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Sponsoring Party: MJMEUC  
File No.: EA-2016-0358

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

**FILE NO. EA-2016-0358**

**REBUTTAL TESTIMONY**

**OF**

**JOHN GROTZINGER ON**

**BEHALF OF**

**THE MISSOURI JOINT MUNICIPAL ELECTRIC  
UTILITY COMMISSION (MJMEUC)**

**JANUARY 24, 2017**

**HC**

MJMEUC Exhibit No. 476 HC  
Date 3-23-17 Reporter TS  
File No. EA-2016-0358

PUBLIC

Schedule JT-7  
Page 1 of 47

**POWER PURCHASE AGREEMENT**

**Between**

**IRON STAR WIND PROJECT, LLC**

**as Seller**

**and**

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

**as Buyer**

**Dated as of January 23, 2017**

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**POWER PURCHASE AGREEMENT**

This Power Purchase Agreement is entered into effective as of January 23, 2017 (the "Effective Date"), by and between Iron Star Wind Project, LLC, a Delaware limited liability company (the "Seller"), and the Missouri Joint Municipal Electric Utility Commission, a body public and corporate organized and existing under the laws of the State of Missouri (the "Buyer"). Buyer and Seller are sometimes referred to individually as a "Party" and collectively as the "Parties".

**RECITALS**

1. Seller and its Affiliates are developing a wind generation facility known as the Iron Star Wind Project (as further described in Exhibit A, the "Project"), with a total nameplate capacity of approximately 300 MW located in Ford County, Kansas;
2. Energy generated by the Project will be transmitted by an approximately five (5) mile transmission line to interconnect with the Grain Belt Express Clean Line LLC high voltage, direct current transmission line (which is currently under development by Clean Line Partners) at the Grain Belt Express AC to DC converter station near Dodge City, Kansas, and will be delivered by the Grain Belt Express into the Midcontinent Independent System Operator ("MISO") system; and
3. Buyer wishes to purchase, and Seller wishes to sell to Buyer a portion of the wind capacity and energy and the associated renewable attributes available from the Project in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

**ARTICLE 1**

**DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below. Certain other capitalized terms that are not defined herein shall have the meanings ascribed to them in the MISO Tariff.

"AAA" has the meaning given to such term in Section 12.2.

"AAA Rules" has the meaning given to such term in Section 12.2.

"Acceptable Bank" means (i) a U.S. commercial bank or the U.S. branch office of a foreign bank with assets of at least ten billion Dollars and at all times having a Credit Rating of at least "A" (or future equivalent) by Standard & Poor's and "A2" (or future equivalent) by Moody's.

"Actual Mechanical Availability Factor" means, with respect to any given Contract Year, a factor calculated as (i) the sum of the Available Turbine Capacity amounts for all Project Turbines,

divided by (ii) the product of the number of hours in the Contract Year and the total Nameplate Capacity of the Project Turbines.

"Additional Products" has the meaning given to such term in Section 3.2.

"Affiliate" means any Person that directly or indirectly Controls, is Controlled by, or is under common Control with another Person.

"Aggregate Availability Damages Caps" has the meaning given to such term in Section 3.5(c).

"Agreement" means this Power Purchase Agreement, together with all of its Exhibits, as may be amended from time to time.

"Alternative GA Program" has the meaning given to such term in Section 3.3(b).

"Annual Availability Damages" has the meaning given to such term in Section 3.5(b).

"Annual Availability Damages Cap" has the meaning set forth in Section 3.5(b).

"Annual Availability Report" has the meaning given to such term in Section 3.5(d).

"Available Turbine Capacity" means, for each Project Turbine in any Contract Year, the sum of the mechanically operable capacity of that Project Turbine (in MW or fractions thereof) in each hour of the Contract Year, taking into account all full or partial Planned Outages, Unplanned Outages and Forced Outages of that Project Turbine.

"Back-up Meter" has the meaning given to such term in Section 3.16.

"Back-up Equipment" has the meaning given to such term in Section 3.16.

"Bankruptcy Proceeding" means, with respect to a Person, that such Person (a) is dissolved (other than pursuant to a consolidation, amalgamation, or merger); (b) becomes insolvent or is generally unable to pay its debts or generally fails or admits in writing its general inability to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of creditors; (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation; (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation, or merger); (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official for it or substantially all its assets; (g) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced, or sued on or against all or substantially all of its assets; (h) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) inclusive; or (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts, and in the case of clauses (a) to (g) inclusive where the act or action taken is involuntary, such act or action is not dismissed within sixty (60) Days of its commencement.

"Business Day" means any Day except a Saturday, Sunday, or a Federal Reserve bank holiday, beginning at 8:00 a.m. and ending at 5:00 p.m. CPT.

"Buyer" has the meaning set forth in the preamble to this Agreement.

"Buyer's Share" means the portion of the Project (which may be expressed in MW or as a percentage, as appropriate for the context), and the associated pro rata portion of the Products produced therefrom, to which Buyer is entitled under this Agreement.

"Buyout Payment" has the meaning given to such term in Section 9.1(a).

"Casualty Buy Down Payment" has the meaning given to such term in Section 3.8.

"Casualty Event" has the meaning given to such term in Section 3.8.

"CPT" means Central Prevailing Time, meaning prevailing Standard Time or Daylight Savings Time in the Central Time Zone.

"Change-in-Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any Law (or in the application or official interpretation of any Law) that occurs after the Effective Date.

"Commercially Reasonable Efforts" means, with respect to any Person, the level of effort and expenditure of funds that, under the circumstances, are commercially and technically reasonable and acceptable in the industry of such Person.

"Communication Equipment" has the meaning given to such term in Section 3.16.

"Confidential Information" has the meaning given to such term in Section 10.1.

"Contract Price" means sixteen dollars and fifty cents per MWh (\$16.50/MWh) for the period beginning with the Initial Delivery Date and extending through the first full Contract Year, adjusted annually starting with the second full Contract Year by an escalation rate of two percent (2.00%) per annum.

"Contract Year" means each full one-year period during the Delivery Period that coincides with the MISO Planning Year, except that the first (partial) Contract Year will begin on the Initial Delivery Date and end on the last Day of the MISO Planning Year in which the Initial Delivery Date occurred.

"Control" and the correlative terms "Controls" and "Controlled by" means the possession or ownership, directly or indirectly, of 50% or more of the voting rights of a Person.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) reasonably incurred by such Party in terminating any arrangement pursuant to which it has hedged its obligations and/or entering into new arrangements which replace this Agreement and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with termination and/or replacement of this Agreement.

"Cover Energy Costs" means (a) the annual average Day-Ahead Ex Post LMP (in \$/MWh) at the interconnection between the Green Belt Express and the MISO transmission system over the course of the applicable Contract Year, plus (b) the price of RECs (in \$/MWh) as of December 1 in the applicable Contract Year as established in reference to the trading price for credits tracked under M-RETS System or using such other source as generally accepted in the wind energy industry, minus (c) the Contract Price (in \$/MWh) for the applicable Contract Year; provided, however, that if the number so calculated is less than zero, the Cover Energy Costs shall be \$0.00/MWh.

"Credit Rating" means, for any Person, the rating assigned to such Person's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its unsecured, senior long-term debt, then the rating then assigned to such Person as an issuer rating by Moody's or Standard & Poor's or, if Moody's or Standard & Poor's are no longer issuing such credit ratings, then the rating(s) assigned by other equivalent rating agencies recognized and accepted by the investment and banking community.

"Credit Support" means collateral in the form of cash or Letter(s) of Credit as required under Section 2.1(d).

"Day" means a calendar day beginning at 00:00 hours CPT and ending at 24:00 hours CPT on the same calendar day.

"Deemed Generated Energy" means the quantity of Energy determined in accordance with Section 3.6 that could reasonably have been produced by the Project and delivered at the Delivery Point during any period, but was not actually produced solely as a result of MISO failing to dispatch such Energy, or dispatching down Energy available from the Project, in either case for economic reasons. In determining the quantity of Energy that could reasonably have been produced by the Project for any period, the calculation shall take account of the extent to which, in the relevant period, the Project Turbines were not mechanically capable of generating Energy due to full or partial Planned Outages, Unplanned Outages or Forced Outages (or as a result of a Casualty Event of a Project Turbine that is not replaced pursuant to Section 3.8). For purposes of clarity, the following is a non-exclusive list of situations in which MISO's failure to dispatch the Project, or MISO's curtailment or interruption of delivery of Energy from the Project, would *not* result in Deemed Generated Energy: (i) Force Majeure, (ii) unavailability of transmission service (including on Grain Belt Express), (iii) issuance by MISO of out-of-merit dispatch orders that override the economic set point instructions for reliability reasons, and (iv) other reliability directives by MISO. In addition, to the extent Energy was actually produced by the Project but was not delivered to MISO for Buyer's account, such Energy will be excluded from Deemed Generated Energy.

"Defaulting Party" has the meaning given to such term in Section 5.2.

"Delivery Period" means the period beginning on the Initial Delivery Date and ending as of the last Day of the twentieth (20<sup>th</sup>) full Contract Year, subject to renewal in accordance with Section 2.1(c).

"Delivery Point" means the planned AC/DC Converter station, located in Ford County, Kansas.

"Early Termination Date" has the meaning given to such term in Section 5.2(c).



"Effective Date" means the date set forth in the preamble to this Agreement.

"Energy" means electrical energy, measured in MWh, which is produced by the Project.

"Event of Default" has the meaning given to such term in Section 5.1.

"Expected Project Output" shall mean the expected output of the Project equal to 1,270,037 MWh for each full Contract Year.

"Fair Market Value" has the meaning given to such term in Section 9.1(b).

"FERC" means the Federal Energy Regulatory Commission.

"Force Majeure" means causes or events beyond the reasonable control of the Party claiming Force Majeure, and which (i) could not be reasonably anticipated, (ii) could not be avoided or removed by such Party's due diligence and use of Commercially Reasonable Efforts and (iii) were not caused by the fault or negligence of the Party claiming Force Majeure including, without limitation, acts of God; sudden actions of the elements such as floods, earthquakes, hurricanes and tornadoes; wind speeds in excess of safe installation or working limits of the Project Turbines during the period of Project installation, high winds outside the Project Turbine rating parameters as stated in the Project Turbine manufacturer's literature during the period of Project Turbine operation; sabotage; inadvertent damage caused to collection systems by a third party; vandalism; terrorism; war; riots; fire; explosion; hot or cold temperatures outside the Project Turbine rating parameters as stated in the Project Turbine manufacturer's literature; icing conditions on the blades; blockade; insurrection; civil disturbance or strike or other labor difficulty caused or suffered by a Party or any third Person beyond the reasonable control of such Party or Person (even if such difficulties could be resolved by conceding to the demands of a labor group); mechanical failure resulting from serial defects in parts or equipment integrated into the Facility; or a disconnection or interruption of service under the Interconnection Agreement by the Transmission Owner, based on the declaration of a force majeure event as defined in the Interconnection Agreement. Notwithstanding the foregoing, under no circumstances shall "Force Majeure" include or be based on, in whole or in part, any of the following: (i) changes in market conditions that affect the cost of or demand for power; (ii) a change in Laws; (iii) any lack of profitability to a Party or other financial consideration of a Party; (iv) unavailability of one or more Project Turbines except when such unavailability is due to a force majeure event as described above; (v) Seller's increased costs of operating the Project or any portion thereof; (vi) Seller's ability to sell the Products at a price greater than the price provided for in this Agreement; (vii) Buyer's ability to purchase comparable products at a price less than the price provided for in this Agreement; (viii) curtailment by MISO or the Transmission Owner at or before the point where Grain Belt Express interconnects to MISO, unless such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the MISO Tariff or any applicable tariff or contract governing use of Grain Belt Express, (ix) Buyer's failure to purchase transmission service and/or any products or services (including congestion rights) associated with such transmission service as necessary to Schedule or receive Buyer's Share of Net Energy; (x) outage of any portion of the Project due to improper installation of equipment; (xi) outage of the Project due to Seller's failure to observe Prudent Industry Practice in the undertaking of planned or periodic maintenance; (xii) Seller's failure to observe manufacturer's guidelines with regard to planned or periodic maintenance on, or the operation of the Project; or (xiii) breach of warranty with regard to the equipment comprising any portion of the Project.

"Forced Outage" means an unexpected failure of one or more components of the Project or any outage on Grain Belt Express that prevents Seller from making Net Energy available at the Delivery Point and is not the result of Force Majeure.

"Gains" means, with respect to a Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed to be the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement.

"GMAF Default" has the meaning given to such term in Section 3.5(c).

"Governmental Entity" means the national government, any political subdivision of the national government or any state, county or local jurisdiction therein or any other governmental, regulatory, quasi-governmental, independent system operator, board, commission, department, division, organ, instrumentality, court or agency of any thereof or entity with authority to bind a Party at law, including the FERC, MPSC, NERC and MISO. Buyer shall not be considered a Governmental Entity.

"Grain Belt Express" means the Grain Belt Express Clean Line LLC high voltage, direct current transmission line originating at the AC to DC converter station near Dodge City, Kansas with capability to deliver energy to both MISO and PJM Interconnection

"Grain Belt Express Availability Date" means the date as of which the Grain Belt Express becomes fully operational and available to the Parties for transmission of Net Energy from the Delivery Point to MISO.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to Buyer's Share and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, including, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) any

emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

"Guaranteed Mechanical Availability Factor" has the meaning given such term in Section 3.5(a).

"Indemnified Party" has the meaning given to such term in Section 8.2(a).

"Indemnifying Party" has the meaning given to such term in Section 8.2(a).

"Initial Delivery Date" means the first date on which Net Energy is delivered to the Delivery Point for sale to Buyer, which date shall be identified in a written notice from Seller to Buyer and thereafter confirmed by Buyer in accordance with Section 2.1(b).

"Initial Delivery Date Deadline" has the meaning given to such term in Section 2.1(b).

"Interconnection Agreement" means the interconnection agreement between Seller and Transmission Owner that contains the rights and obligations of those parties with respect to the interconnection of the Project with Grain Belt Express and prescribing the methods and procedures to be used for the safe operation and maintenance of the Interconnection Facilities.

"Interconnection Facilities" means all the facilities installed for the purpose of interconnecting the Project to the planned Grain Belt Express converter station, located in Ford County, Kansas, including, but not limited to all transformers and associated equipment, relay, switching, metering, Supervisory Control and Data Acquisition (SCADA) communications and safety equipment.

"Interest Rate" means, on any date, the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates", plus two percent (2%); provided, that the Interest Rate shall never exceed the maximum rate permitted by applicable Law.

"Law" means, without limitation, all applicable national, state, local or municipal laws, statutes, codes, acts, treaties, judgments, decrees, injunctions, writs and orders of any court or Governmental Entity, and rules, regulations, orders, ordinances, licenses, permits, directives, standards, protocols, guidelines and requirements of any Governmental Entity, including, without limitation, the MISO Tariff.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit from an Acceptable Bank naming the Buyer as the Person entitled to demand payment and present draw requests thereunder.

"Liabilities" has the meaning given to such term in Section 8.2(a).

"Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be (a) the loss (if any) to such Party represented by the difference between the present value of the payments that would be required to be made during the remaining term of this Agreement but for the default and termination and the present value of the payments that would be required to

be made under transaction(s) replacing this Agreement, and (b) if Buyer is the Non-Defaulting Party, the payments it is required to make under its transmission service agreement with the Transmission Owner for service that was used to support delivery of Net Energy hereunder but is not needed to support delivery of transaction(s) replacing this Agreement.

"Meter" means the revenue-grade meter located at the point of interconnection between the Interconnection Facilities and the Grain Belt Express converter station, which measures the amount of Net Energy actually generated by the Project and delivered to the Delivery Point.

"MISO" means the Midcontinent Independent System Operator, Inc., or its successor.

"MISO Tariff" means the tariff provisions of MISO, as the same may be amended or modified from time to time and approved by FERC.

"Month" means one calendar month.

"MPSC" means the Missouri Public Service Commission and its successors, if any.

"M-RETS" means the Midwest Renewable Energy Tracking System, which tracks renewable energy generation and assists in verifying compliance with mandatory or voluntary State/Provincial renewable portfolio standards and objectives. Currently the states and provinces participating are: Illinois, Iowa, Manitoba, Minnesota, Montana, North Dakota, South Dakota, Missouri, Kentucky, Arkansas, Mississippi, Louisiana, Texas and Wisconsin. M-RETS creates a renewable energy certificate for every MWh of renewable energy produced in the region, tracks the life cycle of each renewable certificate created, and ensures against any double-counting or double-use of each certificate.

"MW" means megawatt.

"MWh" means megawatt hour.

"Nameplate Capacity" means the maximum installed instantaneous generation capacity of a given Project Turbine, expressed in MW, when operated in compliance with the Interconnection Agreement and consistent with the Project Turbine manufacturer's recommended power factor and operating parameters.

"NERC" means the North American Electric Reliability Corporation.

"Net Energy" means, at any time, the Energy generated by the Project, as measured by the Meter, other than electrical losses incurred between the Meter and the Delivery Point.

"Non-Defaulting Party" has the meaning given to such term in Section 5.2.

"Operating Committee" means the committee consisting of one representative each from Company and Seller pursuant to Section 3.19.

"Operating Procedures" has the meaning given to such term in Section 3.13.

"Parties" has the meaning set forth in the preamble to this Agreement.

"Party" has the meaning set forth in the preamble to this Agreement.

"Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or Governmental Entity.

"Planned Outage" means the partial or complete removal of the Project from service for scheduled, routine maintenance (e.g. for annual overhaul, inspections or testing), as set forth in Section 3.15(a).

"Premises" means that certain real property located in Ford County, Kansas, approximately five (5) miles from the Grain Belt Express AC to DC converter station near Dodge City, Kansas, where the Project will be located, as shown in the map attached hereto as Exhibit B.

"Products" means (i) capacity (including MISO-accredited capacity), (ii) Net Energy, (iii) ancillary services, and (iv) Green Attributes, including RECs, all as available from the Project.

"Project" has the meaning given to such term in the first recital hereto.

"Project Information" has the meaning given to such term in Section 10.1.

"Project Lender" means any Person (including any trustee or agent acting on behalf of such Person) lending money or extending credit, including any financing lease, monetization of tax benefits, transactions with a tax investor or credit derivative arrangement (a) for the construction, term or permanent financing or refinancing of the Project, (b) for working capital or other ordinary business requirements for the Project (including for maintenance, repair, replacement or improvement of the Project) or (c) for any development financing, bridge financing, credit support, credit enhancement in connection with the Project.

"Project Turbine" means a wind turbine generator that is part of the Project. From and after the date of payment of a Casualty Buy Down Payment by Seller with respect to any wind turbine generator(s) that was previously part of the Project, those wind turbine generator(s) shall no longer be included as Project Turbine(s).

"Prudent Industry Practice" means any of the practices, methods, and acts that would be implemented and followed by a prudent operator of wind generating facilities similar to the Project in the United States during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include all acceptable practices, methods, and acts generally accepted in the industry.

"REC" means a renewable energy certificate issued under M-RETS for every MWh of renewable energy produced in the MISO region or otherwise eligible under M-RETS.

"Regulatory Event" has the meaning given to such term in Section 13.8.

"Renewal Period" has the meaning given to such term in Section 2.1(c).

"Representatives" has the meaning given to such term in Section 10.2.

"Scheduling" means the actions of Seller, Buyer and/or their designated representatives of notifying, requesting and confirming to each other and MISO the quantity and type of Products to be delivered on any given Day or Days at the Delivery Point, in conformance with the Operating Procedures.

"Seller" has the meaning set forth in the preamble to this Agreement.

"Term" has the meaning given to such term in Section 2.1(a).

"Termination Payment" means (a) all Gains incurred by the Non-Defaulting Party as a result of the termination of this Agreement, plus all other amounts due (including, on an accelerated basis, payments for performance prior to the Event of Default) to the Defaulting Party under this Agreement, minus (b) the absolute value of all Losses and Costs incurred by the Non-Defaulting Party as a result of the termination of this Agreement, plus all other amounts due (including, on an accelerated basis, payments for performance prior to the Event of Default) from the Defaulting Party under this Agreement, so that all such amounts shall be netted to a single liquidated amount that, if negative, is payable by the Defaulting Party to the Non-Defaulting Party.

"Transfer Request" has the meaning given to such term in Section 3.3(b).

"Transmission Owner" means the owner of the Grain Belt Express.

"Unplanned Outage" means the partial or complete removal of the Project from service to perform maintenance on specific components, at a time when the Project must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury, or due to unanticipated problems or wear and tear on the Project or any component thereof.

**1.2 Rules of Interpretation.** The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the present or past tense. In addition, the following rules of interpretation shall apply:

(a) Headings. The titles and headings in this Agreement are inserted for convenience only and shall not be used for the purposes of interpreting this Agreement.

(b) Plural/Singular. Words importing the singular also include the plural and vice versa.

(c) References. References to natural persons include Persons. References to "Articles", "Sections," "Recitals of" and "Exhibits" are to Articles, Sections, Recitals of and Exhibits of this Agreement, unless otherwise indicated.

(d) Gender. Words importing one gender include the other gender.

(e) Without Limitation. The words "include" and "including" or similar words are not words of limitation and shall be deemed to be followed by the words "without limitation."

(f) Amendments. All references in this Agreement to contracts, agreements, or other documents shall be deemed to mean those contracts, agreements, or documents as the same may be modified, supplemented or amended from time to time in accordance with their terms. All references to applicable Law shall be deemed to mean such Laws as the same may be modified, supplemented or amended from time to time.

(g) Industry Meanings. Words and abbreviations not defined in this Agreement or by reference to the MISO Tariff, which have well-known technical, trade or design, engineering or construction industry meanings in the United States, are used in this Agreement in accordance with those recognized meanings.

(h) Incorporation of Exhibits. The Exhibits attached hereto are incorporated in and are a part of this Agreement; provided, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall control. References to any Exhibit shall mean the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments included therewith.

(i) Grammatical Forms. As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have a corresponding meaning. The words "herein", "hereunder" and "hereof" refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement, unless otherwise indicated.

(j) Day. If a payment obligation falls due on a Day other than a Business Day, the obligations are deemed to be due on the next Business Day.

(k) Persons. As used in this Agreement, references to a "Person" includes its successors and permitted assigns and, in the case of a Governmental Entity, any Person or Persons succeeding, in whole or in part, to its functions and capacities.

## ARTICLE 2

### TERM

#### **2.1 Term, Product Delivery and Security**

(a) Term. The term hereof shall begin on the Effective Date and shall, unless sooner terminated as provided herein, end upon the expiration of the Delivery Period (the "Term").

(b) Initial Delivery Date. The Parties anticipate that the Grain Belt Express Availability Date will occur by December 31, 2021. The Initial Delivery Date shall occur no later than thirty (30) Days after the Grain Belt Express Availability Date (the "Initial Delivery Date Deadline"). Seller shall provide written notice to Buyer of the Initial Delivery Date no later than sixty (60) Days prior to such date, and within thirty (30) Days after receipt of such notice Buyer shall deliver a written confirmation to Seller confirming that such date shall be the Initial Delivery Date. If Seller's provision of Net Energy to Buyer hereunder does not commence (*i.e.*, the Initial Delivery Date does not occur) on or before the Initial Delivery Date Deadline, Seller shall be liable to Buyer pursuant

to Section 3.7(f), unless Seller is unable to deliver Net Energy to Buyer, into the MISO market or to any other purchaser, and Seller elects to extend the Initial Delivery Date Deadline by committing to pay Buyer liquidated damages equal to (1) \$30.00 per Day per MW of Buyer's Share starting with the original Initial Delivery Date Deadline and continuing for thirty (30) Days and (2) \$60.00 per Day per MW of Buyer's Share thereafter for a maximum of two hundred and ten (210) Days; provided, however, that Seller shall not be required to pay damages pursuant to Section 3.7(f) or liquidated damages pursuant to this Section 2.1(b) for any Day of delay that is solely attributable to the occurrence of a Force Majeure. If (i) Seller has elected to defer the Initial Delivery Date Deadline and the Initial Delivery Date does not occur within the two hundred and forty (240) Day extension period, or (ii) the Grain Belt Express project is cancelled, Buyer may terminate this Agreement without liability on the part of either Party by providing written notice to Seller, and in such event any Seller security provided under Section 2.1(d), minus any damages owed by Seller to Buyer prior to termination, shall be promptly returned to Seller.

**(c) Delivery Period.** The Delivery Period shall commence on the Initial Delivery Date and expire at the conclusion of the twentieth (20<sup>th</sup>) full Contract Year; provided, however, that Buyer may extend the Delivery Period by an additional period of five (5) years (a "Renewal Period") by delivering written notice to Seller, no later than one hundred eighty (180) Days prior to the expiration of the Delivery Period. If Buyer extends the Delivery Period by such Renewal Period, then Buyer may again extend the Delivery Period by another period of five (5) years by delivering written notice to Seller, no later than one hundred eighty (180) Days prior to the expiration of the Renewal Period.

**(d) Seller Security.**

(i) Effective Date Security. As of the Effective Date, Seller shall deliver Credit Support to Buyer in the amount of \$500,000 and shall maintain such Credit Support until it is replaced by the Credit Support required under Section 2.1(d)(ii) or Section 2.1(d)(iii) below, as applicable. Seller will not have any obligation to replenish the Credit Support provided under this Section 2.1(d)(i) after any drawdown by Buyer.

(ii) Notice to Proceed Security. Seller shall request and upon its receipt of documentation confirming that the Transmission Owner has issued a full notice to proceed to its primary contractor for Grain Belt Express, Seller shall increase the Credit Support provided to Buyer under Section 2.1(d)(i) to \$25,000 dollars times Buyer's Share of capacity (in MW) and shall maintain such Credit Support until it is replaced by the COD Seller Security required under Section 2.1(d)(iii). Seller will not have any obligation to replenish the Credit Support provided under this Section 2.1(d)(ii) after any drawdown by Buyer. Seller may choose to apply the Credit Support provided under Section 2.1(d)(i) toward the Credit Support provided in this Section 2.1(d)(ii).

(iii) Initial Delivery Date Security. On or prior to the Initial Delivery Date, Seller shall deliver to Buyer and maintain throughout the Term Credit Support in the amount of \$75,000 times Buyer's Share of capacity (in MW). Seller will have an obligation to replenish Credit Support provided under this Section 2.1(d)(iii) after any drawdown by Buyer, provided, no replenishment shall be required if this Agreement has been terminated in accordance with its terms. Seller may choose to apply the Credit Support provided under Section 2.1(d)(i) or Section 2.1(d)(ii) toward the Credit Support provided in this Section 2.1(d)(iii).



(iv) Drawing Credit Support. If an Event of Default has occurred and is continuing, the Buyer will be entitled to draw upon the Credit Support for any damages arising from (i) such Event of Default or (ii) any prior Event of Default to the extent that damages arising therefrom have not yet been paid in full to Buyer. In the case of Credit Support in the form of a Letter of Credit, Buyer may draw the full amount of such Letter of Credit within five (5) Business Days before the expiration of such Letter of Credit if, as of the date of such drawing, Buyer has not received replacement Credit Support meeting the requirements of this Agreement.

### ARTICLE 3

#### **PURCHASE OF PRODUCTS BY BUYER**

**3.1 Buyer's Share.** On or before December 31, 2017, Buyer shall provide written notice to Seller designating Buyer's Share. Buyer's Share shall (1) be based upon binding contractual or other commitments obtained from the members of MJMEUC that, in the aggregate, will allow Buyer to meet its financial and other obligations under this Agreement, (2) not be less than 100 MW and (3) not be subject to further adjustment after December 31, 2017 without written agreement of the Parties. Upon request, Buyer shall provide Seller evidence of the contractual or other commitments underlying Buyer's written notice of the amount of Buyer's Share.

**3.2 Sale and Purchase Obligations.** In accordance with and subject to the provisions of this Agreement, commencing on the first Day of the Delivery Period and continuing through the end of the Delivery Period, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, Buyer's Share of the Products available from the Project, including but not limited to Buyer's Share of ZRCs available from the accredited capacity of the Project. Seller shall cooperate with Buyer in connection with its efforts to obtain such ZRCs, including by providing Buyer with information not already in its possession that may be needed to support MISO's accreditation of the capacity.

During the Delivery Period, Seller shall not deliver or sell, to any Person other than Buyer, Buyer's Share of the Products, except that Seller may provide and sell Buyer's Share of Products to other Persons for any period during which (a) Seller's obligation to make the Products available to Buyer is suspended pursuant to Section 5.2 due to a Buyer Event of Default, (b) Buyer's obligation to accept any part of the Products from Seller is suspended due to Force Majeure, or (c) if Grain Belt Express is out of service or unable to take delivery of Net Energy and Seller is capable of delivering the Products to other Persons using alternative transmission arrangements.

Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation to make Buyer's Share of the Products available to Buyer for any period in which, and to the extent that, (a) Seller's obligation to deliver Buyer's Share of the Products is excused pursuant to Section 3.7, (b) Seller's obligations are suspended pursuant to Section 5.2 due to a Buyer Event of Default, or (c) either Party's obligations are suspended due to Force Majeure.

Notwithstanding anything to the contrary in this Agreement, Buyer shall have no obligation to receive and pay for Buyer's Share of the Products for any period in which, and to the extent that, (a) Seller's obligation to deliver the Products is excused pursuant to Section 3.7 (provided, however, that Buyer shall remain responsible to pay for any Deemed Generated Energy), (b) Buyer's obligations are suspended pursuant to Section 5.2 due to a Seller Event of Default, or (c) either Party's obligations are suspended due to Force Majeure.

Over the Delivery Period, new opportunities may arise for the sale or deployment of additional products from the Project that are not currently known to or contemplated by the Parties ("Additional Products"). Buyer shall be entitled to receive Buyer's Share of any such Additional Products that become available without Seller being required to incur additional costs. As to all other Additional Products that become available during the Delivery Period, Buyer's Share of such Additional Products (or, if applicable, the revenues therefrom) shall be allocated equally (50% each) between Seller and Buyer; provided, however, that Buyer shall reimburse Seller for fifty percent (50%) of Buyer's Share of any additional third-party costs incurred by Seller in connection with such Additional Products (not to exceed the value to Buyer of its allocated (50%) share of Buyer's Share of the Additional Products). To the extent that Buyer does not receive its allocated (50%) share of Buyer's Share of the Additional Products directly, it shall be entitled to receive the revenues therefrom, which shall be credited to Buyer in the monthly invoice provided to Buyer under Article 6 herein.

### **3.3 Delivery Arrangements.**

(a) Delivery of Energy. Seller shall be responsible for making, maintaining and paying the costs associated with the interconnection of the Project to Grain Belt Express. Seller shall comply with the Transmission Owner's requirements for the interconnection and shall comply with all requirements set forth in the MISO Tariff, to the extent applicable to the Project. The Operating Procedures to be developed pursuant to Section 3.13 shall establish who (Seller, Buyer, or a third party) will be responsible to arrange Scheduling and transmission services at the Delivery Point, and from and after the Delivery Point. If due to a Change-in-Law, new costs or charges are imposed or assessed by MISO in connection with Scheduling the Energy, including Ancillary Service costs, fees, penalties or expenses, or new or additional wind integration service charges or imbalance costs, fees, penalties, or expenses, the Parties shall engage in good faith negotiations to determine whether Buyer or Seller shall be responsible for such new costs or charges, and if necessary to make appropriate amendments to this Agreement. If the Parties cannot agree, the matter shall be subject to dispute resolution as provided for in Article 12.

#### **(b) Delivery of RECs.**

(i) M-RETS. Each Party shall take all actions necessary to participate in M-RETS. Subject to the provisions hereof, Seller shall deliver to Buyer the RECs hereunder each quarter by submitting a request for transfer of the applicable RECs to the REC account designated by Buyer (the "Transfer Request") in accordance with the requirements of M-RETS and Buyer shall confirm such Transfer Request with the M-RETS administrator no later than ten (10) Business Days after it receives such Transfer Request (or such earlier date as may be required pursuant to the M-RETS rules).

(ii) Alternative Green Attribute Programs. Upon not less than sixty (60) days prior written notice to Seller, Buyer may elect a modified, additional, or alternative Green Attribute program(s) and/or monitoring, tracking, certification and/or trading system(s) (each an "Alternative GA Program") and request Seller to take commercially reasonable actions to secure and register (or support Buyer's actions to secure and register) such Green Attributes for Buyer in such Alternative GA Program; provided that:

(A) neither such actions nor any resulting requirements or other results thereof shall (1) require modifications to the Project (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities, (2) require Seller to reduce (or restrict Seller's flexibility in the generation of Net Energy and delivery thereof to the Delivery Point, or (3) interfere with the qualification, certification, tracking or other disposition of any Green Attributes other than those associated with Buyer's Share;

(B) Buyer shall reimburse Seller for all additional reasonable and properly documented third-party costs incurred by Seller in respect of such actions; and

(C) such actions must be permitted by, and capable of being implemented pursuant to, applicable Laws and any applicable Alternative GA Program(s) and associated monitoring, tracking, certification and/or trading system(s).

**3.4 Contract Price.** For each Month during the Delivery Period, Buyer shall pay to Seller for Buyer's Share of the Products the product of (a) the sum of Buyer's Share of (i) the Net Energy and (ii) the Deemed Generated Energy, both in MWh, for all hours in the Month and (b) the Contract Price for the relevant Month. Such monthly payment includes Seller's compensation for Buyer's Share of all Products provided hereunder, and Buyer shall not be subject to any separate charges for capacity and/or Green Attributes.

### **3.5 Project Availability.**

(a) Availability Guarantee. Commencing with the first full Contract Year following a full year of Project operation but no later than the second full Contract Year and for each remaining Contract Year of the Delivery Period, Seller guarantees that the Project shall achieve an Actual Mechanical Availability Factor during each such Contract Year equal to or greater than 0.92 (a "Guaranteed Mechanical Availability Factor"); provided, however, that beginning with the 16<sup>th</sup> full Contract Year, the Guaranteed Mechanical Availability Factor shall be reduced by 0.005 per year for five (5) Contract Years. If the Delivery Period is extended as provided in this Agreement, then beginning with the 21<sup>st</sup> full Contract Year the Guaranteed Mechanical Availability Factor shall be reduced by 0.01 per year until the end of the extended Delivery Period.

(b) Annual Availability Damages. For any applicable full Contract Year during which Seller fails to achieve the Guaranteed Mechanical Availability Factor, Seller shall pay Buyer damages (the "Annual Availability Damages") in the amount equal to (a) the Buyer's Cover Energy Costs during the Contract Year multiplied by (b) the Guaranteed Mechanical Availability Factor minus the Actual Availability Factor for such Contract Year and multiplied by (c) the Expected Project Output for such Contract Year. The total Annual Availability Damages payable by Seller for failure to achieve the Guaranteed Mechanical Availability Factor in any Contract Year shall be capped at \$3,000,000 ("Annual Availability Damages Cap").

(c) Aggregate Availability Damages Cap, GMAF Default.

(i) The total Annual Availability Damages payable by Seller for failure to achieve the Guaranteed Mechanical Availability Factor shall be capped at \$20,000,000 during the

Initial Delivery Period and \$3,750,000 during any Renewal Period ("Aggregate Availability Damages Caps").

(ii) If Seller (1) fails to achieve the Guaranteed Mechanical Availability Factor in (A) three consecutive Contract Years, or (B) four of six consecutive Contract Years, or (2) achieves an Actual Availability Factor of less than 65% in any Contract Year (each a "GMAF Default"), then Buyer may terminate the Agreement pursuant to Section 5.2(c) and Section 5.3 of this Agreement by providing written Notice to Seller within ninety (90) Days of delivery of the Annual Availability Report reflecting the GMAF Default. Buyer's failure to exercise the right to terminate under this Section 3.5(c) shall not diminish Buyer's right to Annual Availability Damages based upon any subsequent GMAF Default.

(d) Annual Report. No later than the thirtieth (30<sup>th</sup>) Business Day following the end of each Contract Year in which, as set forth in Section 3.5(a), the Guaranteed Mechanical Availability Factor is applicable, Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Availability Factor of the Project for the just-ended Contract Year and the Annual Availability Damages, if any, due to Buyer (the "Annual Availability Report"). Such Annual Availability Report shall include PI tags for the various turbine states and a key for the turbine states. Such Annual Report shall also include the total amount of Annual Availability Damages (if any) to be paid to Buyer and shall provide notice that the Aggregate Availability Damages Cap has been reached, if applicable. If Annual Availability Damages are due from Seller, Seller shall pay such damages no later than the tenth (10<sup>th</sup>) Business Day after providing the Annual Availability Report; *provided*, if the Annual Availability Damages are a negative number, the Annual Availability Damages will be deemed to be zero dollars.

(e) Disputes. Disputes as to any calculations under this Section 3.5 shall be addressed as provided in Article 12 of this Agreement.

**3.6 Deemed Generated Energy.** Calculations of Deemed Generated Energy for a given Month during the Delivery Period, as required under this Agreement, shall be made by Seller acting reasonably and in good faith, and shall be determined by taking into account (i) during the applicable Month, the actual fifteen (15) minute (or more frequent) wind speeds (interpolated over time intervals, if necessary) measured by wind monitoring equipment located at the Project site or, if such monitoring equipment is unavailable during the relevant Month, then using other available data or interpolated data determined using Prudent Industry Practices; (ii) the power curve provided by the Project Turbine manufacturer (adjusted by historical data for the Project compiled by Seller, if any), as applied to the wind speeds referred to in clause (i), as adjusted for line losses to the Delivery Point using historical data compiled by Seller, if any, and (iii) the actual mechanical availability of the Project. Seller shall provide Buyer with supporting documentation detailing the basis for its determination of the amounts of energy under this Section 3.6. Any disputes regarding such determinations shall be resolved in accordance with Article 12.

### **3.7 Reductions in Delivery.**

(a) Project Maintenance. Seller shall be permitted to reduce deliveries of the Products during any period of (and to the extent of) any Unplanned Outage or Planned Outage without liability to Buyer, except that, the reduction in availability due to such Unplanned Outage (except where it is the result of Force Majeure) or Planned Outage shall be taken into account in determining Seller's compliance with the availability requirements pursuant to Section 3.5. Seller shall provide Buyer

as much advance notice as is reasonable under the circumstances of an Unplanned Outage. Seller shall use Commercially Reasonable Efforts to minimize outages of the Project, and all Unplanned Outage and Planned Outage schedules and procedures shall be developed and conducted in accordance with Prudent Industry Practice.

**(b) Forced Outage.** Seller shall be permitted to reduce deliveries of the Products during any Forced Outage without liability to Buyer, except that, the reduction in availability due to such Forced Outage shall be taken into account in determining Seller's compliance with the availability requirements pursuant to Section 3.5. Seller shall provide Buyer with prompt notice and expected duration (if known) of any Forced Outage.

**(c) MISO Dispatch Instructions.** If MISO issues a dispatch instruction for the Project to curtail generation, then Buyer shall promptly notify Seller of such event (unless the Operating Procedures provide for Seller to receive notice from a third party or directly from MISO) and Seller shall comply with such dispatch instruction. If Buyer is responsible for notifying Seller of MISO's dispatch instructions, Buyer shall promptly notify Seller once the dispatch instruction is no longer in effect. Neither Buyer nor Seller shall be entitled to claim damages with respect to the Product not generated and sold resulting from such dispatch instruction, although Buyer shall be responsible to pay Seller the Contract Price for Net Energy not generated if and to the extent that the MISO dispatch instruction results in Deemed Generated Energy.

**(d) Emergency and Other Interconnection Events.** Seller shall be permitted to reduce deliveries of the Product during any period of an emergency condition under the MISO Emergency operating procedures or at the direction of the Transmission Owner pursuant to the terms of the Interconnection Agreement or any applicable tariff without liability to Buyer.

**(e) Force Majeure.** Seller shall be permitted to reduce deliveries of the Products to the extent attributable to an event of Force Majeure without liability to Buyer. For purposes of clarity, the reduction in availability due to such Force Majeure shall be reflected in (i) the determination of the Available Turbine Capacity and (ii) the divisor of the calculation of the Actual Mechanical Availability Factor for purposes of determining Seller's compliance with the availability requirements pursuant to Section 3.5.

**(f) Damages for Unexcused Non-Delivery.** If, at any time following the Initial Delivery Date Deadline and throughout the Delivery Period the Project is available and capable of delivering Products but Seller fails to provide Buyer's Share of Products and such failure is not excused pursuant to any of the preceding subsections of this Section 3.7, then (except as provided in Section 2.1(b) regarding the deferral of the Initial Delivery Date Deadline upon Seller's commitment to pay liquidated damages) Seller shall pay Buyer damages equal to the amount by which the costs incurred by Buyer in replacing Buyer's Share of such Products exceeds what Buyer would have paid under this Agreement if the Products had been provided. For purposes of this calculation, Buyer's costs shall include transportation costs and the locational marginal cost of replacement energy. Buyer shall provide to Seller the calculation of Buyer's damages, with reasonable supporting documentation. Seller shall reflect a credit on the next monthly invoice in an amount equal to the damage calculation, and if this results in a net amount owed by Seller to Buyer, Seller shall make payment of that net amount to Buyer when the invoice is rendered.

**3.8 Casualty Events.** In the event that one or more of the Project Turbines suffers a total casualty loss (a "Casualty Event"), Seller shall notify Buyer in writing, as soon as practical after

such Casualty Event, of Seller's commercially reasonable election to either (i) replace the affected Project Turbine(s) that suffered the Casualty Event or (ii) pay Buyer, as liquidated damages, an amount equal to \$30,000 multiplied by the product of the number of full Contract Years remaining in the Delivery Period or, if applicable, Renewal Period, and the total Nameplate Capacity of the Project Turbine(s) that suffered the Casualty Event and were not otherwise replaced (the "Casualty Buy Down Payment"). In the event Seller elects to pay Buyer the Casualty Buy Down Payment, it shall make the payment within five (5) Business Days following the provision of Seller's notice of its election, and thereafter the turbine(s) that suffered the Casualty Event and were not replaced shall no longer be included as Project Turbines under this Agreement (including, without limitation, for purposes of applying the mechanical availability provisions), and the MW amount (but not the percentage) of Buyer's Share shall be adjusted to reflect the reduced capacity of the Project. If Seller elects not to replace the Project Turbine(s) that suffered the Casualty Event, as permitted hereunder, then Buyer's receipt of the Casualty Buy Down Payment from Seller shall be Buyer's exclusive remedy with respect to the Casualty Event.

**3.9 Rates and Terms Binding.** The rates, terms and conditions of service specified in this Agreement shall remain in effect from the Effective Date until the expiration of the Term. Notwithstanding any provision in this Agreement, neither Party shall seek, nor shall support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the applicable FERC procedures, absent the prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956) and as further clarified by the Supreme Court of the United States, including pursuant to Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S.527, 128 S.Ct. 2733 (2008) and NRG Power Mktg., LLC v. Maine. Pub. Util. Comm'n, 558 U.S.130, 130 S.Ct 693 (2010).

**3.10 Power.** All Net Energy delivered by Seller to the Delivery Point (a) shall be in the form of three-phase alternating current having a nominal frequency of sixty cycles per second, and (b) shall meet all requirements in the Interconnection Agreement.

**3.11 Title and Risk of Loss.** As between Buyer and Seller, (a) Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by Net Energy prior to the Delivery Point, and (b) to the extent of Buyer's Share only, Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Energy delivered hereunder at, from and after the Delivery Point. Seller warrants that it will deliver Buyer's Share of Net Energy to Buyer under this Article 3 free and clear of all liens, claims and encumbrances arising prior to the time that title and risk of loss of Buyer's Share of Net Energy transfers to Buyer under the terms hereunder. Title to and risk of loss of Buyer's Share of Net Energy delivered under this Article 3 shall transfer from Seller to Buyer upon delivery at the Delivery Point. Upon the delivery of Buyer's Share of Net Energy to Buyer, title to the Green Attributes associated with such Net Energy shall vest in Buyer.

**3.12 Standard of Operation.** Seller shall construct, operate and maintain the Project in accordance with (i) the practices, methods, acts, guidelines, standards and criteria of MISO and NERC, (ii) Prudent Industry Practice, and (iii) all applicable Laws. Seller will obtain all registrations,

certifications, permits, licenses and approvals necessary to construct, operate and maintain the Project and to perform its obligations under this Agreement during the Term. As between Buyer and Seller, Seller will be responsible for the coordination and synchronization of the Project's equipment with Grain Belt Express, and shall be solely responsible for any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with Grain Belt Express.

### **3.13 Operating Procedures.**

Seller and Buyer will develop written operating procedures (the "Operating Procedures") no later than December 31, 2020. In addition to establishing the Scheduling responsibilities as required pursuant to Section 3.3(a), the Operating Procedures shall set forth protocols under which the Parties will perform their respective obligations under this Agreement and shall include, but will not be limited to, procedures concerning the following: (1) the method of day-to-day communications; (2) key personnel lists for Seller and Buyer; (3) Energy forecasting, (4) Unplanned Outage, Forced Outage and Planned Outage reporting, and (5) metering. The Operating Committee shall meet (in person or by phone) at least annually, and more frequently as necessary, to ensure that the Operating Procedures remain up to date and make any appropriate changes to them.

**3.14 Interconnection.** Seller shall, at its sole cost and expense, be responsible for the interconnection of the Project with the Grain Belt Express. During the Term, Seller will operate, maintain and control all of Seller's Interconnection Facilities located at the Premises up to, and including, the interconnection to the Grain Belt Express at Seller's sole cost and expense.

### **3.15 Outages.**

**(a) Planned Outages.** No later than sixty (60) Days prior to the start of each full Contract Year (and no later than thirty (30) Days following the start of the initial, partial Contract Year), Seller will provide to Buyer a non-binding Planned Outage schedule for the following Contract Year. Each Planned Outage schedule shall set forth (i) the expected start date and completion date of each Planned Outage, (ii) the amount of capacity of the Project that will not be available during the Planned Outage, and (iii) a description of the maintenance to be performed during the Planned Outage. Buyer shall promptly respond to such schedule and may request reasonable modifications in the schedule for any Planned Outage. Seller shall use all reasonable efforts to comply with such a request to reschedule a Planned Outage, subject to Prudent Industry Practice and Buyer's prior acceptance of any out of pocket incremental costs incurred by Seller in accommodating Buyer's request (such out of pocket incremental costs having been communicated to Buyer prior to a change in a Planned Outage), provided, however, if Buyer's request for a modification in the schedule for a Planned Outage is at the request of MISO, Seller and Buyer shall each bear half of the out of pocket incremental costs. Seller shall provide Buyer with reasonable advance notice of any change in the Planned Outage schedule that affects Seller's ability to deliver Net Energy from the Project.

**(b) Unplanned Outages.** If during the Term, Seller needs to schedule an Unplanned Outage of the Project, Seller shall, to the extent not already being communicated to Buyer as part of the scheduling protocols, notify Buyer, in advance as soon as practicable under the circumstances, of such proposed Unplanned Outage, and the Parties shall plan such outage of capacity to mutually accommodate the reasonable requirements of Seller and Buyer; provided, however, Buyer's requirements shall not unduly prejudice the operation and maintenance of the Project. Notice of

a proposed Unplanned Outage shall include (i) the expected start date and completion date of the Unplanned Outage, (ii) the amount of capacity of the Project that will not be available during the Unplanned Outage and (iii) a description of the maintenance to be performed during the Unplanned Outage. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Subject to Prudent Industry Practice, operational and maintenance needs and Buyer's prior acceptance of any out of pocket incremental costs incurred by Seller in accommodating Buyer's request (such out of pocket incremental costs having been communicated to Buyer prior to a change in an Unplanned Outage) Seller shall use all reasonable efforts to comply with such a request to reschedule an Unplanned Outage. Seller shall notify Buyer of any subsequent changes in such capacity not available to Buyer or any subsequent changes in such Unplanned Outage start or completion dates that affect Seller's ability to deliver Net Energy from the Project. As soon as practicable, any such notifications given orally shall be confirmed in writing.

(c) **Forced Outages.** To the extent not already being communicated to Buyer as part of the scheduling protocols, Seller shall promptly provide to Buyer an oral report of any Forced Outage. Such report shall include the amount of capacity of the Project that will not be available because of such Forced Outage and the expected return date of such capacity. Seller shall update such report as necessary to advise Buyer of changed circumstances. As soon as practicable, all such oral reports shall be confirmed in writing.

**3.16 Metering, SCADA and Communication Systems.** Seller shall be responsible for planning, constructing, and paying for the procurement, construction, installation, operation, calibration and maintenance of the Meter, SCADA and communication equipment located at the Delivery Point and at or near the Grain Belt Express injection point into MISO (collectively "Communication Equipment"). Seller shall (i) read the Meter values in real time, (ii) supply the following real time data that is available for the Project to Buyer in real time: the Meter values; substation check meter values; information on the number of Project Turbines that are available to generate Net Energy and those that are in a fault mode; and meteorological tower information.

Seller shall provide real-time site summary data, as described in the preceding paragraph, to Buyer's designated SCADA system(s) via a communication interface installed at the Seller's primary data center. Seller shall be responsible for providing and configuring all SCADA systems providing data to Buyer. Seller's data center shall provide high availability power and communication systems from multiple carriers and internet service providers. Seller shall facilitate connection to Seller's data system via serial or ethernet hand-off using DNP3 or modbus SCADA protocols, or such other equipment as is consistent with Prudent Industry Practice from time to time. Buyer shall procure and maintain required communications circuit and routers for any required private network connections. Seller shall provide required rack space, cross-connect, and power for Buyer-provided hardware, as needed. Seller shall provide access to equipment for maintenance and upgrades as requested by Buyer, upon reasonable advance notice. Seller shall provide Buyer with internet connection, if requested by Buyer.

Each of Buyer and Seller may, at its own expense, install and maintain a revenue grade back-up meter to measure the output of the Project ("Back-up Meter") and/or Communication Equipment for purposes of monitoring, recording or transmitting data relating to the purchase and sale of Net Energy from the Project (collectively "Back-up Equipment"). Back-up Equipment shall be inspected or tested annually and each Party will provide the other Party with reasonable advance



notice of, and will permit a representative of the other to witness and verify any inspections or tests of Back-up Equipment, provided, however, that each Party will not unreasonably interfere with such testing. Upon Buyer's reasonable request, Seller will arrange for a location at the Delivery Point for such Buyer Back-up Equipment.

### **3.17 Meter Testing and Correction.**

**(a) Rights and Obligations with Respect to Tests.** Seller shall, at its sole cost and expense, test the Meter for accuracy once each year following the first full Contract Year. Each Party and its consultants and representatives shall have the right to witness any Meter test to verify the accuracy of the measurements and recordings of the Meter. Seller shall provide at least ten (10) days' prior written notice to Buyer of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test, and shall, at the request of Buyer, provide Buyer with copies of such written report not later than thirty (30) days after completion of such test. Seller shall bear the cost of the annual testing of the Meter and the preparation of the Meter test reports.

**(b) Standard of Meter Accuracy; Resolution of Disputes as to Accuracy.** The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(i) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(ii) Seller shall, within fifteen (15) days after receiving such notice from Buyer or issuing such notice to Buyer, advise Buyer in writing as to Seller's position concerning the accuracy of such Meter and Seller's reasons for taking such position.

(iii) If the Parties are unable to agree as to the accuracy or condition of the Meter, then either Party may request a test of the Meter, such test to be conducted by an independent third party engineer mutually chosen by the Parties on a date and time mutually agreed to by the Parties. Each Party will be entitled to witness such test, but a Party that elects not to witness the test may not thereafter dispute the accuracy of such test.

(iv) If the Meter is found to be inaccurate by not more than one-half of one percent (0.5%), any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter.

(v) If the Meter is found to be inaccurate by more than one-half of one percent (0.5%) or if such Meter is for any reason out of service or fails to register, then (a) Seller shall promptly cause, at its expense, the Meter to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Net Energy delivered during the periods affected by such inaccuracy, Meter outage or failure to register by using the Back-Up Meter(s), if any, to determine the inaccuracy; provided, however, that each such Back-Up Meter has been tested and maintained in accordance with the provisions hereunder. If both Parties have installed a Back-Up Meter and the Back-Up Meter of both Parties is inaccurate by not more than one-half percent (0.5%) from the measurement made by the standard meter used in the test, the readings from the Back-Up Meter whose readings most closely conform with the measurements made by the standard meter shall be used. If no Back-Up Meter is found to be

accurate within one-half percent (0.5%) from the measurements made by the standard meter used in the test, the Parties shall estimate the necessary adjustment of the Net Energy measured by the improperly functioning Meter based on deliveries of Net Energy from the Project during periods of similar operating conditions when the Meter was operating properly. If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period when an adjustment shall be made shall be the shorter of (i) the last one-half of the period beginning with the last test of the Meter and ending on the date of the test when the Meter was found to be defective or (ii) the one hundred and eighty (180) Days immediately preceding the test that found the Meter to be defective or inaccurate.

**3.18 Taxes.** Seller shall pay all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Entity on the Project and on the Net Energy sold and delivered hereunder up to the Delivery Point. Buyer shall pay for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Entity on Buyer's Share of the Net Energy sold and delivered hereunder at and after the Delivery Point. To the extent permitted by applicable Law, each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any Governmental Entity with respect to Buyer's Share of the Net Energy sold, delivered and received hereunder that are the responsibility of the first Party pursuant to this Section 3.18.

**3.19 Operating Committee and Operating Procedures.**

(a) As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues which may arise during the performance of this Agreement, Seller and Buyer 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 Agreement and to develop operating arrangements for the generation, delivery and receipt of any output from the Project. These appointments will remain in full force and effect until written notice of substitution is delivered to the other Party.

(b) As provided in Section 3.13, the Operating Committee shall from time to time make mutually agreeable modifications to the Operating Procedures consistent with the requirements of this Agreement. To the extent such matters are not formally included in the Operating Procedures, the Operating Committee may also handle matters including 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 have authority to act in all technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes, provided, however, that except to the extent explicitly provided for in this Agreement, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this Agreement.

## ARTICLE 4

**REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and Warranties.** As a material inducement to execution of this Agreement, as of the Effective Date, each Party hereby represents and warrants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

(b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not conflict with or violate any of the terms or conditions in its governing documents or any agreement to which it is a Party, or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to such Party;

(c) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity;

(d) There is no Bankruptcy Proceeding pending or being contemplated by it, or to its knowledge threatened against it;

(e) To such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body that would materially adversely affect its ability to perform this Agreement; and

(f) No consent, approval or authorization of, or registration, filing or declaration with, any federal or state governmental authority or other regulatory agency, which has not been received, waived, satisfied or not yet required in the normal course of the development and operation of the Project as of the date hereof, is required for the valid execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or compliance with the terms and provisions hereof.

**4.2 Other Representations and Warranties.** OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED AND WAIVED BY EACH PARTY.

**4.3 No Other Representations and Warranties.** Each Party acknowledges that it has entered into this Agreement in reliance only upon the representations and warranties set forth in this Agreement.

## ARTICLE 5

**EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

**5.1 Events of Default.** The following occurrences shall constitute events of default of the respective Party (each an "Event of Default"):

(a) Failure by a Party to make any undisputed payment required hereunder when due if such failure is not remedied within five (5) Business Days after such Party's receipt of written notice of such failure;

(b) Seller's delivery or sale of the Buyer's Share of the Product to any Person other than Buyer, except as permitted by Section 3.2, if (1) such delivery or sale of the Product continues after five (5) Business Days following Seller's receipt of written notice of such event, and (2) Seller fails to pay Buyer damages pursuant to Section 3.7(f) for the entire period of the breach.

(c) Failure by a Party to perform any other material obligation hereunder, and such failure is not remedied within thirty (30) Days after the defaulting Party's receipt of written notice of such failure, provided that so long as the defaulting Party has initiated and is diligently attempting to effect a cure and the default is capable of cure, the defaulting Party's cure period shall extend for the period reasonably needed to cure such default but in no event longer than an additional one hundred and eighty (180) Days, unless mutually extended by the Parties.

(d) Any representation or warranty made by a Party pursuant to Article 4 shall have been false in any material respect when made, and is not remedied within thirty (30) Days after the defaulting Party's receipt of written notice of such failure, provided that so long as the defaulting Party has initiated and is diligently attempting to effect a cure and the default is capable of cure, the defaulting Party's cure period shall extend for the period reasonably needed to cure such default but in no event longer than an additional one hundred and eighty (180) Days, unless mutually extended by the Parties

(e) A Party assigns this Agreement or any of its rights hereunder, except as permitted pursuant to Article 7; or

(f) A Party is or becomes subject to a Bankruptcy Proceeding.

**5.2 Default Remedies.** If an Event of Default with respect to a Party (the "Defaulting Party") has occurred and is continuing, the other Party (the "Non-Defaulting Party") shall have the right, without duplication of recovery, to:

(a) Suspend performance of its obligations under this Agreement, and, in the case of Seller, sell to a third Person, free and clear of any claims by Buyer, the Product for such period during which Seller suspends performance hereunder;

(b) Other than payments accrued and due prior to the Event of Default, withhold any payments due to the Defaulting Party under this Agreement;

(c) Designate a Day, no earlier than the Day such notice is effective and no later than twenty (20) Days after such notice is effective, as an early termination date (the "Early Termination Date"); and/or

(d) Exercise all remedies provided in this Agreement or that may be available at law or in equity if otherwise permitted under this Agreement.

**5.3 Termination Upon an Event of Default.** As soon as practicable after the declaration of an Early Termination Date, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment, if any. The Non-Defaulting Party shall calculate the Termination Payment in a commercially reasonable manner as of the Early Termination Date. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment calculation does not demonstrate that the Non-Defaulting Party suffered a net loss, then the Termination Payment shall be zero and if the Termination Payment calculation demonstrates that the Non-Defaulting Party suffered a net loss, then the Termination Payment shall be due to the Non-Defaulting Party pursuant to this Section 5.3. The Termination Payment, if any, shall be made by the Defaulting Party within five (5) Business Days after such notice is effective and shall bear interest at the Interest Rate from the due date until paid. Any disputes regarding a Termination Payment shall be settled in accordance with Article 12.

## ARTICLE 6

### **BILLING AND PAYMENT; RECORDS**

**6.1 Billing and Payment.** Starting with the second Month of the Delivery Period, Seller shall send to Buyer a statement each Month setting forth (a) the quantity of Net Energy generated by the Project in the immediately preceding Month based on the Meter (or, if unavailable, the Back-up Meter), Buyer's Share of such Net Energy, and the total amount due for Buyer's Share of such Net Energy (which amount shall be determined in accordance with Section 3.4), (b) with respect to the first monthly invoice of each Contract Year beginning with the second full Contract Year, Seller's computation of the Actual Mechanical Availability Factor for the prior Contract Year and any Annual Availability Damages due to Buyer pursuant to Section 3.5, and (c) any other amounts due to Seller or to Buyer under Article 3 of this Agreement.

If Seller and Buyer each owe an amount to the other in the same Month for obligations incurred under this Agreement, then the undisputed portion(s) of such amounts shall be aggregated, and the Parties shall satisfy their payment obligations through netting, in which case the Party owing the greater aggregate undisputed amount shall pay to the other Party the difference between the undisputed amounts owed. All statements shall be sent by Seller to Buyer on or before the tenth (10th) Business Day of the Month following the immediately preceding Month. No later than twenty (20) Days after the date such statement is received, or if such Day is not a Business Day, the immediately following Business Day, the owing Party shall remit to the other Party, by wire transfer in accordance with Article 11 the undisputed amount due. Seller shall credit Buyer any amounts owed by Seller to Buyer as a result of any resettlement in Seller's next regular monthly statement.

**6.2 Interest on Late Payments.** Undisputed amounts not paid when due shall accrue interest from, and including, the due date to, and excluding, the date of payment at the Interest Rate.

**6.3 Disputed Amounts.** A Party may in good faith dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, within twelve (12) months of the date the invoice was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice disputed or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payments of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid or refunded. Inadvertent overpayments shall be returned or credited, with interest accrued at the Interest Rate from and including the date of such overpayment, to but excluding the date paid or credited. Any dispute with respect to an invoice shall be waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or, if the dispute relates to a billing adjustment, within twelve (12) months after the adjustment to the invoice was made.

**6.4 Records.** Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least twenty-four (24) Months after the date an invoice was received by a Party, or (ii) if there is a dispute relating to an invoice, the date that is twenty-four (24) Months after the date on which such dispute is resolved.

**6.5 Audit.** Each Party, through its authorized representatives, shall have the right, at its sole expense and upon thirty (30) Days written notice, during normal business hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder. Upon request, each Party shall provide to the other Party statements evidencing the electricity delivered hereunder. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within twelve (12) Months after the date of such statement or payment. Audit rights under this Agreement shall be subject to the auditing Party's obligations of confidentiality to third parties.

**6.6 Access to Site.** Upon reasonable prior notice, but in no event less than three (3) Business Days and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Premises and the Project during normal business hours: (i) for the purpose of reading or testing the Meter, Back-up Meter, Communication Equipment and/or Back-up Equipment, all in accordance with Section 3.16, (ii) as necessary to witness any required capacity tests necessary to determine the amount of capacity associated with the Project, or (iii) in connection with the operation and maintenance of the Interconnection Facilities.

## ARTICLE 7

**ASSIGNMENT: BINDING EFFECT**

**7.1 Assignment.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that (1) Seller may, upon written notice, but without the need for consent from Buyer, encumber or collaterally assign this Agreement, or transfer or assign the accounts, revenues or proceeds hereof, to any Project Lender; (2) Seller may, upon written notice, but without the need for consent from Buyer, transfer or assign this Agreement to an Affiliate, and (3) either Party may, upon written notice, but without the need for consent from the other Party, transfer or assign this Agreement (a) to any Person succeeding to all or substantially all of the assets of such Party or (b) in connection with a merger with another Person or any other transaction to which Buyer or Seller is a party resulting in a change of control of Buyer or Seller, as applicable. In each of the cases set forth in the preceding clauses (2) and (3), the assignee or transferee shall (i) agree in writing to be bound by the terms and conditions hereof, furnish a copy of the assignment or transfer document to the other Party and have comparable or superior capabilities to perform the assignor's or transferors obligations under this Agreement, and (ii) in the case of an assignment or transfer by Seller, possess the same or similar experience in operating wind projects in the United States as Seller or have entered into a binding agreement for the operation and maintenance of the Project with a Person that possesses the same or superior experience in operating wind projects in the United States as Seller. Any assignment in violation of this Section 7.1 shall be void.

**7.2 Assumption by Assignee: No Release from Liabilities.** Any permitted assignee or transferee of a Party's interest in this Agreement shall assume all existing and future obligations of such Party to be performed under this Agreement. Unless otherwise agreed to by the Parties, upon any permitted assignment of this Agreement to an assignee and such assignee's written assumption of this Agreement in a form reasonably acceptable to the other Party, the assigning Party shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption; provided, however, that in all other cases, the assigning Party shall continue to be bound by this Agreement unless the Parties otherwise agree.

**7.3 Mortgages.** Seller may without Buyer's consent collaterally assign, encumber, pledge or mortgage its rights hereunder for security of any indebtedness or obligation in favor of any Project Lender. Upon giving notice to Buyer of such pledge and mortgage, (A) the pledgee or mortgagee shall be entitled, as between Buyer and such Project Lender, to exercise all rights and remedies it may have with respect to this Agreement without the further consent of Buyer, to receive a copy of any notice given by Buyer or Seller pursuant to the terms hereof, and to deliver any notice permitted under this Agreement on Seller's behalf, and (B) Buyer shall be entitled to assume the due authority of the pledgee or mortgagee in taking any action or authorizing any notice without the necessity of independently reviewing the pledge, mortgage, or other security instrument delivered by Seller to the pledgee or mortgagee, and (C) Buyer shall accept performance by the pledgee or mortgagee of any duty or obligation of the Seller hereunder. Upon giving Buyer a copy of a trustee's deed, deed in lieu of foreclosure, or other instrument pursuant to which the pledgee, mortgagee, or other Person acquires legal title to this Agreement and after curing any then-existing Events of Default of Seller, (i) the pledgee, mortgagee, or other Person shall assume Seller's duties and obligations hereunder, and (ii) Buyer shall accept the pledgee, mortgagee, or

other Person as the successor to Seller under this Agreement. Upon request by Seller, from time to time, in connection with its financing of the Project, Buyer agrees to execute and deliver a consent or other direct agreement with Project Lenders that is consistent with this Agreement, provided that such consent or agreement does not dilute any of Buyer's rights under this Agreement or enhance any of Buyer's obligations under this Agreement. Seller shall reimburse Buyer for its reasonable out-of-pocket expenses incurred in connection with such consent or other agreements. Buyer agrees to cooperate with the reasonable due diligence efforts of such Project Lenders, subject to being reimbursed for its reasonable out-of-pocket expenses incurred in connection with such due diligence efforts.

## ARTICLE 8

### **FORCE MAJEURE; INDEMNITY; LIMITATION OF LIABILITY**

**8.1 Force Majeure.** If either Party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement, then, during such event of Force Majeure, but for no longer period, the obligations of the claiming Party (other than any liability for breach of any obligations that were to be performed or that accrued prior to the event of Force Majeure including but not limited to the obligation to make payments then due or becoming due with respect to performance prior to the event of Force Majeure) shall be suspended to the extent of such disability and the claiming Party shall be excused from the performance of its obligations. The claiming Party shall (a) give the other Party written notice, as soon as practicable but no later than three (3) Business Days after the commencement of the Force Majeure event or knowledge that the Force Majeure event will impact the claiming Party's performance, with details to be supplied within twenty-one (21) Days after such notice is provided, further describing the particulars of the occurrence of the Force Majeure event, and (b) take all reasonable steps to remedy the cause of the Force Majeure with all reasonable dispatch; provided, that this provision shall not require Seller to deliver, or Buyer to receive, any portion of the Net Energy at points other than the Delivery Point. In the event of an event of Force Majeure with respect to Buyer, Seller may sell all or a portion of the Product to any Person for the period of time that Buyer's performance of its obligations to purchase Buyer's Share of Net Energy under this Agreement is suspended due to Force Majeure.

If a Force Majeure event renders a Party unable to perform its obligations hereunder for more than two hundred and seventy (270) consecutive Days, the non-claiming Party may thereafter terminate this Agreement by written notice without further liability to the claiming Party except for liabilities existing prior to such termination. The claiming Party shall promptly notify the non-claiming Party when it is able to resume performance of its obligations and compliance with the conditions under this Agreement, if it is able to do so. Until the non-claiming Party is so notified, it shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by an event of Force Majeure.

### **8.2 Indemnification.**

(a) Indemnity. To the extent permitted by Law, and subject to the provisions of Section 8.2(c), each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party and its Affiliates, and each of their officers, directors, board members, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, expenses (including reasonable legal fees and expenses), suits and proceedings of any nature whatsoever for personal injury, death or property damage to each other's property or facilities or



personal injury, death or property damage to third parties (collectively, the "Liabilities") to the extent arising out of, resulting from, or caused by the negligent acts or omissions, willful misconduct or strict liability of the Indemnifying Party, its Affiliates, directors, officers, employees, or agents.

Without limiting the foregoing, to the extent permitted by Law, Buyer shall indemnify Seller for all Liabilities related to Buyer's Share of Net Energy after title and risk of loss of Net Energy transfers to Buyer in accordance with the provisions of Section 3.11, and Seller shall indemnify Buyer for all Liabilities related to Net Energy prior to title and risk of loss of Net Energy transferring to Buyer in accordance with the provisions of Section 3.11, except to the extent such Liabilities arise out of, result from, or are caused by the negligence, willful misconduct or breach of this Agreement of the Indemnified Party.

Without limiting the foregoing, to the extent permitted by applicable Law, Seller shall indemnify and hold Buyer and its Indemnified Parties harmless from and against all Liabilities related to or arising out of: (i) the operation and ownership of the Project; (ii) the failure of the Project to comply with applicable Law whether in connection with the sale of Net Energy, the operation of the Project, or the failure of Seller or the Project to have applicable authorizations from Governmental Entities required for the performance of the obligations arising under this Agreement; and (iii) breach by Seller of any covenants or obligations owed a Project Lender.

**(b) Control of Defense.** A potential Indemnifying Party shall notify the potential Indemnified Party in writing following its receipt of a claim notice whether or not the potential Indemnifying Party agrees that the claim is subject to this Section 8.2 and, if so, whether the Indemnifying Party elects to undertake, conduct and control, through counsel of its choosing and at its sole risk and expense, the settlement or defense of the claim. If the Indemnifying Party notifies the Indemnified Party that it elects to undertake the settlement or defense of the claim, the Indemnified Party shall reasonably cooperate with the Indemnifying Party in connection therewith including, without limitation, by making available to the Indemnifying Party all relevant information and the testimony of employees and agents material to the defense of the claim, and the Indemnifying Party shall reimburse the Indemnified Party for reasonable out-of-pocket costs incurred in connection with such cooperation; provided, however, that the Indemnified Party may retain counsel and participate, at the Indemnified Party's own expense, in the defense of any claim subject to indemnification hereunder. Notwithstanding any other provision of this Section 8.2(b), the Indemnified Party may undertake, conduct and control the defense of a claim subject to indemnification hereunder if (i) the Indemnifying Party fails for any reason to assume control of the defense of a claim in accordance with this Section 8.2 or does not pursue with reasonable diligence the defense, negotiation or settlement of such claim, or (ii) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such claim, and the reasonable costs and expenses incurred by the Indemnified Party in conducting such defense shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

The Indemnifying Party may settle or compromise any claim without the approval of the Indemnified Party so long as: (A) such claim is solely for monetary damages that are paid in full by the Indemnifying Party; (B) the settlement resolving the claim acknowledges the settlement is a compromise of disputed claims and that neither the settlement nor any provision thereof, nor any consideration given thereunder is to be construed as, or offered as evidence of, an admission or an acknowledgement of the validity or merit, or lack thereof, of the disputed claims; and (C) the

Indemnified Party is fully released from liability by the claimant. If the conditions set forth in the foregoing clauses (A), (B) and (C) are not met, the Indemnifying Party shall not be entitled to settle or compromise any claim without the prior written consent of the Indemnified Party.

Notwithstanding any other provision of this Article 8 to the contrary, any fines, penalties or other costs incurred by either Party, or such Party's agents, employees or subcontractors for non-compliance by such Party, its Affiliates or any of their agents, employees or subcontractors with applicable Law will be the sole responsibility of such non-complying Party and will not be subject to the indemnity obligations hereunder.

**(c) Allocation of Liability.** NOTWITHSTANDING SECTION 8.2(a), WHEN ANY CLAIM FOR INDEMNIFICATION RESULTS FROM JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR STRICT LIABILITY OF BOTH PARTIES, EACH PARTY'S DUTY OF INDEMNIFICATION SHALL BE PROPORTIONATE TO SUCH PARTY'S SHARE OF JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR STRICT LIABILITY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION.

**8.3 Waiver and Exclusion of Other Remedies.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE WAIVER OF CONSEQUENTIAL AND OTHER FORMS OF DAMAGES DESCRIBED IN THIS SECTION 8.3, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. EXCEPT WITH RESPECT TO THIRD-PARTY INDEMNITY CLAIMS PURSUANT TO SECTION 8.2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

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 ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

**8.4 Duty to Mitigate.** Each Party has a duty to mitigate damages and will use Commercially Reasonable Efforts (including the payment of commercially reasonable amounts, which will be included as part of such damages) to minimize any damages it may incur as a result of the other Party's default or non-performance of this Agreement. The Parties shall exercise Commercially Reasonable Efforts when purchasing or selling Energy to or from any other Person, as the case may be, in order to mitigate damages pursuant to this Section 8.4.

## ARTICLE 9

### BUYOUT OPTION

#### **9.1 Buyout Option.**

(a) **Option to Purchase.** No later than one hundred twenty (120) Days prior to the last Day of the fifteenth (15th) full Contract Year, or one hundred twenty (120) Days prior to the last Day of any Renewal Period, if applicable, Buyer may, by written notice to Seller, elect to purchase from Seller an undivided ownership interest in the Project equal to Buyer's Share. If Buyer elects to purchase such portion of the Project, Buyer and Seller shall promptly and in good faith negotiate the terms and conditions of an asset purchase agreement and other necessary and appropriate agreements (such as a joint ownership and operating agreement). Upon the closing of the asset purchase agreement (as of a date mutually agreed to by the Parties), Buyer shall pay to Seller a buyout payment equal to the Fair Market Value of such portion of the Project, as determined pursuant to Section 9.1(b) below ("Buyout Payment"), Seller shall have removed any encumbrances held by Seller with respect to Buyer's Share of the Project to the extent necessary to effectuate the transaction, and the Parties shall execute all documents necessary to transfer title from Seller to Buyer of Buyer's Share of the Project.

(b) **Calculation of Fair Market Value.** If Buyer provides notice to Seller of its election to purchase the Buyer's Share of the Project, the Parties shall mutually agree upon an independent appraiser on or before the date that is ninety (90) Days prior to the last Day of the fifteenth (15th) Contract Year of the Delivery Period. The appraiser shall determine, at Buyer's expense, the fair market value of such portion of the Project as of the date on which the Buyout Payment is to be paid, taking into account such factors as deemed appropriate by the appraiser, which may include the resale value of such portion of Buyer's Share the Project, and (without duplication of the foregoing) the market price of the Products available from the Buyer's Share of the Project (the "Fair Market Value"). On or prior to the date that is forty-five (45) Days prior to the last Day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the two appraisers shall choose a third independent appraiser. The Fair Market Value shall be the simple average of the determinations of the three independent appraisers. Buyer may by written notice rescind its election to purchase the Buyer's Share of the Project no later than twenty (20) Days prior to the last Day of the fifteenth (15th) Contract Year, and in such case, the Delivery Period shall continue as though Buyer had not delivered any election to purchase the Project.

**ARTICLE 10****CONFIDENTIALITY**

**10.1 Confidentiality.** The Parties' proposals and negotiations prior to the Effective Date concerning this Agreement, the terms of this Agreement, the actual charges billed to Buyer under this Agreement, the operation, maintenance and technical support, know-how and processes applicable to each specific Project Turbine, as well as information regarding generation output, transmission, interconnection and non-technical aspects such as the permits and land access agreements of the Project (collectively the "Project Information"), and any such Project Information exchanged by the Parties, provided that any written Project Information is specifically identified or marked as confidential by the providing Party, shall be deemed to be "Confidential Information". Confidential Information shall not include (i) information that is or becomes available to the public through no breach of this Agreement, (ii) information that was previously known by the receiving Party without any obligation to hold it in confidence, (iii) information that the receiving Party receives from a third party who is not bound by a confidentiality agreement with the disclosing Party, (iv) information that the receiving Party develops independently without using the Confidential Information, (v) information that the providing Party approves for release in writing, (vi) general descriptive information about the Project such as its total capacity and the location and geographical description of the Project, and (vii) the fact of this Agreement having been entered into by the Parties and general descriptive information regarding the Agreement. Seller and Buyer each agree to hold Confidential Information confidential except to the extent permitted to be disclosed under this Article 10. Except as otherwise expressly provided herein, neither Party shall, unless authorized in writing by the other Party to do so, allow access, distribute or disclose any of the Confidential Information, or any facts related thereto to any Person (other than those otherwise authorized pursuant to this Article 10).

**10.2 Disclosure to Affiliates and Representatives.** Notwithstanding the foregoing, each Party may disclose Confidential Information to such Party's Affiliates (which, for purposes of this Article 10 shall include all of Buyer's members who purchase from Buyer a share of energy from Buyer's Share of the Project) and any of such Party's or such Party's Affiliates' employees, officers, board members, consultants and attorneys and other Persons involved in assisting such Party or such Party's Affiliates in connection with this Agreement (the "Representatives"), provided that such Representatives are informed of the requirements of this Article 10 and agree to maintain the confidentiality of the Confidential Information. A receiving Party shall ensure that all Representatives to whom it discloses Confidential Information under this Agreement shall keep such information confidential in accordance with the requirements of this Agreement.

**10.3 Disclosure Pursuant to Applicable Law.** Notwithstanding anything to the contrary in this Article 10, in the event a receiving Party (or receiving Party Affiliate) is required pursuant to applicable Law (including, without limitation, Missouri open records and open meetings laws) to disclose Confidential Information, such receiving Party (or receiving Party Affiliate) shall, to the extent permitted by applicable Law, give the disclosing Party prompt written notice of such request so that the disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party (or receiving Party Affiliate) is nonetheless advised by counsel that disclosure of the Confidential Information is required, then the receiving Party (or receiving Party Affiliate) may disclose such Confidential Information.

**10.4 Disclosure to Lenders, Rating Agencies and Potential Assignees.** Notwithstanding anything to the contrary in this Article 10, Confidential Information may be disclosed: (a) by Seller to any Project Lender, institutional investor or potential purchaser of Seller or of all or substantially all assets of Seller, provided in each case that such Person is informed of the requirements of this Article 10 and agrees to maintain the confidentiality of the Confidential Information; (b) by either Party to any other entity expressing an interest in providing equity or debt financing or refinancing and/or credit support to such Party (and to any agent of or consultant to such entity), and the agent or trustee of any of the foregoing so long as the Person to whom Confidential Information is disclosed agrees in writing to maintain the confidentiality of the Confidential Information; (c) by a Party to any credit rating agency that has issued a credit rating for such Party or any of its Affiliates; and (d) by a Party to a proposed assignee or transferee for a permitted assignment or transfer pursuant to Section 7.1.

**10.5 Injunctive Relief.** Each of the Parties acknowledges and agrees that the other Party may be irreparably harmed if any Confidential Information of the disclosing Party were to be disclosed to third Persons, or if any use were to be made of such Confidential Information other than that permitted under this Agreement, and further agrees that the disclosing Party shall have the right to seek injunctive relief upon any violation or threatened violation of the terms of this Article 10, in addition to all other rights and remedies available at law or in equity, without having to post a bond or other security.

**10.6 Public Announcements.** Either Party may issue or make any public announcement, press release or statement regarding this Agreement as long as prior to the release of the public announcement, press release or statement, such Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains the prior approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed; provided that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party or such announcement is limited to disclosing Buyer's and Seller's names, location and general description of the Project, Energy sold to Buyer, and Term of this Agreement.

## ARTICLE 11

### NOTICES AND ADDRESS FOR PAYMENT

Except as may be otherwise expressly provided for herein, all notices, requests, statements or payments shall be made in writing to the addresses set out below. Except where this Agreement expressly provides that notice may be made orally, notices required to be in writing shall be delivered by hand delivery, express courier, facsimile or electronic mail (so long as a copy of such electronic mail notice is provided thereafter by hand delivery or express courier). Except as may otherwise be specified in this Agreement, all notices, requests, statements and other communications shall be deemed to have been duly given on (a) the date of delivery if delivered by hand or by express courier, (b) the time stamp upon delivery if sent by electronic mail, (c) date of receipt of a time-stamped, legible copy thereof if sent by facsimile; provided that deliveries under (b) or (c) shall be deemed to have been made upon the next Business Day if made after the close of business on any Business Day or on any other Day. A Party may change its address or its

payment instructions by providing the other Party with at least ten (10) Days prior notice thereof in accordance herewith:

<b>Name: Iron Star Wind, LLC</b> ("Seller")	<b>Name: Missouri Joint Municipal Electric Utility Commission</b> ("Buyer")
<b>All Notices:</b>	<b>All Notices:</b>
Street: 3130 State Street, Suite 200	Street: 1808 I-70 Dr. SW
City: Santa Barbara, CA 93105	City: Columbia, MO 65203
Attn: Matt Riley, CEO Phone: (805) 569-6181 Facsimile: (805) 569-6190 Email: <a href="mailto:mriley@infinityrenewables.com">mriley@infinityrenewables.com</a>	Attn: John Grotzinger, COO of MJMEUC Phone:(573)445-3279 Facsimile: (573) 445-0680 Email: <a href="mailto:jgrotzinger@mpua.org">jgrotzinger@mpua.org</a>
<b>Invoices:</b> Attn: Matt Riley, CEO Phone: (805) 569-6181 Facsimile: (805) 569-6190 Email: <a href="mailto:mriley@infinityrenewables.com">mriley@infinityrenewables.com</a>	<b>Invoices:</b> Attn: John Grotzinger Phone: (573) 445-3279 Facsimile: (573) 445-0680 Email: <a href="mailto:jgrotzinger@mpua.org">jgrotzinger@mpua.org</a>
<b>Payments:</b> Attn: Matt Riley, CEO Phone: (805) 569-6181 Facsimile: (805) 569-6190 Email: <a href="mailto:mriley@infinityrenewables.com">mriley@infinityrenewables.com</a>	<b>Payments:</b> Attn: Mike Loethen CFO Phone: (573) 445-3279 Facsimile: (573) 445-0680 Email: <a href="mailto:mloethen@mpua.org">mloethen@mpua.org</a>
<b>Wire Transfer:</b> In accordance with written notice to be provided by Seller to Buyer on or prior to the Initial Delivery Date	<b>Wire Transfer:</b> In accordance with written notice to be provided by Buyer to Seller on or prior to the Initial Delivery Date
<b>Credit and Collections:</b> Attn: Matt Riley, CEO Phone: (805) 569-6181 Facsimile: (805) 569-6190 Email: <a href="mailto:mriley@infinityrenewables.com">mriley@infinityrenewables.com</a>	<b>Credit and Collections:</b> Attn: Mike Loethen CFO Phone: (573) 445-3279 Facsimile: (573) 445-0680 Email: <a href="mailto:mloethen@mpua.org">mloethen@mpua.org</a>

<p><b>With copy of notices of an Event of Default to:</b>  David Kohl  General Counsel, Infinity Renewables  3130 State Street, Suite 200  Santa Barbara, CA 93105  (805) 569-6188</p>	<p><b>With copy of notices of an Event of Default to:</b>  Douglas Healy  General Counsel, MPUA  3010 E. Battlefield, Suite A  Springfield, MO 65804  (417) 864-7018  doug@healylawoffices.com</p>
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## ARTICLE 12

### DISPUTE RESOLUTION

**12.1 Informal Resolution.** If any dispute arises with respect to either Party's performance hereunder, the senior officers or executives of Buyer and Seller shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) Business Days after the written request of either Party. If such senior officers or executives are unable to resolve such dispute within ten (10) Business Days after their initial meeting or within additional time as agreed to by the senior officers or executives, either Party may refer the dispute to arbitration under the procedures outlined in the remainder of this Article 12.

**12.2 Arbitration.** If the Parties cannot resolve any dispute within the informal resolution period described in Section 12.1 hereunder, either Party may submit such dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") effective at the time of the dispute (the "AAA Rules") and the terms of this Section 12.2. If the AAA Rules are in conflict with this Section 12.2, including the provisions concerning the appointment of arbitrators, the provisions of this Section 12.2 shall control. Notwithstanding the use of the AAA Rules, it is not the Parties' intention to have any such arbitration administered by the AAA unless specifically so agreed.

The arbitration process shall be initiated by either Party delivering to the other a written notice requesting arbitration and the other Party shall respond to such notice within twenty (20) Business Days. Each Party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator; each of the arbitrators shall have knowledge of and over five (5) years of professional experience in connection with similar disputes or transactions and shall have not previously been employed or retained by either Party nor have a direct or indirect interest in either Party or the subject matter of the arbitration. The Party-selected arbitrators shall be named within ten (10) Business Days after written notice from either Party requesting arbitration, and the third arbitrator shall be selected by the Party-selected arbitrators within ten (10) Business Days of their appointment. The arbitration shall be held in Springfield, Missouri or any other mutually agreed upon location. The arbitration shall be conducted according to the following procedures unless the Parties agree otherwise:

(a) The arbitration hearing shall commence no later than ninety (90) Days after the selection of the third arbitrator, (b) not later than seven (7) Days prior to the hearing date set by the

arbitrators each Party shall submit a brief detailing its factual and legal position, (c) the hearing shall be conducted on a confidential basis, (d) the Parties shall divide equally the cost of the third arbitrator and the hearing, and each Party shall bear all costs of its Party-selected arbitrator and be responsible for its own expenses and those of its counsel and representatives, and (e) evidence concerning any offer made or the details of any negotiation prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible. The award of the arbitrators shall be made no later than thirty (30) Days after the date of closing of the hearing, or if oral hearings have been waived, after the date of transmitting the final statements and proof to the arbitrators.

**(b)** Provided that a declaration of early termination of this Agreement pursuant to Section 5.2(c) or otherwise has not occurred, each Party shall continue to perform its obligations under this Agreement during the continuation of any dispute pursuant to this Article 12.

**(c)** The Parties hereby waive any rights of application or appeal to any court or tribunal of competent jurisdiction to the fullest extent permitted by applicable Law in connection with any question of law or fact arising in the course of the arbitration or with respect to any award made except as provided in this Article 12.

**(d)** Except to the extent necessary to enforce the arbitration agreement or award, to enforce other rights of the Parties hereunder, or as required by applicable Law, the Parties, their Affiliates, and all of the employees, officers, directors, counsel, consultants, and expert witnesses, shall maintain as Confidential Information (pursuant to Article 10) the fact of the arbitration proceedings, the arbitral award, filings or submissions exchanged or produced during the arbitration proceedings, and briefs or other documents prepared in connection with the arbitration.

**(e)** Any award rendered by the arbitrators hereunder shall be final and binding upon the Parties as from the date rendered, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues or accounting presented to the arbitral tribunal. Judgment upon any award may be entered in any court having jurisdiction under applicable Law over the assets of the Party owing the award or judgment, or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be.

Each Party hereby submits to the exclusive jurisdiction and venue of any state or federal court located in Missouri in any action, suit or proceeding with respect to the enforcement of the arbitration agreement in this Section 12.2 and the exclusive jurisdiction of such court with respect to the enforcement of any award thereunder. Each Party agrees that such court shall have the power to provide any necessary interim relief prior to the formation of the arbitral tribunal.

### **ARTICLE 13**

#### **MISCELLANEOUS**

**13.1 Insurance.** Seller shall maintain the insurance coverage as set forth in Exhibit C throughout the Term.

**13.2 Entirety.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous discussions,



agreements, proposal, solicitation, terms and conditions, or representations of the Parties affecting the same subject matter.

**13.3 Amendment.** No amendment, modification or change to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. The Parties understand and acknowledge that various arrangements, specific to the Project and/or Grain Belt Express, which are yet to be developed among Seller, Clean Line Partners, MISO, and PJM Interconnection, are expected to affect the development and operation of the Project. Seller shall keep Buyer apprised of progress toward the development of such arrangements and, to the extent feasible, shall provide Buyer a reasonable opportunity to participate in or comment upon such potential arrangements while they are being developed. If any such arrangements materially conflict with any of the Parties' rights and obligations under this Agreement, the Parties shall meet and confer, in good faith, to amend this Agreement, if necessary, to be consistent with such arrangements, while, to the greatest extent possible, preserving the original benefit of the bargains between the Parties as set forth in this Agreement at the time of execution. If the Parties cannot reach agreement on such amendments, the issues shall be resolved as set forth in Article 12.

**13.4 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**13.5 Choice of Law and Forum.** This Agreement shall be governed, construed, enforced and performed in accordance with the laws of the State of Missouri, without regard to principles of conflicts of law. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING BASED UPON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

**13.6 Waiver.** No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by any Party in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

**13.7 Drafting and Interpretation.** Each Party acknowledges that it was represented by counsel in connection with this Agreement and that this Agreement shall be deemed for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

**13.8 Severability; Change in Law.** Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable Governmental Authority or deemed unlawful because of a change in applicable Law (individually or collectively, such events referred to as "Regulatory Event") shall not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided further, that if a Regulatory Event occurs, the Parties shall use Commercially Reasonable Efforts to reform this Agreement in order to give effect to the original intention of the Parties.

**13.9 Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

**13.10 No Third Party Beneficiaries.** Nothing in this Agreement shall provide any benefit to any third Person or entitle any third Person to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

**13.11 Relationships of Parties.** The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of the other Party. Neither Seller nor Buyer shall have any authority to bind the other to any agreement.

**13.12 Non-Recourse Obligations.** Notwithstanding any other provision of this Agreement, no Person (nor any officer, employee, executive, director, agent or authorized representative of any such Person) other than Seller and Buyer shall be liable for any payments due hereunder or for the performance of any obligation hereunder.

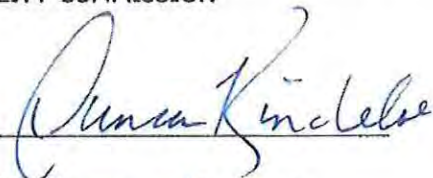
**13.13 Survival.** The provisions of Sections 3.9 and 3.18 (with respect to all periods prior to termination), Sections 5.3, 6.4, 6.5, 8.2, 8.3, 8.4, 13.5, 13.12 and Articles 10, 11 and 12 shall survive the termination of this Agreement.

**13.14 Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

THIS CONTRACT CONTAINS  
A BINDING ARBITRATION  
PROVISION WHICH MAY BE  
ENFORCED BY THE PARTIES

MISSOURI JOINT MUNICIPAL ELECTRIC  
UTILITY COMMISSION

By: 

Name: Duncan Kincheloe

Title: President / CEO MPEUA

IRON STAR WIND Project, LLC, a Delaware  
limited liability company

By: Infinity Wind Holdings, LLC, a Delaware  
limited liability company

Name: 

Title: Manager

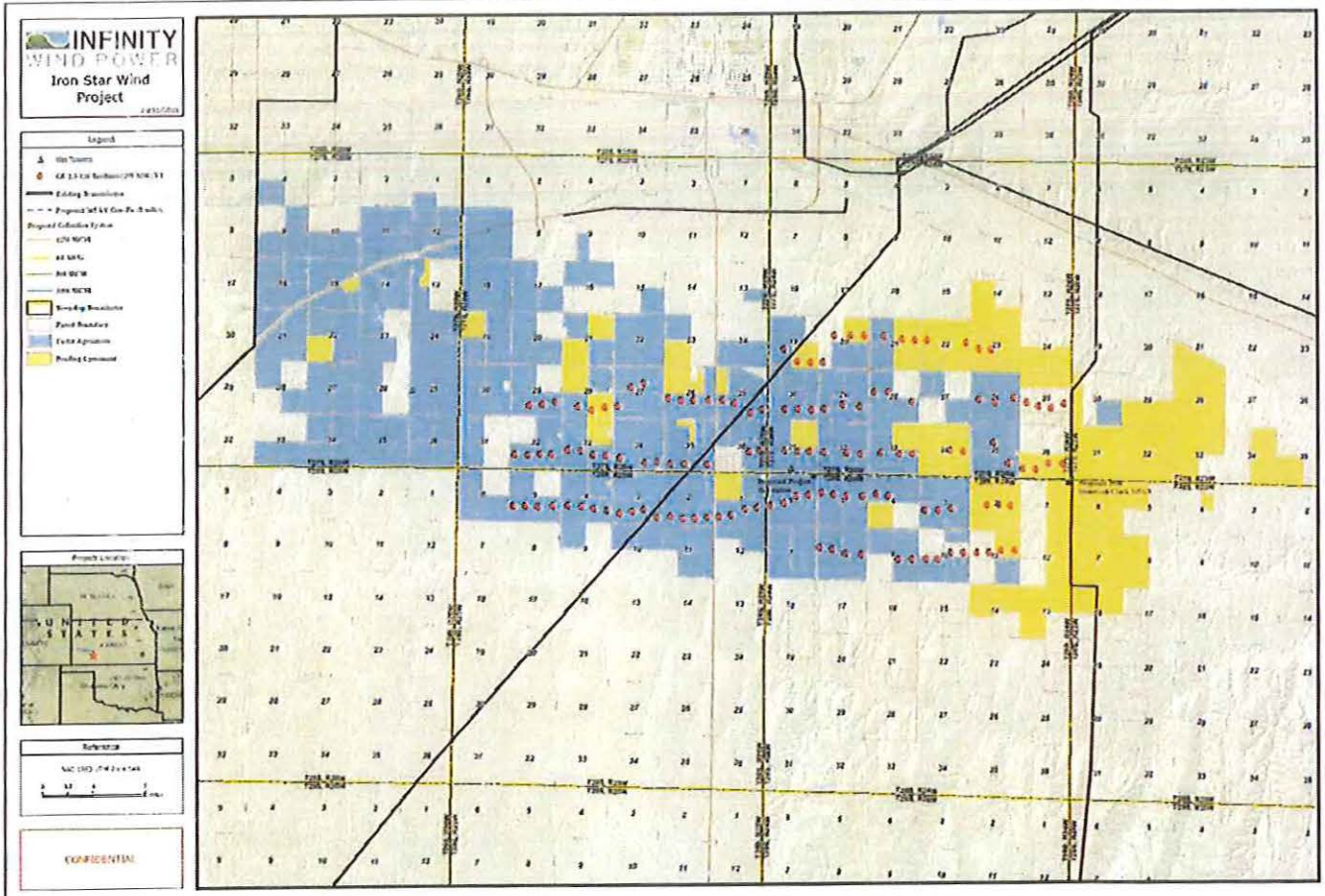
**EXHIBIT A**

**DESCRIPTION OF FACILITIES OF PROJECT**

Iron Star Wind Project is currently being developed by Infinity Renewables. It is a 300 MW wind project located in Ford County, KS. The project is currently planned to use General Electric Wind Turbine Generators to deliver wind energy to the Grain Belt Express DC transmission system.

EXHIBIT B

MAP OF PREMISES



**EXHIBIT C****SELLER INSURANCE**

A. Insurance Coverage. Throughout the Term, Seller shall maintain the types of insurance coverages described in this Part A. All insurance coverages described herein shall be placed with insurance companies that are legally authorized to do business in the State of Kansas and are rated at least A-/VIII by A.M. Best.

1. Workers' Compensation Insurance. Seller shall maintain or cause to be maintained workers' compensation insurance in compliance with applicable Laws and employer's liability insurance with coverage limits of not less than \$1,000,000.

2. Comprehensive or Commercial General Liability Insurance. Seller shall maintain comprehensive or commercial general liability insurance on an "occurrence" basis, including coverage for bodily injury, property damage, personal injury, death, premises/operations, explosion, collapse and underground hazards, broad form property damage and blanket contractual liability for written contracts, with primary coverage limits of not less than \$1,000,000 for injuries or death to one or more persons or damage to property per occurrence and an aggregate limit of not less than \$2,000,000.

3. Automobile Liability Insurance. Seller shall maintain or cause to be maintained automobile liability insurance for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with applicable Laws, with limits of not less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

4. Umbrella Excess Liability Insurance. Seller shall maintain or cause to be maintained umbrella/excess liability insurance of not less than \$10,000,000. Such coverages shall be on a per occurrence basis or claims made basis.

5. All-Risk Property Insurance. Seller shall maintain or cause to be maintained all-risk property coverages in the full amount of the total value of all insurable Project costs and including a full replacement cost endorsement.

B. General Terms.

1. Additional Insureds. Each insurance policy described in Sections 2, 3, and 4 of Part A of this Exhibit C shall include provisions or endorsements naming Buyer and its successors in interest as an additional insured. Each insurance policy for which an additional insured is required to be named pursuant to this Section 1 of this Part B shall provide a severability of interests or cross liability clause.

2. Subrogation. Each insurance policy maintained (or caused to be maintained) by Seller shall provide a waiver of subrogation against Buyer.

3. Evidence of Coverage. Seller shall deliver to Buyer certificates or other evidence of all insurance policies maintained by Seller no later than thirty (30) Days prior to the Initial Delivery Date and each time thereafter when there is any renewal of such insurance policies.

4. Termination of Coverage. Seller (or its insurance carrier) shall provide Buyer prior written notice of any cancellation or non-renewal of any insurance policy required to be maintained by Seller pursuant to this Exhibit C.