

**[WIND] [SOLAR] ENERGY PURCHASE AGREEMENT
FOR THE [REDACTED] PROJECT**

BETWEEN

**TRI-STATE GENERATION AND TRANSMISSION
ASSOCIATION, INC.**

AND

- [date] -

TS-XX-XXXX

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[WIND] [SOLAR] ENERGY PURCHASE AGREEMENT FOR THE [REDACTED] PROJECT
BETWEEN
TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
AND
[REDACTED]

This [Wind][Solar] Energy Purchase Agreement for the [REDACTED] Project (this "PPA") is made this ____ day of _____, 20__, by and between (i) [REDACTED] ("Seller"), a [REDACTED] and (ii) Tri-State Generation and Transmission Association, Inc. ("Tri-State"), a Colorado cooperative corporation. Seller and Tri-State are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Seller desires to develop, design, construct, interconnect, own, operate, and maintain a [REDACTED]-powered electric energy generating facility consisting of [REDACTED] (____) [REDACTED] [wind turbines][solar panels] (each, a "Unit" and collectively, the "Units") with an expected total nameplate capacity of [REDACTED] MW [solar only- AC] (the "Expected Nameplate Capacity Rating"), and which is further defined below as the "Facility"; and

WHEREAS, Seller has secured an approximately [REDACTED] (____,000) acre site in [REDACTED] County, [REDACTED] where it intends to locate the Facility and interconnect the Facility [to Interconnection Provider's existing _____ transmission line in the vicinity of the Site][at the Interconnection Provider's _____ Substation]; and

WHEREAS, Seller desires to sell and deliver to Tri-State at the Point of Delivery the electric energy produced by the Facility and all associated Environmental Attributes, and Tri-State desires to buy the same from Seller.

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

Article 1
Definitions and Rules of Interpretation

1.1 Rules of Construction.

The capitalized terms used in this PPA shall have the meaning set forth in this Article 1 or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined herein shall have meanings as commonly used in the English language and, where applicable, in Prudent Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

(A) References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA.

(B) The Exhibits attached hereto are incorporated in and are intended to be a part of this PPA; *provided* that in the event of a conflict between the terms of any Exhibit and the terms of this PPA, the terms of this PPA shall take precedence.

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

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

(E) Use of the words “include” or “including” or similar words shall be interpreted as “including, but not limited to” or “including, without limitation.”

(F) The words “hereof,” “herein,” and “hereunder” and words of similar import when used in this PPA shall refer to this PPA as a whole and not to any particular provision of this PPA.

(G) Numerical amounts will be rounded to the nearest cent with respect to Dollars, one (1) decimal point for MW and MWh, three (3) decimal points for percentages, which is to the nearest tenth of a percent, and otherwise to two (2) decimal points.

(H) Tri-State’s technical review, comments or inspection of the Facility, any designs, testing procedures, reports, or other documents or monitoring of any events shall not be construed as endorsing such nor as any express or implied warranty of performance, safety, durability, or reliability of the Facility or waiver of its rights under this PPA.

1.2 Interpretation with Interconnection Agreement.

The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider. The Parties acknowledge and agree that:

(A) the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Interconnection Provider.

(B) this PPA does not provide Seller authorization to interconnect the Facility to the Interconnection Provider or inject power into the Transmission System.

(C) notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Tri-State's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Interconnection Provider.

(D) for purposes of this PPA, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Tri-State or an Affiliate of Tri-State.

1.3 Interpretation of Arrangements for Power Supply to the Facility.

This PPA does not provide for the supply of retail electric power to the Facility ("House Energy"). Seller shall arrange with the local utility in whose retail service territory the Facility is located ("Local Provider") for the supply of House Energy. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility, Seller shall obtain House Energy exclusively from the Local Provider.

1.4 Definitions.

The following terms shall have the meanings set forth herein:

"Abandonment" means (i) the relinquishment of all possession and control of the Facility by Seller, other than a transfer permitted under this PPA, or (ii) if prior to the Commercial Operation Date, complete cessation of the development, design, construction, testing or inspection of the Facility for thirty (30) consecutive Days by Seller and/or Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or requested by, Tri-State, or a Force Majeure Event.

[solar only-] "AC" means alternating electric current.

"Additional Tax Benefits" means any new Tax Benefits or changes to, extensions of, or qualification for existing Tax Benefits which become available to Seller or the Facility during the Term, from and after the Effective Date, and which provide an overall net increase in the Tax Benefits attributable to the Facility.

"Additional Tax Benefit Amount" means an amount equal to (i) the aggregate amount of all Tax Benefits received by or on behalf of Seller with respect to any Additional Tax Benefits, minus (ii) the aggregate amount of all Additional Tax Benefit Costs with respect to such Additional Tax Benefits. For the avoidance of doubt, if the Additional Tax Benefit Amount is a negative amount, it shall be deemed to be zero.

“Additional Tax Benefit Costs” means all additional costs, if any, incurred by Seller resulting directly from production, qualification, or verification of an Additional Tax Benefit.

“Additional Maintenance Outages” shall have the meaning set forth in Section 9.7.

“Affiliate” of any named Person means any other Person that Controls, is under the Control of, or is under common Control with, the named Person.

“AGC” means the equipment and capability of an electric generation facility to automatically adjust the generation quantity within the applicable Balancing Authority Area with the purpose of interchange balancing and specifically, the Facility’s capability to accept an AGC Set-Point electronically, and the automatic adjustment and regulation of the Facility’s energy production via the SCADA system.

“AGC Set-Point” means the Tri-State-generated analog or digital signal sent by the SCADA system to the Facility, representing the quantity of Contract Energy to be generated by the Facility. The RDD will communicate the AGC Set-Point to the Facility via the SCADA system.

“Allowable Curtailment” means the amount of otherwise compensable Curtailed Contract Energy in any Commercial Operation Year to be applied at the election of Tri-State at any time during a Commercial Operation Year, which amount equals (i) one percent (1%) in MWh of the Expected Contract Energy for that Commercial Operation Year plus (ii) any unused Allowable Curtailment from prior Commercial Operation Years. Any unused Allowable Curtailment from a Commercial Operation Year does not expire at the end of a Commercial Operation Year and is carried forward to future Commercial Operation Years.

“Applicable Law” means, collectively, all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over the Parties or the Facility, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“Back-Up Metering” shall have the meaning set forth in Section 5.3(B).

“Balancing Authority” means [REDACTED] or any successor entity or another responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission and loads within the metered boundaries of the Balancing Authority.

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC-holiday, or state- and/or federal-recognized holiday where banks in Denver, Colorado are required or authorized to close.

“Change of Control” of a specified Person means any sale or series of sales or other transactions, whether voluntary or by operation of law, following which the previously existing Ultimate Parent does not Control such Person.

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

“Commercial Operation Date” or “COD” for the Facility means the date set forth in Seller’s COD notice that Seller has satisfied all of the conditions for Commercial Operation listed in Section 4.9, subject to confirmation by Tri-State.

“Commercial Operation Milestone” means the milestone for Commercial Operation as set forth in Exhibit A.

“Commercial Operation Year” means, for the first Commercial Operation Year, the period starting at 12:01 a.m. MPT on the COD and ending at 11:59 p.m. MPT on the last Day of the Month in which the first anniversary of COD occurs, and each successive “Commercial Operation Year” shall mean the twelve (12) Month period following the prior Commercial Operation Year.

“Conditions” shall have the meaning set forth in Section 4.9.

“Construction Milestone” means the result specified by Seller as set forth in Exhibit A which Seller shall achieve by the Construction Milestone Date, including the Commercial Operation Milestone.

“Construction Milestone Date” means the date set forth in Exhibit A by which Seller shall achieve the corresponding result specified for such date, including the Commercial Operation Milestone.

“Contract Energy” means all net electric Energy including any and all associated capacity attributes, ancillary services, all associated Environmental Attributes, and any other attributes resulting from the generation or the output of the Facility or produced by the Facility and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.3. Contract Energy shall include any Test Energy and any Excess Contract Energy.

“Contract Energy Payment” means the payment specified in Section 7.1(A).

“Contract Energy Rate” means _____ and _____/100 Dollars per MWh (\$_____/MWh)[, escalating at a rate of ____ (____) percent per year on the anniversary of each Commercial Operation Year and as further set forth in Exhibit C].

“Control” means the ownership of fifty percent (50%) or more of the voting interests of the entity, or the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the entity, whether through ownership of voting securities, by contract or otherwise. “Controls,” “Controlling,” and “common Control” shall have correlative meanings when used in this PPA.

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

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

[wind only - “Cut-Out Event” means the temporary shutting down of Units where the output from the Facility decreases by an aggregate of thirty (30) MW or greater during a five (5) minute interval due to wind speeds in excess of operating parameters specified by the Unit manufacturer.]

“Day” means a calendar day.

“Default Rate” shall have the meaning set forth in Section 8.3(C).

“Deficiency MWhs” means the amount of Energy in MWh, if a positive number, for any Month, equal to (i) ninety percent (90%) of the product of the Expected Contract Energy multiplied by the monthly production percentage for the applicable Month specified on Exhibit G less (ii) the actual amount of Contract Energy during the same period.

“Delay Damages” shall have the meaning set forth in Section 4.3(D).

“Delivery Excuse” means an event solely or substantially due to actions or omissions by Tri-State which prevents or delays delivery of Contract Energy.

“Designation Approval Date” shall have the meaning set forth in Section 2.2.

“Dispute Notice” shall have the meaning set forth in Section 13.9(A).

“Dollars” means the lawful currency of the United States of America.

“Effective Date” means the date first written above.

“Electric Interconnection Point” means the physical point at which electrical interconnection is made between the Interconnection Facilities and the Transmission System, pursuant to the Interconnection Agreement.

“Electric Metering Device(s)” means all metering and data processing equipment used to measure, record, or transmit data relating to the Energy produced by the Facility. Electric Metering Devices include the metering current transformers (CTs) and the metering voltage transformers (VTs).

“Emergency Condition” means any emergency condition or similar situation as defined under the Interconnection Agreement or any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply (including Tri-State’s load or generation), that could adversely affect the reliability of the interconnected system, or that could otherwise pose a threat to public safety.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWh.

“Environmental Attributes” means any and all present and future environmental benefits characteristics, or credits that are attributable to renewable energy, Contract Energy, or the Facility including credits towards achieving local, national or international emission reduction requirements or renewable portfolio standards; green tags, RECs; greenhouse gas or emissions reductions or avoidances, credits, offset, allowances or benefits; any avoided emissions of pollutants to the air, soil, or water, including sulfur oxides (SO₂), nitrogen oxides (NO_x), carbon dioxide (CO₂), carbon monoxide (CO), methane (CH₄), carbon, volatile organic compounds (VOC), mercury (Hg), hydro fluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of renewable energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Environmental Attributes do not include Tax Credits.

“Environmental Contamination” means the introduction or presence of Regulated Materials at the Site at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Laws, or present a material risk under Applicable Laws that the Facility will not be available or usable, whether in whole or in part, to sell Contract Energy to Tri-State as contemplated by this PPA.

“EPC Contract” means the turnkey engineering, procurement and construction contract(s) to be entered into between Seller and the EPC Contractor in relation to the engineering, procurement and construction of the Facility.

“EPC Contractor” means the engineering, procurement and construction contractor(s) retained and paid for by Seller, which contractor(s) shall be acceptable to Tri-State.

“Equipment Supply Agreement” means the agreement under which Seller has purchased or has rights to purchase the Units and related equipment for the Facility.

“Event of Default” shall have the meaning set forth in Article 12.

“Excess Contract Energy” means that amount of Contract Energy in excess of one hundred ten percent (110%) of the Expected Contract Energy.

“Excess Contract Energy Payment” means the payment specified in Section 7.1(C).

“Excess Contract Energy Rate” means fifty percent (50%) of the Contract Energy Rate.

“Expansion Energy” shall have the meaning set forth in Section 20.2(A).

“Expected Contract Energy” means [REDACTED] MWh of Contract Energy in any given Commercial Operation Year.

“Expected Nameplate Capacity Rating” shall have the meaning set forth in the recitals to this PPA.

“Facility” means Seller’s [wind][solar]-powered electric energy generating facility and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit B, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Electric Interconnection Point: Seller’s equipment, buildings, all of the generation facilities, including Units, step-up transformers, equipment and software necessary to receive, accept and respond to an AGC Set-Point signal from Tri-State, output breakers, monitoring hardware, weather station hardware, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of such [wind][solar]-powered electric energy generating facility.

“Facility Assets” shall have the meaning set forth in Section 20.3(B).

“Facility Site Documents” means the deeds, leases, easements, rights of way, land use agreement and other agreements or instruments reasonably necessary for the construction, operation and maintenance of the Facility and that evidence Seller’s ownership or control of the Site.

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

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

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

“Financing Parties” means, collectively, any lender(s), lessor(s) or tax equity investor(s) and other parties providing any Financing and any successor(s) or assigns thereto.

“Force Majeure Event” shall have the meaning set forth in Article 14.

“Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver, Energy that is not the result of (i) a Scheduled Maintenance Outage, (ii) a Force Majeure Event, (iii) a Delivery Excuse, (iv) an Emergency Condition, or (v) a curtailment as set forth in Section 6.3(A).

“Governmental Approval” means any authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by, any Governmental Authority relating to the construction, development, ownership, occupation, start-up, Testing, operation or maintenance of the Facility or to the execution, delivery or performance of this PPA.

“Governmental Authority” means any federal, state, tribal, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, including a Reliability Coordinator, Balancing Authority or other governmental or quasi-governmental body administering energy, capacity, ancillary service, energy imbalance market or other Organized Markets, and PUC, FERC, NERC, WECC or other NERC regional entities; or any court or governmental tribunal.

“Guaranteed Energy Production” means that amount of Contract Energy equal to ninety percent (90%) of the Expected Contract Energy.

“Guaranty” means the payment and performance guaranty provided by a Qualified Guarantor or Superior Guarantor, as appropriate, to Tri-State in the form set forth in Exhibit L.

“House Energy” shall have the meaning set forth in Section 1.3.

“Independent Engineer” means an independent engineering firm of national repute and appropriate expertise in [wind][solar]-power electric generation relative to the configuration of the Facility under this PPA, appointed by Financing Parties under any Financing Documents, or if no such Financing Documents exist, by Seller after consultation with, and upon the prior written consent of, Tri-State.

“Interconnection Agreement” means the separate agreement between Seller and the Interconnection Provider for interconnection of the Facility to the Transmission System, as such agreement may be amended from time to time.

“Interconnection Facilities” means the facilities required to connect the Facility to the Transmission Provider’s Transmission System and shall include the Interconnection Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“Interconnection Provider” means [REDACTED] in its capacity as the owner of the Interconnection Provider’s Interconnection Facilities, or any successor entity owner.

“Interconnection Provider’s Interconnection Facilities” means the facilities necessary to connect Seller’s Interconnection Facilities to the Transmission System at the Electric Interconnection Point as described in the Interconnection Agreement, including breakers, bus work, bus relays, and associated equipment installed by or for the Interconnection Provider for the direct purpose of interconnecting the Facility to the Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Interconnection Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

“Issuer” means a U.S. commercial bank or a licensed U.S. branch of a foreign bank, with such bank having an unsecured bond rating equivalent to A- or better as determined by at least two (2) rating agencies, one of which must be either Standard & Poor’s or Moody’s, and an asset value of at least thirty billion Dollars (\$30,000,000,000), or a Person otherwise approved by Tri-State in its sole discretion. An Issuer cannot be an Affiliate of Seller.

“kW” means kilowatt.

“Letter(s) of Credit” means an unconditional, irrevocable, standby letter of credit from an Issuer in substantially the form set forth in Exhibit K, *provided, however*, that such form may be modified by the Issuer as long as such modifications are customary, commercially reasonable, and acceptable to Tri-State. Costs of a Letter of Credit shall be borne by Seller.

“Mean Absolute Percent Error” or “MAPE” equals:

$$\frac{1}{n} \sum_{t=1}^n \left| \frac{A_t - F_t}{NC} \right|$$

Where:

n = number of hours in the quarter of the Year;

A_t = actual value of Contract Energy deliveries in MWh for the forecast hour;

F_t = hour-ahead forecasted value in MWh for the forecast hour, as provided by Seller in accordance with Section 6.4(E); provided if no hour-ahead forecast was provided for such hour, the amount of the forecast for that hour will be zero; and

NC = Nameplate Capacity Rating.

“Month” means a calendar month.

“Moody’s” means Moody’s Investors Services, Inc., or any successor thereto.

“MPT” means, during any period of determination, the time in effect as of such period determination in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Savings Time.

“MW” means megawatt.

“MWh” means megawatt hours.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW ~~[solar only- AC]~~, when operated in compliance with the Interconnection Agreement and consistent with the Unit manufacturer’s recommended power factor and operating parameters, as set forth in a notice from Seller to Tri-State delivered prior to or on the Commercial Operation Date (but shall be deemed to be zero (0) MW if no such notice is provided). The Nameplate Capacity Rating of the Facility shall not exceed Insert the Expected Nameplate Capacity Rating MW ~~[solar only- AC]~~.

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

“Notice of Intent to Purchase” shall have the meaning set forth in Section 20.3(D).

“O&M Records” shall have the meaning set forth in Section 13.7.

“Offered Assets Notice” shall have the meaning set forth in Section 20.1(A).

“Operating Committee” means one representative each from Tri-State and Seller, appointed pursuant to Section 9.10(A).

“Operating Procedures” means those procedures developed pursuant to Section 9.10(B).

“Operating Records” means all agreements, records and other data associated with the construction, operation or maintenance of the Facility, including O&M Records, Project Contracts, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“Operation and Maintenance Agreement” means that certain operation and maintenance agreement between Seller and the Operation and Maintenance Contractor with respect to the Facility.

“Operation and Maintenance Contractor” means the operation and maintenance contractor retained and paid for by Seller, which contractor shall be a Qualified Operator and acceptable to Tri-State.

“Organized Market” means a regional transmission organization, independent system operator, energy imbalance market, or any other organized market.

“Party” and “Parties” shall have the meaning set forth in the recitals to this PPA.

“Party Representative” or “Parties’ Representatives” shall have the meaning set forth in Section 13.9(A).

“Person” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“Point of Delivery” means the electric system point at which Seller makes available to Tri-State the Contract Energy, which shall be on the high side of the step-up transformer **[at the Electric Interconnection Point]** and as specified in Exhibit B.

“PPA” means this Energy Purchase Agreement between Seller and Tri-State, including the Exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

[wind only- “Production Tax Credit” mean the production tax credits applicable to electricity produced from certain renewable resources under Section 45 of the Internal Revenue Code of 1986 or any substantially similar federal tax credits under Applicable Law that provides Seller with a tax credit based on energy production from the Facility.**]**

“Project Contracts” means the EPC Contract, the Equipment Supply Agreement, the Interconnection Agreement, the Facility Site Documents and the Operation and Maintenance Agreement, and any such other material agreements related to the development, construction, ownership, operation and maintenance of the Facility, a list of which agreements is set forth in Exhibit E.

“Project Entity” means (a) Seller, and (b) any entity that Controls Seller if the Facility and assets related thereto constitute all or substantially all of the assets of such entity (determined on a consolidated basis with all other Persons that are Controlled by such entity).

“Prudent Utility Practice(s)” means the practices, methods, standards, and acts of a significant portion of the electric power generation industry (including, where applicable, the practices, methods, standards, and acts engaged in or approved by a significant portion of the [wind][solar]-power electric generation industry operating facilities of a similar type, size and location in the United States of America), WECC and/or NERC, that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

- (A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility’s needs;
- (B) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly, efficiently, and in coordination with Tri-State and are capable of responding to reasonably foreseeable Emergency Conditions;
- (C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (E) equipment is not operated in a reckless manner, in violation of manufacturers’ guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any Governmental Authority and are operated and maintained in accordance with Applicable Laws.

“PUC” means the [REDACTED] Commission, or any successor agency.

“PUC Approval” means any written order of the PUC necessary for Tri-State to effectuate the purposes of this PPA.

“Purchase Notice” shall have the meaning set forth in Section 20.3(I).

“Purchase Option” shall have the meaning set forth in Section 20.3(A).

“Qualified Guarantor” means a Person having an issuer credit rating of (A) Baa2 or higher by Moody’s and (B) BBB or higher by Standard & Poor’s, or a Person otherwise approved by Tri-State in its sole discretion.

“Qualified Operator” means an operation and maintenance contractor that (i) has operated, for a period of at least five (5) years, multiple utility-scale [wind][solar]-powered electric energy generating facilities in North America having, collectively, an aggregate nameplate capacity of at least 500 MW, and (ii) maintains an operating staff consisting of personnel with comparable experience in the operation and maintenance of power generation facilities similar to the Facility.

“RDD” means Tri-State’s resource dispatch desk representative(s) who are responsible for dispatch of generating units, including the Facility.

“Regulated Materials” means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment, including protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601);

(ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

“RECs” means renewable energy credits or certificates representing all right, title and interest in and to all Environmental Attributes associated with each MWh of energy from a generation facility in the specific period, including title to and claim over such Environmental Attributes, reporting and all other rights arising therefrom or connected therewith under Applicable Law.

“Reliability Coordinator” shall have the meaning as set forth in NERC’s Glossary of Terms Used in NERC Reliability Standards as modified from time to time.

“Replacement Cost(s)” means the costs incurred and reasonably forecasted to be incurred by Tri-State for the Energy, ancillary services and Environmental Attributes which are necessary to replace that which Seller, in accordance with this PPA, is required to produce at the Facility and deliver to Tri-State, but will fail to so provide, less the sum of any payments from Tri-State to Seller, under this PPA, which are eliminated as a result of such failure. Replacement Costs include the amounts incurred and reasonably forecasted to be incurred by Tri-State for replacement renewable energy, ancillary services, transmission and directly associated transaction costs (including reasonable attorneys’ fees suffered as result of Seller’s failure to perform). Additional costs may include replacement capacity costs applicable to a [wind][solar] resource and any penalties incurred as a result of Seller’s non-performance.

“ROFO Transfer” shall have the meaning set forth in Section 20.1(A).

“RTU” shall have the meaning set forth in Section 3.3(A).

“SCADA” means supervisory control and data acquisition.

“Scheduled Maintenance Outage” means a time period during which all or a portion of the Facility is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Tri-State.

“Security” shall have the meaning set forth in Article 11.

“Security Party” shall have the meaning set forth in Section 19.1(B).

“Seller” shall have the meaning set forth in the preamble to this PPA.

“Seller’s Interconnection Facilities” means the facilities and equipment owned by Seller related to the interconnection of the Facility with the Interconnection Provider’s Interconnection Facilities along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the

construction, operation and maintenance of such facilities. On the low side of the step-up transformer, it includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement.

"Seller's WREGIS Account" shall have the meaning set forth in Section 10.2(D).

"Shortfall MWh" means the amount of Energy in MWh, for any period of determination, equal to the Guaranteed Energy Production less the actual amount of Contract Energy during the same period.

"Site" means the parcel(s) of real property on which the Facility will be constructed and located, including any easements, rights of way, land use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Section 3.2 and Exhibit B.

"Standard & Poor's" means Standard & Poor's Global Ratings, or any successor thereto.

"Superior Guarantor" means any Person having an issuer credit rating of (A) Baa1 or higher by Moody's and (B) BBB+ or higher by Standard & Poor's, or a Person otherwise approved by Tri-State in its sole discretion.

"Tariff" shall have the meaning set forth in Section 5.1(B).

"Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth, together with any interest and penalties thereon.

"Tax Credit" means (i) ~~[wind only- the Production Tax Credit]~~~~[solar only- the tax credit for "energy property" under Section 48(a)(3)(A)(i) of the Internal Revenue Code of 1986 or any similar tax credits under Applicable Law, as it may be amended, supplemented, extended or replaced from time to time.]~~, (ii) any other local, state or federal tax credits providing a tax benefit to Seller based on ownership of the Facility or energy production therefrom, and (iii) depreciation and other tax benefits arising from ownership or operation of the Facility.

"Term" means the period of time during which this PPA shall remain in full force and effect, and which is further defined in Section 2.1.

"Test" or "Testing" means those tests, evaluations and measurements of the Facility's output capability that are undertaken in connection with preparing the Facility for Commercial Operation pursuant to Section 9.2, which shall include such tests as are consistent with Prudent Utility Practices.

“Test Date” means the date on which Seller shall commence Testing of the Facility and shall be the date falling at least sixty (60) Days prior to the Commercial Operation Milestone or such other date as Seller and Tri-State may agree in writing.

“Test Energy” means the net electric Energy that is produced by the Facility, including any and all associated ancillary services and all Environmental Attributes and delivered to Tri-State at the Point of Delivery, prior to Commercial Operation.

“Test Energy Payment” means the payment specified in Section 7.1(B).

“Test Energy Rate” means an amount equal to fifty percent (50%) of the Contract Energy Rate.

“TP Approvals” shall have the meaning set forth in Section 2.2.

“Transfer” means any sale, transfer or other disposition.

“Transmission Provider” means the owner or operator of the Transmission System responsible for providing transmission service.

“Transmission System” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

“Tri-State” shall have the meaning set forth in the preamble to this PPA.

“Tri-State’s WREGIS Account” shall have the meaning set forth in Section 10.2(D).

“Ultimate Parent” means [REDACTED] or such other Person that Controls Seller and is not controlled by any other Person.

“Unit” shall have the meaning set forth in the recitals to this PPA.

“WECC” means the Western Electricity Coordinating Council, a NERC regional entity, or any successor organization.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor organization that Tri-State uses to track Environmental Attributes.

“Year” means a calendar year consisting of 365 Days (or 366 Days if a leap year), beginning on January 1 and ending on December 31.

Article 2 **Term**

2.1 PPA Term and Delivery Term.

This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until 11:59 p.m. MPT on the last Day of the Month during which occurs the []th anniversary of the Commercial Operation Date, subject to early termination as set forth herein (the "Term").

2.2 Conditions Precedent.

(A) Network Resource. Tri-State's obligation to accept and pay for Contract Energy is subject to approval by the Transmission Providers of Tri-State's application for designation of the Facility as a network resource for Tri-State's native load customers and the associated reservation of firm network transmission service on the Transmission Provider's Transmission System, all without conditions materially unsatisfactory to Tri-State or requirements of material transmission upgrades (collectively, the "TP Approvals"). Tri-State shall (i) no later than fifteen (15) Business Days after the Effective Date, make a written request for all TP Approvals and (ii) thereafter use commercially reasonable efforts to obtain such TP Approvals from the Transmission Providers within one hundred fifty (150) Days from the Effective Date ("Designation Approval Date") and shall provide Seller prompt written notice upon receipt of all such TP Approvals. If any or all of the TP Approvals are not received by the Designation Approvals Date or any TP Approval would require conditions materially unsatisfactory to Tri-State or material transmission upgrades, (y) Tri-State shall promptly provide Seller written notice notifying Seller that Tri-State elects to terminate this PPA, upon which the Parties shall have no obligations or liabilities to each other hereunder, subject to Tri-State's obligation to return the Security to Seller in full, or (z) if no such notice is received by Seller within ten (10) Days following the Designation Approval Date, Tri-State shall be deemed to have elected to proceed with this PPA despite not receiving such TP Approvals, upon which the condition provided in this Section 2.2(A) shall be deemed to have been satisfied.

(B) PUC Approvals. Tri-State's obligation to accept and pay for Contract Energy is subject to PUC Approvals. Tri-State shall (i) no later than sixty (60) Days after the Effective Date apply to the PUC for any necessary PUC Approvals and (ii) thereafter use commercially reasonable efforts to obtain such PUC Approvals as soon as reasonably practicable. Seller shall cooperate with Tri-State's efforts to obtain PUC Approvals and provide such additional documentation and information as reasonably requested by Tri-State or the PUC. Tri-State shall have the right to terminate this PPA, upon which the Parties shall have no obligations or liabilities to each other hereunder as a result of such termination, by written notice to Seller: (a) at any time within thirty (30) Days following issuance of a written order by the PUC rejecting PUC Approvals or granting PUC Approvals with conditions unacceptable to Tri-State in its sole discretion, (b) at any time between the 180th and 215th Day following Tri-State's

application for PUC Approval, if prior to the date of such termination the PUC has not issued the PUC Approvals, (c) at any time within 30 Days following timely request for reconsideration (in whole or in any material part) by any third party, of the PUC Approvals, and/or (d) at any time within thirty (30) Days following timely appeal by any party, of the PUC Approvals. If Tri-State elects to terminate this PPA, Tri-State shall return the Security to Seller in full. If Tri-State is eligible to terminate this PPA, but fails to terminate this PPA by the applicable date, Tri-State shall be deemed to have elected to proceed with this PPA despite not receiving such PUC Approvals, upon which the condition provided in this Section 2.2(B) shall be deemed to have been satisfied.

(C) Other Tri-State CPs. [if any].

(D) Seller CPs. [if any – project specific].

2.3 Survivability.

Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this PPA, and the indemnifications specified in this PPA. All remedies in this PPA shall survive termination or cancellation of this PPA.

Article 3 **Facility Description**

3.1 Summary Description.

Seller shall develop, design, construct, interconnect, own, operate, and maintain the Facility, which consists of [] () [] [wind turbines][solar panels] and associated equipment having a designed aggregate nameplate electric energy generating capacity of Insert the Expected Nameplate Capacity Rating. Exhibit B provides a detailed description of the Facility, including identification of the major equipment and components that will make up the Facility.

3.2 Location.

The Facility shall be located on the Site and shall be identified as the “Insert Project Name” or such other name as agreed to by the Parties. The latitude and longitude of the Site are []. A scaled map that identifies the Site and the location of the Units on the Site and a drawing identifying the location of the Electric Interconnection Point, the Point of Delivery, important ancillary facilities and Interconnection Facilities, is included in Exhibit B.

3.3 General Design of the Facility.

Seller shall develop, design and construct the Facility according to Prudent Utility Practice(s), this PPA and the Interconnection Agreement, as applicable. In addition to the requirements of the Interconnection Agreement, the Facility shall at all times, and at Seller's expense:

(A) have the required electronic plant interfaces and communications interfaces for meter recording devices, 125vDC battery supplied voltage for meter recording devices, remote terminal unit ("RTU"), telemetering equipment and communications equipment. Seller is responsible for providing appropriate panel space and maintaining ambient conditions suitable for electronic equipment. Seller is responsible for establishing appropriate access control to the electronic equipment;

(B) use communication circuits from the Facility to Tri-State's RDD for the purpose of telemetering, supervisory control/data acquisition, voice communications as required by Tri-State, and dial-in access by Tri-State to remotely interrogate the Electric Metering Devices;

(C) [solar only- have suitable solar irradiation meters and other instrumentation necessary to measure the available resource and ambient temperature and to estimate the quantity of Contract Energy expected to be generated;]

(D) include one full data circuit as required to transmit to Tri-State real-time weather data, including [wind speed, wind direction][solar irradiance], humidity and temperature collected by Seller's monitoring equipment on its meteorological data acquisition equipment located at the Facility; and

(E) have the required equipment and software necessary to receive, accept and respond to an AGC Set-Point signal from Tri-State.

Article 4 **Commercial Operation**

4.1 Commercial Operation.

Seller shall cause the Facility to achieve Commercial Operation no later than the Commercial Operation Milestone. The Facility shall be fully capable of reliably producing and delivering the Contract Energy to be provided under this PPA to Tri-State at the Point of Delivery, no later than the Commercial Operation Milestone; provided, that Seller shall not be obligated to establish a Commercial Operation Date under this PPA that is earlier than the Commercial Operation Milestone, and Tri-State shall not be obligated to acknowledge a Commercial Operation Date under this PPA that is earlier than thirty (30) Days prior to the Commercial Operation Milestone.

4.2 Construction Milestone.

In order to achieve the Commercial Operation Date of the Facility by the Commercial Operation Milestone, Seller shall meet the Construction Milestones set forth in Exhibit A.

4.3 Delay Damages.

(A) If Seller fails to achieve any Construction Milestones (excluding the Commercial Operation Milestone) by the applicable Construction Milestone Date, (i) Seller shall provide Tri-State within ten (10) Days of the missed milestone with a detailed written report indicating the reason for such failure and Seller's proposed course of action to maintain the overall construction and commercial operation schedule, including any required expediting actions, and (ii) Tri-State shall be entitled to delay damages, as liquidated damages and not a penalty, in an amount equal to Two Thousand Five Hundred Dollars (\$2,500) per Day for each Day following the Construction Milestone Date until the date the Construction Milestone is achieved; *provided, however*, that if Commercial Operation is achieved on or before the Commercial Operation Milestone, any liquidated damages amounts paid by, or on behalf of, Seller pursuant to this Section 4.3(A) shall be refunded by Tri-State to Seller without interest.

(B) If the Facility fails to achieve Commercial Operation by the Commercial Operation Milestone, (i) Seller shall provide Tri-State within ten (10) Days of the missed milestone with a detailed written report indicating the reason for such failure and Seller's proposed course of action to achieve Commercial Operation, including any required expediting actions, and (ii) Tri-State shall be entitled to delay damages, as liquidated damages and not a penalty, in an amount equal to Two Hundred Fifty Dollars (\$250) per Day per MW for each MW [solar only- AC] of nameplate capacity not installed, operating and capable of generating Test Energy below the Expected Nameplate Capacity Rating until the earlier to occur of (x) the date Commercial Operation is achieved, and (y) the date, if any, on which this PPA is terminated by Tri-State as permitted hereunder.

(C) All Delay Damages shall begin to accrue on the Day after the applicable missed Construction Milestone and shall continue to accrue until the result specified for such Construction Milestone is achieved. Delay Damages shall be payable in lieu of actual damages accrued for the period during which Delay Damages are assessed; provided, that nothing in this Section shall be construed to preclude Tri-State from terminating this PPA for an Event of Default under Section 12.1 or Tri-State's entitlement to Replacement Costs upon termination of this PPA. All Delay Damages shall be cumulative.

(D) Each Party agrees and acknowledges that (i) the damages that Tri-State would incur due to Seller's delay or failure in achieving any Construction Milestone (collectively, "Delay Damages") would be difficult or impossible to predict with

certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties set forth herein are a fair and reasonable calculation of such damages.

(E) Following the end of the Month in which Delay Damages begin to accrue, Tri-State shall promptly deliver to Seller an invoice setting forth the amount due Tri-State in respect thereof for the preceding Month. The amount of Delay Damages shall be due and payable by Seller in accordance with Section 8.3(A).

4.4 Site Report.

(A) Within ninety (90) Days of the Effective Date, Seller shall conduct a Phase I environmental investigation of the Site and shall provide Tri-State with a copy of the report summarizing such investigation, together with any data or information generated pursuant to such investigation. To the extent the Phase I investigation identifies the need for further environmental audits or investigations, Seller shall also provide to Tri-State, any related further reports. Seller shall provide to Tri-State, with such report, confirmation from an environmental engineer that the Site has been inspected for Environmental Contamination and that the Site complies, in all respects, with all Applicable Law relating to environmental or occupational health and safety matters and Regulated Materials. Such report shall include a confirmation that, based upon such investigation and to the best of Seller's knowledge, no conditions involving Environmental Contamination exist at or under the Site.

(B) During the Term, Seller shall promptly:

(1) disclose to Tri-State and remediate, at Seller's sole cost and expense, any Environmental Contamination identified at the Site;

(2) provide to Tri-State copies of any reports summarizing any further environmental assessments or investigations, together with any data or information generated pursuant to such investigation; and

(3) disclose to Tri-State the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to the protection of endangered, migratory or other protected species.

4.5 Project Contracts.

(A) Promptly after the execution of each of the Project Contracts or amendment thereto, Seller shall deliver to Tri-State copies of each of the fully executed Project Contracts. Upon reasonable notice and request by Tri-State, Seller shall provide Tri-State with other Facility design and construction documents and drawings, including as-built and other major engineering drawings. Seller shall be permitted to redact from the copies of the Project Contracts provided to Tri-State any pricing information which Seller considers confidential.

(B) Within ten (10) Days after the Effective Date, Seller shall deliver to Tri-State a copy of any existing [wind][solar] energy or [wind][solar] resource assessment report related to the Site or the Facility. Furthermore, promptly following its issuance to Seller or development by Seller, Seller shall deliver to Tri-State a copy of any new or updated [wind][solar] energy or [wind][solar] resource assessment report related to the Site or the Facility.

4.6 Governmental Approvals.

Seller shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Seller required Governmental Approvals, and shall timely and properly pay its charges and fees in connection therewith. Tri-State shall have the right to inspect and obtain copies of all Seller required Governmental Approvals (and related applications) obtained or applied for by Seller. Exhibit F sets forth a list of Seller's required Governmental Approvals, which Seller shall update from time to time, as appropriate, to add additional Seller required Governmental Approvals prior to Commercial Operation.

4.7 Construction Progress Reports.

Seller shall provide Tri-State with written progress reports in a form reasonably acceptable to Tri-State: (A) on a quarterly basis commencing with the Effective Date and continuing until the commencement of physical construction of the Facility within twenty (20) Days following the end of each calendar quarter; and (B) on a monthly basis commencing on the commencement of physical construction of the Facility and continuing until Commercial Operation, on or before the twentieth (20th) Day of each Month for the preceding Month. Such written progress reports shall evaluate the progress on development, design, and construction of the Facility, which reports shall include (i) a project master schedule, with appropriate bar charts and status reports; (ii) updated engineering and procurement schedules; (iii) an updated testing, commissioning and start-up schedule; and (iv) reports from engineers and other Persons involved in the engineering, procurement and construction of the Facility. Seller shall, from time to time, upon reasonable advance request from Tri-State, meet with Tri-State to discuss the progress of the construction of the Facility and make the EPC Contractor available to discuss and answer questions of Tri-State regarding the Facility and Construction Milestone progress in order to keep Tri-State informed on the status of the engineering, procurement and construction for the Facility and to consider Tri-State's comments in good faith. None of the foregoing shall be deemed to be in lieu of, or in substitution for, the general record and reporting obligations attendant to Seller in accordance with Article 13.

4.8 Tri-State's Rights During Construction.

Tri-State shall have the right to monitor the construction, start-up and Testing of the Facility, and Seller shall comply with all requests of Tri-State with respect to the monitoring of these events. Seller shall cooperate in such physical inspections of the

Facility as may be requested by Tri-State during and after completion of construction. All persons visiting the Facility on behalf of Tri-State shall comply with all of Seller's applicable reasonable safety and health rules and requirements that have been provided to Tri-State in writing prior to its visit.

4.9 Conditions to Commercial Operation.

Seller shall notify Tri-State in writing when Seller has satisfied all of the Conditions for Commercial Operation. Such notice shall specify the Commercial Operation Date. The Commercial Operation Date is contingent upon verification by Tri-State, including Seller providing evidence acceptable to Tri-State of the satisfaction or occurrence of all of the Conditions set forth below. Review and approval of such Conditions may occur on an ongoing and incremental basis, pending resolution of any dispute, as such Conditions are satisfied. Conditions shall be satisfied at Seller's sole cost and expense. Conditions to be fulfilled by Seller prior to Commercial Operation, to the satisfaction of, or waived in writing by, Tri-State are ("Conditions"):

(A) Seller having delivered to Tri-State copies of fully executed Project Contracts, pursuant to Section 4.5(A);

(B) if applicable, Seller having entered into Financing Documents and having achieved or obtained waivers with respect to all conditions precedent to the initial availability for disbursement of funds under the Financing Documents;

(C) Seller having delivered to Tri-State (i) a copy of its constitutional documents (certified by the Secretary of State of the State of [REDACTED]) and (ii) a copy of a resolution approving the terms of this PPA and authorizing one or more individuals to execute this PPA on its behalf (such copy to have been certified by its authorized officer as true, complete and current);

(D) the Facility having achieved initial synchronization with the Transmission System and having demonstrated the reliability of its communications systems and communications with Tri-State's RDD;

(E) the Independent Engineer having certified that the Facility has been completed in all material respects (excepting punch list items that do not adversely affect the ability of the Facility to operate as intended hereunder) and the Facility is ready for the delivery of Contract Energy and commencement of Commercial Operation;

(F) all arrangements for the supply of required House Energy to the Facility have been completed by Seller, are in effect, and are available for the supply of such House Energy to the Facility;

(G) the Security meeting the requirements set forth in Section 11.1 having been established in the amount required after the Commercial Operation Date pursuant to Section 11.1;

(H) certificates of insurance evidencing the coverages required in Exhibit D having been obtained and submitted to Tri-State;

(I) Seller having submitted to Tri-State a certificate of an officer of Seller familiar with the Facility after due inquiry stating that:

(1) all applicable Seller required Governmental Approvals (including those set forth in Exhibit F) have been obtained and are in full force and effect, except for minor Governmental Approvals that are expected by such officer to be obtained in the ordinary course, the failure of which to obtain would not adversely affect the construction and/or operation of the Facility;

(2) Seller is in compliance with the terms and conditions of this PPA;

(3) the Facility is in compliance with all national and regional reliability standards, including standards set by WECC, NERC, FERC, the PUC and is in compliance with all applicable terms and conditions of applicable Tariffs;

(4) Seller has good title to the Facility and all Facility Site Documents reasonably necessary for the operation and maintenance of the Facility are in full force and effect;

(5) Seller has registered (and attaching with such certificate documentation setting forth that it has registered) (i) with NERC as a generator owner and generator operator, and (ii) the Facility as a generating unit and itself as an account holder with WREGIS;

(6) Seller having successfully completed Testing of the Facility that may be required by the Financing Documents, applicable Seller required Governmental Approvals, any Project Contracts, manufacturers' specifications and warranties for the commencement of Commercial Operation, and in accordance with Section 9.2 at an installed capacity of the Expected Nameplate Capacity Rating;

(7) (i) Seller is in compliance with the Interconnection Agreement, (ii) the interconnection of the Facility to the Interconnection Provider's Interconnection Facilities has been completed in accordance with the Interconnection Agreement, (iii) the Facility has operated at a generation level acceptable to the Interconnection Provider, without experiencing any abnormal or unsafe operating conditions on any interconnected system, and (iv) any other testing of the Facility and/or Seller's interconnection Facilities required by the Interconnection Agreement to interconnect and deliver energy has been completed satisfactorily;

(8) the Nameplate Capacity Rating of the Facility at the time of Commercial Operation is **Insert the Expected Nameplate Capacity Rating** MW **[solar only- AC]**; and

(9) Seller shall have demonstrated that it is a Qualified Operator or that Seller has engaged a Qualified Operator to operate and maintain the Facility.

4.10 Financial Ability.

Within ninety (90) Days of the Effective Date, Seller shall provide to Tri-State copies of applicable funding agreements, financing documents or other documents and agreements, as such may be updated from time to time, which reasonably establish that Seller has or will have sufficient funding to complete the construction of the Facility and achieve Commercial Operation.

4.11 Test Energy.

Seller shall coordinate the production and delivery of Test Energy with Tri-State, with such prior notice as Tri-State may request. Tri-State shall cooperate with Seller to facilitate Testing, shall accept delivery of all Test Energy, and shall accept and purchase all such Test Energy at the Test Energy Rate, so long as the Facility is interconnected in accordance with the Interconnection Agreement and Seller is otherwise in compliance with this PPA.

Article 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall be responsible for all interconnection arrangements and costs required to deliver the Contract Energy. Seller shall execute, deliver, and perform its obligations under the Interconnection Agreement.

(B) Seller is solely responsible for meeting its obligations as an interconnection customer under the Interconnection Provider's open access transmission tariff (the "Tariff") and the requirements of the Balancing Authority. All costs and obligations associated with Interconnection Facilities required to accomplish and operate the Interconnection Facilities is the responsibility of Seller. Seller shall satisfy any concerns of Tri-State regarding viability of the interconnection (timing and status of the generator interconnection request); *provided, however*, that any and all costs associated with this Section 5.1(B) shall be at the sole cost and expense of Seller.

(C) Seller is responsible for all electric losses, transmission and ancillary service arrangements and costs required to deliver Contract Energy to Tri-State at the Point of Delivery.

(D) Tri-State shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to deliver Contract Energy beyond the Point of Delivery. Subject to the provisions of this PPA, Tri-State may elect, at Tri-State's sole option, whether to obtain and utilize firm transmission service, non-

firm transmission service or network integration transmission service for the delivery of Contract Energy from the Point of Delivery.

5.2 Availability Reporting.

Within thirty (30) Days after the end of each Commercial Operation Year, Seller shall provide Tri-State with an operating report detailing events such as maintenance outages, [Unit][feeder breaker] trips and the causes of such trips, Unit failures and the diagnosis of such failures, status of repairs as well as statistical performance summaries and operational trends for the previous Commercial Operation Year.

5.3 Electric Metering Devices.

(A) All Electric Metering Devices used to measure the Contract Energy and to monitor and coordinate operation of the Facility shall be owned, installed, and maintained in accordance with the Interconnection Agreement. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings shall be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and only the Interconnection Provider shall break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Article 5.

(B) Seller and/or Tri-State may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to those installed and maintained pursuant to the Interconnection Agreement, which installation and maintenance shall be performed in a manner acceptable to Tri-State. The Party installing the Back-Up Metering shall, at its own expense, inspect and test the Back-Up Metering upon installation and periodically thereafter. The Party installing the Back-Up Metering shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests; provided, however, that the other Party shall not unreasonably interfere with or disrupt the activities of the Party installing the Back-Up Metering and shall comply with all of such Party's safety standards. Upon request from the other Party, the Party installing the Back-Up Metering shall perform additional inspections or tests of its Back-Up Metering and shall permit a qualified representative of the other Party to inspect or witness the testing of the Back-Up Metering, provided, however, that the other Party shall not unreasonably interfere with or disrupt the activities of the Party installing the Back-Up Metering and shall comply with all of such Party's safety standards. The actual expense of any such requested additional inspection or testing by the non-installing Party shall be borne by the non-installing Party; *provided, however*, that the expense of the requested additional inspection or testing shall be borne by the Party installing if the Back-Up Metering is found to be inaccurate by more than the allowable limits established in this Article 5. If requested in writing, the Party installing the Back-Up Metering shall provide copies of any inspection or testing reports to other Party.

(C) If any Electric Metering Device, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

(D) Seller shall be responsible for the design, installation, operation and maintenance of site data historian systems at the Facility, which are linked on a real-time basis and interoperable with the RDD subject to prior written approval of such systems by Tri-State.

5.4 Adjustment for Inaccurate Meters.

If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Tri-State's Back-up Metering, if installed, to determine the amount of such inaccuracy; *provided*, however, that Tri-State's Back-Up Metering has been tested and maintained in accordance with the provisions of this Article 5. If Tri-State's Back-Up Metering is installed on the low side of Seller's step-up transformer, Tri-State's Back-Up Metering data shall be adjusted for losses. In the event that Tri-State did not install Back-Up Metering, or Tri-State's Back-Up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall use Seller's Back-up Metering, if installed, to determine the amount of such inaccuracy; *provided*, however, that Seller's Back-Up Metering has been tested and maintained in accordance with the provisions of this Article 5. If Seller's Back-Up Metering is installed on the low side of Seller's step-up transformer, Seller's Back-Up Metering data shall be adjusted for losses. In the event that Seller did not install Back-Up Metering, or Seller's Back-Up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Contract Energy during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Tri-State, Tri-State shall use the corrected measurements as determined in accordance with this Article 5 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Tri-State for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Tri-State to Seller; if the difference is a negative number, the difference shall be paid by Seller to Tri-State, or at the discretion of Tri-State, may take the form of an offset to payments due Seller by Tri-State. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Tri-State elects payment via an offset.

5.5 WREGIS Metering.

Seller shall cause the Facility to implement all necessary generation information communications required by WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility.

Article 6
Sale and Purchase of Contract Energy

6.1 Sale and Purchase.

Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Tri-State, and Tri-State shall purchase from Seller, at the applicable price set forth in Article 7, all Contract Energy; *provided* that, notwithstanding anything in this PPA to the contrary, Tri-State shall have no obligation (i) to pay for any Energy that has not actually been generated by the Facility, measured by the Electric Metering Device(s), and delivered to Tri-State at the Point of Delivery except for payments of Curtailed Contract Energy as set forth in Section 7.2 or (ii) to pay for any Energy generated by the Facility to the extent the instantaneous output exceeds **Insert the Expected Nameplate Capacity Rating** MW. Seller shall be responsible for, and shall reimburse Tri-State for, any charges, fees, fines or penalties assessed to Tri-State by the Transmission Provider, Balancing Authority, or an Organized Market as a result of the instantaneous output exceeding **Insert the Expected Nameplate Capacity Rating** MW. Seller shall not curtail or interrupt deliveries of Contract Energy to Tri-State for economic reasons of any type.

6.2 Title and Risk of Loss.

As between Seller and Tri-State, Seller shall be deemed to be in control of the Contract Energy up to and including delivery and receipt at the Point of Delivery and Tri-State shall be deemed to be in control of Contract Energy after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Contract Energy shall transfer from Seller to Tri-State at the Point of Delivery.

6.3 Right to Curtail Energy.

(A) Tri-State shall have the right at any time to notify Seller, by telephonic communication from the RDD or by the AGC system, to curtail the delivery of Contract Energy, in whole or in part, to Tri-State from the Facility to the Point of Delivery, and Seller shall as soon as reasonably practicable, but within no more than ten (10) minutes, comply with such notification consistent with Prudent Utility Practices. Tri-State may provide such notification for any reason and in its sole discretion. Any payments for such curtailed Contract Energy shall be in accordance with Section 7.2. Such curtailment rights do not provide Tri-State with any rights to direct the operation of the Facility.

(B) In the event the Transmission Provider, Interconnection Provider, Balancing Authority, Reliability Coordinator, an Organized Market, NERC, WECC, FERC or any other Governmental Authority either directs Tri-State to notify Seller or notifies Seller directly, by any method established by such Person, to curtail the delivery of Contract Energy, in whole or in part, to Tri-State from the Facility, Seller shall as soon as reasonably practicable, but within no more than ten (10) minutes, comply with such notification consistent with Prudent Utility Practices.

(C) Seller shall be responsible for, and shall reimburse Tri-State to the extent Tri-State is charged and pays for any damages, fines or penalties as a result of Seller failing to comply with such curtailment instructions described in this Section 6.3.

6.4 Scheduling.

(A) Seller shall be responsible for providing the forecast of Contract Energy deliveries during the Term in accordance with the mutually-developed Operating Procedures described in Section 9.10(B).

(B) No later than ninety (90) Days before the start of Testing and by August 1 of each Year thereafter, Seller shall provide, or cause to be provided, to Tri-State, in a format acceptable to Tri-State, a forecast of each Month's average-day deliveries of Contract Energy, by hour, for the following Year.

(C) No later than thirty (30) Days before the start of Testing and at least ten (10) Business Days before the beginning of each Month thereafter, Seller shall provide, or cause to be provided, to Tri-State, in a format acceptable to Tri-State, a forecast of each Day's average deliveries of Contract Energy, by hour, for the following Month.

(D) Seller shall provide, or cause to be provided to Tri-State, by 6:00 a.m. MPT on each Day, in a format acceptable to Tri-State, a forecast of the hourly quantities of Contract Energy to be delivered to Tri-State for the immediately succeeding Day or for multiple Days as may be required by the parameters of the WECC prescheduling calendar.

(E) Seller shall provide, or cause to be provided to Tri-State, thirty (30) minutes before the start of every hour, in a format acceptable to Tri-State, a forecast of the hourly quantity of Contract Energy to be delivered to Tri-State for the next scheduling hour. As an example, Seller shall provide to Tri-State by 6:30 a.m. MPT, a forecast of the hourly quantity of Contract Energy to be delivered to Tri-State beginning 8:00 a.m. MPT and ending 9:00 a.m. MPT.

(F) If, at any time following submission of a forecast as described in Sections 6.4(B), (C), (D) and (E), Seller becomes aware of any change that alters the values previously provided to Tri-State, Seller shall promptly notify Tri-State no later than sixty (60) minutes before the next scheduling hour of such change or predicted change and if such change reduces the forecasted availability of the Facility more than ten (10) MW, such reduction shall be communicated to the RDD as soon as reasonably practicable, but within no more than ten (10) minutes.

(G) Tri-State and Seller shall agree upon reasonable changes to the requirements and procedures set forth above from time to time, as necessary to comply with changes to the Tariff or other requirements set forth by Tri-State, the Interconnection Provider, the Balancing Authority, the Transmission Provider, or an Organized Market, to accommodate changes to their respective generation technology and organizational structure and address changes in the operation and scheduling procedures of Tri-State, the Interconnection Provider, the Balancing Authority, the Transmission Provider, or the Organized Market, including more frequent reporting and automated forecast and outage submissions.

(H) Within fifteen (15) Days after the end of each quarter of the Year commencing with the first full quarter of the Year after the Commercial Operation Date, Seller shall calculate the aggregate MAPE for the prior quarter and provide such percentage, together with reasonable documentation supporting such calculation, to Tri-State. Such percentage of MAPE amount is subject to verification by Tri-State. If the aggregate MAPE for any quarter exceeds **wind only- twelve percent (12%)****solar only- seven percent (7%)**, Seller shall pay Tri-State, as liquidated damages and not a penalty, within ten (10) Days after delivering such calculation to Tri-State **Insert \$2000*Expected Nameplate Capacity Rating** for each one percent (1.0%) above such amount, adjusted pro-rata for any partial percentage. Each Party agrees and acknowledges that (i) the damages that Tri-State would incur due to Seller's forecasting inaccuracies would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the liquidated damages as agreed to by the Parties set forth in this Section 6.4(H) are a fair and reasonable calculation of such damages.

6.5 Forced Outages and Emergency Conditions.

Seller shall notify the RDD by telephone call or other automated means acceptable to Tri-State as promptly as possible upon discovering that the Facility is unable to deliver all or part of any scheduled quantity of Contract Energy due to a

Forced Outage or Emergency Condition resulting in a capacity reduction of more than ten (10) MW and, as soon as reasonably practicable, but within no more than ten (10) minutes, following such discovery, shall notify the RDD of its best estimate of the expected duration of such Forced Outage or Emergency Condition. Such estimate by Seller shall be based on the best information available to it. Should Seller expect any further changes in the duration of any such Forced Outage or Emergency Condition, it shall as soon as reasonably practicable, but within no more than ten (10) minutes, of such change notify the RDD of the same.

6.6 ~~[wind only]~~ Cut-Out Events.

In the event of a Cut-Out Event, Seller shall coordinate with Tri-State's RDD the ramp-up rate of the Facility back to full production after such event. **I**

6.7 Guaranteed Energy Production.

(A) During each Commercial Operation Year, Seller is required to deliver to Tri-State at least the Guaranteed Energy Production; *provided* that the Facility shall be deemed to have generated Contract Energy during such Commercial Operation Year to the extent it was capable of delivering Contract Energy but failed to deliver such Contract Energy due to a (i) Delivery Excuse, (ii) Force Majeure Event, (iii) Emergency Condition, or (iv) a curtailment pursuant to Section 6.3 (except for a curtailment caused by a Forced Outage or otherwise covered by Section 7.2(B)(9) through (11)) with such deemed quantity to be determined using the factors set forth in Section 7.2(A).

(B) In the event Seller delivers less than the Guaranteed Energy Production in any Commercial Operation Year, Tri-State shall promptly invoice Seller for an amount equal to the Shortfall MWh multiplied by the Contract Energy Rate during such Commercial Operation Year. Invoiced amounts shall be payable in accordance with Section 8.3(A); *provided* that this Section shall not limit Tri-State's rights and remedies under Article 12 with respect to Deficiency MWhs upon the occurrence of and during an Event of Default or Replacement Costs upon termination of this PPA. Each Party agrees and acknowledges that (i) the damages that Tri-State would incur due to Seller's failure in achieving the Guaranteed Energy Production would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the liquidated damages as agreed to by the Parties set forth in this Section 6.7 are a fair and reasonable calculation of such damages and not a penalty.

6.8 Organized Market.

(A) If at any time during the Term, the Interconnection Provider changes or the facilities at the Point of Delivery cease to be subject to the Interconnection Provider's Tariff, Tri-State and Seller shall cooperate and take all necessary actions to facilitate the delivery of Contract Energy from the Point of Delivery to Tri-State's load, at the least possible cost to the Parties, consistent with this PPA.

(B) If at any time during the Term, (i) the Interconnection Provider, the Transmission Provider, the Balancing Authority, or Tri-State elects to join or participate in an Organized Market, or (ii) WECC, NERC, FERC or any other Governmental Authority institutes an Organized Market and such action requires changes to this PPA or changes the manner in which the Facility is scheduled and dispatched, the Parties shall cooperate in good faith to change their protocols for operation and scheduling of the Facility and to amend this PPA to comply with such changes accordingly, at the least possible cost to the Parties, consistent with this PPA. The Parties shall negotiate and allocate the costs associated with these changes between the Parties in a fair and reasonable manner.

Article 7

Payment Calculations

7.1 Contract Energy Payment.

(A) Contract Energy Payment. Except as otherwise provided in this PPA, commencing on the Commercial Operation Date, Tri-State shall pay Seller an energy payment for each Month (the “Contract Energy Payment”) equal to the product of (i) the applicable Contract Energy Rate; and (ii) the aggregate amount of Contract Energy (other than Test Energy and Excess Contract Energy) delivered to Tri-State. The Contract Energy Payment for each Month during the Term shall be paid in accordance with the invoicing procedures set forth in Section 8.1.

(B) Test Energy Payment. Tri-State shall pay for all Test Energy at the Test Energy Rate. Test Energy Payments shall be equal to the product of (i) the Test Energy Rate; and (ii) the aggregate amount of Test Energy delivered by Seller to Tri-State during such Month. The Test Energy Payment for each Month during the Term shall be paid in accordance with the invoicing procedures set forth in Section 8.1.

(C) Excess Contract Energy Payment. Except as otherwise provided in this PPA, Tri-State shall pay for all Excess Contract Energy, if any, generated and delivered in each Commercial Operation Year, during the Term at the Excess Contract Energy Rate. Excess Contract Energy Payments shall be equal to the product of (i) the applicable Excess Contract Energy Rate for such Month, and (ii) the aggregate amount of Excess Contract Energy delivered by Seller to Tri-State. The Excess Contract Energy Payment, if any, for each Month during the Term shall be paid in accordance with the invoicing procedures set forth in Section 8.1.

7.2 Curtailed Contract Energy Payment.

(A) Determination of Curtailed Contract Energy. On and after the Commercial Operation Date, if delivery of Contract Energy is curtailed by Tri-State pursuant to Section 6.3(A), then:

(1) The Parties shall determine the quantity of Contract Energy that would have been generated by the Facility and delivered to the Point of Delivery during the period of curtailment had its generation not been so curtailed by Tri-State (“Curtailed Contract Energy”) by using the best available data obtained through commercially reasonable methods in accordance with the Operating Procedures; and shall be dependent upon measured [wind speed and wind direction][solar irradiance] gathered from appropriate [wind only- Units anemometers][solar only- pyranometers] and meteorological towers at the Facility during those hours in which Tri-State curtailed its receipt of Contract Energy, as such process may be further described in the Operating Procedures, and any other adjustments necessary to accurately reflect the Facility’s capacity to generate and deliver Energy to the Point of Delivery including applicable losses and manufacturers’ warranted power curves (a copy of which shall be provided to Tri-State) for all operational Units whose output was curtailed. The methodology utilized to measure Curtailed Contract Energy shall be reviewed and adjusted, as necessary, by the Operating Committee, at least once every five (5) years after the Commercial Operation Date.

(2) Tri-State shall pay to Seller for such Curtailed Contract Energy all amounts that Seller would have received from Tri-State under this PPA for the corresponding Contract Energy had delivery not been so curtailed by Tri-State (and at the applicable rates set out in Section 7.1) [wind only -] plus an amount per MWh that equals (a) the Production Tax Credit to the extent Seller would have been entitled to receive such Production Tax Credit plus (b) a gross up amount to take into account the federal, state and local income tax to Seller or its Affiliates or tax investors on such payment in lieu of the Production Tax Credit, calculated in accordance with the following formula] (the “Curtailed Contract Energy Payment”):

$$\begin{array}{ccc}
 \text{[wind only -]} & & \\
 \text{Amount of Payment in} & & 1 \\
 \text{lieu of Production Tax} & \times & \frac{\quad}{1\text{-applicable aggregate tax}} \\
 \text{Credit} & & \text{rate}
 \end{array}$$

For the avoidance of doubt, Seller shall not be entitled to recover any of the above referenced tax benefits to the extent Seller would not have been entitled to receive the Production Tax Credit had the Curtailed Contract Energy actually been delivered.]

(3) In the event Tri-State is obligated to pay for Curtailed Contract Energy under this Section 7.2(A), Seller shall provide on the applicable monthly invoice detailed calculations of the Curtailed Contract Energy and the Curtailed Contract Energy Payment due Seller.

(B) Restriction on Curtailment Payments. Notwithstanding anything in this Section 7.2 to the contrary, no payment shall be due to Seller from Tri-State under paragraph (A) above for curtailments of delivery of Contract Energy resulting from:

- (1) an Emergency Condition, Force Majeure Event, or Forced Outage;
- (2) the failure of Seller's Interconnection Facilities or any action taken by the Interconnection Provider in accordance with its rights under the Interconnection Agreement and not due to Seller's default;
- (3) any restriction, reduction, or curtailment of firm transmission service or network integration transmission service by the applicable Transmission Provider, arranged by either Party, to provide transmission of Contract Energy to or from the Point of Delivery;
- (4) any restriction, reduction, or curtailment of non-firm transmission service by the applicable Transmission Provider, arranged by either Party, to provide transmission of Contract Energy to or from the Point of Delivery to the extent such restriction, reduction, or curtailment would also have been imposed even if firm transmission service had been in place;
- (5) maintenance outages, whether planned or unplanned, of any part of the Transmission System or any testing of the Transmission System;
- (6) Allowable Curtailment;
- (7) **wind only**- Cut-Out Events; provided that Tri-State shall compensate Seller for any curtailment of Contract Energy up to one (1) hour for the first Cut-Out Event per quarter of any Year;
- (8) any notification from the Balancing Authority requiring Seller to curtail or cease deliveries of Contract Energy to achieve load balancing in the Balancing Authority Area or any notifications from the Reliability Coordinator requiring Seller to curtail or cease deliveries of Contract Energy;
- (9) any curtailment arising from Seller's failure to obtain and/or maintain in full force and effect any Governmental Approval or WREGIS registration, or failure to comply with applicable NERC reliability standards;
- (10) any action taken by the Interconnection Provider pursuant to Seller's default under the Interconnection Agreement; or
- (11) Seller fails or refuses to respond to AGC instructions from the SCADA system, Seller fails or refuses to respond, or Seller refuses or fails to respond to a curtailment instruction from Tri-State, the RDD, the Transmission Provider, Interconnection Provider, Balancing Authority, Reliability Coordinator, an Organized

Market, NERC, WECC, FERC or any other Governmental Authority pursuant to Section 6.3 including if the Interconnection Provider trips the breaker at the Electric Interconnection Point, due to Seller's failure or refusal.

Article 8

Billing and Payment Procedures

8.1 Billing Invoices.

No later than ten (10) Business Days after the end of each Month, Seller shall provide to Tri-State an invoice for the amount due to Seller by Tri-State for Contract Energy delivered by Seller to Tri-State and the Curtailed Contract Energy, if any, determined pursuant to Section 7.2 for such Month. Seller's invoice shall show metered Energy from the Facility, all billing parameters, rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to Seller. If Tri-State disputes any portion of the invoice, Tri-State shall provide to Seller an explanation of the items in dispute. Billing disputes shall be resolved in accordance with Section 8.4.

8.2 Metered Billing Data.

All billing data based on metered deliveries to Tri-State shall be collected by the Electric Metering Device(s) in accordance with Article 5.

8.3 Payments and Late Payments.

(A) Payment Due to Tri-State. Unless otherwise specified herein, payments due to Tri-State under or in connection with this PPA shall be due and payable by electronic funds transfer, as designated by Tri-State, on or before the fifth (5th) Business Day following receipt of the billing invoice. Any failure to make full payment within such time period shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within three (3) Business Days after the date of written notice from Tri-State to Seller. This Section shall not limit Tri-State's right to draw any such amounts due from the Security in accordance with Section 11.1(E).

(B) Payments due to Seller. Unless otherwise specified herein, payments due to Seller under or in connection with this PPA shall be due and payable by electronic funds transfer, as designated by Seller, on or before the twentieth (20th) Business Day following receipt of the billing invoice. Any failure to make full payment within such time period shall constitute an Event of Default of Tri-State upon its occurrence but shall be subject to cure within ten (10) Business Days after the date of written notice from Seller to Tri-State.

(C) Late Payment Charges. If the undisputed amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the lower of (i) an annual interest rate equal to two percent (2%) plus the prime interest rate, as published on the date of the invoice in *The Wall Street*

Journal (or, if *The Wall Street Journal* is not published on that Day, the next succeeding date of publication) and (ii) the maximum interest rate allowed by Applicable Law (“Default Rate”). If the due date occurs on Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

(D) Offset. Tri-State at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller to Tri-State.

8.4 Billing Disputes.

Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve billing disputes, the Parties shall use the procedures set forth in Section 13.9(A). When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 8.3 if payment is not received within the five (5) Business Days. Undisputed amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 8.3(C).

8.5 Statement Errors.

In the event that either Party becomes aware of any error in any statement, such Party shall, promptly upon discovery of the error, notify in writing the other Party of such error and shall rectify such error (whether in the form of an underpayment or overpayment) within thirty (30) Days of such notification. If a Party does not notify the other Party of any error (regardless of actual knowledge of such error) within three hundred sixty five (365) Days of such error, any payment associated with such error older than three hundred sixty five (365) Days shall be waived. Except for adjustments in the billing and payment for defective or inaccurate Electric Metering Devices as provided in Section 5.4, if Seller fails to invoice for Contract Energy or Curtailed Contract Energy within one hundred eighty (180) Days of delivery of such Contract Energy or curtailment of Contract Energy, payment for such shall be waived.

8.6 Taxes.

(A) Tax Responsibility. Seller shall be responsible for, and shall pay when due, all income, gross receipts, sales, *ad valorem*, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against Seller or the Facility due to generation of Energy from the Facility, the construction, ownership, leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, including all taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Regulated Materials) produced by the Facility. Seller’s prices under Article 7 are inclusive of such

Taxes, allowances and credits during the Term. If Tri-State is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Facility on the Site, Tri-State shall promptly notify Seller. Tri-State and Seller shall cooperate in contesting such assessment; *provided, however*, that Tri-State may pay such Taxes to avoid any penalties on such assessments subject to reimbursement by Seller. If, after resolution of the matter, Taxes are imposed on Tri-State as a result of the improvement of the Site due to the existence of the Facility on the Site, Seller shall reimburse Tri-State for such Taxes. Seller shall not be obligated to pay or reimburse Tri-State for Taxes imposed on or measured by the Tri-State's overall revenues or income.

(B) Reimbursement. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other Party for such Taxes.

(C) Information. The Parties shall provide each other, upon written request, with copies of any documentation that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(D) Cooperation. Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; *provided, however*, that no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

(E) Failure to Qualify for Tax Credits. Seller's failure to qualify for the Tax Credits or Additional Tax Benefits for any reason including Delivery Excuse, Force Majeure Event, the acts or inaction of the Interconnection Provider or of any third party, or any Event of Default, shall not release Seller of its obligations to comply with this PPA, give rise to any damages payable by Tri-State or an increase in the price for Contract Energy.

(F) Additional Tax Benefits. From and after the Effective Date and throughout the Term, in the event that Seller or the Facility qualifies for and receives or is subject to Additional Tax Benefits, Seller and Tri-State shall share on a 50/50 basis the Additional Tax Benefit Amount associated with such Additional Tax Benefits by making an adjustment to the Contract Energy Rate for the Term of the PPA to account for such Additional Tax Benefit Amount. For the avoidance of doubt, Additional Tax Benefits may not result in an increase to the Contract Energy Rate. The Contract Energy Rate shall be adjusted in the first month following the effective date of the Applicable Law, which may be in the form of new or revised guidance or interpretations by a Governmental Authority having jurisdiction related to such Applicable Law, pursuant to which such Additional Tax Benefit is enacted. Seller shall at all times retain all right, title and interest in any Additional Tax Benefits. Seller shall provide Tri-State with written notice upon its receipt of Additional Tax Benefits, and along with such notice provide to Tri-State commercially reasonable documentation describing: (i) the

Additional Tax Benefit Amount, (ii) the effective date of the Applicable Law, including guidance or interpretations by a Governmental Authority, (iii) reasonable accounting of the Additional Tax Benefit Costs associated therewith, verified by an independent national accounting firm selected by Seller at Seller's expense, subject to further verification by Tri-State, and (iv) a calculation of the reduction to the Contract Energy Rate.

Article 9

Testing, Operations and Maintenance

9.1 Modification of the Facility.

Seller shall not modify the Facility in any way that would increase or decrease the electric energy generating capacity of the Facility or the output of Contract Energy to be delivered to Tri-State under this PPA without Tri-State's prior written consent, which may be withheld in its sole discretion.

9.2 Facility Tests Prior to Commercial Operation.

Seller shall give Tri-State at least three (3) Months prior notice of (i) the approximate Test Date, (ii) the proposed Tests scheduled relating to the commissioning of the Facility, and (iii) a draft of the Testing procedures and requirements. Tri-State shall review and provide any comments on the Testing procedures and requirements within thirty (30) Days of receipt. Representatives of Tri-State shall have the right to be present at all such Testing. Seller shall promptly notify Tri-State of any changes to the Test Date or the date of any Tests relating to the Facility in order that Tri-State may arrange for its respective representatives to attend.

9.3 Operation and Maintenance of the Facility.

Seller shall staff, control, operate, maintain, and repair the Facility or cause the same to be staffed, controlled, operated, maintained, and repaired at all times in accordance with manufacturers' recommendations and Prudent Utility Practices and otherwise in accordance with this PPA. Seller shall procure and maintain a Qualified Operator to operate and maintain the Facility. Personnel (i) capable of remotely starting, operating and stopping the Facility shall be continuously available and reachable by phone, and (ii) shall be capable of being at the Facility on no more than sixty (60) minutes' notice, weather conditions permitting.

9.4 Replacement of Facility Equipment.

Seller shall, consistent with Prudent Utility Practices, repair and replace all necessary equipment at the Facility required to deliver Contract Energy for the Term.

9.5 Disposal of Facility Equipment.

Upon the cessation of operations or the replacement of equipment, Seller shall, at its sole expense and cost, dispose of all Facility equipment no longer in use in accordance with Applicable Law and Prudent Utility Practices, and all requirements under the Facility Site Documents.

9.6 Scheduled Maintenance.

Three (3) Months prior to the Commercial Operation Date and, thereafter, by August 1 of each Year, Seller shall deliver to Tri-State the projected schedule of Scheduled Maintenance Outages, for the subsequent Year or the remainder of the Term, whichever period of time is shorter. Seller shall notify Tri-State of a Scheduled Maintenance Outage and any changes to such no later than sixty (60) Days prior to the start date of a Scheduled Maintenance Outage. In the event a Scheduled Maintenance Outage is extended, Seller shall notify Tri-State as soon as practicable of such extension and the expected end date of such Scheduled Maintenance Outage. Scheduled Maintenance Outages and/or Additional Maintenance Outages may not be scheduled during the Months of January, June, July, August, September, or December unless agreed to in writing by Tri-State at its sole discretion.

9.7 Additional Maintenance Outages.

Before Seller conducts further maintenance on the Facility which would result in greater than ten (10) MW of the Nameplate Capacity Rating of the Facility being taken out of service or Seller's Interconnection Facilities being taken out of service in addition to the Scheduled Maintenance Outages conducted pursuant to Section 9.6 ("Additional Maintenance Outages"), Seller shall notify Tri-State of such required maintenance, together with proposed dates for carrying out such additional maintenance and the estimated duration of the work to be carried out. To the extent possible, such notification to Tri-State shall be provided no later than sixty (60) Days prior to the start date of an Additional Maintenance Outage. Unless deferral of such maintenance would cause an Emergency Condition, Seller and Tri-State shall negotiate in good faith a reasonable schedule during which such Additional Maintenance Outages shall take place. In the event an Additional Maintenance Outage is extended, Seller shall notify Tri-State as soon as practicable of such extension and the expected end date of such Additional Maintenance Outage.

9.8 Access to and Inspection of Facility.

(A) Seller shall provide Tri-State and its authorized employees, agents and inspectors with reasonable access to the Facility (including Tri-State's equipment, if any) for the purposes set forth herein. Tri-State acknowledges that such access does not provide Tri-State with the right to direct or modify the operation of the Facility in any way and further acknowledges that any exercise by Tri-State of its rights under this Section 9.8 shall be at its own risk and expense.

(B) No inspections of the Facility, whether by Tri-State or otherwise, shall relieve Seller of its obligation to maintain the Facility and operate the same in accordance with Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Tri-State, either express or implied, relieve Seller of its exclusive responsibility for the Facility.

9.9 Operating Parameters.

(A) Seller shall operate, maintain or procure the operation and maintenance of the Facility in accordance with Prudent Utility Practices and Applicable Law. Subject to compliance with Prudent Utility Practices and Applicable Law, Seller shall operate the Facility in such a manner that Contract Energy shall meet all requirements required by the Interconnection Provider and the Transmission Provider.

(B) Seller shall operate the Facility such that all system protective equipment is in service whenever the Facility is connected to, or is operated in parallel with, the Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Facility's protective equipment shall meet Institute of Electrical and Electronic Engineers and all other applicable industry standards. Seller shall have qualified personnel test, calibrate and certify in writing the proper functioning of all protective equipment in accordance with the intervals and maintenance activities for each component as established by the appropriate reliability standards. All of the foregoing shall be conducted in accordance with Prudent Utility Practices.

9.10 Operating Committee and Operating Procedures.

(A) Representative. Tri-State and Seller shall each appoint one (1) representative and one (1) alternate representative to act in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of Contract Energy hereunder. Such representatives shall constitute the Operating Committee, and shall be specified in Exhibit H. Each Party shall notify the other Party in writing of any changes to their representative and provide the other Party an updated Exhibit H. The Operating Committee shall have no authority to amend or waive any terms or conditions of this PPA.

(B) Operating Procedures. Prior to the Commercial Operation Date, the Operating Committee shall develop mutually agreeable written Operating Procedures which shall include methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable Tri-State and Seller operating centers; operations and maintenance scheduling and reporting; Contract Energy reports; measurement of Curtailed Contract Energy; unit operations log; and such other matters as may be mutually agreed upon by the Parties.

Article 10
Environmental Attributes

10.1 Ownership of Environmental Attributes.

(A) Ownership of Environmental Attributes. Payment of each of the Contract Energy Rate, Test Energy Rate and the Excess Contract Energy Rate to Seller by Tri-State includes the consideration for the purchase and ownership of, and the right to market and sell, all Environmental Attributes associated with the generation of Contract Energy, Test Energy and Excess Contract Energy, respectively.

(B) Duration. Environmental Attributes associated with the Contract Energy are owned by Tri-State and Tri-State shall have the right to own and to use such Environmental Attributes for any purpose, including any Environmental Attributes that are reserved or “banked” during the Term of this PPA but not used, sold, assigned or otherwise transferred during the Term of this PPA. Tri-State may assign its rights, title and interest in and to any Environmental Attributes associated with Contract Energy to one or more third parties under any transaction.

10.2 Transfer of Title to Environmental Attributes; Documentation of Environmental Attributes Transfers.

(A) Title. Title to the Environmental Attributes shall irrevocably pass from Seller to Tri-State immediately upon the generation of Contract Energy at the Facility that gives rise to such Environmental Attributes.

(B) Bill of Sale. Upon request from Tri-State, Seller shall deliver to Tri-State an Attestation and Bill of Sale in the form attached as Exhibit J for all Environmental Attributes delivered to Tri-State during the time period requested by Tri-State.

(C) WREGIS Compliance. Seller shall, at its sole expense, use WREGIS to provide and convey to Tri-State the Environmental Attributes associated with the generation of Contract Energy. Such Environmental Attributes shall be conveyed in a manner consistent with the WREGIS provision below promptly upon WREGIS certificates relating to the Facility being credited to Seller’s WREGIS account.

(D) WREGIS Account. Prior to Testing, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain through the Term. Seller shall transfer the WREGIS certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Tri-State or the account(s) of a designee that Tri-State identifies by written notice (“Tri-State’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS

Account, paying WREGIS certificate issuance and transfer fees, and transferring WREGIS certificates from Seller's WREGIS Account to Tri-State's WREGIS Account.

(E) Qualified Reporting Entity. Seller shall procure and maintain a Person to act as a qualified reporting entity and provide qualified reporting services for the Facility as required by WREGIS.

(F) Reporting Compliance. Seller, at its own cost and expense, shall comply with all reporting and other requirements of WREGIS relating to the Facility or Environmental Attributes.

(G) No Liens or Encumbrances. Environmental Attributes shall be transferred to Tri-State free of all liens and encumbrances.

(H) Additional Certification. Upon request from Tri-State, Seller shall, at its expense, register and/or certify the Facility with Governmental Authorities requested by Tri-State in order to qualify the Facility as a renewable resource or qualify the Contract Energy and/or Environmental Attributes with such Governmental Authority and maintain such registration/certification for the Term.

Article 11 **Security**

11.1 Seller Security Form and Amount.

(A) Form. As security for its obligations hereunder, Seller shall, within ten (10) Days after the Effective Date, post and maintain in favor of Tri-State (i) one or more unconditional, irrevocable, standby Letter(s) of Credit from an Issuer, (ii) a cash escrow account established with an Issuer in favor of Tri-State pursuant to an escrow agreement acceptable to Tri-State, or (iii) any combination of the foregoing (i) and (ii) (the "Security"); provided that a Guaranty may be posted to satisfy part of or all of the Security amount set forth in Section 11.1(B) in lieu of Letter(s) of Credit or a cash escrow account, subject to the following conditions (x) any Guaranty provided by a Superior Guarantor shall not exceed Ten Million Dollars (\$10,000,000), (y) any Guaranty provided by a Qualified Guarantor shall not exceed Five Million Dollars (\$5,000,000), and (z) the total aggregate amount of guaranteed obligations of any such Guaranty and any other guaranties of payment or performance related to or provided by the Seller, the Qualified Guarantor, the Superior Guarantor or any of their Affiliates to Tri-State shall not exceed an aggregate of Five Million Dollars (\$5,000,000) if provided by a Qualified Guarantor or Ten Million Dollars (\$10,000,000) if provided by a Superior Guarantor, unless agreed to in writing by Tri-State at its sole discretion.

(B) Amount. The Security shall be in the amount of: (i) **Insert**
\$100*Expected Nameplate Capacity Rating in kw Dollars (\$,000) for the period beginning with the Effective Date and continuing thereafter.

(C) Duration. The Security shall remain in place for the entire Term (except to the extent drawn upon as provided herein). To the extent the Security consists of Letter(s) of Credit expiring before the end of the Term, Seller shall cause their renewal or extension for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) no later than thirty (30) Days prior to each expiration date of such Letter(s) of Credit and written proof of such renewal shall be provided to Tri-State as soon as practicable thereafter, but in no event later than fifteen (15) Days prior to the expiration of the same. If the Letter of Credit(s) is not renewed or extended as required herein, Tri-State shall have the right to demand payment under the Guaranty or draw immediately upon the entire amount of the Letter of Credit and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an account controlled by Tri-State until and unless Seller provides a substitute Letter of Credit(s) meeting the requirements of this Article 11.

(D) Downgrades. Upon the occurrence of a downgrade event, such that the Person providing the Security in the form of a Letter of Credit or Guaranty no longer meets the requirements of an Issuer, Qualified Guarantor, or Superior Guarantor, as applicable, Seller shall within three (3) Business Days of such downgrade event, provide replacement security satisfying the requirements of this Article 11. If such replacement security is not provided within three (3) Business Days, Tri-State shall have the right to draw immediately upon the entire amount of the Letter of Credit or demand payment under the Guaranty, as applicable, and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an account controlled by Tri-State until and unless Seller provides a substitute security meeting the requirements of this Article 11. Except as provided in this Section 11.1(D), Seller may change the form of Security at any time and from time-to-time upon thirty (30) Days' prior written notice to Tri-State; *provided* that the Security shall satisfy the requirements of this Article 11 at all times.

(E) Draw on Security. Without notice to Seller, Tri-State may demand payment under or draw on the Security during the Term for Seller's failure to meet any of its obligations under this PPA, including Delay Damages, the damages provided in Section 6.4(H), Section 6.7 and Section 12.3, and Replacement Costs. Tri-State may draw or demand payment of all or any part of the appropriate amounts due to it from any form of Security to the extent available pursuant to this Article 11, and from all such forms, and in any sequence Tri-State may select; *provided* that any failure to draw upon the Security for any damages or other amounts due to Tri-State shall not prejudice Tri-State's rights to recover such damages or amounts in any other manner to the extent provided in this PPA. Tri-State shall notify Seller within five (5) Business Days following any draw on the Security by Tri-State, including the amount thereof and the basis therefor.

(F) Release of Security. Within thirty (30) Days following the expiration or termination of this PPA and the satisfaction of all of Seller's obligations hereunder, Tri-State shall release any remaining balance of the Security to Seller without interest.

(G) Replenishment. In the event Tri-State draws upon the Security pursuant to this Article 11, Seller shall replenish the Security to the amount required by Section 11.1 within ten (10) Days of such draw.

(H) Expenses. Seller shall reimburse Tri-State for its expenses, including internal costs and expenses and reasonable attorneys' fees, incurred by Tri-State in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security under this Article 11.

Article 12

Default and Remedies

12.1 Events of Default of Seller.

(A) Seller Defaults (No Cure). Any of the following shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable unless otherwise stated:

- (1) Seller's dissolution or liquidation;
- (2) Seller makes a general assignment for the benefit of its creditors;
- (3) Seller's authorization or filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Contract Energy committed to Tri-State by Seller other than in mitigation of damages for any breach by Tri-State of this PPA;
- (5) Seller's failure to establish, and maintain, the Security in accordance with Article 11;
- (6) Seller's failure to achieve Commercial Operation by the date that is ninety (90) Days following the Commercial Operation Milestone;
- (7) Seller's actual fraud or tampering with Tri-State owned facilities or other material misrepresentation or intentional misconduct in connection with this PPA or the operation of the Facility; and/or
- (8) Seller's failure to make any payment due to Tri-State under this PPA in accordance with Article 8 (subject to cure by Seller as provided therein).

(B) Seller Defaults (30 Day Cure). Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Tri-State to Seller:

- (1) Seller's Abandonment;
- (2) Seller's failure to maintain in effect any agreements required to deliver Contract Energy to the Point of Delivery pursuant to Section 5.1, including the Interconnection Agreement;
- (3) Seller's failure to comply with the requirements of Section 10.2;
- (4) Seller's breach of or failure to perform or comply with any material term of this PPA not otherwise specified in this Section 12.1; and/or
- (5) Seller's failure to achieve any Construction Milestone, excluding the Commercial Operation Milestone, by the date that is ninety (90) Days following the date specified for such milestone.

(C) Seller Defaults (60 Day Cure). Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Tri-State to Seller:

- (1) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Facility, except as permitted in accordance with Article 19;
- (2) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made; and/or
- (3) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller.

(D) Seller Default (Delivery Shortfall). Seller's failure to deliver at least eighty percent (80%) of the Expected Contract Energy in a Commercial Operation Year shall constitute an Event of Default of Seller upon its occurrence; *provided* that the Facility shall be deemed to have generated Contract Energy during such period as specified in Section 6.7 with such quantity to be determined using the factors set forth in Section 7.2(A); *provided further* that this Event of Default shall be curable and deemed cured if (i) within thirty (30) Days following the end of the energy deficient Commercial Operation Year, Seller cures the reason(s) for such default (or, if such cure cannot reasonably be effected within thirty (30) Days, Seller commences to cure such default within thirty (30) Days and then diligently pursues such cure to completion as soon as practicable thereafter), and (ii) as a result of such efforts, during the next Commercial Operation Year subsequent to such Default, the production of Contract Energy by the

Facility equals or exceeds ninety-five percent (95%) of the Expected Contract Energy for such period.

Subject at all times to the limitation set forth in Section 6.1, Seller shall be permitted to add and/or replace Units if and to the extent reasonably required to cure Seller's default under this Section 12.1(D). Seller shall keep Tri-State apprised at least monthly of Seller's cure efforts under this Section 12.1(D). If the production of Contract Energy fails to equal or exceed ninety-five percent (95%) of the Expected Contract Energy for the Commercial Operation Year following the Event of Default as described in this Section 12.1(D), Tri-State shall have the right to terminate this PPA for default upon delivery of written notice.

12.2 Events of Default of Tri-State.

(A) Tri-State Defaults (No Cure). Any of the following shall constitute an Event of Default of Tri-State upon its occurrence and no cure period shall be applicable, unless otherwise stated:

(1) Tri-State's dissolution or liquidation, *provided, however*, that division of Tri-State into multiple entities shall not constitute dissolution or liquidation;

(2) Tri-State makes a general assignment for the benefit of creditors;

(3) Tri-State's authorization or filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Tri-State voluntarily taking advantage of any such law by answer or otherwise; and/or

(4) Tri-State's failure to make any payment due to Seller under this PPA in accordance with Article 8 (subject to cure by Tri-State as provided therein).

(B) Tri-State Defaults (30 Day Cure). Tri-State's failure to comply with any material obligation under this PPA not otherwise specified in this Section 12.2 shall constitute an Event of Default of Tri-State if not cured within thirty (30) Days after the date of written notice from Seller to Tri-State.

(C) Tri-State Defaults (60 Day Cure). Any of the following shall constitute an Event of Default of Tri-State upon its occurrence but subject to cure sixty (60) Days after the date of written notice from Seller to Tri-State:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Tri-State;

(2) Tri-State's assignment of this PPA, except as permitted in accordance with Article 19; and/or

(3) Any representation or warranty made by Tri-State in this PPA shall prove to have been false or misleading in any material respect when made.

12.3 Damages Prior to Termination.

Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to collect damages accruing prior to the termination of this PPA from the defaulting Party as set forth below, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute an element of any respective cure. For all Events of Default (including failure to achieve the Commercial Operation Milestone) the non-defaulting Party shall be entitled to receive from the defaulting Party all of the direct damages incurred by the non-defaulting Party in connection with such Event of Default. The Parties agree that the damages recoverable by Tri-State hereunder on account of an Event of Default of Seller prior to termination of this PPA shall include an amount calculated at the end of each Month during an Event of Default equal to the Deficiency MWhs multiplied by the applicable Contract Energy Rate during such Commercial Operation Year and Tri-State may draw the appropriate amounts from the Security. Each Party agrees and acknowledges that (i) the damages that Tri-State would incur at such time prior to termination of this PPA due to Seller's failure to perform would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the liquidated damages as agreed to by the Parties set forth in this Section 12.3 are a fair and reasonable calculation of such damages.

12.4 Termination.

Upon the occurrence of an Event of Default that has not been cured within the applicable time period, if any, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this PPA shall terminate. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4, the non-defaulting Party shall be entitled to receive from the defaulting Party, all of the direct damages incurred by the non-defaulting Party related to such Event of Default, including, if Seller is the defaulting Party, the value of future Replacement Costs for the then remaining Term based upon the amount of Expected Contract Energy that should have been delivered provided, however, that, if the Replacement Costs amount is negative, the Replacement Costs shall be deemed to be zero.

12.5 Operation by Tri-State Following Event of Default of Seller.

(A) Subject to the rights of the Financing Parties, on occasion of an Event of Default and after the expiration of the cure period provided in respect thereof, if any, and prior to any termination of this PPA as a result thereof, Tri-State shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as

agent for Seller (in accordance with Seller's rights, obligations, and interest under this PPA) during the period provided for herein. Seller shall not grant any Person, other than the Financing Parties, a right to possess, assume control of, and operate the Facility that is equal to or superior to Tri-State's right under this Section 12.5.

(B) Tri-State shall give Seller and the Financing Parties ten (10) Days' prior notice of the contemplated exercise of Tri-State's rights under this Section 12.5. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Utility Practice, including all Operating Records. Upon such notice, Tri-State, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Site and Facility for the purpose of constructing and/or operating the Facility.

(C) Tri-State shall be entitled to immediately draw upon the Security to cover any expenses incurred by Tri-State in exercising its rights under this Section 12.5.

(D) During any period that Tri-State is in possession of and constructing and/or operating the Facility pursuant to this Section 12.5, Tri-State shall perform and comply with all of the obligations of Seller under this PPA and shall use the proceeds from the sale of electricity generated by the Facility to first, reimburse Tri-State for any and all expenses reasonably incurred by Tri-State in taking possession of and operating the Facility, and to second, remit any remaining proceeds to Seller.

(E) During any period that Tri-State is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and Tri-State shall assume possession, operation, and control solely as agent for Seller.

(1) In the event that Tri-State is in possession and control of the Facility for an interim period, Seller may resume operation and Tri-State shall relinquish its right to operate when Seller demonstrates to Tri-State's satisfaction that it will remove those grounds that originally gave rise to Tri-State's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this PPA, and (ii) has cured any Events of Default of Seller that allowed Tri-State to exercise its rights under this Section 12.5 (or, if the Event of Default is of such a nature that it cannot be cured by Seller without possession of the Facility, reasonable assurance that Seller will cure such Event of Default promptly following resumption of possession).

(2) In the event that Tri-State is in possession and control of the Facility for an interim period, the Financing Parties, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and Tri-State shall relinquish its right to operate when the Financing Parties or any nominee or transferee thereof, requests such relinquishment.

(F) Tri-State's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by Tri-State of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility Tri-State elects to return such possession and operation to Seller, Tri-State shall provide Seller with at least fifteen (15) Days' prior notice of the date Tri-State intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

(G) In the event Tri-State assumes operation of the Facility under this Section 12.5, Tri-State shall operate the Facility in accordance with Prudent Utility Practice.

12.6 Replacement Costs.

Upon termination for an Event of Default, subject to Section 12.11, Tri-State shall be entitled to Replacement Costs for the balance of the Term (based upon the amount of Expected Contract Energy) had this PPA not been terminated, and Tri-State may draw the appropriate amounts from the Security.

12.7 Specific Performance.

In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Tri-State shall have the right to specific performance. The Parties agree that in the event Tri-State seeks injunctive relief in connection with the foregoing, that such action may be taken without the necessity of posting of a bond or other security as would otherwise be required under Applicable Law.

12.8 Remedies Cumulative.

Each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.9 Forward Contracts.

The Parties agree that this PPA is a "forward contract" for purposes of the U. S. Bankruptcy Code; all payments made or to be made by one Party to the other Party pursuant to this PPA are "settlement payments" within the meaning of the U.S. Bankruptcy Code; and all transfers of Security by Seller to Tri-State under this PPA are "margin payments" within the meaning of the U.S. Bankruptcy Code.

12.10 Waiver and Exclusion of Other Damages.

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 OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN); *PROVIDED* THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFOR FROM THE OTHER PARTY, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES, ALL IN ACCORDANCE WITH THE INDEMNIFICATION PROVISIONS OF ARTICLE 17.

12.11 Duty to Mitigate.

Each Party (i) has a general duty to mitigate all damages hereunder (other than Delay Damages, or the damages provided in Section 6.4(H), Section 6.7 and Section 12.3) and (ii) shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.12 Limitation of Liability.

Except as otherwise provided in this Section 12.12, Seller's aggregate financial liability to Tri-State for Delay Damages pursuant to Section 4.3, shall not exceed an amount equal to **Insert \$100*Expected Nameplate Capacity Rating in kw** Dollars (\$_____,000) and Seller's aggregate financial liability to Tri-State for Replacement Costs and other damages, excluding Delay Damages, shall not exceed **Insert \$250*Expected Nameplate Capacity Rating in kw** Dollars (\$_____,000). If at any time during the Term, Tri-State incurs damages in excess of the limitations set forth above which Seller does not agree to pay when billed by Tri-State, Tri-State shall have the right to declare a termination of this PPA under Section 12.1, unless such damages are disputed in good faith. The limitations on damages set forth in this Section 12.12 shall not apply to damages arising out of any of the following events:

- (A) damage or tampering with Tri-State owned facilities caused by negligence, breach of this PPA or other misconduct by Seller, its directors, officers, employees and agents;
- (B) the sale by Seller to a third party, or diversion by Seller for any use, of Contract Energy committed to Tri-State under this PPA other than in mitigation of damages for any breach by Tri-State of this PPA;
- (C) Seller's intentional misrepresentation or intentional misconduct in connection with this PPA or the operation of the Facility;

(D) Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds to reconstruct the Facility following a casualty;

(E) any claim for indemnification herein;

(F) any Environmental Contamination; or

(G) damages incurred by Tri-State in connection with any bankruptcy or insolvency proceeding involving Seller, including Tri-State's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

Article 13

Contract Administration and Notices

13.1 Notices in Writing.

Notices required by this PPA shall be addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses specified in Exhibit I, as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or delivered by electronic mail with a copy mailed via overnight service with signature required upon receipt, to the representative of said other Party. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section 13.1.

13.2 Representative for Notices.

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Operating Committee, or a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent and shall provide the other Party an updated Exhibit I.

13.3 Authority of Representatives.

The Parties' designated representatives shall have authority to act for its respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or waive any provision of this PPA.

13.4 Operating Records.

Originals or copies of all Operating Records shall be maintained at the Facility or such other location in the State in which the Facility is located as may be specified by Seller from time to time. Tri-State may examine and make copies of such Operating Records from time to time upon request, during normal business hours.

13.5 Books and Records.

Seller and Tri-State shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including metering, billing and payment records, and such records as may be required by Governmental Authorities in the prescribed format.

13.6 Audit Rights.

During the Term and for a period of three (3) years after the Term, Tri-State shall have the right, at its sole expense, with reasonable advance written notice and during normal working hours, to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA.

13.7 Operating Log.

Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of energy production (by individual block or Unit); changes in operating status; meteorological data; maintenance; and Forced Outages (the "O&M Records"). Within thirty (30) Days after the end of each quarter of the Year, Seller shall submit to Tri-State, in a mutually agreeable format, a copy of the O&M Records for the prior quarter.

13.8 Provision of Real Time Data.

Seller shall, at least five (5) Business Days prior to the delivery of Test Energy and continuing through the Term, make the following data available to Tri-State on a real-time basis, at the Tri-State RTU:

- (1) production of Energy in MW and MWh;
- (2) [in-service status for each Unit][feeder level breaker status];
- (3) [Unit MW output][inverter availability and generation in kW];
- (4) [wind speed and direction at each Unit][solar irradiance as measured by the pyranometers at the Facility];

- (5) ambient temperature ~~[solar only-~~ and solar panel temperature];
- (6) ~~[solar only-~~ stow indication][~~wind only-~~ icing indication and overspeed indication for each Unit];
- (7) humidity; and
- (8) barometric pressure.

13.9 Dispute Resolution.

(A) The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this PPA, the Parties immediately, through their designated representatives selected in the sole discretion of each Party (individually, the “Party Representative”, together, the “Parties’ Representatives”), shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within fourteen (14) Days of the date of the letter from one Party Representative notifying the other Party Representative of the nature of the dispute. In the event that the Parties’ Representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute (the “Dispute Notice”), together with a statement describing the issues or claims, shall be delivered, within seventy-two (72) hours after the expiration of such thirty (30) Day period, by each of the Parties’ Representatives to its respective senior manager or official (such senior manager or official to be selected by each of the Party Representatives in his or her sole discretion, *provided* such senior manager or official has authority to bind the respective Party). Within three (3) Business Days after receipt of the Dispute Notice, the senior manager or officials for both Parties shall negotiate in good faith to resolve the dispute. If the Parties are unable to resolve the dispute within fourteen (14) Days of receipt of the Dispute Notice by the senior manager or officials, either Party may seek available legal remedies.

(B) SELLER AND TRI-STATE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND TRI-STATE RELATED HERETO.

Article 14

Force Majeure

14.1 Definition of Force Majeure Event.

(A) A “Force Majeure Event” shall mean (i) an event or circumstance that is not reasonably foreseeable, (ii) is beyond the reasonable control of, and is not caused by, the negligence or lack of due diligence of the affected Party or its contractors or suppliers and (iii) adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

(B) The failure of a transmission line or element due to a Force Majeure Event that prevents Tri-State from delivering Contract Energy from the Point of Delivery is considered a Force Majeure Event.

(C) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval, is not considered a Force Majeure Event.

(D) Notwithstanding the foregoing, the term “Force Majeure Event” does not include any of the following (i) inability by Seller to procure the Units or any component parts therefor, or any associated equipment for the Facility for any reason (the risk of which is assumed by Seller) or any increase in the price to procure the Units or any component parts therefor, including due to changes in any import or export duties or tariffs, (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of a Force Majeure Event under Section 14.1(A); (iii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishaps, events or conditions attributable to normal wear and tear or flaws, except as caused by a Force Majeure Event under Section 14.1(A), (iv) failure of Seller to abide by Prudent Utility Practices, (v) changes in market conditions that affect the cost of supplies, or that affect demand or price for power and/or Environmental Attributes; (vi) any labor strikes, slow downs or stoppages, or other labor disruptions against Seller’s contractors, subcontractors, vendors, or suppliers; (vii) changes in Applicable Laws; (viii) failure of Seller or the Facility to qualify or be eligible for any Tax Credit or Additional Tax Benefits, including any federal, state, or local tax credits or exemptions; (ix) any delay or inability of Seller to construct or install any required interconnection or transmission facilities required to be constructed and installed in order for Seller to meet its

obligations hereunder, including any delays of the Interconnection Provider; (x) Seller's failure to timely apply for, or diligently pursue, any of the Governmental Approvals set forth in Exhibit F; or (xi) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns.

(E) In the event that any delay or failure of performance (including a significant reduction in the delivery of Contract Energy) caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of sixty (60) Days from its inception, the Term of this PPA shall be extended on a day for day basis for the duration of the Force Majeure Event (including the initial sixty (60) Days from its inception) with a maximum extension of the Term of this PPA for all Force Majeure Events not to exceed four (4) years; *provided that* the Commercial Operation Year for purposes of determining the applicable Contract Energy Rate and Expected Contract Energy shall be tolled on a day for day basis for the duration of the Force Majeure Event.

(F) In the event that any delay or failure of performance (including a significant reduction in the delivery of Contract Energy) caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of ninety (90) Days from its inception (with respect to a Force Majeure Event occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to a Force Majeure Event occurring after COD), the Party not claiming a Force Majeure Event may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(G) Except as otherwise provided in this PPA, and subject to compliance with the notice, mitigation and other requirements of this Article 14, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof.

14.2 Notification Obligations.

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party immediately by telephonic communication and in writing, within five (5) Days of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure Event requires. A Party claiming that a Force Majeure Event has occurred shall not be entitled to any relief therefor unless and until confirming notice is provided. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case within two (2) Business Days thereof.

14.3 Duty to Mitigate.

The Party claiming that a Force Majeure Event has occurred shall use commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Delay Caused by Force Majeure Event.

Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of Tri-State, Interconnection Provider or Transmission Provider to accept Energy from the Facility or to the extent that a Force Majeure Event affects the ability of Seller to Test pursuant to Section 9.2 or to deliver Energy from the Facility, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 7.1.

Article 15
Representations and Warranties

15.1 Seller's Representations and Warranties.

Seller hereby represents and warrants as of the date hereof as follows:

(A) Seller is a [REDACTED], duly organized, validly existing and in good standing under the laws of the state of [REDACTED]. Seller is qualified to do business in [REDACTED] and in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller. Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

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

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Tri-State upon execution of this PPA);

(2) violate any Applicable Law, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's organizational documents or bylaws, or any indenture or loan or credit agreement, or

any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, or any judgment, order, statute, or regulation that is applicable to Seller or the Facility; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

(D) The individual of Seller executing this PPA is authorized to do so and is authorized to bind Seller to the obligations under this PPA.

(E) The execution and performance of this PPA shall not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party.

(F) Except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(G) That it has arranged for sufficient financing and other funding required to complete the construction of the Facility in accordance with this PPA and to achieve Commercial Operation on or before the Commercial Operation Milestone.

(H) That the Environmental Attributes, as to which right and title is to be transferred to Tri-State under this PPA are, or will be: (1) compliant with the definitions of local, state, or federal renewable portfolio standard rules and requirements, (2) free and clear of any liens, encumbrances and/or defects of title; and (3) shall not otherwise been, nor will be sold, retired, claimed, or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction.

(I) Within the meaning of the U.S. Bankruptcy Code, Seller is a "forward contract merchant."

15.2 Tri-State's Representations and Warranties.

Tri-State hereby represents and warrants as of the date hereof as follows:

(A) Tri-State is a cooperative corporation duly organized, validly existing and in good standing under the laws of the state of Colorado and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Tri-State. Tri-State has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

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

- (1) require any consent or approval of Tri-State's members;
- (2) violate any Applicable Law, the violation of which could have a material adverse effect on the ability of Tri-State to perform its obligations under this PPA;
- (3) result in a breach or constitute a default under Tri-State's corporate charter or bylaws, or under any agreement relating to the management or affairs of Tri-State, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Tri-State is a party or by which Tri-State or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Tri-State to perform its obligations under this PPA; or
- (4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Tri-State now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Tri-State to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Tri-State, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

(D) The individual of Tri-State executing this PPA is authorized to do so and is authorized to bind Tri-State to the obligations under this PPA.

(E) The execution and performance of this PPA shall not conflict with or constitute a breach or default under any contract or agreement of any kind to which Tri-State is a party or any judgment, order, statute, or regulation that is applicable to Tri-State.

(F) Within the meaning of the U.S. Bankruptcy Code, Tri-State is a “forward contract merchant.”

Article 16

Insurance

16.1 Evidence of Insurance.

Seller shall, upon execution of this PPA and promptly after the renewal of each policy of insurance coverage required in Exhibit D, provide Tri-State with one copy of insurance certificates or other evidence in a form acceptable to Tri-State evidencing the insurance coverages required to be maintained in accordance with Exhibit D to this PPA. Such certificates shall (i) include Tri-State as an additional insured (except worker’s compensation); (ii) provide that the applicable insurer shall endeavor to provide Tri-State with thirty (30) Days’ prior written notice of non-renewal or cancellation of the policies required in Exhibit D (except that such notice shall be ten (10) Days for non-payment of premiums); and (iii) provide a waiver of any rights of subrogation against Tri-State, its Affiliates and their officers, directors, agents, subcontractors, and employees. Insurance carriers providing the coverages required in Exhibit D, must have a policy holders rating of “A-” or better, and a financial size of “Class VII” or better as published in the most recent edition of Best’s Insurance Reports. Any policy of insurance furnished hereunder shall be written by an insurer authorized to write such coverage in the state where the Facility is located. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall include language providing that Seller’s policy shall be primary in all instances regardless of like coverages, if any, carried by Tri-State. Seller’s liability under this PPA is not limited to the amount of insurance coverage required herein. Seller shall notify Tri-State immediately should the policies required in Exhibit D be cancelled before the expiration date, if the insureds receive a non-renewal notice from its carrier, or if there is any material adverse change of coverage.

16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the later of (i) the Effective Date, or (ii) the cancellation date of any occurrence basis policies that such insurance has replaced.

(B) Tri-State shall have the right to request modification of the insurance minimum limits specified in Exhibit D in order to maintain reasonable coverage amounts. Seller shall make all commercially reasonable efforts to comply with any such request. Tri-State shall reimburse Seller for all premium increases and other costs incurred by Seller in complying with any such Tri-State request for modification of the insurance minimum limits specified in Exhibit D.

16.3 Application of Proceeds.

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

Article 17
Indemnity

17.1 Indemnification.

Each Party (the “Indemnifying Party”) shall, to the extent permitted by Applicable Law, indemnify, pay, defend and hold harmless the other Party (the “Indemnified Party”) and its officers, directors, employees, agents and contractors from and against any and all claims or demands of a third party, costs or expenses (including reasonable attorneys’ fees) for loss, damages, or injury to persons or property of the Indemnified Party (or to third parties) (collectively, “Losses”) caused by, arising out of, or resulting from:

- (A) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;
- (B) a violation or alleged violation of Applicable Laws by the Indemnifying Party;
- (C) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation, testing, inspection, or operation or maintenance of its respective facilities or equipment;
- (D) any defect in, failure of, or fault related to, the Indemnifying Party’s facilities or equipment; or
- (E) the negligence or intentional acts or other misconduct of the Indemnifying Party or its contractors, agents, servants, employees or any authorized persons acting on behalf of such Indemnifying Party.

17.2 Indemnification for Fines and Penalties.

Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or other misconduct of the other Party) for non-compliance with any Applicable Laws shall be the sole responsibility of the non-complying Party.

17.3 Limitations

- (A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party’s liability to indemnify the Indemnified Party shall be reduced in

proportion to the percentage by which the Indemnified Party's misconduct caused the damages.

(B) Neither Party shall be indemnified for Losses resulting from the sole negligence or intentional acts or misconduct of the directors, officers, employees, or agents of such Party

17.4 Notice of Proceedings.

Each Party shall promptly notify the other Party of any loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Section 17.1. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding and that such loss or proceeding may give rise to an indemnification, but in any event no later than seven (7) Days after the receipt by the Party seeking indemnification of notice of the commencement of any action for which indemnity may be sought. The delay or failure of such Indemnified Party to provide the notice required pursuant to this Section 17.4 to the other Party shall not release the other Party from any indemnification obligation which it may have to such Indemnified Party except (i) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or increased the amount of the loss, and (ii) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defense of the claim, suit, action or proceeding during such period of failure or delay.

17.5 Defense of Claims.

(A) Whether or not acknowledging in writing its obligation to indemnify an Indemnified Party to the extent required pursuant to this Section 17.5, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior approval of the Indemnified Party.

(B) Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party to the extent required pursuant to this Section 17.5 and assumes control of the defense of a claim, suit, action or proceeding in accordance with paragraph (A) above, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

(C) Neither the Indemnifying Party nor the Indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior consent of the other; *provided, however*, that after agreeing in writing to indemnify the Indemnified Party, the Indemnifying Party may, subject to paragraph (D) below,

settle or compromise any claim without the approval of such Indemnified Party. Except where such consent is unreasonably withheld, if an Indemnified Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified without the prior consent of the Indemnifying Party, the Indemnifying Party shall be excused from any indemnification obligation in respect of such settlement or compromise.

(D) Following the acknowledgement of the indemnification and the assumption of the defense by the Indemnifying Party pursuant to paragraph (A) above, the Indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless: (i) the employment of counsel by the Indemnified Party has been authorized in writing by the Indemnifying Party; (ii) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; (iii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party; or (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party, or that such claim, action, suit or proceeding involves or could have a material adverse effect upon the Indemnified Party beyond the scope of this PPA. If clause (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute reimbursable legal or other expenses hereunder.

Article 18

Legal and Regulatory Compliance

18.1 Applicable Law.

Each Party shall at all times comply with all Applicable Law related to its obligations under this PPA, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of the Party or its ability to fulfill its commitments under this PPA. Seller shall promptly notify Tri-State of any investigation, notices or findings of violations of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential or possible violation of Applicable Law. Except as otherwise expressly provided herein, each Party assumes the risk of changes in Applicable Laws following the date hereof, that affect such Party's costs of ownership and operation of its assets, and its performance of this PPA, except as otherwise specifically set forth herein.

18.2 Compliance with Governmental Approvals.

Seller shall comply with and cause the Facility to comply with all applicable Governmental Approvals. Seller shall promptly notify Tri-State of any inspections by any Governmental Authority with respect to any material Governmental Approval and will promptly provide Tri-State with copies of any notices of violation or non-compliance with respect to any material Governmental Approval. Upon permanent cessation of generation of Energy from the Facility, Seller, at its sole cost and expense, shall decommission the Facility, dismantle the Facility, remediate the Site and submit and obtain any Governmental Approvals with respect thereto.

18.3 Compliance Information.

(A) Each Party shall, for the purpose of gathering information and/or providing verbal or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

(B) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Tri-State to contact and obtain information concerning the Facility and Interconnection Facilities directly from the Interconnection Provider and the Transmission Provider and, to the extent necessary, Seller shall provide written notice to the Interconnection Provider and the Transmission Provider confirming such authorization.

18.4 Reliability Standards.

In the event that new reliability standards are promulgated by WECC, NERC, FERC, or PUC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions which result in monetary penalties being assessed to Tri-State by WECC, NERC, FERC or PUC, or any successor agencies, for lack of compliance with reliability standards (except to the extent that Seller acted at the direction of Tri-State), Seller shall reimburse Tri-State for its share of such monetary penalties.

18.5 Financial Accounting Standards.

Under accounting principles generally accepted in the United States of America ("GAAP"), Tri-State may be required to consolidate an entity with which Tri-State has entered into a long-term power purchase agreement. Seller shall provide all information needed by Tri-State in order for Tri-State to determine whether or not Seller must be consolidated by Tri-State under GAAP. If Tri-State determines in its discretion that Tri-

State is required to consolidate Seller in its financial statements, Seller shall provide reasonable access to any records and personnel, as requested by Tri-State, in connection with such consolidation and also so that Tri-State's independent auditors can conduct financial statement audits in accordance with generally accepted audit standards, as well as internal controls review. Seller shall have adequate controls over financial information.

Article 19

Assignment and Other Transfer Restrictions

19.1 Assignment of PPA.

(A) Except as expressly permitted by this Section 19.1 or in connection with a Transfer of the Facility that is expressly permitted by Section 19.4, neither Party shall assign this PPA, or any portion thereof, without the prior written consent of the other Party. Any purported assignment of this PPA or any portion thereof in violation of the foregoing shall be null and void and shall constitute an Event of Default.

(B) Notwithstanding Section 19.1(A) but subject to Section 19.1(C), without the prior written consent of the other Party:

(1) Either Party shall have the right at any time and from time to time to mortgage, create or provide for a security interest in, convey in trust, or collaterally assign its respective rights, titles and interests in this PPA to any lender, collateral agent, mortgagee, or trustee as security for its present or future indebtedness (including, in the case of such an assignment by Seller, any Financing Party) (each, a "Security Party"), without such Security Party assuming or becoming in any respect obligated to perform any of the obligations of the Parties.

(2) Any Security Party may foreclose upon or, in lieu thereof, otherwise succeed to and acquire all the rights, titles and interests of such Party in this PPA.

(3) Either Party may assign this PPA to any Affiliate thereof that has the financial capability to fulfill its obligations hereunder as demonstrated by a credit rating of equal to or better than the assigning Party.

(C) No assignment of or other succession to a Party's interest in this PPA shall be permitted pursuant to this PPA (other than Section 19.1(B)(1)) unless and until: (i) the successor assumes and agrees, in writing in form and substance reasonably acceptable to the other Party, to fully perform and discharge all of the obligations hereunder of such Party, and (ii) in the case of Seller's interest in this PPA, the successor (1) succeeds to and acquires all rights, title and interest of Seller in the Facility and (2) provides to Tri-State all Security then required to be maintained by Seller hereunder.

(D) Any successor to a Party's interest in this PPA shall notify the other Party promptly in writing of such succession, and shall furnish to the other Party evidence of such succession.

19.2 Change of Operator.

(A) Except as expressly permitted by this Section 19.2, Seller shall not replace the Operation and Maintenance Contractor (which for purposes of this Section 19.2 shall include replacement of any subcontractor or other Person providing operation management or other significant operation or maintenance services) without the prior written consent of Tri-State. The replacement of the Operation and Maintenance Contractor in violation of the foregoing shall constitute an Event of Default.

(B) Notwithstanding Section 19.2(A), Seller can replace the Operation and Maintenance Contractor without the prior written consent of Tri-State if:

(1) Seller provides to Tri-State reasonable advance written notice of such replacement (which, absent extraordinary circumstances affecting the safe and reliable operation of the Facility, shall not be less than ninety (90) Days prior to such replacement); and

(2) Seller reasonably demonstrates to Tri-State that the replacement operator is a Qualified Operator.

19.3 Change of Control.

(A) Except as expressly permitted by this Section 19.3, Seller shall not permit a Change of Control of Seller to occur without the prior written consent of Tri-State. The occurrence of a Change of Control of Seller in violation of the foregoing shall constitute an Event of Default.

(B) Notwithstanding Section 19.3(A) but subject to Section 19.3(C), without the prior written consent of Tri-State:

(1) Any direct or indirect owner of Seller shall have the right at any time and from time to time to mortgage, grant a security interest in, convey in trust, or pledge to any Security Party any equity or ownership interest in Seller or in any Person that Controls Seller.

(2) Any Security Party may foreclose upon or, in lieu thereof, otherwise succeed to and acquire any such equity or ownership interests in Seller or in any Person that Controls Seller.

(C) No Change of Control of Seller shall be permitted under this PPA unless all obligations of Seller hereunder with respect to maintaining Security are satisfied immediately following such Change of Control.

(D) Seller shall notify Tri-State promptly in writing of any Change of Control of Seller.

19.4 Transfer of Facility.

(A) Except as expressly permitted by this Section 19.4, Seller shall not Transfer all or any portion of the Facility without the prior written consent of Tri-State. The Transfer of all or any portion of the Facility in violation of the foregoing shall constitute an Event of Default.

(B) Notwithstanding Section 19.4(A) but subject to Section 19.4(C), without the prior written consent of Tri-State:

(1) Seller shall have the right at any time and from time to time to mortgage, convey in trust, or grant to any Security Party a security interest in the Facility or any portion thereof.

(2) Any Security Party may foreclose upon or, in lieu thereof, otherwise succeed to and acquire the Facility or any portion thereof.

(3) Seller may, and shall be obligated to, Transfer the Facility to any Affiliate to which Seller assigns the PPA in compliance with the provisions of Section 19.1.

(C) No Transfer of the Facility or any portion thereof shall be permitted pursuant to this PPA (other than Section 19.4(B)(1)) unless and until the successor (i) succeeds to and acquires all rights, title and interest of Seller in this PPA, (ii) assumes and agrees in writing, in form and substance reasonably acceptable to Tri-State, to fully perform and discharge all of the obligations of Seller hereunder, and (iii) provides to Tri-State all Security then required to be maintained by Seller hereunder.

(D) Seller shall notify Tri-State promptly in writing of any Transfer of the Facility or any portion thereof, and shall furnish to Tri-State evidence of such Transfer.

19.5 Reimbursement of Tri-State's Costs.

In the event Seller proposes to or does assign or transfer an interest in the Facility or this PPA, undergo a Change of Control, or replace the Operation and Maintenance Contractor, as such transactions are described in this Article 19, Seller shall reimburse Tri-State for its expenses, including internal costs and expenses and reasonable attorneys' fees, incurred by Tri-State in connection with the evaluation of such proposed transaction and the preparation, negotiation, and execution of any consent and any other documents associated with such proposed transaction.

Article 20
Purchase Option

20.1 Right of First Offer of Sale of the Facility.

(A) Except for Transfers expressly permitted by Section 19.3(B) or Section 19.4(B), Seller shall not, and shall cause each direct and indirect owner of Seller not to, at any time during the Term, consummate or enter into any agreement for the consummation of any of the following (each, a “ROFO Transfer”):

(1) any Transfer by Seller of the Facility or any part of the Facility to one or more Persons that are not Affiliates of Seller; or

(2) any Transfer by any Person, in one or more transactions to one or more other Persons that are not Affiliates of such Person, of equity or other ownership interests in one or more Project Entities that (individually or in the aggregate) constitute a direct or indirect Controlling interest in Seller;

unless Seller has first offered to Transfer the Facility, or such direct or indirect owner has first offered to Transfer such direct or indirect equity interests in Seller, as applicable, to Tri-State pursuant to a written offer (in each case, an “Offered Assets Notice”) and otherwise complies with this Section 20.1 and Article 19.

(B) Any Offered Assets Notice shall set forth in reasonable detail all material terms and conditions of the offer, including the minimum price and terms of payment, liabilities and obligations to be directly or indirectly assumed, all other financial terms, all material conditions to closing, a period of no less than 180 days following execution of the purchase agreement for the parties to obtain any approvals or other authorizations of any Governmental Authority or third party that are required by such party in connection with such Transfer, and all material representations, warranties, rights to indemnification, limitations thereon, and credit support for any of the foregoing. Following Tri-State’s receipt of the Offered Assets Notice, Tri-State shall have ninety (90) Days to investigate the proposed transaction and conduct due diligence. Seller (i) shall promptly answer any questions that Tri-State may have concerning the Facility, any applicable liabilities and obligations, and the offered terms and conditions, (ii) shall meet with Tri-State to discuss the offer, and (iii) shall provide all documents and information requested by Tri-State that are reasonably available to Seller.

(C) If Tri-State does not provide Seller notice that it accepts the offered terms and conditions to purchase the Facility or the specified equity interests (as applicable) within ninety (90) Days after receiving the Offered Assets Notice, Seller shall have the right to sell the Facility (or Seller’s relevant parent shall have the right to sell the specified equity interests, as applicable) to a third party on terms and conditions that are not more favorable in the aggregate to the third party than those included in the Offered Assets Notice, at any time within the twelve-month period following issuance of

the Offered Assets Notice, and to enter into any agreement therefor. If Seller or its relevant parent wishes to enter into an agreement for or consummate a ROFO Transfer with a third party on terms and conditions that in the aggregate are more favorable to the third party than those previously offered to Tri-State in the Offered Assets Notice, or on a date that is more than twelve months following delivery of the applicable Offered Assets Notice, such ROFO Transfer shall again be subject to this Section 20.1 and Seller or its relevant parent shall again first offer the revised terms and conditions to Tri-State pursuant to a new Offered Assets Notice.

(D) If Tri-State accepts an offer made by Seller under Section 20.1(B), the Parties shall within a further ninety (90) Days enter into a purchase agreement that, except to the extent otherwise agreed by Seller and Tri-State, incorporates the terms and conditions in the Offered Assets Notice.

20.2 Right of First Offer on Facility Expansion.

(A) If, at any time during the Term, Seller or any Affiliate of Seller intends to install or modify any energy generation or storage equipment on the Site or on any location within a five (5) mile radius of the boundary of the Site, the effect of which, if deemed part of the Facility, would be to increase the Nameplate Capacity Rating of the Facility, Seller shall first offer the Energy (and Environmental Attributes) resulting from such installation or modification ("Expansion Energy") to Tri-State. Such offer shall set forth in reasonable detail the proposed transaction and the terms and conditions of the offer, including the price. Following Tri-State's receipt of such notice, Tri-State shall have ninety (90) Days to investigate the proposed transaction and conduct due diligence. Seller shall promptly answer any question that Tri-State may have concerning the offered terms and conditions, shall meet with Tri-State to discuss the offer, and shall provide requested documents and information requested by Tri-State.

(B) If Tri-State does not provide Seller notice that it accepts the offered terms and conditions within ninety (90) Days after receiving the offer, Seller or the Affiliate of Seller may enter into an agreement to sell the Expansion Energy to a third party on terms and conditions no more favorable in the aggregate to the third party than those offered to Tri-State. If Seller or the Affiliate of Seller wishes to enter into an agreement with a third party on terms and conditions more favorable to the third party than those previously offered to Tri-State under Section 20.2(A), Seller or the Affiliate of Seller shall first offer such revised terms and conditions to Tri-State pursuant to Section 20.2(B).

(C) If Tri-State accepts an offer made by Seller under Section 20.2(A), the Parties shall within a further ninety (90) Days enter into an energy purchase agreement in substantially the same form as this PPA for the purchase and sale of Expansion Energy and associated Environmental Attributes (with the Security requirement set forth in Article 11, Contract Energy delivery requirements set forth in Section 6.1, the damage payment in Section 6.4(H) and Expected Contract Energy to

be adjusted on a pro rata basis to account for the size of the proposed expansion relative to the Expected Nameplate Capacity Rating), but incorporating such changes as are expressly identified in the terms and conditions offered by Seller.

20.3 Option to Purchase.

(A) Seller hereby gives and grants to Tri-State the exclusive and irrevocable right and option to purchase the Facility Assets, at the times and upon the terms and conditions set forth in this Section 20.3, for a price equal to the Fair Market Value of the Facility, as determined pursuant to this Section 20.3 ("Purchase Option").

(B) As used herein, "Facility Assets" means the Facility, all interest of Seller or any of its Affiliates in, to or under this PPA, and any and all tangible or intangible assets that are reasonably necessary for the ownership, operation and maintenance of the Facility, including (i) all drawings, specifications, operations and maintenance records, and performance data of or related to the Facility; (ii) all warranties, equipment service and maintenance agreements, and similar agreements related to the Facility, any portion thereof, or any related equipment or facilities; (iii) non-exclusive, irrevocable and royalty-free licenses to use software and other intellectual property necessary for the ownership, operation or maintenance of the Facility; (iv) all Governmental Approvals related to the ownership, operation or maintenance of the Facility, to the extent assignable; (v) the Interconnection Agreement and utility services agreements, (vi) the Facility Site Documents, and all other interests or rights in real estate reasonably necessary for the operation and maintenance of the Facility, and (vii) all rights to future Energy, Environmental Attributes, and tax benefits.

(C) Facility Assets do not include (without limitation) (i) any liabilities of Seller or any of its Affiliates, contingent or otherwise, other than future performance obligations under contracts and Governmental Approvals that, in any case, are reasonably necessary for the ownership, operation or maintenance of the Facility and are assigned to Tri-State; (ii) any agreement or instrument evidencing indebtedness for borrowed money; (iii) any contracts or agreements for the sale of Energy, Environmental Attributes, or other products, other than this PPA; or (iv) any contract or agreement for asset management, operations, or other services not specifically included in the Facility Assets.

(D) As a condition to any exercise of the Purchase Option, Tri-State must give non-binding written notice (a "Notice of Intent to Purchase") either (i) within ninety (90) days prior to any of [solar only: the sixth (6th) anniversary of the Commercial Operation Date, the eleventh (11th) anniversary of the Commercial Operation Date, the fifteenth (15th) anniversary of the Commercial Operation Date, the twentieth (20th) anniversary of the Commercial Operation Date, or the expiration of the Term, or (ii) within ninety (90) days following any termination of this PPA by Tri-State, following the [solar: sixth (6th)][wind: fifteenth (15th)] anniversary of the Commercial Operation Date, due to an Event of Default by Seller.

(E) For a period of sixty (60) days following the date of the Notice of Intent to Purchase, the Parties will meet to discuss and negotiate in good faith to determine and agree upon the Fair Market Value, and shall use commercially reasonable efforts to agree upon the terms and conditions of a purchase and sale agreement with respect to the Facility Assets. For the avoidance of doubt, neither agreement upon Fair Market Value and such terms and conditions, nor execution of a purchase and sale agreement, shall be conditions to the closing of a purchase and sale of the Facility Assets pursuant to exercise of the Purchase Option.

(F) For purposes of this Section 20.3, "Fair Market Value" means the fair market value of the Facility Assets as agreed by the Parties; provided, however, that in the event the Parties cannot agree upon Fair Market Value within sixty (60) Days following the delivery of the Notice of Intent to Purchase, the Parties shall retain an independent nationally recognized appraiser experienced in appraising [wind][solar]-powered electric energy generation facilities selected by Tri-State (and certified as so qualified by Seller), in which case Fair Market Value shall be as determined by such appraiser. The Parties shall share equally all fees and costs of the third appraiser, if required, retained to determine Fair Market Value.

(G) The appraiser shall consider the following factors in its determination of Fair Market Value:

(1) the expected annual generating output of the Facility over the remainder of its assumed useful life determined in a manner consistent with Prudent Utility Practices, taking into account the expected degradation of the Facility over such period;

(2) the net present value of the after-tax cash flows over the remainder of its assumed useful life (determined in a manner consistent with Prudent Utility Practices, and taking into account the expected degradation), applying a discount rate that is reasonable under then-current market conditions as agreed by the Parties, and if not so agreed within thirty (30) Days, then as determined by such appraiser;

(3) the general condition of the Facility at the time of the expected closing following exercise of the Purchase Option determined by inspection and, if applicable, testing;

(4) any restrictions on use of the Site or any portion thereof;

(5) any rights or obligations of Seller to dismantle and remove the Facility and restore the Site (whenever arising);

(6) any restrictions upon or obligations or liabilities associated with any of the Facility Assets or the operation of the Facility prior to the closing pursuant to the Purchase Option that could adversely affect the operation of the

Facility, or for which Tri-State could be responsible or have any liability, following the closing pursuant to the Purchase Option, including due to any Environmental Contamination, any accrued liabilities (contingent or non-contingent) under the Interconnection Agreement, any Facility Site Documents, or any other contract included in the Facility Assets, any accrued and unpaid property tax liabilities, and any failure to comply with any Governmental Approval or Applicable Law;

(7) the terms and conditions of this PPA, including the encumbrance of any obligations and liabilities on an assignee thereof with respect to delivery of Contract Energy to Tri-State for the remainder of the Term, the expected market price of Energy following the expiration of this PPA, transmission costs and constraints and other limitations on the marketability of power generated from the Facility;

(8) any terms and conditions (if any) that will apply to the sale and purchase of the Facility Assets;

(9) an appropriate discount to the extent that (i) Seller fails to provide to Tri-State and the appraiser any material information related to the Facility Assets or Site, or (ii) the representations, warranties, indemnification obligations and other terms and conditions (if any) that will apply to the sale and purchase of the Facility Assets materially deviate from customary terms and conditions for the sale and purchase of facilities similar to the Facility; and

(10) such other factors as the independent appraiser deems relevant.

(H) Following delivery of a Notice of Intent to Purchase, Seller shall promptly provide to Tri-State (and, if applicable, the appraiser) all information regarding the Facility Assets and Site as may be requested thereby, that is reasonably available to Seller, and Tri-State (and, if applicable, the appraiser) shall be provided with access to the Site and Facility in order to conduct an inspection and witness any testing. All inspections and testing, and access to the Site and Facility, shall be conducted in accordance with all of Seller's applicable reasonable safety and health rules and requirements that have been provided to Tri-State (and, if applicable, the appraiser), and shall be conducted in a manner so as to minimize disruption in the operation and the maintenance of the Facility and in such a manner so as to avoid any adverse economic impacts to Seller under this PPA.

(I) To definitively exercise the Purchase Option, Tri-State must deliver written notice (a "Purchase Notice") to Seller within sixty (60) days following determination of Fair Market Value pursuant to this Section 20.3. Once the Purchase Notice has been delivered, the Purchase Option shall be irrevocable.

(J) The closing for purchase and sale of the Facility Assets shall occur on the later of the thirtieth (30th) day following the date of the Purchase Notice and the

fifth (5th) Business Day after the receipt of all required consents and approvals of Governmental Authorities. At the closing:

(1) Seller shall convey to Tri-State good and marketable title to all of the Facility Assets, free and clear of all liens and encumbrances (other than those arising under the terms of the Facility Site Documents and Governmental Approvals), and with such other representations and warranties as may be agreed by the Parties; and

(2) Tri-State shall pay to Seller, in full consideration thereof, an amount in cash equal to the Fair Market Value.

Article 21

Miscellaneous

21.1 Waiver.

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

21.2 Fines and Penalties.

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

(B) If fees, fines, liens, penalties, or costs are claimed or assessed against Tri-State by any Governmental Authority due to noncompliance by Seller or the Facility with this PPA, any requirements of Applicable Law, any permit or contractual obligation, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any requirements of Applicable Law, permit, or contractual obligation, Seller shall indemnify and hold Tri-State harmless against any and all losses, liabilities, damages, and claims suffered or incurred by Tri-State, including claims for indemnity or contribution made by third parties against Tri-State, except to the extent Tri-State recovers any such losses, liabilities or damages through other provisions of this PPA.

21.3 Disclaimer of Third Party Beneficiary Rights.

In executing this PPA, Tri-State does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

21.4 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as specifically provided in Section 12.5, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of Persons to perform Seller's obligations under this PPA, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Tri-State for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Tri-State employee.

21.5 Severability.

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

21.6 Complete Agreement; Amendments.

The terms and provisions contained in this PPA constitute the entire agreement between Tri-State and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Tri-State and Seller with respect to the sale of Contract Energy. This PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties.

21.7 Binding Effect.

This PPA, as it may be amended from time to time pursuant to this Article 21, shall be binding upon and inure to the benefit of the Parties and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

21.8 Headings.

The table of contents, captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

21.9 Counterparts.

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

21.10 Governing Law.

The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of Colorado. The Parties hereby submit to the exclusive jurisdiction in the federal and state courts of the State of Colorado, and venue is hereby stipulated as Denver, Colorado.

21.11 Mobile-Sierra.

Notwithstanding any other provision of this PPA to the contrary, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this PPA through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this PPA proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Applicable Law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first written above.

Seller:



By: _____

Printed Name: _____

Title: _____

Tri-State:

Tri-State Generation and Transmission Association, Inc.

By: _____

Printed Name:

Title: Chief Executive Officer

EXHIBIT A

PROJECT MILESTONES

Date

10 Days after the
Effective Date

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Construction Milestones

Seller shall have established the Security in accordance with
Article 11.

Seller shall have delivered a fully executed EPC Contract to Tri-
State.

[wind only] Seller shall have provided Tri-State with copies of
Determinations of No Hazard from the Federal Aviation
Administration for the Units.

Seller shall have provided Tri-State with documentation that all
Seller required Governmental Approvals have been obtained or
will be obtained by the time needed to meet all Construction
Milestones.

Seller shall have entered into Financing Documents and having
achieved or obtained waivers with respect to all conditions
precedent to the initial availability for disbursement of funds
under the Financing Documents.

Seller shall have commenced construction of the Facility (all
Seller required Governmental Approvals required to construct
Facility shall have been obtained and are in full force and effect,
except for minor Seller required Governmental Approvals that
are expected to be obtained in the ordinary course, the failure
of which to obtain would not adversely affect the construction
and/or operation of the Facility).

Delivery of major components to the Site shall have
commenced.

Seller shall have provided Tri-State with copies of the executed
Operation and Maintenance Agreement, if applicable

The step-up transformer shall have been delivered to the Site.

Seller shall have completed construction of Seller's
Interconnection Facilities and such facilities are capable of
being energized.

Start-up testing of the Units shall have commenced.

Commercial Operation Milestone



The Facility shall have achieved Commercial Operation.

EXHIBIT B

FACILITY DESCRIPTION AND SITE MAPS

Required Items:

Location of Electric Interconnection Point (see definition of Point of Delivery)

A detailed description of the Facility, including identification of the major equipment and components that will make up the Facility (see Section 3.1)

A scaled map that identifies the Site and the location of the Units on the Site and a drawing identifying the location of the Electric Interconnection Point, the Point of Delivery, important ancillary facilities and Interconnection Facilities (See Section 3.2)

EXHIBIT C
CONTRACT ENERGY RATE

EXHIBIT D

INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
1. Commercial General Liability ("CGL") and commercial umbrella	\$15,000,000 per occurrence and aggregate. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing similar coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification limiting coverage for liability assumed under an insured contract. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

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

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be:

primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA.

2 Environmental/Pollution Liability insurance either stand alone or as part of the CGL/commercial umbrella	At least \$5,000,000 each occurrence
--	--------------------------------------

Environmental/Pollution Liability insurance shall protect against bodily injury and property damage claims arising out of pollution. The policy through its language or by endorsement, shall include coverage for contractual liability.

3. Business Automobile Liability	\$1,000,000 combined single limit (each accident), including Non-Owned and Hired Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing similar liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. If transporting hazardous waste/materials from the Site, an appropriate MCS-90 Endorsement must be attached with \$10,000,000 limits of liability.

4. Workers' Compensation	Statutory Requirements. Seller may comply with these requirements through its project operator.
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EXHIBIT D

INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
5. Employers' Liability, if Seller maintains employees (or a certification from Seller that is maintains no employees)	Bodily Injury by Accident, \$1,000,000 each accident Bodily Injury by Disease, \$1,000,000 policy limit Bodily Injury by Disease, \$1,000,000 each employee

6. Builders All Risk insurance coverage	For the full value of Facility.
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Builders All Risk insurance shall include coverage carried by either Seller or the EPC Contractor, without limitation against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, water, falsework, testing and startup, for entire period of construction, which shall cover the interests of Indemnified Parties until the Commercial Operation Date, and insurance coverage as set forth in 7 below is provided. A certificate of Builders Risk insurance shall be provided to Tri-State regardless of who procures coverage.

7. All-Risk Property insurance covering physical loss or damage to the Facility	Full Replacement Value of the Facility. A deductible may be carried, which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake; (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and engines, and (iii) business interruption to cover loss of providing Energy to Tri-State should Seller not be able to produce or provide electrical energy as agreed to herein. Tri-State shall be named as a loss payee as to its interests under this PPA.

Seller shall require its contractors and subcontractors to purchase and maintain commercial general liability including environmental coverage within or as a separate policy in an amount commensurate with type of work to be performed and automobile, workers' compensation and employers liability insurance of the types and amounts specified above. If requested by Tri-State, Seller shall furnish copies of certificates of insurance evidencing such coverage.

EXHIBIT E

PROJECT CONTRACTS

[Seller to Provide]

1. Generator Interconnection Agreement

2.

EXHIBIT F

SELLER'S REQUIRED GOVERNMENTAL APPROVALS

[Seller to Provide]

EXHIBIT G

MONTHLY PRODUCTION PERCENTAGE OF EXPECTED CONTRACT ENERGY

Calendar Month	Monthly Production %
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

EXHIBIT H

OPERATING COMMITTEE REPRESENTATIVES

Tri-State	Seller
Primary Representative: Origination Manager Tri-State Generation and Transmission Association, Inc. 1100 W. 116 th Avenue Westminster, CO 80234 Phone: (303) 254-_____ Email: _____@tristategt.org	Primary Representative:
Alternative Representative: Senior Manager, Energy Resources Tri-State Generation and Transmission Association, Inc. 1100 W. 116 th Avenue Westminster, CO 80234 Phone: (303) 254-_____ Email: _____@tristategt.org	Alternative Representative:

EXHIBIT I

NOTICE ADDRESSES

Tri-State	Seller
Notices: Chief Executive Officer Tri-State Generation and Transmission Association, Inc. 1100 W. 116 th Avenue Westminster, CO 80234 Telephone: (303) 452-6111 with a copy to (at the same address): Senior Vice President and General Counsel	Notice:

EXHIBIT J

FORM OF ATTESTATION AND BILL OF SALE

_____ (“Seller”) hereby sells, transfers and delivers to Tri-State Generation and Transmission Association, Inc. (“Tri-State”) the Environmental Attributes associated with the generation of Contract Energy, as detailed in the Energy Purchase Agreement for the _____ Project between the Parties, dated _____ (the “Agreement”). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of Renewable Energy Facility

Type/Resource

Nameplate Capacity
Rating (MW)

Commercial Operation
Date

(from) - (to)
Dates

MWh generated

One (1) REC represents the REC and Environmental Attributes reporting rights associated with one (1) MWh generated from the Facility.

Seller further attests, warrants and represents as follows:

- i) each REC and Environmental Attribute is free and clear of any liens, encumbrances and/or defects of title;
- ii) none of the RECs or Environmental Attributes has been retired, claimed or represented as part of electricity output or sales by Seller, or used to satisfy obligations in any other jurisdiction;
- iii) its sale to Tri-State is its one and only sale of the RECs and Environmental Attributes with respect to the Contract Energy referenced herein, after due inquiry, no third party has claimed nor can claim any interest in such RECs or Environmental Attributes;

iv) the Facility identified above produced the number of MWh above during the period indicated above;

v) Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and

vi) Seller owns the _____.
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Tri-State all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Contract Energy.

Contact Person: _____

phone: _____; fax: _____

[Seller]

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

IRREVOCABLE LETTER OF CREDIT
NO _____

DATE OF ISSUANCE: _____

INITIAL EXPIRATION DATE: [Must be at least
ONE YEAR after Date of Issuance]

BENEFICIARY:
TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.

APPLICANT:
[NAME OF APPLICANT]

ATTN: CREDIT RISK ADMINISTRATOR
1100 W. 116TH AVENUE
WESTMINSTER, CO 80234

[APPLICANT ADDRESS]

1. AS THE ISSUING BANK ("ISSUER"), WE, [NAME OF ISSUING BANK], HEREBY ESTABLISH AND ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ IN FAVOR OF THE ABOVE-NAMED BENEFICIARY ("BENEFICIARY") FOR THE ACCOUNT OF THE ABOVE-NAMED APPLICANT ("APPLICANT") IN THE MAXIMUM AGGREGATE AMOUNT OF USD \$ _____ (_____ U.S. DOLLARS).

2. ISSUER UNDERTAKES TO BENEFICIARY TO PAY BENEFICIARY'S DEMAND FOR PAYMENT OF AN AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT, UPON PRESENTATION OF A DEMAND FOR PAYMENT SUBSTANTIALLY IN THE FORM OF EXHIBIT "A," ATTACHED HERETO, DULY COMPLETED AS INDICATED, AT THE FOLLOWING PLACE FOR PRESENTATION: [ADDRESS OF PLACE FOR PRESENTATION], AT ANY TIME ON OR BEFORE 5:00 PM (_____ TIME) ON THE EXPIRATION DATE.

DEMAND FOR PAYMENT MAY ALSO BE PRESENTED BY FACSIMILE ("FAX") TO FAX NO. _____ PROVIDED THAT SUCH FAX PRESENTATION IS MADE AT ANY TIME ON OR BEFORE 5:00 PM (_____ TIME) ON THE EXPIRATION DATE. ISSUER WILL ACKNOWLEDGE RECEIPT OF BENEFICIARY'S PRESENTMENT WITHIN FOUR (4) BUSINESS HOURS TO THE EMAIL ADDRESS PROVIDED TO ISSUER IN THE FAX DRAW CERTIFICATE.

IF THE AMOUNT IN THE DRAW CERTIFICATE EXCEEDS THE AMOUNT AVAILABLE, BUT THE PRESENTATION OTHERWISE COMPLIES, ISSUER UNDERTAKES TO PAY THE AMOUNT AVAILABLE.

NO OTHER DOCUMENTS WILL BE REQUIRED TO BE PRESENTED. PAYMENT MADE HEREUNDER SHALL BE MADE IN U.S. DOLLARS IN IMMEDIATELY AVAILABLE FUNDS.

3. PARTIAL AND MULTIPLE DRAWS AND PRESENTATIONS ARE PERMITTED, PROVIDED THAT THE AVAILABLE AMOUNT OF THIS LETTER OF CREDIT SHALL BE PERMANENTLY REDUCED BY THE AMOUNT OF EACH SUCH DRAW.

4. THIS LETTER OF CREDIT IS ISSUED PURSUANT TO THE PROVISIONS OF THAT CERTAIN ENERGY PURCHASE AGREEMENT BETWEEN THE BENEFICIARY AND THE APPLICANT DATED AS OF _____, 20__ (AS THE SAME MAY HAVE BEEN OR MAY BE AMENDED FROM TIME TO TIME, THE "PPA"). NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO THE PPA OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, OR REFERENCES IN THE PPA OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS TO THIS LETTER OF CREDIT, THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

5. THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED EACH YEAR WITHOUT AMENDMENT FOR A PERIOD OF ONE YEAR FROM THE EXPIRATION DATE HEREOF, AS EXTENDED, UNLESS AT LEAST FORTY-FIVE (45) DAYS PRIOR TO THE EXPIRATION DATE, ISSUER NOTIFIES BENEFICIARY AND APPLICANT BY A NATIONALLY RECOGNIZED OVERNIGHT COURIER OR CERTIFIED MAIL THAT IT ELECTS NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD (THE PRESENT OR ANY FUTURE EXPIRATION DATE AS AFORESAID IS REFERRED TO HEREIN AS THE "EXPIRATION DATE"). NOTICE OF NON-EXTENSION WILL BE GIVEN BY ISSUER TO BENEFICIARY AT BENEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS BENEFICIARY MAY DESIGNATE TO ISSUER IN WRITING AT ISSUER'S LETTERHEAD ADDRESS.

6. ISSUER UNDERTAKES TO MAKE PAYMENT AGAINST A COMPLYING PRESENTATION WITHIN THREE BUSINESS DAYS AFTER PRESENTATION. THE BENEFICIARY SHALL RECEIVE PAYMENT BY WIRE TRANSFER TO A BANK ACCOUNT OF THE BENEFICIARY. FOR THE PURPOSES HEREOF, "BUSINESS DAY" SHALL MEAN ANY DAY ON WHICH COMMERCIAL BANKS IN COLORADO ARE NOT AUTHORIZED OR REQUIRED TO CLOSE.

7. THIS LETTER OF CREDIT IS FREELY TRANSFERABLE TO AN ASSIGNEE AND THE NUMBER OF TRANSFERS IS UNLIMITED. SUBJECT TO COMPLIANCE WITH APPLICABLE LAWS, ISSUER AGREES THAT IT WILL EFFECT ANY TRANSFERS IMMEDIATELY UPON PRESENTATION TO ISSUER OF THIS LETTER OF CREDIT AND A COMPLETED WRITTEN TRANSFER REQUEST SUBSTANTIALLY IN THE FORM OF EXHIBIT "B," ATTACHED HERETO, DULY COMPLETED AS INDICATED. SUCH TRANSFER WILL BE EFFECTED AT NO COST TO BENEFICIARY. ANY TRANSFER FEES ASSESSED BY ISSUER WILL BE PAYABLE SOLELY BY APPLICANT, AND THE PAYMENT OF ANY TRANSFER FEES WILL NOT BE A CONDITION TO THE VALIDITY OR EFFECTIVENESS OF THE TRANSFER OR THIS LETTER OF CREDIT.

8. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 ("ISP98") (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE ISP98. AS TO MATTERS NOT COVERED BY THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH

THE LAWS OF THE STATE OF COLORADO, WITHOUT REGARD FOR THE PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER.

9. ISSUER'S CHARGES AND FEES FOR ISSUING, AMENDING, OR HONORING THIS LETTER OF CREDIT ARE FOR APPLICANT'S ACCOUNT AND SHALL NOT BE DEDUCTED FROM ANY PAYMENT ISSUER MAKES UNDER THIS LETTER OF CREDIT.

ISSUER:

By: _____
AUTHORIZED SIGNATURE
Its: _____

EXHIBIT "A"
(TO LETTER OF CREDIT)

FORM OF DEMAND FOR PAYMENT

[ISSUING BANK NAME]
[ISSUING BANK ADDRESS]

DATE:

LADIES AND GENTLEMEN:

THIS DEMAND FOR PAYMENT IS PRESENTED BY THE UNDERSIGNED BENEFICIARY UNDER THE IRREVOCABLE LETTER OF CREDIT NO. _____, DATED _____ (THE "LETTER OF CREDIT"), ISSUED BY _____ ("ISSUER") FOR THE AMOUNT OF _____ U.S. DOLLARS _____ AND ____/100THS (U.S.\$_____), WHICH CONSTITUTES A PAYMENT OF THE FUNDS AVAILABLE TO THE BENEFICIARY UNDER THE LETTER OF CREDIT.

1. UNDER THIS DEMAND FOR PAYMENT, THE BENEFICIARY STATES [CHECK APPLICABLE]:

☐ BENEFICIARY IS OWED BY APPLICANT THE AMOUNT DEMANDED UNDER THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED _____ AND DATED _____, WHICH AMOUNT REMAINS DUE AS OF THE DATE OF THIS DEMAND FOR PAYMENT.

☐ THE ISSUER HAS GIVEN WRITTEN NOTICE PURSUANT TO THE LETTER OF CREDIT OF ITS INTENT NOT TO EXTEND THE LETTER OF CREDIT FOLLOWING THE PRESENT EXPIRATION DATE THEREOF AND THE CURRENT EXPIRY DATE OF THIS LETTER OF CREDIT IS WITHIN THIRTY (30) DAYS AND THE AMOUNT DEMANDED IS REQUIRED TO SECURE THE OBLIGATIONS OF APPLICANT UNDER THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED _____ AND DATED _____.

2. BENEFICIARY REQUESTS THE AMOUNT DEMANDED HEREUNDER BE TRANSFERRED TO BENEFICIARY BY WIRE TRANSFER TO THE FOLLOWING BANK ACCOUNT OF THE BENEFICIARY:

- [3. ISSUER ACKNOWLEDGEMENT OF BENEFICIARY'S PRESENTMENT BY FAX SHALL BE SENT TO BENEFICIARY AT _____@TRISTATEGT.ORG.]

BENEFICIARY:

TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.

BY: _____

NAME: _____

TITLE: _____

EXHIBIT "B"
(TO LETTER OF CREDIT)

FORM OF TRANSFER REQUEST

IRREVOCABLE LETTER OF CREDIT NO: _____

CURRENT BENEFICIARY:

APPLICANT:

TO: [NAME OF ISSUING BANK]

THE UNDERSIGNED, AS THE CURRENT "BENEFICIARY" OF THE ABOVE REFERENCED LETTER OF CREDIT, HEREBY REQUESTS THAT YOU REISSUE THE LETTER OF CREDIT IN FAVOR OF THE TRANSFEREE NAMED BELOW [INSERT TRANSFEREE NAME AND ADDRESS BELOW]:

FROM AND AFTER THE DATE THIS TRANSFER REQUEST IS DELIVERED TO THE ISSUER, THE TRANSFEREE SHALL BE THE "BENEFICIARY" UNDER THE LETTER OF CREDIT FOR ALL PURPOSES AND SHALL BE ENTITLED TO EXERCISE AND ENJOY ALL OF THE RIGHTS, PRIVILEGES AND BENEFITS THEREOF.

DATED: _____

[NAME OF BENEFICIARY]

By:
Name:
Title:

EXHIBIT L

FORM OF GUARANTY

This Guaranty is executed and delivered as of this _____ day of _____, 20__ by _____, a _____ ("Guarantor"), in favor of Tri-State Generation and Transmission Association, Inc. ("Company"), in connection with the performance by _____, a _____ ("Seller") of that certain Energy Purchase Agreement for the _____, dated _____, 20__, TS-__-____, by and between Seller and Company (the "PPA"). Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.

RECITALS

A. Seller is planning to develop, design, construct, own, operate, and maintain a _____-powered electric energy generating facility having an Expected Nameplate Capacity Rating of _____ MW **AC** to be located in _____ County, _____ (the "Facility").

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

C. This Guaranty is delivered to the Company pursuant to Section 11.1(A) of the PPA.

D. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, Guarantor hereby agrees as follows:

AGREEMENT

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

Guaranty. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

- a. The liability of Guarantor under this Guaranty is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the PPA or the pursuit by Company of any remedies which it now has or may hereafter have under the PPA;
- b. Company may enforce this Guaranty upon the occurrence of a default by Seller under the PPA notwithstanding the existence of a dispute between Company and Seller with respect to the existence of the default;
- c. The obligations of Guarantor under this Guaranty are independent of the obligations of Seller under the PPA and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Seller or any other guarantors and whether or not Seller is joined in any such action or actions;
- d. Company may, at its election, foreclose on any security held by Company, or exercise any other right or remedy available to Company without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Company by Seller have been paid;
- e. Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, amendment, supplement, extension, agreement or stipulation between Seller and Company or their respective successors and assigns, with respect to the PPA or the obligations encompassed thereby; (ii) Company's waiver of or failure to enforce any of the terms, covenants or conditions contained in the PPA; (iii) any release of Seller or any other guarantor from any liability with respect to the Obligations or any portion thereof; (iv) any release, compromise or subordination of any real or personal property then held by Company as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto; (v) without in any way limiting the generality of the foregoing, if Company is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit; (vi) Company's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty; (vii) Company's exercise of any other rights available to it under the PPA; (viii) Company's consent to the change, reorganization or termination of the corporate structure or existence of the Seller and to any corresponding restructuring of the Obligations; (ix) any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations; and (x) any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any

extent vary the risk of Guarantor as an obligor with respect to the Obligations; and

- f. Guarantor agrees that upon a demand for payment under this Guaranty, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Seller may allege or assert against Company with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Seller may allege or assert against Company (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.
2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ (\$ _____), plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company.
3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:
 - a. to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;
 - b. to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and
 - c. to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.
4. Performance; Payment. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately (but in no event later than three (3) Business Days) upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct. All sums payable by Guarantor hereunder shall be made in immediately available funds in U.S. Dollars.
5. Term; Satisfaction.

- a. This Guaranty shall continue in full force and effect until the earlier to occur of: (i) the substitution of an alternative form of Security in accordance with the PPA; (ii) the satisfaction of all Obligations of Seller under the PPA; or (iii) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the maximum liability set forth in Section 2, together with any other amounts required to be paid by Guarantor pursuant to Section 10 hereof.
 - b. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full.
- 6. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Company, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Seller. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.
- 7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:
 - a. all set-offs, counterclaims, withholdings or deductions and all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;
 - b. any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;
 - c. any defense based upon an election of remedies by Company;
 - d. any duty of Company to protect or not impair any security for the Obligations;

- e. any defense based upon promptness, diligence, and any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - f. the benefit of any laws limiting the liability of a surety or any other circumstance that limits the liability of or exonerates a guarantor generally or provides any legal or equitable discharge of Guarantor's obligations hereunder;
 - g. other than demand for payment, any requirement of notices between Company and Seller including, without limitation, with respect to the PPA and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by Seller to Company, any information regarding Seller's financial condition, and all other notices whatsoever;
 - h. any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
 - i. until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.
8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.
9. Representations and Warranties. Guarantor represents and warrants to Company as follows:
- a. Guarantor is a [corporation], duly organized, validly existing, and in good standing under the laws of the state of its [incorporation]. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
 - b. The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor

and constitutes a legal, valid and binding obligation of Guarantor,
enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor hereby agrees to pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.
11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.
13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor. Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of Company, which consent may be withheld in its sole discretion. Company shall have the right to assign this Guaranty to any person or entity without the prior written consent of Guarantor; *provided, however*, that no such assignment shall be binding upon Guarantor until it receives written notice of such assignment from Company.
14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of Colorado without regard to the principles of conflicts of law thereof. Guarantor hereby submits to the exclusive jurisdiction in the federal and state courts of the State of Colorado, and venue is hereby stipulated as Denver, Colorado. Guarantor waives any claim or defense that such action or proceeding brought in any such court is an inconvenient forum, any objection to venue with respect to such action or proceeding, and any right of jurisdiction on the account of the place of residence or domicile of the Guarantor.
15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

if to Guarantor: _____

Attn:
 Phone: () _____

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

By: _____
Name: _____
Title: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of _____.

My commission expires: _____

(S E A L)