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Minneapolis, MN 55401

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September 23, 2014

—Via Electronic Filing—

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

RE: COMPLIANCE  
COMPETITIVE RESOURCE ACQUISITION  
DOCKET NOS. E002/CN-12-1240 & E002/CN-13-606

Dear Dr. Haar:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission a Compliance filing including its updated resource need assessment, and negotiated draft Purchased Power Agreements between the Company and Calpine Energy, Invenergy, and Geronimo – as well as the Company's Black Dog Unit 6 pricing.

We have prepared Public, Non-Public Trade Secret, and Non-Public Highly Sensitive Trade Secret Information versions of this Compliance filing. The most restricted version is that which contains Highly Sensitive Trade Secret Information – Third Party Confidential Information in the body of the Comments and in Attachment D to the Comments. Per the terms of the October 1, 2013 Fifth Prehearing Order, and consistent with the practice in this matter, we are submitting the Highly Sensitive Trade Secret version only in Docket No. E002/CN-13-606. Since this version contains Third Party Confidential Information, consistent with the terms of paragraph 2(c) of the Fifth Prehearing Order, this version is only being served on the governmental agencies who are parties in this docket.

We are also filing a Non-Public Trade Secret version of our filing in E002/CN-12-1240. In this version, we have redacted the Third Party Confidential Information. It, however, contains Trade Secret information applicable to the Power Purchase Agreements and the pricing proposal for Black Dog 6. The Trade Secret

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information is contained in the body of the Comments and in Attachments A, B, and C. We are also submitting a Public version of our Comments in Docket No. E002/CN-12-1240, which does not contain the restricted material contained in the other versions of this filing.

We have electronically filed the Public and Non-Public versions with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. The Highly Sensitive Trade Secret version has been served on the governmental agencies that are parties in Docket No. E002/CN-13-606. If you have any questions regarding this filing, please contact me at [james.r.alders@xcelenergy.com](mailto:james.r.alders@xcelenergy.com) or (612) 330-6732.

Sincerely,

/s/

JAMES R. ALDERS  
STRATEGY CONSULTANT  
REGULATORY AFFAIRS

Enclosures  
c: Service List

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STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER COMPANY  
D/B/A XCEL ENERGY TO INITIATE A  
COMPETITIVE RESOURCE ACQUISITION  
PROCESS

DOCKET NOS. E002/CN-12-1240 AND  
E002/CN-13-606

**COMPLIANCE**

**INTRODUCTION**

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission this Compliance filing as required in the Commission's May 23, 2014 ORDER in Docket No. E002/CN-12-1240. In this filing, we provide the following information required in the Commission's Order:

- A status report regarding changes in the Company's resource needs, including those resulting from changes in MISO's reserve requirements by October 2014;
- Draft Power Purchase Agreements with Calpine and Invenergy, and price terms for Black Dog Unit 6, so that the Commission can determine which of these project(s), if any, best addresses the Company's overall system needs identified in this proceeding and the Commission's March 5, 2013 Order in E002/RP-10-825; and
- A draft Power Purchase Agreement (PPA) with Geronimo Energy, for Commission review to ensure that the negotiated terms for the Aurora solar project are consistent with the public interest.

As we explain below, changes in our expected capacity needs suggest that our resource need has softened and the Commission may want the Company to defer selection and seek additional flexibility from all bidders. Below, we outline a proposed path forward that we believe will ensure that the Company has adequate capacity resources to meet our customers' needs, and acquires adequate resources timed cost-effectively with our expected needs. Additionally, in recognition of the unique timing issues surrounding solar resources, we offer options for the Commission's

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consideration with respect to the acquisition of these resources.

**OVERVIEW**

We have spent the summer negotiating contracts and developing pricing terms with the parties consistent with the Commission's Order, which we provide with this filing. However, based on our updated resource need assessment, we believe it would be beneficial to our customers to delay the addition of any thermal resources to our system. Instead, we recommend the Commission afford us the opportunity to work with Calpine and Invenegy to renegotiate PPAs with pricing to reflect in-service dates ranging from 2019-2021 and similarly refresh our Black Dog 6 self-build proposal.

We would then bring the revised agreements and our Black Dog 6 pricing terms, along with any new resource need information, back to the Commission by May 1, 2015. We believe this will avoid adding unnecessary thermal resources to our system – and significant costs for customers.

With respect to solar, however, given the expected step-down of the Investment Tax Credit (ITC) at the end of 2016, we believe a different approach – and some urgency – is needed. As we discussed in our September 12, 2014 Status Update in our Solar RFP proceeding (Docket No. E002/M-14-162), we received competitive pricing on a range of solar proposals, and believe the Commission would benefit from a wholistic look at the addition of solar resources to our system. Thus, we believe the Commission's public interest determination for the Aurora solar project in this CAP proceeding could be informed by the PPAs we develop through the Solar RFP process.

We expect to submit the PPAs that result from our Solar RFP process in mid-October 2014, and believe it will be in the best interests of our customers for the Commission to consider a broad range of proposals in deciding the best solar resources to add to our system beginning in 2016. For example, given the pricing and the potential expiration of the ITC, the Commission may decide the Company should add more than it minimally needs to meet its Solar Energy Standard compliance requirements.

The remainder of our filing is organized as follows:

- *Background*, which provides an overview of relevant procedural information.
- *Updated Resource Need Assessment*, providing the results of our current resource need assessment and discussing key issues that have changed since the Commission determined the Company's 2017-2019 resource need.

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- *Resource Need Summary*, discussing the results and conclusions of our resource need assessment.
- *Thermal Resource Agreement Terms*, outlining the terms of the Calpine and Invenenergy agreements and Black Dog 6 pricing and the Company's recommendation for acquisition of thermal resources.
- *Solar Resource Acquisition*, outlining the terms of the Geronimo agreement, and discussion and options for the Commission to consider for meeting the Company's immediate solar resource needs.

**A. Background**

On November 21, 2012, the Commission initiated Docket No. E002/CN-12-1240 to solicit proposals from project developers to meet the revised assessment of the Company's resource needs. On March 5, 2013, in the Company's Integrated Resource Plan proceeding in Docket No. E002/RP-10-825, the Commission issued an order declaring a demonstrated need for an additional capacity of 150 MW by 2017, increasing up to 500 MW by 2019.

In April 2013, bids to meet the identified need were submitted to the Commission, and in June 2013, the Commission referred the matter to a contested case proceeding. On December 31, 2013, the Administrative Law Judge issued his FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION. The Commission considered the matter March 25 and 27, 2014, and on May 23, 2014 issued its ORDER DIRECTING XCEL TO NEGOTIATE DRAFT AGREEMENTS WITH SELECTED PARTIES.

The Commission's May 23, 2014 ORDER required the Company to negotiate draft PPAs for acquiring new supply resources with Geronimo Energy, Calpine Corporation, and Invenenergy Thermal Development – and to develop price terms for its own Black Dog Unit 6 – and submit the terms for Commission approval no later than September 23, 2014. The Order also required the Company to submit status updates by October 2014 and October 2015 regarding any changes in the Company's resource needs.

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**B. Updated Resource Need Assessment**

In the Commission's May 23, 2014 Order, the Commission found that the future adequacy, reliability, and efficiency of power available to the Company, its customers, and the people of Minnesota and neighboring states, depends upon a prudent assessment of need.<sup>1</sup> The Commission also acknowledged that there were several areas of uncertainty in the record regarding the Company's resource needs in the 2017-2019 timeframe, including customer demand, evolving MISO reserve requirements, and possible changes in MISO's accreditation of demand response resources.

In this section we provide an updated customer demand forecast, and discuss each of these issues, which contribute to our current assessment of our capacity need. In summary, we believe our capacity need has changed from an *increasing need* to a *flat capacity surplus* through as late as 2023, which we believe supports a delay of two years or more in adding any new capacity resource to our system.

The amount of generating capacity needed to meet our customers' electrical demand is determined by considering a combination of factors. The analysis starts with the forecast of our customers' peak demand for electricity. To that, a Reserve Margin is added to reflect the utility's contribution to the region's pool of generation that can respond to unexpected equipment outages. The combination of Peak Demand and Reserve represent the Company's total Generating Capacity Obligation, which is then compared to the generation available to meet the obligation, as shown below:

*Peak Customer Demand Forecast* **plus** *Reserve Margin* **equals**  
*Total Generating Capacity Obligation*

*Total Generating Capacity Obligation* **minus**  
*Demand Response Capability* **and**  
*Existing Generation Capacity as Measured by UCAP* **and**  
*Generation Adjustments* **equals**  
*Net Generating Capacity Obligation/Surplus*

In our analysis, our Demand Response Capability is treated as a resource that can be used to meet a portion of Peak Demand, and we make adjustments for any known changes from our last analysis of available generating resources.

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<sup>1</sup> Order at page 31.

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1. *Peak Customer Demand Forecast*

Our most recent demand forecast that we discuss in this filing was prepared in August 2014 and reflects actual results through July. The demand forecast update we provided in September 2013 in this proceeding was from our Spring 2013 forecast, which included actuals through 2012. While we have been seeing stronger than expected sales in the recent past, our peak demand over the last two summers has not shown the same growth. In fact, our current forecast indicates a slight downward correction, projecting average growth over the 2017-2022 period to be less than 0.60 percent compared to the September 2013 update, which indicated average growth of 0.90 percent.

This lower expected growth rate in customer demand represents a 22 MW reduction in the forecasted median Peak Demand in 2017, growing to a 190 MW reduction by 2021, and a 388 MW reduction in 2024. As can be seen below, our current forecast update resulted in relatively modest changes in early years from the information we provided in September 2013:

**Median Peak Demand Forecast  
September 2014 compared to September 2013**

<b>(MW)</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Sep 2013	9,500	9,590	9,676	9,770	9,859	9,950	10,029	10,100
Sep 2014	9,478	9,552	9,608	9,639	9,669	9,726	9,720	9,712
Difference	(22)	(38)	(68)	(131)	(190)	(224)	(309)	(388)

2. *MISO Reserve Margin Requirements*

The Company's Reserve Margin is the amount of generating capacity in excess of its forecasted Peak Customer Demand that the Company must maintain for regional electric grid reliability. Since 2013, MISO has determined resource adequacy by applying a percentage to each utility's customer demand at the time of the MISO system-wide peak demand to calculate a Reserve Margin. As reflected in the Commission's May 23, 2014 Order, the MISO Reserve Margin calculation is relatively new, and at the time of hearing in this proceeding, there was some reservation about whether MISO's coincident peak approach and associated calculation would remain stable. Since then, however, we have gained more confidence in the approach, and believe it represents a conservative estimate of Reserve Margin obligations.

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In testimony in this proceeding, we described the process that led to our application of a 5 percent coincidence factor to the MISO peak to reflect the fact that, on average, customer demand on our NSP System is at 95 percent of its annual peak at the time of the MISO region-wide peak. MISO has since accepted our 5 percent coincidence factor, which we have reflected in the updated resource need assessment we present in this filing.

Another signal from MISO regarding its resource adequacy determination process is the continuing reduction in the Reserve Margin that utilities must include in their overall resource need determination process. In our Resource Plan, and previously in this proceeding, we used the most current MISO reserve calculation, which was 7.39 percent for the 2012/2013 planning period. The rate for planning year 2014/2015 is 7.3 percent, and MISO recently set the rate at 7.1 percent for planning year 2015/2016, which is what we have used in this updated need analysis.

The trend of reductions in the amount of generation held in reserve in percentage terms is consistent with the expansion of the MISO region and increase in the pool of resources that can be shared to respond to unexpected generation outages. Recent MISO analysis also indicates that Zone 1 of the MISO system has substantial import capability from other parts of MISO.

We understand that there is continuing discussion of Reserve Margin calculations, and that there could be further reductions as new transmission infrastructure strengthens connections among MISO's sub-regions.<sup>2</sup> Overall, MISO is getting more confident with its load forecasting, including non-coincident peak, as well as its Reserve Margin needs. In fact, MISO's most recent *Loss of Load Probability Analysis Report* projects a 6.5 percent Reserve Margin percentage for the 2024/2025 planning year.

Xcel Energy's Reserve Margin obligation utilizing the 5 percent coincidence factor and the 7.1 percent reserve value results in approximately a 640 MW Reserve Margin obligation.<sup>3</sup> The impact of applying the coincidence factor and updated reserve percentage to our updated resource need assessment is a reduction in our capacity obligation of 217 to 267 MW over the 2017-2019 period, from the September 2013 resource need information we provided in this proceeding. We recognize that there

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<sup>2</sup> We are aware that MISO and the OMS provided FERC with a resource adequacy update regarding a survey that assessed the capacity needs of the MISO footprint in the short-term. The survey shows that Zone 1, which includes Minnesota, is projected to have a small capacity surplus in 2016. The update also acknowledges that there are capacity deficiencies in other Zones, but there are resources planned to be placed in-service to address those deficiencies. See FERC Docket AD14-17-000 (*Update on MISO 2016 Resource Adequacy Forecast*, September 18, 2014).

<sup>3</sup> Obligation values are reflected in terms of UCAP.

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can still be evolution of these specific numbers, but given MISO's acceptance of both values, and their projected future Reserve Margin, their use now represents our most likely assessment of future need.

3. *Capacity Need Summary*

Our updated Customer Peak Demand forecast and the result of the MISO capacity resource adequacy determination calculation results in our overall Total Generating Capacity Obligation. In 2017, we anticipate an obligation of just over 9,640 MW; by 2020, our obligation estimate increases to just over 9,800 MW.

4. *Demand Response Capability*

Demand Response, often referred to as *load management*, is a customer resource that evolves with market conditions. These programs encourage customers to reduce loads when called upon in return for lower electric rates or bill credits. Although these loads can vary based on customer activity and other external forces, we are confident that we can provide the forecasted load reductions in the 2017-2020 time period as indicated in our Resource Need Assessment outlined in Section C below.

We have based our Demand Response projections on the fact that we have a large portfolio of load management resources in Minnesota built through decades of customer engagement and program development. While there is some uncertainty regarding the rules and how Demand Response will be valued in the future, we will continue to work with MISO to get the rules right – and with our customers, to verify our programs provide expected load relief, and to deliver new program choices that grow our future Demand Response resources.<sup>4</sup>

5. *Existing Generation Capability*

In MISO's resource adequacy analysis, it assigns a production capability value (UCAP) to each generating unit, with generating units having higher availability contributing more to the resource adequacy than units with lower availability history. However, MISO's typical 3-year rolling average approach has the effect of penalizing units that have experienced extended repair outages such as Sherco 3 and Black Dog 5-2.

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<sup>4</sup> We note that on May 23, 2014, the D.C. Circuit Court of Appeals vacated FERC Order 745, rejecting FERC jurisdiction over demand response pricing, which may slow the of pace of any change to the current rules. *Electric Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C.Cir.2014).

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To gain a longer-term perspective and better sense of what unit availability values will look like three or more years from now, we have used a value based on each unit's median availability over the last five years. The longer time horizon provides a better indication of future generating unit availability, since it is not skewed by an abnormal repair outage. This provides a more realistic view of our resource capability when looking at the need for future resource acquisitions.

6. *Other Factors Affecting our Need*

Resource need assessments are always dynamic, and we have attempted to approach our updated need assessment with a conservative view by not including some of the potential demand reductions and other generation additions that could conceivably occur in the 2017-2020 timeframe. For example, we have become aware that we may have customers adding both incremental industrial load and onsite generation resources that together may reduce our net capacity obligation. We have not attempted to incorporate adjustments for these potential changes at this time. However, we may be in better position next Spring to know whether any material adjustments are necessary.

**C. Resource Need Summary**

We present our updated Resource Need Assessment below. In summary, our analysis indicates that we will have surplus capacity resources – over-and-above our MISO Reserve Margin – of approximately 250 MW in 2017, 175 MW in 2018, and nearly 100 MW in 2019. This changed assessment is the result of very modest changes in the Customer Demand forecast, but primarily greater confidence in the MISO resource adequacy paradigm.

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**Resource Need Assessment - Summary  
September 2014**

	2017	2018	2019	2020	2021	2022	2023	2024
Peak	9,478	9,552	9,608	9,639	9,669	9,726	9,720	9,712
Coincident Peak adjustment	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Reserve Margin	7.1%	7.1%	7.1%	7.1%	7.1%	7.1%	7.1%	7.1%
Capacity Obligation	9,643	9,719	9,776	9,807	9,838	9,896	9,890	9,881
Coal	2,414	2,414	2,414	2,414	2,414	2,414	2,414	2,395
Nuclear	1,643	1,643	1,643	1,643	1,643	1,643	1,643	1,643
Gas	3457	3457	3446	3,293	3,293	3,293	3,293	3,137
Wind, Hydro, Bio	1,253	1,230	1,204	1,203	1,433	1,425	1,385	1,317
Solar	109	115	121	127	129	128	128	127
Load Management	1,021	1,033	1,044	1,056	1,067	1,078	1,090	1,101
Resources	9,897	9,892	9,872	9,736	9,979	9,981	9,953	9,720
<i>Net Resource Surplus (Deficit)</i>	<b>254</b>	<b>173</b>	<b>96</b>	<b>(71)</b>	<b>141</b>	<b>85</b>	<b>63</b>	<b>(161)</b>

During the negotiation of Power Purchase Agreements with the parties and prior to our completion of our Customer Demand forecast update, it became apparent that, due to the passage of time, bidders were no longer able to meet a 2017 in-service date with their projects. As a result, we began to investigate whether there may be any short-term capacity enhancements available. We discuss below two short-term resources that we identified could be used as tools to further strengthen our resource adequacy position if needed.

*Manitoba Hydro.* Xcel Energy and Manitoba Hydro are parties to three separate power supply agreements that terminate in April 2025. These agreements, in aggregate, provide the Company with over 700 MW of accredited summer generation capacity for years 2015-2020, increasing to over 800 MW for years 2021-2025. One of these agreements is an exchange of generating capacity. In the arrangement, Manitoba Hydro provides the Company 350 MW of generation capacity during the summer; in exchange, we provide 350 MW to Manitoba Hydro in the winter when they experience peak demand.

This exchange is designed to make more efficient use of generation capacity that exists on each party's system and is available during non-peak portions of the year when each System's demand for power is low. We are currently in discussions with Manitoba Hydro to increase our diversity exchange by approximately 75 MW.

This incremental 75 MW exchange would utilize existing transmission paths. While the exact term of the additional 75 MW capacity exchange is still being negotiated between the parties, it is contemplated that it will cover years 2016 through 2019.

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Since the addition of 75 MW to our system in the summer would be part of an exchange of capacity, we do not anticipate it would result in any incremental cost to our customers. We will be continuing discussions with Manitoba Hydro over the next few months to see if we can add this short-term addition to our system.

*Blue Lake.* We have also investigated the remaining lives of some of our older peaking units. As part of past resource need assessments we have assumed four of our older peaking units, Blue Lake 1-4, will be retired in 2019. Blue Lake Units 1-4 are oil-fired peaking units that have been dispatched only a few times a year to provide energy during peak demand periods associated with extreme hot or cold weather conditions. These four units have combined capacity of 157 MW and can contribute approximately 153 MW toward MISO's resource adequacy determination.

We believe we can accomplish a short extension to their operating life, to 2023, with a minimal, if any, increase in current fixed and variable O&M, since the units are operated infrequently – and by the same staff operating other peaking units at the plant site. Further, we anticipate only minor improvements and repairs in order to extend the life of these units through the 2020-2023 period. We are planning boroscopic inspections to confirm the condition of the units. While at this time we have not identified any specific capital investments necessary to extend their operation, we have tried to be conservative and have assumed some incremental capital expense in the range of \$3 to \$5 million in the four years of additional operation.

As shown in the above Resource Need Summary table, with the addition of these potential resources, our capacity need assessment consistently shows surplus capacity through the mid-2020s. With the exception of one year, 2020, our need assessment has changed from an ever-increasing resource need to a relatively flat capacity surplus through 2023.

As we consider the results of this updated Resource Need Assessment, we believe these changes may cause the Commission to want to pause and collect additional information before committing to the addition of a new thermal resource on our system at this time. While we acknowledge there is always some uncertainty in resource need assessments, we believe we can substantially mitigate most potential short positions in this time horizon through use of the Manitoba Hydro and Blue Lake options. We provide below a view of how including these options would adjust our Resource Need Summary:

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**Resource Need Summary  
(Including Short-Term Resources)  
September 2014**

	2017	2018	2019	2020	2021	2022	2023	2024
<i>Net Resource Excess (Deficit) – Prior to Addition of Short-Term Resource Tools</i>	254	173	96	(71)	141	85	63	(161)
Blue Lake 1-4 Life Extension				153	153	153	153	
Potential Manitoba Hydro Diversity Agreement	73	73	73					
<b>Net Resource Surplus (Deficit)</b>	<b>327</b>	<b>246</b>	<b>169</b>	<b>82</b>	<b>294</b>	<b>238</b>	<b>216</b>	<b>(161)</b>

Even with the uncertainty in resource need assessments, our analysis leads us to conclude that there is high probability we will have more than adequate generating resources through 2018 or 2019, and perhaps through 2023. If the Commission agrees with our reassessment of our capacity needs, the terms and timing of the Power Purchase Agreements we have negotiated no longer coincide with our anticipated need.

Even though the analysis suggests we can forgo generation additions until at least 2020, if not longer, we believe a conservative approach continues to be in order. Rather than start a whole new resource acquisition process, we recommend that the Commission permit the Company to return to the bidders for renewed discussions regarding the timing of these resources.

We would work with bidders to refresh their proposals to reflect potential in-service dates in the 2019-2021 timeframe, as well as options to delay or cancel. We request that the Commission require the Company to report back in May 2015 with updated pricing for 2019-2021 in-service dates for all thermal PPAs and the Black Dog 6 unit if the Company believes it can provide greater benefit.

First year revenue requirements associated with the three natural gas proposals in this proceeding range from approximately [TRADE SECRET BEGINS...

...TRADE SECRET ENDS]<sup>5</sup> depending on which facility or combination of facilities is selected. We recognize the need to balance adequacy of supply with customer rate impacts. At this point, we do not see a need to add resources to our system perhaps until 2024. Because of this, our proposed approach of renegotiating with the identified best options for a slight shift in timing should provide sufficient safeguards to ensure we meet our capacity obligations if circumstances do not play out

<sup>5</sup> Trade Secret designation is based on the provisions of the October 1, 2013 Fifth Prehearing Order in this matter.

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as we expect. However, if new generation can be avoided until the mid-2020s, it has the effect of completely eliminating a generating unit rather than just deferring the addition, consistent with state policy to minimize non-renewable resource additions.

Our proposal to bring back revised thermal PPAs also allows the Commission the opportunity to consider our next Resource Plan filing in January. That filing will provide more in-depth examination of our resource needs in the mid-2020s timeframe, will include the potential impacts of federal CO<sub>2</sub> regulations currently under development, and explore resource scenarios that can achieve Minnesota's greenhouse gas goals and comply with federal rules. With the Resource Plan filing in hand, we believe the Commission will have a better understanding of any interplay between the decisions that must be made in this docket and the important policy issues that will drive subsequent planning outcomes.<sup>6</sup>

#### **D. Thermal Resource Agreement Terms**

Over the summer, the Company has worked diligently with bidders to establish draft Power Purchase Agreements consistent with the Commission's May 23, 2014 Order. In this section, we present an overview of the draft PPAs we have negotiated with Calpine and Invenergy, and pricing terms for Black Dog 6. All PPAs are the result of the negotiation of terms designed to address and allocate project risks. We provide a discussion of each PPA, its risks, and how the PPA terms mitigate the risk.

##### *1. Calpine Mankato Energy Center Expansion*

Calpine proposed a 20-year PPA for the capacity of a 345 MW natural gas-fired combined cycle facility to be built at its existing 375 MW Mankato Energy Center combined cycle plant. Its bid contained a proposed kW-month price for capacity and MWh price for energy, as supplemented in the proceedings with respect to different commercial operation dates (CODs). The proposed capacity and energy prices escalate annually after the first year of operation. At hearing, Calpine initially proposed a 2017 COD, but upon request provided pricing information for CODs in 2018 and 2019.

Two principal changes in the structure of Calpine's proposal relating to COD and payment formulas developed in the course of negotiations, as follows:

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<sup>6</sup> It is our goal to also provide the Commission and Minnesota stakeholders with information regarding the outcome of our North Dakota rate case as it relates to resource planning for the State of Minnesota and the NSP System.

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- (1) Calpine concluded that it could not construct its proposed facility in time for a June 1, 2017 COD, given: (1) the timing of the construction of the required transmission network upgrades for the facility's interconnection to be unconditional; and (2) the likely timing of the Commission's review and approval of the PPAs in this proceeding.

The parties therefore negotiated a June 1, 2018 COD. Calpine will need a Commission-approved and Company-executed PPA in hand by April 1, 2015 to meet this date.

- (2) Calpine's bid proposed that payment and other terms in the MEC II PPA would mirror the same terms in its existing, Commission-approved Mankato Energy Center PPA. In addition, the payment terms in the MEC II PPA include a dispatchability payment similar to a payment provision in the Mankato Energy Center PPA, although this was not included in Calpine's bid proposal.

By using the existing Mankato Energy Center PPA payment provisions in the new PPA, the administrative burden associated with using two different payment calculations and billing processes for the two Mankato PPAs was avoided. It also avoids the risk that unforeseen differences in the payments made and received under different calculation formulas for the two PPAs could have unintended consequences on how the parties choose to schedule, operate, and properly calculate payments for each facility.

However, the impact of adding the dispatchability payment and using the facility availability formula from the existing Mankato Energy Center PPA resulted in a marginal increase in the aggregate capacity payments to Calpine when compared to the capacity payments calculated pursuant to the Company's Model PPA.

The PPA addresses risks in the following areas:

*Delay/Termination of the PPA based on need.* Consistent with the Commission's order, Calpine provided options to delay or terminate its PPA in the event the Commission considers delay or termination prudent in light of new information about the Company's need for the PPA. The Company may delay the facility's COD from 2018 to 2019 subject to the increased capacity and energy prices associated with the new COD, and must also pay for Calpine's demobilization and re-mobilization costs. The Company may also terminate the PPA, paying Calpine for its unrecovered costs, as

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well as a breakage fee in addition to the unrecovered costs. Total termination fees could be substantial as shown in the PPA, provided as Trade Secret Attachment A.

*Transmission Interconnection Costs.* Calpine's proposal was that the Company pay for all transmission costs to interconnect the MEC II Facility to the grid. In the course of the proceedings, Calpine estimated that these costs could run from \$650,000 to \$1.5 million. While the Company sought to cap the Company's exposure for transmission interconnection costs at Calpine's estimate, Calpine was unwilling to agree given its uncertainty of the total amount of such costs.

*Capacity Accreditation Risk.* It appears there are transmission network upgrades that must be made before MISO can accredit the MEC II Facility as a Capacity Resource available to the Company, and the completion schedule for these upgrades is beyond Calpine's control. As a result, Calpine would not agree to the MEC II PPA requiring a specific COD, given the uncertainties associated with the PPA requirement that Calpine must achieve MISO capacity accreditation of the MEC II Facility. The Company therefore agreed to Calpine's proposal that it may elect to delay COD by one year upon timely notice to the Company that Calpine cannot achieve accreditation by COD. This allows the Company to obtain from another source the capacity credit it needs for the year the PPA is delayed, although the cost of the capacity credit will be subject to the prevailing market conditions. Absent such timely notice, Calpine must achieve accreditation by COD, and failure to do so is an Event of Default subject to specific cure provisions designed to keep the Company whole in all events.

*Environmental Risk.* Calpine proposed that the Company be liable under the MEC II PPA for all costs resulting from future regulation of all types of emissions. The Company strongly objected to its customers incurring these unknowable costs, and Calpine accepted the Company's position that it will only accept conditional risks from the regulation of carbon emissions as stated in its Model PPA.

*Financial Risk.* The Mankato Expansion PPA establishes a pre-COD and post-COD security fund to protect the Company generally from the range of financial risks associated with the PPA. The Company also negotiated a provision requiring Calpine upon completion of the facility to obtain a subordinated mortgage on the facility for the benefit of the Company.

*Construction/Operational Risk.* The Company negotiated the payment of liquidated damages for each day that Calpine fails to meet COD for the MEC II Facility due to reasons other than its failure to achieve MISO accreditation of the facility as a Capacity Resource. In addition, the MEC II PPA includes other protective measures

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such as specific performance, step-in rights, actual damages, and termination. The Company also accepted Calpine's proposal that it be allowed to provide energy from an alternative generation source post COD in the event that more than 50 MW of the capacity of its new MEC II Facility becomes unavailable due to a forced outage. This holds the Company harmless from a shortfall in meeting its energy needs in the face of a significant outage of the MEC II Facility.

Adding the MEC II Facility to the NSP System in June 2018 would result in the addition of approximately [TRADE SECRET BEGINS... ..TRADE SECRET ENDS] of revenue requirements in 2018 and [TRADE SECRET BEGINS... ..TRADE SECRET ENDS] in 2019.

We provide a copy of the Calpine PPA as Trade Secret Attachment A.

*2. Invenergy Cannon Falls Expansion*

Invenergy proposed a 20-year PPA for the capacity of a 179 MW combustion turbine peaking unit added to its existing 357 MW simple cycle plant site at Cannon Falls, Minnesota. The monthly payment structure was based on proposed price per kW-month for capacity, price per MWh for energy, and price per turbine start, each escalated annually after the first year of operation.

Invenergy's pricing was supplemented in the course of the proceedings to reflect different CODs. Invenergy initially proposed a June 1, 2016 COD, but upon request during the course of the proceedings provided pricing information for a 2017 COD, when it was anticipated Xcel Energy's need would begin, as well as for 2018 and 2019 CODs.

There are two principal changes in the structure of the Invenergy PPA, relating to its initial start date and the amount of capacity provided under the PPA, as follows:

- (1) As was the case with Calpine, Invenergy concluded that it could not construct its proposed CT facility in time for a June 1, 2017 COD, given the timing of required transmission network upgrades for the Facility's interconnection to be unconditional, and the likely timing of the Commission's review and approval of its PPA with the Company. The parties therefore negotiated a June 1, 2018 COD. Invenergy will need a Commission-approved and Company-executed PPA in hand by April 1, 2015 to meet the June 1, 2018 COD.

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- (2) The second change is the result of the COD being moved two years later than the June 1, 2016 COD Invenergy originally proposed. Because of this delay, Invenergy is no longer planning on using the 179 MW CT it had in stock as its CF II Facility; it will use that CT instead for another Invenergy project that needs to be in service before 2018. Invenergy now plans to add a new 209 MW GE Turbine 7FA.05 at its CF II Facility.

The PPA addresses risks in the following areas:

*Delay/Termination of the PPA based on need.* In response to the Commission's request for PPA delay and early termination options, Invenergy will allow the Company to delay the CF II Facility's 2018 COD to 2019. While the Company will pay the higher capacity and energy prices associated with the 2019 COD, there is no additional payment or fee associated with the delay. The Company may also terminate the CF II PPA subject to an early termination fee.

*Transmission Interconnection Costs.* Invenergy's proposal included a specific dollar amount for anticipated costs to interconnect its new CF II Facility to the transmission network, with any costs over that amount passed onto the Company and its ratepayers for collection. In the course of negotiations, Invenergy abandoned its proposal that the Company cover any of the project's transmission and interconnection related costs beyond the amount included in its PPA pricing.

*Capacity Accreditation Risk.* As with Calpine's project, Invenergy's addition of an additional CT peaker to its existing Cannon Falls plant site requires the completion of certain transmission network upgrades before it can be accredited as a Capacity Resource by MISO. Invenergy has no control over the schedule for completing those upgrades, and as a result the Company negotiated the same provisions with Invenergy that it did with Calpine to keep itself whole in the event that Invenergy cannot obtain capacity accreditation for its CF II Facility by COD.

*Environmental Risk.* As was the case with Calpine, Invenergy agreed to the Company's position that it would only accept the conditional risks associated with the future regulation of carbon emissions.

*Financial Risk.* The Company negotiated pre-COD and post-COD security fund amounts to protect the Company generally from the range of financial risks associated with the Invenergy CF II PPA.

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*Construction/Operational Risk.* The Company negotiated the payment of liquidated damages for each day Invenergy fails to meet COD for its CF II Facility for reasons other than failure to achieve accreditation. The CF II PPA also includes other protective measures such as specific performance, step-in rights, actual damages, and termination.

Invenergy also proposed in the course of negotiations to increase the current oil storage at the Cannon Falls plant by 50 percent at no cost to the Company. The increase will allow the entire site to maintain its current fuel oil run capability of 28 consecutive hours after the addition of the CF II Facility.

Adding the Invenergy Cannon Falls facility to the NSP System in June 2018 would result in the addition of approximately [TRADE SECRET BEGINS...  
...TRADE SECRET ENDS] of revenue requirements in 2018 and [TRADE SECRET BEGINS...  
...TRADE SECRET ENDS] in 2019.

We provide a copy of the Invenergy PPA as Trade Secret Attachment B.

3. *Xcel Energy Black Dog 6 Proposal*

Xcel Energy proposed a peaking unit, nominally a 215 MW combustion turbine, located within the power house at the Black Dog plant site in Burnsville. Only minor modifications to the existing 115 kV switchyard will be required to connect Black Dog 6 to the transmission system, and no upgrades are required to the 115 kV transmission system. Unit 6 will increase the plant's high pressure natural gas need, for which the Company plans to conduct a competitive process for supply to the plant.

We provided capital cost estimates for Black Dog 6 and its associated transmission interconnection for 2017, 2018, and 2019 in-service dates. As is the case with other bidders, due to the passage of time, we are no longer able to meet a 2017 in-service date. Our capital cost estimates for 2018 or 2019 in-service dates have not changed. However, to meet a 2018 in-service date, we will have to make commitments to major equipment soon, with generally a three-year lead time. Thus, like other bidders, cancellation after those commitments are made would result in sunk costs. To be clear, our proposal is to recover all prudently-incurred sunk costs if the project is cancelled after authorized to proceed.

In its May 23, 2014 Order, the Commission directed the Company to present terms of a similar nature to those of other bidders. Furthermore, the Order indicates that bidders should be held to the parameters of their bids that ratepayers should not be

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subject to costs higher than those bid, but that bidders should be able to retain any savings if actual costs are below what was presented.

In compliance with the Commission's Order, we propose the capital cost estimates presented in our initial April 2013 filing for a 2018 or a 2019 in-service date for Black Dog 6 be the basis for cost recovery. If the actual capital cost of Black Dog 6 is higher than the estimate presented, only the estimate and allowance for funds used during construction (AFUDC) associated with the estimate would be placed in rate base. If the actual cost of the project is less than the estimate, the full capital cost estimate along with AFUDC associated with actual incurred costs will be put in rate base. We would create a regulatory asset on our books to recognize the difference between actual cost and that included in rate base.

*4. Thermal Resource Recommendations*

As we have outlined, a number of changes have occurred since the Commission ordered the Company to fill a need of 150 MW in 2017, increasing to 500 MW in 2019. In summary, instead of a need during the 2017-2019 timeframe, we are forecasting a relatively steady surplus as outlined in the Resource Need Summary section of this filing. In light of these changes and opportunities, we recommend that the Commission permit the Company to return to the bidders for renewed discussions regarding the timing of these resources.

We request that the Commission require the Company to report back to the Commission in May 2015 with updated pricing for delayed in-service dates to address a potential need in the 2019-2021 timeframe for all thermal PPAs and the Black Dog 6 unit.

**D. Solar Resource Acquisition**

In its May 23, 2014 Order, the Commission required the Company to negotiate a draft PPA with Geronimo Energy, and submit it to the Commission to ensure the negotiated terms are in the public interest. We provide the Geronimo PPA as Trade Secret Attachment C to this filing, and discuss its terms below. In this section, we additionally discuss how the Geronimo PPA in this proceeding may interact with the PPAs we are negotiating in our Solar RFP effort.

We believe our customers would benefit from the Commission taking a wholistic look at the addition of solar resources to our system – and therefore, considering Geronimo's Aurora solar project in this CAP proceeding alongside the Solar RFP

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PPAs we will submit to the Commission in mid-October.

1. *Aurora Project Summary*

Geronimo proposed a 20-year PPA for up to 100 MW of nameplate capacity from distributed solar facilities, ranging in size from 2 MW to 10 MW and located at up to 31 sites. Geronimo offered two pricing options: (1) a capacity price per kW-month escalating annually, and a per MWh energy price escalating annually; and (2) a bundled capacity/energy price per MWh escalating annually. Geronimo proposed a December 1, 2016 COD to ensure that its project would qualify for the 30 percent ITC, and proposed a modified solar energy PPA form that was used in a Request for Proposal process conducted by the Xcel Energy operating company Public Service Company of Colorado.

In the course of negotiations, the parties agreed upon using the Company's newly-developed Model Solar PPA with Geronimo's bundled per MWh capacity/energy price payment structure. To accommodate Geronimo's tax equity financing of the Aurora project sites, the parties negotiated a single PPA structure covering all sites (each site referred to as a "phase"), with the possibility of the PPA being split into a maximum of three separate PPAs as needed post-COD for tax equity financing purposes. As a result of this structure, each phase is treated as a separate project pre-COD, and the Company cannot terminate the single PPA because of any action or inaction of a particular phase that occurs prior to COD. The Company retains, however, pre-COD global default and termination rights for bad acts and defaults by Geronimo.

Geronimo has also modified the number of sites to 24, which range in size from 1.5 to 10 MW and total approximately **[TRADE SECRET BEGINS...  
...TRADE SECRET ENDS]**<sup>7</sup>. The maximum nameplate capacity Geronimo may deliver under the PPA is capped at 100 MW, however, and Geronimo has the discretion to determine which of the sites it will bring to COD to deliver capacity up to the cap.

The PPA addresses areas of risk in the following ways:

*Delay/Termination of PPA Based on Need.* Geronimo's pricing depends in part on its phases qualifying for the ITC, and so the parties did not negotiate any delay or

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<sup>7</sup> Trade Secret designation is based on the provisions of the October 1, 2013 Fifth Prehearing Order in this matter.

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termination of the Geronimo PPA in response to changes in the Company's capacity need in the 2017-2019 time period.

*Transmission Interconnection Costs.* None of Geronimo's phases require interconnection to the transmission grid; they are all connected to the Company's system at the distribution level. Per its bid, Geronimo bears all distribution interconnection costs.

*Capacity and Capacity Accreditation Risk.* Geronimo offered up to 100 MW of nameplate capacity in its proposal. In the course of negotiations, the parties negotiated a scale of damage payments that escalates the further the aggregate MW level Geronimo brings to COD falls short of the 100 MW. In addition, Geronimo's failure to obtain 71 percent accreditation of the nameplate capacity it delivers results in damages for the period of the accredited capacity shortfall.

*Environmental Risk.* The Company will own all environmental and renewable energy credits.

*Financial Risk.* The Company negotiated pre-COD and post-COD security fund amounts to protect the Company generally from the range of financial risks associated with the Geronimo PPA. In addition, Geronimo takes all ITC qualification risks.

*Construction/Operational Risk.* The Company accepted Geronimo's proposal that completed phases can be recognized as having achieved COD in a 120-day window that begins September 1, 2016 and ends December 31, 2016. For each phase that fails to achieve COD by December 31, 2016, Geronimo will have the option to complete additional project phases, but will be required to pay liquidated damages until the phase achieves COD. The PPA also includes protective measures such as specific performance, step-in rights, actual damages, and termination.

Because of the likelihood that there will be some number of phases completed before the start of the COD window on September 1, 2016, Geronimo proposed the Company take pre-COD energy produced by a phase before that date. The Company agreed to take such energy at a price based on the prevailing market rate.

2. *Public Interest Approach to Solar Acquisition*

We believe that there are two public interest questions with respect to acquisition of solar resources in this CAP proceeding: (1) the amount of large-scale utility solar projects to acquire; and (2) whether the acquisitions should impact decisions regarding the public interest in this CAP proceeding. Regardless of the approach to the

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acquisition of solar resources the Commission chooses, the needed decisions are time-sensitive due to the significant reduction in the available ITC at the end of 2016.

a. Amount of Solar Resources

As to the amount of solar resources to acquire at this time, we indicated in our September 12, 2014 Solar RFP Update letter (Docket No. E002/M-14-162) that the banking rules for solar RECs required an addition of approximately 100 MW of utility-scale solar by 2020, compared to our previous estimate of 200 MW, which did not include the Commission's decisions regarding solar REC banking. The question of how much to acquire now is similar to previous wind acquisitions made to comply with the Renewable Energy Standard. The Commission needs to make some judgments about the amount of solar generation that we should add to our system in the 2016 timeframe. In making that determination, the Commission will be weighing the opportunity associated with the 30 percent ITC in 2016 compared to general trends in the declining cost of solar technology.

The 30 percent ITC will automatically reduce to 10 percent absent Congressional action for projects in-service beginning in 2017. Taking advantage of the higher ITC locks-in roughly a 20 percent price reduction by acting early – assuming no change in current law. Given the stagnation on the Production Tax Credit for wind resources in 2014, we believe there continues to be a real risk that certain of these tax benefits will not continue. On the countervailing side, we have seen dramatic decreases in solar power prices. If technology continues to improve at as rapid a pace as it has for the past five years, it may benefit customers to wait to add incremental resources.

While we think technology improvements are certainly not over, it will be difficult to replicate the magnitude of price decline going forward compared to what we have already seen. In order to comply with the Solar Energy Standard (SES) through at least 2024, we will need approximately 100 MW of retail and 100 MW of utility-scale resources. If approximately 100 MW are developed in customer-sponsored projects and community gardens, the remaining 200 MW becomes our non-banked target for utility-scale additions to our system.

However, the banking rules for solar RECs established by the Commission adds some flexibility to compliance. As we noted previously, we need to add only about 100 MW of utility-scale solar to maintain compliance through the mid-2020s. A more limited acquisition in 2016 might be warranted if substantial reductions in the cost of solar generation are foreseen by the mid-2020s. We currently lean toward fulfilling nearly all of our solar obligation with 2016 resources, because: (1) the uncertainty of any

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ITC extension; and (2) the certainty of the larger pre-2017 ITC benefit provides more certainty of selecting economic resources than awaiting potential technology improvements.

Therefore, we recommend targeting a total acquisition of utility-scale solar resources of approximately 150-200 MW to be added to our system by the end of 2016. This, together with the 100 MW of solar developed with customer-sponsored projects, will enable the Company to comply with the SES for the foreseeable future.

b. Mix of Solar Resources

There are different ways for the Commission to view the acquisition of solar resources. The first is to bifurcate the CAP proceeding's public interest determination from the Solar RFP response. The logic in this approach is that these are separate proceedings with different purposes – one for capacity planning and the other for solar compliance. Under this view, the processes, and thus the resources selected from them, could be viewed separately.

Another approach is to assume we will acquire a certain amount of solar resources to meet our compliance obligations under the statute. Under this approach, the Commission could recognize that although undertaken in different proceedings, the time period of the acquisitions will be overlapping and the nature of the resource – solar photovoltaics – makes them roughly identical from a system perspective. As such, acquiring the least-cost aggregate set of resources to meet compliance during this period would be in the public interest. In doing so, we acknowledge certain differences in contractual terms may exist, but we believe this could be considered in a wholistic comparison of solar resource options.

To assure no further disputes regarding confidentiality, we have marked the entire following discussion of our assessment of resource mix as Trade Secret. The October 1, 2013 Fifth Prehearing Order in this matter provides for Trade Secret designation. Additionally, certain material below is more restrictively marked as “Highly Sensitive Trade Secret Information – Third Party Confidential Information” consistent with paragraph 2(c) of the Fifth Prehearing Order, as this contains the confidential information submitted by certain participants in the Solar RFP conducted in Docket No. E002/M-14-162. Per the terms of this Order, this Third Party Confidential Information should not be disclosed in this docket to any party other than the governmental agencies.

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At this time, we recommend the Commission consolidate its solar acquisition public interest determinations and consider all the information available in both this CAP docket and the Solar RFP docket. When we submit the Solar RFP PPAs, the Commission will have the requisite information needed to make a public interest decision, and we will move forward with acquiring the resources selected by the Commission.

**CONCLUSION**

Xcel Energy provides updated resource need information, and the results of its negotiations with parties and development of pricing terms for its proposal to the Commission. We respectfully request the Commission to:

- Permit the Company to work with the thermal bidders, and on its Black Dog 6 proposal, to update terms and pricing that reflects in-service timing in the 2019-2021 timeframe; and
- Consider both the Aurora proposal for new solar resource additions to our system and PPAs from our RFP process when making public interest determinations in the two dockets.

Dated: September 23, 2014

Northern States Power Company

Respectfully submitted by:

/s/

JAMES ALDERS  
STRATEGY CONSULTANT  
RATES AND REGULATORY AFFAIRS

# **POWER PURCHASE AGREEMENT**

**BETWEEN**

**NORTHERN STATES POWER COMPANY, A MINNESOTA  
CORPORATION  
("COMPANY")**

**AND**

**MANKATO ENERGY CENTER II, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY  
("SELLER")**



**- [date] -**

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**Power Purchase Agreement,  
between  
MANKATO ENERGY CENTER II, LLC, A DELAWARE LIMITED LIABILITY COMPANY,  
AND  
NORTHERN STATES POWER COMPANY, A MINNESOTA  
CORPORATION**

This Power Purchase Agreement (this “PPA”) is made this [ ] day of [ ], 20\_\_ (the “Effective Date”), by and between (i) Northern States Power Company, a Minnesota corporation with a principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota, 55401, (“Company”), (ii) Mankato Energy Center II, LLC, a Delaware limited liability company with offices at 717 Texas Avenue, Suite 1000, Houston, TX 77002 (“Seller”), and, with respect to Section 2.2 and Section 19.2 only, Mankato Energy Center, LLC, a Delaware limited liability company with offices at 717 Texas Avenue, Suite 1000, Houston, TX 77002 (“MEC I”). Company and Seller are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Seller desires to develop, design, construct, interconnect, own, operate and maintain the Facility as defined herein; and

WHEREAS, Seller desires to sell and deliver and Company desires to accept and receive certain products and services delivered from the Facility to 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, (ii) be given their generally accepted meanings consistent with Good Utility Practice, and (iii) be given their well known and generally accepted technical or trade meanings.

(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 a 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.

#### 1.2 Interpretation with Other Agreements.

(A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does 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 whether such Transmission Authority is Company or an Affiliate of Company.

(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 to the Facility. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties’ rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. To the extent allowed by Applicable Law, Seller shall obtain House Power for the Facility by self-generating and netting such self-generation from the Energy provided to Company, *provided, however, that* such netting shall not reduce Seller’s obligation to provide Contract Energy in the amounts and during the times called for by this PPA, and *provided further that*, if Applicable Law does not allow netting of House Power, Seller shall obtain House Power for the Facility 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 date of its execution, and shall remain in full force and effect until the Scheduled Termination Date, subject to delay or early termination as provided in this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties, and (iii) address any remedies or indemnification obligations, arising prior to termination.

2.2 Governing PPA. The Parties and MEC I agree that, notwithstanding any other provision in this PPA and the March 11, 2004 Purchased Power Agreement between Company and MEC I, as amended from time to time (the "MEC I PPA") (i) this PPA alone determines and governs the rights and obligations of the Parties and MEC I with respect to the Facility; (ii) except as expressly provided in this Section 2.2 and Section 19.2, the MEC I PPA alone determines and governs the rights and obligations of MEC I and Company with respect to the MEC I Facility; (iii) except as expressly provided in this Section 2.2 and Section 19.2, in no event shall the rights, benefits and obligations of MEC I or Company as set forth in the MEC I PPA in any way be affected, modified, curtailed, restricted or otherwise limited by this PPA and, for the avoidance of doubt, in no event shall any action or failure to act by MEC I that (A) is otherwise in compliance with the MEC I PPA and (B) proximately causes Seller not to be in compliance with this PPA, be construed as an Event of Default of Seller under this PPA; and (iv) in no event shall the rights, benefits and obligations of Seller or Company as set forth in this PPA in any way be affected, modified, curtailed, restricted or otherwise limited by the MEC I PPA, and, for the avoidance of doubt, in no event shall any action or failure to act by Seller that (A) is otherwise in compliance with this PPA and (B) proximately causes MEC I not to be in compliance with the MEC I PPA, be construed as an event of default or the equivalent thereof under the MEC I PPA. The Parties and MEC I further agree that upon execution of this PPA (i) any terms and conditions in the MEC I PPA referring to or regarding the Facility shall be null and void and have no effect on this PPA and (ii) except as expressly provided in this Section 2.2 and Section 19.2 any terms and conditions in this PPA referring to or regarding the MEC I Facility shall be null and void and have no effect on the MEC I PPA. To the extent reasonably practicable, the Parties and MEC I shall interpret the MEC I PPA and this PPA harmoniously.

2.3 Delay. Company may, at its option, delay the COD of the Facility to June 1, 2019 (the "Delay Period") upon delivery of Notice of such delay to Seller on or before January 1, 2016 (the "Delay Option"). Company shall reimburse Seller for Demobilization Costs and Re-mobilization Costs incurred by Seller to accommodate Company's exercise of the Delay Option under this Section 2.3. The Parties shall revise Exhibit B-Construction Milestones to this PPA to extend the Commercial

Operation Milestone and other Construction Milestones to reflect the impacts of any delay of the COD of the Facility pursuant to this Section 2.3.

(A) Subject to the maximum capped cost of **[Trade Secret Data Begins... ...Trade Secret Data Ends]** Demobilization Costs shall, subject to audit, include such activities and costs for disassembly, removal, transportation, storage or protection of equipment and supplies (and applicable labor of personnel associated therewith) which were delivered to the Facility Site in furtherance of and in performance of this PPA and which are not required for PPA performance during the Delay Period and/or which are required to be protected during the Delay Period.

(B) Subject to the maximum capped cost of **[Trade Secret Data Begins... ...Trade Secret Data Ends]** Remobilization Costs shall, subject to audit, include such activities and associated costs for transportation of equipment and supplies (and applicable labor of personnel associated therewith) to the Facility Site which were earlier contractually required to be on the Facility site but which were suspended as a direct result of Company's exercise of the Delay Option and for which Seller has incurred costs. Remobilization Costs may also include related job site costs and equipment standby costs.

2.4 Early Termination. Company has an option to terminate this PPA for its convenience ("Early Termination") by providing Notice to Seller on or before January 1, 2016; *provided, however, that* in the event Company elects to delay the deadline for State Regulatory Approval as provided in Section 6.1(B), Company may provide the Notice of Early Termination to Seller on or before **[Trade Secret Data Begins... ...Trade Secret Data Ends]**.

(A) Subject to Section 2.6, Company shall pay to Seller the maximum capped sum of **[Trade Secret Data Begins... ...Trade Secret Data Ends]** which shall constitute Seller's Unrecovered Costs for Early Termination, no later than sixty (60) Days after receipt of Seller's invoice for such costs. Said payment of Seller's Unrecovered Costs shall constitute full and complete compensation to Seller for (without duplication of any items): (i) work performed and expenses sustained in furtherance of and in support of this PPA, in accordance with the PPA, prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work and expenses; (ii) all claims, costs, losses, and damages (including but not limited to all fees and charges of material and equipment suppliers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with contractors, subcontractors, suppliers, consultants, and others; and (iii) reasonable expenses directly attributable to termination.

(B) Company shall also pay to Seller a Breakage Fee **[Trade Secret Data Begins... ...Trade Secret Data Ends]** for Early Termination, which Company shall pay no later than sixty (60) Days after receipt of Seller's invoice for such fee. Payment of the Breakage Fee shall constitute full and complete

compensation to Seller (without duplication of any items) on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

2.5 Limited Liability for Costs for Delay and Early Termination. The Parties agree that the amounts to be paid by Company to Seller for the exercise of the Delay Option or Early Termination by Company shall constitute compensation in full for such delay or termination, as applicable, including labor, equipment and materials attributable to Seller's contractors, subcontractors and suppliers, for all costs, damages, charges, and fees of whatever kind and nature directly or indirectly attributable to the exercise of the Delay Option or Early Termination. Markups (including without limitation overhead, general and administrative and profit) of Seller shall not be compensated by the Company for any delay in COD due to the exercise by Company of the Delay Option. Company will not be liable for costs which Seller could have avoided by Commercially Reasonable means, such as Commercially Reasonable handling of labor/personnel, materials, or equipment. Subject to Company's payment to Seller of any undisputed amounts due under Sections 2.3, 2.4, and 2.6, Seller shall indemnify and hold Company harmless from any demands, claims, costs and fees, including counsel fees, associated with mechanic's liens, stop notices, bonds, claims, and lawsuits and any other actions from Seller's contractors, subcontractors, consultants, and suppliers relating to the exercise by Company of the Delay Option or Early Termination; *provided, however, that* Company shall be released and held harmless from all such claims and actions before Company pays Seller.

2.6 Audit. Upon notice, Company shall have the right to audit at its own expense Seller's documentation of Demobilization Costs, Re-mobilization Costs, and Unrecovered Costs for Early Termination invoiced to Company as provided in Section 2.3 and Section 2.4 prior to payment by Company. Seller shall provide cooperation reasonably requested by Company in connection with any such audit. Company shall complete such audit within four (4) months following delivery of Company's notice of audit to Seller. Any resulting dispute shall be subject to Sections 9.3 and 13.1 of this PPA.

### **Article 3 - Facility Description**

3.1 Description. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C-Facility Description, One-Line Diagram, And Site Map. A scaled map that identifies the Site, the location of the Facility, Interconnection Point, Interconnection Facilities, the Point of Delivery, the Fuel Delivery Point, and other important facilities, is included in Exhibit C-Facility Description, One-Line Diagram, And Site Map.

#### **3.2 General Design of the Facility.**

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) 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 Company's SCADA System.

(D) The Facility shall include all equipment specified in Exhibit C-Facility Description, One-Line Diagram, And Site Map or otherwise necessary to fulfill Seller's obligations under this PPA.

#### **Article 4 - Implementation**

##### **4.1 Project Development.**

(A) Seller represents and warrants that: (i) Seller has provided to Company copies of all environmental assessments performed for the Site by or on behalf of Seller or any of its Affiliates ("Environmental Assessments"), including the Wenck Environmental Assessments; (ii) Seller has no knowledge of any Environmental Contamination at the Site that is not disclosed in such Environmental Assessments; and (iii) the Site remains appropriate for its intended use by Seller. Seller shall provide Company with all future Environmental Assessments relating to or affecting the Facility or Facility Property, and Seller shall promptly inform Company if, due to any Environmental Contamination, Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) to allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of any backup data associated with the Environmental Assessments. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any such Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

(B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary for the development, construction, operation of the Facility and delivery of products and services contemplated hereunder from the Facility with qualified and experienced contractors.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit quarterly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; and (ii) provide copies of reports

submitted to the Facility Lender relating to status, progress and development of the Facility.

(D) Upon request, Company shall have the right to monitor at the Site the construction, start-up, testing, and operation of the Facility for compliance with this PPA, *provided, however, that* Company shall comply with all of Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections of or as endorsing the design thereof nor as any express or implied warranties relating to performance, safety, durability, or reliability of the Facility.

(E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company informed as to the status of its permitting efforts. Seller shall promptly inform Company of any Permits that Seller is unable to obtain or that are delayed, limited, suspended, terminated or otherwise constrained in a way, that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent such circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Seller shall provide Company copies of its Permit applications and Permits as such applications are filed and such Permits are received by Seller.

(F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection, which notification, in the case of any impromptu inspection, shall include a description of the nature and outcome of such impromptu inspection.

4.2 Commercial Operation. Subject to any extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Day after the Commercial Operation Milestone; *provided, however, that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Day after the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is earlier than the Day after the Commercial Operation Milestone.

4.3 COD Conditions. Subject to Section 10.6, Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to 10 Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. At Seller's option, Seller may provide Notice of completion of the COD Conditions on an

individual and/or incremental basis, including (i) by providing more than one (1) written confirmation from an officer of Seller as required under Section 4.3(A) so as to allow Seller to confirm completion of a subset of such items and/or (ii) pending resolution of any objections, *provided, however, that* Company shall in all cases have up to 10 Business Days to review and object to each Notice. The COD Conditions are:

(A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all Material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects; (3) the Facility is available to commence normal operations; (4) Seller is obligated under and in material compliance with the Interconnection Agreement, (5) all conditions of the Interconnection Agreement to obtain either NRIS or ERIS as applicable to the Seller have been completed; (6) all Network Upgrades required for NITS have been completed; (7) the Facility is fully interconnected to the Transmission Authority's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (8) Seller has completed any testing of the Facility and Interconnection Facilities required by the Interconnection Agreement; (9) Seller has met all Transmission Authority requirements for the Facility to be qualified as a Capacity Resource for the Planning Year of COD; (10) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery; (11) Seller has demonstrated (i) the reliability of the Facility's communications systems and communication interface with Company's Energy Markets Control Center ("EMCC") and the Facility is capable of receiving and reacting to signals from Company's SCADA System, and (ii) all Automatic Generation Control ("AGC") equipment is installed and operational; (12) the Facility has achieved three Successful Starts in combined cycle configuration without experiencing any abnormal operating conditions; (13) the Facility has generated in each possible combined-cycle operating configuration of the Facility while synchronized to Transmission Authority's System at full capacity without experiencing any abnormal operating conditions; (14) the Facility has generated continuously for a period of not less than 16 hours while synchronized to Transmission Authority's System at a net capacity output, adjusted to Reference Conditions, of at least 90% of the Net Capability without experiencing any abnormal operating conditions; (15) the Facility has demonstrated initial dispatchability capability, operational compliance capability, and verification of ramp range and ramp rate pursuant to Exhibit H-Operating Standards; (16) all natural gas interconnection and metering arrangements necessary to operate the Facility in compliance with this PPA have been completed, tested and are in effect; and (17) Seller has provided to Company copies of all Environmental Assessments performed for the Site by or on behalf of Seller or any of its Affiliates; and

(B) Seller has provided Company an independent registered professional engineer's certification that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose; and

(C) Seller has provided written confirmation that it has the right and access to use all the electric generating facilities and associated balance of plant, parts, equipment, and property necessary to operate and maintain the Facility in accordance with the terms of this PPA.

#### 4.4 Test Energy.

(A) Pre-COD Test Energy. Seller shall be responsible for providing the necessary information to, and making all arrangements with, the Transmission Authority and any third parties to the extent required in advance and for the purposes of generating any pre-COD Test Energy, including, as applicable, the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, to allow the Facility to be registered in such model sufficiently in advance of generating any pre-COD Test Energy in accordance with the Transmission Authority's requirements.

1. Prior to the COD, Seller shall coordinate with Company the production and delivery of any Test Energy, and any other energy produced by the Facility that Company is required to purchase pursuant to Section 4.4(A)4, with not less than six (6) Days Notice to Company, subject to any changes as Seller may reasonably request no later than 24 hours prior to such production and delivery or as required by Good Utility Practices. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall pay the Test Energy Rate for all Test Energy delivered prior to COD and energy Company is required to purchase pursuant to Section 4.4(A)4.

2. Seller shall reimburse Company for the cost of fuel used for such Test Energy, which shall be calculated as the volume of natural gas consumed to generate the Test Energy multiplied by the Daily Gas Cost.

3. Company shall pay Seller for Test Energy at the Test Energy Rate. Company shall have no obligation to make any other payments to Seller pursuant to Article 8 in connection with the purchase of such Test Energy.

4. Prior to the Delivery and Supply Commencement Notice Effective Date under Section 10.6(B), Seller shall have the right to sell energy and/or capacity from the Facility to third parties; *provided, however, that* Company shall not provide fuel for such sales; *and provided further that* such sales do not adversely affect, modify, curtail, restrict or otherwise limit the availability or operation of the MEC I Facility pursuant to the MEC I PPA. For avoidance of doubt, Seller shall not have the right to sell energy or capacity from the Facility to third parties on or after the Delivery and Supply Commencement Notice Effective Date. After the Delivery and Supply Commencement Notice Effective Date but prior to COD, Company shall purchase all energy produced by the Facility and delivered to the Company at the Point of Delivery.

(B) Post-COD Test Energy. After COD, to the extent practicable, Seller shall conduct all necessary testing of the Facility when Company is otherwise dispatching the Facility and post-COD Test Energy generated and delivered during such tests shall be treated as Contract Energy for all purposes. If Seller must conduct tests when the Facility would not otherwise be dispatched: (i) Company shall pay to Seller the Test Energy Rate; (ii) any restrictions in the amount of available Contract Capacity due to such testing shall be reflected in the monthly Capacity Payment specified in Section 8.1; and (iii) Seller shall reimburse Company for the cost of fuel used for such post-COD Test Energy, which cost shall be volume of natural gas consumed to generate the Test Energy multiplied by the Daily Gas Cost.

## Article 5 - Delivery

### 5.1 Electric Delivery Arrangements.

(A) Seller shall be responsible for making, maintaining, and paying all costs associated with the interconnection of the Facility to the Transmission Authority's System. Company shall reimburse Seller for Seller's Reimbursable Transmission Costs. Upon the Parties' concurrence that Seller has met the requirements of Section 4.3, Seller shall provide an invoice to Company with appropriate detailed support that documents Seller's Reimbursable Transmission Costs. Notwithstanding anything to the contrary in this PPA, Company shall reimburse Seller for Seller's Reimbursable Transmission Costs within thirty (30) days from receipt of invoice. Seller shall comply with the Transmission Authority's requirements for the interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The Point of Delivery shall be located in what the Transmission Authority currently designates as Local Resource Zone 1.

1. Seller shall obtain either (i) NRIS or (ii) ERIS. In the event Seller interconnects as an ERIS and without limiting Company's obligation to reimburse Seller for Seller's Reimbursable Transmission Costs, Seller shall be responsible for paying Company for any Network Upgrades costs associated with the Company obtaining firm Network Integration Transmission Service ("NITS") from the Point of Delivery to Company load and Company shall reimburse Seller for any such costs to the extent not already included in Seller's Reimbursable Transmission Costs within thirty (30) days of receipt of an invoice with appropriate detailed support. For either NRIS or ERIS all conditions of the Interconnection Agreement and any identified Network Upgrades associated with NITS must be satisfied by the Commercial Operation Date and the generation output must qualify as a Capacity Resource.

(B) Seller authorizes Company 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 Company or the Transmission Authority.

(C) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm transmission service basis, the output from the Facility to the Point of Delivery.

(D) Company shall be responsible for delivering the Facility's output beyond the Point of Delivery. If at any time during the Term, the entity owning the transmission facilities at the Point of Delivery changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company and Seller.

## 5.2 Electric Metering Devices.

(A) All Electric Metering Devices used to measure energy from the Facility shall be provided by Company to Seller for installation and owned and maintained by Company in accordance with the Interconnection Agreement.

1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided, however, that* the Operating Committee may revise this loss adjustment based on actual experience.

2. Company shall provide Seller the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however, that* the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest 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 to the requesting Party.

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

1. If the 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 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, 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, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) 180 Days immediately preceding the test that found the 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 Company, Company shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Company for this period from such re-computed amount. The net difference shall be reflected as an adjustment on the next regular bill in accordance with Article 9.

### 5.3 Fuel.

(A) All fuel for the Facility from and after the COD shall be procured and paid for by Company and shall be delivered to the Facility pursuant to this Section at a pressure not less than 550 psig at the Fuel Delivery Point. Title to the fuel shall be retained by Company at and from the Fuel Delivery Point to the burner tips of the Facility. As between the Parties, however, Seller shall be deemed to be in exclusive control and possession of all such fuel after the Fuel Delivery Point and Seller shall bear the risk of loss of any fuel after the Fuel Delivery Point and shall only be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other causes associated with such fuel after the Fuel Delivery Point

(B) Seller shall accept delivery of all Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point for the purpose of generating the Contract Energy from the Facility dispatched by Company to the full extent the Contract Capacity from the Facility is available to be dispatched. Seller shall not be obligated to accept natural gas fuel delivery to the extent Seller reasonably determines it does not materially conform to the specifications for Acceptable Natural Gas Fuel as set for the in Exhibit K-Fuel Quality Specifications, and that such nonconformance could reasonably be expected to have a Material Adverse Effect on the Facility ("Nonconforming Gas").

1. In the event that the Upstream Pipeline delivers Nonconforming Gas, Seller may refuse to consume such gas and cease delivering Contract Energy for the period of time that such natural gas fuel constitutes Nonconforming Gas. Seller shall promptly notify Company and the Upstream Pipeline of such Nonconforming Gas and the basis for its determination. The Parties shall cooperate to promptly identify and share any relevant information to determine the

cause(s) for the delivery of the Nonconforming Gas and to enforce any available remedies against the Upstream Pipeline or other third parties arising out of the delivery of such Nonconforming Gas.

2. In the event the Upstream Pipeline proposes to change its tariff specifications and requirements such that the fuel available for delivery constitutes Nonconforming Gas, Seller shall cooperate with Company to resist such changes and shall cooperate with Company to enforce all available remedies against the Upstream Pipeline or other third parties regarding such proposed change. In the event that the Upstream Pipeline successfully revises its tariff specifications and requirements for natural gas fuel such that the fuel available for delivery constitutes Nonconforming Gas: (i) at Company's request and expense, Seller shall modify the Facility or other equipment to allow the Facility to utilize such Nonconforming Gas, *provided, however, that* such modification is not required if it would void the manufacturer's warranty for such equipment then in effect or would have a Material Adverse Effect on the operation of such equipment, or (ii) at Company's request and expense, Seller shall construct and operate an appropriate natural gas conditioning facility at a reasonably convenient location, to condition the natural gas fuel to satisfy the requirements for Acceptable Natural Gas Fuel.

(C) As between the Parties, Seller shall be solely responsible for all natural gas interconnection, transportation, delivery and metering arrangements, and all associated costs, required to receive natural gas fuel at the Fuel Delivery Point to operate the Facility. Seller shall, at its sole expense, construct or cause to be constructed and, to the extent necessary, operate and maintain the Natural Gas Interconnection Facilities, natural gas metering facilities, any natural gas compression, regulation, heating and filter/separation equipment, and all other necessary equipment, of sufficient size and specifications to receive natural gas deliveries at the Fuel Delivery Point sufficient for the full operation of the Facility over the Term.

1. Seller shall separately meter and supply, at Seller's expense, the natural gas fuel consumed by the auxiliary boiler that will be used for both MEC I Facility and the Facility. Seller shall pay Company an amount equal to the applicable volume of fuel multiplied by the Daily Gas Cost.

2. Company may elect at Company's sole option whether to obtain and utilize firm gas transportation service or non-firm gas transportation service for the delivery of natural gas fuel to Seller at the Fuel Delivery Point.

3. Company may elect at Company's sole option to interconnect the Facility with one or more additional natural gas delivery systems at or near the Fuel Delivery Point identified in Exhibit C-Facility Description, One-Line Diagram, And Site Map and to designate such an additional interconnection as an additional Fuel Delivery Point, *provided, however, that* (i) Company shall be responsible for installing and paying for all natural gas interconnection and metering facilities required to establish such additional interconnection; (ii) such additional interconnection will not interfere with the operation of the Facility, other than during the

time necessary to physically connect the additional interconnecting facilities; and (iii) such additional interconnection will deliver natural gas fuel that provides the equivalent of Acceptable Natural Gas Fuel to the Fuel Delivery Point. Seller shall, with respect to any real property interests of Seller or its Affiliates, grant, or cause any such Affiliate to grant, Company or its designee an easement and access to the location of the Fuel Delivery Point for the purpose of constructing and maintaining any additional natural gas interconnection and metering facilities.

4. Company shall be responsible for all volume confirmations, allocations and balancing functions with the Upstream Pipeline. Seller shall be responsible for gas regulation and maintenance and testing arrangements for all natural gas metering from the Fuel Delivery Point. Seller shall also be responsible for all natural gas physical flow activities, such as flow control, valve operation, and contacting the delivering pipeline to initiate gas flow from the Fuel Delivery Point.

5. All natural gas custody transfer metering at the Fuel Delivery Point shall be installed, maintained and tested in accordance with accepted natural gas industry standards and shall comply with the Upstream Pipeline's tariff requirements. Seller shall provide written meter test results to Company within 30 days following completion. Company shall have the right to require additional tests, *provided, however, that* Company pays for the cost of such additional tests. Seller shall provide Company with at least 10 Business Days advance notice of such tests and a representative of Company shall be permitted to witness such tests, *provided, however, that* such Company representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Seller shall provide copies of all test data and testing reports to Company. If requested by Company in writing, Seller shall install (at Company's cost) check metering, in connection with the natural gas custody transfer metering, downstream from the Fuel Delivery Point. Disputes regarding the allocation of natural gas volumes and associated billings with the Upstream Pipeline, including meter reading adjustments for prior periods, shall be resolved in accordance with the Upstream Pipeline's tariff.

## **Article 6 - Conditions Precedent**

### **6.1 Company CPs.**

(A) No later than 15 Business Days after execution of this PPA, Company may make written request for State Regulatory Approval. If Company fails to apply for State Regulatory Approval within 15 Business Days following execution of this PPA, Company shall be deemed to have waived its right to seek such approval under this Section and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter.

(B) In the event that Company applies for State Regulatory Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more

than 10 Business Days after the earlier of: (i) receipt of any written order from a State Regulatory Agency rejecting State Regulatory Approval or granting such approval with conditions reasonably and materially unsatisfactory to Company; or (ii) April 1, 2015, in the event Company has not received State Regulatory Approval as of such date; *provided, however, that* if Company has not received State Regulatory Approval by April 1, 2015, Company may provide Seller Notice within 48 hours after said date that it is electing to wait until July 1, 2015 for such approval and Seller shall then have the right to delay the COD from June 1, 2018 to June 1, 2019 at no cost to Company, notwithstanding anything to the contrary in Section 2.3, and *provided, further, that* the Parties shall revise Exhibit B-Construction Milestones to this PPA to extend the Commercial Operation Milestone and other Construction Milestones to reflect the impacts of such delay of the COD of the Facility. If Company fails to terminate this PPA in the time allowed by this paragraph, Company shall be deemed to have waived its right to terminate this PPA under this Section and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter.

6.2 Seller CPs. Either Party shall have the right to terminate this PPA, without any further financial or other obligation to the other as a result of such termination, by Notice to the other Party within 14 Business Days following the failure of Seller to satisfy any of the Seller CPs by the required deadline date in the table below. In the event that COD is delayed pursuant to Sections 2.3 or 6.1(B), the Parties shall revise the deadline dates in the table below to reflect the impacts of such delay of the COD of the Facility. If neither Party terminates this PPA in the time allowed by this Section, the Seller CPs shall be deemed to have been waived and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter.

Condition Precedent	Deadline Date
Seller has obtained the Air Permit, which Permit does not contain conditions reasonably and materially unsatisfactory to Seller.	September 1, 2016
Seller has obtained the Site Permit, which Permit does not contain conditions reasonably and materially unsatisfactory to Seller.	June 1, 2016
Transmission Owner, Transmission Authority and Seller have entered into the Interconnection Agreement.	June 1, 2016
Approval of this PPA, in the form submitted by Company to the MPUC for approval, by the board of directors of Calpine Corporation.	December 1, 2014
Approval of this PPA by the board of directors of Calpine Corporation in the event any conditions are added or modifications are made to this PPA	Thirty (30) Days after issuance of any order requiring such additional conditions or modifications

after its submittal to the MPUC for approval	
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## Article 7 - Sale and Purchase

### 7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase from Seller at the Point of Delivery, the products and services required by this PPA. Seller shall not curtail or interrupt deliveries from the Facility required by this PPA for economic reasons of any type whatsoever.

(B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

### 7.2 Capacity and Energy.

(A) Contract Capacity shall be the net generating capacity available at any time from the Facility.

(B) Contract Energy shall be the metered, net energy output generated by the Contract Capacity as delivered and adjusted for losses to the Point of Delivery, which shall include Test Energy produced when the Facility is otherwise dispatched by Company as provided in Section 4.4(B).

### 7.3 Alternate Generation Sources.

(A) If after the Commercial Operation Date more than 50 MW of the Facility is unavailable due to a Forced Outage, Seller may upon Notice use Alternate Generating units and /or systems ("Alternate Generation Source(s)") to provide Contract Energy to Company in accordance with this Section 7.3. Unless otherwise mutually agreed to by the Parties, Seller shall not use an Alternate Generating Source once such Forced Outage is remedied or less than 50 MW of Facility is unavailable.

1. Delivery of Contract Energy from an Alternate Generation Source must be made to either NSP.NSP or NSP.MEC ("Alternate Delivery Point(s)"). The Alternate Generation Source(s) designated by Seller shall: (i) not, in the aggregate, exceed the Nameplate Capacity of the Facility; (ii) not be subject to or limited by any operating restrictions imposed by any Governmental Authorities that would prohibit its use for the purposes hereof; and (iii) be available to be scheduled by Company.

#### (B) General Alternate Generation Source Provisions.

1. Notice for Contract Energy from an Alternate Generation Source must be provided no later than two (2) hours before each applicable daily

submission deadline for the Transmission Authority's Day-Ahead Market. Such Notice from Seller shall include (i) a description of the Forced Outage, (ii) the amount and Alternate Delivery Point(s) of the Contract Energy deliverable from each Alternate Generation Source, and (iii) the period(s) during which such Contract Energy will be provided.

2. Company shall submit to Seller schedules for hourly deliveries of Contract Energy from Alternate Generation Source(s) ("Day-Ahead Bilateral Financial Schedule") no later than one (1) hour after the Transmission Authority posts the next-day nodal Locational Marginal Pricing.

3. Company's submittal and Seller's confirmation of a Day-Ahead Bilateral Financial Schedule shall be deemed to be delivered energy at the designated Alternate Delivery Points.

4. Company shall settle with the Transmission Authority pursuant to the Day-Ahead Bilateral Financial Schedule.

5. Seller shall be responsible for any Transmission Authority charges associated with deliveries of Contract Energy from the Alternate Generation Source(s) to the Alternate Delivery Point(s) ("Transmission Authority Charges").

6. Company shall make the following payments to Seller with respect to Contract Energy from Alternate Generation Source(s): (i) payment for Contract Energy from Alternate Generating Sources(s) calculated as (Contract Energy x Tolling Price x Inflation Factor; and (ii) a Scheduling Charge for each schedule of an Alternate Generation Source that would qualify for a Turbine Start Payment if the schedule were for the Facility; and (iii) Company shall pay the sum of Seller's fuel costs associated with Contract Energy from Alternate Generation Source(s), where "Seller's fuel costs" for any Day shall equal the product of (a) the Daily Gas Cost for that Day, multiplied by (b) the quantity of Contract Energy from Alternate Generation Source(s) that is scheduled by Company and delivered by Seller to Company at the Alternate Delivery Point(s) on that Day, multiplied by (c) the most recent Actual Net Heat Rate for the Facility.

7. Seller shall have no obligation to cause or seek to cause any Alternate Generation Source to be subject to AGC, nor shall the Company be obligated to make payments for AGC service for any Alternate Generation Source deliveries. An Alternate Generation Source may be owned or controlled by Company or an Affiliate of Company or Seller or an Affiliate of Seller; *provided, however, that* the Alternate Generation Source may not be the MEC I Facility while subject to a power purchase agreement with the Company.

8. With respect to Alternate Generation Sources, the Company shall only pay for such costs and charges as expressly provided in this Section 7.3.

#### 7.4 Dispatch.

(A) Company's EMCC shall have the right to determine the AGC control of the Facility, starts, shutdowns, ramping, and loading levels associated with the Contract Capacity and Contract Energy from the Facility, all in accordance with Good Utility Practices and the Facility operational information in Exhibit N-Facility Operational Information. Company shall not dispatch any portion of the Facility below Minimum Loading. For any Facility trip, Seller shall restart the Facility in coordination with the EMCC in accordance with Good Utility Practices.

(B) If Seller initiates a turbine start in response to a request by the Company, but fails to satisfy the requirements for a Successful Start as a result of: (i) the cancellation of the turbine start by Company within the applicable time period permitted for a Successful Start, (ii) a request from Company, within one hour from Facility start, to shut down the Facility, or (iii) a Company or Company system performance failure, then the initiated turbine start shall nevertheless qualify as a Successful Start. Seller shall not be credited a Successful Start following a turbine trip where Company directs the Seller to restart the Facility after it has tripped out of service even if the restart would otherwise meet the qualifications for a Successful Start.

(C) Each Party shall make Commercially Reasonable Efforts to avoid taking any action that would result in or materially contribute to a restriction under any Permit that would restrict or limit the delivery of any Contract Energy from the Facility.

#### 7.5 Other Products and Services.

(A) Except as provided in Section 7.2 (C), Seller shall make available to Company all Generation Benefits and Ancillary Services associated with the Facility at no additional charge under this PPA, except for Reactive Power. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits or Ancillary Services, other than Reactive Power, associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services, other than Reactive Power, associated with the Facility and its output.

1. 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 material capital expenditures or incur any material increased operating expenses in connection with such efforts.

2. In the event a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services other than Reactive Power, requiring Seller to

install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall install such additional equipment at Seller's expense, up to a cumulative amount equal to **[Trade Secret Data Begins... Trade Secret Data Ends]** during the Term. If such requirements require Seller to incur expenditures exceeding this cumulative amount during the Term, Seller and Company shall cooperate to determine and implement a mutually agreeable and Commercially Reasonable response to such requirements.

3. Seller shall be entitled to all revenue from Reactive Power associated with the Facility.

## Article 8 - Payment Calculations

### 8.1 Capacity Payments.

(A) Capacity Testing of the Facility. For purposes of calculating Seller's Capacity Payment only, Seller shall test or cause to be tested the net generating capability of the Facility, at Seller's expense, (a) immediately prior to the Commercial Operation Date (the "Initial Capacity Test"), and (b) thereafter annually during the Term. The annual capacity test shall be conducted between January 1 and March 1 of each calendar year, unless the Facility is scheduled for a major overhaul prior to April 15 (in which case the capacity test for that year shall be conducted promptly following completion of the major overhaul).

1. For avoidance of doubt, the capacity testing requirements for calculating the Capacity Payment under this Article are not the capacity testing requirements that Seller shall complete as required by the Transmission Authority for the Facility to be accredited as a Capacity Resource pursuant to Section 10.6.

2. Upon request by Company from time to time following the Commercial Operation Date, not more frequently than twice per calendar year, Seller shall perform interim capacity testing of the Facility for purposes of calculating Seller's Capacity Payment. The Parties' out-of-pocket costs of any such interim testing requested by Company shall be borne by Company unless, upon such testing, the Net Capability of the Facility is determined to be more than one percent (1%) less than the Net Capability of the Facility determined by the capacity test next preceding the test requested by Company (in which event the Parties' out-of-pocket costs, excluding fuel costs, shall be borne by Seller).

3. Seller may perform interim capacity testing of the Facility from time to time, not more frequently than twice per calendar year (not including any re-testing necessitated by any Failed Capacity Test(s)). The Parties' out-of-pocket costs in connection with any such interim capacity testing shall be borne by Seller.

4. Seller shall set the date for the Initial Capacity Test on not less than five (5) Business Days' prior notice to Company. The Parties shall set the exact date for each subsequent capacity test to be performed under this Article 8 by mutual agreement; *provided that*, in the event that the Parties cannot agree upon a

mutually acceptable testing date within ten (10) Business Days following either Party's request for a test, (a) by notice to Company, Seller shall set the date for the capacity test, which date shall be not less than four (4) weeks and not more than six (6) weeks following expiration of such 10-day period, and (b) the results of the capacity test shall be retroactively effective to the first Day of the billing period immediately preceding the billing period during which the test is conducted.

5. Notwithstanding Section 8.1(A)(4), in the event of a Failed Capacity Test, the capacity test shall be rescheduled unilaterally by Seller as soon as reasonably practicable following the Failed Capacity Test.

6. One or more representatives of Company shall be permitted to witness, record and verify all capacity testing process parameters and conditions; *provided that* any failure of Company to send a representative to witness a capacity test scheduled in accordance with this Section 8.1(A) shall not affect the validity of such test.

7. All capacity testing of the Facility will be conducted with the Facility operating at maximum design load, including full duct firing, using Acceptable Natural Gas Fuel. Testing shall be performed in accordance with mutually agreed upon test codes/procedures generally consistent with the current version of the ASME PTC 46. The test will be conducted over such period as Company may reasonably require, not to exceed four (4) hours, with operation of the unit held constant. Appropriate operational stability criteria shall be established and met. The Facility shall be operated in full compliance with all state and federal environmental regulations throughout the test, with all auxiliary equipment needed for normal operation of the Facility in service and in typical operating condition. Seller may be required to provide operational records to be used to substantiate the Normal Mode of Operation. Seller shall provide to Company copies of all capacity testing reports.

8. For purposes of calculating the test results of the Facility, each hour of the test will be averaged and adjusted to Reference Conditions. After all adjustments have been made, the final capacity value used for purposes of determining Net Capability, as applicable, will be the average output of the hourly corrected results.

(B) Net Capability. For purposes of this PPA, the Net Capability of the Facility from time to time shall mean the lesser of (a) three hundred forty five (345) MW, or (b) the net generating capability of the Facility, as determined by the most recent capacity test thereof in accordance with Section 8.1(A), adjusted to Reference Conditions.

(C) Monthly Payments. Commencing on the Commercial Operation Date, Company shall pay to Seller in arrears a monthly capacity payment ("Capacity Payment"). All Capacity Payments shall be billed on a calendar month basis. Payments for partial calendar months shall be prorated appropriately. Capacity Payments shall be computed based upon the following formula:

Capacity Payment = NC x CP x AAQ, where:

NC = the then-current Net Capability of the applicable Facility.

CP = Capacity Price, stated in \$/kW-month, as set forth in the definitions.

AAQ = Availability Adjustment Quotient for that month, as defined in Section 8.1(D) below.

(D) Availability Definitions.

1. General. For purposes of this PPA, with respect to both On-Peak Months and Off-Peak Months:

Available The Facility is deemed "Available" if and to the extent it is capable of generating and delivering energy to Company at the applicable Point of Delivery, in response to dispatch/scheduling requests by Company, irrespective of whether such requests were actually issued.

AE Available Energy for any month or other measurement period means the amount of energy, stated in megawatt hours (MWh), Available from the Facility during that period; *provided that* regardless of actual Availability, the Facility shall be deemed to be Available during periods of (i) Excused Outage with respect to that Facility and (ii) Forced Outage with respect to the Facility when Seller provides Contract Energy pursuant to Section 7.3. AE shall be adjusted to Reference Conditions.

SME Scheduled Maintenance Energy for any month or other measurement period means the amount of energy, stated in MWh, that was not available from the Facility for dispatch and receipt by Company during the period due to outages / deratings that meet the requirements for credited Scheduled Maintenance Energy specified in Exhibit L-Maintenance Requirements. SME shall be adjusted to Reference Conditions. Seller will be eligible for SME with respect to (and only with respect to) the Facility, and only after the Commercial Operation Date.

PE Period Energy for any month or other measurement period means the product of the then-current NC and the total number of hours in the period, stated in MWh.

CAF Capacity Availability Factor for any month or other measurement period =  $(AE + SME) \div PE$ . CAF can never exceed 1.0.

2. On-Peak Months. For purposes of this Agreement, with respect to On-Peak Months:

MAF Monthly Availability Factor =  $CAF + 0.03$ .

RAF Rolling Availability Factor for any month means the rolling twelve-month average of the MAF for the On-Peak Month in question and the eleven (11) prior full On-Peak Months; *provided, however, that:*

- i. commencing as of COD and continuing through the end of the twelfth (12<sup>th</sup>) full On-Peak Month following the COD, RAF for On-Peak Months shall be calculated on a monthly basis (i.e.,  $RAF = MAF$  for that On-Peak Month);
- ii. beginning as of the end of the twelfth (12<sup>th</sup>) full On-Peak Month following the Commercial Operation Date, RAF shall mean the rolling twelve-month average of MAF for the On-Peak Month in question and the previous eleven (11) On-Peak Months; and
- iii. notwithstanding the foregoing, (a) during the period of any default by Seller under this PPA that affects the Availability of a Facility during an On-Peak Month, regardless of whether the default is subsequently cured or becomes an Event of Default, RAF shall be calculated on a monthly basis (i.e.,  $RAF = MAF$  for that period), and (b) if the default is subsequently cured, RAF following such cure shall be calculated with the MAF during the period of default assumed to equal 1.0.

AAQ Availability Adjustment Quotient for any On-Peak Month means either:

- i.  $AAQ = RAF$ , if  $RAF \geq 1.0$ , or
- ii.  $AAQ = (2 \times RAF) - 1.0$ , if  $RAF < 1.0$  (*provided that AAQ may not be less than zero*).

3. Off-Peak Months. For purposes of this PPA, with respect to Off-Peak Months:

MAF Monthly Availability Factor =  $CAF + 0.06$ .

RAF Rolling Availability Factor for any month means the rolling twelve-month average of the MAF for the Off-Peak Month in question and the eleven (11) prior full Off-Peak Months; *provided, however, that:*

- i. commencing as of COD and continuing through the end of the twelfth (12<sup>th</sup>) full Off-Peak Month following the COD, RAF for Off-Peak Months shall be calculated on a monthly basis (i.e.,  $RAF = MAF$  for that Off-Peak Month);
- ii. beginning as of the end of the twelfth (12<sup>th</sup>) full Off-Peak Month following the COD, RAF shall mean the rolling twelve-month average of MAF for the Off-Peak Month in question and the previous eleven (11) Off-Peak Months; and
- iii. notwithstanding the foregoing, (a) during the period of any default by Seller under this PPA that affects the Availability of a Facility during an Off-Peak Month, regardless of whether the default is subsequently cured or becomes an Event of Default, RAF shall be calculated on a monthly basis (i.e.,  $RAF = MAF$  for that period), and (b) if the default is subsequently cured, RAF following such cure shall be calculated with the MAF during the period of default assumed to equal 1.0.

AAQ

Availability Adjustment Quotient for any Off-Peak Month means either:

- i.  $AAQ = 1.0$ , if  $RAF \geq 1.0$ , or
- ii.  $AAQ = (2 \times RAF) - 1.0$ , if  $RAF < 1.0$  (*provided that AAQ may not be less than zero*).

8.2 Payment for Dispatchability.

(A) Ramp Rate Testing. Company's EMCC shall test or cause to be tested the ramp rate of the Facility, after synchronization with the Transmission Authority's System at Company's expense, (i) before or immediately following the Commercial Operation Date, and (ii) thereafter in Company's discretion, without prior notice to Seller, periodically during the Term from time to time. At Seller's request, Company shall test the ramp rate of the Facility at Seller's expense at a mutually agreeable time no later than thirty (30) Days after Notice of such request. Company shall provide to Seller copies of all ramp rate testing reports. Ramp rates shall consist of four (4) tests: the unfired increasing ramp rate for the Base Capacity, the unfired decreasing ramp rate for the Base Capacity, the fired increasing ramp rate, and the fired decreasing ramp rate. Increasing ramp rates shall include the entire specified ramp rate range, beginning at or below the applicable minimum load of the ramp rate range, and ending at the maximum output for the selected configuration during the hour of the test, adjusted to Reference Conditions. For the unfired ramp rate test, the maximum output shall be the Facility output when the gas turbine and steam turbine

reach baseload. For the fired ramp rate test, the test shall end when the Facility output, adjusted to Reference Conditions, reaches the Net Capability during the hour of the test. The timed portion of the test used to determine the increasing ramp rate shall begin when the Facility is synchronized and its output level reaches the minimum load starting point of the specified ramp range, and shall end one (1) MW prior to achievement of the maximum load point of the ramp range. The timed portion of the test used to determine the decreasing ramp rate shall begin when the Facility output level is at the maximum load point of the ramp range and shall end one (1) MW prior to reaching the minimum load point. The Ramp Rate used to determine RRAF shall be calculated by the following formula:

$$\text{Ramp Rate} = \sum (.38 \times \text{UIR}) + (.38 \times \text{UDR}) + (.12 \times \text{FIR}) + (.12 \times \text{FDR}), \text{ where:}$$

UIR = the measured unfired increasing ramp rate.

UDR = the measured unfired decreasing ramp rate.

FIR = the measured fired increasing ramp rate.

FDR = the measured fired decreasing ramp rate.

(B) Monthly Payments. Commencing on the Commercial Operation Date Company shall pay to Seller in arrears a monthly Dispatchability Payment. All Dispatchability Payments shall be billed on a calendar month basis; in the event that the Commercial Operation Date does not occur at the start of a calendar month, the first (1st) month's Dispatchability Payment shall be prorated to reflect the actual number of Days of Commercial Operation in such month. Dispatchability Payments shall be computed based on the following formula:

$$\text{Dispatchability Payment} = \text{NC} \times \text{DAF} \times \text{RRAF} \times \text{Dispatchability Rate}, \text{ where:}$$

NC = the then-current Net Capability of the Facility

DAF = Dispatch Availability Factor

= a fraction, the numerator of which is the sum of all hours on-control during the month, and denominator of which is the sum of all hours on-line during the month, where:

Hours on-control = means the total time during the month when the Facility is receiving and responding (or capable of receiving and responding) to dispatch pulses transmitted from Company's EMCC; *provided, however, that* any period during which Company requests that the Facility be dispatched without AGC, and any period of Excused Outage, shall be counted as a period on-control (so that hours on-control/hours on-line = 1.0 for any such period(s)). The Facility will be deemed not on control for any period during which any portion of the Facility is not Available to Company under Section 8.1(D).

Hours on-line = means the total time during the month when any portion of the Facility is synchronized to the Transmission Authority's

System and Available, or when the Facility is not so synchronized or not Available due to an Excused Outage.

For the avoidance of doubt, Start-Up Periods and Shut-Down Periods shall be excluded from hours on-control and hours on-line for purposes of the calculation of DAF.

RRAF = Ramp Rate Availability Factor, determined by the following table:

Most Recently Tested Ramp Rate	RRAF
$\geq 10$ MW / minute	1.00
$< 10$ MW / minute; $\geq 5$ MW / minute	(Actual Ramp Rate $\div$ 5) - 1
$< 5$ MW / minute	0

8.3 Payment for Energy. Commencing on the Commercial Operation Date, Company shall pay to Seller in arrears a monthly Energy Payment for the Contract Energy that is dispatched/scheduled by Company and delivered by Seller to Company during the billing month. The monthly Energy Payment shall be determined by the following formula:

Energy Payment = (E x Tolling Price x Inflation Factor) - HRA, where:

E = Contract Energy, stated in MWh, that is dispatched or scheduled by Company and delivered by Seller to Company at the Point(s) of Delivery during the billing month.

HRA = Heat Rate Adjustment, determined as a dollar amount pursuant to Section 8.4.

8.4 Heat Rate Adjustment to Payments.

(A) If at any time following the Commercial Operation Date, the Actual Net Heat Rate for the Facility is more than **[Trade Secret Data Begins...**

**...Trade Secret Data Ends]** of the Predicted Net Heat Rate, a Heat Rate Adjustment (“HRA”) determined by the following formula shall be used to reduce payments to Seller for Contract Energy delivered from the Facility, starting effective with the first (1st) full billing month following the most recent heat rate test and continuing effective through the end of the billing month during which the next heat rate test occurs:

HRA =  $\sum$  DFCC1  $\times$  [1 - ((Px **[Trade Secret Data Begins...** **...Trade Secret Data Ends]**)  $\div$  A)], where:

$\sum$  DFCC1 = Sum of all daily fuel consumption costs (DFCC1s) for that billing month.

DFCC1 = Daily Fuel Consumption Cost for any Day means the sum of (i) the volume of Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point to produce the Contract Energy (including any Test Energy that is economically dispatched by Company) that is dispatched by Company and delivered by Seller to Company on that Day (stated in MMBtu), multiplied by the applicable Daily Gas Cost, plus (ii) the associated demand charges incurred by Company for that Day.

P = Predicted Net Heat Rate at the time of the most recent heat rate test.

A = Actual Net Heat Rate for the Facility as determined from the most recent heat rate test.

(B) If at any time following the Commercial Operation Date the Actual Net Heat Rate for the Facility is less than **[Trade Secret Data Begins...**

**...Trade Secret Data Ends]** of the Predicted Net Heat Rate, an HRA determined by the following formula shall be used to increase payments to Seller for Contract Energy delivered from the Facility, starting effective with the first (1<sup>st</sup>) full billing month following the heat rate test and continuing effective through the end of the billing month during which the next heat rate test occurs:

HRA =  $\sum DFCC2 \times (1 - [(P \times \text{[Trade Secret Data Begins...} \quad \text{...Trade Secret Data Ends]}) \div A]) \times \text{[Trade Secret Data Begins...} \quad \text{...Trade Secret Data Ends]}$ , where " $\sum DFCC2$ " is defined below, and "A" and "P" are as defined in Section 8.4(A):

$\sum DFCC2$  = Sum of all daily fuel consumption costs (DFCC2s) for that billing month.

DFCC2 = (Daily Fuel Consumption Cost) for any Day means the sum of (i) the volume of Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point to produce the Contract Energy (including any Test Energy that is economically dispatched by Company) that is dispatched by Company and delivered by Seller to Company on that Day (stated in MMBtu), multiplied by the applicable Daily Gas Cost, plus (ii) any demand charge savings actually realized by Company.

(C) If the Actual Net Heat Rate for the Facility is equal to or less than **[Trade Secret Data Begins...**

**...Trade Secret Data Ends]** of the Predicted Net Heat Rate, and is equal to or greater than **[Trade Secret Data Begins...**

**...Trade Secret Data Ends]** of the Predicted Net Heat Rate, the HRA for the billing month following the heat rate test until the billing month following the next heat rate

test for Contract Energy delivered from the Facility, shall be deemed to be zero dollars (US\$0.00) for purposes of the payment calculations specified in Section 8.4.

#### 8.5 Heat Rate Testing.

(A) The Actual Net Heat Rate shall be determined by heat rate testing of the Facility at the maximum design load for its combustion and steam turbine generators, including full duct firing, using Acceptable Natural Gas Fuel. For the purposes of heat rate testing and determination of the Actual Net Heat Rate, (i) fuel input shall be measured at the Fuel Delivery Point, and (ii) electric output shall be measured as provided in Section 5.2. The test will be conducted over a continuous 4-hour period, with operation of the generating unit held constant. The Facility will be operated in full compliance with all state and federal environmental regulations throughout the test, with all auxiliary equipment needed for normal operation of the Facility in service and in typical operating condition. Seller may be required to provide operational records to be used to substantiate the Normal Mode of Operation. Testing shall be performed in accordance with the then-current ASME PTC 46. The net heat rate of the Facility so determined shall then be subject to one or two adjustments:

1. in the event that the capacity test of the Facility conducted simultaneously with the heat rate test yields (or, if no capacity test is conducted simultaneously, the capacity test most recently conducted yielded) a Net Capability for the Facility in excess of three hundred forty five (345) MW, the tested heat rate for each hour of the test shall be adjusted to the heat rate that would have been obtained had the duct firing rate during the test been limited to such rate as would have yielded a Net Capability of three hundred forty five (345) MW; and

2. following any adjustment pursuant to Section 8.5(A)(1), the tested net heat rate for each hour of the test shall be adjusted to Reference Conditions. Uncertainty, as defined in the ASME power test codes, shall not be used to adjust heat rate test results. After all adjustments have been made, the Actual Net Heat Rate shall equal the average tested net heat rate of the Facility, as adjusted, for each of the four (4) hours of the test.

(B) Seller shall perform an initial heat rate test of the Facility prior to or within thirty (30) Days following the Commercial Operation Date ("Initial HR Test"). Seller shall provide to Company at least five (5) Business Days' prior notice of, and shall permit one or more representatives of Company to witness and verify, the Initial HR Test. If the Initial HR Test is performed after the Commercial Operation Date, the Actual Net Heat Rate resulting from such Initial HR Test shall apply retroactively from the Commercial Operation Date for the purposes of determining the Heat Rate Adjustment pursuant to Section 8.4. The heat rate test performed by or on behalf of Seller prior to the Commercial Operation Date may constitute the Initial HR Test, provided, that such test is performed in accordance with all the requirements for heat rate testing set forth in this Section 8.5. Seller shall perform the Initial HR Test at Seller's cost.

(C) Following the Commercial Operation Date, Seller shall perform an annual heat rate test of the Facility concurrently with the annual capacity testing of the Facility prescribed in Section 8.1(A). Seller shall perform the annual heat rate test of the Facility at Seller's cost.

(D) Each Party shall have the right to request and schedule an interim heat rate test of the Facility (not to exceed two interim tests per Party) on a Business Day, between annual heat rate tests, pursuant to the procedures set forth in this Section 8.5. Seller shall perform any and all interim heat rate tests. The Party requesting such test shall pay all costs thereof. The Parties shall set the exact date for each interim heat rate test by mutual agreement; *provided that*, in the event that the Parties cannot agree upon a mutually acceptable testing date within ten (10) Business Days following either Party's request for an interim heat rate test, by notice to Company, (i) Seller shall set the date for the test, which date shall be not less than four (4) weeks and not more than six (6) weeks following expiration of such 10-day period, and (ii) the results of the heat rate test shall be retroactively effective to the first Day of the billing period immediately preceding the billing period during which the test is conducted.

(E) Seller shall prepare and submit to Company for review and approval, at least sixty (60) Days prior to each heat rate test of the Facility, the proposed heat rate test procedures. Such test procedures shall include but not be limited to (i) specification of the governing test code(s), (ii) the extent, if any, to which the test code(s) will not be followed, (iii) provisions for testing, including collection of test data, (iv) operational stability criteria, and (v) methodology for calculating test results, including the planned method of adjusting the tested net heat rate to the NC and Reference Conditions. Seller shall be responsible for the full scope of heat rate testing, including but not limited to, furnishing the test instrumentation, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report. Company shall have the right to install, during the heat rate test and at Company's expense, any temporary, redundant test equipment complying with the governing test code(s), that Company deems necessary for the purpose of verifying test measurements obtained by, or on behalf of, Seller.

(F) Notwithstanding anything to the contrary in this Section 8.5, in the event of a Failed HR Test, the heat rate test shall be rescheduled unilaterally by Seller as soon as reasonably practicable following the Failed HR Test.

(G) One or more representatives of Company shall be permitted to witness, record and verify all heat testing process parameters and conditions; *provided that* any failure of Company to send a representative to witness and verify a heat rate test scheduled in accordance with this Section 8.5 shall not affect the validity of such test.

(H) In connection with and during any heat rate test, for the sole purpose of developing a unit dispatch heat rate curve, Company may also require Seller to perform heat rate testing of the Facility, for up to thirty (30) minutes per load

point after stabilization, at the Facility's Base Capacity and up to nine (9) other specified partial load points.

(I) Seller shall notify Company of any generation equipment tuning and adjustment that may impact the heat rate performance of the Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test. Upon such notification, Company may require Seller to perform additional heat rate testing of the Facility and provide new correction curves that reflect the actual post-tuning condition of the Facility's equipment.

(J) Within sixty (60) Days following performance of each heat rate test of the Facility, Seller shall provide to Company for review and approval (i) all raw test data, calculations, fuel analyses and a final test report, in written and, to the extent possible, electronic format, (ii) equipment calibration specifications, and (iii) correction curves, equations, and other information necessary for review of the heat rate test results which have not been previously submitted to Company. The final test report shall include clear and complete explanations of the calculations resulting in the Actual Net Heat Rate, including the adjustment of the tested net heat rate to the NC and Reference Conditions.

8.6 Payment for Turbine Starts. Commencing on the Commercial Operation Date, Company shall pay to Seller in arrears monthly a Turbine Start Payment based upon the number of combustion turbine starts at the Facility requested by Company and successfully performed by Seller during the month, and the duration of combustion turbine operation following each such start. Each individual Turbine Start Payment ("TSP") shall be determined by the following formula:

$$\text{TSP} = (\text{Turbine Start Price} \times \text{Inflation Factor}) + ((\text{FH}-25) \times \text{Fired Hour Charge} \times \text{Inflation Factor}), \text{ where:}$$

FH = Fired hours are the greater of (i) twenty five (25), or (ii) number of continuous fired hours for the combustion turbine, following its start.

By way of example, assuming that (i) the Commercial Operation Date is June 1, 2017, (ii) inflation between June 1, 2017 and June 1, 2019 is five and two-tenths percent (5.2%), (iii) Company requests Seller to start the entire Facility or only such Facility's combustion turbine in July 2019, and (iv) following such start, the combustion turbine runs for thirty (30) continuous hours; then the TSP payable with respect to such one start would be: ***[Trade Secret Data Begins...***

***...Trade Secret Data Ends]*** The monthly Turbine Start Payment payable to Seller shall equal the sum of all individual turbine starts during the billing period.

For the avoidance of doubt, a combustion turbine restart at the Facility following a turbine trip not caused by an Excused Outage, all during a single continuous dispatch

period scheduled by Company, shall not constitute a compensable start for purposes of this Section 8.6.

8.7 ESC Event Adjustment.

(A) In connection with each ESC Event during the Term, an adjustment in the payment due to Seller from Company shall be made for the billing period during which the ESC Event occurs ("ESC Event Adjustment"), based upon the Availability of the Facility during the ESC Event as set forth in Exhibit M-ESC Event Adjustment. The ESC Event Adjustment, if any, shall be in addition to (not in lieu of) any adjustment to the Monthly Capacity Payment based upon the Available Energy from the Facility during that billing period, pursuant to Section 8.1.

(B) The Parties shall take such steps as may be necessary from time to time to allow each of Seller and Company to receive notice of ESC Events and anticipated ESC Events.

**Article 9 - Billing and Payment**

9.1 Billing Invoices.

(A) The billing period shall be the calendar month with any partial months prorated appropriately.

(B) No later than thirty-eight (38) Days following the end of each billing period, Company shall (i) calculate the HRA for such billing month, and (ii) deliver to Seller, electronically, Company's calculation of the HRA together with such supporting data as will allow Seller to verify Company's calculation of the HRA for such billing period.

(C) As soon as practicable following the end of each billing period, Seller shall prepare an invoice for such billing period (a "Monthly Invoice") showing metered energy from the Facility (adjusted for losses at the Point of Delivery), all relevant billing parameters (including starts and fired hours per turbine), rates and factors, and other data reasonably pertinent to the calculation of the monthly payments and other amounts due to Seller for such billing month, and (ii) deliver the Monthly Invoice to Company electronically. All billing data based upon metered deliveries to Company shall be collected in accordance with Article 5. The Monthly Invoice for each billing period shall include the HRA for the next preceding billing period delivered to Seller by Company pursuant to Section 9.1(B), i.e., the HRA shall lag the current Monthly Invoice by one (1) month.

(D) In the event that Seller owes Company any amounts hereunder, including without limitation any indemnification payments, Company shall provide to Seller by electronic transmission an invoice showing the payment due to Company from Seller. The invoice will include any data reasonable pertinent to the calculation of the payment due to Company.

## 9.2 Payment.

(A) All regular monthly payments payable to Seller from Company for capacity, energy, tolling and other services after COD under Article 8 shall be due and paid by Company by electronic funds transfer, as designated by Seller from time to time, on or before the last to occur of (i) the twenty-fourth (24th) Day of the month following the end of the relevant billing period, or (ii) fifteenth (15th) Day following receipt by Company of the electronic copy of the Monthly Invoice under Section 9.1(C). Unless otherwise specified herein, all other payments under this PPA shall be due and payable by electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Day following receipt of the billing 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 fifteenth (15<sup>th</sup>) Day following receipt of the billing invoice.

(B) If any amount due under this PPA is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance commencing on such date and continuing until the amount is paid. The late payment charge shall be added to the next billing statement and to subsequent billing statements until the amount due is paid. Such late payment charge shall be calculated based upon a floating annual interest rate equal to the Prime Rate, as the Prime Rate may change from time to time. For purposes of this PPA, the "Prime Rate" as of any Day means the base rate on corporate loans posted by at least seventy-five percent (75%) of the nations thirty (30) largest banks for such Day, as published in the Wall Street Journal from time to time. In the event the Wall Street Journal ceases to publish the "Prime Rate," then Company and Seller shall agree as to an appropriate substitute reference that represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

(C) Seller and Company shall net their undisputed payment obligations to each other under this PPA, and payment of the resulting net amount will fully discharge the netted underlying obligations between the Parties.

## 9.3 Billing Disputes.

(A) Either Party may dispute invoiced amounts, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed on or before the invoice due date.

(B) To resolve any billing dispute, the Parties shall use the procedures set forth in Article 13. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount in accordance with the provisions of Section 9.2. Unless an invoice amount is being disputed pursuant to this Section 9.3, all invoices shall be deemed final two (2) years after the date issued and shall not be subject to dispute or audit thereafter.

## Article 10 - Operations and Maintenance

### 10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. Personnel shall be available at all times via telephone or other electronic means with the ability to be present at the Site within 30 minutes. Company will use Commercially Reasonable efforts to notify Seller at least twenty-four (24) hours in advance of potentially critical turbine starts, and upon such notification and during such identified critical periods, Seller shall make available on-site personnel capable of starting, operating, and stopping the Facility.

(B) Seller shall comply with the requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Exhibit H-Operating Standards, Governmental Authority, and Good Utility Practice in the operation of the Facility.

1. To the extent that a Party proximately causes monetary penalties assessed by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, that Party shall pay for all such monetary penalties so proximately caused.

2. Seller shall be responsible for providing accurate and timely updates on the current availability of the Contract Capacity to Company's EMCC ("Reported Availability"). Company shall have the right to verify at any time, without prior notice to Seller, Seller's current Reported Availability. To verify Seller's Reported Availability, Company shall dispatch the Contract Capacity to the level of Reported Availability ("Availability Verification Test"). If (i) the tested availability (rounded upward to the next whole MW) is less than **[Trade Secret Data Begins...  
...Trade Secret Data Ends]** of the Reported Availability (rounded upward to the next whole MW), or (ii) such tested availability is more than five MW below the Reported Availability, such shortfall shall constitute a Deficiency. The Contract Capacity availability shall be derated by the Deficiency for the then current hour and all subsequent hours until Seller reports a revised level of available Contract Capacity. The amount of Contract Capacity available for any individual hour shall be integrated over the hour, on a prorated basis, to reflect any updates in Seller's Reported Availability made effective during such hour.

3. Company will notify Seller as soon as possible by telephone and thereafter in writing whenever an Availability Verification Test has identified a Deficiency. The occurrence of more than one Deficiency in any billing month shall result in derating the Contract Capacity availability retroactive to the beginning of such billing month to the capacity level achieved in the most recent Availability Verification Test. Three Deficiencies in any two consecutive billing months shall result in a five percent reduction in the Capacity Price, as set forth in Section 8.1, applicable to the subsequent two billing months.

## 10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Maintenance Schedules shall comply with the requirements of Exhibit L-Maintenance Requirements ("Maintenance Schedule").

(B) Scheduled Outages/Deratings shall be coordinated between the Parties and shall be scheduled to avoid such outages during On-Peak Months.

1. Notwithstanding the foregoing, Company shall have the right to change the start date of any Scheduled Outage/Derating in a Maintenance Schedule; *provided, however, that* the changed start date must be within 45 Days, earlier or later, of the start date set forth for such outage/derating in the most recent Maintenance Schedule provided by Seller; *and provided further that*, Company shall reimburse Seller for the actual incremental direct costs incurred by Seller from third parties as a result of any such changes to the start date. Upon request, Seller shall provide Company its best estimate of the actual incremental direct costs that Seller would incur as a result of such change to the start date, broken out by type of expense and the third party to whom the expense would be owed.

2. Not less than 72 hours (with respect to major overhauls) and 12 hours (with respect to other Scheduled Outages/Deratings) prior to commencement of any Scheduled Outage/Derating, Company may request verbally or in writing, that Seller defer such Scheduled Outage/Derating. Subject to Good Utility Practice, Seller shall comply with any such request and reschedule such deferred maintenance to a subsequent date mutually agreed upon between the Parties if Company agrees to pay Seller the actual incremental direct costs incurred by Seller in such deferral or rescheduling. Seller shall provide to Company, in advance, a non-binding good faith estimate of such costs and Company shall promptly advise whether Company is willing to reimburse Seller to implement such revised schedule.

(C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one hour after the Forced Outage occurs. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of each Forced Outage.

1. Seller shall report to Company information on Facility performance during a calendar month within five Business Days after the end of the calendar month. For each turbine generator, and using definitions provided by, or consistent with, the NERC Generation Availability Data System ("GADS") Manual, or any successor document, the data reported shall include planned derated hours, unplanned derated hours, average derated kW from Net Capability during the derated

hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line and a preliminary billing invoice.

2. In addition to the foregoing notification, for any Forced Outage, shutdown, or material derating of the Facility (in each case, not otherwise attributable to any act or omission of Company), Seller shall promptly investigate the cause(s) and take corrective action to prevent reoccurrences in accordance with Good Utility Practices at Seller's cost and expense. Seller shall diligently complete such investigation, identify and implement corrective actions as soon as possible and provide to Company a written report containing a summary of the results of the investigation and the corrective action(s) taken or to be taken as soon as possible.

### 10.3 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 Company.

(B) Seller and Company 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 a Facility shall be maintained on the premises of the Facility 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 for a minimum of two years and shall provide the other Party Commercially Reasonable access to those records.

(D) Each Party shall be entitled to examine and audit the records, data, and other information maintained by the other Party relevant to performance or confirming performance of this PPA at any time and from time to time during the period such records, data, and information are required to be maintained, upon request, on reasonable prior notice, during normal business hours. Each Party's right to audit and examine any documents or other information under this Section shall be subject to any confidentiality obligations of the other Party to any third parties with respect to such documents or information.

### 10.4 Operating Committee and Operating Procedures.

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

Operating Committee representatives shall be included in Exhibit D-Notices And Contact Information.

1. 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.

(B) 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.

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

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

10.6 Accreditation.

(A) Seller shall at its own expense comply with the Transmission Authority's requirements for the Facility to be accredited as a Capacity Resource for each Commercial Operation Year under this PPA ("Transmission Authority Capacity Accreditation Requirements"), as such requirements are revised from time to time by the Transmission Authority.

(B) If on or prior to January 1 before the Planning Year of COD Seller has obtained the Full Interconnection Agreement, Seller shall deliver to Company Notice on or prior to such January 1 ("Delivery and Supply Commencement Notice") confirming Seller's commitment effective commencing such January 1 ("Delivery and Supply Commencement Notice Effective Date"), to (i) commence its capacity and energy delivery and supply obligations set forth in this PPA and (ii) adhere to the established Commercial Operation Milestone, subject to the terms and conditions in this PPA.

(C) If Seller has provided Company with the Delivery and Supply Commencement Notice as provided in Section 10.6(B), no later than ten (10) Business Days before the Transmission Authority's deadline for accreditation of new

generation for the Planning Year of COD (“Accreditation Deadline”), Seller shall provide Company Notice that it has completed and reported to the Transmission Authority the capacity testing results necessary for the Facility to be accredited by the Transmission Authority as a Capacity Resource (“Necessary Accredited Capacity Testing Results”).

1. Subject to this Section 10.6(C)1 and Section 10.6(C)4, Seller’s failure to provide the Necessary Accredited Capacity Testing Results to the Transmission Authority by the Accreditation Deadline shall be an Event of Default (“Failure to Meet Accreditation Deadline”) notwithstanding anything to the contrary in Articles 12 and 14 of this PPA, which Seller shall be required to cure by paying Company the Auction Clearing Price for the amount of accredited capacity for the Planning Year of COD that Seller failed to obtain as a result of such failure to meet the Accreditation Deadline, which shall be paid within fifteen (15) Days of receipt of Company’s invoice therefor. Upon Seller paying the Auction Clearing Price to Company as specified in this Section 10.6(C)1, the Failure to Meet Accreditation Deadline is cured and Seller shall not be liable to Company for any of the remedies under Article 12 associated with the Events of Default under Sections 12.1(H) or 12.1(K). Seller shall not sell any of the unaccredited capacity of the Facility in any Commercial Operation Year that Seller fails to obtain the Transmission Authority’s re-accreditation of the Facility as a Capacity Resource.

2. Seller shall also provide Company on a monthly basis the amount of Contract Energy that Seller would have provided Company under this PPA for the Planning Year of COD had the Facility obtained accreditation as a Capacity Resource, for which Company shall pay Seller the Energy Payments and monthly Capacity Payments pursuant to Article 8, *provided, however, that* Seller has paid Company the Auction Clearing Price as required under Section 10.6(C)1. If Seller fails to pay the Auction Clearing Price to Company or provide Contract Energy to Company as set forth in this Section, Company shall have the right to terminate this PPA and collect Actual Damages, subject to Section 12.3(A).

3. Subject to Section 10.6(F), Seller thereafter shall at its own expense comply with the Transmission Authority Capacity Accreditation Requirements for the next Planning Year.

4. In the event Seller elects to provide the Necessary Accredited Capacity Testing Results for the Facility for the Planning Year of COD to the Transmission Authority in accordance with the Transmission Authority’s Generation Verification Test Capacity Deferral Requirements (“GVTC Deferral Requirements”) (such election, the “GVTC Deferral Election”), Seller shall provide Notice to Company at least fifteen (15) Days before the Accreditation Deadline. Upon making the GVTC Deferral Election, Seller shall:

a. Take all actions and make all payments required under the GVTC Deferral Requirements until the Facility is accredited as a Capacity Resource for the Planning Year of COD;

b. Take all actions necessary to transfer Seller's capacity rights in the Facility to Company until such time as Company replaces Seller as the registered entity for the Facility for Transmission Authority capacity planning purposes.

c. Provide Company on a monthly basis the amount of Contract Energy that Seller would have provided Company under this PPA for the Planning Year of COD had the Facility obtained accreditation as a Capacity Resource, for which Company shall pay Seller the Energy Payments and monthly Capacity Payments pursuant to Article 8, *provided, however, that* Seller is current in making all payments required under the GVTC Deferral Requirements. Seller's failure to take all actions or make all payments required under the GVTC Deferral Requirements or provide Contract Energy as set forth in this Section shall constitute an Event of Default, for which Company shall have the right to terminate this PPA and collect Actual Damages, subject to Section 12.3(A).

(D) Once Seller has delivered to Company the Delivery and Supply Commencement Notice for the Planning Year of COD, Seller and Company shall take such steps as are necessary under the Transmission Tariff and the Transmission Authority's requirements to timely transfer the registration of the Facility with the Transmission Authority such that Company replaces Seller as the registered entity for the Facility for the Planning Year of COD.

(E) If Seller has not obtained the Full Interconnection Agreement by January 1 before the Planning Year of COD, Seller may at its option elect to delay the COD to the next Planning Year under this Section by delivering to Company on or prior to January 1 before the Planning Year of COD Notice indicating that Seller has elected to delay the Commercial Operation Date to the next Planning Year ("Accreditation Delay Notice"). Seller's right to delay the Commercial Operation Date shall continue for each subsequent Planning Year, subject to the delivery of the Accreditation Delay Notice to Company on or prior to the January 1 before such Planning Year, until such time as the Interconnection Agreement has become a Full Interconnection Agreement. The Parties shall revise Exhibit B-Construction Milestones to this PPA to extend the Commercial Operation Milestone and other Construction Milestones to reflect the impacts of any delay of the COD of the Facility pursuant to this Section 10.6(E).

(F) For each Commercial Operation Year of the PPA after the Facility has been accredited by the Transmission Authority as a Capacity Resource, Seller shall at its own expense comply with all the Transmission Authority's requirements for the Facility to be re-accredited as a Capacity Resource. In the event Seller fails to meet the deadline for such re-accreditation of the Facility for a Commercial Operation Year, Seller shall pay Company the Auction Clearing Price for the amount of accredited capacity for the Commercial Operation Year that Seller failed to obtain through re-accreditation, which shall be paid within fifteen (15) Days of receipt of Company's invoice therefor. Seller shall also provide Company the amount of Contract Energy for the Commercial Operation Year that Seller would have provided

Company under this PPA had the Facility obtained re-accreditation as a Capacity Resource. Seller shall not sell any of the unaccredited capacity of the Facility in any Commercial Operation Year that Seller fails to obtain the Transmission Authority's re-accreditation of the Facility as a Capacity Resource. In the event that Seller fails to pay the Auction Clearing Price to Company or provide Contract Energy to Company as set forth in this Section, such failure shall constitute an Event of Default and Company shall have the right to terminate this PPA and collect Actual Damages, subject to Section 12.3(A).

(G) Notwithstanding any other provision in this PPA, in the event that the Transmission Authority Capacity Accreditation Requirements, the Transmission Tariff and/or the Tariff Authority's planning reserve procedures and requirements with respect to qualifying generation facilities as a Capacity Resource are changed, modified or revised such that the framework as contemplated in this Section 10.6 cannot be implemented or cannot be implemented without an unanticipated Material Adverse Effect on one or both of the Parties, the Parties shall in good faith promptly amend or modify this Section 10.6 to address such change(s), modification(s) or revision(s) in a manner consistent with the intentions of the Parties as originally set forth in this Section 10.6.

## **Article 11 - Security for Performance**

### **11.1 Security Fund.**

(A) No later than 60 (sixty) Days following Company obtaining or waiving State Regulatory Approval from the State Regulatory Agency, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due and owing to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.

1. The Security Fund shall equal the Pre-COD Security Fund up to the COD and the Post-COD Security Fund on and after the COD and throughout the Term.

2. In the event of any draw by Company on the Security Fund, regardless of the nature of the collateral upon which such draw is actually made, for purposes of determining the required mix of the Security Fund to be posted by Seller following such draw, such draw shall be deemed to have been made against the HGC and non-HGC posted by Seller, *pro rata* to the applicable amounts thereof set forth in the tables in Section 11.1(D), rounded to the nearest whole thousand dollars. Subject only to the foregoing regarding the relative mix of collateral, and notwithstanding anything to the contrary in this PPA, Seller shall not be required to replenish the amount of Security Fund following any draw thereon by Company.

(B) Company may draw from the Security Fund such amounts as are necessary to recover undisputed amounts due and owing to Company pursuant to this PPA, including any damages due to Company and any amounts for which Company is

entitled to indemnification under this PPA if Seller does not pay such amounts within five (5) Business Days following written demand by Company therefor. Company 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 Section and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(C) The Security Fund shall be maintained at Seller's expense and, to the extent applicable, shall be originated by or deposited in a financial institution or company ("Issuer") satisfying the requirements of this Section; and shall be in the form of one or more of the following instruments:

1. The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G-1-Form of Letter of Credit, with such modifications as may be required by the Issuer of such letter of credit, subject to Commercially Reasonable review and approval by Company (the "Letter of Credit").

a. The Issuer for the Letter of Credit shall have and maintain a senior unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by all rating agencies that have provided such a rating, and if ratings from either Standard & Poor's and Moody's are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on negative credit watch or have a negative outlook by any rating agency.

b. The Letter of Credit must be for a minimum term of 360 Days. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of 360 Days or more (or, if shorter, the remainder of the Term) no later than 30 Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least 30 Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with subparagraph (2) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Section.

c. Seller shall have the right to change the amount of Security Fund provided by Letter of Credit in accordance with the other requirements of this Section by amending an existing Letter of Credit or providing a new or replacement Letter of Credit. Seller shall provide no less than thirty (30) Days Notice of such change to Company. Company shall use Commercially Reasonable Efforts to cooperate with Seller in effecting any such change.

2. The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest,

deposited with an Issuer who is a state or federally-chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its Commercially Reasonable discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form of Exhibit G-3-Form of Escrow Agreement. Funds held in the Escrow 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. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed.

3. The Security Fund may consist of a guaranty substantially in the form of Exhibit G-2-Form of Guaranty, from the direct or any indirect parent of Seller (a "Parent Guaranty") with a minimum net worth of at least **[Trade Secret Data Begins... ...Trade Secret Data Ends]**. Said parent shall have a senior unsecured credit rating (unenhanced by third-party support) consistent with the credit ratings set forth in the tables in Section 11.1(D), which rating shall be as determined by all rating agencies that have provided such a rating, and if ratings from both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company). The amount of the Security Fund secured by the Parent Guaranty shall be based on the credit rating of such parent as set forth in the tables in Section 11.1(D). If the credit rating of the parent is downgraded to a level that requires a reduction in the amount of the Parent Guaranty as set forth in the tables in Section 11.1(D), to the extent Seller desires to retain the Parent Guaranty as part of the Security Fund, Seller shall, no later than ten (10) Business Days after receiving Notice from Company, amend or replace the Parent Guaranty such that the amount of the guaranty corresponds to the amount set forth in the tables in Section 11.1(D) for a parent possessing the credit rating of such parent following the downgrade.

(D) Seller may change the form or mix of the Security Fund at any time and from time to time upon thirty (30) Days prior Notice to Company, *provided, however, that* the Security Fund must at all times satisfy the requirements of this Section. Security satisfying the requirements of Section 11.1(C)1 or 11.1(C)2 shall be "High Grade Collateral" or "HGC". In the event that the Security Fund ever fails to meet the criteria set forth herein, Seller shall replace such collateral and take such other actions as are necessary to cause the Security Fund to be in compliance with this Section 11.1 within thirty (30) Days following such failure. The required mix of collateral constituting the Security Fund from time to time shall be as follows:

1. Prior to COD:

a. If and for so long as Seller's equity investment in the Facility is less than **[Trade Secret Data Begins...**


**...Trade Secret Data Ends]**

b. If and for so long as Seller's equity investment in the Facility is **[Trade Secret Data Begins...**


**...Trade Secret Data Ends]**

2. On or after COD:

a. If and for so long as Seller's equity investment in the Facility is less than **[Trade Secret Data Begins...**


**...Trade Secret Data Ends]**

b. If and for so long as Seller's equity investment in the Facility is **[Trade Secret Data Begins...**


**...Trade Secret Data Ends]**

(E) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term. Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller within forty-five (45) Days of termination of this PPA.

(F) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Section.

#### 11.2 Subordinated Mortgage.

(A) Prior to breaking ground for the Facility, Seller shall execute and deliver to Company a mortgage on the Facility and Facility Property, a security agreement with respect to Seller's licenses, permits, and contractual rights with respect to the ownership and operation of the Facility and Facility Property, to the extent assignable, and the equipment, fixtures and other personal property located or to be located on the Facility Property and/or principally related to Seller's operations on the Facility Property (collectively, the "Mortgaged Property"), associated financing statements, and other agreements, documents and instruments, in form and substance reasonably satisfactory to Company, Seller and, to the extent there is Facility Debt, the Facility Lender, under which Company shall enjoy a fully perfected security interest(s) and mortgage lien (collectively, the "Subordinated Mortgage") in the Mortgaged Property; *provided, however, that* the Mortgaged Property shall not include Seller's cash, accounts, securities, books and records, as more specifically described in the Subordinated Mortgage. Company agrees to cooperate with Seller and diligently negotiate, at Seller's request, the form of the Subordinated Mortgage and to execute and deliver the Subordinated Mortgage as reasonably necessary. The Subordinated Mortgage shall secure Seller's continuing performance under this PPA

and any amounts that may be owed by Seller to Company pursuant to this PPA, including, without limitation, any damages expressly excluded from the limitation on Seller's liability set forth in Section 12.3(C). To the extent there is Facility Debt, Seller agrees to, and Company shall, cause the Subordinated Mortgage to be subordinate in right of payment, priority, and remedies to the interests of the Facility Lender in the Facility Debt in accordance with an intercreditor agreement in form and substance satisfactory to the Company and Facility Lender. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to Company by reason of any breach by Seller of this PPA or the early termination of this PPA as provided herein. In the event that there is no Facility Debt until later during the Term, (i) Company shall at such time subordinate the Subordinated Mortgage to such Facility Debt and take whatever actions may be requested by Seller and Facility Lender in connection therewith consistent with this Section 11.2(A) and (ii) Seller shall take such steps as may be reasonably required to ensure compliance with this Section 11.2(A). Company shall take such further actions and execute such further documents and instruments, all as reasonably required by Company, to confirm the subordination provisions set forth in this PPA.

(B) The Subordinated Mortgage shall be discharged and released, and Company shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration or earlier termination of the Term of this PPA and satisfaction by Seller of all obligations hereunder.

(C) Seller shall reimburse Company for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or the discharge and release of the Subordinated Mortgage and any related documents.

## **Article 12 - Default and Remedies**

12.1 Events of Default. Any of the following events shall constitute an Event of Default of the specified Party on such date indicated or if such event has not been cured within the cure period specified for such event:

(A) Either Party's failure to make any undisputed payment to the other Party as required by this PPA, including invoices pursuant to Article 9, 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 sixty (60) Days from its inception.

(C) Either Party's inability to pay debts when due, 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 sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

(D) The authorization or filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state by a Party (and, in the case of Seller, its parent or any other Affiliates of Seller) that could materially affect such Party's ability to perform its obligations hereunder, which proceedings remain undismissed or unstayed for sixty (60) Days, or which result in adjudication of bankruptcy or insolvency within such time

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

(F) 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 and such falsity shall remain unremedied for sixty (60) Days after Notice thereof has been provided to the defaulting Party (or, if only able to be remedied by performance, such longer period as may be reasonably required to effect such remedy, not to exceed an additional sixty (60) Days.

(G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for ten (10) Business Days after Company provides Notice of Seller's failure.

(H) Seller's failure to achieve the Commercial Operation Milestone.

(I) Seller's failure, commencing eighteen (18) months after the COD, to maintain a RAF, pursuant to Section 8.1, greater than **[Trade Secret Data Begins... ..Trade Secret Data Ends]** on a twelve-month rolling average basis utilizing data from the previous twelve months, if such failure shall remain unremedied for sixty (60) Days after Notice thereof has been provided to Seller; *provided, however, that* to the extent such failure of performance is attributable to Force Majeure, the contribution of such Force Majeure shall be eliminated from the RAF calculation for the purposes of, and only for the purposes of, establishing a default of Seller pursuant to this paragraph; *provided, further, that* if Seller provides a written opinion from an independent engineer retained and paid for by Seller and

approved by Company such failure was due to a Major Equipment Failure and Seller is diligently pursuing remedy of such Major Equipment Failure, Seller shall have an additional twelve (12) months following delivery of such opinion to Company to remedy such failure.

(J) Seller's material breach of the Interconnection Agreement that has a Material Adverse Effect on Company if such breach shall remain unremedied for thirty (30) Days after Notice thereof has been provided to Seller (or, if only able to be remedied by performance, such longer period as may be reasonably required to effect such remedy, not to exceed an additional sixty (60) Days).

(K) 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 thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party (or, if only able to be remedied by performance, such longer period as may be reasonably required to effect such remedy, not to exceed an additional thirty (30) Days).

12.2 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. 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. The Parties agree that any uncured Event of Default is deemed to be material and justifies termination. 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, draw on the Security Fund for any unpaid Liquidated Delay Damages, Actual Damages, required payments under Section 10.6, or any other required and unpaid amount;

4. In the case of an Event of Default by Seller, exercise of Company's Step-In Rights.

5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Section, the non-defaulting Party shall be entitled to receive from the

defaulting Party, subject to the Damage Caps, all of the Liquidated Delay Damages owed hereunder and any Actual Damages in connection with the Event of Default resulting in such termination.

(B) Liquidated Delay Damages. Seller shall be liable to pay Company Liquidated Delay Damages as a liquidated damage and not 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, (i) the payment of such Liquidated Delay Damages shall be Company's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay in achieving, the Commercial Operation Milestone, and (ii) Company shall have no right to seek Actual Damages, terminate this PPA, seek specific performance, or exercise its Step-In Rights, notwithstanding anything to the contrary in this Article 12. 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 Company'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. If Seller does not pay Liquidated Delay Damages as and when owed, Company shall have the right to exercise all remedies available for an Event of Default under Section 12.2(A).

2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until but excluding the Day upon which the Commercial Operation Date is achieved.

3. For avoidance of doubt, Seller's failure to obtain accreditation of the Facility as a Capacity Resource is not subject to Liquidated Delay Damages but rather subject to the default, cure, and damage provisions of Section 10.6.

(C) Actual Damages. For all Events of Default under Section 10.6 and this Section, except for a Failure to Meet Accreditation Deadline that is cured as specified in Section 10.6(C)1 or the failure to achieve the Commercial Operation Milestone for which Seller is paying Liquidated Damages as and when owed pursuant to Section 12.2(B)1, the non-defaulting Party shall be entitled to receive from the defaulting Party Actual Damages incurred by the non-defaulting Party; *provided, however, that* if such an Event of Default has occurred and has continued uncured for a period of 365 Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default, event, or breach or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.

(D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Company may elect to treat this PPA as being in full force and effect and shall have the right to specific performance. 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, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

### 12.3 Limitation on Damages.

(A) Except as otherwise provided in this Section, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages and any other pre-COD Actual Damages shall not exceed the Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages post-COD shall not exceed the Post-COD Damage Cap (collectively the "Damage Cap(s)").

(B) If at any time during the Term, Company incurs damages under this PPA in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.

(C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:

1. Physical damage to Company-owned facilities caused by Seller's gross negligence or willful misconduct;
2. Seller's intentional misrepresentation or willful 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 Company under this PPA other than as permitted under this PPA;
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 third party claim subject to indemnification under this PPA;
6. Any Environmental Contamination caused by Seller in connection with this PPA; or
7. Damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the

benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided, however, that* if either Party is held liable to a 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. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the 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.

#### 12.4 Step-In Rights.

(A) Upon the occurrence of an Event of Default, Company shall have the right, but not the obligation, to exercise its Step-In Rights for the period of time until Seller has cured its Event of Default or this PPA has been terminated. Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA.

(B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

(C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Prior to commencing construction of the Facility, in the event there is Facility Debt, Seller shall obtain the written agreement of the Facility Lender recognizing Company's Step-In Rights as being limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.

(D) Company shall implement its Step-In Rights in conformance with Good Utility Practice and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Company shall indemnify Seller for any liabilities, losses, costs expenses and/or damages to Seller or the Facility to the extent such liabilities, losses, costs expenses and/or damages arise from Company's gross negligence or willful misconduct. Except to the extent such expenses and costs relate to Company's indemnification obligations to Seller in this Section 12.4(D), Seller shall reimburse Company for its expenses and costs (including the fees and expenses of

counsel) incurred by Company in connection with exercising its Step-In Rights. Company shall give Seller and, to the extent applicable, the Facility Lender 10 Days Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:

1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.

2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.

3. Seller shall cooperate in the implementation of Company's Step-In Rights.

4. Company shall use the output generated and delivered from the Facility during such period in partial satisfaction of Seller's obligations hereunder.

(E) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this Section.

(F) Seller shall retain legal title to and ownership of the Facility.

(G) Company shall timely pay to Seller all amounts that would otherwise be due to Seller under this PPA for products and services delivered to Company in accordance with this PPA.

(H) Company shall provide Seller with at least 15 Days Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA; (ii) Seller has cured all outstanding defaults; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties mutual decision.

(I) Company's Step-In Rights shall not constitute an assumption by Company of any liability attributable to Seller.

12.5 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 13 - Dispute Resolution**

### **13.1 Dispute Resolution**

(A) In the event of any dispute arising under this PPA (a "Dispute"), within 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 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 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 10 Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall meet and negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute within 30 Days after their first meeting, either Party may seek available legal remedies.

(B) If no Notice has been issued within 24 months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

(C) Seller and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any disputes arising under or in connection with this PPA be adjudicated by a judge of the court having jurisdiction without a jury.

#### **Article 14 - Force Majeure**

14.1 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 Commercially Reasonable 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.

#### 14.2 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) In no event shall the existence of a claim of Force Majeure by Seller relieve Seller of its obligations under Section 10.6.

(D) If Force Majeure affecting a Party continues for an uninterrupted period of 90 Days from its inception (with respect to Force Majeure occurring prior to COD) or 365 Days from its inception (with respect to Force Majeure occurring after COD), the other Party may, at any time following the end of such period terminate this PPA upon Notice to the Party so affected, without further obligation by either Party except as to costs and balances incurred pursuant to this PPA prior to the effective date of such termination; *provided, however, that* if Seller within the first 90 Days of an uninterrupted Force Majeure event occurring prior to COD provides a written opinion from an independent engineer retained and paid for by Seller and approved by Company that the Force Majeure can be remedied within an additional 90 Days, then only after an uninterrupted period of 180 Days of a Force Majeure event affecting Seller may Company terminate the PPA under this Section.

14.3 Delays Attributable to Company. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

## **Article 15 - Representations and Warranties**

15.1 General Representations and Warranties. Except for the requirements of Article 6 which the Parties will use their Commercially Reasonable Efforts to obtain, each Party hereby represents and warrants to the other as follows:

(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 on the representing Party's ability to perform its obligations under this PPA;

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; or

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

(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.

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

(F) It is (i) an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12), (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or by products thereof; and (iv) entering into this PPA solely for purposes related to its business as such.

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

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

(I) This PPA creates a binding obligation for each Party to either make or take delivery of the commodity which is the subject of this PPA, as applicable, without providing any right to offset, cancel, or settle such delivery obligations on a payment-of-difference basis.

15.2 Seller's Specific Representation. To the knowledge of Seller, and except for (i) Seller's CPs in Section 6.2 and (ii) any actions required by the Transmission Authority to qualify the Facility as a Capacity Resource, all actions required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

15.3 Company's Specific Representation. To the knowledge of Company, and except for the State Regulatory Approval identified in Section 6.1, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

## Article 16 - Insurance

16.1 Evidence of Insurance. No later than commencement of construction of the Facility and then on or before the policy renewal date each year thereafter during the Term, Seller shall provide Company with two (2) copies of insurance certificate(s) evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E-Insurance Coverage. Such certificates shall (a) name Company as an additional insured to the extent of the indemnity obligations assumed by Seller hereunder (except worker's compensation); (b) provide Company 30 Days prior Notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such Notice shall be 10 Days for non-payment of premiums); (c) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) 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-VII or a Standard & Poor's rating of at least A, or that the Company deems acceptable. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

### 16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two (2) years after 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 five (5) years after the Term.

(B) The Parties shall modify the insurance types and minimum limits specified in Exhibit E-Insurance Coverage from time to time during the Term in order to maintain Commercially Reasonable coverage amounts in the event that Good Utility Practices so require and Seller can obtain the modified insurance on Commercially Reasonable terms. Seller shall make Commercially Reasonable Efforts to obtain such modified insurance.

(C) If any insurance required to be maintained by Seller hereunder ceases to be available in the commercial insurance market on reasonable terms for electric generating plants of a type, geographic location and capacity comparable to the Facility, Seller shall provide Notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is no longer so available. Upon receipt of such Notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.3 Application of Proceeds. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

#### **Article 17 - Indemnity**

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

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

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

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

17.2 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 send 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.

17.3 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, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

17.4 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 net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **Article 18 - Lender Provisions**

18.1 Accommodation of Facility Lender. Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, 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 I-Lender Consent Provisions (generally, a "Lender Consent"), *provided, however, that* in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement, that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company 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 Company, pursuant to this Section.

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

period as may be specified in a consent to assignment or other agreement between Company and the Facility Lender.

18.3 Notice of Facility Lender Action. Within 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 Company.

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

### **Article 19 - Assignment and Other Transfer Restrictions**

19.1 Transfer Without Consent is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.

(A) Except as permitted in this Section, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however, that* (i) at least 30 Days prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party, (iii) except as otherwise provided in Sections 19.1(A)1 and 19.1(A)3, 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 Section 11.1; and (v) before this PPA is assigned by Seller, 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 Company to assign this PPA to an Affiliate of Company; *provided, however, that* Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the MPUC and has an Investment Grade rating, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

2. Company's consent shall not be required for Seller to assign this PPA for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than 30 Days after the assignment.

3. Company's consent shall not be required for Seller to assign this PPA to MEC I if, as of the date of assignment, MEC I (i) owns all or substantially all of the Facility and the Facility Property, (ii) assumes Seller's obligations under this PPA, and (iii) has the technical expertise substantially similar to Seller to perform Seller's obligations under this PPA.

4. Company shall release Seller from its obligations under this PPA, upon request of Seller, in the event of any permitted assignment of this PPA by Seller to any assignee that: (a) is Investment Grade rated or has a parent that is Investment Grade rated; (b) provides a Security Fund meeting the requirements of Section 11.1; (c) assumes Seller's obligations under this PPA; and (d) has technical expertise (or has retained others with such expertise) substantially similar to Seller to perform Seller's obligations under this PPA as of the date of assignment.

(B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld, *provided, however, that* no such consent shall be required for any Change of Control of Seller if the ultimate parent entity of Seller following the Change of Control, together with its Affiliates, has an Investment Grade rating as measured by its senior unsecured credit rating unenhanced by third party support (or enjoys creditworthiness if such credit rating is unavailable as otherwise reasonably determined by Company) not worse than Seller's ultimate parent entity, together with its Affiliates, prior to the Change of Control.

(C) For the avoidance of doubt, the Parties acknowledge and agree that Seller shall not be relieved of its obligations under this PPA as the result of any Change of Control unless Company agrees in writing in advance to waive Seller's continuing obligations under this PPA.

## 19.2 ROFO.

(A) At any time after the Commercial Operation Date, if Seller or any Affiliate of Seller decides to solicit or proceed with unsolicited third-party offers to convey all or substantially all of the Facility Property and the assets comprising the MEC I Facility or a majority of the interests in Seller and MEC I (each a "Proposed Transaction") to an unaffiliated third party, Seller shall in advance of any such solicitation or pursuit of unsolicited offers provide Company with the right of first offer ("ROFO"). Under the ROFO, Seller shall furnish to Company (i) the terms Seller is willing to accept in connection with the Proposed Transaction, and (ii) the price Seller is willing to accept to proceed with the Proposed Transaction (the "ROFO Notice"). Company's ROFO shall only apply to a Proposed Transaction and its related terms and conditions where the conveyance of all or substantially all of the Facility Property and the assets comprising the MEC I Facility or majority of the interests in Seller and

MEC I represents substantially all of the value of the assets or interests, as applicable, being conveyed in such Proposed Transaction. .

(B) Seller shall allow Company (a) where Seller has elected to solicit third party offers, forty-five (45) Days after the ROFO Notice to investigate the Proposed Transaction and conduct due diligence, (b) where Seller has elected to pursue unsolicited third party offers, thirty (30) Days after the ROFO Notice to investigate the Proposed Transaction and conduct due diligence. Within the applicable period, Company shall either (i) exercise its ROFO rights on terms equivalent to the terms and price set forth in the ROFO Notice or (ii) cancel its ROFO rights.

1. If Company exercises its ROFO, the Parties shall have a period of no longer than six (6) months to conduct due diligence and develop definitive agreements on terms no less favorable to Company than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for Company to exercise its ROFO rights.

2. If Company does not exercise its ROFO, Seller shall have the right to solicit offers on the Proposed Transaction from unaffiliated third, *provided, however, that* in the event Seller proceeds with the Proposed Transaction and the purchaser is an unaffiliated third party, (a) the price associated with such transaction shall have an aggregate value of not less than the price set forth in the ROFO Notice, and (b) the terms associated with such transaction shall be no less favorable to Seller than the terms set forth in the ROFO Notice. In the event Seller does not close on its Proposed Transaction with an unaffiliated third party, Seller shall offer Company a ROFO in connection with any new or subsequent Proposed Transaction as set forth in Section 19.2(B).

(C) In the event that: (a) a Proposed Transaction is part of a larger transaction to which Company's ROFO does not apply and (b) such Proposed Transaction represents more than twenty percent (20%) of the aggregate generating capacity that would be conveyed by such larger transaction, Seller shall provide Notice to Company of its decision to solicit or proceed with the Proposed Transaction within thirty (30) Days of such decision, and Company may in its sole discretion make an offer for Seller's consideration to purchase all or substantially all of the Facility Property and the assets comprising the MEC I Facility or a majority of the interests in Seller and the MEC I the Facility upon receipt of such Notice.

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

## **Article 20 - Miscellaneous**

20.1 Notices. Notices required by this PPA 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 and Contact Information as either Party updates them from time to time by Notice to the other Party. Notices shall either be hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile 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, including with respect to provision of energy from Alternate Energy Source(s), shall be exempt from this Section.

## 20.2 Taxes, Emissions 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 on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term.

(B) Company shall be solely responsible for sales and use taxes imposed with respect to the purchase of fuel by Company for use in or consumption by the Facility to produce the electric energy dispatched and received by Company hereunder.

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

(D) Notwithstanding clause (A) of this Section, Company shall be solely responsible for the payment of any taxes and other impositions enacted or promulgated by Governmental Authorities after the Effective Date, that are assessed based upon the quantity of carbon dioxide emissions produced from the combustion of fuel purchased by Company for consumption by the Facility to produce Contract Energy or Test Energy during the Term of this PPA.

1. If (i) following the Effective Date of this PPA, Applicable Law imposes any enforceable limits or other enforceable compliance obligations related to carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy, (ii) the limits or obligations are not imposed on a facility specific basis, and (iii) such limits or obligations can be mitigated

by the acquisition or application by Company of allowances, credits and/or eligible offsets, then (a) Company shall be responsible for compliance with the limits or compliance obligations from the Facility in its generation portfolio, and (b) Company shall be solely responsible for the acquisition costs, application and management of such allowances, credits and/or offsets necessary to mitigate carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy.

2. Nothing herein shall relieve Seller of its obligation to comply, at its sole cost, with Applicable Law or any Permit (including any emission limit or standard relating to carbon dioxide) imposed specifically on the Facility.

(E) With respect to any changes to Applicable Law with respect to emissions of carbon dioxide or other emissions, including SO<sub>x</sub> and NO<sub>x</sub>, enacted or promulgated by Governmental Authorities after the Effective Date that have or are reasonably likely to have a Material Adverse Effect on the economics of this PPA or the Facility with respect to either Party, the Parties will cooperate to consider a mutually agreeable and Commercially Reasonable response to mitigate such Material Adverse Effect.

20.3 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 Adverse 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.

20.4 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 (“Aggrieved Party”) by any Governmental Authority due to noncompliance by the other Party, its employees, or subcontractors (“Offending Party”) with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or, if the performance of the Offending Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to the Offending Party’s noncompliance with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, the Offending Party shall reimburse and hold the Aggrieved Party harmless against any such costs incurred by the Aggrieved Party, including claims for indemnity or contribution made by third parties against the Aggrieved Party in accordance with Article 17.

#### 20.5 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 Section 205 or 206 of the Federal Power Act.

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

20.6 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties, or 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.

#### 20.7 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 by such Party to perform such Party’s obligations under this PPA, 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.

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

20.9 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.

20.10 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* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

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

20.12 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.

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

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

20.15 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 in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.

20.16 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.

20.17 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.

20.18 Confidentiality.

(A) This PPA and all appendices and amendments hereto are intended to be treated as Confidential Information. Within thirty (30) Days from execution of this PPA, Seller shall provide the Company with its version of this PPA with all of Seller's claimed Confidential Information redacted. Within 30 Days of receipt, Company shall provide Seller its version of this PPA with all of Company's claimed Confidential Information as well as Seller's claimed Confidential Information redacted ("Confidential PPA Version"). A Party may provide this Confidential PPA Version to Governmental Authorities or their staffs in connection with any regulatory proceeding, including regulatory filings and responses to discovery requests, without consent from the other Party. Notice of a Party's disclosure of the Confidential PPA Version shall be provided to the other Party within 10 Days of such disclosure.

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

1. Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party. Such materials may 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 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 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 Section, 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 (including in the case of Seller, Facility Lender), 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.

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

a. Which can be documented was in the public domain as allowed by this Section, 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 was independently developed by the receiving Party;

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

d. 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 promptly notify the non-disclosing Party, no later than five 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 Section.

3. The obligation to maintain Confidential Information in confidence shall continue until two (2) years after the expiration or earlier termination of this PPA.

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Parties and MEC I have executed this PPA.

**Seller:**

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

**Company:**

David M. Sparby  
Senior Vice President & Group President,  
Revenue  
President & CEO, NSP Minnesota

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

**MEC I:**

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

## EXHIBIT A

### DEFINITIONS

The following terms shall have the meanings set forth herein:

“Acceptable Natural Gas Fuel” means (i) natural gas fuel procured from the Upstream Pipeline pursuant to the Upstream Pipeline’s tariff, which tariff includes the natural gas quality specifications, requirements, and minimum delivery pressures, as attached hereto as Exhibit K-Fuel Quality Specifications, or (ii) such other natural gas fuel delivered to a Fuel Delivery Point, the actual gas quality of which meets or exceeds the natural gas quality specifications, requirements and minimum delivery pressures in Exhibit K-Fuel Quality Specifications; or (iii) natural gas fuel that otherwise complies with the turbine manufacturer’s natural gas fuel quality specifications, requirements and delivery pressures and that would not otherwise void such manufacturer’s warranties.

“Accreditation Deadline” shall have the meaning set forth in Section 10.6(C).

“Accreditation Delay Notice” shall have the meaning set forth in Section 10.6(E).

“Actual Capacity” of the Facility means the actual (vs. tested) maximum net generating capability of the Facility from time to time, including capacity available from duct firing, unadjusted to Reference Conditions. Actual Capacity may be greater or less than the Net Capability of the Facility.

“Actual Damages” means direct damages proximately caused by an Event of Default.

“Actual Net Heat Rate” means the net heat rate for the Facility, stated in Btu/kWh, Higher Heat Value (“HHV”), as adjusted to Reference Conditions, resulting from a heat rate test conducted in accordance with Section 8.4.

“Affiliate” means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the 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. For the Facility to be considered capable of AGC, it must meet the dispatchability requirements described in Section (A) of Exhibit H-Operating Standards.

“Aggrieved Party” shall have the meaning set forth in Section 20.4(B).

“Air Permit” means any permit or permit amendment required by the Minnesota Pollution Control Agency under Chapter 7007 of the Minnesota Rules for construction and operation of the Facility.

“Alternate Delivery Point” shall have the meaning set forth in Section 7.3.

“Alternate Generation Source” shall have the meaning set forth in Section 7.3.

“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.

“Auction Clearing Price” means the price at which capacity credit can be purchased in the Transmission Authority’s market for such credit for the Facility’s location, which the Transmission Authority currently designates as Local Resource Zone 1.

“Availability Verification Test” shall have the meaning set forth in Section 10.1(B).

“Available Energy” shall have the meaning set forth in Section 8.1(A).

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

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

“Base Capacity” means the portion of the Facility’s Actual Capacity, without duct firing.

“Breakage Fee” shall have the meaning set forth in 2.4(B).

“Btu” means British thermal unit.

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

“CAF” stands for Capacity Availability Factor and shall have the meaning set forth in Section 8.1.



“Capacity Resource” means the amount of net generating capacity associated with the Facility for which capacity credit may be obtained under the Transmission Authority’s planning reserve procedures and requirements.

“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 if the direct or indirect interest in Seller represents substantially all of the value of such owner’s assets: (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 the selling entity or entities that formerly owned, directly or indirectly, a majority of the ownership interest in Seller no longer own such a majority, *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, (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, (iii) a change of the Ultimate Parent Entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976), or (iv) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change.

“COD Conditions” means all of the requirements that must be satisfied by Seller in order to achieve Commercial Operation as set forth in Section 4.3.

“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 12:01 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 the Construction Milestone specified in Exhibit B-Construction Milestones, as may be extended pursuant to the terms of this PPA, by which Seller must have satisfied the COD Conditions to achieve the Commercial Operation Date on the following Day .

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

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to 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.

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

“Confidential Information” shall have the meaning set forth in Section 20.18.

“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-Construction Milestones, as may be extended pursuant to the terms of this PPA.

“Contract Capacity” shall have the meaning set forth in Section 7.2(A).

“Contract Energy” shall have the meaning set forth in Section 8.3.

“Daily Gas Cost” for any Day, expressed in \$/MMBtu, means the sum of (i) the midpoint of the daily gas price survey for Northern, Ventura, as published for that Day by Platts Gas Daily (the “Gas Survey”), multiplied by the percentage fuel rate for the relevant delivering pipeline in effect for that Day, plus (ii) the applicable commodity transportation rate for the relevant delivering pipeline in effect for that Day, plus (iii) the midpoint of the daily gas price survey for Northern, Ventura, as published for that Day by Platts Gas Daily. If Platts Gas Daily ceases to publish the Gas Survey, or if the Gas Survey is changed so that it is intended to measure something materially different from the level of wholesale gas prices in the vicinity of the Site, the Parties shall substitute a new index that reasonably measures a comparable level of wholesale gas prices in the region.

“Damage Caps” shall have the meaning set forth in Section 12.3.

“Day” means a calendar day.

“Day-Ahead Market” shall have the meaning set forth in the Transmission Tariff.

“Deficiency” means the deficiency in Reported Availability and tested availability of the Facility as described in Section 10.1(B).

“Delay Option” shall have the meaning set forth in Section 2.3.

“Delay Period” shall have the meaning set forth in Section 2.3.

“Delivery and Supply Commencement Notice” shall have the meaning set forth in Section 10.6(B).

“Delivery and Supply Commencement Notice Effective Date” shall have the meaning set forth in Section 10.6(B).

“Demobilization Costs” shall have the meaning set forth in Section 2.3(A).

“Dispatchability Payment” shall have the meaning set forth in Section 8.2.

“Dispatchability Rate” means *[Trade Secret Data Begins...  
...Trade Secret Data Ends]*.

“Dispute” shall have the meaning set forth in Article 13.

“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.

“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 Company's merchant representatives responsible for dispatch of generating units, including the Facility.

“Energy Resource Interconnection Service” or “ERIS” shall have the meaning set forth in the Transmission Tariff.

“Environmental Assessments” shall have the meaning set forth in Section 4.1(A).

“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 Section 215 of the Federal Power Act or any successor organization; the Midwest Reliability Organization (“MRO”) is the certified ERO as of the date of this PPA.

“ESC Event” shall mean those events described in Exhibit M-ESC Event Adjustment.

“ESC Event Adjustment” has the meaning set forth in Section 8.7.

“Event of Default” shall have the meanings set forth in Articles 10.6 and 12.

“Excused Outage” means a partial or complete outage of the Facility to the extent caused or extended by: (i) a breach of this PPA by Company; (ii) any disconnection of the Facility from the Transmission Authority's System not attributable to events or conditions at the Facility; (iii) an interruption in the supply of required House Power for the Facility, not attributable to the Facility, if the Facility is using the Company

distribution system for House Power; (iv) the Facility having reached the limits of the operating restrictions imposed by any Permits (or any subsequent amendments thereto) applicable to or affecting the Facility, *provided, however, that* if any Permit restriction results in the restriction of the amount of Contract Energy that is available for dispatch and receipt by Company to an amount which is less than the amount set forth in the original version of such Permit, then the Contract Capacity shall be considered unavailable to the extent that Seller cannot deliver Contract Energy to Company in an amount equal to such original amount; (v) modification of the Facility at Company's request pursuant to this PPA or otherwise; or (vi) Company's failure or inability to supply to a Fuel Point of Delivery sufficient Acceptable Natural Gas Fuel for operation of the Facility, whether due to Force Majeure or any other reason. Excused Outage does not include: (1) any disconnection of the Facility from the Transmission Authority's System attributable to events or conditions at the Facility except as described above; or (2) any event or condition of Force Majeure at the Site that affects the Availability of the Facility, not attributable to Company or events or conditions on the Company side of the Interconnection Point.

"Facility" means Seller's electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major equipment components, and all equipment necessary to interconnect such facilities to the Transmission Authority's System, all as further described in Exhibit C-Facility Description, One-Line Diagram, And Site Map, including all of the following: Seller's equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, Seller's Natural Gas Interconnection Facilities, and Seller's natural gas compression, heating and filter/separation equipment and associated piping and control systems, above ground and underground fuel piping systems and storage facilities, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

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

"Facility Lender" means, collectively, any lenders providing any Facility Debt and any successors or assigns thereto.

"Facility Property" means all Seller's property rights necessary for the use of the Facility for its intended purpose, including (i) the Facility; (ii) the Site; (iii) Seller's Interconnection Facilities; (iv) the Facility collection facilities and substation; (v) Seller's rights and obligations under the Interconnection Agreement; (vi) Permits, and all material contracts; and (vii) all Facility fixtures, equipment and personal property.

“Failed Capacity Test” means a capacity test of the Facility that (i) must be cancelled because of a Forced Outage, failure of testing equipment, inclement weather, or any other reason, or (ii) if conducted, substantially fails to measure accurately the Actual Capacity of the Facility.

“Failed HR Test” means a heat rate test of the Facility that (i) must be cancelled because of a Forced Outage, failure of testing equipment, inclement weather, or any other reason, or (ii) if conducted, substantially fails to measure accurately the net heat rate of the Facility.

“Failure to Meet Accreditation Deadline” has the meaning set forth in Section 10.6(C)1.

“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.

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt 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.

“Fired Hour Charge” means ***[Trade Secret Data Begins...  
...Trade Secret Data Ends]***.

“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 anticipated as of the date of this PPA, (ii) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided. Without limiting the preceding, Force Majeure shall include acts of God; floods, earthquakes, hurricanes, and tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; terrorism; war; riots; fire; explosion; strike, slow down or labor disruption at the Site to the extent part of a general strike, slow down and/or labor disruption not otherwise confined solely to the Site; to the extent environmental hazards which could not have reasonably been detected by the environmental investigations of the Party claiming Force Majeure; severe cold or hot weather or snow or other extreme or severe weather conditions that the affected Party could not have reasonably anticipated based on the time of year and applicable geographic location; requirements, actions or failures to act by any Governmental

Authority taken after the date hereof (including the adoption or change in any rule, regulation, Permit, or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; mechanical or equipment breakdown, or inability to operate, attributable to circumstances occurring outside of design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity except to the extent attributable to Seller's failure to abide by Good Utility Practices; and inability, despite due diligence, to obtain any Permits required by any Governmental Authority; *provided, however, that* Force Majeure 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 in its capacity as a contractor or customer of the Party claiming Force Majeure unless such acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown, or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity; or (d) changes in market conditions.

"Forced Outage" means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or some part 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.

"Fuel Delivery Point" means the natural gas delivery system point at which Company makes available and delivers to Seller the natural gas fuel consumed by the Facility to produce the Contract Energy dispatched by Company as described pursuant to Section 5.3. The Fuel Delivery Point shall be the outlet flange of the meter installed at the point of interconnection between the Natural Gas Interconnection Facilities and the Upstream Pipeline.

"Full Interconnection Agreement" means the conditions set forth in the Interconnection Agreement have been fulfilled, removed, or waived such that the Interconnection Agreement is no longer conditional and allows Seller to obtain accreditation of the Facility as a Capacity Resource for the Planning Year of COD pursuant to the Transmission Authority Capacity Accreditation Requirements.

"GDPIPD" means the Gross Domestic Product Implicit Price Deflator, as published by the US Bureau of Economic Analysis of the U.S. Department of Commerce.

"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 the Seller and sold to Company 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 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 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.

“GVTC Deferral Election” shall have the meaning set forth in Section 10.6(C)4.

“GVTC Deferral Requirements” means the applicable Transmission Tariff requirements for deferring the capacity testing that Seller must complete and report to the Transmission Authority for the Facility to be accredited by the Transmission Authority as a Capacity Resource. The current generation capacity deferral requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated listed, or identified by any local Governmental Authority, any applicable State, or the United States of America, as hazardous, dangerous, damaging, or toxic 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).

"Heat Rate Adjustment" shall have the meaning set forth in Section 8.4.

"HHV" means Higher Heat Value.

"High Grade Collateral" or "HGC" shall have the meaning set forth in Section 11.1(D).

"House Power" means retail power to the Facility for purposes of Facility start-up or shut-down, or for any other purpose.

"Indemnified Party" shall have the meaning set forth in Section 17.1.

"Indemnifying Party" shall have the meaning set forth in Section 17.1.

"Inflation Factor" means, with respect to each Commercial Operation Year, a fraction, the numerator of which is the GDPIPD most recently announced as of the first (1st) Day of such Commercial Operation Year, and the denominator of which is the GDPIPD as of June 1, 2018.

"Interconnection Agreement" means the separate agreement among the Seller, Company, and the Transmission Authority 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.

"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, One-Line Diagram, And Site Map to this PPA.

"Interconnection Point" means the physical point within the operational authority of the 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.

"Issuer" shall have the meaning set forth in Section 11.1.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Lender Consent" shall have the meaning set forth in Section 18.1.

"Liquidated Delay Damages" means **[Trade Secret Data Begins...  
...Trade Secret Data Ends]** per MW of the Nameplate Capacity of the Facility per Day.

"Local Provider" means the utility providing House Power to the Facility.

"Locational Marginal Pricing" or "LMP" shall have the meaning set forth in the Transmission Tariff.

"Maintenance Schedule" shall have the meaning set forth in Section 10.2.

"Major Equipment Failure" means either a sudden, unexpected failure or a mechanical or equipment breakdown of the steam turbine generator, condenser, circulating water pump, or cooling tower used for the operation of the Facility that: (i) substantially reduces or eliminates the capability of the Facility to produce energy, and (ii) is beyond the reasonable control of Seller and could not have been prevented by the exercise of reasonable due diligence by Seller.

"Mankato Energy Center" means, collectively, the Facility and the MEC I Facility.

"Material Adverse Effect" means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

"Material Permit" means any Permit designated as a "Material Permit" on Exhibit F—Material Permits.

"MEC I" shall have the meaning set forth in the first paragraph of this PPA.

"MEC I Facility" means the Mankato Facility as defined in the MEC I PPA.

"MEC I PPA" shall have the meaning set forth in Section 2.2.

"Minimum Load Starting Point" means the minimum level of operation at which the Facility is capable of receiving a dispatch signal unless there is a physical limitation to the AGC.

"Minimum Loading" means the minimum capacity the Facility can be scheduled for continuous operation according to Good Utility Practices.

“MISO” means the Midcontinent Independent Transmission System Operator, Inc., a non-profit Delaware corporation, or successor organization. MISO is the current Transmission Authority.

“Mortgaged Property” shall have the meaning set forth in Section 11.2(A).

“MPUC” means the Minnesota Public Utilities Commission.

“MW” means megawatt or one thousand kW.

“MWh” means megawatt hours.

“Nameplate Capacity” means 345 MW.

“Natural Gas Interconnection Facilities” means Seller’s, or Seller’s agent’s, pipeline, compression and related facilities required to receive, regulate and meter natural gas fuel and to transport such fuel from the Fuel Delivery Point to the Facility for the generation of electric energy under this PPA, including those facilities required to heat or filter/separate such natural gas fuel as Seller, in its sole judgment, deems necessary to install.

“Necessary Accredited Capacity Testing Results” means the capacity testing that Seller must complete and report to the Transmission Authority for the Facility to be accredited by the Transmission Authority as a Capacity Resource. The current accredited capacity testing requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

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

“Net Capability” or “NC” means the lesser of (a) three hundred forty five (345) MW, or (b) the net generating capability of the Facility as determined by the most recent capacity test thereof, adjusted to Reference Conditions.

“Network Integration Transmission Service” or “NITS” shall have the meaning set forth in the Transmission Tariff.

“Network Resource” means the applicable amount of capacity for the Facility that has been designated as a “network resource” under the Transmission Tariff.

“Network Resource Interconnection Service” or “NRIS” shall have the meaning set forth in the Transmission Tariff.

“Network Upgrades” means the upgrades to any transmission facilities on the regional transmission system identified in the studies required pursuant to the Transmission Tariff.

“Notice(s)” shall have the meaning set forth in Section 20.1.

“Offending Party” shall have the meaning set forth in Section 20.4(B).

“Off-Peak Months” means the months of March, April, May, October and November.

“On-Peak Months” means the months of January, February, June, July, August, September and December.

“Operating Committee” means one representative each from Company and Seller pursuant to Section 10.4.

“Operating Procedures” means those procedures developed pursuant to Section 10.4, if any.

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

“Operating Standards” means Company’s Operating Standards as set forth in Exhibit H-Operating Standards, as may be revised from time to time.

“Parent Guaranty” shall have the meaning set forth in Section 11.1(C)4.

“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 Company.

“Planning Year” means the annual capacity accreditation period that the Company is subject to as designated by the Transmission Authority. Currently under the Transmission Tariff this period is June 1<sup>st</sup> to May 31<sup>st</sup> of the following year. A Planning Year is identified by the year in which it begins. For example, the 2018 Planning Year begins June 1, 2018.

“Point of Delivery” means the physical point within the operational authority of Transmission Authority at which Seller makes available to Company and delivers to Company the Contract Capacity and Contract Energy being provided by Seller to Company from the Facility under this PPA as specified in Exhibit C-Facility Description, One-Line Diagram, And Site Map to this PPA. The Point of Delivery shall be the dead end structure on the high side of Seller’s step-up transformer at the Facility.

“PPA” shall have the meaning set forth in the introductory paragraph hereto and includes all amendments hereto.

“Post-COD Damage Cap” means *[Trade Secret Data Begins...  
...Trade Secret Data Ends]*.

“Post-COD Security Fund” means *[Trade Secret Data Begins...  
...Trade Secret Data Ends]*.

“Pre-COD Damage Cap” means *[Trade Secret Data Begins...  
...Trade Secret Data Ends]*.

“Pre-COD Security Fund” means *[Trade Secret Data Begins...  
...Trade Secret Data Ends]*.

“Predicted Net Heat Rate” means the predicted net heat rate for the Facility, stated in Btu/kWh Higher Heating Value (“HHV”), at Reference Conditions and adjusted to reflect the turbine manufacturer’s estimated degradation in equipment performance over the period of Commercial Operation from new and clean equipment conditions as specified in Exhibit J-Predicted Net Heat Rate Degradation Adjustment. The initial Predicted Net Heat Rate at new and clean equipment conditions and at Reference Conditions shall be the lesser of (i) *[Trade Secret Data Begins...  
...Trade Secret Data Ends]* Btu/kWh HHV or (ii) the Actual Net Heat Rate resulting from the initial heat rate test of the Facility pursuant to Section 8.4. The Predicted Net Heat Rate degradation adjustment, as specified in Exhibit J-Predicted Net Heat Rate Degradation Adjustment, shall be used to adjust such initial Predicted Net Heat Rate, and thereby establish the Predicted Net Heat Rate, over the period.

“Reactive Power” shall have the meaning of “Reactive Supply and Voltage Control” set forth in the Transmission Tariff.

“Reference Conditions” means the Facility operating in ambient conditions used to establish the Predicted Net Heat Rate to provide a reference for adjustment in determining the Actual Net Heat Rate from heat rate testing of the Facility pursuant to Section 8.5. The ambient Reference Conditions for the Facility shall be an ambient temperature of 6.0 degrees Fahrenheit (F), 68% ambient relative humidity, and standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation of 800 feet above mean sea level.

“Re-mobilization Costs” has the meaning set forth in Section 2.3(B).

“Replacement Power Costs” means the costs incurred by Company that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide, less the sum of any payments from Company to Seller, under this PPA, and costs of fuel that were eliminated as a result of such failure; *provided, however, that* the net amount shall never be less than zero in any hour and if the calculation for any hour results in a number less than zero, the number for such hour shall be deemed to be zero. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours where the following calculation achieves a positive number.

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

“A” is the product of (x) the number of MW of capacity derived by subtracting the number of MW of capacity that qualifies for capacity credit actually made available to Company from the Contract Capacity, and (y) the applicable market price for capacity made available to Company’s system plus any other associated costs and penalties arising out of Seller’s failure to perform;

“B” is the product of the number of MWh of energy purchased by Company associated with the replacement capacity and the applicable market price for energy delivered to Company’s system at a point nearest to the Point of Delivery for the hour plus any other associated costs and penalties arising out of Seller’s failure to perform; and

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

“D” is the sum of any payments from Company to Seller, under this PPA that would have been made but were eliminated as a result of such failure and any costs of fuel that can be reasonably avoided by Company to obtain replacement energy.

“Reported Availability” shall have the meaning set forth in Section 10.1(B)(2).

“ROFO Notice” shall have the meaning set forth in Section 19.2(A).

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” means through and including the last Day of a Planning Year on or immediately after the twentieth (20<sup>th</sup>) anniversary of the COD.

“Scheduled Maintenance Energy” shall have the meaning set forth in Section 8.1.

“Scheduled Outage/Derating” means a planned interruption/reduction of the Facility’s generation that both (i) has been coordinated in advance with Company, with a mutually agreed start date and duration, (ii) is required for inspection, or preventive or corrective maintenance, and (iii) complies with the Transmission Authority scheduling requirements as set forth in the Transmission Authority Business Practices Manual for Outage Operations.

“Scheduling Charge” means the product of **[Trade Secret Data Begins...  
...Trade Secret Data Ends]** multiplied by the Inflation Factor.

“Security Fund” means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller’s performance under this PPA.

“Seller’s Reimbursable Transmission Costs” means all the engineering, design, procurement, and construction costs Seller incurs for transmission facilities required under the Interconnection Agreement, and the costs Seller shall incur for Network Upgrades associated with Company obtaining firm NITS for the Facility.

“Shut-Down Period” means any period during which the Facility has completed its run schedule, is taken off AGC, and ramps down to breaker open.

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

“Site Permit” means any Permit, or any amendment to an existing Permit, required by Applicable Law to authorize the construction and siting of the Facility at the Site.

“Start-Up Period” means any period during which the Facility is ramping from breaker close to its Minimum Load Starting Point.

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

“State Regulatory Agency” means the North Dakota Public Service Commission, and any successor agency thereof.

“State Regulatory Approval” means a final, non-appealable written order of the North Dakota Public Service Commission making the affirmative determination that Company’s execution of this PPA is reasonable, in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudence review of Company’s performance and administration of this PPA.

“Step-in Rights” means Company’s right, but not the obligation, to assume control and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller’s right, obligations, and interest under this PPA.

“Subordinated Mortgage” shall have the meaning set forth in Section 11.2(A).

“Successful Start” means, in response to a request from Company to start the Facility, Seller’s start and operation of the Facility that: (i) achieves the Minimum Loading level for the requested operating configuration within the greater of (a) two hundred thirty (230) minutes after the time Company requested the turbine start to begin or (b) the operating parameters of the air Permit, and (ii) upon achieving the aforementioned Minimum Loading level, generates continuously for a period of not less

than one hour while synchronized to the Transmission Authority's System at or above such Minimum Loading level without experiencing any abnormal operating conditions.

"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 Company at the Point of Delivery, and purchased by Company pursuant to Section 4.4 in order to perform testing of the Facility.

"Test Energy Rate" means *[Trade Secret Data Begins...  
...Trade Secret  
Data Ends]*.

"Tolling Price" means *[Trade Secret Data Begins...  
...Trade Secret  
Data Ends]*.

"Transmission Authority" means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to the Transmission Tariff, including (i) Midcontinent Independent Transmission System Operator, Inc. ("MISO"), a non-profit, Delaware corporation, or successor organization and (ii) 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 Capacity Accreditation Requirements" means the applicable Transmission Tariff requirements for accreditation of the capacity of new generation added to the Transmission Authority's System. The current capacity accreditation requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

"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. The current Transmission Tariff is the MISO OATT.

"Turbine Start Payment" shall have the meaning set forth in Section 8.6.

"Turbine Start Price" means *[Trade Secret Data Begins...  
...Trade  
Secret Data Ends]* per Successful Start.

"UCP" shall have the meaning set forth in Exhibit G-1, Form of Letter of Credit.

“Unrecovered Costs for Early Termination” has the meaning set forth in Section 2.4(A).

“Upstream Pipeline” means Northern Natural Gas, the interstate natural gas pipeline interconnecting to the Facility at the Fuel Delivery Point and providing Acceptable Natural Gas Fuel to the Facility in accordance with its applicable tariff.

“Wenck Environmental Assessments” means the following Environmental Assessments performed by Wenck Associates, Inc.: Phase I Environmental Site Assessment—Mankato Energy Center Site, Mankato, Minnesota (September 2003); Limited Phase II Environmental Site Assessment—Mankato Energy Center Site, Mankato, Minnesota (December 2003); Phase I Environmental Site Assessment—Residential Property, 3274 Third Avenue, Mankato Minnesota (July 2004); Phase I Environmental Site Assessment—Remote Equipment Area, County Road 5 and Industrial Drive, Line Township, Minnesota (April 2005); Phase I Environmental Site Assessment—Pipeline Corridor, Mankato, Minnesota (July 2005); Phase I Environmental Site Assessment—Mankato Energy Center, LLC. 1 Fazio Lane, Mankato, Minnesota (August/September 2009); Phase I Environmental Site Assessment—Mankato Energy Center, LLC. Natural Gas Pipeline Corridor, Mankato, Minnesota (August, 2009); Phase I Environmental Site Assessment—Mankato Energy Center, LLC. Water Pipeline Within Section 31, T109N, R26W and Section 7, T108N, R26W, Mankato, Minnesota (August 2009).

**EXHIBIT B**  
**CONSTRUCTION MILESTONES**

All Construction Milestones are subject to extension in accordance with the terms of the PPA.

<b>Construction Milestone</b>	<b>Outcome</b>
<i>[Trade Secret Data Begins...]</i>	
	Company shall have obtained State Regulatory Approval.
	Seller and all required counterparties have executed major procurement contracts, the Construction Contract (Limited Notice To Proceed Only), any operating agreements, and the Interconnection Agreement needed to commence construction of the Facility.
	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
	Seller shall have laid the foundation for generating facilities and step-up transformation facilities.
	The turbine(s)/generator(s)/step-up transformer shall have been delivered to, and set on foundation at, the Site.
	All Network Upgrades associated with obtaining NITS are completed.
	All fuel supply and transportation arrangements have been put in place and fuel interconnection facilities in have been constructed and are operational.
	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized
	Commissioning of the Facility commences.
	Seller shall have obtained either (i) unconditional ERIS and

	unconditional NITS, or (ii) unconditional NRIS.
	Seller shall have obtained MISO accreditation of the Facility as a Capacity Resource
	Commercial Operation Milestone
<b><i>...Trade Secret Data Ends]</i></b>	
June 1, 2018	Commercial Operation Date

## EXHIBIT C

### FACILITY DESCRIPTION, ONE-LINE DIAGRAM, AND SITE MAP

#### Site Location

The Facility will be located on a 25-acre site within the Mankato city limits in Blue Earth County, Minnesota, northwest of the County Highway 5 and Summit Avenue intersection. A one-line diagram of the Facility and site map is included in this Exhibit.

#### General

The Facility will consist of a combustion turbine generator (CTG) and heat recovery steam generator (HRSG) and associated balance of plant items required to supplement the MEC I Facility's 1x1x1 configuration to achieve a 2x2x1 configured plant. The Facility's CTG and HRSG will combust natural gas only.

#### Major New Equipment

The Facility's equipment will include: one (1) 501FD CTG, one (1) new generator step up transformer, one (1) natural gas, supplementary fired HRSG, plus associated switchgear, motor control centers, water treatment, and an expansion to the existing evaporative cooling tower.

#### Support Buildings

The existing administration/maintenance/warehouse/control building will be used for any Facility activities. Additionally, the existing water treatment building will be used to house any additional demineralization equipment and water lab equipment need to support the expanded operations.

#### Water

The Facility will make use of existing infrastructure to receive and discharge water. Gray water will be provided by the City of Mankato Municipal Wastewater Treatment Plant. Additional wastewater treatment facilities are located at the municipal treatment plant which is approximately one mile due south from the Facility. Two existing pipelines will transport gray water to the Facility and return discharged water from the Facility. The wastewater facilities are owned by the City of Mankato. Potable water is provided by the City of Mankato's water distribution system.

### Gas Interconnection

A 20-inch natural gas lateral was constructed to provide fuel to the MEC I Facility and the Facility. The lateral connects to the Northern Natural Gas system which is located approximately 3.5 miles to the East of the Facility. The lateral is capable of serving the fuel requirements for the Facility and the MEC I Facility.

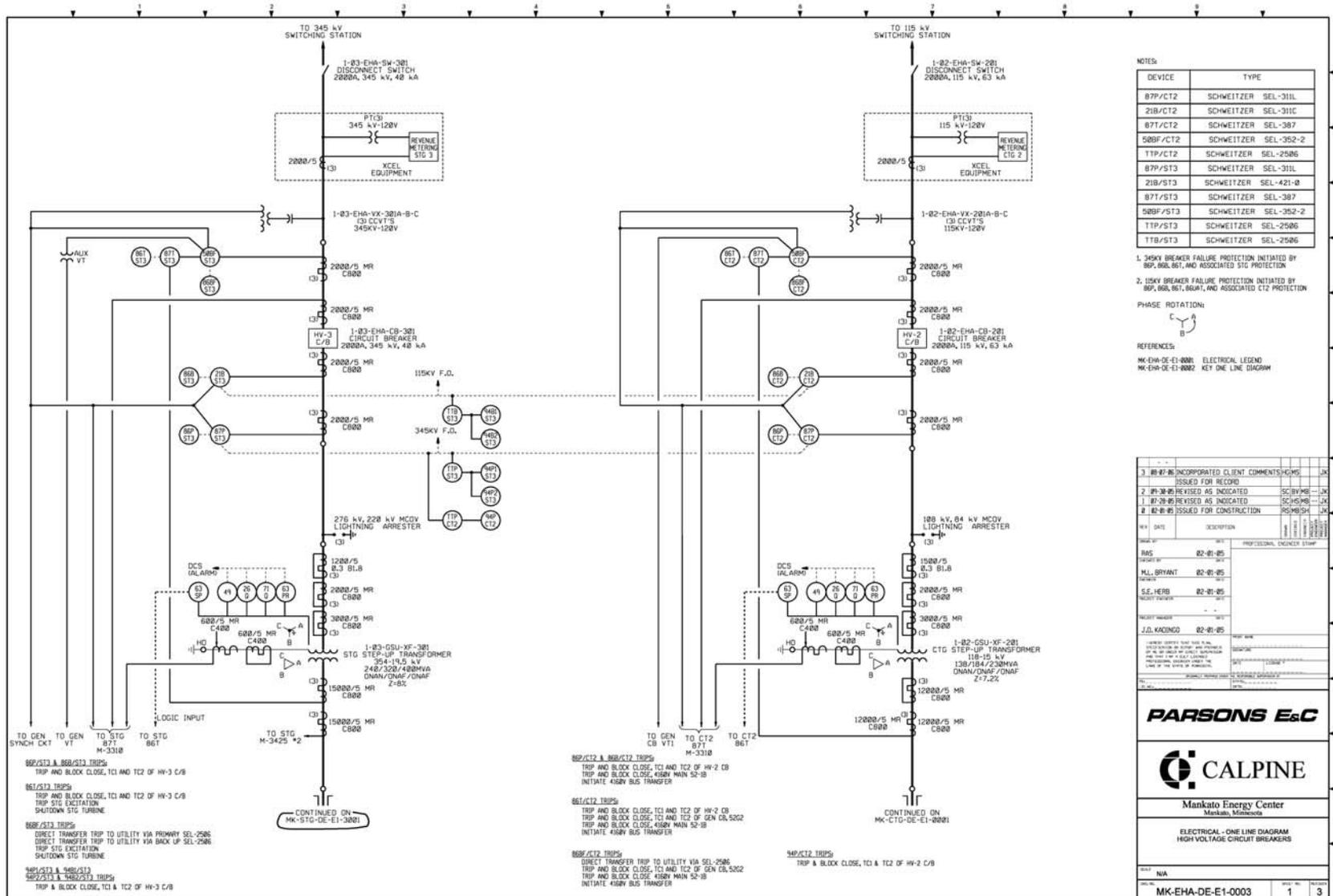
### Electrical Interconnection

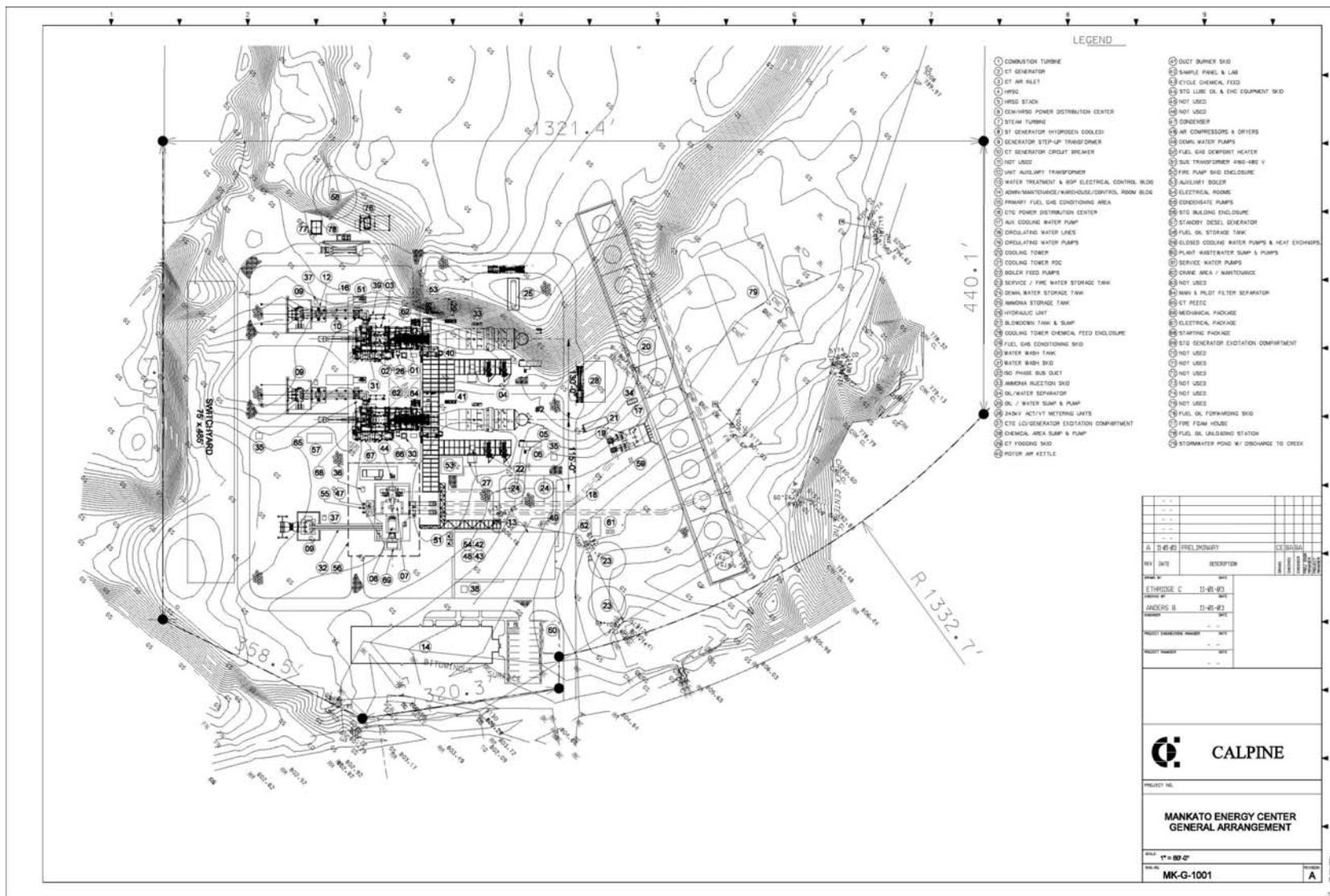
As described in the Interconnection Agreement, as may be amended from time to time, which as of August 29, 2014 provides as follows:

The Facility will be interconnected to Company's Wilmarth Substation, located approximately 2,500 feet west of the Facility, via a new 115 kV circuit.

**Point of Interconnection.** The Facility's point of interconnection is identified in the Interconnection Agreement. Currently, the point of interconnection is identified as the point where the transmission owner's new 115 kV line from the Mankato substation connects with the dead-end A-frame structure at the high side of the Facility's step-up transformer.

**Interconnection Facilities (including metering equipment) to be constructed by Facility.** The Facility's interconnection facilities are identified in the Interconnection Agreement, and currently are identified as requiring the following: one 115 kV breaker, and new line relaying and associated protection and metering equipment on Facility's side of the new 115 kV point of interconnection.





**EXHIBIT D**

**NOTICES AND CONTACT INFORMATION**

<b>Company</b>	<b>Seller</b>
<p><b>Notices:</b></p> <p>Tim Kawakami            Director, Purchased Power            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-2748            Email: tim.kawakami@xcelenergy.com            Fax: 303-571-2913</p> <p>Jeff Klein            Manager, Structured Purchases            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-2732            Email: jeffrey.klein@xcelenergy.com            Fax: 303-571-2913</p> <p>Jeanette Schuck            Purchased Power Analyst            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-7428            Email: jeanette.r.schuck@xcelenergy.com            Fax: 303-571-2913</p>	<p><b>Notices:</b></p> <p>Mankato Energy Center II, LLC            Attention: Vice President East Power Trading            717 Texas Avenue, Suite I 000            Houston, TX 77002            Email: CommodityContracts@calpine.com            Facsimile: 713-830-8751</p> <p>Mankato Energy Center II, LLC            Attention: Risk Management Counsel            717 Texas Avenue, Suite I 000            Houston, TX 77002            Email: CommodityContracts@calpine.com            Facsimile: 713-325-1508</p>
<p><b>Operating Committee Representative:</b></p> <p>Jeff Klein            Manager, Structured Purchases            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-2732            Email: jeffrey.klein@xcelenergy.com</p>	<p><b>Operating Committee Representative:</b></p> <p>Asset Manager            c/o Calpine Corporation            East Region Office            500 Delaware Avenue, Suite 600            Wilmington, DE 19801            Phone: 302-468-5340</p>

<p>Fax: 303-571-2913</p> <p><b>Alternate:</b> Jeanette Schuck Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-7428 Email: jeanette.r.schuck@xcelenergy.com Fax: 303-571-2913</p>	
<p><b>Real-Time Contact Information</b></p> <p>Real-time Communications Contact Real-time Generation Dispatch desk (24 hour coverage) Mark Schultz, or Shift Operator Phone: 303-571-7426 Fax: 303-571-7305 E-mail: mark.schultz@xcelenergy.com</p> <p>Transmission Operation Contact Position: Real Time Transmission Operations Todd Sarkinen, or Shift Operator Phone: 612-321-7432 FAX: 303-571-7305 E-mail: todd.k.sarkinen@xcelenergy.com</p>	<p><b>Real-Time Contact Information</b></p> <p>Calpine 24-hour Desk Calpine Corporation 717 Texas Avenue, Suite 1000 Houston, TX 77002 Phone: 713-830-2083</p>

**EXHIBIT E**

**INSURANCE COVERAGE**

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed substantially (by blanket endorsement or otherwise) as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$1,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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Type of Insurance	Minimum Limits of Coverage
Employers Liability	\$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for bodily injury by disease.

Builder's Risk	Replacement value of the Facility.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy, with sublimits as appropriate.

All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
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Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

**EXHIBIT F**

**MATERIAL PERMITS**

1. Air Permit
2. Site Permit
3. [Reserved]

**EXHIBIT G  
FORM OF SECURITY DOCUMENTS**

**EXHIBIT G-1**

**FORM OF LETTER OF CREDIT**

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit  
No: \_\_\_\_\_

Beneficiary: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

Initial Expiration Date: [Must be at least one year after date of issuance]

Applicant: \_\_\_\_\_

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of USD \$ \_\_\_\_\_ (\_\_\_\_\_ U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds available to Beneficiary, upon presentation of the following documents (collectively, the "Presentation Documents"):

1. Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and signed on behalf of Beneficiary, with Beneficiary's signatory indicating his or her title or other official capacity;
2. This Letter of Credit; and
3. A statement signed by an authorized officer or representative of Beneficiary substantially as follows:

"The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Northern States Power Company, (ii) the amount of the draft accompanying this certification is an undisputed amount due and owing to Northern States Power Company by virtue of a breach by Mankato Energy Center II, LLC under the terms of the Power Purchase Agreement dated as of \_\_\_\_\_, and (iii) all applicable notice-and-cure periods have expired."

or as follows:

"The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Northern States Power Company, and (ii) Northern States Power Company has

received notice that this Letter of Credit will not be extended beyond its Expiry Date, and Mankato Energy Center II, LLC has failed to provide alternate security to Northern States Power Company as required under the Power Purchase Agreement dated as of \_\_\_\_\_ within ten (10) days prior to the Expiry Date of the Letter of Credit.”

No documents other than the Presentation Documents will be required to be presented. Issuer will effect payment under this Letter of Credit within three (3) banking days following the date of Issuer’s receipt of the required Presentation Documents. Payment shall be made in U.S. Dollars with Issuer’s own funds in immediately available funds.

Issuer will honor any Sight Draft presented in compliance with the terms of this Letter of Credit at the Issuer’s letterhead office, the office located at \_\_\_\_\_ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

Issuer acknowledges that this Letter of Credit is issued pursuant to the provisions of that certain Power Purchase Agreement between Beneficiary and Applicant dated as of \_\_\_\_\_, 20\_\_ (as the same may have been or may be amended from time to time, the “PPA”). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary’s address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer’s letterhead address. The date on which this Letter of Credit expires (as such date may be extended pursuant to this paragraph) is referred to herein as the “Expiry Date.”

This Letter of Credit is not transferable or assignable by Beneficiary, except that this Letter of Credit may be transferred in its entirety to, and only to, any transferee who has succeeded to Beneficiary’s rights under the PPA, and notwithstanding any contrary provision in the UCP, such transferred Letter of Credit may be successively so transferred. Issuer agrees that it will affect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request in a form acceptable to Issuer in Issuer’s sole

discretion. Any transfer fees assessed by Issuer will be payable solely by Beneficiary.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (The "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: \_\_\_\_\_  
Authorized Signature

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

**EXHIBIT "A"**  
**TO LETTER OF CREDIT**

**SIGHT DRAFT**

Draft Number \_\_\_\_\_  
\$ \_\_\_\_\_

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD \$ \_\_\_\_\_ ( \_\_\_\_\_ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].  
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No. \_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_

[Name of Beneficiary to be inserted]

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

Name: \_\_\_\_\_  
Its Authorized Representative and [Title  
or Other official Capacity to be  
inserted]

Account: [Applicant to be inserted]

**EXHIBIT G-2**

**FORM OF GUARANTY**

This Guaranty is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of \_\_\_\_\_ ("Company"), in connection with the performance by \_\_\_\_\_, a \_\_\_\_\_ [limited liability company] ("Seller") of a Power Purchase Agreement dated \_\_\_\_\_, 20\_\_ between Seller and Company (the "PPA").

- RECITALS -

A. Seller is planning to construct, own, and operate an electric generation facility having Nameplate Capacity of approximately \_\_\_\_\_ MW to be located in \_\_\_\_\_ County, \_\_\_\_\_ (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, including any applicable exceptions or limitations, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to (\$US\_\_\_\_\_).

3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and

without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA, except that any such renewal, compromise, extension, acceleration or other change shall not enlarge Guarantor's obligations under this Guaranty and Guarantor shall have the benefit of any such renewal, compromise, extension, acceleration or other change as Seller (e.g., if Seller's time for payment of an Obligation has been extended, Guarantor shall have no obligation under this Guaranty to make payment of such Obligation until such time as Seller is required under the extension to make payment);

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result of any efforts to collect or enforce any valid obligations under this Guaranty all in such manner and at such times as Company may reasonably direct. All payments hereunder shall be made without reduction, whether by offset, payment in escrow, or otherwise, except to the extent of any defenses to payment or performance which Seller may have under the PPA (other than defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller, the power or authority of Seller to enter into the PPA, and to perform the Obligations, and the lack of validity or enforceability of the PPA or any other documents executed in connection with the PPA).

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty, subject to any applicable limitations or exceptions hereunder, be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred,

regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company, subject to Company's obligation to reasonably mitigate damages;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Project, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Termination and Release. This Guaranty shall terminate on the date (the "Termination Date") that is the earlier of (i) thirty (30) days after prior written notice of termination of this Guaranty has been received by Company, or (ii) the date when all Obligations have been paid; *provided, however, that* this Guaranty shall continue to remain in force following the Termination Date with respect to any Obligations of Seller arising on or prior to the Termination Date.

9. Release and Assignment. Upon (i) the transfer or assignment by Seller of the PPA or any rights thereunder to any third party that is not an Affiliate (as defined in the PPA) of Guarantor whereby Seller is released from or relieved of its obligations

under the PPA pursuant to the terms of the PPA or (ii) a Change of Control (as defined in the PPA) of Seller that results in Seller no longer being a direct or indirect subsidiary of Guarantor, Guarantor's obligations under this Guaranty shall be released and discharged, except with respect to Guarantor's guarantee of any Obligations of Seller arising on or prior to the effective date of such assignment or Change of Control. Company hereby agrees to enter into a mutually acceptable agreement to evidence, or otherwise provide adequate assurance of, any such release or discharge. Subject to the foregoing in this Section 9, Guarantor may not assign this Guaranty or its obligations hereunder without the prior written consent of Company, which consent of Company shall not be unreasonably withheld or delayed.

10. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

11. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

12. Collection Costs. Guarantor hereby agrees to pay to Company, upon demand, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing this Guaranty against Guarantor, whether or not suit is filed.

13. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

14. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company or as expressly provided herein.

15. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

16. Governing Law and Limitation of Liability. **THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. CALPINE HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE. IN NO EVENT SHALL CALPINE BE LIABLE UNDER THIS GUARANTEE FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES AND NO SUCH DAMAGES MAY BE AWARDED IN ANY PROCEEDING.**

17. Miscellaneous. This Guaranty shall not be deemed to benefit any person except Seller, Guarantor and Company. This Guaranty supercedes and replaces any guarantees made by Guarantor that pertain to the PPA prior to the effective date of this Guaranty.

18. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company as provided in the PPA

(b) if to Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*Attn:*  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

*with a copy to:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*Attn:*  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.

**[Name of Guarantor]**

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



### EXHIBIT G-3

#### FORM OF ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into and effective this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and among \_\_\_\_\_ ("Seller"), \_\_\_\_\_ ("Company") and \_\_\_\_\_ ("Escrow Agent").

#### RECITALS

WHEREAS, Seller and Company are parties to a Power Purchase Agreement dated \_\_\_\_\_ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility in \_\_\_\_\_ (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and

WHEREAS, Section 11.1 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA up to a total of **[Trade Secret Data Begins... ..Trade Secret Data Ends]**; and

WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that escrow account.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

#### AGREEMENT

1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.
2. Delivery of Funds to Escrow Agent.

- a. Seller shall deposit with Escrow Agent an amount equal to \$\_\_\_\_\_ (the "Escrow Total") on or before [\_\_\_\_\_] / [the date required by the PPA].
  - b. Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by Escrow Agent of the Escrow Funds pursuant to the terms hereof, fully satisfies Seller's initial obligations under Section 11.1 of the PPA to establish and maintain the Security Fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds only in accordance with Section 5.
  - c. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Seller or Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(c).
3. Investment. Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.
  4. Distributions of Escrow Funds by Escrow Agent. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with Section 5.
  5. Distributions.

- a. Escrow Interest. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.
  - b. Release at End of Term; Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the PPA in form and substance as required by the PPA to secure Seller's obligations to Company prior to the expiration or termination of the PPA, then all Escrow Funds and Escrow Interest in excess of the amount necessary to maintain the Security Fund under the PPA shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.
  - c. Escrow Claims by Company. During the term of the PPA, Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts due and owing to Company pursuant to the PPA that are not the subject of a good faith dispute. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the third Business Day after it receives the Claim Certificate.
  - d. Regulations of the Comptroller of the Currency. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.
6. Rights and Obligations of Escrow Agent.
- a. Duties.
    - i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under

this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.

- ii. This Agreement may be terminated by a writing executed by all of Company, Seller and Escrow Agent.
  - iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) Business Days of the scheduled expiration or termination date, and without regard to any objection asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.
  - iv. Seller will provide immediate notice to Company in the event that the amount of Escrow Funds at any time falls below the Escrow Total.
- b. No Other Duties. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. Escrow Fee. Escrow Agent shall be entitled to receive solely from Seller (a) \$\_\_\_\_\_ annually (pro-rated for any partial year) on each anniversary of this Agreement as compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations under this Section 6.c(b) shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement, except for actual damages sustained by Escrow Agent that have been directly caused by Company's sole negligence or intentional tortious misconduct.

- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
  - e. Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with Section 5, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.
  - f. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.
  - g. Interpleader. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
7. Termination of Agreement. Unless terminated earlier by a writing executed by all of Company, Seller and Escrow Agent, this Agreement shall continue through, and terminate on, the earlier of: (i) the date on which all obligations of Seller under the PPA have been fully satisfied; or (ii) the date on which all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.

8. Taxes. Taxes on distributions of the Escrow Funds shall be paid by Seller.
9. Notices. All notices and other communications (including all certificates delivered pursuant to Section 5) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by telecopier or facsimile transmission or sent to the applicable parties at their respective addresses indicated in this Section 9 by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Seller, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

If to Company:

Manager, Structured Purchases  
Xcel Energy Services Inc.  
1800 Larimer Street, Suite 1000  
Denver, CO 80202  
Phone: (303) 571-7714  
Fax: (303) 571-7002

If to Escrow Agent, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by telecopier or facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the

transmission is not made on a Business Day, the first Business Day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 9, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 9, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

#### 10. Miscellaneous.

- a. Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- c. Integration; Amendment. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.
- d. Governing Law. The Agreement is made in the State in which the Facility is located and shall be interpreted and governed by the laws of such State or the laws of the United States, as applicable.
- e. Good Faith and Fair Dealing; Reasonableness. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action by a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- f. Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other

provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

- g. Cooperation. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- h. Execution in Counterparts and By Facsimile Transmission. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

**Dated:** \_\_\_\_\_ **(Seller)**

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

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

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

**Dated:** \_\_\_\_\_ **(Company)**

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

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

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

**Dated:** \_\_\_\_\_ **(Escrow Agent)**

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

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

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

**EXHIBIT A TO ESCROW AGREEMENT**

ESCROW

CLAIM

CLAIM CERTIFICATE

TO: \_\_\_\_\_

This Claim Certificate is issued pursuant to that certain Escrow Agreement, dated as of \_\_\_\_\_, 2010, by and among Company, Seller and you, as Escrow Agent (the "Agreement"). Capitalized terms used but not otherwise defined in this Claim Certificate shall have the meaning ascribed to them in the Agreement.

The undersigned representative of Company hereby certifies that Company is entitled to receive Escrow Funds in the amount of \$\_\_\_\_\_ pursuant to the terms of the Agreement and the PPA, due to the following (generally): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Accordingly, subject to the terms of the Agreement, you are hereby instructed to distribute, on the third Business Day after your receipt of this Claim Certificate if you have not received written notice from the Seller that the disbursement is the subject of a good faith dispute, the sum of \$\_\_\_\_\_ from the Escrow Funds to the undersigned by wire transfer to the following account:

Bank: \_\_\_\_\_  
Account: \_\_\_\_\_  
Routing Number: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

**(Company)**

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

## EXHIBIT H

### OPERATING STANDARDS

(A) Dispatchability Requirements. Each unit shall be capable of providing:

1. Automatic Generation Control (AGC) from the EMCC;
2. A minimum regulating range 30 MW per unit in automatic load regulation capacity;
3. Continuous response to EMCC pulsing at a minimum rate of five percent of the capacity available at the time per minute over the regulating range of increasing MW of the Facility dispatched and five percent of the capacity available at the time per minute over the regulating range of decreasing MW of the Facility dispatched; and
4. A low load point for the regulating range of the Facility, which is equal to or less than the Minimum Loading level for operation with AGC.

(B) Operations Requirements. The following operations requirements will apply throughout the Term.

1. Operations Log. Seller shall maintain an hourly operation log that identifies real-time unit operating information including: current level of unit capacity availability, planned and unplanned maintenance outages or deratings, circuit breaker operation and any other significant events related to the operation of the unit. Any changes in the generating status or availability of the unit shall be reported immediately to the EMCC operator by telephone.

2. Telemetry/Generation Load Control Requirements. Company shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from the Facility demark to the EMCC. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by Company. The telemetry and generation load equipment is to provide the following: instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by Company. Seller shall install at the Facility MW and MVAR indicating equipment that reflects the identical MW and MVAR values as those telemetered to the EMCC.

3. Periodic Verification of Compliance. Subsequent to the initial verification of AGC compliance as provided for above, Company shall have the

right, at any time and without prior notice to Seller, to verify the continued compliance of such requirements. The subsequent tests will be performed by Company on an as needed basis with a frequency of not greater than every two years. Seller will be notified of test results for any noncompliance.

(C) Automatic Generation Control Availability. Company will monitor Seller's ability to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during 100% of the Facility's on-line hours (excluding periods of failure of Company's telemetry, during which Seller will manually be dispatched by Company).

\* \* \*

## EXHIBIT I

### 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 Company 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 Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company 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 Section 12.1 of the PPA, plus an additional 30 Days beyond Seller's cure period to cure such Event of Default; *provided, however*, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional 30-Day cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.
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 paragraph 6, Company 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 Company 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 J**

**PREDICTED NET HEAT RATE DEGRADATION ADJUSTMENT**

The Predicted Net Heat Rate (P), as used in Section 8.4, shall be calculated as follows:

**P = initial Predicted Net Heat Rate × (1 + HRAF), where**

**HRAF = Predicted Net Heat Rate Adjustment Factor, as provided in Tables J-1 and J-2**

Prior to the first major maintenance on the combustion turbine (CT) at the Facility, Table J-1 shall be used to calculate the HRAF for the Facility. The total fired hours on the CT shall be used to look-up the HRAF in the table. Linear interpolation shall be used to calculate the HRAF used to calculate the Predicted Net Heat Rate, between break points.

After the first major maintenance on the CT and after each following major maintenance, Table J-2 shall be used to calculate the HRAF. The total fired hours on the CT since the most recent major maintenance shall be used to look-up the HRAF in Table J-2. Linear interpolation shall be used to calculate the HRAF used to calculate the Predicted Net Heat Rate, between break points.

Major maintenance normally occurs after 48,000 hours of CT operation. Factors such as number of trips and a low average number of fired hours per start can accelerate the major maintenance schedule.

**Table J-1:**

<b>Total combustion turbine fired hours (as of end of billing period)</b>	<b>Predicted Net Heat Rate Adjustment Factor (HRAF)</b>
0	0%
5,000	1.13%
10,000	1.44%
15,000	1.63%
20,000	1.78%
25,000	2.17%
30,000	2.56%
35,000	2.87%
40,000	3.06%
45,000	3.22%
>48,000	3.25%

Table J-2:

<b>Total combustion turbine fired hours (since last major maintenance) (as of end of billing period)</b>	<b>Predicted Net Heat Rate Adjustment Factor (HRAF)</b>
0	1.70%
5,000	2.83%
10,000	3.14%
15,000	3.33%
20,000	3.48%
25,000	3.54%
30,000	3.58%
35,000	3.61%
40,000	3.65%
>45,000	3.70%

**EXHIBIT K**

**FUEL QUALITY SPECIFICATIONS**

See attached pages taken from the tariffs of the Upstream Pipeline and Northern Border Pipeline Company. The specifications are subject to change by the Upstream Pipeline and Northern Border Pipeline Company in accordance with the modification requirements of the tariff and other applicable regulations.

Northern Border Pipeline Company  
FERC Gas Tariff  
Second Revised Volume No. 1

PART 6.5  
6.5 - GT&C  
Quality of Gas  
v.1.0.0 Superseding v.0.0.0

## 6.5 QUALITY OF GAS

### 1. Quality Standards of Gas Received by Company.

Company may refuse to accept gas which does not conform to the following specifications:

- (a) The gas shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the gas.
- (b) The gas shall have a hydrocarbon dew-point less than -5 degrees F at 800 psia, -10 degrees F at 1000 psia, or -18 degrees F at 1100 psia, or such higher dew point approved by Company as, without treatment by Company, may be compatible with the operating conditions of Company's pipeline.
- (c) The gas shall not contain more than 0.3 grains of hydrogen sulphide per Ccf.
- (d) The gas shall not contain more than 2 grains of total sulphur per Ccf.
- (e) The gas shall contain not more than 0.3 grains of mercaptan sulphur per Ccf, or such higher content as, in Company's judgment, will not result in deliveries by Company to Shippers of gas containing more than 0.3 grains of mercaptan sulphur per Ccf.
- (f) The gas shall not contain more than 2 percent by volume of carbon dioxide.
- (g) The gas shall not have a water vapor content in excess of 4 pounds per MMcf.
- (h) The gas shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than 0.4 percent by volume of oxygen.
- (i) The gas shall have a gross heating value of not less than 967 Btu per cf.

### 2. Quality Tests.

At each Point of Receipt of a Shipper, Company shall cause tests to be made, by approved standard methods in general use in the gas industry, to

determine whether the gas conforms to the quality specifications set out in Section 6.5 paragraph 1 hereof. Such tests shall be made at such intervals as Company may deem reasonable, and at other times, but not more often than once per day, at the request of any Shipper.

Issued: December 13, 2010  
Effective: July 28, 2010

Docket No. RP10-1004-001  
Accepted: August 16, 2011

Northern Natural Gas Company  
FERC Gas Tariff  
Sixth Revised Volume No. 1

Original Sheet No. 281

## GENERAL TERMS AND CONDITIONS

### 44. QUALITY

All gas shall conform to the following specifications:

- a) The gas shall be commercially free from objectionable odors, solid matter, dust, gums and gum-forming constituents, or any other substance which might interfere with the merchantability of the gas, or cause injury to or interference with proper operation of the lines, meters, regulators, or other appliances through which it flows.
- b) Oxygen - less than or equal to 0.2% by volume.
- c) Hydrogen sulfide - less than or equal to 1/4 grain/Ccf.
- d) Total Sulphur - less than or equal to 20 grains/Ccf.
- e) Carbon Dioxide - less than or equal to 2.0% by volume.
- f) Water - less than or equal to 6 pounds/MMcf.
- g) Heating Value - greater than or equal to 950 Btu/Cubic Foot.
- h) The temperature shall be less than or equal to 120 degrees Fahrenheit.

If any gas received by Northern shall fail at any time to conform to the specifications set forth above, Northern may refuse to accept delivery pending correction by the other party. Northern may, on a basis that is not unduly discriminatory, elect to accept gas which fails to meet specifications.

Issued on: September 24, 2010

Effective on: September 24, 2010

## EXHIBIT L

### MAINTENANCE REQUIREMENTS

(A) Seller shall provide a schedule of the expected Scheduled Outages/Deratings for the Facility ("Maintenance Schedule") for the first Commercial Operation Year at least ninety (90) Days prior to COD. Thereafter, at least ninety (90) Days prior to each successive Commercial Operation Year, Seller shall: (1) submit an annual Maintenance Schedule for the next successive Commercial Operation Year; each scheduled outage shall include the start time and expected duration of the outage; and (2) supply a long-term Maintenance Schedule that will encompass the following four Commercial Operation Years. Any change in the annual Maintenance Schedule, by either Party, shall be furnished to the other Party with advance notice. Minimum advance notice of any change in or extension of the Maintenance Schedule is as follows based on the original total duration:

<u>Scheduled Outage Expected Duration</u>	<u>Advance Notice Required</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major overhauls (over 5 Days)	at least 90 Days

(B) Scheduled Maintenance Energy.

1. If the Facility is comprised only of combustion turbine units, Company shall provide Seller the opportunity to use 360 MWh of Scheduled Maintenance Energy ("SME") per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's Capacity Availability Factor ("CAF") pursuant to the payment calculation specified in Section 8.1, *provided, however, that* such SME is scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller's use of such SME. If Seller uses less than 360 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year unused SME as additional credit towards Seller's CAF during the next Commercial Operation Year, *provided, however, that* such SME carried over shall also be scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller's use of such SME, and *provided, further, that* the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second Commercial Operation Year and including carry over SME, shall not exceed 672 MWh of SME per MW of Net Capability for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

2. If the Facility is comprised of combustion turbine and steam turbine units operating in combined cycle mode, Company shall provide Seller the opportunity to use 456 MWh of Scheduled Maintenance Energy ("SME") per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's

Capacity Availability Factor (“CAF”) pursuant to the payment calculation specified in Section 8.1, *provided, however, that* such SME is scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller’s use of such SME. If Seller uses less than 456 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year unused SME as additional credit towards Seller’s CAF during the next Commercial Operation Year, *provided, however, that* such SME carried over shall also be scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller’s use of such SME, and *provided, further, that* the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second Commercial Operation Year and including carry over SME, shall not exceed 720 MWh of SME per MW of Net Capability for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

**EXHIBIT M**

**ESC EVENT ADJUSTMENT**

(A) If during some or all of an event (an “ESC Event”) deemed an “Energy Emergency” by the applicable “Reliability Coordinator” under NERC Standard EOP-002-3, or its replacement, the entire Facility either (i) is fully available, (ii) is deemed fully available pursuant to Section 8.1 and this Section, and/or (iii) is subject to a scheduled maintenance outage eligible for SME under Section 10.2 (an “SME Outage”), Seller shall be entitled to a positive ESC Event Adjustment with respect to such ESC Event in the amount of  $NC \times DE \times ABF$ , where consistent with NERC Standard EOP-002-3, or its replacement, Capacity and Energy Emergencies:

NC = the Net Capability of the Facility expressed in kW;

DE = the number of hours during the ESC Event, during which the Facility is fully available (excluding the number of hours (if any) during the ESC Event when the Facility was subject to an SME Outage); and

ABF = the applicable Availability Bonus Factor:

EEA-1:	<b><i>[Trade Secret Data Begins... Secret Data Ends]</i></b>	<b><i>...Trade</i></b>
EEA-2:	<b><i>[Trade Secret Data Begins... Secret Data Ends]</i></b>	<b><i>...Trade</i></b>
EEA-3:	<b><i>[Trade Secret Data Begins... Secret Data Ends]</i></b>	<b><i>...Trade</i></b>

(B) If some or all of the Facility is not fully available (other than due to SME Outages) during some or all of an ESC Event, Seller shall be subject to a negative ESC Adjustment with respect to such ESC Event in the amount of  $ANC \times DO \times ARF$ , where:

ANC = the Affected Net Capability of the Facility (i.e. the portion of the Net Capability subject to the outage), expressed in kW;

DO = the hours during which the Net Capability of the Facility is not fully available due to causes other than SME Outages; and

ARF = the applicable Availability Reduction Factor:

EEA-1:	<b><i>[Trade Secret Data Begins... Secret Data Ends]</i></b>	<b><i>...Trade</i></b>
EEA-2:	<b><i>[Trade Secret Data Begins... Secret Data Ends]</i></b>	<b><i>...Trade</i></b>
EEA-3:	<b><i>[Trade Secret Data Begins... Secret Data Ends]</i></b>	<b><i>...Trade</i></b>

*provided, however, that* with respect to each Commercial Operation Year, in no event shall aggregate net ESC Event Adjustment under this Section exceed:

(i) an amount equal to 200 hours x EEA-1 x NC, with respect to EEA-1 Events during such Commercial Operation Year;

(ii) an amount equal to 50 hours x EEA-2 x NC, with respect to EEA-2 Events during such Commercial Operation Year; or

(iii) an amount equal to 25 hours x EEA-3 x NC, with respect to EEA-3 Events during such Commercial Operation Year.

(C) In determining whether the Facility is “fully available” for purposes of an ESC Event (in contrast to Section 8.1), the availability of the Facility will be adjusted to Reference Conditions.

**EXHIBIT N**

**FACILITY OPERATIONAL INFORMATION**

**General**

The information contained in this Exhibit is indicative only and merely the Seller’s best representation of the operational characteristics of the Facility at the time of execution of the Agreement. Updates to the information are possible based on final design and construction and environmental permitting.

**Heat Rate information**

Unit Loading	Summer Load (MW)	Summer Net Heat Rate (Btu/kWh) HHV	Winter Load (MW)	Winter Net Heat Rate (Btu/kWh) HHV
<b>[Trade Secret Data Begins...</b>				
Low operating point (Minimum Load)				
Minimum Loading Starting Point				
25% of base capacity				
50% of base capacity				
75% of base capacity				
100% of base capacity				
100%, plus supplemental capacity				

**...Trade Secret Data Ends]**

Summer reference conditions are at an ambient temperature of 90°F dry-bulb, and 68% relative humidity. Winter reference conditions are at an ambient temperature of 6°F dry-bulb, and 68% relative humidity.

**Start Up information**

Start Type	Duration (mins)	Fuel Consumed (MMBtu)	Energy Produced (MWh)
<b>[Trade Secret Data Begins...</b>			
Warm			
Cold			
Lag			

**...Trade Secret Data Ends]**

A warm start is defined as less than or equal to 48 hours off-line and a cold start is when the steam turbine is off-line for more than 48 hours. A lag start refers to a start when the MEC I Facility is already operating.

The startup is initiated at “flame on” at the plant and ends when the unit is at Minimum Load Starting Point.

**Shutdown and Minimum On/Off line**

Minimum Up Time (minimum time between generator breaker close and re-open): 4 hours.

Minimum Down Time (minimum time Facility must be off-line before restarting): 60 minutes, unless the steam turbine generator has been placed on turning gear, in which case the Facility must be off-line for 4 hours.

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**NORTHERN STATES POWER COMPANY, A MINNESOTA  
CORPORATION  
("COMPANY")**

**AND**

**INVENERGY CANNON FALLS II LLC  
("SELLER")**



**- [date] -**

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Power Purchase Agreement,  
between  
**INVENERGY CANNON FALLS II LLC**  
**AND**  
**NORTHERN STATES POWER COMPANY, A MINNESOTA**  
**CORPORATION**

This Power Purchase Agreement (this “PPA”) is made this [\_\_\_\_\_] day of [\_\_\_\_], 2014 by and between (i) Northern States Power Company, a Minnesota corporation with a principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota, 55401, (“Company”), and (ii) Invenergy Cannon Falls II LLC, a Delaware limited liability company with a principal place of business at One South Wacker Drive, Suite 1900, Chicago, IL 60606 (“Seller”). Company 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 Facility as defined herein; and

WHEREAS, Seller desires to sell and deliver and Company desires to accept and receive certain products and services delivered from the Facility to 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, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well known and generally accepted technical or trade meanings.

(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 a 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.

1.2 Interpretation with Other Agreements.

(A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does 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 whether such Transmission Authority is Company or an Affiliate of Company.

(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 is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties' rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. To the extent allowed by Applicable Law, Seller may obtain House Power by self-generating and netting such self-generation from the Energy provided to Company, *provided, however, that* such netting shall not reduce Seller's obligation to provide Contract Energy in the amounts and during the times called for by this PPA, and *provided further that*, if Applicable Law does not allow netting of House Power, or Seller cannot self-generate House Power, 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 This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination as provided in this PPA.

2.2 Early Termination or Delay. Company may on or before *[Trade Secret Data Begins... ..Trade Secret Data Ends]* elect to either: terminate this PPA upon delivery of written notice of such early termination to Seller and payment of an early termination fee of *[Trade Secret Data Begins... ..Trade Secret Data Ends]*, or 2) delay the Commercial Operation Date to June 1, 2019, in which case the Capacity Price shall be *[Trade Secret Data Begins... ..Trade Secret Data Ends]*/kW/month. Company will pay the early termination fee within thirty (30) days of receipt of an invoice from Seller.

2.2 Surviving Provisions. 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. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C-Facility Description, Site Maps And Performance Detail. A scaled map that identifies the Site, the location of the Facility, Interconnection Point, Interconnection Facilities, the Point of Delivery, the Fuel Delivery Point, and other important facilities, is included in Exhibit C-Facility Description, Site Maps And Performance Detail.

### 3.2 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) 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 Company's SCADA System.

(D) The Facility shall include all equipment specified in Exhibit C-Facility Description, Site Maps And Performance Detail or otherwise necessary to fulfill Seller's obligations under this PPA.

## Article 4 - Implementation

### 4.1 Project Development.

(A) No later than 60 Days following State Regulatory Approval, Seller shall complete a comprehensive independent environmental investigation of the Site and shall disclose to Company any Environmental Contamination identified in that investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) to allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of the investigation report and any backup data. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any such Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

(B) Seller shall at its own expense enter into the Construction Contract and all other major contracts necessary for the successful development, construction, operation of and delivery from the Facility with qualified and experienced contractors. Upon written request by Company, Seller shall provide to Company, copies of all major contracts pertaining to the Facility; *provided, however, that* Seller may redact any confidential or commercially sensitive information, and may provide a summary in lieu of a copy of any contract that cannot be disclosed due to disclosure limitations contained in the contract.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development.

(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this PPA, *provided, however, that* Company shall comply with all of Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or as endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

(E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company informed as to the status of its permitting efforts and shall provide Company the opportunity to review and comment on major applications for draft and final Permits. Seller shall promptly inform Company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.2 Commercial Operation. Subject to Company's obligation to provide Acceptable Natural Gas Fuel for testing pursuant to Section 4.4(B) 1, the Facility shall achieve Commercial Operation no later than the Commercial Operation Milestone; *provided, however, that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is earlier than the Commercial Operation Milestone. In its efforts to achieve the Commercial Operation Milestone, Seller agrees to use Commercially Reasonable Efforts to achieve the Construction Milestones set forth in Exhibit B-Construction Milestones.

4.3 COD Conditions. Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to 10 Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. Seller may provide Notice of completion of the COD Conditions on an individual and incremental basis pending resolution of any objections, *provided, however, that* Company shall in all cases have up to 10 Business Days to review and object to each Notice. The COD Conditions are:

(A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary and material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects, and (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Construction Contract, and applicable manufacturers' warranties; (4) the Facility has been registered with the Transmission Authority, (5) Seller is

obligated under and in material compliance with the Interconnection Agreement, (6) all conditions of the Interconnection Agreement to be a Network Resource Interconnection Service (“NRIS”) or Energy Resource Interconnection Service (“ERIS”) as applicable to the Seller have been completed; (7) all Network Upgrades required for Network Integration Transmission Service (“NITS”) have been completed in accordance with Section 5.1(A) 1; (8) the Facility is fully interconnected to the Transmission Authority’s System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (9) Seller has completed any testing of the Facility and Interconnection Facilities required by the Interconnection Agreement; (10) the Facility has completed all Transmission Authority requirements to qualify as a Capacity Resource no later than the Capacity Resource Milestone or Seller has met the GVTC Deferral Requirements; (11) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery; (12) Seller has demonstrated (i) the reliability of the Facility’s communications systems and communication interface with Company’s Energy Markets Control Center (“EMCC”) and the Facility is capable of receiving and reacting to signals from Company’s SCADA System, and (ii) all Automatic Generation Control (“AGC”) equipment is installed and operational; (13) the Facility has achieved three Successful Starts without experiencing any abnormal operating conditions; (14) the Facility has generated continuously for a period of not less than 16 hours while synchronized to Transmission Authority’s System at a net capacity output of at least 90% of the Net Capability without experiencing any abnormal operating conditions; (15) the Facility has demonstrated initial dispatchability capability, operational compliance capability, and verification of ramp range and ramp rate pursuant to Exhibit H-Operating Standards; and (16) all fuel oil storage facilities necessary to operate the Facility in compliance with this PPA have been completed and tested;

(B) an independent registered professional engineer’s certification has been obtained by Seller and provided to Company stating that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose; and

(C) Seller has provided written confirmation that it has the right and access to use all the electric generating facilities and associated balance of plant, parts, equipment, and property necessary to operate and maintain the Facility in accordance with the terms of this PPA without regard or reference to the terms and conditions of the April 1, 2005 Replacement Power Purchase Agreement between the Company and Invenergy Cannon Falls LLC.

#### 4.4 Test Energy and Pre-COD Energy.

(A) Seller shall provide Company and Transmission Authority 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 at least six months prior to generating any Test Energy. Upon receipt of such information, Company 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 Company in accordance with MISO requirements, currently requiring five (5) Days' Notice, or such other Commercially Reasonable prior Notice as Company may reasonably request. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall only be required to accept delivery of Test Energy required to satisfy the COD Conditions. Company shall pay the Test Energy Rate for all Test Energy delivered prior to COD.

1. Company shall purchase Acceptable Natural Gas for Facility testing and deliver such Acceptable Natural Gas to the Fuel Delivery Point. Seller shall notify Company of the amount and time of Acceptable Natural Gas deliveries required for testing purposes. Seller shall reimburse Company for the Test Energy Fuel Cost of the Acceptable Natural Gas delivered to produce such Test Energy.

2. Company shall have no obligation to make any payments to Seller for Contract Capacity pursuant to Section 8.1 or any Dispatchability Payments pursuant to Section 8.2 in connection with the purchase of such Test Energy.

3. Upon the successful completion of capacity testing to comply with MISO requirements for the Facility to be accredited as a Capacity Resource, but prior to the COD, Seller shall have the right to submit offer curves that Company will bid into MISO for the sale of energy produced by the Facility on a real time basis, subject to current MISO requirements for the scheduling and sale of such energy, and if the Facility is dispatched Company shall pay to Seller the Locational Marginal Pricing ("LMP") of the energy produced by the Facility at the time of sale minus [*Trade Secret Data Begins... ...Trade Secret Data Ends*]/MWh, and any applicable MISO settlement charges.

(C) After the COD, Seller shall conduct all necessary testing of the Facility to the extent practicable, when Company is otherwise dispatching the Facility and all energy generated and delivered during such tests shall be treated as Contract Energy for all purposes. If Seller must conduct tests when the Facility would not otherwise be dispatched, the payment provisions of paragraphs (B) and (B) 1 of this Section shall apply, and Company shall have no obligation to make any Dispatchability Payments to Seller pursuant to Section 8.2 in connection with the purchase of such Test Energy.

1. If Facility testing restricts the amount of available Contract Capacity, such availability restrictions shall be reflected in the Monthly Capacity Payment or Dispatchability Payment calculations specified in Section 8.1 and Section 8.2, respectively.

2. Seller shall reimburse Company to the extent Facility testing causes Company to incur fuel balancing or other fuel transportation penalties or additional charges associated with fuel delivery to the Facility.

## Article 5 - Delivery

### 5.1 Electric Delivery Arrangements.

(A) 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 with the Transmission Authority's requirements for the interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The Point of Delivery shall be located in what MISO currently designates as Local Resource Zone 1.

1. Seller shall obtain either (i) NRIS or (ii) ERIS. In the event Seller interconnects as an ERIS, Seller shall be responsible for any Network Upgrade costs associated with the Company obtaining firm NITS from the Point of Delivery to Company load. For either NRIS or ERIS all conditions of the Interconnection Agreement and any identified Network Upgrades associated with NITS must be satisfied by the Commercial Operation Date and the generation output must qualify as a Capacity Resource.

(B) Seller authorizes Company 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 Company or the Transmission Authority.

(C) Notwithstanding anything to the contrary in this PPA, Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm transmission service basis, the output from the Facility to the Point of Delivery.

(D) Upon receipt from Seller at Point of Delivery, Company shall be responsible for delivering the Facility output beyond the Point of Delivery and responsible for all electric losses, transmission and ancillary service arrangements, and costs associated therewith. If at any time during the Term, the entity owning the transmission facilities at the Point of Delivery changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company.

### 5.2 Electric Metering Devices.

(A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Company under this PPA.

1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided, however, that* the Operating Committee may revise this loss adjustment based on actual experience.

2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however, that* the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest 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 to the requesting Party.

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

1. If the 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 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, 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, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) 180 Days immediately preceding the test that found the 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 Company, Company shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Company for this period from such re-computed amount. The net difference shall be reflected as an adjustment on the next regular bill in accordance with Article 9.

### 5.3 Fuel.

(A) All fuel for the Facility from and after the COD shall be procured and paid for by Company and shall be delivered to the Facility pursuant this Section. Title to the fuel shall be retained by Company at and from the Fuel Delivery Point and/or storage tank(s) to the burner tips of the Facility. As between the Parties, however, Seller shall be deemed to be in exclusive control and possession at all times of all such fuel until after such fuel has been consumed in the Facility and Seller shall bear the risk of loss of any fuel delivered to the Facility

prior to its consumption in the Facility and shall be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other causes associated with such fuel. Seller shall promptly report and resolve any fuel leaks or spills at its sole expense.

(B) Seller shall accept delivery of all natural gas fuel delivered to any Fuel Delivery Point for the purpose of generating the Contract Energy dispatched by Company to the full extent the Contract Capacity is available to be dispatched. Seller shall not be obligated to accept natural gas fuel delivery to the extent Seller reasonably determines it does not materially conform to the specifications for Acceptable Natural Gas set forth in Exhibit K-Fuel Quality Specifications, and that such nonconformance could reasonably be expected to have a Material Adverse Effect on the Facility (“Nonconforming Gas”).

1. In the event that the Upstream Pipeline delivers Nonconforming Gas, Seller may refuse to consume such gas and cease delivering Contract Energy from the Facility for the period of time that such natural gas fuel constitutes Nonconforming Gas. Seller shall promptly notify Company and the Upstream Pipeline of such Nonconforming Gas and the basis for its determination. As between the Parties, Seller shall be solely responsible to resolve the causes for the delivery of Nonconforming Gas, *provided, however, that* Company shall cooperate to enforce any available remedies against the Upstream Pipeline or other third parties arising out of the delivery of such Nonconforming Gas.

2. In the event the Upstream Pipeline proposes to change its tariff specifications and requirements such that the fuel available for delivery constitutes Nonconforming Gas, Seller shall cooperate with Company to resist such changes and shall enforce all available remedies against the Upstream Pipeline or other third parties regarding such proposed change. In the event that the Upstream Pipeline successfully revises its tariff specifications and requirements for natural gas fuel such that the fuel available for delivery constitutes Nonconforming Gas: (i) at Company’s request and expense, Seller shall modify the Facility or other equipment to allow the Facility to utilize such Nonconforming Gas, *provided, however, that* such modification is not required if it would void the manufacturer’s warranty for such equipment then in effect or would have a Material Adverse Effect on the operation of such equipment, or (ii) at Company’s request and expense, Seller shall construct and operate an appropriate natural gas conditioning facility at a reasonably convenient location, to condition the natural gas fuel to satisfy the requirements for Acceptable Natural Gas .

(C) As between the Parties, Seller shall be solely responsible for all natural gas interconnection and metering arrangements, and all associated costs, required to receive natural gas fuel at the Fuel Delivery Point and deliver it from the Fuel Delivery Point to the Facility. Seller shall, at its sole expense, construct, operate and maintain the Natural Gas Interconnection Facilities, natural gas metering facilities, any natural gas compression, regulation, heating and filter/separation equipment, and all other necessary equipment, of sufficient size and specifications to allow natural gas deliveries at the Fuel Delivery Point sufficient for the full operation of the Facility over the Term. As between the Parties, Company shall be responsible for obtaining and paying for transportation service to the Fuel Delivery Point for delivery to Seller, and for all scheduling and imbalance charges and other amounts incurred as a result of such delivery.

1. If Seller elects to install other natural gas-fired equipment that is not used for the direct conversion of natural gas fuel to electric energy (such as natural gas-fired auxiliary boiler(s), natural gas in-line heater(s) used to heat the natural gas fuel, or building heating equipment), Seller shall separately meter and supply, at Seller's expense, the natural gas fuel consumed by such equipment.

2. Company may elect at Company's sole option whether to obtain and utilize firm gas transportation service or non-firm gas transportation service for the delivery of natural gas fuel to Seller at the Fuel Delivery Point.

3. Company may elect at Company's sole option to interconnect the Facility with one or more additional natural gas delivery systems at or near the Fuel Delivery Point identified in Exhibit C-Facility Description, Site Maps And Performance Detail and to designate such an additional interconnection as an additional Fuel Delivery Point, *provided, however, that* (i) Company shall be responsible for installing and paying for all natural gas interconnection and metering facilities required to establish such additional interconnection; (ii) such additional interconnection will not interfere with the operation of the Facility, other than during the time necessary to physically connect the additional interconnecting facilities; and (iii) such additional interconnection will deliver natural gas fuel that provides the equivalent of Acceptable Natural Gas to the Fuel Delivery Point. Seller shall grant Company or its designee an easement and access to the location of the Fuel Delivery Point for the purpose of constructing and maintaining any additional natural gas interconnection and metering facilities.

4. Unless otherwise agreed by the Parties, Seller shall be the operator of the Fuel Delivery Point(s). Seller shall be responsible for administering all volume confirmations, allocations and balancing functions with the Upstream Pipeline, as well as all gas regulation and maintenance and testing arrangements for all natural gas metering at such Fuel Delivery Point(s). Seller shall also be responsible for administering all natural gas physical flow activities, such as flow control, valve operation, and contacting the delivering pipeline to initiate gas flow to the Fuel Delivery Point.

5. All natural gas custody transfer metering at the Fuel Delivery Point(s) shall be installed, maintained and tested in accordance with accepted natural gas industry standards and shall comply with the Upstream Pipeline's tariff requirements. Seller shall provide written meter test results to Company within 30 Days following completion. Company shall have the right to require additional tests, *provided, however, that* Company pays for the cost of such additional tests. Seller shall provide Company with at least 10 Business Days advance notice of such tests and a representative of Company shall be permitted to witness such tests, *provided, however, that* such Company representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Seller shall provide copies of all test data and testing reports to Company. If requested by Company in writing, Seller shall install (at Company's cost) check metering, in connection with the natural gas custody transfer metering, on Seller's downstream natural gas facilities. Disputes regarding the allocation of natural gas volumes and associated billings with the Upstream Pipeline, including meter reading adjustments for prior periods, shall be resolved in accordance with the Upstream Pipeline's tariff.

(D) Seller shall be responsible for the permitting, installation, operation, maintenance and testing of the Fuel Oil Supply Facilities required to receive, store, start and fully operate the Facility over the Term with active storage sufficient to operate at full Net Capability for a period of not less than 28 consecutive hours without additional fuel.

1. Seller shall maintain and calibrate the fuel oil meter(s) from time to time in accordance with manufacturer's recommendations and Good Utility Practices.

2. Seller shall fill the fuel oil storage tank(s) at the Facility with Acceptable Fuel Oil prior to the Commercial Operation Date, in such amount as may be directed by Company and at a cost previously agreed to in writing by Company. Seller shall test such fuel oil prior to filling the tank(s) to confirm it constitutes Acceptable Fuel Oil. After the Commercial Operation Date, Seller may submit an invoice, with appropriate cost documentation, to Company for, and Company shall reimburse Seller for the costs incurred by Seller for such initial fill of the fuel oil storage tank(s), less Seller's cost for fuel oil consumed by the Facility prior to the Commercial Operation Date. Thereafter, Company shall arrange and pay for all subsequent fills of the fuel oil storage tank(s) at the Facility as and when desired by Company. Seller shall not reject deliveries of fuel oil without first establishing that such fuel oil does not constitute Acceptable Fuel Oil. Acceptance by Seller of the fuel oil will be deemed to constitute Acceptable Fuel Oil for all purposes upon the fuel oil being placed into the fuel oil storage tanks(s).

3. Company shall, in its sole discretion, determine when and if the Facility shall be dispatched using fuel oil as the combustion fuel to provide Contract Energy to Company, and/or to test the Facility's performance to start, stop, switch fuels and otherwise to operate fully and thoroughly on only fuel oil, subject to Seller's Permits and Planned Energy or as limited by Good Utility Practice. Seller shall only operate the Facility using fuel oil as the combustion fuel for generation, to the extent directed by Company, *provided, however, that* the Operating Committee may develop procedures allowing for periodic testing and operation on fuel oil consistent with Good Utility Practices and proper maintenance of the equipment.

4. Except as provided in this Paragraph (4), Seller shall be solely responsible for maintenance of the Acceptable Fuel Oil, including any degradation of such fuel from and after it has been placed in the fuel oil storage tank(s). Seller shall provide Company from time to time with Commercially Reasonable written plans, procedures and policies for maintaining Seller's Fuel Oil Supply Facilities, storing Acceptable Fuel Oil, removal and replacing Degraded and Unusable Fuel Oil, and inventory control ("Fuel Oil Plan"), which shall be subject to Company's review and approval. Company and Seller shall coordinate the dispatch of the Facility utilizing fuel oil consistent with Good Utility Practices and proper testing and maintenance of the equipment. Seller shall be solely responsible for the removal and replacement of any Degraded and Unusable Fuel Oil, except to the extent that Company has not dispatched the Facility on fuel oil consistent with Seller's Fuel Oil Plan, in which case Company shall be responsible for the cost of the removal and replacement of any Degraded and Unusable Fuel Oil. Seller shall conduct Facility testing using fuel oil at Company's reasonable request and at Seller's cost, in conjunction with dispatch of the Facility pursuant to this Agreement. In

addition, either Party, at its own expense, may conduct fuel oil tests to determine the extent of such deterioration and whether the fuel oil has degraded.

5. At the end of the Term, (i) Seller shall pay to Company the then-current market value of the fuel oil in storage at the Facility, and (ii) such fuel oil shall be and become the property of Seller.

## Article 6 - Conditions Precedent

### 6.1 Company CPs.

(A) No later than thirty (30) Days after execution of this PPA, Company may make written request for State Regulatory Approval. Company shall use Commercially Reasonable Efforts to obtain State Regulatory Approval, and Seller shall cooperate with Company's efforts to seek State Regulatory Approval. If Company fails to apply for State Regulatory Approval within 30 Days following execution of this PPA, Company shall be deemed to have waived its right to seek State Regulatory Approval or to terminate this PPA under this Section and this PPA shall remain in full force and effect thereafter.

(B) In the event that Company applies for State Regulatory Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more than 10 Days after the earlier of (i) 14 Days after receipt of any written order from a State Regulatory Agency rejecting State Regulatory Approval or granting such approval with conditions unsatisfactory to Company, or (ii) *[Trade Secret Data Begins... ...Trade Secret Data Ends]* following the written request for State Regulatory Approval without receipt of any State Regulatory Approval. If Company fails to terminate this PPA in the time allowed by this paragraph, Company shall be deemed to have waived its right to terminate this PPA under this Section and this PPA shall remain in full force and effect thereafter.

## Article 7 - Sale and Purchase

### 7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the products and services required by this PPA. Seller shall not curtail or interrupt deliveries from the Facility as required by this PPA for economic reasons of any type whatsoever.

(B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

### 7.2 Capacity and Energy.

(A) The Contract Capacity shall be the net generating capacity available at any time from the Facility at the Point of Delivery, not to exceed the Net Capability.

(B) The Contract Energy shall be the metered, net energy output generated by the Contract Capacity as delivered and adjusted for losses to the Point of Delivery, less any Test Energy that has been uneconomically dispatched by Company at Seller's request.

### 7.3 Dispatch.

(A) Company's EMCC shall have the right to determine the AGC control of the Facility, starts, shutdowns, ramping, and loading levels associated with the Contract Capacity and Contract Energy, all in accordance with Good Utility Practices and the technical capabilities of the Facility as set forth in Exhibit H-Operating Standards. Company shall not dispatch any portion of the Facility below Minimum Loading. For any Facility trip, Seller shall restart the Facility in coordination with the EMCC in accordance with Good Utility Practices and Exhibit H-Operating Standards.

(B) If Seller initiates a turbine start in response to a request by the Company, but fails to satisfy the requirements for a Successful Start as a result of: (i) the cancellation of the turbine start by Company within the applicable time period permitted for a Successful Start, (ii) a request from Company, within one hour from Facility start, to shut down the Facility, or (iii) a Company or Company system performance failure, then the initiated turbine start shall nevertheless qualify as a Successful Start. Seller shall not be credited a Successful Start following a turbine trip where Company directs the Seller to restart the Facility after it has tripped out of service even if the restart would otherwise meet the qualifications for a Successful Start.

(C) Seller covenants that under Applicable Law it has or will obtain the authority to generate and deliver Contract Energy in amounts at least equal to the Planned Energy. Seller accepts the risk that its Permits or other Applicable Law restricts or limits its legal authority to generate and deliver all of the Planned Energy. Seller shall not claim that any Permit restriction in and of itself that precludes or limits the generation or delivery below the level of Planned Energy constitutes Force Majeure under this PPA.

1. Neither Party shall take any action that would result in or materially contribute to a restriction under any Permit that would restrict or limit the delivery of any Planned Energy.

2. In the event that Seller's Permits or Applicable Law restricts or limits generation and delivery below the Planned Energy level ("Restricted Energy") or restricts or limits Company's AGC of the Contract Capacity, the Parties shall determine how such availability restrictions will be reflected in the monthly Capacity Payment and/or Dispatchability Payment calculations specified in Sections 8.1 and 8.2, respectively.

### 7.4 Other Products and Services.

(A) Seller shall operate the Facility in accordance with Good Utility Practices that make available to Company all Generation Benefits and Ancillary Services associated with the Facility at no additional charge under this PPA. Any compensation Seller receives under the Transmission Tariff or otherwise for Generation Benefits or Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to

Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services.

(B) 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 or certification or registration fees in connection with such efforts.

## Article 8 - Payment Calculations

### 8.1 Payment for Contract Capacity.

(A) Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Capacity Payment for Contract Capacity based on the following formula:

Monthly Capacity Payment = NC X CAF X CP, where:

NC = Net Capability

CAF = Capacity Availability Factor, Twelve Month Rolling Average =  
(AE + SME) / PE, where

AE = Available Energy, stated in Megawatt-hours (MWh), is the amount of energy associated with the Contract Capacity that is available from the Facility for dispatch and receipt by Company, regardless of whether Company dispatches Contract Energy using Acceptable Natural Gas Fuel or Acceptable Fuel Oil and regardless of whether Company dispatches Contract Energy for receipt at that level, in the monthly billing period and the previous 11 monthly billing periods, taking into account all Scheduled Outage/Derating, Forced Outage(s) and any other unplanned outages and deratings of the Facility.

The Contract Capacity that is unavailable for dispatch and receipt by Company will be considered to be available for the purposes of determining Available Energy only when: (i) the Facility is disconnected from the Transmission Authority's System pursuant to the Interconnection Agreement and the disconnection is not caused by actions of Seller or problems with the Facility; (ii) the Contract Capacity and associated Contract Energy cannot be delivered by Seller or received by Company due to an Emergency, or an event of Force Majeure, affecting the Transmission Authority's System; (iii) the Contract Capacity and associated Contract Energy cannot be received by Company at the Point of Delivery due to transmission constraints affecting the Transmission Authority's System; (iv) the unavailability of the Contract Capacity is caused by, or results from, Company's failure to perform its obligations under this PPA; or (v) the Facility cannot operate because it has exhausted the limits of the operating restrictions imposed by any governmental permit(s) (or any subsequent amendments thereto) applicable to or affecting the Facility, *provided, however,*

*that* if such permit restriction(s) result in the restriction of the amount of Contract Energy that is available for dispatch and receipt by Company to an amount which is less than the Planned Energy set forth in Section 7.3(C), then the Contract Capacity shall be considered unavailable to the extent that Seller cannot deliver Contract Energy to Company in an amount equal to the Planned Energy set forth in Section 7.3(C). Without limiting the foregoing, the Contract Capacity will be considered to be unavailable for the purposes of determining Available Energy when, and to the extent that, Seller is unable to provide or deliver such Contract Capacity and the associated energy due to an event of Force Majeure, not on Transmission Authority's System or Upstream Pipeline, affecting Seller or the Facility. Available Energy shall be calculated as the sum, for all hours in the billing period, of the amount of energy associated with the Contract Capacity available during each individual hour.

SME = Scheduled Maintenance Energy, stated in MWh, is the amount of energy associated with the Contract Capacity that is not available from the Facility for dispatch and receipt by Company, in the monthly billing period and the previous 11 monthly billing periods, due to Scheduled Outages/Deratings that meet the requirements for credited Scheduled Maintenance Energy specified in Exhibit L-Maintenance Requirements. Scheduled Maintenance Energy shall be calculated as the sum, for all hours in the billing period, of the amount of energy associated with the Contract Capacity that is unavailable during each individual hour due to a Scheduled Outage/Derating that meets the specified requirements for credited Scheduled Maintenance Energy.

PE = Period Energy, stated in MWh, shall be calculated, for the current monthly billing period and the previous 11 monthly billing periods, as the product of the Net Capability and the total number of hours in the current billing period and the previous 11 monthly billing periods.

Notwithstanding the above, for each of the first 23 monthly billing periods after the Commercial Operation Date, CAF shall be determined with data from the current monthly billing period only, rather than including data from the previous monthly billing periods. Starting in the twenty-fourth (24<sup>th</sup>) monthly billing period after the COD, CAF shall be determined with data from the current monthly billing period and the previous 11 monthly billing periods for the purposes of calculating the twelve month rolling average.

CP = Capacity Price as defined in Exhibit A.

8.2 Payment for Dispatchability. Commencing on the Commercial Operation Date and subject to the provisions of Exhibit H-Operating Standards Company shall pay Seller a monthly Dispatchability Payment (prorated to reflect the actual number of Days of Commercial Operation in the first and last monthly billing periods) based on the following formula:

Dispatchability Payment = NC x DAF x Dispatchability Rate, where:

NC = Net Capability

DAF = Dispatch Availability Factor, where the factor is based on the number of hours the Facility is on AGC by Company, as determined by Company, and the number of hours the Facility is on line adjusted for Ramp Rate Availability Factor. DAF is derived from the following formula:

DAF = (Hours on-control / Hours on-line) × RAF, where:

Hours on-control = the total number of hours during the monthly billing period and the preceding 11 monthly billing periods when the Facility is receiving and responding to dispatch pulses transmitted from Company's EMCC. Any hour for which Company requests that the Contract Capacity be dispatched without AGC by Company will be counted as an Hour on-control so that the ratio of (Hours on-control/Hours on-line) will be one for such hour.

Hours on-line = the total number of hours during the monthly billing period and the preceding 11 monthly billing periods when the Facility is synchronized to Transmission Authority's System and available to generate electric energy.

RAF = Ramp Rate Availability Factor, where RAF is determined by the following table solely for that month subject to verification testing by Company as set forth in Exhibit H-Operating Standards. For the avoidance of doubt RAF is calculated on a monthly basis and is not a part of a 12 month rolling average:

<b>Tested Contract Capacity Ramp Rate Performance Based on the Testing in <u>Exhibit H-Operating Standards</u></b>	<b>RAF</b>
Contract Capacity ramps at a rate which is greater than or equal to 100%.	1.00
Contract Capacity ramps at a rate which is greater than or equal to 75%, but less than 100%.	0.75
Contract Capacity ramps at a rate which is greater than or equal to 50%, but less than 75%.	0.50
Contract Capacity ramps at a rate which is less than 50%.	0.00

Notwithstanding the above, for each of the first twenty-three (23) monthly billing periods after the COD, hours on-control and hours on-line shall be determined

with data from the current monthly billing only, rather than including data from the previous monthly billing periods and hours on-control/hours on-line shall equal 1.0 for any monthly billing period during which there is no dispatch of the Facility. Starting in the twenty-fourth (24<sup>th</sup>) monthly billing period, hours on-control/hours on-line shall be determined with data for the current monthly billing period and the prior 11 monthly billing periods for the purposes of calculating the twelve-month rolling average.

### 8.3 Payment for Energy.

(A) Prior to the Commercial Operation Date, Company shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to Section 4.4 at the Test Energy Rate. Seller shall be entitled to no other compensation prior to the COD. Any Test Energy delivered after the COD shall be compensated as provided in Section 4.4.

(B) Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Tolling Payment for the Contract Energy that is dispatched by Company and delivered by Seller to Company during the billing month. If the Heat Rate Adjustment (“HRA”) results in a negative Tolling Payment for any billing month, the negative balance shall be offset against the Capacity Payment determined pursuant to Section 8.1. The monthly Tolling Payment shall be determined by the following formula:

Tolling Payment = (E x TP) – HRA, where:

E = Contract Energy, stated in MWh, which is dispatched by Company and delivered by Seller to Company during the billing month;

TP = Tolling Price; and

HRA = Heat Rate Adjustment, determined as a dollar amount pursuant to Section 8.4.

### 8.4 Heat Rate Adjustment to Payments.

(A) If the Actual Net Heat Rate for the Facility is greater than [*Trade Secret Data Begins... ..Trade Secret Data Ends*] of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be used to reduce payments to Seller as specified in Section 8.3 and shall be determined by the following formula:

Heat Rate Adjustment = Fuel Delivered × Price of Fuel × (1 – (P/A)), where:

“Fuel Delivered” is the amount of natural gas energy or fuel oil energy provided by Company and consumed by the Facility to produce the Contract Energy dispatched by Company and delivered by Seller to Company in the billing month, stated in MMBtu;

“Price of Fuel” is the average Facility cost of the Fuel Delivered, stated in \$/MMBtu, calculated as the total cost of the Fuel Delivered divided by the Fuel Delivered. The total cost of the Fuel Delivered shall include Company’s actual commodity cost of the Fuel

Delivered; any transportation, handling, natural gas storage and ancillary natural gas service costs incurred by Company associated with the Fuel Delivered; and all natural gas demand charges incurred by Company associated with the Fuel Delivered;

“P” is the Predicted Net Heat Rate at the time of the most recent heat rate test; and

“A” is the Actual Net Heat Rate for the Facility as determined from the most recent heat rate test.

(B) If the Actual Net Heat Rate for the Facility is less than [*Trade Secret Data Begins... ...Trade Secret Data Ends*] of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be used to increase payments to Seller as specified in Section 8.3 and shall be determined by the following formula:

Heat Rate Adjustment = Fuel Delivered x Price of Fuel x (1 – [(P x [*Trade Secret Data Begins... ...Trade Secret Data Ends*])/A]) x [*Trade Secret Data Begins... ...Trade Secret Data Ends*], where:

“Fuel Delivered” is the amount of natural gas energy or fuel oil energy provided by Company and consumed by the Facility to produce the Contract Energy dispatched by Company and delivered by Seller to Company in the billing month, stated in MMBtu;

“Price of Fuel” the average Facility cost of the Fuel Delivered, stated in \$/MMBtu, calculated as the total cost of the Fuel Delivered divided by the Fuel Delivered.

The total cost of the Fuel Delivered shall include Company’s actual commodity cost of the Fuel Delivered; any transportation, handling, natural gas storage and ancillary natural gas service costs incurred by Company associated with the Fuel Delivered; and all natural gas demand charges incurred by Company associated with the Fuel Delivered;

“P” is the Predicted Net Heat Rate at the time of the most recent heat rate test; and

“A” is the Actual Net Heat Rate for the Facility as determined from the most recent heat rate test.

(C) If the Actual Net Heat Rate for the Facility is equal to or less than [*Trade Secret Data Begins... ...Trade Secret Data Ends*] of the Predicted Net Heat Rate, and is equal to or greater than [*Trade Secret Data Begins... ...Trade Secret Data Ends*] of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be deemed to be zero dollars for the payment calculations specified in Section 8.3.

(D) Heat Rate Testing. Seller shall conduct periodic heat rate testing at Company’s request and at Seller’s sole expense pursuant to Exhibit J-Heat Rate Testing. Upon the completion of any heat rate test in accordance with this Section, Seller may, at its option and expense, retest the Facility, *provided, however, that* Seller reimburse Company for all incremental costs incurred by Company associated with Company’s activities in monitoring such retests.

8.5 Payment for Turbine Starts. Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Turbine Start Payment. The monthly Turbine Start Payment shall be based on the following formula:

Turbine Start Payment =  $N1 \times TSP$ , where:

$N1$  = Number of Successful Starts during the billing month; and

$TSP$  = Turbine Start Price.

8.6 Payment for ESC Availability.

(A) In connection with each ESC Event during the Term, an adjustment in the payment due to Seller from Company shall be made for the billing period during which the ESC Event occurs (an “ESC Adjustment”), based upon the availability of the Facility during the ESC Event as set forth in Exhibit M-ESC Event Adjustment. The ESC Adjustment, if any, shall be in addition to (not in lieu of) any adjustment to CAF based upon the Available Energy from the Facility during that billing period, under Section 8.1.

(B) The Parties shall take such steps as may be necessary from time to time to allow each of Seller and Company to receive notice of ESC Events and anticipated ESC Events.

## **Article 9 - Billing and Payment**

9.1 Billing.

(A) The billing period shall be the calendar month with any partial months prorated appropriately. Within ten (10) Days after receipt from Seller of (i) the information on Facility performance specified in Section 10.2(c)1 and (ii) the operations log required by Exhibit H, Company will provide to Seller a statement containing the applicable billing parameters based on Company’s reading of the Electric Metering Devices and Company’s assessment of the amount due during the previous calendar month. No later than 15 Business Days after the end of each month, Seller shall submit an invoice to Company in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller during the previous calendar month, specifying the products and services provided, all billing parameters, rates and factors, and any other data reasonably relevant to the calculation of payments due to Seller.

(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 Section 9.3.

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

9.2 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 15<sup>th</sup> 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 15<sup>th</sup> 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) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller pursuant to this PPA.

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

9.3 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 13. When the billing dispute is resolved, the Party owing shall pay the amount owed within five 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 Section 9.2. Unless subject to dispute pursuant to this Section 9.3, all invoices shall be deemed final two years after the date issued and shall not be subject to dispute thereafter.

## **Article 10 - Operations and Maintenance**

### **10.1 Operation and Administration**

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. 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 10 minutes, and (ii) the ability to be present at the Site within 30 minutes.

(B) Seller shall comply with the requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Company's Operating Standards as set forth in Exhibit H-Operating Standards, Governmental Authority, and Good Utility Practice in the operation of the Facility.

1. To the extent that the actions of Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, Seller shall reimburse Company for all such monetary penalties proximately caused by Seller or the Facility.

2. Seller shall be responsible for providing accurate and timely updates on the current availability of the Contract Capacity to Company's EMCC ("Reported Availability"). Company shall have the right to verify at any time, without prior notice to Seller, Seller's current Reported Availability. To verify Seller's Reported Availability, Company shall dispatch the Contract Capacity to the level of Reported Availability ("Availability Verification Test"). If (i) the tested availability (rounded upward to the next whole MW) is less than [*Trade Secret Data Begins... ...Trade Secret Data Ends*] of the Reported Availability (rounded upward to the next whole MW), or (ii) such tested availability is more than five MW below the Reported Availability, such shortfall shall constitute a Deficiency. The Contract Capacity availability shall be derated by the Deficiency for the then current hour and all subsequent hours until Seller reports a revised level of available Contract Capacity. The amount of Contract Capacity available for any individual hour shall be integrated over the hour, on a prorated basis, to reflect any updates in Seller's Reported Availability made effective during such hour.

3. Company will notify Seller as soon as possible by telephone and thereafter in writing whenever an Availability Verification Test has identified a Deficiency. The occurrence of more than one Deficiency in any billing month shall result in derating the Contract Capacity availability retroactive to the beginning of such billing month to the capacity level achieved in the most recent Availability Verification Test. Three Deficiencies in any two consecutive billing months shall result in a five percent reduction in the Capacity Price, as set forth in Section 8.1, applicable to the subsequent two billing months.

## 10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice, and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company and meet all MISO outage reporting requirements. Maintenance Schedules shall comply with the requirements of Exhibit L-Maintenance Requirements ("Maintenance Schedule").

(B) Scheduled Outages/Deratings shall be coordinated between the Parties and shall be scheduled to avoid such outages during On-Peak Months.

1. Notwithstanding the foregoing, within thirty (30) Days after Seller delivers its proposed maintenance schedule pursuant to Exhibit L, Company shall have the right to request a change in the start date of any Scheduled Outage/Derating, and Seller shall use Commercially Reasonable Efforts to accommodate such request; *provided, however, that* the changed start date must be within 45 Days, earlier or later, of the start date set forth for such outage/derating in the most recent Maintenance Schedule provided by Seller at no cost to Company.

2. Not less than 12 hours prior to commencement of any Scheduled Outage/Derating, Company may request verbally or in writing, that Seller defer such Scheduled Outage/Derating. Subject to Good Utility Practice and the technical requirements of the Facility as set forth in Exhibit H, Seller shall comply with any such request and reschedule such deferred maintenance to a subsequent date mutually agreed upon between the Parties if Company agrees to pay Seller the actual incremental direct costs incurred by Seller in such deferral or rescheduling. Seller shall provide to Company, in advance, a non-binding good faith estimate of such costs and Company shall promptly advise whether Company is willing to reimburse Seller to implement such revised schedule.

(C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one hour after the Forced Outage occurs. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of each Forced Outage.

1. Seller shall report to Company information on Facility performance during a calendar month within five Business Days after the end of the calendar month. For each turbine generator, and using definitions provided by, or consistent with, the NERC Generation Availability Data System ("GADS") Manual, or any successor document, the data reported shall include planned derated hours, unplanned derated hours, average derated kW from Net Capability during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line and a preliminary billing invoice; and

2. In addition to the foregoing notification, for any Forced Outage, shutdown or derating of the Facility, Seller shall promptly conduct a root cause analysis and take corrective action to prevent reoccurrences. Such corrective action includes, but is not limited to, weather protective modifications to the Facility, additional operating or maintenance procedures and other appropriate preventative measures in accordance with Good Utility Practices and shall be at Seller's cost and expense. Seller shall diligently complete such analysis and corrective actions as soon as possible and provide to Company a written report containing such analysis and a summary of the corrective action taken or to be taken as soon as diligently possible.

### 10.3 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 Company.

(B) Seller and Company 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 a Facility shall

be maintained on the premises of the Facility 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) Company may audit and examine from time to time upon 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 Company with Applicable Law and relevant accounting standards. Seller shall maintain all such records at the Facility or some other mutually-agreeable location and shall cooperate with Company's audit rights under this Section.

#### 10.4 Operating Committee and Operating Procedures.

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

1. 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.

(B) 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.

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

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

#### 10.6 Accreditation.

(A) Seller shall at its own expense comply with the Transmission Authority's requirements for the Facility to be accredited as a Capacity Resource for each Commercial Operation Year under this PPA ("Transmission Authority Capacity Accreditation Requirements"), as such requirements are revised from time to time by the Transmission Authority.

(B) If Seller will obtain accreditation of the Facility from the Transmission Authority as a Capacity Resource for the Planning Year of COD, Seller shall deliver to Company a Notice on or before the January 1 immediately preceding the Planning Year of COD confirming Seller's commitment to obtain such capacity accreditation by the Commercial Operation Milestone ("COD Capacity Confirmation").

(C) If Seller has provided Company the COD Capacity Confirmation as provided in Section 10.6(B), Seller shall no later than ten (10) Business Days before the Transmission Authority's deadline for accreditation of new generation for the Planning Year of COD ("Accreditation Deadline") provide Company written Notice that it has completed and reported to the Transmission Authority the capacity testing results necessary for the Facility to be accredited by the Transmission Authority as a Capacity Resource ("Necessary Accredited Capacity Testing Results").

1. Subject to Section 10.6(C)4, Seller's failure to provide the Necessary Accredited Capacity Testing Results to the Transmission Authority by the Accreditation Deadline shall be an Event of Default as set forth in Section 12.1(I), provided that, notwithstanding anything to the contrary in Articles 12 and 14 of this PPA, such Event of Default shall be deemed cured so long as Seller shall pay to Company the Auction Clearing Price for the amount of accredited capacity for the Planning Year of COD that Seller failed to obtain through the Transmission Authority's accreditation of the Facility as a Capacity Resource, which shall be paid within fifteen (15) Days of receipt of Company's invoice thereof. Seller shall not sell any of the unaccredited capacity of the Facility in any Commercial Operation Year that Seller fails to obtain the Transmission Authority's re-accreditation of the Facility as a Capacity Resource.

2. Seller shall also provide Company on a monthly basis the amount of Contract Energy that Seller would have provided Company under this PPA for the Planning Year of COD had the Facility obtained accreditation as a Capacity Resource, for which Company shall pay Seller the monthly Capacity Payment and Energy Payment pursuant to Article 8, *provided, however, that* Seller has paid Company the Auction Clearing Price for the accredited capacity for the Planning Year of COD. In the event that Seller fails to pay the Auction Clearing Price to Company or provide Contract Energy to Company as set forth in this Section, Company shall have the right to terminate this PPA and collect Actual Damages.

3. Subject to Section 10.6(F), Seller thereafter shall at its own expense comply with the Transmission Authority Capacity Accreditation Requirements for the next Planning Year.

4. In the event Seller elects to provide the Necessary Accredited Capacity Testing Results for the Facility for the Planning Year of COD to the Transmission

Authority in accordance with the Transmission Authority's Generation Verification Test Capacity Deferral Requirements ("GVTC Deferral Requirements") (such election, the "GVTC Deferral Election"), Seller shall provide written Notice to Company at least fifteen (15) Days before the Accreditation Deadline. Upon making the GVTC Deferral Election, Seller shall:

a. Take all actions and make all payments required under the GVTC Deferral Requirements until the Facility is accredited as a Capacity Resource for the Planning Year of COD;

b. Take all actions necessary to transfer Seller's capacity rights in the Facility to Company until such time as Company replaces Seller as the registered entity for the Facility for Transmission Authority capacity planning purposes.

c. Provide Company on a monthly basis the amount of Contract Energy that Seller would have provided Company under this PPA for the Planning Year of COD had the Facility obtained accreditation as a Capacity Resource, for which Company shall pay Seller the Energy Payments and monthly Capacity Payments pursuant to Article 8, *provided, however, that* Seller is current in making all payments required under the GVTC Deferral Requirements. Seller's failure to take all actions or make all payments required under the GVTC Deferral Requirements or provide Contract Energy as set forth in this Section shall constitute an Event of Default and Company shall have the right to terminate this PPA and collect Actual Damages.

(D) Once Seller has delivered to Company the COD Capacity Confirmation, Seller and Company shall take such steps as are necessary under the Transmission Tariff and the Transmission Authority's requirements to transfer the registration of the Facility with the Transmission Authority such that Company replaces Seller as the registered entity for the Facility for the Planning Year of COD.

(E) If Seller will not obtain accreditation of the Facility from the Transmission Authority as a Capacity Resource for the Planning Year of COD, Seller may delay the COD to the next Planning Year under this Section by delivering a Notice to Company on or prior to January 1 before the Planning Year of COD stating Seller has elected to delay the Commercial Operation Date to the next Planning Year ("Accreditation Delay Notice"). Seller's right to delay the Commercial Operation Date shall continue for each subsequent Planning Year, subject to the delivery of the Accreditation Delay Notice to Company for each such Planning Year, until such time as Seller has obtained accreditation of the Facility from the Transmission Authority as a Capacity Resource.

(F) For each Commercial Operation Year of the PPA after the Facility has been accredited by the Transmission Authority as a Capacity Resource, Seller shall at its own expense comply with all the Transmission Authority's requirements for the Facility to be re-accredited as a Capacity Resource. In the event Seller fails to meet the deadline for such re-accreditation of the Facility for a Commercial Operation Year, Seller shall pay Company the Auction Clearing Price for the amount of accredited capacity for the Commercial Operation

Year that Seller failed to obtain through re-accreditation, which shall be paid within fifteen (15) Days of receipt of Company's invoice therefor. Seller shall also provide Company the amount of Contract Energy for the Commercial Operation Year that Seller would have provided Company under this PPA had the Facility obtained re-accreditation as a Capacity Resource. Seller shall not sell any of the unaccredited capacity of the Facility in any Commercial Operation Year that Seller fails to obtain the Transmission Authority's re-accreditation of the Facility as a Capacity Resource. In the event that Seller fails to pay the Auction Clearing Price to Company or provide Contract Energy to Company as set forth in this Section, such failure shall constitute an Event of Default and Company shall have the right to terminate this PPA and collect Actual Damages.

(G) Notwithstanding any other provision in this PPA, in the event that the Transmission Authority Capacity Accreditation Requirements, the Transmission Tariff and/or the Tariff Authority's planning reserve procedures and requirements with respect to qualifying generation facilities as a Capacity Resource are changed, modified or revised such that the framework as contemplated in this Section 10.6 cannot be implemented or cannot be implemented without an unanticipated Material Adverse Effect on one or both of the Parties, the Parties shall in good faith promptly amend or modify this Section 10.6 to address such change(s), modification(s) or revision(s) in a manner consistent with the intentions of the Parties as originally set forth in this Section 10.6.

## **Article 11 - Security for Performance**

### **11.1 Security Fund.**

(A) No later than 30 Days following Company obtaining or waiving State Regulatory Approval, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.

1. The Security Fund shall equal the Pre-COD Security Fund up to the COD and the Post-COD Security Fund on and after the COD and throughout the Term.

2. Seller shall replenish the Security Fund within 15 Business Days after Company makes a draw on the Security Fund as authorized by this PPA, up to the required amount, *provided, however*, that Seller shall not be required to replenish the Security Fund to a level in excess of the remaining amount of the applicable Damage Cap. Notwithstanding the foregoing, Seller shall replenish all amounts drawn from the Security Fund in respect of damages described in Section 12.3(C).

(B) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this PPA that have not been paid by Seller in accordance with the requirements of this Agreement, including any such damages due to Company and any such amounts for which Company is entitled to indemnification under this PPA. Company 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 Section and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any

instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("Issuer") satisfying the requirements of this Section, and shall be in the form of one or more of the following instruments:

1. The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G-1-Letter of Credit, and any material changes to such Exhibit shall be subject to review and approval by Company at its sole discretion (the "Letter of Credit").

a. The Issuer for the Letter of Credit shall have and maintain a senior unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by all rating agencies that have provided such a rating, and if ratings from either Standard & Poor's and Moody's are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on negative credit watch or have a negative outlook by any rating agency.

b. The Letter of Credit must be for a minimum term of 360 Days. Seller shall give Company at least 30 Days advance Notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit or other authorized security for additional consecutive terms of 360 Days or more (or, if shorter, the remainder of the Term) more than 30 Days prior to each expiration date of the security. If the Letter of Credit or other security is not renewed or extended at least 30 Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the security and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with sub-paragraph (2) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Section.

2. The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally-chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its sole discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form of Exhibit G-3-Escrow Agreement, and any changes to such Exhibit shall be subject to review and approval by Company, not to be unreasonably withheld or delayed. Funds held in the Escrow 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. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the escrow account exceeds the required amount of security, the escrow agent may remit any excess to Seller.

3. Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit G-2-Guaranty (and any changes to such Exhibit shall be subject to review and approval by Company, not to be unreasonably withheld or delayed), from an Issuer with a minimum of net worth of at least \$200,000,000 and a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better as determined by all rating agencies that have provided such a rating, and if ratings from both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company). If such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency. If the credit rating of the Issuer is downgraded or there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer, then Seller shall be required to convert the guarantee provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either sub-paragraph (1) or sub-paragraph (2) above no later than 10 Days after receiving information from or about the Issuer that the Issuer no longer satisfies the requirements of this paragraph.

(D) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior Notice to Company, *provided, however, that* the Security Fund must at all times satisfy the requirements of this Section.

(E) Company may reevaluate from time to time the value of any Security posted by Seller to determine, in a Commercially Reasonable manner, whether (i) it continues to satisfy the requirements in this PPA or (ii) there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer or guarantor, such that it does not or with the passage of time, it will no longer satisfy the requirements of this PPA. If Company determines, in a Commercially Reasonable manner, that there has been an event that has caused, or will cause, with the passage of time, Seller's Security to no longer satisfy the requirements of this PPA, then Company shall provide prompt Notice to Seller of such event and after receipt of such Notice, Seller shall be required to provide alternative Security that satisfies the terms of this PPA.

(F) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term. Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

(G) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Section.

## Article 12 - Default and Remedies

12.1 Events of Default. Any of the following events 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 any payment to the other Party as required by this PPA, including invoices pursuant to Article 9, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of 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 30 Days from its inception.

(C) Either Party's failure generally to pay debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so, 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 sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

(D) The authorization or filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state by Company on the one hand, or Seller or Seller's parent or any other Affiliate that materially and adversely affects Seller's ability to perform its obligations hereunder in Company's Commercially Reasonable discretion on the other hand, which proceedings remain undismissed or unstayed for sixty (60) Days, or which result in adjudication of bankruptcy or insolvency within such time. For the avoidance of doubt, this Event of Default shall be subject to Facility Lender's right to cure under the applicable Lender Consent.

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

(F) 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 immediately upon its occurrence and without further notice from the non-defaulting Party.

(G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for five (5) Business Days after Company provides Notice of Seller's failure.

(H) Seller's failure to achieve Commercial Operation Milestone; *provided, however*, that it shall not be an Event of Default if the reason for such failure is Company's failure to deliver Acceptable Natural Gas pursuant to Section 4.4(B) 1 required to perform all testing required for the Facility to qualify as a Capacity Resource.

(I) Seller's failure to achieve the Capacity Resource Milestone to the extent such failure is not excused under Section 10.6; *provided, however*, that it shall not be an Event of Default if the reason for such failure is Company's failure to deliver Acceptable Natural Gas required to perform all testing required for the Facility to qualify as a Capacity Resource.

(J) Seller's failure, commencing 18 months after the COD, to maintain a CAF, pursuant to Section 8.1, greater than [*Trade Secret Data Begins...  
...Trade Secret Data Ends*] on a twelve-month rolling average basis utilizing data from the previous twelve months; *provided, however, that* to the extent such failure of performance is attributable to Force Majeure, the contribution of such Force Majeure shall be eliminated from the CAF calculation for the purposes of, and only for the purposes of, establishing a default of Seller pursuant to this paragraph.

(K) Seller's material breach of the Interconnection Agreement that has a Material Adverse Effect on Company.

(L) 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 30 Days after Notice thereof shall have been given by the non-defaulting Party; *provided, however, that* if such failure is not reasonably capable of being remedied within such 30 Day period, the Party shall have such additional time, not to exceed 30 (thirty) Days, as may reasonably be required to remedy such failure.

12.2 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. 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. The Parties agree that any uncured Event of Default is deemed to be material and justifies termination. 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, draw on the Security Fund for any unpaid Liquidated Delay Damages, Actual Damages, or any other required and unpaid amount;
4. In the case of an Event of Default by Seller, exercise of Company's Step-In Rights.
5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Section, 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 Company Liquidated Delay Damages as a liquidated damage and not a penalty for any delay in meeting the Commercial Operation Milestone on the terms and conditions as follows; *provided, however, that* no Liquidated Delay Damages shall be payable by Seller to the extent that the reason for any delay in meeting the Commercial Operation Milestone is Company's failure to deliver Acceptable Natural Gas pursuant to Section 4.4(B) 1 required to perform all testing required for the Facility to qualify as a Capacity Resource:

1. Provided Seller actually pays Liquidated Delay Damages as and when owed, the payment of such Liquidated Delay Damages shall be Company'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 Company'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 on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until the Day after such Commercial Operation Date is achieved.

(C) Actual Damages. For all Events of Default arising under Section 10.6 or 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; *provided, however, that* if an Event of Default has occurred and has continued uncured for a period of 365 Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that

Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.

(D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance. 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, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

### 12.3 Limitation on Damages.

(A) Except as otherwise provided in this Section, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages shall not exceed Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages shall not exceed the Post-COD Damage Cap (collectively the "Damage Cap(s)").

(B) If at any time during the Term, Company incurs damages in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.

(C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:

1. damage to Company-owned facilities caused by Seller's acts or omissions;
2. Seller's intentional misrepresentation or 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 Company under this PPA;
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 indemnification under this PPA;
6. any Environmental Contamination caused by Seller in connection with this PPA; or

7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided, however, that* if either Party is held liable to a 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. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the 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.

#### 12.4 Step-In Rights.

(A) Upon the occurrence of an Event of Default affecting the operation or maintenance of the Facility, Company shall have the right, but not the obligation, to exercise its Step-In Rights for the period of time until Company relinquishes its Step-In Rights pursuant to Section 12.4(H). Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA.

(B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

(C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Prior to commencing construction of the Facility, Seller shall obtain the written agreement of the Facility Lender recognizing Company's Step-In Rights as being limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.

(D) Company shall implement its Step-In Rights in conformance with Good Utility Practice, Seller's Permits, the requirements of Applicable Law, and the technical capabilities of the Facility as set forth in Exhibit H, and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Company shall not operate the Facility in a manner that would violate the terms of any warranty on the Facility or any part thereof provided that Seller has made the terms of such warranty available to Company in accordance with this Section 12.4(D). Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights.

Company shall give Seller and the Facility Lender 10 Days Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:

1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.
2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.
3. Seller shall cooperate in the implementation of Company's Step-In Rights.

(E) During any period that Company is in possession of and operating and maintaining the Facility pursuant to the foregoing paragraphs, Company shall perform and comply with all of the obligations of Seller under this PPA and shall pay Seller for the Contract Energy and Contract Capacity produced by the Facility as provided herein; *provided however, that* Company shall be entitled to withhold from such payment an amount sufficient to reimburse Company for any and all expenses reasonably incurred by Company in taking possession of and operating the Facility.

(F) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this Section that are not reimbursed by Seller within ten (10) Business Days after Company's written demand therefor.

(G) Seller shall retain legal title to and ownership of the Facility.

(H) Company shall provide Seller with at least 15 Days Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA; (ii) Seller has cured any Events of Default of Seller which allowed Company to exercise its rights under this Section 12.4 and which are capable of being cured in the absence of possession of the Facility, or has given, in the Company's reasonable discretion, reasonable assurance that Seller will cure any other Event of Default which allowed Company to exercise its rights under this Section 12.4 promptly following its resumption of possession; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties mutual decision.

(I) Company's Step-In Rights shall not constitute an assumption by Company of any liability attributable to Seller.

12.5 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 13 - Dispute Resolution

### 13.1 Dispute Resolution.

(A) In the event of any dispute arising under this PPA (a “Dispute”), within 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 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 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 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 24 months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

(C) Seller and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based here on, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any disputes arising under or in connection with this PPA be adjudicated by a judge of the court having jurisdiction without a jury.

## Article 14 - Force Majeure

14.1 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.

### 14.2 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 a Party continues for an uninterrupted period of 90 Days from its inception (with respect to Force Majeure occurring prior to COD) or for an uninterrupted period of 365 Days from its inception (with respect to Force Majeure occurring after COD), the other Party may, at any time following the end of such period, terminate this PPA upon Notice to the Party so affected, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; provided, however, that Seller within the first 90 Days of an uninterrupted Force Majeure event occurring prior to COD provides a written opinion from an independent engineer retained and paid for by Seller and approved by Company that the Force Majeure can be remedied within an additional 90 Days, then Company may only terminate the PPA under this Section after an uninterrupted period of 180 Days of a Force Majeure event affecting Seller prior to COD.

(D) In no event shall the existence of a claim of Force Majeure by Seller relieve Seller of its obligations under Section 10.6.

14.3 Delays Attributable to Company. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

## **Article 15 - Representations and Warranties**

15.1 General Representations and Warranties. Except for the requirements of Article 6 which the Parties will use their Commercially Reasonable Efforts to obtain, 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 on the representing Party's ability to perform its obligations under this PPA;

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; or

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

(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.

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

(F) It is (in the case of Company) or will be on the Commercial Operation Date (in the case of Seller) (i) an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12), (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or by products thereof; and (iv) entering into this PPA solely for purposes related to its business as such.

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

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

(I) This PPA creates a binding obligation for each Party to either make or take delivery of the commodity which is the subject of this PPA, as applicable, without providing any right to offset, cancel, or settle on a payment-of-difference basis.

15.2 Seller's Specific Representation. To the best knowledge of Seller, and except for those Permits identified in Exhibit F-Seller's Permits, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

15.3 Company's Specific Representation. To the best knowledge of Company, and except for the State Regulatory Approval(s) identified in Section 6.1, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

## **Article 16 - Insurance**

16.1 Evidence of Insurance. No later than commencement of construction and then on or before June 1 of each year, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E-Insurance Coverage to this PPA. Such certificates shall (a) name Company as an additional insured (except worker's compensation); (b) provide that Company shall receive 30 Days prior Notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such Notice shall be 10 Days for non-payment of premiums); (c) provide a waiver of any rights of subrogation against Company, 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-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

### 16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after 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 six years after the Term.

(B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E-Insurance and Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make all Commercially Reasonable Efforts to comply with any such request. Primary and excess policies may be combined to satisfy insurance coverage requirements. The structure of the coverage shall be at Seller’s option, so long as the total amount of insurance meets the requirements specified in this Agreement.

(C) 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 Company, 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.

16.3 Application of Proceeds. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

## **Article 17 - Indemnity**

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

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

(B) Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be

construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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

17.2 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 send 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.

17.3 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, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

17.4 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 net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **Article 18 - Lender Provisions**

18.1 Accommodation of Facility Lender. Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, 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 I-Lender Consent Provisions (generally, a "Lender Consent"), *provided, however, that* in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement, that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse,

Company for the direct expenses (including the fees and expenses of counsel) incurred by Company 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 Company, pursuant to this Section. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender.

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

18.3 Notice of Facility Lender Action. Within 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 Company.

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

## **Article 19 - Assignment and Other Transfer Restrictions**

19.1 Transfer Without Consent is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.

(A) Except as permitted in this Section, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however, that* (i) at least 30 Days prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party, (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, 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 Section 11.1; and (v) before this PPA is assigned by Seller, 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 Company to assign this PPA to an Affiliate of Company; *provided, however, that* Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the State Regulatory Agency and has or attains an Investment Grade rating, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

2. Company's consent shall not be required for Seller to assign this PPA for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than 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 Company, which shall not be unreasonably withheld, *provided, however, that* Company shall have no obligation to provide any such consent prior to the fulfillment and expiration of all rights conferred pursuant to Section 19.2.

19.2 ROFO. Seller hereby agrees to provide Company with a right of first offer ("ROFO"), on terms set forth in this Section 19.2.

(A) At any time after the Commercial Operation Date, if Seller or any Affiliate of Seller intends to convey all or substantially all of the Facility or a majority of the interests in Seller ("Proposed Transaction") to an unaffiliated third party (other than a transaction in connection with incurring Facility Debt), Seller shall first offer Company the ROFO. Seller further agrees that if such Proposed Transaction is in conjunction with a proposed sale of all or substantially all of the Cannon Falls I Project, whether such proposed sale is structured as an asset sale or sale of the interests in the owners of the Cannon Falls I Project, Seller will not enter in any agreement for such a sale of the Facility unless Company has been provided with a right of first offer substantially in accordance with the ROFO for the purchase of the Cannon Falls I Project together with the Facility. Seller shall identify (i) the buyer, if then known, (ii) the nature and terms of the Proposed Transaction, and (iii) the minimum price Seller is willing to accept to proceed with the contemplated transaction (the "ROFO Notice").

(B) Seller shall allow Company 60 Days after the ROFO Notice to investigate the Proposed Transaction and conduct due diligence. Within such period, Company shall either (i) exercise its ROFO rights on substantially comparable terms to the Proposed Transaction or (ii) cancel its ROFO rights.

(C) If Company exercises its ROFO rights, the Parties shall have an additional 120 Day period to sign definitive agreements on terms no less favorable to Company than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for Company to exercise its ROFO rights.

(D) If Company does not exercise its ROFO rights, Seller shall have the right to close its Proposed Transaction, *provided, however, that* such transaction shall have an aggregate value of not less than the minimum price set forth in the ROFO Notice and the

transaction shall have been closed not more than nine months following expiration of the Company's right to exercise its ROFO rights.

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

## Article 20 - Miscellaneous

20.1 Notices. Notices required by this PPA 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 And Contact Information as either Party updates them from time to time by Notice to the other Party. Notices shall either be hand delivered or mailed, postage prepaid, or electronically mailed. If mailed, Notices shall be simultaneously sent by facsimile 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 Section.

### 20.2 Taxes, Emissions 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 on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term.

(B) Company shall be solely responsible for sales and use taxes imposed with respect to the purchase of fuel by Company for use in or consumption by the Facility to produce the electric energy dispatched and received by Company hereunder.

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

(D) Notwithstanding clause (A) of this Section, Company shall be solely responsible for the payment of any taxes and other impositions enacted or promulgated by Governmental Authorities after the Effective Date, that are assessed based upon the quantity of carbon dioxide emissions produced from the combustion of fuel purchased by Company for

consumption by the Facility to produce Contract Energy or Test Energy during the Term of this PPA.

1. If (i) following the Effective Date of this PPA, Applicable Law imposes any enforceable limits or other enforceable compliance obligations related to carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy, and (ii) the limits or obligations are not imposed on a facility-specific basis, and (iii) such limits or obligations can be mitigated by the acquisition or application by Company of allowances, credits and/or eligible offsets, then, (a) Company shall be responsible for compliance with the limits or compliance obligations from the Facility in its generation portfolio, and (b) Company shall be solely responsible for the acquisition costs, application and management of such allowances, credits and/or offsets necessary to mitigate carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy.

2. Nothing herein shall relieve Seller of its obligation to comply, at its sole cost, with Applicable Law or any Permit (including any emission limit or standard relating to carbon dioxide) imposed specifically on the Facility.

20.3 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.

20.4 Fines and Penalties.

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

(B) If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or

requirements of Applicable Law, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse and hold Company harmless against any such costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 17.

#### 20.5 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 Section 205 or 206 of the Federal Power Act.

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

20.6 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties, or 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.

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

20.8 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws

may also be applicable to Seller as a subcontractor to Company. 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).

20.9 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.

20.10 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* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

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

20.12 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.

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

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

20.15 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 in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.

20.16 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.

20.17 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.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

**Seller:**

Invenergy Cannon Falls II LLC//

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

**Company:**

David M. Sparby  
Senior Vice President & Group President,  
Revenue  
President & CEO NSP Minnesota

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

## EXHIBIT A

### DEFINITIONS

The following terms shall have the meanings set forth herein:

“Acceptable Fuel Oil” means fuel oil meeting the fuel oil quality specifications set forth in Exhibit K-Fuel Quality Specifications to this PPA at the time that such fuel oil is loaded into Seller’s Fuel Oil Supply Facilities.

“Acceptable Natural Gas” means (i) natural gas fuel procured from the Upstream Pipeline pursuant to the Upstream Pipeline’s tariff, which tariff includes the natural gas quality specifications, requirements, and minimum delivery pressures, as attached hereto as Exhibit K-Fuel Quality Specifications, or (ii) such other natural gas fuel delivered to a Fuel Delivery Point, the actual gas quality of which meets or exceeds the natural gas quality specifications, requirements and minimum delivery pressures in Exhibit K-Fuel Quality Specifications; or (iii) natural gas fuel that otherwise complies with the turbine manufacturer’s natural gas fuel quality specifications, requirements and delivery pressures and that would not otherwise void such manufacturer’s warranties.

“Accreditation Deadline” has the meaning set forth in Section 10.6(C).

“Accreditation Delay Notice” has the meaning set forth in Section 10.6(E).

“Actual Damages” has the meaning set forth in Section 12.2(C).

“Actual Net Heat Rate” means the net heat rate for the Facility, stated in Btu/kWh, Higher Heating Value (“HHV”), as adjusted to Reference Conditions, resulting from a heat rate test conducted in accordance with Section 8.4.

“Affiliate” means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the 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 for 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. For the Facility to be considered capable of AGC, it must meet the Requirements and Compliance Standards for Dispatchability, attached hereto as Exhibit H.

“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.

“Auction Clearing Price” means the price at which capacity credit can be purchased in the Transmission Authority’s market for such credit for the Facility’s location, which the Transmission Authority currently designates as Local Resource Zone 1.

“Availability Verification Test” shall have the meaning set forth in Section 10.1(B)(2).

“Available Energy” shall have the meaning set forth in Section 8.1(A).

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

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

“Btu” means British thermal unit.

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

“Cannon Falls I Project” means the electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major equipment components, and all equipment necessary to interconnect to the Transmission Authority’s System, all as further described in the Replacement Power Purchase Agreement dated April 1, 2005 (“Replacement PPA”) between Company and Invenergy Cannon Falls LLC (“ICF1”), including all of the following: ICF1’s equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, ICF1’s Natural Gas Interconnection Facilities, and ICF1’s Fuel Oil Supply Facilities, natural gas compression, heating and filter/separation equipment and associated piping and control systems, above ground and underground fuel piping systems and storage facilities, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for operation, maintenance, generation and delivery of the capacity and energy subject to the Replacement PPA.

“CAF” or “Capacity Availability Factor” shall have the meaning set forth in Section 8.1.

“Capacity Price” means *[Trade Secret Data Begins... ..Trade Secret Data Ends]*/kW/month for the first Commercial Operation Year. For each successive Commercial Operation Year, the Capacity Price shall be adjusted by multiplying the previous Commercial Operation Year’s Capacity Price by a fraction, the numerator of which is the most recently published quarterly value of the GDPIPD as of the start of such successive Commercial Operation Year, and the denominator of which is the most recently published quarterly value of

the GDPIPD as of the start of the prior Commercial Operation Year, with the result rounded to the nearest \$0.01. For example, assuming the Facility's COD is June 1, 2019, then if the most recently published quarterly value of the GDPIPD as of *[Trade Secret Data Begins...*

*...Trade Secret Data Ends]* is 150.0, and the most recently published quarterly value of the GDPIPD as of *[Trade Secret Data Begins...*

*...Trade Secret Data Ends]* was 147.0, then the Capacity Price for the *[Trade Secret Data Begins...*

*...Trade Secret Data Ends]* Commercial Operation Year would be  $(150.0/147.0) \times [Trade Secret Data Begins... \dots Trade Secret Data Ends]/kW/month$ .

“Capacity Resource” means the amount of net generating capacity associated with the Facility for which capacity credit may be obtained under applicable planning reserve procedures and requirements as designated by Company.

“Capacity Resource Milestone” means the date when the Facility qualifies as a Capacity Resource as set forth in Exhibit B-Construction Milestones.

“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 if the direct or indirect interest in Seller represents substantially all of the value of such owner's assets: (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 the selling entities are no longer the direct or indirect owner of at least 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, (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, (iii) a change of the Ultimate Parent Entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976), or (iv) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change.

“COD Capacity Confirmation” has the meaning set forth in Section 10.6(B).

“COD Conditions” means all of the requirements that must be satisfied by Seller in order to achieve Commercial Operation as set forth in Section 4.3.

“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 June 1, 2018.

“Commercial Operation Milestone” means the Construction Milestone for the Commercial Operation Date specified in Exhibit B-Construction Milestones.

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

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to 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.

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

“Confidential Information” shall have the meaning set forth in Section 20.18.

“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 Milestone(s)” means the dates set forth in Exhibit B-Construction Milestones.

“Contract Capacity” shall have the meaning set forth in Section 7.2(A).

“Contract Energy” shall have the meaning set forth in Section 7.2(B).

“Damage Caps” shall have the meaning set forth in Section 12.3(A).

“Day” means a calendar day.

“Deficiency” means the deficiency in Reported Availability and tested availability of the Facility as described in Section 10.1(B)(2).

“Degraded and Unusable Fuel Oil” means fuel oil that no longer complies with the definition of Acceptable Fuel Oil and that otherwise no longer complies with the turbine manufacturer’s fuel oil quality specifications and requirements and that would otherwise void such manufacturer’s warranties.

“Dispatch Availability Factor” or “DAF” shall have the meaning set forth in Section 8.2.

“Dispatchability Payment” shall have the meaning set forth in Section 8.2.

“Dispatchability Rate” means [*Trade Secret Data Begins... ..Trade Secret Data Ends*]/kW-month.

“Dispute” shall have the meaning set forth in Article 13.

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

“Electric Metering Device(s)” 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.

“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 Company’s merchant representatives responsible for dispatch of generating units, including the Facility.

“Energy Resource Interconnection Service” or “ERIS” means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an “Energy Resource” as defined by the Transmission Tariff, and be eligible to deliver the Facility’s output using the existing firm or non-firm capacity on the transmission system on an as-available basis.

“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 Section 215 of the Federal Power Act or any successor organization; the Midwest Reliability Organization (“MRO”) is the certified ERO as of the date of this PPA.

“ESC Event” shall mean those events described in Exhibit M.

“Event of Default” shall have the meaning set forth in Article 12.

“Facility” means Seller’s electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major equipment components, and all equipment necessary to interconnect to the Transmission Authority’s System, all as further described in Exhibit C-Facility Description, Site Maps And Performance Detail, including all of the following: Seller’s equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, Seller’s Natural Gas Interconnection Facilities, and Seller’s Fuel Oil Supply Facilities, natural gas compression, heating and filter/separation equipment and associated piping and control systems, above ground and underground fuel piping systems and storage facilities, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

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

“Facility Lender” means, collectively, any lenders providing any Facility Debt and any successors or assigns thereto.

“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.

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt 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 anticipated as of the date of this PPA, (ii) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided, *provided, however, that* 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 in its capacity as a contractor or customer of the Party claiming Force Majeure unless such acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity; (d) changes in market conditions; or (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions.

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or some part 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.

“Fuel Delivered” shall have the meaning set forth in Section 8.4.

“Fuel Delivery Point” means the natural gas delivery system point at which Company makes available and delivers to Seller the natural gas fuel consumed by the Facility to produce the Contract Energy dispatched by Company as described pursuant to Section 5.3.

“Fuel Oil Supply Facilities” means Seller’s fuel oil storage tanks and related fuel oil pipelines, interconnection equipment, unloading facilities and metering equipment necessary to receive and store Acceptable Fuel Oil at the Facility and deliver such fuel oil for combustion within the Facility as described pursuant to Section 5.3.

“Fuel Oil Plan” has the meaning set forth in Section 5.3(D)4.

“GDPIPD” means the Gross Domestic Product Implicit Price Deflator, as published by the US Bureau of Economic Analysis.

“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 the Seller and sold to Company 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 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 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.

“Guarantor” shall have the meaning set forth in Section 11.1.

“GVTC Deferral Election” has the meaning set forth in Section 10.6(c)4.

“GVTC Deferral Requirements” means the applicable Transmission Tariff requirements for deferring the capacity testing that Seller must complete and report to the Transmission Authority for the Facility to be accredited by the Transmission Authority as a Capacity Resource. The current generation capacity deferral requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

“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).

“Heat Rate Adjustment” or “HRA” shall have the meaning set forth in Section 8.4.

“Higher Heating Value” or “HHV” means the higher heating value stated on Exhibit J-Heat Rate Testing.

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

“Indemnified Party” shall have the meaning set forth in Section 17.1.

“Indemnifying Party” shall have the meaning set forth in Section 17.1.

“Interconnection Agreement” means the separate agreement 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.

“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, Site Maps And Performance Detail and Site Maps to 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.

“Issuer” shall have the meaning set forth in Section 11.1.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Lender Consent” shall have the meaning set forth in Section 18.1.

“Liquidated Delay Damages” means [*Trade Secret Data Begins... ..Trade Secret Data Ends*] per MW of Facility Net Capability per Day.

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

“Local Resource Zone 1” has the meaning set forth in the Transmission Tariff.

“Locational Marginal Pricing” has the meaning set forth in the Transmission Tariff.

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

“Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

“Minimum Loading” means the minimum capacity the Facility can be scheduled for continuous operation according to Good Utility Practices and the Facility’s boiler manufacturer’s warranties and performance standards.

“MISO” means the Midcontinent Independent Transmission System Operator, Inc., a non-profit, Delaware Corporation, or successor organization.

“Monthly Net Heat Rate” means the hourly integrated actual net heat rates for the five production levels set forth in Exhibit J-Heat Rate Testing, resulting from the actual hourly fuel consumption and energy output of the Facility.

“MW” means megawatt or one thousand kW.

“MWh” means megawatt hours.

“Natural Gas Interconnection Facilities” means Seller’s, or Seller’s agent’s, pipeline, compression and related facilities required to receive, regulate and meter natural gas fuel and to transport such fuel from the Fuel Delivery Point to the Facility for the generation of electric energy under this PPA, including those facilities required to heat or filter/separate such natural gas fuel as Seller, in its sole judgment, deems necessary to install.

“Necessary Accredited Capacity Testing Results” means the capacity testing that Seller must complete and report to the Transmission Authority for the Facility to be accredited by the Transmission Authority as a Capacity Resource. The current accredited capacity testing requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

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

“Net Capability” or “NC” means 209.3 MW, which is the maximum Capacity Resource, in kilowatts (kW), that the Facility is expected to be able to produce and deliver to Company at the Point of Delivery.

“Network Integration Transmission Service” or “NITS” has the meaning set forth in the Transmission Tariff.

“Network Resource” means the amount of Facility capacity that has been designated as a “network resource” under the Transmission Tariff.

“Network Resource Interconnection Service” or “NRIS” means the interconnection of the Facility to the transmission system in a manner that would allow it to qualify as a Network Resource.

“Network Upgrade(s)” means the upgrades to any transmission facilities on the regional transmission system identified in the studies required pursuant to the Transmission Tariff that are necessary (i) to interconnect the Facility and (ii) to designate the Facility as a Network Resource.

“Nonconforming Gas” shall have the meaning set forth in Section 5.3(B).

“Notice(s)” shall have the meaning set forth in Section 20.1.

“On-Peak Months” means the months of January, February, June, July, August, September and December.

“Operating Committee” means one representative each from Company and Seller pursuant to Section 10.4.

“Operating Procedures” means those procedures developed pursuant to Section 10.4, if any.

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

“Operating Reserve” means the undispached portion of the Capacity Resource, which (i) is maintained by Company to provide for regulation, load forecasting error, forced and scheduled outages, and system reliability; and (ii) qualifies as operating reserve available to Company in accordance with the definitions and descriptions in the minimum operating reliability criteria, as such criteria are published or updated from time to time by ERO or Transmission Authority.

“Operating Standards” means the Company’s Operating Standards attached hereto as Exhibit H, as may be revised upon reasonable agreement of the Parties.

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

“Period Energy” shall have the meaning set forth in Section 8.1(A).

“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 Company.

“Planned Energy” means the amount of Contract Energy that is authorized to be generated in accordance with Seller’s Permits.

“Planning Year” shall mean the annual capacity accreditation period that the Company is subject to as determined by the Transmission Authority. Under the current Transmission Tariff the annual capacity accreditation period is June 1st to May 31st of the following year. A Planning Year is identified by the year in which it begins. For example, the 2018 Planning Year begins June 1, 2018.

“Point of Delivery” means the physical point within the operational authority of Transmission Authority at which Seller makes available to Company and delivers to Company the capacity and energy being provided by Seller to Company under this PPA as specified in Exhibit C-Facility Description, Site Maps And Performance Detail to this PPA.

“PPA” shall have the meaning set forth in the introductory paragraph hereto and includes all amendments hereto.

“Post-COD Damage Cap” means [*Trade Secret Data Begins... ...Trade Secret Data Ends*]/kW [*multiplied by the number of KW in the Net Capability*].

“Post-COD Security Fund” means [*Trade Secret Data Begins... ...Trade Secret Data Ends*]/kW [*multiplied by the number of KW in the Net Capability*].

“Pre-COD Damage Cap” means [*Trade Secret Data Begins... ...Trade Secret Data Ends*]/kW [*multiplied by the number of KW in the Net Capability*].

“Pre-COD Security Fund” means [*Trade Secret Data Begins... ...Trade Secret Data Ends*]/kW [*multiplied by the number of KW in the Net Capability*].

“Predicted Net Heat Rate” means the predicted net heat rate for the Facility, stated in Btu/kWh, Higher Heating Value (“HHV”), at Reference Conditions and adjusted to reflect the turbine manufacturer’s estimated degradation in equipment performance over the period of Commercial Operation from new and clean equipment conditions as specified in Exhibit J-Heat Rate Testing. The initial Predicted Net Heat Rate at new and clean equipment conditions and at Reference Conditions shall be the lesser of (i) [*Trade Secret Data Begins... ...Trade Secret Data Ends*] Btu/kWh HHV or (ii) the Actual Net Heat Rate resulting from the initial heat rate test of the Facility pursuant to Section 8.4. The Predicted Net Heat Rate degradation adjustment, as specified in Exhibit J-Heat Rate Testing, shall be used to adjust such initial Predicted Net Heat Rate, and thereby establish the Predicted Net Heat Rate, over the period.

“Price of Fuel” shall have the meaning set forth in Section 8.4.

“Ramp Rate Availability Factor” shall mean as set forth in Section 8.2.

“Reference Conditions” means the Facility operating in ambient conditions used to establish the Predicted Net Heat Rate to provide a reference for adjustment in determining the Actual Net Heat Rate from heat rate testing of the Facility pursuant to Section 8.4. The ambient Reference Conditions for the Facility shall be an ambient temperature of 95 degrees Fahrenheit (F), 30% ambient relative humidity, and standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation of 870 feet above mean sea level. The operating Reference Conditions for the Facility shall be the design parameters for the Facility generating equipment corrected to a Generator Power Factor of 1.0.

“Replacement Power Costs” means the costs incurred by Company, after the Commercial Operation Milestone, that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide, during any period, less the sum of any payments from Company to Seller under this PPA for such period that were eliminated as a result of such failure; *provided, however, that* the net amount shall never be less than zero for any period and if the calculation for any period results in a number less than zero, the Replacement Power Costs for such period shall be deemed to be zero. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours for the period, provided that the total calculation for the period achieves a positive number.

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

“A” is the product of (x) the number of MW of capacity derived by subtracting the number of MW of capacity that qualifies for capacity credit actually made available to Company from the Contract Capacity, and (y) the applicable market price for capacity made available to Company’s system plus any other associated costs and penalties arising out of Seller’s failure to perform;

“B” is the product of the number of MWh of energy purchased by Company associated with the replacement capacity and the applicable market price for energy delivered to Company’s system at a point nearest to the Point of Delivery for the hour plus any other associated costs and penalties arising out of Seller’s failure to perform; and

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

“D” is the sum of any payments from Company to Seller, under this PPA that would have been made but were eliminated as a result of such failure and any costs of fuel that can be reasonably avoided by Company to obtain replacement energy.

“Reported Availability” shall have the meaning set forth in Section 10.1(B)(2).

“Resource Adequacy Planning Year” shall be the Planning Year as set forth in the Transmission Tariff.

“Restricted Energy” shall have the meaning set forth in Section 7.3(C).

“ROFO” shall have the meaning set forth in Section 19.2.

“ROFO Notice” shall have the meaning set forth in Section 19.2.

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” means through and including the last date of a Resource Adequacy Planning Year immediately on or after the twentieth (20<sup>th</sup>) anniversary of the COD.

“Scheduled Maintenance Energy” shall have the meaning set forth in Section 8.1.

“Scheduled Outage/Derating” means a planned interruption/reduction of the Facility’s generation that both (i) has been coordinated in advance with Company, with a mutually agreed start date and duration, (ii) is required for inspection, or preventive or corrective maintenance, and (iii) complies with the Transmission Authority scheduling requirements as set forth in the Transmission Authority Business Practices Manual for Outage Operations.

“Security Fund” means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller’s performance under this PPA.

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

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

“State Regulatory Agency” means each of the Minnesota Public Utilities Commission, and the North Dakota Public Service Commission, and any successor agency thereof.

“State Regulatory Approval” means a final, non-appealable written order of the North Dakota Public Service Commission making the affirmative determination that Company’s execution of this PPA is prudent, reasonable, and in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudence review of Company’s performance and administration of this PPA.

“Step-In Rights” means Company’s right, but not the obligation, to assume control and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller’s rights, obligations, and interest under this PPA.

“Successful Start” means, in response to a request from Company to start the Facility, Seller’s start and operation of the Facility that: (i) achieves the Minimum Loading level for the requested operating configuration within 30 minutes after the time Company requested the turbine start to begin, and (ii) upon achieving the aforementioned Minimum Loading level,

generates continuously for a period of not less than one hour while synchronized to Transmission Authority's System at or above such Minimum Loading level without experiencing any abnormal operating conditions. If Seller initiates a start requested by Company, but fails to meet the above specified requirements for a Successful Start solely as a result of: (i) the cancellation of the start by Company within the applicable time period, (ii) a request from Company, within one (1) hour from Facility start, to shut down of the Facility, (iii) a Company or Company system performance failure, or (iv) a requirement of any Governmental Authority, then the initiated start shall nevertheless qualify as a Successful Start.

“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 Company at the Point of Delivery, and purchased by Company, pursuant to Sections 4.4 and 8.3, in order to perform testing of the Facility.

“Test Energy Fuel Cost” means the total, reasonably incurred, cost of the Acceptable Natural Gas delivered by Company for Seller's testing of the Facility including Company's actual commodity cost of the Acceptable Natural Gas delivered; any transportation, handling, natural gas storage and ancillary natural gas service costs reasonably incurred by Company associated with the Acceptable Natural Gas delivered; and all natural gas demand charges reasonably incurred by Company associated with the Acceptable Natural Gas delivered.

“Test Energy Rate” means *[Trade Secret Data Begins... ...Trade Secret Data Ends]/MWh*.

“Tolling Price” means *[Trade Secret Data Begins... ...Trade Secret Data Ends]/MWh* for the first Commercial Operation Year. For each successive Commercial Operation Year, the Tolling Price shall be adjusted by multiplying the previous year's Tolling Price by a fraction, the numerator of which is the most recently published quarterly value of the GDPIPD as of the start of such successive Commercial Operation Year, and the denominator of which is the most recently published quarterly value of the GDPIPD as of the start of the prior Commercial Operation Year, with the result rounded to the nearest \$0.01. For example, assuming the Facility's COD is June 1, 2019, then if the most recently published quarterly value of the GDPIPD as of *[Trade Secret Data Begins... ...Trade Secret Data Ends]* is 150.0, and the most recently published quarterly value of the GDPIPD as of *[Trade Secret Data Begins... ...Trade Secret Data Ends]* was 147.0, then the Tolling Price for the *[Trade Secret Data Begins... ...Trade Secret Data Ends]* Commercial Operation Year would be  $(150.0/147.0) \times [Trade Secret Data Begins... ...Trade Secret Data Ends] = [Trade Secret Data Begins... ...Trade Secret Data Ends] /MWh$ .

“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 (i) Midcontinent Transmission System Operator, Inc., a non-profit, Delaware corporation, or successor organization and (ii) 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 Capacity Accreditation Requirements” means the applicable Transmission Tariff requirements for accreditation of the capacity of new generation added to the Transmission Authority’s System. The current capacity accreditation requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

“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 (“OATT”) of the Transmission Authority, as amended from time to time. The current Transmission Tariff is the MISO OATT.

“Turbine Start Payment” shall have the meaning set forth in Section 8.5.

“Turbine Start Price” means *[Trade Secret Data Begins... ...Trade Secret Data Ends]* per Successful Start for the first Commercial Operation Year. For each successive Commercial Operation Year, the Turbine Start Price shall be adjusted by multiplying the previous year’s Turbine Start Price by a fraction, the numerator of which is the most recently published quarterly value of the GDPIPD as of the start of such successive Commercial Operation Year, and the denominator of which is the most recently published quarterly value of the GDPIPD as of the start of the prior Commercial Operation Year, with the result rounded to the nearest \$0.01. For example, assuming the Facility’s COD is June 1, 2019, then if the most recently published quarterly value of the GDPIPD as of *[Trade Secret Data Begins... ...Trade Secret Data Ends]* is 150.0, and the most recently published quarterly value of the GDPIPD as of *[Trade Secret Data Begins... ...Trade Secret Data Ends]* was 147.0, then the Turbine Start Price for the *[Trade Secret Data Begins... ...Trade Secret Data Ends]* Commercial Operation Year would be  $(150.0/147.0) \times [Trade Secret Data Begins... ...Trade Secret Data Ends]$  = *[Trade Secret Data Begins... ...Trade Secret Data Ends]* per Successful Start.

“UCP” shall have the meaning set forth in Exhibit G-1, FORM OF LETTER OF CREDIT.

“Upstream Pipeline” means Northern Natural Gas, the interstate natural gas pipeline interconnecting to the Facility at the Natural Gas Interconnection Point and providing Acceptable Natural Gas to the Facility in accordance with its applicable tariff.

**EXHIBIT B**  
**CONSTRUCTION MILESTONES**

<b>Construction Milestone</b>	<b><i>Outcome</i></b>
<b><i>[Trade Secret Data Begins...</i></b>	
	Seller and all required counterparties shall have executed major procurement contracts, the Construction Contract(s) and the Interconnection Agreement needed to commence construction of the Facility.
	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
	Seller shall have laid the foundation for generating facilities.
	The turbine(s)/generator(s)/step-up transformer shall have been delivered to, and installed at, the Site.
	All fuel interconnection facilities have been constructed and are operational.
	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.
	Start-up testing of the Facility commences.
	Capacity Resource Milestone
	Commercial Operation Milestone.
<b><i>Trade Secret Data Ends]</i></b>	
<i>June 1, 2018</i>	Commercial Operation Date

## EXHIBIT C

### FACILITY DESCRIPTION, SITE MAPS AND PERFORMANCE DETAIL

The Facility shall be located on Seller's existing Cannon Falls facility in Goodhue County, Minnesota and shall be identified as Seller's Unit 3 Generation Facility. The address of the Facility is 525 North Park Drive Cannon Falls MN 55009.

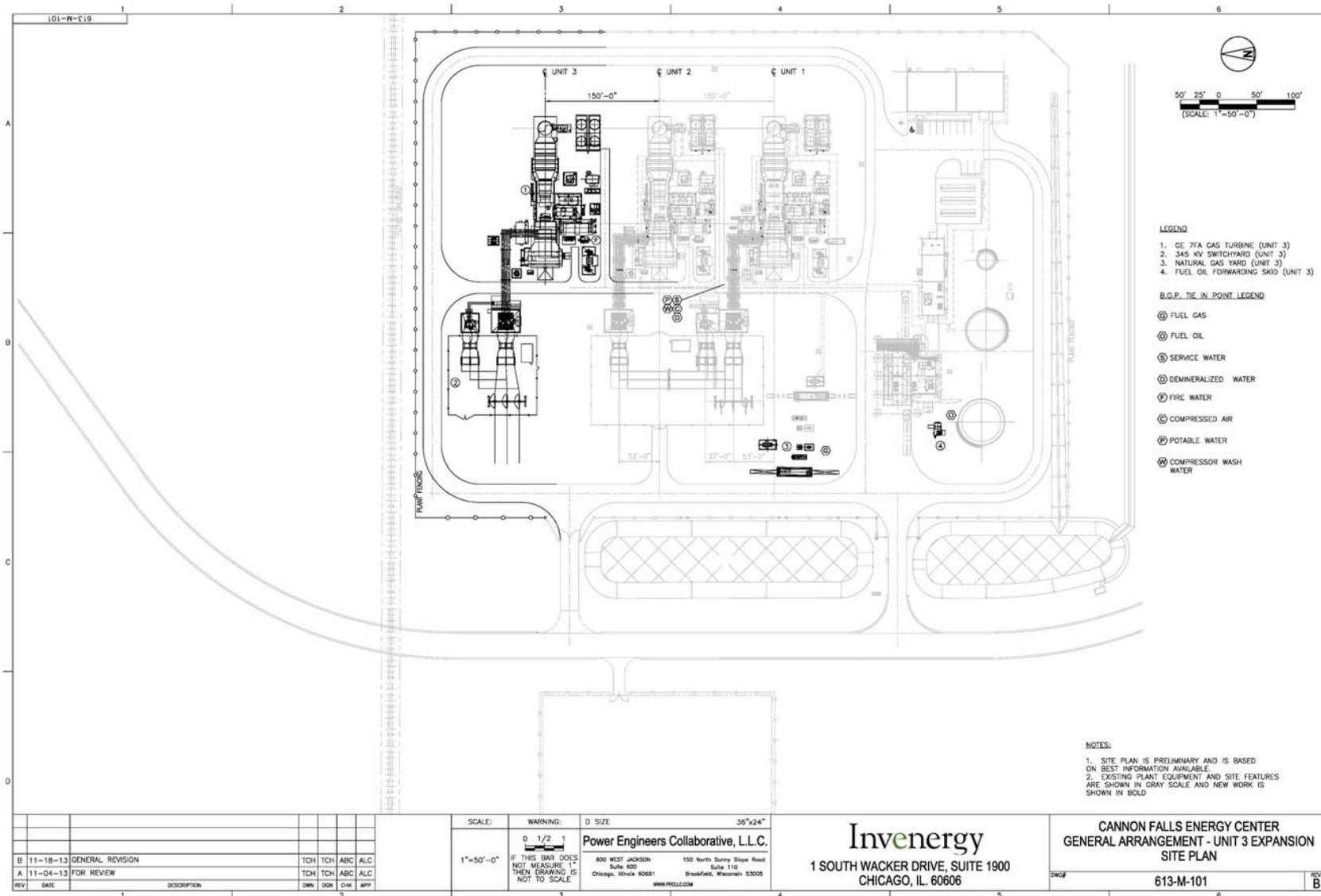
The Facility will be a dual fueled simple cycle combustion turbine peaking plant consisting of the following major components:

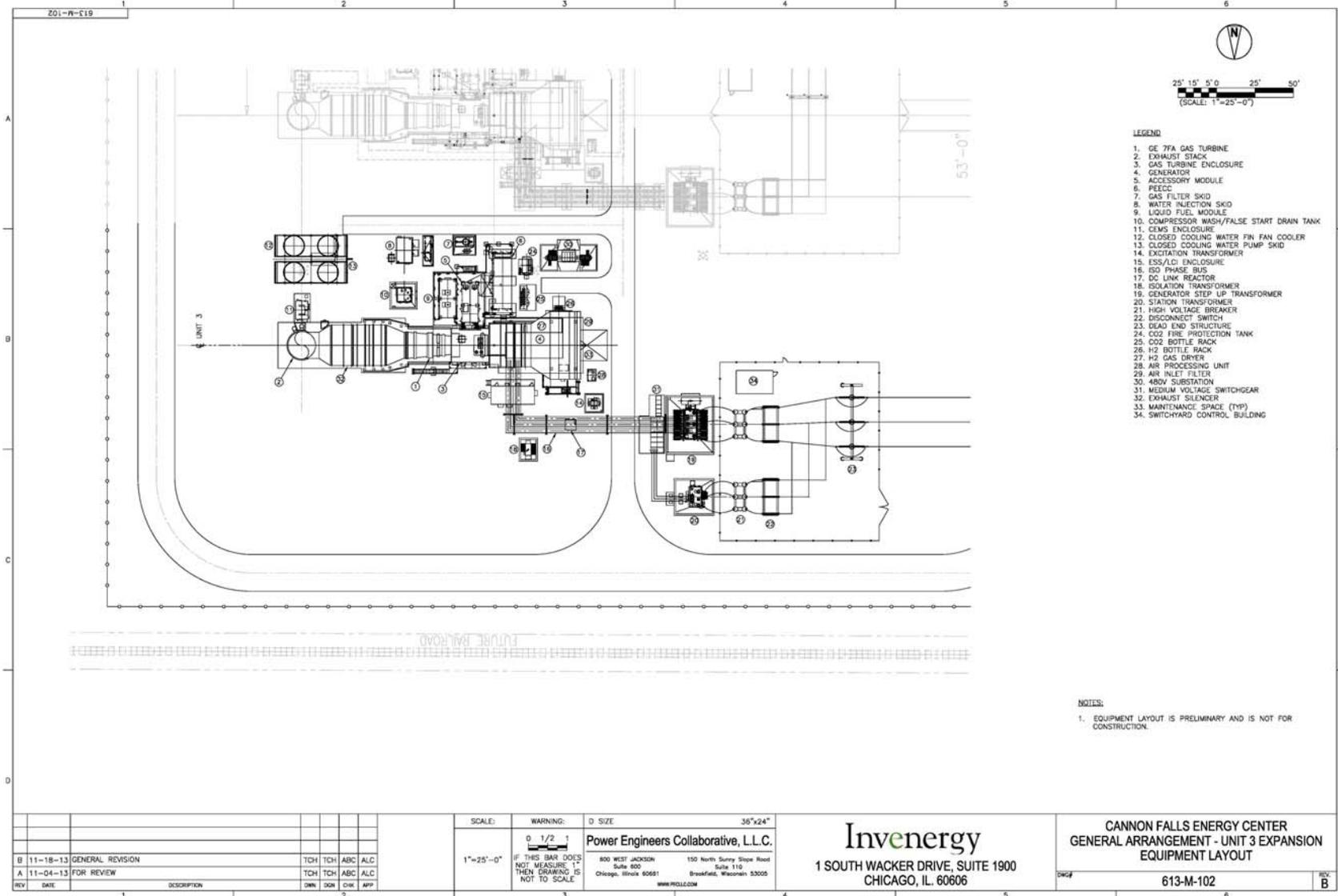
1. GE combustion turbine generator 7FA.05 complete with associated auxiliaries,
2. Combustion turbine inlet air cooling systems,
3. No. 2 fuel oil receiving, storage and transfer facilities,
4. Natural gas heating and filtering facilities,
5. Water treatment system (installed or portable) and water storage facilities,
6. Wastewater treatment and disposal facilities,
7. Fire protection system,
8. Control systems for combustion turbine/generator and balance of plant,
9. Building(s) housing control room, maintenance shop and administrative facilities,
10. Generator step-up transformer(s),
11. Station auxiliary transformers,
12. Facility electric distribution systems,
13. Additional ancillary or augmentation equipment installed by Seller.

The Facility shall:

- \* have panel space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the PPA;
- \* have communication circuits from the Facility to the EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Company;
- \* have equipment and software necessary to receive, accept and react to an AGC signal from the Company's SCADA system;
- \* be individually linked to Seller's information system;
- \* be capable of sending real time data and OPC interface to Company's plant information system (OPC is the Object Linking and Embedding for Process Control interface);
- \* be capable of transmitting fuel flows for generation and other Facility operating information to Company's EMCC on a real-time basis;
- \* be capable of remote starts and stops by Company's EMCC;
- \* be capable of starting and fully operating on all applicable fuel types;
- \* be capable of dispatching Minimum Loading levels with AGC.







REV	DATE	DESCRIPTION	DNW	DNK	DNK	APP
B	11-18-13	GENERAL REVISION	TCH	TCH	ABC	ALC
A	11-04-13	FOR REVIEW	TCH	TCH	ABC	ALC

SCALE: 1"=25'-0"

WARNING: IF THIS BAR DOES NOT MEASURE, THEN DRAWING IS NOT TO SCALE.

D SIZE 36"x24"

Power Engineers Collaborative, L.L.C.

800 WEST JACKSON Suite 600 Chicago, Illinois 60681

150 North Sunny Slope Road Suite 115 Brookfield, Wisconsin 53005

www.PECOLL.COM

**Invernergy**

1 SOUTH WACKER DRIVE, SUITE 1900  
 CHICAGO, IL. 60606

CANNON FALLS ENERGY CENTER  
 GENERAL ARRANGEMENT - UNIT 3 EXPANSION  
 EQUIPMENT LAYOUT

613-M-102

*[Trade Secret Data Begins...*

*...Trade Secret Data Ends]*

EXHIBIT D

NOTICES AND CONTACT INFORMATION

<b>Company</b>	<b>Seller</b>
<p><b>Notices:</b></p> <p>Tim Kawakami            Director, Purchased Power            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-2748            Email: tim.kawakami@xcelenergy.com            Fax: 303-571-2913</p> <p>Jeff Klein            Manager, Structured Purchases            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-2732            Email: jeffrey.klein@xcelenergy.com            Fax: 303-571-2913</p> <p>Jeanette Schuck            Purchased Power Analyst            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-7428            Email: jeanette.r.schuck@xcelenergy.com            Fax: 303-571-2913</p>	<p><b>Notices:</b></p> <p>Invenergy Cannon Falls II LLC            c/o Invenergy LLC            One South Wacker Drive, Suite 1900            Chicago, Illinois 60606            Phone: (312) 224-1400            Fax: (312) 224-1444</p> <p>Attn: Asset Manager – Invenergy Cannon Falls II LLC            Attn: General Counsel – Invenergy Cannon Falls II LLC</p>
<p><b>Operating Committee Representative:</b></p> <p>Jeff Klein            Manager, Structured Purchases            Xcel Energy Services Inc.            1800 Larimer Street, Suite 1000            Denver, CO 80202            Phone: 303-571-2732            Email: jeffrey.klein@xcelenergy.com            Fax: 303-571-2913</p>	<p><b>Operating Committee Representative:</b></p> <p>Asset Manager            Invenergy Cannon Falls II LLC            c/o Invenergy LLC            One South Wacker Drive, Suite 1900            Chicago, Illinois 60606            Phone: (312) 224-1400            Fax: (312) 224-1444</p>

<p><b>Alternate:</b></p> <p>Jeanette Schuck Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-7428 Email: jeanette.r.schuck@xcelenergy.com Fax: 303-571-2913</p>	<p><b>Alternate:</b></p>
<p><b>Real-Time Contact Information</b></p> <p>Real-time Communications Contact Real-time Generation Dispatch desk (24 hour coverage) Mark Schultz, or Shift Operator Phone: 303-571-7426 Fax: 303-571-7305 E-mail: mark.schultz@xcelenergy.com</p> <p>Transmission Operation Contact Position: Real Time Transmission Operations Todd Sarkinen, or Shift Operator Phone: 612-321-7432 FAX: 303-571-7305 E-mail: todd.k.sarkinen@xcelenergy.com</p>	<p><b>Real-Time Contact Information</b></p> <p>CFEC Operations Phone: (507) 263-4612 FAX: (507) 263-4640</p>

EXHIBIT E

INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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Type of Insurance	Minimum Limits of Coverage
Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.

Builder's Risk	Replacement value of the Facility.
----------------	------------------------------------

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$5,000,000 each occurrence.
------------------------------------	------------------------------

All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
--	--

All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
---------------------------------	---

Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

**EXHIBIT F**

**SELLER'S PERMITS**

Site Permit for Large Electric Generating Facility

Modification to Existing Air Quality Permit No. 04900088-01

NPDES/SDS General Stormwater Permit for Construction Activity

FAA Notice of Proposed Construction or Alteration

Building Permit as required by local codes

For Any Related Transmission Line:

Routing Permit

NPDES/SDS General Stormwater Permit for Construction Activity

**EXHIBIT G**

**FORM OF SECURITY DOCUMENTS**

EXHIBIT G-1

FORM OF LETTER OF CREDIT

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit  
No: \_\_\_\_\_

Beneficiary:

Date of Issuance: \_\_\_\_\_

Initial Expiration Date: [Must be at least one year after date of issuance]

Applicant:

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of USD \$ \_\_\_\_\_ ( \_\_\_\_\_ U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary and the signatory must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at \_\_\_\_\_ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

Issuer acknowledges that this Letter of Credit is issued pursuant to the provisions of that certain [Title of Agreement] between Beneficiary and Applicant dated as of \_\_\_\_\_, 20\_\_ (as the same may have been or may be amended from time to time, the "\_\_\_\_\_"). Notwithstanding any reference in this Letter of Credit to the \_\_\_\_\_ or any other documents, instruments or agreements, or references in the \_\_\_\_\_ or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer agrees that it will affect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (The "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: \_\_\_\_\_  
Authorized Signature

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

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

**EXHIBIT "A"**  
**TO LETTER OF CREDIT**

**SIGHT DRAFT**

Draft Number \_\_\_\_\_  
\$ \_\_\_\_\_

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of  
USD \$ \_\_\_\_\_ ( \_\_\_\_\_ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].  
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No.  
\_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_

[Name of Beneficiary to be inserted]

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

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

Its Authorized Representative and [Title or  
Other official Capacity to be inserted]

Account: [Applicant to be inserted]

**EXHIBIT "B"**  
**TO LETTER OF CREDIT**

**FORM OF TRANSFER REQUEST**

Irrevocable Standby Letter of  
Credit No. \_\_\_\_\_

Current Beneficiary:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

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

[Name of Beneficiary]

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

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

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

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

**EXHIBIT G-2**

**FORM OF GUARANTY**

This Guaranty is executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (“Guarantor”), in favor of \_\_\_\_\_ (“Company”), in connection with the performance by \_\_\_\_\_, a \_\_\_\_\_ [limited liability company] (“Seller”) of a Power Purchase Agreement dated \_\_\_\_\_, 20\_\_ between Seller and Company (the “PPA”).

- RECITALS -

A. Seller is planning to construct, own, and operate a wind power electric generation facility having Nameplate Capacity of approximately \_\_\_\_ MW to be located in \_\_\_\_\_ County, \_\_\_\_\_ (the “Facility”).

B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor’s maximum liability under this Guaranty shall be limited to (\$US \_\_\_\_\_), plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company.

3. Rights of Company. Guarantor hereby grants to Company, in Company’s discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor’s duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company;

- Obligations;
- (d) any duty of Company to protect or not impair any security for the
  - (e) the benefit of any laws limiting the liability of a surety;
  - (f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Project, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
  - (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor hereby agrees to pay to Company, upon demand, and in addition to the maximum liability set forth in Section 3 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of \_\_\_\_\_ without regard to the principles of conflicts of law thereof.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company as provided in the PPA

(b) if to Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Attn:*  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

*with a copy to:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Attn:*  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.



**EXHIBIT G-3**

**FORM OF ESCROW AGREEMENT**

This Escrow Agreement ("Agreement") is entered into and effective this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and among \_\_\_\_\_ ("Seller"), \_\_\_\_\_ ("Company") and \_\_\_\_\_ ("Escrow Agent").

RECITALS

WHEREAS, Seller and Company are parties to a Renewable Energy Purchase Agreement dated \_\_\_\_\_ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility in \_\_\_\_\_ (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and

WHEREAS, Section 11.1 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA up to a total of \$\_\_\_\_\_ (the "Escrow Total"); and

WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that account.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.
2. Delivery of Funds to Escrow Agent.
  - a. Seller shall deposit with Escrow Agent an amount equal to \$\_\_\_\_\_ on or before \_\_\_\_\_ on or before the date required by the PPA.
  - b. Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by

Escrow Agent of the Escrow Funds pursuant to the terms hereof, fully satisfies Seller's initial obligations under Section 11.1 of the PPA to establish and maintain a security fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds only in accordance with Section 4.

c. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(b).

3. Investment. Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.
4. Distributions of Escrow Funds by Escrow Agent. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with Section 4.
5. Distributions.
  - a. Escrow Interest. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.
  - b. Release at End of Term; Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the

PPA in form and substance as required by the PPA and in the full amount of the Escrow Total to secure Seller's obligations to Company prior to the expiration or termination of the PPA, the Escrow Funds and any Escrow Interest shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.

- c. Escrow Claims by Company. During the term of the PPA, Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts owing to Company pursuant to the PPA that are not the subject of a good faith dispute, including any damages due to Company and any amounts for which Company is entitled to indemnification under the PPA. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the first business day after it receives the Claim Certificate.
  - d. Regulations of the Comptroller of the Currency. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.
6. Rights and Obligations of Escrow Agent.

- a. Duties.
  - i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.
  - ii. This Agreement may be terminated only by a writing executed by all of Company, Seller and Escrow Agent.
  - iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the

PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) business days of the scheduled expiration or termination date, and without regard to any objection asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.

- iv. Escrow Agent and Seller will provide immediate notice to Company in the event that (i) the amount of Escrow Funds at any time falls below \$ \_\_\_\_\_ prior to the time the Second Deposit is due or (ii) the amount of Escrow Funds at any time falls below the Escrow Total after the Second Deposit is due.
- b. No Other Duties. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. Escrow Fee. Escrow Agent shall be entitled to receive solely from Seller (a) compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.
- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
- e. Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with Section 4, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by

Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.

- f. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.
  - g. Interpleader. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
7. Termination of Agreement. This Agreement shall continue through the date on which all obligations of Seller under the PPA have been fully satisfied or all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.
8. Taxes. Taxes on distributions of the Escrow Funds shall be paid by Seller.
9. Notices. All notices and other communications (including all certificates delivered pursuant to Section 4) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by telecopier or facsimile transmission or sent to the applicable parties at their respective addresses indicated in this Section 9 by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Seller, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

If to Company:

Manager, Structured Purchases  
Xcel Energy Services Inc.  
1800 Larimer Street, Suite 1000  
Denver, CO 80202  
Phone: (303) 571-7714  
Fax: (303) 571-7002

If to Escrow Agent, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by telecopier or facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 8, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 8, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

10. Miscellaneous.

- a. Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- c. Integration; Amendment. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such

amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.

- d. Governing Law. The Agreement is made in the State in which the Facility is located and shall be interpreted and governed by the laws of such State or the laws of the United States, as applicable.
- e. Good Faith and Fair Dealing; Reasonableness. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action by a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- f. Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- g. Cooperation. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- h. Execution in Counterparts and By Facsimile Transmission. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

**Dated:** \_\_\_\_\_(Seller)

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

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

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

**Dated:** \_\_\_\_\_(Company)

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

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

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

**Dated:** \_\_\_\_\_(Escrow Agent)

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

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

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

**EXHIBIT A TO ESCROW AGREEMENT**

*ESCROW CLAIM CERTIFICATE*

TO: \_\_\_\_\_

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of \_\_\_\_\_, 2010, by and among Company, Seller and you, as Escrow Agent (the "Escrow Agreement"). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Company hereby certifies that Company is entitled to receive Escrow Funds in the amount of \$\_\_\_\_\_ pursuant to the terms of the Escrow Agreement and the PPA, due to the following (generally): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to distribute, on the first business day after your receipt of this Certificate, the sum of \$\_\_\_\_\_ from the Escrow Funds to the undersigned by wire transfer to the following account:

Bank: \_\_\_\_\_  
Account: \_\_\_\_\_  
Routing Number: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_\_

**(Company)**

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

## EXHIBIT H

### OPERATING STANDARDS

Dispatchability Requirements. The Facility shall be capable of providing:

1. Automatic Generation Control (AGC) from the EMCC;
2. A minimum regulating range of 15 MW or 40% of the capacity available at the time the Facility is dispatched, whichever is greater, in automatic load regulation capacity;
3. Continuous response to EMCC pulsing at a minimum rate of five percent of the capacity available at the time per minute over the regulating range of increasing MW of the Facility and five percent of the capacity available at the time per minute over the regulating range of decreasing MW of the Facility; and
4. A low load point for the regulating range of the Facility, which is equal to or less than the Minimum Loading level for operation with AGC.

Operations Requirements. The following operations requirements will apply throughout the Term.

5. Operations Log. Seller shall maintain an hourly operation log that identifies real-time operating information including: current level of Facility capacity availability, planned and unplanned maintenance outages or deratings, circuit breaker operation and any other significant events related to the operation of the Facility. Any changes in the generating status or availability of the Facility shall be reported immediately to the EMCC operator by telephone.

6. Telemetry/Generation Load Control Requirements. Company shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from the Facility demark to the EMCC. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by Company. The telemetry and generation load equipment is to provide the following: instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by Company. Seller shall install at the Facility MW and MVAR indicating equipment that reflects the identical MW and MVAR values as those telemetered to the EMCC.

7. Periodic Verification of Compliance. Subsequent to the initial verification of AGC compliance as provided for above, Company shall have the right, at any time and without prior notice to Seller, to verify the continued compliance of such requirements. The subsequent tests will be performed by NAP on an as needed basis with a frequency of not greater than every two years. Seller will be notified of test results for any noncompliance.

8. Automatic Generation Control Availability. Company will monitor Seller's ability to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during 100% of the Facility's on-line hours (excluding periods of failure of Company's telemetry, during which Seller will manually be dispatched by Company).

9. Verification Testing of Ramp Rate Availability Factor. Company shall have the right to routinely conduct, from the EMCC, verification testing of the Facility Ramp Rate Availability Factor (RAF), as described in Section 8.2, without prior notice to Seller. RAF verification testing shall be conducted over the minimum regulating range of the Facility, beginning at or below the applicable minimum load of such minimum regulating range and ending at the maximum reported available capacity during the hour of the test (the "specified ramp range"), taking into consideration non-standard ambient conditions which exist at the time of the test. The timed portion of the test used to determine the increasing ramp rate shall begin when the output level of the Facility is at the minimum load point of the specified ramp range and shall end when such output is one MW less than the maximum load point of the specified ramp range. The timed portion of the test used to determine the decreasing ramp rate shall begin when the output level of the Facility is at the maximum load point of the specified ramp range and shall end when such output is one (1) MW greater than the minimum load point of the specified ramp range. The calculated ramp rate for determining RAF shall be the average of the increasing and decreasing ramp rates for the specified ramp range. Company will verify compliance on an as needed basis with a frequency of not greater than two years.

## EXHIBIT I

### 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 Company 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 Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company 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 Section 12.1 of the PPA, plus an additional 30 Days beyond Seller's cure period to cure such Event of Default; *provided, however*, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional 30-Day cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.
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 paragraph 6, Company 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 Company 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 J

### HEAT RATE TESTING

(A)The Actual Net Heat Rate shall be determined by heat rate testing by Seller at the Net Capability for the Facility, using Acceptable Natural Gas, at an ambient temperature of not less than 70 degrees F, with, if applicable, cooling of intake air,

(B)The results of such testing shall be adjusted to Reference Conditions using the final design correction curves for the Facility (specifically, the design correction curves reflecting expected Facility equipment performance after all equipment tuning and adjustments have been completed) to determine the Actual Net Heat Rate. For the purposes of heat rate testing and determination of the Actual Net Heat Rate, (i) fuel input shall be measured at the Fuel Delivery Point and (ii) electric output shall be measured at the Point of Delivery. Testing shall be conducted over a continuous period until operation of the Facility is held constant for up to one hour. The Facility will be operated in full compliance with all Permits and Applicable Law throughout the test, with all auxiliary equipment (including thermal export), used during normal operation of the Facility. Seller may be required to provide operational records to be used to substantiate the normal mode of operation. Testing shall be performed in accordance with the current ASME test codes applicable to the Facility, or in accordance with other mutually agreed upon test codes/procedures.

(C)Each Party shall have the right to request and schedule a heat rate test on a Business Day, not more often than once during any calendar year and upon Notice to the other Party at least 120 Days prior to the Day of such test, pursuant to the procedures set forth in this Section. Seller shall perform the heat rate test under Company observation and concurrence. Company shall have the right of access to all areas of the Facility necessary to observe and verify testing activities. Company shall have the right to install, during the heat rate test and at Company's expense, any temporary, redundant test equipment complying with the governing test codes that Company deems necessary for the purpose of verifying test measurements obtained by, or on behalf of, Seller.

(D)Seller shall prepare and submit to Company for review and approval, at least 120 Days prior to each heat rate test, the proposed heat rate test procedure. Such test procedure shall include (i) specification of the governing test codes, (ii) the extent to which the test codes will be followed, (iii) provisions for testing, including collection of test data, (iv) any deviations from the test code, and (v) the methodology for calculating test results, including the planned method of adjusting the test net heat rate to each of the Reference Conditions, and (v) the configuration and operation of the plant equipment (i.e. specific firing curve, turbine governor valve position, use of duct burners, foggers, chillers, etc.). Seller shall be responsible for the full scope of heat rate testing, including furnishing the test instrumentation, instrument calibration, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report.

Electronic and paper copies of the raw test data shall be provided to Company at the conclusion of each test run. Immediately following each heat rate test Seller shall provide to Company all raw test data. Within 60 Days following performance of each heat rate test, Seller

shall provide to Company for review and approval (i) calculations, fuel analyses and a final test report, in written and electronic format, (ii) all as-built equipment specifications, correction curves, equations and other information necessary for review of the heat rate test results that have not been previously submitted to Company, and (iii) a fully functioning electronic model, in Gate-cycle or a similar program, that Company can use to verify Seller's calculations of, and adjustments to, test data. The final test report shall include clear and complete explanations of the calculations resulting in the test net heat rate and the adjustment of the test net heat rate to each of the Reference Conditions. Uncertainty, as defined in the ASME power test codes, shall not be used to adjust heat rate test results.

In connection with any heat rate test, at the Seller's cost, Company may also require Seller to perform heat rate testing at up to five Company specified load points for each possible Facility operating configuration (i.e. with and without supplemental fuel firing) for the sole purpose of developing an accurate dispatch heat rate curve for each possible Facility operating configuration.

Seller shall notify Company of any generation equipment tuning and adjustment that may impact the heat rate performance of the Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test. Upon such notification, Company may require Seller to perform additional heat rate testing of the Facility and provide new correction curves that reflect the actual post-tuning condition of the Facility equipment.

Seller shall perform the initial heat rate test on or before the first August 31<sup>st</sup> following the Commercial Operation Date. If the initial heat rate test is performed after the Commercial Operation Date, the Actual Net Heat Rate resulting from such initial heat rate test shall apply retroactively from the Commercial Operation Date for the purposes of determining the Heat Rate Adjustment pursuant to Section 8.4. The heat rate test performed by Seller, or on behalf of Seller, prior to Seller's acceptance of the Facility and auxiliary equipment may constitute the initial heat rate test, *provided, however, that* such test is performed in accordance with all the requirements for heat rate testing set forth in this Section. Notwithstanding the foregoing, if Seller elects to establish such Facility equipment acceptance heat rate test as the initial heat rate test under this PPA, the requirement that the heat rate test be performed at an ambient temperature of not less than 70 degrees F shall be waived for such initial heat rate test.

**EXHIBIT K**

**FUEL QUALITY SPECIFICATIONS**

Acceptable Natural Gas – per attached Upstream Pipeline Tariff

Acceptable Fuel Oil – per specifications below:

Kinetic Viscosity, cSt, 100 deg F, min	0.5
Kinetic Viscosity, cSt, 100 deg F, max	5.8
Distillation Temperature, 90% point, deg F, max	650
Pour Point, deg F, max	-25
Sulfur, Weight %, max	0.05
Carbon Residue, Weight %, max	1
Ash, ppm, max	50
Sodium plus Potassium, ppm, max	1
Lead, ppm, max	1
Calcium, ppm, max	2
Vanadium, ppm, max	0.5
Filterable Dirt, mg/100 ml, max	4
Water and Sediment, Volume %, max	0.1

Northern Natural Gas Company  
FERC Gas Tariff  
Sixth Revised Volume No. 1

Original Sheet No. 281

GENERAL TERMS AND CONDITIONS

44. QUALITY

All gas to be received from Shipper into the Northern pipeline system shall conform to the following specifications:

- a) The gas shall be commercially free from objectionable odors, solid matter, dust, gums and gum-forming constituents, or any other substance which might interfere with the merchantability of the gas, or cause injury to or interference with proper operation of the lines, meters, regulators, or other appliances through which it flows.
- b) Oxygen – less than or equal to 0.2% by volume.
- c) Hydrogen sulfide – less than or equal to 1/4 grain/Ccf.
- d) Total Sulphur – less than or equal to 20 grains/Ccf.
- e) Carbon Dioxide – less than or equal to 2.0% by volume.
- f) Water – less than or equal to 6 pounds/MMcf.
- g) Heating Value – greater than or equal to 950 Btu/Cubic Foot.
- h) The temperature shall be less than or equal to 120 degrees Fahrenheit.

If any gas received by Northern shall fail at any time to conform to the specifications set forth above, Northern may refuse to accept delivery pending correction by the other party. Northern may, on a basis that is not unduly discriminatory, elect to accept gas which fails to meet specifications.

**EXHIBIT L**

**MAINTENANCE REQUIREMENTS**

(A) Seller shall provide a schedule of the expected Scheduled Outages/Deratings for the Facility (“Maintenance Schedule”) for the first Commercial Operation Year on or before December 1 of the year prior to COD. Thereafter, on or before December 1 of each successive year, Seller shall submit an annual Maintenance Schedule for the next successive Commercial Operation Year; each scheduled outage shall include the start time and expected duration of the outage. On or before December 1st, and every December 1<sup>st</sup> thereafter, Seller shall also supply a long-term Maintenance Schedule that will encompass the following four Commercial Operation Years. Any change in the annual Maintenance Schedule, by either Party, shall be furnished to the other Party with advance notice. Minimum advance notice of any change in or extension of the Maintenance Schedule is as follows based on the original total duration:

<u>Scheduled Outage Expected Duration</u>	<u>Advance Notice Required</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major overhauls (over 5 Days)	at least 90 Days

(B) Company shall provide Seller the opportunity to use 360 MWh of Scheduled Maintenance Energy (“SME”) per MW of Net Capability during each Commercial Operation Year as a credit towards Seller’s Capacity Availability Factor (“CAF”) pursuant to the payment calculation specified in Section 8.1, *provided, however, that* such SME is scheduled in advance with Company pursuant to this Article and approved in writing by Company prior to Seller’s use of such SME. If Seller uses less than 360 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year unused SME as additional credit towards Seller’s CAF during the next Commercial Operation Year, *provided, however, that* such SME carried over shall also be scheduled in advance with Company pursuant to this Article and approved in writing by Company prior to Seller’s use of such SME, and *provided, further, that* the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second Commercial Operation Year and including carry over SME, shall not exceed 672 MWh of SME per MW of Net Capability for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

(C) Seller shall also provide Company with any other required outage/derating information in accordance with current MISO requirements.

## EXHIBIT M

### ESC EVENT ADJUSTMENT

(A) If during some or all of an ESC Event the Facility either (i) is fully available, (ii) is deemed fully available pursuant to Section 8.1 and this Section, and/or (iii) is subject to a scheduled maintenance outage eligible for SME under Section 10.2 (an “SME Outage”), Seller shall be entitled to a positive ESC Adjustment with respect to such ESC Event in the amount of  $NC \times DE \times ABF$ , where consistent with NERC Standard EOP-002-3, or its replacement, Capacity and Energy Emergencies:

NC = the Net Capability of the Facility expressed in kW;

DE = the number of hours during the ESC Event, during which the Facility is fully available (excluding the number of hours (if any) during the ESC Event when the Facility was subject to an SME Outage); and

ABF = the applicable Availability Bonus Factor:

EEA-1: \$0.005

EEA-2: \$0.015

EEA-3: \$0.050

(B) If some or all of the Facility is not fully available (other than due to SME Outages) during some or all of an ESC Event, Seller shall be subject to a negative ESC Adjustment with respect to such ESC Event in the amount of  $ANC \times DO \times ARF$ , where:

ANC = the Affected Net Capability of the Facility (i.e. the portion of the Net Capability subject to the outage), expressed in kW;

DO = the hours during which the Net Capability of the Facility is not fully available due to causes other than SME Outages; and

ARF = the applicable Availability Reduction Factor:

EEA-1: (\$0.025)

EEA-2: (\$0.075)

EEA-3: (\$0.250)

*provided, however, that* with respect to each Commercial Operation Year, in no event shall aggregate net ESC Event Adjustment under this Section exceed:

(i) an amount equal to 200 hours  $\times$  EEA-1  $\times$  NC, with respect to EEA-1 Events during such Commercial Operation Year;

(ii) an amount equal to 50 hours  $\times$  EEA-2  $\times$  NC, with respect to EEA-2 Events during such Commercial Operation Year; or

(iii) an amount equal to 25 hours x EEA-3 x NC, with respect to EEA-3 Events during such Commercial Operation Year.

(C) In determining whether the Facility is “fully available” for purposes of an ESC Event (in contrast to Section 8.1)

1. the Facility will not be de-rated for ambient conditions,
2. if Acceptable Natural Gas Fuel is available on an interruptible basis at the Fuel Delivery Point, the Facility must be available on Acceptable Natural Gas, and
3. if Acceptable Natural Gas is not available on an interruptible basis at the Fuel Delivery Point, the Facility must be available on both Acceptable Natural Gas and Acceptable Fuel Oil.

# **SOLAR ENERGY PURCHASE AGREEMENT**

**BETWEEN**

**NORTHERN STATES POWER COMPANY,  
A MINNESOTA CORPORATION**

**AND**

**AURORA DISTRIBUTED SOLAR, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**



**- [date] -**

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**SOLAR ENERGY PURCHASE AGREEMENT  
BETWEEN  
NORTHERN STATE POWER COMPANY, AND  
AURORA DISTRIBUTED SOLAR, LLC**

This Solar Energy Purchase Agreement (this "PPA") is made this \_\_\_\_\_ (\_\_\_\_) day of September 2014 ("Effective Date") by and between (i) **NORTHERN STATES POWER COMPANY**, a Minnesota corporation with a principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota 55401 ("Company"), and (ii) **AURORA DISTRIBUTED SOLAR, LLC**, a Delaware limited liability company with a principal place of business at One Tech Drive, Suite 220, Andover, MA 01810 ("Seller"). Company and Seller are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Seller will either directly or through one or more Affiliates, develop, design, construct, interconnect, own, operate and maintain a multi-phase, multi-site, utility-scale solar energy generation facility with a projected total project size of AC 100 MW in aggregate nameplate capacity and expected to initially achieve 71 MW of Accredited Capacity based upon current rules and methodologies for calculating such capacity;

WHEREAS, Seller participated in Docket No. E-002/CN 12-1240 and proposed its distributed solar project; consisting of approximately 24 sites along Company's transmission or distribution lines, each site with a capacity of approximately 2 to 10 MW, for a Facility of up to AC 100 MW in aggregate nameplate capacity;

WHEREAS, on May 23, 2014, the Minnesota Public Utilities Commission issued "Order Directing Xcel to Negotiate Draft Agreement with Selected Parties" to order Company to negotiate this PPA with Seller and submit this PPA to the Minnesota Public Utilities Commission for review (the "Order");

WHEREAS, each of Seller's distributed solar sites will execute separate Interconnection Agreements in accordance with the Distribution Tariff to provide for the interconnection of each such site to the Distribution Authority's Distribution System; and

WHEREAS, Seller desires to sell and deliver and Company desires to accept and receive certain products and services delivered from Seller's Facility to the designated Points 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, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.

(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 a 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 any Project Phase or the Facility or inject power into the Distribution System. Seller shall, to the extent required for the applicable Project Phase, contract for interconnection services in accordance with the Distribution Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract with the Distribution Authority pursuant to the Distribution Tariff and the Interconnection Agreement and Distribution Tariff do not create or modify the Parties' rights and obligations under this PPA. For purposes of this PPA, Seller agrees that the Distribution Authority shall be deemed to be a separate and unaffiliated contracting party despite that such Distribution Authority is Company or an Affiliate of Company.

(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 is a separate contract and that the House Power contract does not create or modify the Parties' rights and obligations under this PPA. For purposes of this PPA, Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party despite that Local

Provider is Company or an Affiliate of Company. 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**

This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination or extension as provided in this PPA or otherwise agreed to by the Parties. 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 - Description**

### 3.1 Transaction Structure.

(A) Maximum AC MW. Seller shall install sufficient Project Phases that, in the aggregate, achieve as close to as reasonably feasible but not exceeding AC 100 MW of Nameplate Capacity as of the Commercial Operation Date. Notwithstanding anything to the contrary herein, Seller acknowledges and agrees that the maximum aggregate AC MW Nameplate Capacity of all Project Phases associated with this PPA (or the aggregate of this PPA and all power purchase agreements with Seller or its Affiliates, as described in Section 3.3) shall not exceed AC 100 MW.

(B) Project Phases. The Parties acknowledge and agree that the Facility will be installed in up to 24 individual Project Phases and that each Project Phase will be located at a separate Site. The 24 Project Phases potentially comprising the Facility equal in excess of AC 100 MW and Seller shall manage

implementation of Project Phases to achieve as close to AC 100 MW of Nameplate Capacity as reasonably feasible without exceeding this amount.

1. For the period of time from **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**, each individual Project Phase shall be entitled to quiet enjoyment of the terms and provisions and the pro rata implementation of this PPA, each on a several and stand-alone basis regardless of whether all planned Project Phases are completed or otherwise achieve Commercial Operation.

2. Except as provided otherwise in Section 3.3 hereof, **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**, this PPA shall operate as a single contract between Company and Seller and the rights and obligations of all Project Phases shall be merged and Seller shall be jointly and severally responsible for performance of the terms and conditions of this PPA in connection with the Facility, which shall constitute all Project Phases on an aggregated basis. From such date forward during the remainder of the Term, the presence of Project Phases shall not limit or restrict Seller's obligations to Company under this PPA. From and after such date, Seller's obligations, including the Post-COD Security Fund, Committed Energy, Capacity Accreditation, and Post-COD Damage Cap, and the applicability of Seller Events of Default (including any right to terminate this PPA) shall be determined on a single-Facility basis, based on the actual installed Nameplate Capacity of the Facility as finally determined pursuant to this PPA.

3. Seller agrees to use Commercially Reasonable Efforts to achieve, or cause the achievement of, the milestones set forth in Exhibit B-Overall Construction Milestones, to construct, interconnect, own, operate, and maintain all Project Phases of the Facility. The initial descriptions of the proposed Project Phases and their corresponding Sites that may become Project Phases hereunder are further described in Exhibit C - Initial Descriptions of Project Phases. The Parties acknowledge and agree that the list of potential Project Phases set forth as of the date hereof in Exhibit C-Initial Descriptions of Project Phases includes proposed solar energy projects that may not become part of the Facility hereunder. Seller shall have the right to amend Exhibit C-Initial Descriptions of Project Phases by adding, removing or adjusting Project Phases upon written Notice to Company, *provided, however*, that no such changes shall affect Seller's obligations under this PPA with respect to the sale and delivery of the products and services hereunder or cause the aggregate of all Project Phases to equal more than AC 100 MW of Nameplate Capacity in the aggregate (subject to adjustment as described in Section 3.3).

4. Prior to the commencement of construction of a Project Phase, Seller shall provide Company with written notice of its intent to commence construction of such Project Phase. Seller shall provide (i) a description of the applicable Project Phase, updated from the description included for such potential Project Phase in Exhibit C- Initial Descriptions of Project Phases, (ii) a scaled map

that identifies such Project Phase, its corresponding Site and the location of such Project Phase, (iii) a description of such Project Phase's Interconnection Point, and Interconnection Facilities, and (iv) a description of such Project Phase's Point of Delivery and other important facilities.

(C) Exclusive Remedies Prior to COD. Company specifically acknowledges and agrees that the Liquidated Delay Damages and the Nameplate Capacity Buy-Down Payment shall be Company's sole and exclusive remedy for the delay or failure in completion of any Project Phase(s). The Parties specifically recognize that Company's damages associated with either of (i) delays in completing any Project Phase(s), or (ii) Seller's achievement of an AC 100 MW Facility will be significant but will be difficult to quantify and that the Liquidated Delay Damages and Nameplate Capacity Buy-Down Payment are a reasonable approximation of such damages. Seller explicitly acknowledges that any Liquidated Delay Damages and/or Nameplate Capacity Buy-Down Payment accrued under this PPA are reasonable and do not constitute an unenforceable penalty.

(D) Project Phase Completion/Commercial Operation Date. Seller shall be entitled to submit, and Company agrees to accept, completed Project Phase Completion Declarations (pursuant to Section 4.3) for Project Phases beginning as early as June 1, 2015, subject to the terms and conditions of this PPA. The Commercial Operation Date shall occur on the earlier of December 31, 2016 and the date Seller provides Company with written Notice of a list of all completed Project Phases for which a Project Phase Completion Declaration has been confirmed by the Company and a statement that the aggregate of all such completed Project Phases shall constitute the Facility, *provided, however, that* Seller may not issue such Notice prior to September 1, 2016.

1. In the event that, as of the Commercial Operation Date, the aggregate Nameplate Capacity of the Facility is less than **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]**, Seller shall, no later than the date described in Section 3.1(E) and Section 3.1(F) below, pay to Company (subject to the applicable Damage Caps): (i) any Liquidated Delay Damages arising from Project Phase(s) that are completed after the Commercial Operation Date, and (ii), if applicable, any required Nameplate Capacity Buy-Down Payment.

2. Upon paying any required Liquidated Delay Damages and/or making the Nameplate Capacity Buy-Down Payment, the Parties shall reset the aggregate Nameplate Capacity of the Facility to an amount equal to the aggregate of all Project Phases for which a Project Phase Completion Declaration has been confirmed by Company (pursuant to Section 4.3) and the Nameplate Capacity of the Facility shall be deemed to be such amount for all purposes for the Term. Corresponding and concurrent proportional adjustments shall be made by the Parties to the respective amounts of Seller's other obligations hereunder, including corresponding proportional reductions to the Post-COD Security Fund, Committed Solar Energy, Capacity Accreditation and Post-COD Damage Cap.

3. On the later of (i) the Commercial Operation Date (if Seller's Commercial Operation Date Notice includes Project Phases of at least **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]**), or (ii) the date Seller makes the required payments of Liquidated Delay Damages and/or Nameplate Capacity Buy-Down Payment (if Seller's Commercial Operation Date Notice includes Project Phases of less than **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]**), Seller's pre-COD obligations (including with respect to the Pre-COD Security Fund, Liquidated Delay Damages, Nameplate Capacity Buy-Down Payment and the Pre-COD Damage Cap) shall expire. For the avoidance of doubt, such pre-COD obligations shall be effective until all accrued and applicable Liquidated Delay Damages and Nameplate Capacity Buy-Down Payment obligations have been satisfied, subject to the Pre-COD Damage Cap.

4. Seller's post-COD obligations under this PPA, except the Post-COD Security Fund, shall become effective upon the Commercial Operation Date. The Post-COD Security Fund shall be put in place no later than the expiration of Seller's pre-COD obligations described in the preceding paragraph.

5. Company acknowledges and agrees that, after satisfaction or waiver of all conditions precedent set forth in Article 6 hereof **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**, Company has no right to terminate this PPA with respect to a specific Project Phase except as set forth in Section 12.1(A), (B), (C), (D), (E), and (G) as applicable to only that specific Project Phase (and Company acknowledges and agrees that any such termination right of Company only applies to the specific Project Phase giving rise to such right and the other Project Phases shall not be affected thereby). For the avoidance of doubt, if Company terminates this PPA as to any Project Phase as authorized by this paragraph, such termination shall not lessen any of Seller's obligations under this PPA, including the obligation to achieve the amount of committed Nameplate Capacity or pay applicable damages for any shortfall as provided herein. Further, Company acknowledges and agrees that, during such time period, Company has no right to terminate this PPA in total except as set forth in Section 12.1(H). From and after **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**, the limitation on Company's right to terminate the PPA set forth in the previous sentence shall be eliminated and the termination of the PPA for the occurrence of any uncured Event of Default after such date shall apply equally to the entire Facility, regardless of the number or ownership of any Project Phases, including any allocation of aggregate obligations described in Section 3.3 below.

(E) Project Phase Delay. Upon the Commercial Operation Date, Seller shall provide Notice to Company of the aggregate AC MW of all Project Phases that have a confirmed Project Phase Completion Declaration in accordance with Section 4.3.

1. If the aggregate total Nameplate Capacity as of the Commercial Operation Date is at or greater than **[TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS]** the Facility, for purposes of this PPA, shall be deemed to be the actual AC MW of the aggregate of all Project Phases, not to exceed AC 100 MW (subject to allocation as described in Section 3.3 below).

2. If the aggregate total as of such date is less than **[TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS]**, the following shall apply:

a. Seller may seek to complete additional Project Phase(s) and obtain confirmed Project Phase Completion Declaration(s) after the COD and for no more than ninety (90) Days after the Commercial Operation Date, *provided, however, that* if during such period Seller provides a written opinion from a mutually agreeable independent engineer that additional Project Phases can reasonably be completed within an additional ninety (90) Day period, then Seller shall be allowed a total period not to exceed one hundred-eighty (180) Days after the Commercial Operation Date. Upon completion of any additional Project Phase(s) pursuant to this paragraph, Seller shall provide updated Notice to Company showing the number of AC MW that have been added since the original Notice, the date any new Project Phase(s) received a confirmed Project Phase Completion Declaration (pursuant to Section 4.3), the aggregate total of AC MW of the Facility as of such date, and a calculation showing the amount of Liquidated Delay Damages owed as a result of adding such additional Project Phase(s).

b. Seller shall pay Liquidated Delay Damages for every AC MW of any additional Project Phase(s) Nameplate Capacity that is added to the Facility after the Commercial Operation Date, up to AC 100 MW. For the avoidance of doubt, if Seller elects to add, after the Commercial Operation date, MW above **[TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS]**, Seller must pay Delay Liquidated Damages for such additional MW above **[TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS]**.

c. Such Liquidated Delay Damages shall be due immediately upon the occurrence and shall be paid within ten (10) Days after Company's written request. All accrued Liquidated Delay Damages must be paid prior to Company being obligated to confirm any Project Phase Completion Declaration. Company is not obligated to accept any Project Phase(s) as part of the Facility for which any Liquidated Delay Damages are owed but have not been paid.

d. As of the date of receipt of confirmation of the Project Phase Completion Declaration for the final additional Project Phase(s) added to the Facility as described in this Section 3.1, Seller shall reset the aggregate Nameplate Capacity of the Facility upon payment of the Liquidated Delay Damages. Resetting the aggregate Nameplate Capacity of the Facility shall not change the COD. In such circumstances, if the Facility is still less than **[TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS]**, Seller shall be obligated to

pay to Company the Nameplate Capacity Buy-Down Payment for the difference between AC 100 MW and such reset amount as described in Section 3.1(F) below.

3. If the aggregate total as of the Commercial Operation Date is AC zero (0) MW, Section 12.1(H) shall be available to Company.

(F) Nameplate Capacity Buy-Down Payment. Effective as of (i) the date described in Section 3.1(E)(2)(d) above or (ii) in the event Seller does not elect to add any additional Project Phases to the Facility, the Commercial Operation Date, Seller shall determine and fix the aggregate Nameplate Capacity of the Facility. In the event that the aggregate Nameplate Capacity as of such date is fixed at an amount less than **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]**, then Seller shall make one of the following payments to Company:

1. In the event that such aggregate Nameplate Capacity of the Facility is **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**, then the difference between **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]** and the actual aggregate Nameplate Capacity shall be determined in kilowatts. The Nameplate Capacity Buy-Down Payment for such shortfall shall equal the product of such difference multiplied by **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]**. Upon Seller making such payment, each of the aggregate Nameplate Capacity of the Facility and Seller's obligations with respect to performance of this PPA shall be adjusted to the actual aggregate Nameplate Capacity for the remainder of the Term and Seller's obligations under this PPA shall be reduced as described in paragraph (D)(2) of this Section 3.1.

2. In the event that such aggregate Nameplate Capacity of the Facility is **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**, then the difference between **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]** and the aggregate Nameplate Capacity shall be determined in kilowatts. The Nameplate Capacity Buy-Down Payment for such shortfall shall equal the product of such difference multiplied by **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]** plus the amount of **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]** representing an amount owed for the shortfall between **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**. Upon Seller making such payment, each of the aggregate Nameplate Capacity of the Facility and Seller's obligations with respect to performance of this PPA shall be adjusted to the actual aggregate Nameplate Capacity for the remainder of the Term and Seller's obligations under this PPA shall be reduced as described in paragraph (D)(2) of this Section 3.1.

3. In the event the aggregate Nameplate Capacity of the Facility is **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]**, Seller shall pay a Nameplate Capacity Buy-Down Payment equal to

**[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS].**

Upon Seller making such payment, the aggregate Nameplate Capacity of the Facility and Seller's obligations with respect to performance of this PPA shall be adjusted to the actual aggregate Nameplate Capacity for the remainder of the Term and Seller's obligations under this PPA shall be reduced as described in paragraph (D)(2) of this Section 3.1.

4. Company may draw from the Pre-COD Security Fund to pay any portion of the Nameplate Capacity Buy-Down Payment and such Pre-COD Security Fund shall remain in place and available to Company until satisfaction of all such obligations.

5. The Parties expressly agree that the Nameplate Capacity Buy-Down Payment does not constitute an Event of Default and payment of such amount is not a remedy or a penalty. Rather, the Nameplate Capacity Buy-Down Payment is a negotiated payment allowing Seller to reduce the size of the Facility under specified circumstances and reflects the value of such reduction to Company in light of Company's obligation to purchase specified amounts of solar power under Minnesota law.

**3.2 General Design of the Facility.**

(A) Seller shall design, construct, operate and maintain each Project Phase of the Facility according to Good Utility Practice(s) and the Interconnection Agreement.

(B) Each Project Phase shall include all equipment necessary to successfully interconnect with the Distribution System for the delivery of the Facility's output to the Point of Delivery.

(C) Each Project Phase shall include all equipment and telecommunications capabilities necessary to communicate with Company's SCADA System. Each Project Phase(s) that has Nameplate Capacity equal to 5 MW or greater in size shall also include, at such Project Phase, all equipment necessary for AGC operation pursuant to this PPA.

(D) Each Project Phase shall include all equipment specified in Exhibit C – Initial Description of Project Phases or otherwise reasonably necessary to fulfill Seller's obligations under this PPA.

**3.3 Potential for Multiple Power Purchase Agreements.** The Parties acknowledge and agree that, Seller and its Affiliates will be seeking Tax Equity Financing for the Project Phases following the Effective Date of this PPA, and such Tax Equity Financing may be obtained from more than one Financing Party. Accordingly, at any time following the Effective Date and prior to or on December 31, 2015, Seller may provide Company written Notice advising Company of Seller's need

to subdivide the Project Phases into no more than two additional power purchase agreements to facilitate Seller's Tax Equity Financing efforts.

(A) Company shall agree to enter into up to two additional power purchase agreements with Seller or an Affiliate of Seller who has the same Ultimate Parent Entity as Seller, *provided, however, that* Company shall not be obligated to agree to terms and conditions that are different from the terms of this PPA (except as described in paragraph (B) below) and the aggregate of this PPA and all other power purchase agreements entered into pursuant to this Section 3.3 shall not exceed AC 100 MW.

(B) In the event Seller provides Company with Notice that its efforts to seek Tax Equity Financing will be facilitated by entry into up to two additional power purchase agreements, then (i) Seller or its Affiliates will transfer ownership of the applicable Project Phases to one or two (as applicable) additional project company entities, (ii) Company agrees to enter into one or two (as applicable) additional power purchase agreements with such additional project company entities, on the same terms and conditions set forth herein (with such adjustments to account for their respective facility characteristics, including Nameplate Capacity, Interconnection Points, Points of Delivery, Committed Solar Energy, Capacity Accreditation and other characteristics specific to each such Project Phases), and (iii) the Parties shall amend and modify this PPA to adjust such characteristics of the Facility accordingly.

#### Article 4 - Implementation

##### 4.1 Project Development.

(A) **[TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS]**, Seller shall complete an environmental site assessment ("Environmental Site Assessment") of the Sites of the Project Phases to be included in the Facility (except for potential Project Phases that Seller has deemed to no longer be viable as a Project Phases hereunder) and shall disclose to Company any Environmental Contamination identified in that investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of the Environmental Site Assessment report and any backup data; *provided, however, that* the Environmental Site Assessment and backup data shall be deemed Confidential Information pursuant to Section 20.18. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or

Site that has been caused by Seller or its Affiliates is promptly remediated. Seller shall promptly disclose to Company the presence of any material Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

(B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary to the successful development of, construction of, operation of and delivery from the Facility with qualified and experienced contractors. Upon written request by Company, Seller shall provide Company with a memorandum of agreement executed by Seller and the contractor party to the Construction Contract and all other major contracts, which memorandum shall set forth the basic terms of such contract, including the names of the parties thereto, the date of such contract, a summary of any products or services to be provided or in lieu thereof, at Seller's option, a copy of the Construction Contract or other major contract (provided that Seller shall be permitted to redact pricing and other sensitive information).

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Financing Party relating to status, progress and development of the Facility; and (iii) invite Company to participate in quarterly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development.

(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the applicable Project Phase for compliance with this PPA; *provided, however, that* Company shall comply with all of Seller's applicable safety and health rules and requirements and Company and its representatives shall execute Seller's standard indemnification and hold harmless agreement applicable to all visitors at the Facility. Company'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.

(E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to the Points of Delivery. Seller shall keep Company reasonably informed as to the status of its permitting efforts. Seller shall promptly inform Company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this

circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Upon reasonable request, Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility that would be reasonably likely to adversely affect Seller's Permits, to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.2 Commercial Operation. Subject to extension as authorized in this PPA, the Facility shall achieve Commercial Operation of the Facility no later than the Commercial Operation Date. Seller agrees to use Commercially Reasonable Efforts to achieve the Construction Milestones set forth in Exhibit B - Construction Milestones; *provided, however*, that Seller shall have no liability under this PPA, and it shall not be an Event of Default hereunder, in the event Seller does not achieve any such Construction Milestone, other than the Commercial Operation Date, by the corresponding date.

4.3 Project Phase Completion Conditions. Seller shall provide Company a Notice, substantially in the form attached hereto as Exhibit M, of the date Seller believes a Project Phase or a group of Project Phases has achieved completion of the conditions set forth in this Section 4.3 (a "Project Phase Completion Declaration") along with all supporting documentation of the satisfaction or occurrence of all such conditions. Company shall have up to ten (10) Business Days to review such evidence and raise any Commercially Reasonable objections to Seller's satisfaction of any of the Project Phase Completion Conditions; *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period and, *provided further*, that Company shall provide Seller with a written statement of its confirmation or no objection regarding the satisfaction of such conditions, even if such confirmation or lack of objection is due to Company's failure to timely respond, promptly following Seller's written request therefor. Seller may provide Notice of completion of the Project Phase Completion Conditions on an individual and incremental basis pending resolution of any objections; *provided, however, that* Company shall in all cases have up to five (5) Business Days to review and object to each Notice (as described above). The Project Phase Completion Conditions are:

(A) an officer of Seller, authorized to bind Seller and who is familiar with the applicable Project Phase(s), has provided written confirmation that (1) all necessary and material Permits with respect to such Project Phase have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects, (3) such Project Phase(s) is or are available to commence normal operations in accordance with Seller's operating agreements, Construction Contract,

and applicable manufacturers' warranties, (4) the applicable Project Phase is in material compliance with the Distribution Tariff, (5) Seller is in material compliance with its obligations under the corresponding Interconnection Agreement(s), (6) such Project Phase(s) is or are fully interconnected to the Distribution System, has been tested, has achieved initial synchronization, and has been successfully operated at a generation level reasonably acceptable to the Distribution Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (7) Seller has completed any testing of such Project Phase(s) and the corresponding Interconnection Facilities required by the applicable Interconnection Agreement(s) and Distribution Tariff, and (8) Seller has made all other arrangements necessary to deliver the output of such Project Phase(s) to the corresponding Point(s) of Delivery;

(B) an independent registered professional engineer's certification has been obtained by Seller and provided to Company stating that the applicable Project Phase(s) has or have been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of such Project Phase(s) to operate for its or their intended purpose, and, if applicable, incomplete Solar Units allowed pursuant to Section 4.3(D) below;

(C) Seller has demonstrated (1) the reliability of the applicable Project Phase(s)' communications systems and communication interface with Company's EMCC and, to the extent applicable to such Project Phase(s), is capable of receiving and reacting to signals from Company's SCADA System, and (2) to the extent applicable to such Project Phase(s), all AGC equipment is installed and operational; and

(D) at least ninety-five percent (95%) of the Solar Units comprising such Project Phase(s) and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy to the corresponding Point(s) of Delivery have been completed.

4.4 Following Project Phase Completion. From and after the date a Project Phase has met and satisfied the Project Phase Completion Conditions (as described in Section 4.3) and until the Commercial Operation Date, all of the rights and duties of the Parties shall commence and continue with respect to such Project Phase hereunder. Seller shall be solely responsible for allocating payments from Company for products and services hereunder among the completed Project Phases. Furthermore, upon and following the Commercial Operation Date, Seller shall be entitled to receive the Solar Energy Payment Rate in connection with its performance hereunder.

4.5 Stage 1 Energy and Stage 2 Energy.

(A) Seller shall have the right to deliver Solar Energy and associated RECs to Company from and after June 1, 2015 and prior to September 1, 2016 ("Stage 1 Energy") from any Project Phase that is undergoing testing or has received

a confirmed Project Phase Completion Notice. Company shall accept and purchase all Stage 1 Energy at the Stage 1 Energy Price. Seller shall not be entitled to Compensable Curtailment Energy payment prior to the COD in connection with Stage 1 Energy under Section 8.2. Prior to the COD, Company shall use Commercially Reasonable Efforts to minimize discretionary curtailments by Company that would otherwise constitute Compensable Curtailment Energy if the curtailment had occurred after the COD.

(B) Seller shall have the right to deliver Solar Energy and associated RECs to Company from September 1, 2016 until the Commercial Operation Date ("Stage 2 Energy") from any Project Phase that is undergoing testing or has received a confirmed Project Phase Completion Notice. Company shall accept and purchase all Stage 2 Energy at the Stage 2 Energy Price. Seller shall not be entitled to Compensable Curtailment Energy payment prior to the COD in connection with Stage 2 Energy under Section 8.2. Prior to the COD, Company shall use Commercially Reasonable Efforts to minimize discretionary curtailments by Company that would otherwise constitute Compensable Curtailment Energy if the curtailment had occurred after the COD.

(C) The following procedures shall apply for testing a Project Phase.

1. At least 30 Days prior to the date when Seller expects to start generating any energy from any Project Phase, Seller shall coordinate the production and delivery of energy from such Project Phase with Company for the purpose of testing the Project Phase's equipment. The Parties shall cooperate to facilitate Seller's testing of each such Project Phase as necessary to satisfy the Project Phase Completion Conditions for such Phase.

2. Seller shall promptly provide Company and Market Operator or other transmission authority designated by Company with the information necessary to have such Project Phase registered with the transmission system for inclusion in any generation modeling maintained by the regional transmission authority, sufficiently in advance to allow such Project Phase to be registered in such model prior to generating any Stage 1 Energy or Stage 2 Energy. Upon receipt of such information, Company will cooperate reasonably to assist in the registration of the Facility to allow generation of Stage 1 Energy or Stage 2 Energy.

## **Article 5 - Delivery**

5.1 Electric Delivery Arrangements. Seller shall be responsible for making, maintaining and paying the costs associated with the interconnection of each Project Phase of the Facility to the Distribution System. Seller shall comply with the Distribution Authority's requirements for each interconnection and shall comply with all requirements set forth in the applicable Distribution Tariff. The Interconnection Request for each Project Phase shall request interconnection service as authorized under the applicable Distribution Tariff. To the extent applicable during the Term, Company shall be the market participant as defined by the MISO tariff for each

Project Phase and for the Facility, and shall timely file all necessary registration and other required filings to become market participant for each Project Phase in order to allow for all energy sales contemplated herein to occur.

(A) Seller authorizes Company to contact and obtain information concerning each Project Phase of the Facility and Interconnection Facilities directly from any person or entity and, upon request, Seller shall confirm such authorization in writing to Company, the Distribution Authority or MISO in such form as requested by Company or the Distribution Authority.

(B) Seller shall be responsible for all interconnection, electric losses, and ancillary service arrangements and costs required to deliver the output from each Project Phase of the Facility to its corresponding Point of Delivery.

(C) Company shall be responsible for all electric losses, and ancillary service arrangements and costs required to transmit and deliver the output from each Project Phase of the Facility at and beyond its corresponding Point of Delivery. If at any time during the Term, the Distribution Provider changes or the Interconnection Facilities cease to be subject to the Distribution Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to mitigate the impact of such changes on the Parties and to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible incremental cost to Company; *provided, however, that* such actions shall not materially adversely affect either Party's rights, benefits, risks or obligations under this Agreement.

## 5.2 Electric Metering Devices.

(A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the applicable Interconnection Agreement at no cost to Company under this PPA.

1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the applicable Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided, however, that* the Operating Committee may revise this loss adjustment based on actual experience.

2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices at any Project Phase ("Back-Up Metering"), *provided, however, that* the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other

Party. The actual cost of any retest shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent (1%), 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 to the requesting Party.

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

1. If the 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 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%), 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, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty (180) Days immediately preceding the test that found the 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 Company, Company shall use the corrected measurements as determined in accordance with this Article 5 to re-compute the amount due for the period of the inaccuracy and, in accordance with Article 9, will adjust the next regular bill to reflect such re-computed amount, *provided however, that* payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## **Article 6 - Conditions Precedent**

### **6.1 Company CPs.**

(A) No later than September 23, 2014, Company intends to file an unexecuted draft of this PPA with the Minnesota Public Utilities Commission pursuant to the requirements of the Order. No later than ten (10) Days after receipt of an outcome of the Order approving this PPA as consistent with the Order, Company shall file this PPA with the North Dakota Public Service Commission pursuant to relevant regulatory requirements. Seller shall cooperate with Company's effort to seek State Regulatory Approval.

(B) Either Party shall have the right to terminate this PPA, without any further financial or other obligation to the other as a result of such termination, by

Notice to the other Party not more than ten (10) Days after the earlier of (i) fourteen (14) Days after receipt of written determinations by both State Regulatory Agencies that together do not constitute State Regulatory Approval, or (ii) six (6) months following the written request for State Regulatory Approval without receipt of State Regulatory Approval. If a Party fails to terminate this PPA in the time allowed by this paragraph, such Party shall be deemed to have waived its right to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.

6.2 Seller CPs. Either Party shall have the right to terminate this PPA, without any further financial or other obligation to the other as a result of such termination, by Notice within fourteen (14) Days following the failure of Seller to satisfy or waive in its sole discretion any of the following conditions precedent (the "Seller CPs") by the indicated deadline:

<u>Seller CP</u>	<u>Deadline</u>
(1) Receipt by Seller of a final, non-appealable Master Site Permit or equivalent Permit for each Project Phase, reasonably acceptable to Seller.	December 31, 2015
(2) Seller and the Distribution Authority shall have entered into mutually-satisfactory arrangements for the interconnection of the Project Phases of the Facility that are reasonably acceptable to Seller (see note below)	December 31, 2015.

If Seller fails to terminate this PPA in the times allowed by this Section 6.2, the Seller CPs shall be deemed to have been waived and this PPA shall remain in full force and effect thereafter.

## **Article 7 - Sale and Purchase**

### 7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the applicable Point of Delivery, and sell to Company, and Company shall receive and purchase at the applicable Points of Delivery, the Solar Energy (not to exceed AC 100 MW in the aggregate at the Points of Delivery) and other products and services required by this PPA. Seller shall not curtail or interrupt deliveries from the Facility as required by this PPA for economic reasons of any type whatsoever; *provided, however, that* Seller's obligation to generate, deliver and sell to Company the Solar Energy and other products and services required hereunder shall be excused during Seller Excuse Hours.

(B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the applicable Points of Delivery.

7.2 Committed Solar Energy. Seller covenants to deliver the Committed Solar Energy to the Points of Delivery, except as otherwise provided in this Agreement (including during Seller Excuse Hours). Beginning at the end of the first Commercial Operation Year and continuing at the end of each Commercial Operation Year thereafter for the balance of the Term, Seller shall, no later than 90 Days after the end of such Commercial Operation Year, provide to Company (i) a calculation of the actual output of the Facility for the just-completed Commercial Operation Year (including adjustments per Exhibit L) against the Committed Solar Energy for such year.

7.3 AGC/SCADA.

(A) Beginning on the Commercial Operation Date, Company shall dispatch the applicable Project Phases to which AGC applies through the EMCC AGC system. All Project Phases for which AGC is not required shall be dispatched through the SCADA system. Seller shall faithfully implement dispatch and other instructions through AGC or SCADA, as the case may be.

(B) Subject to the applicable compensation obligations of Company for Compensable Curtailment Energy as described in this PPA, Company may notify Seller, by telephonic communication or through use of the AGC Set-Point (for those Project Phases utilizing AGC), to curtail the delivery of Solar Energy to Company from any applicable Project Phases, for any reason and in its sole discretion and Seller shall promptly comply with such notification as soon as reasonably possible in accordance with Good Utility Practices.

(C) Company shall use its Commercially Reasonable Efforts to communicate electronically to the applicable Project Phase(s) respective AGC or SCADA Systems. Seller shall use its Commercially Reasonable Efforts to ensure that, throughout the Term, the applicable Project Phase(s)' respective AGC or SCADA System are capable of functioning within the margin of error specified in the solar facility's control system manufacturer's energy set point margin of error.

(D) Seller shall use its Commercially Reasonable Efforts to ensure that, for the applicable Project Phases to which AGC applies, Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.4 Compensation for Other Products and Services.

(A) The Parties acknowledge that existing and future Applicable Laws create value in the ownership, use or allocation of RECs. To the full extent allowed by such Applicable Law, Company shall own or be entitled to claim all RECs to the extent such credits may exist or be created during the Term associated with Stage 1 Energy, Stage 2 Energy, Solar Energy, and any Excess Solar Energy delivered to and paid for by Company.

1. Seller hereby automatically and irrevocably assigns to Company all rights, title and authority for Company to register the Eligible Energy

Resource and own, hold and manage such RECs in Company's own name and to Company's account, including any 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 government) with regard to monitoring, registering, tracking, certifying, or trading such credits. Seller hereby authorizes Company to act as its agent for the purposes of registering the Eligible Energy Resource, and tracking and certifying RECs, and Company has full authority to hold, sell or trade such RECs to its own account of said renewable energy information or tracking systems. Upon the request of Company, at no cost to Company, (i) Seller shall deliver or cause to be delivered to Company such attestations/certifications of RECs, and (ii) Seller shall cooperate with Company's reasonable requests in connection with registration and certification of RECs.

2. Seller shall provide the information needed for Company to make all applications and/or filings required by Applicable Law for REC accreditation and for the provision of such RECs to Company within the Midwest Renewable Energy Trading System program for the Facility. To the extent possible during the Term, Seller and Company will implement and maintain a Forward Certificate Transfer, as defined in the current Midwest Renewable Energy Trading System Program Operating Procedures (rev. April 23, 2010), to allow RECs to be directly deposited into Company's account. Company may, at its election, pursue other or alternative REC qualifications or certifications with respect to the Solar Energy purchased by Company from any Project Phase of the Facility, and Seller agrees to cooperate in good faith with Company in connection therewith, *provided, however, that* Seller shall not be required to incur any third-party out-of pocket cost or expense in connection with such cooperation or such other or alternative RECs.

(B) Seller shall make available to Company all Generation Benefits and any available Ancillary Services associated with the Facility that Seller actually receives at no additional charge under this PPA. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits or any available Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually agreed mechanism, for any compensation that Seller receives for Generation Benefits or any available Ancillary Services.(net of costs or expenses incurred by Seller and its Affiliates to obtain such benefits or provide such services). Notwithstanding the above, with respect to (i) new Generation Benefits not in existence on the Effective Date and/or (ii) in the event a Governmental Authority implements new or revised requirements for generators (such as the Facility or any Project Phase) to obtain Generation Benefits that require Seller or its Affiliates to incur costs or expenses to obtain such benefits, then Seller shall be entitled to reduce the amount of credit to Company under this paragraph by an amount sufficient to allow Seller to recover such costs and expenses; *provided that* Seller shall not reduce the credit below zero and any excess of such costs and expenses over the amount of such credit in any Commercial Operation Year shall instead be carried forward as a reduction to such

credit in the following Commercial Operation Years (and any such excess prior to the Commercial Operation Date shall be carried over to the initial Commercial Operation Year). In the event that Company receives all or a portion of such compensation related to any such Generation Benefits related to the Facility or any Project Phase, Company shall promptly remit such compensation to Seller.

1. 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 (i) operate its Facility in a manner that reduces the real output of the Facility in order to maximize any Generation Benefits and Ancillary Services for Company, or (ii) make any additional capital expenditures or incur any increased operating expenses in connection with such efforts.

2. In the event a Governmental Authority or Distribution Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services, requiring Seller to install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall be allowed to reduce the amount owed to Company for such Generation Benefits by an amount sufficient to recover the cost of such additional equipment and operating expenses incurred in obtaining and transferring such benefits to Company; *provided, however, that* the amount of credit shall in no event be less than zero. Any excess of such cost over the amount of the credit in any year shall instead be carried forward as a reduction of the amount of the credit in subsequent years.

## **Article 8 - Payment Calculations**

### **8.1 Solar Energy Payment Rate.**

(A) Prior to the Commercial Operation Date, Company shall pay Seller for Stage 1 Energy and Stage 2 Energy, as applicable, delivered to the Points of Delivery pursuant to Section 4.5.

(B) Commencing on the Commercial Operation Date, Company shall pay Seller the Solar Energy Payment Rate for Solar Energy delivered to the applicable Points of Delivery from all Project Phases of the Facility. The Solar Energy Payment Rate for a specific Commercial Operation Year shall be effective on the first Day of the calendar month following the calendar month in which the applicable anniversary of COD occurs (for example, if COD occurs on December 10, 2016, the Renewable Energy Payment Rate for the second Commercial Operation Year as described in Exhibit J shall be effective as of January 1, 2018).

(C) In the event that the Solar Energy in any Commercial Operation Year (including any Compensable Curtailment Energy) exceeds one hundred fifteen percent (115%) of the Committed Solar Energy ("Excess Solar Energy"), Company shall pay Seller at a rate equal to the Stage 1 Energy Price for all such Excess Solar Energy and RECs associated therewith, delivered by Seller to Company for such

Commercial Operation Year. After such Commercial Operation Year, the Parties obligations shall resume pursuant to this PPA. Seller shall notify Company upon Seller's delivery of Solar Energy hereunder that exceeds 110% of the Committed Solar Energy for a Commercial Operation Year.

8.2 Curtailment Energy Payment Rate.

(A) If delivery of Solar Energy from any Point of Delivery is curtailed by Company pursuant to Section 7.3, or there is an Economic Curtailment, then:

1. the Parties shall determine the quantity of Solar Energy that would have been produced by the Facility (i) during those periods of time when the Facility (or any Project Phase) is on AGC and the AGC Set-Point is set at a level that will not allow the entire Facility Nameplate Capacity to be deliverable by determining the difference between Potential Energy and the delivered Solar Energy, and (ii) during those periods of time when the Facility (or any Project Phase) is not on AGC or the AGC Set-Point is set at a level that will allow the Facility Nameplate Capacity to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed ("Compensable Curtailment Energy").

2. Compensable Curtailment Energy shall be the number of MWh represented by the Potential Energy less the Solar Energy actually delivered and measured by the applicable Electric Metering Devices during the period of curtailment.

3. Company shall pay to Seller for such Compensable Curtailment Energy all amounts that Seller would have received from Company under this PPA had such Compensable Curtailment Energy actually been delivered.

(B) 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 Solar Energy.

1. To the extent available, Company agrees to use Seller's real time Park Potential (for the curtailed Project Phase(s)) communicated to Company through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus two percent (2%) over a period of one month).

2. During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.

(C) Seller shall be entitled to, but not obligated to, sell any curtailed energy and associated RECs to third parties to whom Seller is able to successfully

transact and deliver; *provided, however, that* the net amount realized for such sale shall offset amounts owed by Company for Compensable Curtailment Energy. Company shall reasonably cooperate with any such sales, and Seller accepts sole responsibility to obtain rights to deliver such energy at no cost to Company. Seller accepts all risk of the unavailability of delivery rights during any curtailment.

(D) Notwithstanding anything in this Article 8 to the contrary, curtailments or reductions of delivery for any of the following reasons shall constitute "Non-Compensable Curtailments" and shall be excluded from Compensable Curtailment Energy, and no payment shall be due Seller under paragraph (A) above for curtailments of delivery of Solar Energy arising out of or resulting from

1. an Emergency declared by the Distribution Authority that prevents or restricts Seller from delivering Solar Energy to the applicable Point(s) of Delivery;

2. any breach or default of Seller under the applicable Interconnection Agreements that prevents or restricts Seller from delivering Solar Energy to the applicable Point of Delivery;

3. maintenance outages, whether planned or unplanned, of any part of the Distribution System or any testing of the Distribution System to the extent such maintenance outage or testing requires a restriction or reduction to the output of the Facility or Distribution System;

4. Seller's failure to maintain in full force and effect any Permit to construct and/or operate the Facility to the extent such failure prevents the Seller from delivering Solar Energy to the applicable Point of Delivery;

5. Seller's failure to maintain and utilize the applicable communications system (whether AGC or through the SCADA System) or its failure or refusal to respond to instructions from the EMCC in a manner consistent with the terms of this Agreement.

## **Article 9 - Billing and Payment**

### **9.1 Billing.**

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

(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 Section 9.3.

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

9.2 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 fifteenth (15th) Business Day following receipt of the invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) 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) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller pursuant to this PPA.

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

9.3 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 13. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) 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 Section 9.2.

## **Article 10 - Operations and Maintenance**

### **10.1 Operation and Administration**

(A) Seller shall directly or indirectly staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. During daylight hours and/or when the Facility is capable of operation, personnel shall be available at all times via telephone or other electronic means with (i) the capability of remotely operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within six (6) hours.

(B) Seller shall comply with the applicable requirements of NERC, ERO, Distribution Authority, FERC, State Regulatory Agencies, or successor organizations, Company requirements, Governmental Authority, and Good Utility Practice in the operation of the Facility.

(C) Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company's EMCC. Seller shall provide to Company a day-ahead availability forecast in accordance with Exhibit H - Operating Standards (AGC Protocols, Data Collection). Seller acknowledges that such forecasting is consistent with the reporting requirements required for compliance with NERC standards intended to maintain reliability. Seller, as the generator, is primarily responsible for complying with the NERC standards and reporting the information to Distribution Authority, ERO or other reliability coordinator. Company agrees to provide the forecasted information to the reliability coordinator on Seller's behalf; *provided, however, that* Seller shall remain responsible to ensure the reliability and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility; and *provided further, that* the Parties acknowledge and agree that such forecasts are estimates prepared by Seller in good faith and based upon the data and information available to Seller as of the date such forecasts are made and, as a result, are subject to risks, uncertainties and other factors that may cause the actual results to differ from such forecasts.

#### 10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Beginning with the first calendar month following COD and continuing through the balance of the Term, Seller shall provide monthly Maintenance Schedules to Company in writing not later than the fifteenth (15th) Day of the preceding month ("Maintenance Schedule").

(B) Except as otherwise agreed to by Company, Seller shall minimize the amount of scheduled maintenance during On-Peak Months to the full extent consistent with Good Utility Practices. During each Business Day of an On-Peak Month, Seller shall use Commercially Reasonable Efforts to (i) maximize the amount of Solar Energy produced by the Facility, and (ii) minimize the extent and duration of Forced Outages.

(C) When Forced Outages occur at a Project Phase, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than thirty (30) minutes after Seller becomes aware that the Forced Outage has occurred. Seller shall promptly inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of the Forced Outage.

### 10.3 Books and Records.

(A) Seller shall maintain an accurate and up-to-date operating log, in electronic format, at Seller's headquarters or at some other mutually-agreeable location, with records of production for each clock hour; changes in operating status; Forced Outages; information required by Applicable Law, Governmental Authority, Distribution Authority, State Regulatory Agency(s), or the ERO in the prescribed format; and other information reasonably requested by Company.

(B) Seller and Company 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, Distribution Authority, NERC or ERO, or the State Regulatory Agency(s) as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained in Seller's Minnesota 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) Company may audit and examine from time to time upon request and during normal business hours: (i) Seller's Operating Procedures, (ii) equipment manuals and Operating Records, and (iii) data kept by Seller relating to transactions under and administration of this PPA, by Company with Applicable Law and relevant accounting standards. Seller shall maintain all such records in Seller's Minnesota headquarters or some other mutually agreeable location and shall cooperate with Company's audit rights under this Section 10.3.

### 10.4 Operating Committee and Operating Procedures.

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

(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.

(C) The Operating Committee shall review the requirements for operational communications 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* except to the extent explicitly provided for in this PPA, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.

10.5 Access to Facility. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at the Facility, such representatives shall observe such Commercially Reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility. Upon request, Company and its representatives shall execute Seller's standard indemnification and hold-harmless agreement applicable to all visitors at the Facility.

10.6 Capacity Accreditation.

(A) Company has certain planning, operating and reporting requirements. Exhibit N of this PPA is a copy of the MISO resource adequacy requirements for intermittent generation-non wind.

(B) Seller's Facility was selected in the Order in part because of statements made to the Minnesota Public Utilities Commission that the Facility would be capable of initially achieving Accredited Capacity as of the Commercial Operation Date at a ratio of seventy-one percent (71%) of its aggregate installed Facility Nameplate Capacity. From and after **[TRADE SECRET DATA BEGINS...**

**...TRADE SECRET DATA ENDS]**,

Seller shall use Commercially Reasonable Efforts to achieve Accredited Capacity, at or above the applicable Accredited Capacity for the applicable Commercial Operation Year as set forth on Exhibit J hereto, based upon, utilizing and applying the Accredited Capacity Testing Procedures (except as described in paragraph 2 below).

1. Commencing during the first Commercial Operation Year, Seller shall test all completed Project Phases to determine the Accredited Capacity applicable for the succeeding MISO planning year. The Parties acknowledge that the definition of "Accredited Capacity" in this PPA incorporates the Accredited Capacity Testing Procedures to determine accredited capacity for solar generation facilities. Seller shall report the authorized level of Accredited Capacity to Company based on the outcome of such testing.

2. Notwithstanding anything herein to the contrary, in the event that MISO changes its requirements and protocols for determining Accredited Capacity, Seller shall conduct the tests required under this Section 10.6 in compliance with each of (i) such new MISO requirements and protocols and (ii) the

Accredited Capacity Testing Procedures. For purposes of compliance with this PPA, Seller's Accredited Capacity shall be deemed to be the higher value determined using the two such methods.

3. In the event that at any time after the Commercial Operation Date, Seller's Accredited Capacity falls below the applicable Accredited Capacity threshold for the applicable Commercial Operation Year as such threshold is adjusted to the extent necessary to account for any curtailment, all as further described in Exhibit J, then Seller shall compute the Accredited Capacity of the Facility based on the MISO requirements as reflected in Exhibit N and as otherwise provided herein. In the event such Accredited Capacity is lower than the Accredited Capacity threshold set forth in Exhibit J for such applicable Commercial Operation Year ("Accredited Capacity Shortfall"), then Seller shall pay to Company liquidated damages in the amount of **[TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]** of Accredited Capacity Shortfall for each month that the Accredited Capacity Shortfall exists ("Accredited Capacity Shortfall Liquidated Damages"). Payment of such Accredited Capacity Shortfall Liquidated Damages shall be subject to the Post-COD Damage Cap. Seller may pay the Accredited Capacity Shortfall Liquidated Damages as an offset to its monthly invoice, *provided, however*, that Company reserves the right to draw from the Post-COD Security Fund for payment of any outstanding Accredited Capacity Shortfall Liquidated Damages. Seller explicitly acknowledges that any Accredited Capacity Shortfall Liquidated Damages accrued under this PPA are reasonable and do not constitute an unenforceable penalty. For the avoidance of doubt, no Accredited Capacity Shortfall Liquidated Damages shall be due or payable by Seller with respect to the first Commercial Operation Year.

#### 10.7 Real Time Data.

(A) For the Project Phases to which AGC is applicable, Seller shall communicate all data necessary for Company to integrate such Project Phases into Company's EMCC in real time through the Facility's SCADA System in accordance with the AGC Protocols. Seller shall maintain such Project Phases' respective SCADA Systems so that each is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from the Company's EMCC in accordance with the AGC Protocols.

1. For such Project Phases, Seller shall use Commercially Reasonable Efforts to adjust the real time Park Potential when Company communicates to Seller a measured difference of plus or minus two percent (2%) between the metered Solar Energy, during a time where there was no AGC Set-Point, and Park Potential.

2. In the event that Company reasonably concludes that Seller is not (i) providing the data required by this Section 10.6, (ii) interfacing with and reacting to Company's AGC Set-Point as required by this PPA, and/or (iii) providing Park Potential data within the required margin of error, then upon Notice

from Company, Seller shall, at Seller's expense, take those actions necessary to fully comply with this paragraph. Upon Seller's request, Company shall cooperate with Seller in taking any such actions.

(B) For the Term of this PPA Seller shall maintain one meteorological station at each Project Phase of the Facility. Beginning on the Commercial Operation Date (and up to sixty (60) Days prior thereto, if so requested by Company on reasonable prior notice), Seller shall provide Company, at Seller's expense, real time unit performance and meteorological data for all Solar Units and the meteorological station at the Facility in accordance with Exhibit H - Operating Standards (AGC Protocols, Data Collection) for the Term of this PPA. Seller shall undertake to maintain Seller-owned data collection systems that are compatible with Company's PI. Seller shall ensure that real time communications capabilities are available and maintained for the transmission to Company's PI. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit H - Operating Standards (AGC Protocols, Data Collection). Company shall be entitled to disclose data gathered through the Company's PI to third parties as Confidential Information subject to the provisions of Section 20.18. Company shall have the right to disclose data gathered through the Company'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/or the suppliers of Solar Units.

## Article 11 - Security

### 11.1 Security Fund.

(A) No later than thirty (30) Days following the Parties' receipt of the initial written order of the Minnesota Public Utilities Commission approving this PPA on terms and conditions satisfactory to Company in its sole discretion, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.

1. The Security Fund shall equal the Pre-COD Security Fund up to the date described in Section 3.1(D)(3), and the Post-COD Security Fund on and after such date for the remainder of the Term.

2. Seller shall replenish the Security Fund within fifteen (15) Business Days after Company makes a draw on the Security Fund as authorized by this PPA, up to the required amount; *provided, however, that* Seller shall not be required to replenish the Security Fund to a level in excess of the remaining amount of the applicable Damage Cap. Notwithstanding the foregoing, Seller shall replenish all amounts drawn from the Security Fund in respect of damages described in Section 12.3(C).

(B) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company that have not been timely paid pursuant to this PPA, including any damages due to Company and any amounts for which Company is entitled to indemnification under this PPA. Company 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 11 and in any sequence Company may select; *provided however*, that Company may not draw amounts in excess of any applicable Damage Caps. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("Issuer") satisfying the requirements of this Article 11, and shall be in the form of one or more of the following instruments:

1. The Security Fund may be in the form of an irrevocable standby letter of credit in the form and substance of Exhibit G-1 - Form of Letter of Credit, and any material changes to such Exhibit shall be subject to review and approval by Company at its sole discretion (the "Letter of Credit").

a. The Issuer for the Letter of Credit shall have and maintain an unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by all rating agencies that have provided such a rating, and if ratings from either Standard & Poor's or Moody's are not available, then equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on credit watch or have a negative outlook by any rating agency.

b. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days' advance Notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit or other authorized security for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit or other security is not renewed or extended at least thirty (30) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the security and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with sub-paragraph (2) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Article 11.

2. The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent

acceptable to Company in its sole discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form attached as Exhibit G-3 - Escrow Agreement. Funds held in the Escrow 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. After the Commercial Operation Date, Periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit any excess to Seller.

3. Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit G-2 - Form of Guaranty, from an Issuer with a minimum net worth of at least \$200,000,000 and a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better as determined by all rating agencies that have provided such a rating, and if ratings from both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company). If such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency. If the credit rating of the Issuer is downgraded or there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer, then Seller shall be required to convert the guarantee provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either sub-paragraph (1) or sub-paragraph (2) (of this Section 11.1(C)) above no later than ten (10) Business Days after receiving information from or about the Issuer that the Issuer no longer satisfies the requirements of this paragraph.

(D) Promptly upon any draw upon the Security Fund, Company shall give Notice to Seller of the amount thereof and the reason therefor, including the obligation(s) that Seller has not satisfied which entitled Company to draw on the Security Fund.

(E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior Notice to Company; *provided, however, that* the Security Fund must at all times satisfy the requirements of this Article 11.

(F) Company may reevaluate from time to time the then-existing Security Fund of Seller to determine, in a Commercially Reasonable manner, whether (i) it continues to satisfy the requirements in this PPA or (ii) there has been a change that has a Material Adverse Effect on the creditworthiness of the Issuer, such that it does not or, with the passage of time, it will no longer satisfy the requirements of this PPA. If Company determines, in a Commercially Reasonable manner, that there has been an event that has caused, or will cause, with the passage of time, Seller's

Security to no longer satisfy the requirements of this PPA, then Company shall provide prompt Notice to Seller of such event and after receipt of such Notice, Seller shall be required to provide alternative Security that satisfies the terms of this PPA. Notwithstanding the above, Company shall not be entitled to request a change to the Security Fund posted by Seller hereunder so long as the Issuer of such security continues to meet the requirements set forth for an Issuer in this Section 11.1.

(G) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

(H) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Article 11.

## **Article 12 - Default and Remedies**

12.1 Events of Default. Any of the following events 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 any payment to the other Party as required by this PPA, including invoices pursuant to Article 9, Liquidated Delay Damages, any required Nameplate Capacity Buy-Down Payment, 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 sixty (60) 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 undismitted or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

(D) Either Party's unauthorized assignment of this PPA or Change of Control, 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.

(F) Any material representation or warranty made by a Party in this PPA 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 immediately upon its occurrence and without further notice from the non-defaulting Party; and if such misrepresentation is not remedied within ten (10) Business Days after Notice thereof is received by the defaulting Party; *provided, however, that*, if the default is not reasonably capable of being cured within the ten (10) Business Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional forty-five (45) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure.

(G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for five (5) Business Days after Company provides Notice of Seller's failure.

(H) Solely when the circumstances described and provided for in Section 3.1(E)(3) apply (and in no other circumstance), Seller's failure to complete any Project Phase(s) on or before the Commercial Operation Date; *provided, however, that* Seller shall have ninety (90) Days from and after the Commercial Operation Date to complete any Project Phase(s) that are actively under construction, and *provided, further, that* if during such ninety (90) Day period, Seller provides a written opinion from a mutually agreeable independent engineer that Seller can reasonably complete Project Phases totaling an aggregate of AC 95 MW Nameplate Capacity within an additional ninety (90) Day period, then Seller shall be allowed a total period not to exceed one hundred-eighty (180) Days after the Commercial Operation Date to achieve confirmed Project Phase Completion Declarations for any applicable Project Phases, *provided further that* Liquidated Delay Damages shall have been paid throughout the entire period of delay and that no additional cure period for such default shall be required.

(I) Seller's failure, commencing twelve (12) months after the COD, to deliver at least eighty five percent (85%) of the Committed Solar Energy. Seller's failure to deliver Committed Solar Energy shall be measured during each twelve (12) month period ending on the anniversary of the Commercial Operation Date

("Committed Solar Energy Measurement Period"), utilizing data from the previous twelve (12) months. For the avoidance of doubt, the first Committed Solar Energy Measurement Period will commence at the end of the first Commercial Operation Year.

1. To the extent such failure to deliver Committed Solar Energy is attributable to (i) Seller Excuse Hours; (ii) actual solar irradiation falling below the Expected Solar Irradiation for the twelve (12) month Period, as calculated using the methodology set forth in Exhibit L; or (iii) curtailment by Company under Sections 7.3 and 8.2, the contribution of such occurrences shall be imputed into the calculation of Committed Solar Energy for the purposes of, and only for the purposes of, establishing a Default of Seller under this paragraph. Seller shall be permitted to add and/or replace Solar Units on the Site if and to the extent reasonably required to cure Seller's default pursuant to this paragraph.

2. This Event of Default shall be curable and deemed cured if (i) within thirty (30) Days following the end of the applicable Committed Solar Energy Measurement Period, Seller cures the reason(s) for such default (or, if such cure cannot reasonably be effected within thirty (30) Days, Seller commences to cure such default within thirty (30) days and then diligently pursues such cure to completion as soon as practicable thereafter), and (ii) as a result of such efforts, during the twelve (12) month period subsequent to the applicable Committed Solar Energy Measurement Period, the production of Solar Energy by the Facility (adjusted as provided in paragraph 1 equals or exceeds ninety five percent (95%) of the Committed Solar Energy.

3. Seller shall keep Company apprised at least monthly of Seller's cure efforts under this Section 12.1(I), if any.

(J) 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; *provided however, that*: (i) neither Party shall be entitled to terminate this PPA on account of this Event of Default unless such failure shall remain unremedied for thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party; and (ii) if the Event of Default is not reasonably capable of being cured within the thirty (30) Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional ninety (90) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences the cure within the initial 30-Day cure period and diligently pursues the cure to completion thereafter.

12.2 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. 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. 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, draw on the Security Fund for any unpaid Liquidated Delay Damages and Actual Damages, or any other required and unpaid amount;
4. In the case of an Event of Default by Seller occurring after the Commercial Operation Date, exercise Company's Step-In Rights.
5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Section 12.2, 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. Seller shall be liable to pay Company Liquidated Delay Damages, subject to the Pre-COD Damage Cap, as a liquidated damage and not a penalty for any Project Phase that is completed after the Commercial Operation Date 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 Company's sole and exclusive remedy for Seller's completion of any Project Phase(s) after the Commercial Operation Date. 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 Company's damages associated with the addition of any Project Phase(s) after the Commercial Operation Date will be significant but that it will be difficult to quantify those damages.
2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Date as may be extended pursuant to this PPA as described in Section 3.1.

(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; *provided, however, that* if an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365) Days, then, except in the event of an intentional or willful breach of non-payment by the defaulting Party with respect to the amounts payable under this PPA, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include the present value of the Replacement Power Costs, subject to the applicable Damage Cap. If Company is the defaulting Party, the Parties agree that Actual Damages recoverable by Seller hereunder on account of an Event of Default of Company may include the present value of Replacement Sales Amount and the value of any ITC and ITC Recapture Amount determined on an after-tax basis, that are lost by Seller or an Affiliate, or are required to be repaid by Seller or an Affiliate due to an Event of Default of Company that Seller has not been able to mitigate after use of Commercially Reasonable Efforts.

(D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance. By way of example, if the breach by Seller arises from a failure by a 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, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

### 12.3 Limitation on Damages.

(A) Except as otherwise provided in this Section 12.3, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages and all other amounts (including the Nameplate Capacity Buy-Down Payment) prior to the date ninety (90) Days following the Commercial Operation Date shall not exceed Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages from and after the COD shall not exceed the Post-COD Damage Cap (collectively the "Damage Cap(s)").

(B) If at any time during the Term, Company incurs damages in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.

(C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:

1. damage to Company-owned facilities caused by Seller's failure to adhere to Good Utility Practices;

2. Seller's intentional misrepresentation or 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 Company under this PPA except to the extent permitted by this PPA;
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 indemnification under this PPA;
6. any Environmental Contamination caused by Seller in connection with this PPA; or
7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. ***Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein);*** provided, however, that if either Party is held liable to a 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. The Parties agree that direct damages for Seller include the value of any ITC and ITC Recapture Amount, determined on an after-tax basis, that are lost by Seller or an Affiliate, or are required to be repaid by Seller or an Affiliate due to an Event of Default of Company that Seller has not been able to mitigate after use of Commercially Reasonable Efforts. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the 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.

12.4 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 13 - 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 occurrence of events or circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

**(C) SELLER AND COMPANY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS PPA BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.**

### Article 14 - Force Majeure

14.1 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 resumes performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.

14.2 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 a Force Majeure affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception (with respect to Force Majeure occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after COD), Company may, within 60 Days following the end of such period, terminate this PPA upon Notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; *provided, however, that* if the Force Majeure is one that can be corrected through repair or restoration work to the Facility or other actions by Seller, and Seller provides evidence that it is diligently pursuing such actions, then Company shall not have the right to terminate this Agreement for an additional ninety (90) day period during any suspension so long as (i) Seller is using Good Utility Practice to complete such repair work, restoration or such other actions, and (ii) prior to expiration of the initial one hundred eighty (180) or three hundred sixty-five (365) Day period, Seller informs and provides reasonable proof to Company of Seller's intention and ability to undertake and complete such actions.

14.3 Delays Attributable to Company. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Distribution Authority to perform its obligations under the Distribution Tariff or any Interconnection Agreement, in each case whether or not caused by Force Majeure ("Delay Conditions"); *provided, however, that* in the event of such Delay Conditions, Seller's obligations hereunder shall be extended for a period of time equal to the duration of the Delay Conditions.

(A) For the avoidance of doubt, Seller's failure to complete any Project Phase in time to qualify for any Tax Benefits, for any reason, including Delay Conditions, Force Majeure, the acts or inaction of the Distribution Authority or of any third party, or any Event of Default, except as expressly provided in Section 14.3(B), shall not give rise to any damages payable by Company (or an increase in the price for Solar Energy) associated with or arising from such failure resulting in the Facility not qualifying for Tax Benefits or other tax incentives, grants or credits.

(B) The limitation set forth in Section 14.3(A) shall not apply to any situation when Seller can establish that the failure to complete any Project Phase(s) (i) actually caused any Project Phase or the Facility not to qualify for Tax Benefits or other tax incentives, grants or credits and (ii) was solely caused by Company's willful misconduct or gross negligence in its performance of this PPA or by an Event of Default by Company of this PPA.

## Article 15 - Representations and Warranties

15.1 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 would reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;

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 would reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or

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

(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.

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

(F) It is (i) an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. §1a(12); (ii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or byproducts thereof; and (iii) entering into this PPA solely for purposes related to its business as such.

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

15.2 Seller’s Specific Representation. To the best knowledge of Seller, and except for those Permits identified in Exhibit F - Seller’s Permits which are the required Permits that will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller’s execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

15.3 Company’s Specific Representation. To the best knowledge of Company, and except for the State Regulatory Approval identified in Section 6.1, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company’s execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

## **Article 16 - Insurance**

16.1 Evidence of Insurance. No later than commencement of construction and then annually on or before December 1 of each year during the Term thereafter (and at such other times as may be reasonably requested by Company from time to time), Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in

compliance with the specifications for insurance coverage set forth in Exhibit E – Insurance Coverage to this PPA. Such certificates shall (a) name Company as an additional insured (except workers' compensation); (b) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) 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-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after 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 six years after the Term.

(B) In order to maintain Commercially Reasonable coverage amounts, Company may request Seller (through a certificate from an independent insurance advisor of recognized national standing certifying that such coverage amounts are not reflecting the standard practice for electric generating plants of similar type, geographic location and design) to modify the insurance minimum limits specified in Exhibit E. Seller shall make all Commercially Reasonable Efforts to comply with any such request and, in the event it cannot so comply, Seller shall provide written notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such a request is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and design.

(C) 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 Company, 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.

16.3 Application of Proceeds. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty; *provided* that Seller shall only be obligated under this Section 16.3 if an independent engineer, mutually agreed upon

by the Parties, provides a written opinion that such application of proceeds will be sufficient to assure the restoration of at least 90% of the aggregate nameplate capacity of the applicable Project Phase(s) or the Facility as a whole; *provided, however*, this Section 16.3 shall not act in any way as a waiver of any of Company's rights under this PPA.

### Article 17 - Indemnity

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

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

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

(C) Nothing in this Section 17.1 shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

17.2 Notice of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative proceeding, legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall give 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.

17.3 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, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

17.4 Amounts Owed. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

### **Article 18 - Financing Party Provisions**

18.1 Accommodation of Facility Financing Party. To facilitate Seller's obtaining of financing to construct and operate the Facility, Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, information or other documents, as may be reasonably requested by Seller or the Facility Financing Party in connection with the financing of the Facility consistent with the terms set forth in Exhibit I – Financing Party Consent Provisions (generally, a "Financing Party Consent"); *provided, however, that* in providing a Financing Party Consent, Company shall have no obligation to alter or modify the terms of the PPA or provide any consent or enter into any agreement, in each case that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Financing Party to reimburse, Company for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the Financing Party Consent and any documents requested by Seller or the Facility Financing Party, and provided by Company, pursuant to this Section 18.1. Seller shall provide Company with a Notice identifying the Facility Financing Party and providing appropriate contact information for the Facility Financing Party.

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

18.3 Notice of Facility Financing Party Action. Within ten (10) Days following Seller's receipt of each Notice from the Facility Financing Party of default, or Facility

Financing Party's intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such Notice to Company.

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

### **Article 19 - Assignment and Other Transfer Restrictions**

19.1 Transfer Without Consent Is Null and Void. Except for any Permitted Transfer, any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.

(A) Except as permitted in this Section 19.1, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, 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) 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 11; and (v) before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities. For the avoidance of doubt, the requirements delineated in clauses (ii) through (iv) of this Section 19.1(A) shall apply to all assignments, including Permitted Transfers.

1. Seller's consent shall not be required for Company to assign this PPA to an Affiliate of Company; *provided, however, that* Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the State Regulatory Agency and has or attains an Investment Grade, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

2. Company's consent shall not be required for Seller to assign this PPA for collateral purposes to a Facility Financing Party or assign this PPA to Geronimo Wind Energy, LLC, dba Geronimo Energy, LLC or one of its

Affiliates if (i) in the case of Seller's assignment to an Affiliate of Geronimo Wind Energy, LLC, dba Geronimo Energy, LLC the resulting credit profile is no less favorable than Geronimo Wind Energy, LLC, dba Geronimo Energy, LLC, which determination will be made by Company in its commercially reasonable judgment, and (ii) if Seller is not relieved of its obligations under this PPA as the result of such assignment. Seller shall notify Company of any such assignment no later than thirty (30) Days after the assignment. Notwithstanding the foregoing, such assignment shall be effective only upon Geronimo Wind Energy, LLC, dba Geronimo Energy, LLC providing Company with evidence that the Security Fund required by Article 11 is in place.

(B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld; *provided, however, that* Company shall have no obligation to provide any such consent prior to the fulfillment and expiration of all rights conferred pursuant to Section 19.2. For the avoidance of doubt, the Parties acknowledge and agree that Seller shall not be relieved of its obligations under this PPA as the result of any Change of Control unless Company agrees in writing in advance to waive Seller's continuing obligations under this PPA.

19.2 ROFO and PFT. Seller hereby grants Company a right of first offer ("ROFO") on terms set forth in this PPA.

(A) At any time after the Commercial Operation Date, if Seller or any Affiliate of Seller seeks to offer to convey the Facility or a majority of the LLC interests in Seller to an unaffiliated third party, then Seller shall provide written notice of such sale or transfer to Company (the "ROFO Notice").

1. Seller shall allow Company sixty (60) Days after the ROFO Notice to negotiate in good faith with Seller the terms of the sale of the Facility of a majority of the LLC interests in Seller. If Company desires to enter into such negotiation, then Company shall notify Seller of such decision within fifteen (15) Days of receipt of Seller's ROFO Notice.

2. Seller will provide, in a timely manner, information regarding the Facility that is reasonable or customary to allow Company to perform due diligence and to negotiate in good faith for the purchase of the Facility or the majority of the LLC interests in Seller. If Company exercises its ROFO rights, and Seller, in Seller's sole discretion, accepts an offer made in connection thereto, then the Parties shall have an additional thirty (30) Day period to sign definitive agreements. Seller shall cooperate in all respects necessary for Company to exercise its ROFO rights.

3. If Company does not exercise its ROFO rights, or if Company exercises such rights but Seller does not accept the offer made by Company in connection thereto, then Seller shall have the right to sell the Facility or a majority of LLC interests in Seller to any person within one hundred eighty (180) Days

of the expiration date of Company's ROFO rights and such transaction shall not be subject to Section 19.2, *provided, however*, that such transaction shall be subject to Section 19.1.

(B) To the extent Seller proposes a Pending Facility Transaction that does not otherwise trigger Company's ROFO rights, Seller shall give Company at least ninety (90) Days prior Notice of such Pending Facility Transaction (a "PFT Notice") in order to provide Company with an opportunity to discuss and negotiate with Seller the possible sale of the Facility to Company. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. Seller shall have no obligation to sell nor shall Company have any obligation to purchase the Facility, following any PFT Notice, *provided, however, that* issuance of a PFT Notice shall not relieve Seller of its obligations to provide a ROFO Notice if and when applicable pursuant to this Section 19.2.

(C) Notwithstanding anything to the contrary contained in this Article 19, any transaction or proposed transaction that is either a Permitted Transfer or does not constitute a Change of Control shall not trigger any obligations of Seller or create any rights of Company under this Section 19.2.

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

## Article 20 - Miscellaneous

20.1 Notices. Notices required by this PPA 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 and Contact Information as either Party updates them from time to time by Notice to the other Party. Notices shall be either hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile 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 Section 20.1.

### 20.2 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 on the products and services generated by Seller, sold and delivered to

Company at the Points of Delivery. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term.

(B) Company shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Solar Energy purchased under this PPA beyond the Points 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 Company hereunder shall be sales for resale, with Company reselling such electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.

20.3 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.

20.4 Fines and Penalties.

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

(B) If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any

provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse and hold Company harmless against any such costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 17.

(C) Company shall pay when due all fees, fines, penalties or costs incurred by Company or its agents, employees or contractors for noncompliance by Company, 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 Company and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(D) If fees, fines, penalties, or costs are claimed or assessed against Seller by any Governmental Authority due to noncompliance by Company, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to noncompliance by Company, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Company shall reimburse and hold the applicable Seller harmless against any such costs incurred by Seller, including claims for indemnity or contribution made by third parties against Seller in accordance with Article 17.

#### 20.5 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 Section 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).

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

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

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

20.9 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.

20.10 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* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.11 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including

Exhibits, may be amended, changed, modified, or altered in accordance with the terms of this PPA; *provided, however, that* such amendment, change, modification, or alteration shall be in writing.

20.12 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.

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

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

20.15 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 in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.

20.16 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.

20.17 Exhibits. Either Party may change the information in Exhibit D – Notices and Contact Information 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.

20.18 Confidentiality.

(A) Although this PPA is not Confidential Information, the Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").

1. Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party and wants the receiving Party to treat as Confidential Information. Disclosing Party shall designate 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 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 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 Section 20.18, 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 (i) 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 (ii) pursuant to Applicable Law, including all Laws and regulations governing disclosure to the State Regulatory Authority.

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

a. can be documented was in the public domain as allowed by this Section 20.18, 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. can be documented was independently developed by the receiving Party;

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

d. 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. 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 in a judicial or administrative proceeding other than a proceeding before the State Regulatory Agency; *provided, however, that* the Party requested or required to

make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after 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 Section 20.18.

3. In proceedings before the State Regulatory Agency, a Party may disclose Confidential Information pursuant to the State Regulatory Agency's procedures relating to confidential information; *provided, however, that* if the designation of such information as Confidential Information is contested or a Party is required to disclose information which a Party has labeled "Highly Confidential Information," the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after 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 Section 20.18.

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this PPA.

*Seller:*

**Aurora Distributed Solar, LLC,  
a Delaware limited liability company**

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

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

*Company:*

**Northern States Power Company,  
a Minnesota Corporation**

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

David Sparby, President and CEO  
Northern States Power Company, a Minnesota  
Corporation

## 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 Section 12.2(C).

“Accredited Capacity” means the higher amount of generating capacity associated with the Facility for which capacity credit can be given toward meeting a load-serving entity’s anticipated peak demand requirements plus reserve margin, pursuant to the applicable MISO resource adequacy requirements, as described in (i) Exhibit N or (ii) the Accredited Capacity Testing Procedures, in effect at the time, or substantially similar resource adequacy methodology.

“Accredited Capacity Shortfall Liquidated Damages” has the meaning set forth in Section 10.6 of this PPA.

“Accredited Capacity Shortfall” has the meaning set forth in Section 10.6 of this PPA.

“Accredited Capacity Testing Procedures” means either the (i) procedures described in Exhibit N or (ii) the MISO testing requirements, methodologies and protocols in existence and used at the time to determine accredited capacity for solar generation facilities.

“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. Geronimo Wind Energy, LLC dba Geronimo Energy, LLC shall be deemed an Affiliate of Seller. Each Tax Equity Investor shall be deemed to be an Affiliate of Seller for purposes of this PPA.

“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 applicable Project Phase’s capability of accepting AGC Set-Point electronically and automatically adjusting and regulating such Project Phase’s energy production via its SCADA System.

“AGC Protocols” means the protocols attached hereto as Exhibit H - Operating Standards (AGC Protocols, Data Collection), as modified in accordance with Section 10.4.

“AGC Remote/Local” means a handshake electronic signal sent from the Project Phase(s) to which AGC is applicable to the EMCC AGC system, and from the EMCC AGC system to each such Project Phase, indicating each such Project Phase 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 Company-generated analog or digital signal sent by the SCADA System to the Project Phase(s) to which AGC is applicable, representing the maximum Solar Energy output for such Project Phase(s).

“Ancillary Services” means those ancillary services (by whatever name) as well as those other services and products that may be included in the Distribution 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. The Parties acknowledge that as of the Effective Date, the Distribution Tariff does not include provision for any such ancillary services.

“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.

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

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

“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 any Project Phase: (i) a transfer of a majority of the ownership interests in Seller or such owner of a Project Phase, as applicable; or (ii) any consolidation or merger of Seller or such owner of a Project Phase 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 Enel or any Affiliate thereof is no longer the direct or indirect owner of at least 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 (1) transactions exclusively among Affiliates of Seller, (2) any refinancing or replacing of the Facility Financing by Seller, or any of its respective Affiliates, including any Tax Equity Financing liquidation or monetization; (3) the financing obtained to develop, construct and operate any Project Phase, including any Tax Equity Financing, backleverage financing or credit derivative arrangement; (4) any exercise by the Facility Financing Party of its rights and remedies under the Financing Documents (including under any construction debt Financing Documents), (5) a change of the Ultimate Parent Entity of Seller, (6)

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 interests of such entity; (7) any transaction in which Seller offered to and Company declined to acquire the applicable Facility or enter into a Change of Control; (6) any transaction, the sole purpose of which is to change the jurisdiction of Seller's organization; (8) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the applicable Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change, or (9) 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.

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

"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 Seller provides the Notice authorized by Section 3.1(D) of this PPA or such other date as is mutually agreed upon by the Parties.

"Commercial Operation Year" means any consecutive 12 month period during the Term, commencing with the Commercial Operation Date or any of its anniversaries.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to 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.

"Committed Solar Energy" for any period means the megawatt-hours of Solar Energy committed to be delivered to the Company by Seller from the Facility in such period, set forth in Exhibit J – Committed Solar Energy, Solar Energy Payment Rate and Accredited Capacity (by Commercial Operation Year), as such may be adjusted in accordance with this PPA or finalized as described in Exhibit J. For any period that does not coincide with a Commercial Operation Year, Committed Solar Energy shall

be calculated as the month-weighted sum of the Committed Solar Energy falling in each of the two Commercial Operation Years using expected monthly generation profile data, set forth in Exhibit K - Expected Monthly Generation Profile.

“Committed Solar Energy Measurement Period” shall have the meaning set forth in Section 12.1(l)

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

“Compensable Curtailment Energy” shall have the meaning set forth in Section 8.2(A)(1).

“Confidential Information” shall have the meaning set forth in Section 20.18(A).

“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 – Construction Milestones.

“Damage Caps” shall have the meaning set forth in Section 12.3(A).

“Day” means a calendar day.

“DC” means direct electric current.

“Dispute” shall have the meaning set forth in Article 13.

“Distribution Authority” means the business unit within Company responsible for operating the Interconnection Facilities, and the distribution system applicable to Seller and the Project Phases pursuant to the Distribution Tariff.

“Distribution System” means the contiguously interconnected electric distribution facilities over which the Distribution Authority has rights (by ownership or contract) to deliver electric energy to Company’s retail customers.

“Distribution Tariff” means Section 10 of the Northern States Power Company Minnesota retail electric rate tariff, as amended from time to time, the Distributed Generation, Standard Interconnection and Power Purchase Tariff.

“Economic Curtailment” shall mean curtailments of delivery of Solar Energy that arise from Company’s scheduling and other market participation activities as may be required of Seller by the Market Operator, if any, including any such curtailment arising from any energy offer made by, or on behalf of, Company with respect to the Facility. If Seller asserts that any curtailment was an Economic Curtailment and

Company disputes that such curtailment arose from such scheduling or market participation activities of Company, Company shall furnish to Seller, subject to Section 20.18, copies of such records of Company relating to Company's scheduling and market participation activities as Seller reasonably requests for purposes of resolving the dispute.

"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 Solar Energy output from the Facility, including the metering current transformers and the metering voltage transformers.

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

"Emergency" means any condition or situation that causes the Distribution Authority to disconnect the Facility due to a system emergency and imminent danger to the public as provided in an applicable Interconnection Agreement.

"Enel" means Enel Green Power, S.p.A.

"Energy Markets Control Center" or "EMCC" means Company'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 a 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 Section 215 of the Federal Power Act or any successor organization; the Midwest Reliability Organization is the certified ERO as of the date of this PPA.

"Escrow Account" shall have the meaning set forth in Section 11(C)(2).

"Event of Default" shall have the meaning set forth in Article 12.

"Excess Solar Energy" shall have the meaning set forth in Section 8.1(C).

"Expected Solar Irradiance" for any 12-month period means the annual average solar irradiation values for the Site of each Project Phase contained in the NREL Solar Prospector TMY file for the coordinates of such Site (as further described in Exhibit C hereto The Expected Solar Irradiance (global horizontal) for the entire

Facility shall be as described on Exhibit C as updated by Seller in connection with the finalization of the potential Project Phases that will be included in the Facility.

“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 Distribution System, that are made up of the Project Phases. including all of the following: Seller’s equipment, buildings, Solar Units, generators, inverters, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Points, 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 reasonably necessary for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

“Facility Financing” means the obligations of Seller or its Affiliates to any lender and/or equity investor (including so-called “tax equity” investors) pursuant to the Financing Documents, or any portfolio financing, including principal of, premium on and interest on indebtedness, fees, expenses or penalties; amounts due upon acceleration, prepayment or restructuring; swap or interest rate hedging breakage costs; and any claims or interest due with respect to any of the foregoing. For the avoidance of doubt, Facility Financing includes any amount of cash and tax attributes allocated to Facility Financing Party and any Tax Equity Financing.

“Facility Financing Party” means, collectively, any parties providing any Facility Financing and any successors or assigns thereto and any Tax Equity Investors.

“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.

“Financing Documents” means the documents associated with any Tax Equity Financing and the agreements equity contribution, loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt and/or equity financing for the Facility or any Project Phases, 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 or any Project Phases.

“Financing Party Consent” shall have the meaning set forth in Section 18.2.

“Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not

within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (ii) by exercise of due diligence and foresight could not reasonably have been avoided, including (A) acts of God; (B) sudden action of the elements such as floods, earthquakes, hurricanes, tornados, major storms that restrict transportation or access to an applicable Project Phase, lightning, fire, ice storms, smoke or other particulates from volcanoes; (C) sabotage; the discovery of Native American burial grounds not evidenced in Seller's Environmental Site Assessment environmental assessment of any Site; (D) the discovery of endangered species, as defined by Applicable Law; (E) vandalism beyond that which could reasonably be prevented by Seller; (F) terrorism; war; riots; explosion; blockades; insurrection; (G) except as set forth in clause (e) below, labor strikes, slowdowns or labor disruptions (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); (H) serial manufacturing and/or design defects in the Solar Units or other major components comprising a Project Phase only in the event and to the extent that such occurrence is, would be or would have been (without regard for the passing of time) a serial defect under the applicable Seller's Solar Unit supply agreement(s) or Construction Contract for such Project Phase; (I) actions or inactions by any Governmental Authority taken after the Effective Date (including the adoption or change in any rule, Applicable Law or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and (J) inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority following COD, *provided, however, that* Force Majeure 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) mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity, unless such breakdown or condition was itself caused by an event of Force Majeure; (d) changes in market conditions; or (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited to Seller, Seller's Affiliates, or any third party employed by Seller to work on the Facility.

"Forced Outage" means any condition at the Facility that requires the immediate and unplanned removal of any Project Phase, the reduction of such Project Phase by at least the greater of (i) 10% and (ii) AC 1 MW, or the reduction of production from the Facility by AC 10 MW or more, 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, and avoided or reduced carbon dioxide emissions that are attributable to Energy generated by the Seller and sold to Company under this PPA, whether pursuant to or arising from any Governmental Authority or international

agreement or treaty, *provided, however, that* this definition excludes (i) any credits, offsets or other benefits arising out of or associated with any emission or pollutant other than carbon dioxide emissions, and (ii) any Tax Benefits.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the solar energy electric power generation industry pertaining to facilities of the same type as and 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 solar energy 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.

“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 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.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*

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

“Indemnified Party” shall have the meaning set forth in Section 17.1.

“Indemnifying Party” shall have the meaning set forth in Section 17.1.

“Interconnection Agreement” means each separate agreement for interconnection of one or more Project Phases to the Distribution 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 Distribution Authority to interconnect the Facility in accordance with the Distribution Tariff.

“Interconnection Facilities” means those facilities designated in the applicable Interconnection Agreement for the direct purpose of interconnecting any Project Phase of the Facility at an 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 Distribution Authority or another entity.

“Interconnection Point” means, with respect to Project Phase, the physical point within the operational authority of Distribution Authority, as specified in the Interconnection Agreement, at which electrical interconnection is made between such Project Phase of the Facility and the Distribution System in accordance with the Distribution Tariff and the corresponding 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.

“Issuer” shall have the meaning set forth in Article 11.

“ITC” means an investment tax credit applicable to electricity produced from certain renewable resources pursuant to Code §48.

“ITC Recapture Amount” means the amount payable (determined on an after-tax basis) to the IRS by Seller under Code §50(a) due to Seller’s ineligibility for ITC after such time as Seller or its Affiliate, Tax Equity Investor or Facility Financing Party has claimed the ITC.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Letter of Credit” shall have the meaning set forth in Section 11(C)(1).

“Liquidated Delay Damages” means \$70 per MW of Nameplate Capacity (AC) per Day.

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

“Maintenance Schedule” has the meaning set forth in Section 10.2(A).

“Market Operator” means the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within any energy market in which Company participates with respect to the Solar Energy or Capacity Attributes based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability. If such entity is also the Distribution Provider, then “Market Operator” shall be construed to mean such entity acting in its capacity as the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within the energy market in which Company participates with respect to the Solar Energy or Capacity Attributes based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability.

“Master Site Permit” means a site permit issued by the State Regulatory Agency for Facilities up to an aggregate of 100 AC MW of Nameplate Capacity, pursuant to Minnesota Statutes Chapter 216E and Minnesota Rules Chapter 7850.

“Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations, or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

“MISO” means the Midcontinent Independent System Operator, Inc., a non-profit, Delaware corporation, or successor organization.

“MW” means megawatt or one thousand kW.

“MWh” means megawatt hours.

“Nameplate Capacity” means the designed maximum output for any Project Phase or the Facility as designated by the equipment manufacturer(s) or in the aggregate of any such Project Phase or the Facility (AC MW), as applicable.

“Nameplate Capacity Buy-Down Payment” means the payment required pursuant to Section 3.1(F).

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

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

“Notice(s)” shall have the meaning set forth in Section 20.1.

“On-Peak Months” means the months of January, February, June, July, August, September and December.

“Operating Committee” means one representative each from Company and Seller pursuant to Section 10.4.

“Operating Procedures” means those procedures developed pursuant to Section 10.4, if any.

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

“Order” shall have the meaning set forth in the recitals.

“Park Potential” means the number provided to the Company in real time through the Company’s SCADA System in accordance with the AGC Protocols, which depicts Seller’s real time calculation of the Potential Energy capable of being provided by the Facility or any Project Phase to Company 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 plane-of-array solar insolation, temperature, barometric pressure, Solar Unit availability, derate(s) and line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Points of Delivery.

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

“Pending Facility Transaction” or “PFT” means (i) any proposed Change of Control of Seller, (ii) the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, (iii) the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, and (iv) the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility, *provided, however, that* a PFT does not include (w) any financing, refinancing, Tax Equity Financing, or replacing of the Facility Financing by Seller or any of its Affiliates; (x) any transaction between and among Affiliates of Seller; (y) any transaction or proposed transaction that would not constitute a Change of Control and/or that constitutes a Permitted Transfer, and (z) any transaction in which Company declined to exercise its ROFO rights.

“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 Company.

“Permitted Transfer” means any of the following:

- (i) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates, *provided, however,* that the equity interests in Seller (excluding interests held by Facility Financing Party) continue to be held, directly or indirectly, no less than fifty percent (50%) by Enel,
- (ii) any exercise by a Facility Financing Party of its rights and remedies under the Financing Documents,
- (iii) a Change of Control of the Ultimate Parent Entity of Seller,
- (iv) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change,
- (v) the direct or indirect transfer of shares of or equity interests in Seller to a Tax Equity Investor; or
- (vi) a transfer of the Facility or any Project Phases packaged with any of the following:
  - a. all or substantially all of the assets of Seller’s Ultimate Parent Entity;
  - b. all or substantially all of the renewable energy generation portfolio of Seller’s Ultimate Parent Entity; or
  - c. all or substantially all of the solar generation portfolio of Seller’s Ultimate Parent Entity; provided, however, that in the case of (c), the Facility does not represent more than fifty percent (50%) of the generation of such solar generation portfolio; andprovided further that in the case of each of (a), (b) and (c), the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

“PFT Notice” shall have the meaning set forth in Section 19.2(C).

“Environmental Site Assessment” shall have the meaning set forth in Section 4.1(A).

“PI” means the “plant information” system as described and implemented in Section 10.6(B).

“Point of Delivery” means each of the physical points within the operational authority of the Distribution Authority at which Seller makes available to Company and delivers to Company the Solar Energy being provided by Seller to Company from a Project Phase of the Facility under this PPA.

“Post-COD Damage Cap” means [TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS].

“Post-COD Security Fund” means [TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS].

“Potential Energy” means the quantity of the energy that Seller is capable of delivering at the Points of Delivery. In the event that Park Potential is not a reliable proxy for Potential Energy pursuant to Section 8.2(B), Potential Energy shall be calculated as the aggregate energy available for delivery at the Points of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured solar resource, power curves, Solar Unit availability, derate(s) and line losses, and any other adjustment necessary to accurately reflect the Facility’s (or, if applicable, a Project Phase’s) capability to produce and deliver energy to the applicable Points of Delivery.

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

“Pre-COD Damage Cap” means [TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS].

“Pre-COD Security Fund” means an amount equal to [TRADE SECRET DATA BEGINS...  
...TRADE SECRET DATA ENDS].

“Project Phase” means one or more (as the context requires) of 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 Distribution System, with the following characteristics separate and apart from all other phases: (i) a separate Site, (ii) proposed to interconnect through the Distribution System utilizing a separate Interconnection Agreement pursuant to the Distribution Tariff, (iii) a separate Point of Delivery and Electric Metering Devices, and (v) is of a size from approximately 2 MW to no more than 10 MW of Nameplate Capacity. The initial listing of potential Project Phases is found in Exhibit C-Initial Description of Project Phases.

“Project Phase Completion Conditions” means all of the requirements that must be satisfied by Seller as a prerequisite to a Project Phase achieving the requirements set forth in Section 4.3.

4.3. “Project Phase Completion Declaration” has the meaning set forth in Section

“Qualified Operator” means any affiliate of Seller, or an operator of solar generation facilities that demonstrates to Company’s reasonable satisfaction that it has sufficient experience to successfully operate the Facility, including a minimum of three (3) years’ experience in the solar energy generation and operation business, and owns, controls or operates a minimum of 100 MW of solar energy generation capacity.

“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 Resources, 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 Agreement as of the Effective Date, the REC Registration Program means the Midwest Renewable Energy Trading System Program.

“Renewable Energy Credits” or “RECs” means a 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 benefits as may be created 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 Tax Benefits.

“Replacement Power Costs” means the costs that would be incurred by Company, after the Commercial Operation Date, that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide, less the sum of any payments from Company to Seller, under this PPA, that were eliminated as a result of 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. Replacement Power Costs shall be determined as follows:

$$\text{Replacement Power Costs} = (A + B + C) - D, \text{ where}$$

“A” is the product of (x) the number of MW of the Nameplate Capacity (AC) and (y) the applicable market price for AC capacity made available to Company’s system;

“B” is the sum of (i) the weighted average product of the number of MWh of energy purchased by Company to replace any of the Committed Solar Energy that was not delivered under this PPA and the applicable market price for energy delivered to Company’s system at a point nearest to the applicable Point(s) of Delivery for the hour, and (ii) the weighted average product of the MWh of energy derived in clause (i) and the actual cost of registered RECs for that number of MWh;

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

“D” is the product of the Committed Solar Energy that was not delivered under this PPA and the Solar Energy Payment Rate.

“Replacement Sales Amount” means the sum of any payments which Company 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 Solar Energy and other products and services that Company was required to accept and purchase under this PPA, but failed to purchase.

“ROFO” shall have the meaning set forth in Section 19.2.

“ROFO Notice” shall have the meaning set forth in Section 19.2(A).

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” means 11:59 pm on the date that is the twentieth (20th) 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 11, as security for Seller’s performance under this PPA.

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

“Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Solar Energy to Company as a result of (A) Non-Compensable Curtailments; (B) Force Majeure; (C) Economic Curtailments; and (D) any unexcused failure of Company to perform any obligation of Company under this PPA that causes Seller to be unable to generate or deliver Solar Energy to the Point of Delivery.

“Site” means the separate parcel of real property on which a Project Phase will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the

construction, operation and maintenance of such Project Phase. Each Site is more specifically described in Exhibit C - Facility Description to this PPA.

“Solar Energy” means the net electric energy generated from (or, with respect to any curtailed energy, capable of being generated from) an Eligible Energy Resource utilizing solar irradiance as its source of electric generation in compliance with Minn. Stat. Section 216B.1691, including any and all associated RECs and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.2. Solar Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement. Solar Energy shall be net of energy self-generated and concurrently consumed by the Facility, and net of losses prior to the Points of Delivery.

“Solar Energy Payment Rate” means the rate as shown in Exhibit J – Committed Solar Energy, Solar Energy Payment Rate and Accredited Capacity (by Commercial Operation Year).

“Solar Units” means the equipment necessary for the Facility to collect sunlight at the Sites and convert it into electricity or thermal energy. Solar Units include photovoltaic arrays and tracking devices.

“Stage 1 Energy” shall have the meaning set forth in Section 4.5(A).

“Stage 1 Energy Price” means a payment rate equal to the price per MWh for energy in the MISO day-ahead market at the pricing node designated as nsp.nsp (or such reasonable and mutually-agreed successor pricing node), less \$2 per MWh.

“Stage 2 Energy” shall have the meaning set forth in Section 4.5(B).

“Stage 2 Energy Price” means a payment rate of seventy percent (70%) of the Solar Energy Payment Rate applicable as of the Commercial Operation Date.

“State Regulatory Agency(s)” means the Minnesota Public Utilities Commission or any successor agencies in the State of Minnesota and the North Dakota Public Service Commission or any successor agencies in the State of North Dakota.

“State Regulatory Approval” means a final, written order of one State Regulatory Agency, or if needed, both State Regulatory Agencies, that does not impose conditions unsatisfactory to the Company and is not subject to application for rehearing, re-argument and reconsideration, and that makes the affirmative determination that Company’s execution of this PPA is reasonable and in the public interest, and that 100% of the costs incurred by Company under this PPA are recoverable, in the aggregate, from the retail customers of both States or if only one State then from the retail customers of that State (without application of jurisdictional allocators or other reductions to reflect multi-state operations) pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudence review of Company’s performance and administration of this PPA.

“Tax Benefits” means any and all (i) tax credits based on ownership of, investment in or energy production from the Facility or any portion thereof, including the production credit and the investment credit described, respectively, in Sections 45 and 48 of the Code, as amended, and any other similar tax credits that may be available to any Seller based upon ownership of or energy production from any portion of its Facility, (ii) grants based on ownership of, investment in or energy production from the Facility or any portion thereof, including the grant described in Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, and (iii) other tax benefits, credits and/or grants, including depreciation and other cost recovery deductions, and/or cash payments from a taxing authority arising in connection with ownership of, investment in, or operation of the Facility, or any portion thereof, in each case allocated, allowed, allowable, assigned, awarded, certified or otherwise transferred or granted to Seller or its Affiliate or Company by any Governmental Authority in any jurisdiction in connection with any Project Phase or the Facility.

“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each a “Tax Equity Investor”) and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code , as amended (a pass-through lease).

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

“Ultimate Parent Entity” shall have the meaning set forth under Section 7A of the Clayton Act, 15 U.S.C. §18a, also known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976. For the avoidance of doubt (and notwithstanding the foregoing), the Ultimate Parent Entity of Seller as of the Effective Date shall be either Enel or Enel S.p.A.

\* \* \* \* \*

**EXHIBIT B**

**OVERALL CONSTRUCTION MILESTONES**

[TRADE SECRET DATA BEGINS...


...TRADE SECRET DATA ENDS]

**EXHIBIT C**  
**INITIAL DESCRIPTIONS OF PROJECT PHASES**

<b>Facility</b>	<b>GPS Coordinates</b>	<b>Gross Acres</b>	<b>Applied Interconnection MWs AC</b>	<b>Expected Solar Irradiance kWh/m2/yr</b>
Albany	N45.641536, W94.599465	230	10	1372
Annandale	N45.250813, W94.111136	68	6	1383
Atwater	N45.140809, W94.769319	40	4	1394
Brooten	N45.508304, W95.125572	12.8	1.5	1383
Chisago County	N45.452567, W92.902101	62	7.5	1376
Dodge Center	N44.026, W92.882	68.9	6.5	1391
Eastwood	N44.154883, W93.916250	44.5	5.5	1391
Fiesta City	N44.955163, W95.688693	24	2.5	1413
Hastings	N44.759294, W92.824906	41	5	1376
Lake Emily	N44.320552, W93.904056	46	5	1398
Lake Pulaski	N45.196, W93.812	75.88	8.5	1387
Lawrence Creek	N45.401744, W92.693699	74.4	4	1372
Lester Prairie	N44.908663, W94.028319	29.9	3.5	1391
Mayhew Lake	N45.619, W94.152	36	4	1380
Montrose	N45.055776, W93.923189	34	4	1398
Paynesville	N45.391063, W94.721433	298.25	10	1391
Pine Island	N44.204948, W92.663715	40	4	1387
Pipestone	N44.003685, W96.335801	15.85	2	1442

PUBLIC DOCUMENT:  
TRADE SECRET DATA EXCISED  
Model Solar Energy Purchase Agreement

Docket No. E002/CN-12-1240  
Attachment C

Scandia	N45.301665, W92.800848	24	2.5	1358
Waseca	N44.092142, W93.530960	100.6	10	1402
West Faribault	N44.274971, W93.310803	44	5.5	1394
West Waconia	N 44.793445, W93.901329	77.13	8.5	1398
Wyoming	N45.307612 , W92.981732	69	7	1380
Zumbrota	N44.299, W92.69	40.13	3.5	1387
			Exhibit L	1389

**EXHIBIT D**  
**NOTICES AND CONTACT INFORMATION**

<b>Company</b>	<b>Seller</b>
<p><b>Notices:</b> Thomas A. Imbler Vice President, Commercial Operations Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7414</p> <p>Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740</p>	<p><b>Notices:</b> Michael Storch EVP Enel Green Power North America, Inc. One Tech Drive, Suite 220 Andover, MA 01810 Phone: 978-296-6805</p> <p>General Counsel Enel Green Power North America, Inc. One Tech Drive, Suite 220 Andover, MA 01810 generalcounsel@enel.com</p>
<p><b>Operating Committee Representative:</b> Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740</p> <p><b>Alternate:</b> Andy Sulkko Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.6529</p>	<p><b>Operating Committee Representative:</b> Mark McGrail Senior Director Energy Management Enel Green Power North America, Inc. One Tech Drive, Suite 220 Andover, MA 01810 Phone: 978-296-6815</p> <p><b>Alternate:</b> Roberto Rosner Manager Enel Green Power North America, Inc. One Tech Drive, Suite 220 Andover, MA 01810 Phone: 978-296-6807</p>

<p><b>Real-Time Contact Information</b></p> <p><i>Real-time Communications Contact:</i> Generation Dispatch desk (24-hr coverage) Phone: 303.571.6280 Fax: 303.571.7305</p> <p><i>Distribution Operation Contact:</i> Position: Real Time Distribution Ops Phone: 303.571.2764 Fax: 303.571.2779 E-mail: michael.i.boughner@xcelenergy.com</p>	<p><b>Real-Time Contact Information</b></p> <p>Control and Monitoring Room CMR Operations Operator Enel Green Power North America, Inc. One Tech Drive, Suite 220 Andover, MA 01810 978-686-4386</p> <p><b>Sean Reid</b> CMR Manager Enel Green Power North America, Inc. One Tech Drive, Suite 220 Andover, MA 01810 978-296-6845</p>
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**EXHIBIT E**  
**INSURANCE COVERAGE**

TYPE OF INSURANCE	MINIMUM LIMITS OF COVERAGE
Commercial General Liability (CGL) and commercial umbrella	Prior to COD: \$6,500,000 Following COD: \$11,000,000  Combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility. (Umbrella policy may be used to satisfy the limits.)

CGL insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be in excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$1,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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Employers Liability	\$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for
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	bodily injury by disease.
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Builder's Risk	Replacement value of the Facility or Maximum Foreseeable Loss (MFL) may be used to establish the Builder's Risk insurance limit, provided, however, that Company shall have the right to approve the amount.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$1,000,000 each occurrence
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All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility or Maximum Foreseeable Loss (MFL) may be used to establish the All-Risk property insurance limit. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. Company shall be given the right to review and approve any MFL.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$1,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and Units, in an amount equal to the MFL or other agreed-to limit.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
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Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under All-Risk Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

**EXHIBIT F**  
**SELLER'S PERMITS**

**Aurora Distributed Solar, LLC Required Approvals**

Regulatory Authority	Permit/Approval
<b>Federal Approvals</b>	
U.S. Army Corps of Engineers	Wetland Delineation Approvals
	Jurisdictional Determination
	Federal Clean Water Act Section 404 Permit(s)
U.S. Fish and Wildlife Service	Section 7 Consultation
	Review for Threatened and Endangered Species
Environmental Protection Agency (Region 5) (EPA) in coordination with the Minnesota Pollution Control Agency (MPCA)	Spill Prevention Control and Countermeasure (SPCC) Plan
	Phase I Environmental Site Assessment
Lead Federal Agency	Federal Section 106 Review
Federal Land Manager (BLM, USBR, Forest Service)	Right-of-Way Crossing
National Historic Preservation Act	Class I Literature Review / Class III Cultural Field Survey
U.S. Department of Agriculture	Form AD-1006
	Conservation / Grassland / Wetland Easement and Reserve Program Releases and Consents
	FSA Mortgage Subordinations & Site-Specific Environmental Assessments
Federal Energy Regulatory Commission	Exempt Wholesale Generator Self Cert. (EWG)
	Qualifying Facilities (QF) Certification
	Market-Based Rate Authorization
Federal Emergency Management Agency	Flood Plain Designations
<b>State of Minnesota Approvals</b>	
Minnesota Board of Water and Soil Resources	Wetland Conservation Act Approval
Minnesota Department of Labor and Industry	Building Plan Review and Permits
Minnesota Public Utilities Commission	Site Permit for Large Electric Generating Plant (LEGP)
	Exemption from Certificate of Need for LEGP
Minnesota State Historic Preservation Office (SHPO)	Cultural and Historic Resources Review and Review of State and National Register of Historic Sites and Archeological Survey

**Aurora Distributed Solar, LLC Required Approvals**

<b>Regulatory Authority</b>	<b>Permit/Approval</b>
Minnesota Pollution Control Agency	Section 401 Water Quality Certification
	National Pollutant Discharge Elimination System Permit (NPDES) – MPCA General Storm water Permit for Construction Activity
	Very Small Quantity Generator (VSQG) License – Hazardous Waste Collection Program
	Aboveground Storage Tank (AST) Notification Form
Minnesota Department of Health	Environmental Bore Hole (EBH)
	Water Supply Well Notification
	Plumbing Plan Review
Minnesota Department of Natural Resources	License to Cross Public Land and Water
	Public Waters Work Permit
Minnesota Department of Transportation	Utility Permits on Trunk Highway Right of Way
	Oversize/Overweight Permit for MNDOT/State Highways
	Access Driveway Permits for MNDOT/State Roads
<b>Local Approvals</b>	
Watershed District	Grading Permit, Land Alteration Permit, Stormwater Permit
Counties	Driveway Permit, Right-of-Way/Utility Permit, Wetland Conservation Act Approval, Parcel Split, Platting, Demolition, Hazardous Waste Disposal Pre-demolition, Conditional Use Permit.
Townships	Driveway Permit, Parcel Split, Platting, Right-of-Way/Utility Permit, Conditional Use Permit

**EXHIBIT G**  
**FORM OF SECURITY DOCUMENTS**

**EXHIBIT G-1**  
**FORM OF LETTER OF CREDIT**

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit  
No.: \_\_\_\_\_ Date of Issuance: \_\_\_\_\_  
Initial Expiration Date: [Must be at least one  
year after date of issuance]

Beneficiary: \_\_\_\_\_ Applicant: \_\_\_\_\_

As the issuing bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of USD \$ \_\_\_\_\_ ( \_\_\_\_\_ U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in the form attached hereto as Exhibit A ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Draft(s) must be signed on behalf of Beneficiary, and signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within 24 hours after presentment of the Sight Draft(s). Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft(s) presented in compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at \_\_\_\_\_, or any other full service office of the Issuer on or before the above stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

Issuer acknowledges that this Letter of Credit is issued pursuant to the provisions of that certain Solar Energy Purchase Agreement between the Beneficiary and the Applicant dated as of \_\_\_\_\_, 201\_ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA

or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail or overnight courier that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is transferable in its entirety (but not in part) and only at the counter of the Issuer. Issuer agrees that it will affect any transfers immediately upon presentation to Issuer of this Letter of Credit and all amendments (if any) and a completed written transfer request in the form attached hereto as Exhibit B. Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer or this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(B) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(B) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of god, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: \_\_\_\_\_  
AUTHORIZED SIGNATURE  
Its: \_\_\_\_\_

**EXHIBIT A**  
(TO LETTER OF CREDIT)

**SIGHT DRAFT**

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

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD \$ \_\_\_\_\_ ( \_\_\_\_\_ and 00/100ths U.S. Dollars).

Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No. \_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_

[Name of Beneficiary to be inserted]

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

Its Authorized Representative

[Title or Other Official Capacity to be inserted]

To: [Name and Address of Issuer to be inserted]

**EXHIBIT B**  
(TO LETTER OF CREDIT)

**FORM OF TRANSFER REQUEST**

IRREVOCABLE STANDBY LETTER OF CREDIT NO: \_\_\_\_\_

CURRENT BENEFICIARY:

APPLICANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO: [NAME OF ISSUING BANK]

The undersigned, as the current "Beneficiary" of the above referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [INSERT TRANSFEREE NAME AND ADDRESS BELOW]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From and after the date this transfer request is delivered to the Issuer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee, and the transferee shall have the sole rights as Beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments agreed between the parties, whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned transferor.

DATED: \_\_\_\_\_

[NAME OF BENEFICIARY]

*[NOTARY ACKNOWLEDGMENT]*

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

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

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

[TO BE SIGNED BY A PERSON PURPORTING TO BE AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY AND INDICATING THEIR TITLE OR OTHER OFFICIAL CAPACITY, AND ACKNOWLEDGED BY A NOTARY PUBLIC.]

**EXHIBIT G-2**  
**FORM OF GUARANTY**

This Guaranty is executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of **Northern States Power Company, a Minnesota corporation** ("Company"), in connection with the performance by \_\_\_\_\_, a \_\_\_\_\_ company ("Seller"), of a Solar Energy Purchase Agreement dated \_\_\_\_\_, 201\_ between Seller and Company [as amended by \_\_\_\_\_ dated \_\_\_\_\_] (the "PPA").

- RECITALS -

A. Seller is planning to construct, own, and operate a solar power electric generation facility having nameplate capacity of approximately \_\_\_\_ MW (AC) to be located in \_\_\_\_\_ County, Minnesota (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

C. Seller is controlled directly or indirectly by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. Pursuant to Article 11 of the PPA, Guarantor has agreed to execute and deliver this Guaranty as the Post-COD Security Fund (as defined in the PPA) to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to (\$US\_\_\_\_\_), [Note: the Post-COD Security Amount specified in the PPA to be inserted here] plus reasonable costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company, as further described in Section 10 hereof.

3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall within ten (10) business days after receipt of written demand by Company pay, reimburse, and indemnify Company for and against any liabilities, damages, and related costs (including reasonable attorneys' fees) incurred by Company as a result of any failure by Seller to perform the Obligation in Default, all in such manner and at such times as Company may reasonably direct.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws (as defined in the PPA);

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a [corporation][\_\_\_\_\_], duly organized, validly existing, and in good standing under the laws of the state of its [incorporation][formation]. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all requisite [corporate] actions of Guarantor and is not in violation of any law or judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor hereby agrees to pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other reasonable expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all such attorneys' fees and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor. Guarantor shall be entitled to a release of its obligations under this Guaranty in the event, and as and to the extent, Company accepts other Post-COD Security Fund in substitution for this Guaranty.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of Minnesota without regard to the principles of conflicts of law thereof.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) *if to Company:* as provided in the PPA

(b) *if to Guarantor:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
*Attn:*  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_

*with a copy to:* \_\_\_\_\_

\_\_\_\_\_  
*Attn:*



**EXHIBIT G-3**  
**FORM OF ESCROW AGREEMENT**

This Escrow Agreement ("Agreement") is entered into and effective this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and among \_\_\_\_\_ ("Seller"), **Northern States Power Company, a Minnesota corporation** ("Company") and \_\_\_\_\_ ("Escrow Agent").

- RECITALS -

WHEREAS, Seller and Company are parties to a Solar Energy Purchase Agreement dated \_\_\_\_\_, 201\_ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility in \_\_\_\_\_ County, Minnesota (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and

WHEREAS, Article 11 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA, up to a total of \$\_\_\_\_\_ (the "Escrow Total"); and

WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that account.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

- AGREEMENT -

1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.

2. Delivery of Funds to Escrow Agent.

a. Seller shall deposit with Escrow Agent an amount equal to \$\_\_\_\_\_ on or before \_\_\_\_\_ on or before [the date required by the PPA].

b. Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by Escrow Agent of the

Escrow Funds pursuant to the terms hereof, fully satisfies Seller's initial obligations under Article 11 of the PPA to establish and maintain a security fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds only in accordance with Section 5.

c. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including, upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(c).

3. Investment. Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.

4. Distributions of Escrow Funds by Escrow Agent. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with Section 5.

5. Distributions.

a. Escrow Interest. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.

b. Release at End of Term; Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the PPA in form and substance as required by the PPA and in the full amount of the Escrow Total to secure

Seller's obligations to Company prior to the expiration or termination of the PPA, the Escrow Funds and any Escrow Interest shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.

c. Escrow Claims by Company. During the term of the PPA, Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts owing to Company pursuant to the PPA that are not the subject of a good faith dispute, including any damages due to Company and any amounts for which Company is entitled to indemnification under the PPA. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the first business day after it receives the Claim Certificate.

d. Regulations of the Comptroller of the Currency. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.

6. Rights and Obligations of Escrow Agent.

a. Duties.

i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.

ii. This Agreement may be terminated only by a writing executed by all of Company, Seller and Escrow Agent.

iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) business days of the scheduled expiration or termination date, and without regard to any objection asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.

b. No Other Duties. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.

c. Escrow Fee. Escrow Agent shall be entitled to receive solely from Seller (a) compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.

d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days' advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.

e. Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with Section 4, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.

f. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein,

without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.

g. Interpleader. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.

7. Termination of Agreement. This Agreement shall continue through the date on which all obligations of Seller under the PPA have been fully satisfied or all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.

8. Taxes. Taxes on distributions of the Escrow Funds shall be paid by Seller.

9. Notices. All notices and other communications (including all certificates delivered pursuant to Section 5) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by facsimile transmission or sent to the applicable parties at their respective addresses indicated in this Section 9 by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

*If to Seller, to:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

*If to Company:*

Manager, Renewable Purchases  
Xcel Energy Services Inc.  
1800 Larimer Street, Suite 1000  
Denver, CO 80202  
Phone: (303) 571-\_\_\_\_\_  
Fax: (303) 571-7002

If to Escrow Agent, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 9, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 9, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

10. Miscellaneous.

a. Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

b. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

c. Integration; Amendment. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment of, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.

d. Governing Law. The Agreement is made in the state in which the Facility is located and shall be interpreted and governed by the laws of such state or the laws of the United States, as applicable.

e. Good Faith and Fair Dealing; Reasonableness. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action of a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

f. Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

g. Cooperation. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.

h. Execution in Counterparts and by Facsimile Distribution. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

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

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

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

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

Dated: **Northern States Power Company, a  
Minnesota corporation**

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

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

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

Dated: \_\_\_\_\_ **(Escrow Agent)**

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

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

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

**EXHIBIT A TO ESCROW AGREEMENT**

ESCROW CLAIM CERTIFICATE

TO: \_\_\_\_\_

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, by and among Company, Seller and you, as Escrow Agent (the "Escrow Agreement"). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Company hereby certifies that Company is entitled to receive Escrow Funds in the amount of \$\_\_\_\_\_ pursuant to the terms of the Escrow Agreement and the PPA, due to the following (generally):\_\_\_\_\_

\_\_\_\_\_.

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to distribute, on the first business day after your receipt of this Certificate, the sum of \$\_\_\_\_\_ from the Escrow Funds to the undersigned by wire transfer to the following account:

Bank: \_\_\_\_\_

Account: \_\_\_\_\_

Routing Number: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_\_

**Northern States Power Company, a  
Minnesota corporation**

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

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

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

**EXHIBIT H**  
**OPERATING STANDARDS**  
(AGC Protocols, Data Collection)

**1. AGC Electronic Communications Between Company and Seller**

Company will receive and send AGC Set-Point and related data over an analog or digital line. The data points covered under this PPA, as described below, may overlap data requirements for the Distribution Provider, Distribution Authority or Company's Solar Forecasting group.

**2. Data Points to Be Sent from Seller to Company via AGC**

The following data points will be transmitted via AGC from Seller to Company and represent Facility level data:

Description	Units
AGC Set-Point (echo)	MW
Power demand	MW
Actual power	MW
Park Potential	MW
Actual reactive power	Mvars
Average voltage	kV
Number of units online and running	Integer
AGC status	Remote/Local

**3. Response Times and Limitations of Facility in Regards to AGC**

The following protocols outline the expectations around responding to the AGC Set-Point. Except in the case of the frequency of changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Facility.

a. Required Response Time. The Facility will respond to the AGC Set-Point within the maximum Solar Unit manufacturers' specifications. The response time will vary based on the mix of available Solar Units and the current level of output of the Facility. The required response time will be subject to change based upon any change in the Solar Unit manufacturers' specifications for ramp rate.

b. Allowable Variances in Excess of AGC Set-Point. Once the Facility has reached the AGC Set-Point, there may be variances in excess of such set-point up to two percent (2%) on average as measured during a 10-minute period. This is due to changing solar conditions vs. the manufactures' specifications for responding to those

new conditions provided irradiance conditions allow for achieving the assigned AGC Set-Point.

c. Frequency of Changes. Company can send a new AGC Set-Point to the Facility as frequently as the Solar Unit manufacturer's specifications allow, using the specification for the least frequent change to output. If, however, the AGC Set-Point is below 10% of Park Potential, then Company will be restricted from changing the AGC Set-Point for 30 minutes to prevent the Solar Units from cycling on and off.

d. Range of AGC Set-Point. The range of set-point values can be between zero percent (0%) and one hundred percent (100%) of Park Potential.

#### **4. Backup Communications**

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

#### **5. Data Collection**

Concurrently with the Commercial Operation Date, Seller will deliver to Company a report showing (i) manufacturer, model and year of all panels, inverters and meteorological instrumentation and (ii) the latitude and longitude of the center of the solar panels for every inverter and every meteorological station. Seller will also transmit and provide to Company the real-time data set forth below, refreshed as frequently as allowed by the SCADA System, not to exceed fifteen (15) minute intervals.

A. Two (2) data points from each inverter:

1. Inverter generation (kW)
2. Inverter availability

B. Five (5) data points from the meteorological station(s):

1. Global horizontal insolation (GHI)
2. Plane-of-array insolation (POA) using a reference cell
3. Temperature
4. Wind speed (mph)
5. Wind direction (degrees relative to true north)

Seller shall provide a map and key for each inverter sufficient to allow Company to correlate the data received through Company's data historian system to each individual inverter.

**EXHIBIT I**  
**FINANCING PARTY CONSENT PROVISIONS**

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

1. Seller and Company will neither modify nor terminate the PPA, other than as provided therein, without the prior written consent of the Facility Financing Party.
2. The Facility Financing Party 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 Financing Party shall be as effective to prevent or cure a default as if done by Seller itself.
3. If Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such uncured Event of Default to the Facility Financing Party and has given the Facility Financing Party the same cure period afforded to Seller under Section 12.1 of the PPA, plus an additional thirty (30) Days beyond Seller's cure period to cure any monetary Event of Default and an additional sixty (60) Days beyond Seller's cure period to cure any non-monetary Event of Default; *provided, however*, that if the Facility Financing Party requires possession of the Facility in order to cure the Event of Default, and if the Facility Financing Party diligently seeks possession, the Facility Financing Party's additional thirty (30) Day or sixty (60) Day, as applicable, cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Financing Party.
4. Neither the Facility Financing Party nor any other participant in the Facility Financing 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 Financing Party's rights and remedies.
5. Any party taking possession of the Facility through the exercise of the Facility Financing Party'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 Financing Party or its successor assumes the PPA in accordance with this paragraph 5, Company shall continue the PPA with the Facility Financing Party 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 Financing Party (or its successor) and Company 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 L

### METHODOLOGY FOR ADJUSTING THE TWELVE-MONTH COMMITTED SOLAR ENERGY VALUE FOR DIFFERENCES IN ACTUAL SOLAR IRRADIATION AND EXPECTED SOLAR IRRADIATION

The adjustment to the 12-month average calculation of total Committed Solar Energy is appropriate only when actual solar irradiation falls below the total Expected Solar Irradiation for the relevant period as agreed to by the Parties.

As an illustrative example, Table 1 below provides the historical generation and solar irradiation between the months of January and December 2017, the adjustments to the Committed Solar Energy related to this irradiation and the resulting 12-month Committed Solar Energy percentage for a hypothetical solar generating facility. The steps taken in the calculations, and referenced sections in the PPA, are provided below.

#### ***Step 1 – Actual Solar Irradiation to Expected Solar Irradiation***

The Expected Solar Irradiation is determined on a monthly basis by calculating the mean monthly values of the NREL Solar Prospector TMY data set referenced under the definition of “Expected Solar Irradiation” in the PPA. The Expected Solar Irradiation relevant to Seller is the global horizontal irradiance as finalized and established in the final Project Phase descriptions in Exhibit C, as described in and pursuant to the PPA (PPA, Exhibit A, definition of “Expected Solar Irradiation”; Table 1 - Column B).

The actual monthly solar irradiation is determined by the pyranometer reading at a Project Phase Site for the applicable month. (Table 1 - Column C). By dividing the actual solar irradiation by the Expected Solar Irradiation for such Site, a ratio is calculated for each month (Table 1 - Column D).

Seller shall provide Company with the NREL Solar Prospector TMY data including the pyranometer reading pertaining to the Facility, and all pertinent data regarding the solar irradiation adjusted Committed Solar Energy calculation whenever an adjustment is made by Seller.

#### ***Step 2 – Adjustments to Committed Solar Energy***

The Committed Solar Energy on a monthly basis is determined by multiplying the expected monthly generation profile (Exhibit K of PPA and column E in Table 1) by the annual Committed Solar Energy (Exhibit J of PPA and Column F in Table 1) for the relevant year of operation. The resulting monthly Committed Solar Energy is adjusted down (pursuant to Section 12(I) of the PPA) by multiplying the Committed Solar Energy by any monthly actual to Expected Solar Irradiation ratio that is below the expected amount (Table 1 - Column G).

The actual generation delivered is equal to the MWh that were produced and delivered per the PPA. (Table 1 - Column H.)

#### ***Step 3 – Committed Solar Energy Percentage***

In the final step, the summation of the 12 months of actual generation is divided by the summation of the 12 months adjusted Committed Solar Energy to determine the Committed Solar Energy percentage (Table 1 - Column I).



**PUBLIC DOCUMENT:  
TRADE SECRET DATA EXCISED**

**Docket No. E002/CN-12-1240  
Attachment C**

Nov.								
Dec.								

**EXHIBIT M**  
**FORM OF PROJECT PHASE COMPLETION DECLARATION**

**AURORA DISTRIBUTED SOLAR, LLC**  
**PHASE PROJECT COMPLETION DECLARATION**

Reference is hereby made to the Solar Energy Purchase Agreement, dated as of August \_\_, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "PPA"), by and between Aurora Distributed Solar, LLC, a Delaware limited liability company ("Seller"), and Northern States Power Company, a Minnesota corporation ("Company"). This Phase Project Completion Declaration notice (this "Phase Project Completion Declaration") is delivered pursuant to Section 4.3 of the PPA. Capitalized terms not otherwise defined herein shall have the meanings set forth in the PPA.

The undersigned, [\_\_\_\_], being the duly elected and acting [\_\_\_\_] of Seller, certifies on behalf of Seller that, with respect to the Project Phase described on Annex A hereto:

1. All necessary and material Permits with respect to such Project Phase have been obtained and are in full force and effect;
2. Seller is in compliance with the PPA in all material respects with respect to such Project Phase;
3. Such Project Phase is available to commence normal operations in accordance with Seller's operating agreements, Construction Contract for such Project Phase, and applicable manufacturers' warranties;
4. Such Project Phase is in material compliance with the Distribution Tariff;
5. Seller is in material compliance with its obligations under the Interconnection Agreement for such Project Phase;
6. Such Project Phase is fully interconnected to the Distribution System, has been tested, has achieved initial synchronization, and has been successfully operated at a generation level reasonably acceptable to the Distribution Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system;
7. Seller has completed any testing of such Project Phase and the corresponding Interconnection Facilities required by the applicable Interconnection Agreement and Distribution Tariff; and
8. Seller has made all other arrangements necessary to deliver the output of such Project Phase to its Point of Delivery.

In addition, the undersigned hereby confirms that, with respect to such Project Phase:

1. An independent registered professional engineer's certification has been obtained by Seller is attached hereto as Annex B, stating that such Project Phase has been completed in all material respects, except for punch list items that do not have a Material

Adverse Effect on the ability of such Project Phase(s) to operate for its or their intended purpose, and, if applicable, incomplete Solar Units allowed pursuant to Section 4.3(D) of the PPA;

2. Seller has demonstrated (a) the reliability of the applicable Project Phase's communications systems and communication interface with Company's EMCC and, to the extent applicable to such Project Phase, is capable of receiving and reacting to signals from Company's SCADA System, and (b) to the extent applicable to such Project Phase, all AGC equipment is installed and operational; and
3. At least ninety percent (90%) of the Solar Units comprising such Project Phase and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy to such Project Phase's Point of Delivery have been completed.

Pursuant to Section 3.1(B)(4) of the PPA, the attached description of the Project Phase in Annex A hereto shall be the updated version of the description of such Project Phase for purposes of the PPA, including with respect to the Expected Solar Irradiance of such Project Phase's Site and such Project Phase's portion of the overall Committed Solar Energy.

*[Signature page follows]*

IN WITNESS WHEREOF, I have executed this certificate as an authorized officer of Seller as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

## **Annex A**

### **Project Phase Description**

*[To include: (i) a description of the applicable Project Phase, updated from the description included for such potential Project Phase in Exhibit C to the PPA, (ii) a scaled map that identifies such Project Phase, its corresponding Site and the location of such Project Phase, (iii) a description of such Project Phase's Interconnection Point, and Interconnection Facilities, and (iv) a description of such Project Phase's Point of Delivery and other important facilities. Also include Expected Solar Irradiance of such Project Phase's Site and such Project Phase's portion of the overall Committed Solar Energy.]*

**Annex B**

**Copy of Independent Registered Professional Engineer's Certification**

**EXHIBIT N**

**COPY OF THE MISO RESOURCE ADEQUACY REQUIREMENTS FOR  
INTERMITTENT GENERATION-NON WIND**

*[See attached]*



**Resource Adequacy Business Practice Manual**  
**BPM-011-r13**  
Effective Date: JAN-01-2014

**4.2.2.1 Wind Capacity Credit Calculation**

MISO calculates specific wind capacity credit for each wind farm and applies it to its registered maximum capability in the Commercial Model or its registered Capacity through the LMR or External Resource registration process. The wind capacity credit MW for the MISO system is allocated to each wind farm based on its capacity value at each of MISO's top 8 highest coincident peaks that occurred during the Summer. The Wind Capacity Credit Report includes analysis and results. This calculation is done on a CPNode basis for wind farms that are registered in MISO's Commercial Model, and on a wind farm basis as submitted through the Planning Resource registration process for External Resources and Behind the Meter Generation. A wind farm that does not have any commercial operation history will receive a wind capacity credit equivalent to the system wide wind capacity credit from the ELCC study, for their initial Planning Year, and thereafter metered data will be used in order to calculate its future wind farm specific wind capacity credit. If no metered data is available, then the wind farm will receive a capacity credit of 0%.

Planning Year	Total System Wind Capacity Credit
2012-2013	14.7%
2013-2014	13.3%

**4.2.2.4 Intermittent Generation and Dispatchable Intermittent Resources – Non-wind**

For Run of River Hydro, the median hourly integrated net output from the most recent three (3) years up to the most recent fifteen (15) years for hours ending 1500-1700 EST for all days of the Summer (June, July, August) shall be used. If 15 years of historic data is not available for this period when the 15 year time period is chosen, or is no longer relevant due to environmental, operational, regulatory or other restrictions, all available relevant data shall be used and accumulated until the 15 year requirement is met.

Once the number of years and methodology is chosen and submitted as GVTC requirements, the same number of years must be submitted in future GVTC data collection.

All other Intermittent Generation and Dispatchable Intermittent Resources will have their annual UCAP value determined based on the 3 year historical average output of the resource for hours 1500-1700 EST for the most recent Summer months (June, July, and August). For non-wind powered Intermittent Generation and Dispatchable Intermittent Resources Market Participants



**Resource Adequacy Business Practice Manual  
BPM-011-r13**

Effective Date: JAN-01-2014

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will need to supply this historical data to MISO by October 31 of each year in order to have their UCAP value determined.

Non-wind powered Intermittent Generation and Dispatchable Intermittent Resources that are new, upgraded or returning from extended outages shall submit all operating data for the prior Summer with a minimum of 30 consecutive days, in order to have their capacity registered with MISO. An example of a qualified extended outage is a resource that does not have a transmission path due to a planned or forced transmission outage.

Resources that experience changing characteristics during the historical period due to changing nameplate capability will have the historical data adjusted by a ratio of the current nameplate rating divided by the nameplate rating in effect at the time the data was collected. For resources that experience partial outages not related to the supply of fuel (e.g. water conditions), regular maintenance, or shutdowns due to safety concerns (e.g. high water), the historical data may be prorated upward to reflect the expected value as if all units had been on line. For units that experience reduced output due to reasons outside of management control data from these periods may be excluded from the calculation of UCAP. MISO will consider reasons outside management control based on the DMC codes entered in GADS for resources that report data. The annual UCAP will be the three year average output value after the adjustments as described above have been made.

An increase in unit capability for Intermittent Generation and Dispatchable Intermittent Resources that are solely powered by wind after the annual UCAP values have been established will require written notification from the Market Participant to a member of the Resource Adequacy Team in order to update the values. This notification is due by March 1<sup>st</sup> prior to the Planning Year.

UCAP options for units with derates prior to the GVTC test date are further explained in Appendix J.4.

**PUBLIC DOCUMENT:  
TRADE SECRET DATA EXCISED**

Northern States Power Company

Docket No. E002/CN-12-1240  
Attachment D  
Page 1 of 1

**Short List Bidders Proceeding to PPA Negotiations**

<u>Project Developer or Bid Submitter</u>	<u>Project Name</u>	<u>Project Location</u>	<u>Size MW AC</u>	<u>PPA Term (Years)</u>	<u>Proposed COD</u>	<u>Levelized Price (\$/MWh) As Proposed</u>
<i>[HIGHLY SENSITIVE TRADE SECRET INFORMATION – THIRD PARTY CONFIDENTIAL INFORMATION BEGINS</i>						

\*Through contract negotiations, the project size has been changed to 25.0 MW.

*HIGHLY SENSITIVE TRADE SECRET INFORMATION – THRID PARTY CONFIDENTIAL INFORMATION ENDS]*

**Schedule**

Contract negotiations are underway; PPA filing goal of early October.

## CERTIFICATE OF SERVICE

I, SaGonna Thompson, hereby certify that I have this day served copies of the foregoing document or a summary thereof on the attached list of persons.

xx by depositing a true and correct copy or summary thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota; or

xx via electronic filing

**Docket No. E002/CN-12-1240**

Dated this 23rd day of September 2014

/s/

---

SaGonna Thompson  
Regulatory Administrator

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_12-1240_Official CC Service List
Thomas	Bailey	tbailey@briggs.com	Briggs And Morgan	2200 IDS Center 80 S 8th St Minneapolis, MN 55402	Electronic Service	No	OFF_SL_12-1240_Official CC Service List
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