

**[Commenter 14]**  
**Comments on**  
**Draft ISC Contract**  
**and Preliminary**  
**Proposal**  
**Requirements**

**From:** [Commenter 14]  
**Sent:** Tue 5/19/2026 5:32 PM  
**To:** Illinois-RFP <Illinois-RFP@nera.com>  
**Subject:** RE: Initial Storage Procurement Comments

Good afternoon,

In the comments I submitted last week, the word “requirement” was omitted from our comments on Section 2.7. A corrected version is attached. The entire paragraph is pasted below for reference. I apologize for the error. Please let me know if you have any questions.

“ELCC is a non-controllable risk for a developer as an Independent Power Producer, this would reduce ability to bid into this process. An ELCC floor may not necessary be passed down to rate payers and puts the risk onto generators. A floor may under-compensate highly valuable projects, provide a mismatch with real capacity needs and operators would have no control over the ELCC value which would provide an unforeseen risk for investors/ financing requirements. We suggest eliminating this as a requirement.”

[Commenter 14]

**From:** [Commenter 14]  
**Sent:** Wed 5/13/2026 7:13 PM  
**To:** Illinois-RFP <Illinois-RFP@nera.com>  
**Subject:** Initial Storage Procurement Comments

Good evening,

Attached please find comments on Preliminary Proposal Requirements and the Draft ISC Contract. Please let me know if you have any questions.

Thank you!

Best,

[Commenter 14]

**Indexed  
Storage  
Credit  
Agreement  
(DRAFT)**

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# INDEXED STORAGE CREDIT AGREEMENT

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## INDEXED STORAGE CREDIT AGREEMENT

THIS INDEXED STORAGE CREDIT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between \_\_\_\_\_ (“Seller” or “Party A”) and [Ameren Illinois Company d/b/a Ameren Illinois / Commonwealth Edison Company] (“Buyer” or “Party B”). Each of Seller and Buyer is sometimes referred to herein as a “Party” or collectively as the “Parties.”

### RECITALS

**WHEREAS**, the Illinois Power Agency (“IPA”) issued a Request for Proposals (the “RFP”) for the payment of Indexed Storage Credits (“ISCs”) by Illinois electric utilities, for which bid results were approved by the Illinois Commerce Commission (“ICC”) on \_\_\_\_\_, 20\_\_ (“Commission Bid Approval Date”);

**WHEREAS**, Seller was a winning bidder with respect to the Project selected through the RFP;

**WHEREAS**, pursuant to the RFP, Buyer and Seller agreed to enter into this Agreement to set forth the terms and conditions of the Transaction entered into by the Parties; and

**WHEREAS**, each of Buyer and Seller believes it is in its best interest to enter into this Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the mutual agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1: DEFINITIONS

1.1 “AAA” is defined in Section 15.2.

1.2 “Acceptable Vintage Period” means the period in which an ISC must be generated for such ISC to be eligible for payment and shall be the period starting on the first day of the Earliest Vintage Month and ending on the last day of the Latest Vintage Month.

1.3 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, with “control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies, or activities of a person, whether through ownership or voting securities, by contract or otherwise.

1.4 “Agreement” means this Indexed Storage Credit Agreement.

1.5 “Applicable Program” means the Energy Storage System Portfolio Standard, as established under 20 Ill. Comp. Stat. 3855/1-75(d-20), or successor.

1.6 “Available” or “Availability” means, with respect to the Project, on or after the COD, the Project is (i) interconnected into the transmission system of RTO and (ii) available for charging and/or

discharging, consistent with RTO rules.

1.7 “Bankrupt” means an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 60 days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debts as they fall due.

1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, is the Party from whom the notice, payment or delivery is sent and by whom the notice or payment or delivery is received.

1.9 “Buyer” means the buyer of the Product under this Agreement.

1.10 “Claiming Party” is defined in Section 10.1.

1.11 “Collateral Requirement” means, with respect to the Project prior to COD, an amount equal to fifty thousand dollars (\$50,000) times the Proposed Contract Capacity; and with respect to a Project on or after COD, an amount equal to fifty thousand dollars (\$50,000) times the Initial Contract Capacity.

1.12 “Collateral Threshold” is defined in Section 7.1.

1.13 “Commercially Reasonable Threshold” means, the amount equal to the multiplicative product of (a) Strike Price, (b) Proposed Contract Capacity (if prior to COD) or Initial Contract Capacity (if COD has occurred), (c) 4 hours and (d) 365 days; provided that in any case the Commercially Reasonable Threshold shall be subject to a minimum of \$2,500,000 and a maximum of \$6,000,000.

1.14 “Contract Capacity” [Commenter 14 note: At what point in time is this measured? Is this charging or discharging capacity? This definition creates additional risk for developers because battery capacity decreases over time due to aging, ISC Contract requires a 4-hour discharge, making it necessary to reduce the contracted capacity annually. Despite this characteristic, current contracts do not allow for exceeding the contracted capacity and stipulate steep penalties for falling short, thereby imposing excessive risk on the Seller. Inflated risk premiums will ultimately increase strike prices for Illinois ratepayer] means the power output capability of the Project for a Delivery Year as recognized by RTO, expressed in megawatts (MW), which amount is specified in the Product Order as may be updated pursuant to Section 2.7. For avoidance of doubt, building a Project with a larger power capacity than the Proposed Contract Capacity and [Commenter 14 note: Why is this prohibited?]e selling the residual capacity under a different arrangement is not permitted.]

1.15 “Construction Activities” means activities related to the Project that includes not only construction, but also any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented and all construction work performed by Seller, including its contractors and subcontractors, relating to construction, maintenance, repair, assembly, or disassembly work in relation to the Project.

1.16 “Commercial Operation Date” or “COD” means the date on which the Project first achieved Commercial Operations as recognized by RTO.

1.17 “Commercial Operations” means the Project is Available for dispatch by RTO into the wholesale day-ahead or real-time markets, excluding dispatch for purposes of completing testing and commissioning of all components of the Project to ensure the Project is mechanically, electrically and structurally capable of performing under the Agreement, which includes completion of end-to-end systems controls test and verification.

1.18 “Commercial Operations Deadline” means the date on which the Project must achieve Commercial Operations, unless extended pursuant to Section 2.3 or Section 10.1.

1.19 “Credit Rating” means, with respect to the Seller or Seller’s Guarantor, as applicable, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (excluding, however, any debt obligations that are supported by specific third party credit enhancement that would not apply to payment obligations under this Agreement) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer default rating by Fitch, or the issuer rating by Moody’s, or the corporate issuer rating or corporate credit rating by S&P; provided, however, that in the event Seller (or Seller’s Guarantor, if applicable) is rated by only one rating agency, that rating will be used. If Seller, or its Guarantor, is rated by only two rating agencies, and the ratings are split, the lower rating will be used. If Seller, or its Guarantor, is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that in the event that the two highest ratings are common, such common rating will be used.

1.20 “Defaulting Party” is defined in Section 9.1 and Section 9.2.

1.21 “Default Rate” means a rate per annum equal to four percentage points (4%) over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates.”

1.22 “Delivery Year” means each consecutive twelve (12) calendar month period during the Acceptable Vintage Period beginning with June 1 of each calendar year through and including May 31 of the following calendar year; provided that if the Earliest Vintage Month is not June, (i) the period commencing on the first day of the Earliest Vintage Month through and including the immediately following May 31 and (ii) the period commencing on June 1 immediately prior to the end of the Acceptable Vintage Period through and including the last day of the Latest Vintage Month shall, in each case, be a Delivery Year. For avoidance of doubt, unless the term “Delivery Year” is used, the uncapitalized term “delivery year” shall refer generally to each consecutive twelve (12) calendar month period beginning with June 1 of each calendar year through and including May 31 of the following calendar year, regardless of whether or not such period is in the Acceptable Vintage Period.

1.23 “Delivery Year Maximum Quantity” means, with respect to a Delivery Year, an amount equal to the multiplicative product of (a) the Contract Capacity for such Delivery Year, (b) four (4) hours and (c) the number of days in such Delivery Year within the Acceptable Vintage Period.

1.24 “Earliest Commercial Operation Date” means the earliest date on which the Project may achieve Commercial Operations, which date is specified in the Product Order.

1.25 “Earliest Vintage Month” means the Vintage Month elected by Seller pursuant to Section 2.5(a), which may be delayed pursuant to Section 2.5(e).

1.26 “Early Termination Date” is defined in Section 9.3.

1.27 “Effective Date” means the date this Agreement became effective as written above.

1.28 “ELCC” means the project-specific effective load carrying capability rating in percentage recognized by RTO for the Project for a Delivery Year as provided by Seller pursuant to Section 2.5 or Section 2.7. If a project specific ELCC is not available for a Delivery Year, then the prevailing effective

load carrying capability class rating for 4-hour duration energy storage resources (with, if relevant for determining which class rating is applicable, RTE of 85%) applicable to the ISC Delivery Point shall be used for such Delivery Year. If RTO uses a different percentage metric than ELCC for the purposes of determining the capacity value of energy storage systems that offer into the capacity market, then ELCC in this Agreement will be understood to mean this different percentage metric used by RTO.

1.29 “Equity Eligible Contractor” means a business that is majority-owned by Equity Eligible Persons, or a nonprofit or cooperative that is majority-governed by Equity Eligible Persons or is a natural person that is an Equity Eligible Person offering personal services as an independent contractor as defined in Section 1-10 of the IPA Act as further clarified in the IPA’s long-term renewable resources procurement plan as approved by the ICC in ICC Docket No. 25-0945.

1.30 “Equity Eligible Persons” means persons who would most benefit from equitable investments by Illinois State designed to combat discrimination, specifically: (a) persons who graduate from or are current or former participants in the Clean Jobs Workforce Network Program, the Clean Energy Contractor Incubator Program, the Illinois Climate Works Pre-apprenticeship Program, Returning Residents Clean Jobs Training Program, or the Clean Energy Primes Contractor Accelerator Program, and the solar training pipeline and multi-cultural jobs program created in paragraphs (a)(1) and (a)(3) of Section 16-108.12 of the Public Utilities Act; (b) persons who are graduates of or currently enrolled in the foster care system; (c) persons who were formerly incarcerated; (d) persons whose primary residence is in an Equity Investment Eligible Community as defined in Section 1-10 of the IPA Act as further clarified in the IPA’s long-term renewable resources procurement plan as approved by the ICC in ICC Docket No. 25-0945.<sup>1</sup>

1.31 “Event of Default” is defined in Section 9.1 and Section 9.2.

1.32 “External Event” is defined in Section 10.1.

1.33 “Fitch” means Fitch Ratings Ltd.

1.34 “Force Majeure” is defined in Section 10.1.

1.35 “General Contractor” means the entity or organization with main responsibility for the building of a construction project and who is the party signing the prime construction contract for the Project.

1.36 “Government Action” means action by a Governmental Authority to change the eligibility of a Product for an Applicable Program or substantially change the requirements for compliance by persons obligated to comply with the Applicable Program which in either case has a material adverse effect on the value of a Product under this Agreement.

1.37 “Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any applicable laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

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<sup>1</sup> For avoidance of doubt, “persons who were formerly incarcerated” means any individual who (i) was sentenced to a term of imprisonment, not including juvenile detention, after the disposition of one or more misdemeanor or felony charges; and (ii) has completed their sentence. For avoidance of doubt, “persons who are graduates of or currently enrolled in the foster care system” means any individual who is currently or was formerly a youth in care of the Illinois Department of Children and Family Services, or the equivalent agency in another state.

1.38 “Guarantor” means the party named as the Guarantor in the Guaranty.

1.39 “Guaranty” means an irrevocable and unconditional guaranty made by Seller’s Guarantor, in the form attached hereto as Exhibit E-2, with such options as elected therefrom.

1.40 “ICC” means the Illinois Commerce Commission.

1.41 “Indexed Storage Credit” or “ISC” means a virtual unit of measurement of Availability that is generated from the Project pursuant to Section 4.1.

1.42 “Initial Contract Capacity” means the Contract Capacity of the Project as recognized by RTO as of COD, which amount shall be specified in the Product Order.

1.43 “IPA” means the Illinois Power Agency.

1.44 “ISC Daily Payment Amount” means, with respect to a given day of a Vintage Month, the multiplicative product of (a) the number of ISC credited for such day pursuant to Section 4.1 and (b) the ISC Daily Value for such day.

1.45 “ISC Daily Value” means, with respect to a given day of a Vintage Month, the result obtained by subtracting the ISC Index Reference Price from the Strike Price.

1.46 “ISC Delivery Point” means, as applicable, either the MISO CP Node or PJM Pnode, or successor, as indicated in the Product Order.

1.47 “ISC Generation Date” means a date within the Acceptable Vintage Period in which ISCs were generated by the Project and eligible for payment.

1.48 “ISC Index Reference Price” means, with respect to a given day of a Vintage Month, the sum of the ISC Reference Energy Arbitrage Price and the ISC Reference Capacity Price.

1.49 “ISC Reference Capacity Price” means the multiplicative product of (a) the ELCC and (b) as applicable, the MISO’s planning resource auction clearing price (or successor) applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours or the PJM’s base residual auction resource clearing price (or successor) applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours.

1.50 “ISC Reference Energy Arbitrage Price” means, with respect to a given day of a Vintage Month, an amount in \$/MWh obtained by the formula below. For purposes of such calculation, all references to "hour" or "hourly" shall mean the hour as measured in Eastern Standard Time, without any adjustment for daylight saving time. Further, if any Locational Marginal Prices are tied, each tied price shall be counted separately.

ISC Reference Energy Arbitrage Price in \$/MWh for a given day  $d$ :

$$\left[ \sum_{n=1}^4 \max \left( T_n - \left( \frac{B_n}{0.85} \right), 0 \right) \right] / 4$$

$T_n$ : Locational Marginal Price for  $n$ th top-priced hour in day  $d$

$B_n$ : Locational Marginal Price for nth bottom-priced hour in day  $d$

1.51 “ISC Monthly Payment Amount” means, with respect to a Vintage Month, the sum of the ISC Daily Payment Amounts associated with such Vintage Month.

1.52 “ISC Monthly Price” means, with respect to a Vintage Month, the ISC Monthly Payment Amount divided by the quantity of ISCs generated during such Vintage Month. If the quantity of ISCs generated during such Vintage Month is zero (0), then the ISC Monthly Price with respect to such Vintage Month is “N/A” (not applicable).

1.53 “Increased Collateral Requirement” means, an amount equal to one hundred thousand dollars (\$100,000) times the Proposed Contract Capacity. The Increased Collateral Requirement shall be equal to fifty thousand dollars (\$50,000) upon the Project having achieved Commercial Operations by the extended Commercial Operations Deadline.

1.54 “Invoice Due Date” is defined in Section 5.1.

1.55 “IPA Act” means the Illinois Power Agency Act, 20 ILCS 3855.

1.56 “Labor Peace Agreement” means an agreement between an entity operating an energy storage system and any labor organization recognized under the National Labor Relations Act, referred to in Section 1-75(d-20) of the IPA Act as a bona fide labor organization, that prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the entity operating an energy storage system. This agreement means that the entity operating an energy storage system has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the energy storage system’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the energy storage system’s employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under State law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization. Further, for avoidance of doubt, the Labor Peace Agreement shall apply to employees that are working at the Project site only and shall exclude employees that may be off-site.

1.57 “Latest Vintage Month” means the last month of the Acceptable Vintage Period, which shall be the 240<sup>th</sup> month since the start of the Earliest Vintage Month, unless extended pursuant to Section 10.1 or Section 11.1. For example, if the Earliest Vintage Month is June 2028, then the Latest Vintage Month shall be May 2048, unless extended pursuant to Section 10.1 or Section 11.1 for any Suspension Period up to a maximum extension of seven hundred thirty (730) days.

1.58 “Letter of Credit” means an irrevocable standby letter of credit issued by a major U.S. commercial bank or the U.S. branch office or U.S. agency office of a foreign bank utilizing either of the forms attached as Exhibit E-1 to the Agreement or utilizing such forms with minor modifications that are acceptable to Buyer in its reasonable discretion.

1.59 “Locational Marginal Price” means, with respect to a given hour, the day-ahead hourly locational marginal price associated with the ISC Delivery Point. For purposes of such calculation, all references to “hour” or “hourly” shall mean the hour as measured in Eastern Standard Time, without any adjustment for daylight saving time.

1.60 “Maximum Contract Quantity” means an amount equal to the multiplicative product of (a)

the Initial Contract Capacity, (b) four (4) hours (c) the number of days in the Acceptable Vintage Period calculated as of the first day of the Earliest Vintage Month.

1.61 "Megawatt" or "MW" means a unit of electrical power, equal to one million watts, and unless otherwise specified shall be in alternating current (AC) voltage.

1.62 "Minimum Equity Standard" means specific requirements established under subsections (c-10), (c-20), (c-25), (c-30) and (d-20)(7) of Section 1-75 of the IPA Act, for which a minimum percentage of the Project Workforce must consist of Equity Eligible Persons or Equity Eligible Contractors; where such minimum percentage requirement, if applicable, is indicated in the Product Order.

1.63 "Minimum Equity Standard Compliance Plan" or "MES Compliance Plan" means, with respect to a Project that is subject to the requirements of the Minimum Equity Standard as indicated in the Product Order, a compliance plan filed by Seller to the IPA to demonstrate how Seller will achieve compliance with the Minimum Equity Standard requirements in a given delivery year. The requirements of the MES Compliance Plan are more specifically described in Section 6.4.

1.64 "Minimum Equity Standard Report" or "MES Report" means, with respect to a Project that is subject to the requirements of the Minimum Equity Standard as indicated in the Product Order, a year-end report submitted by Seller to IPA that demonstrates compliance to the Minimum Equity Standard for a delivery year in which Construction Activities have been carried out. The requirements of the MES Report are more specifically described in Section 6.4.

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

1.66 "Moody's" means Moody's Investors Service, Inc.

1.67 "Non-Defaulting Party" is defined in Section 9.3.

1.68 "Performance Assurance" means collateral in the form of cash or letters of credit, or other security acceptable to Buyer.

1.69 "Performance Assurance Amount" is defined in Section 7.1.

1.70 "PJM" means PJM Interconnection LLC or its successor.

1.71 "Planned Outage" means the unavailability of the Project or a portion of the Project due to a scheduled planned outage approved by RTO. For avoidance of doubt, unavailability of the Project for economic reasons shall not constitute as Planned Outage.

1.72 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.73 "Potentially Defaulting Party" means a Party that, but for a cure of a Potential Event of Default or failure of performance, would be a Defaulting Party.

1.74 "Potentially Non-Defaulting Party" means a Party that, but for a cure of a Potential Event of Default or failure of performance by the Potentially Defaulting Party, would be a Non-Defaulting Party.

1.75 "Prevailing Wage Act" means the Illinois Prevailing Wage Act, 820 ILCS 130.

1.76 “Product” means the ISCs to be generated under this Agreement.

1.77 “Product Order” is the form used by the Parties to effect a Transaction substantially in the form of Exhibit A specifying the terms of such Transaction.

1.78 “Project” means the stand-alone energy storage system identified under “Project Information” in the Product Order of the Agreement that was selected through the RFP and from which the Product is sourced; where a stand-alone energy storage system refers to an energy storage resource that is (a) separately metered by a revenue quality meter that satisfies the requirements of RTO, (b) normal operations of the storage system are not constrained or hindered by other generation units, and (c) the storage system can demonstrate ability to charge and discharge independent of any generation unit output.

1.79 “Project Labor Agreement” means a pre-hire collective bargaining agreement that covers all terms and conditions of employment on a specific construction project and must include the following: (a) provisions establishing the minimum hourly wage for each class of labor organization employee; (b) provisions establishing the benefits and other compensation for each class of labor organization employee; (c) provisions establishing that no strike or disputes will be engaged in by the labor organization employees; (d) provisions establishing that no lockout or disputes will be engaged in by the General Contractor building the Project; (e) provisions for minorities and women, as defined under the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, setting forth goals for apprenticeship hours to be performed by minorities and women and setting forth goals for total hours to be performed by underrepresented minorities and women; and (f) the efforts that Seller will take or has taken to achieve such goals, including recruitment of minorities and women into apprenticeship roles. A labor organization and the General Contractor building the Project shall have the authority to include other terms and conditions as they deem necessary.

1.80 “Project Labor Agreements Act” means the Illinois Project Labor Agreements Act, 30 ILCS 571.

1.81 “Project Workforce” means employees, contractors and their employees, and subcontractors and their employees whose job duties are directly required by or substantially related to the development, construction, and operation of the Project. This shall include both project installation workforce and workforce in administrative, sales, marketing, and technical roles where those workers’ duties are directly related to the Project. For workforce in administrative, sales, marketing and technical roles, this shall apply only if those workers are located in Illinois.

1.82 “Proposed Contract Capacity” means the power output capability of the Project as proposed by Seller in the RFP, expressed in megawatts (MW), which amount is specified in the Product Order.

1.83 “Public Utilities Act” means the Illinois Public Utilities Act, 220 ILCS 5.

1.84 “RTO” means, as applicable, the regional transmission organization of MISO or PJM, or successor, as indicated in the Product Order.

1.85 “RTO Resource Zone” means, as applicable, a Local Resource Zone (“LRZ”) of MISO or Locational Deliverability Area (“LDA”) of PJM, or successor, as such term is defined by RTO. For purposes of this Agreement, the applicable RTO Resource Zone that is applicable to the ISC Delivery Point is indicated in the Product Order.

1.86 “Regulatorily Continuing” means, with respect to the Transaction, the Product shall comply with the requirements of the Applicable Program, as of each ISC Generation Date, and Seller will do what is necessary to cause the Product that is generated to comply with such requirements; except as otherwise provided in Section 11.1.

1.87 “RTE” means the round-trip efficiency of an energy storage resource. For the avoidance of doubt, RTE excludes auxiliary load consumption.

1.88 “S&P” means S&P Global Ratings.

1.89 “Seller” means the seller of the Product.

1.90 “Settlement Amount” means an amount that the Non-Defaulting Party is entitled to and that is to be paid by the Defaulting Party calculated pursuant to Sections 9.3 and 9.4.

1.91 “Strike Price” means the bid price as offered by Seller through the RFP and as indicated in the Product Order.

1.92 “Suspension Period” means the period of time during which the obligations of the Parties under this Agreement are suspended in accordance with Section 10.1 or Section 11.1.

1.93 “Technical Curtailment” is defined in Section 4.3.

1.94 “Term” is defined in Section 3.2.

1.95 “Terminated Transaction” is defined in Section 9.3.

1.96 “Trade Date” means the Effective Date of this Agreement.

1.97 “Transaction” means a transaction as memorialized in a Product Order under this Agreement.

1.98 “Vintage” means, with respect to each ISC, the month it is generated.

1.99 “Vintage Month” means any of calendar monthly periods within the Acceptable Vintage Period for which ISCs were generated by the Project and eligible for payment.

1.100 “WHO” means the World Health Organization or successor.

1.101 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” or “Exhibits” are to articles, sections, schedules, annexes, or exhibits hereof; (c) all references to a particular entity or market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “hereto,” “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Article, Section or subsection hereof; (e) all accounting terms not specifically defined herein will be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine includes the feminine and neuter and vice versa; (h) “including” is construed in its broadest sense to mean “including without limitation” or

“including, but not limited to”; (i) references to agreements and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements or instruments that are duly entered into and effective against the parties thereto or their permitted successors and assigns; (j) a reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the Trade Date or ISC Generation Date with respect to a Product that is Regulatorily Continuing, together with all amendments and supplements thereto and any statute or regulation substituted for such statute or regulations; and (k) the word “or” is not necessarily exclusive.

## **ARTICLE 2: PRODUCT AND FACILITY REQUIREMENTS**

### **2.1 Product.**

(a) Indexed Storage Credits (“ISCs”). The Product to be sold by Seller and purchased by Buyer under this Agreement is ISCs generated from the Project, for which summary information is specified in the Product Order. Seller may not substitute ISCs to be generated from the Project with ISCs from another generator or energy storage resource. For avoidance of doubt, Buyer is not purchasing Seller’s Project and Buyer shall have no ownership interest in, or responsibility for, the Project. Further, for avoidance of doubt, nothing in this Agreement prohibits Seller from participating in wholesale markets for energy, capacity or ancillary services and receiving revenues from RTO for its participation in such wholesale markets.

(b) No payment shall be due for any ISC(s) that are generated outside the Acceptable Vintage Period.

### **2.2 Project Information.**

The Product is unit specific and ISCs generated and processed for payment under this Agreement must be from the Project specified in the Product Order. The following requirements shall apply to the Project and Seller represents as of each ISC Generation Date hereunder that:

(a) As required by Section 1-75(d-20)(10) of the IPA Act, the Project is not and will not be an energy storage system whose costs are being recovered through rates regulated by Illinois or any other state or states.

(b) The Project is a new project such that the COD of the Project has not occurred before the Earliest Commercial Operation Date.

(c) The Project is interconnected within the RTO Resource Zone applicable to the ISC Delivery Point.

(d) The Project is the same project as proposed during the RFP such that the RTO queue ID as indicated during the RFP remains the same as recognized by RTO on COD, unless amended for such project by RTO.

(e) As required by Section 1-75(d-20)(8) of the IPA Act, Construction Activities related to the Project are compliant with the prevailing wage requirements included in the Prevailing Wage Act. These requirements apply to the wages of laborers, mechanics, and other workers employed in Construction Activities related to the Project. Applicable activities related to Construction Activities of the Project include not only construction, but also any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. All construction work performed by Seller, including its

contractors and subcontractors, relating to construction, maintenance, repair, assembly, or disassembly work in relation to the Project has been or will be performed by employees receiving an amount equal to or greater than the “general prevailing rate of hourly wages”, as defined in Section 3 of the Prevailing Wage Act. Seller, including its contractors and subcontractors, has provided express notice of these requirements to all laborers, mechanics and other workers employed to perform such work.

(f) As required by Section 1-75(c)(1)(Q)(2.5) and Section 1-75(d-20)(8) of the IPA Act, the Project is built by General Contractors that have entered into a pre-hire Project Labor Agreement prior to construction.

(g) As required by Section 1-75(d-20)(9) of the IPA Act, the Project is operated by an entity that has entered into a Labor Peace Agreement with a bona fide labor organization that is actively engaged in representing its employees.

(h) If the Project is reasonably determined by the IPA not to be in compliance with any of the provisions of Section 2.2(a) through Section 2.2(g) (inclusive), then an Event of Default shall be deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to Section 2.2(a) through Section 2.2(g) (inclusive), Buyer shall be entitled to payment by Seller in the amount of the sum of: (i) the Collateral Requirement (or Increased Collateral Requirement, if applicable) and (ii) 100% of the total payments Seller has received from Buyer. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with one or more of Section 2.2(a) through Section 2.2(g) (inclusive), (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.2 shall be Buyer’s sole and exclusive remedy in the event that Seller fails to comply with one or more of Section 2.2(a) through Section 2.2(g) (inclusive) and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

### **2.3 Commercial Operations Deadline and Extensions**

(a) Seller must achieve Commercial Operation of the Project by December 31, 2029 (the “Commercial Operations Deadline”). This deadline may be extended one time as follows:

(i) Provided that (A) an extension request is made in writing by Seller to Buyer and the IPA prior to December 31, 2029 and (B) Seller has posted Performance Assurance to satisfy the Increased Collateral Requirement by December 31, 2029, the Commercial Operations Deadline shall be deemed automatically extended to December 31, 2030.

(ii) [Reserved.]

(b) If the Commercial Operations Deadline is extended pursuant to Section 2.3(a), the IPA shall issue a notice to Buyer and Seller and the extended Commercial Operations Deadline shall be specified in such written notice issued by the IPA; the IPA shall endeavor on a commercially reasonable basis to issue such written notice prior to the Commercial Operations Deadline that prevailed prior to the extension, but failure by the IPA to issue such notice on a timely basis does not nullify the approval of the Commercial Operations Deadline extension.

(c) In no event shall any extension under this Section 2.3 extend beyond December 31, 2030.

(d) If the COD has not occurred by December 1 in a delivery year, Seller shall provide to Buyer and the IPA a status report by December 1 of such delivery year indicating its non-binding estimate of the COD, and the ISCs expected to be generated, if any, for the next delivery year.

#### **2.4 Failure to Achieve Commercial Operations**

(a) Prior to the Commercial Operations Deadline (or extended Commercial Operations Deadline, as applicable), if the Seller determines that it will not construct the Project to achieve Commercial Operations by the Commercial Operations Deadline or extended deadline pursuant to Section 2.3, it shall provide a written notice of that determination to Buyer. In such a case, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement or Increased Collateral Requirement, as applicable. Buyer shall terminate this Agreement within twenty (20) Business Days of the later of: (i) Buyer's receipt of written notice from Seller; or (ii) Buyer's receipt of payment in the amount of the Collateral Requirement or Increased Collateral Requirement, as applicable. For avoidance of doubt, the actions taken under this section are not an Event of Default and upon termination of the Agreement, neither Buyer nor Seller shall be entitled to any Settlement Amount under such circumstance.

(b) If Seller has not provided a written notice to Buyer pursuant to Section 2.4(a), Seller's failure to achieve Commercial Operations of the Project by the Commercial Operations Deadline or extended deadline pursuant to Section 2.3 or Section 10.1 shall constitute an Event of Default. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that Seller has posted Seller's Performance Assurance to satisfy the Increased Collateral Requirement required for an extension pursuant to Section 2.3 or the Project has achieved Commercial Operations by the deadline or the extended deadline, as applicable. For such Events of Default, Buyer shall be entitled to payment by Seller (i) in the amount of the Collateral Requirement if there has been no extension; or (ii) in the amount of the Increased Collateral Requirement if an extension is granted and Seller fails to achieve Commercial Operations of the Project by the extended deadline pursuant to Section 2.3. The Parties acknowledge that (i) Buyer shall be damaged by the failure of Seller to achieve Commercial Operations of the Project by the deadline or extended deadline, as applicable, (ii) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (iii) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (iv) the remedy specified in this Section 2.4(b) shall be Buyer's sole and exclusive remedy in such Events of Default and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount under such circumstance.

#### **2.5 Initial Contract Capacity and Operational Characteristics**

(a) Seller shall inform Buyer (and the IPA) of the Project's operational characteristics, including without limitation the Initial Contract Capacity, duration and RTE, and the elected commencement date of the Acceptable Vintage Period (i.e., the Earliest Vintage Month), within ten (10) Business Days after COD. Seller's elected Earliest Vintage Month shall be: (i) no earlier than October 2026; and (ii) no later than the first June month immediately succeeding the 365<sup>th</sup> day following COD.<sup>2</sup>

(b) Concurrent with Seller's notice pursuant to Section 2.5(a), Seller shall provide IPA and

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<sup>2</sup> For example, if COD is on May 15, 2028, then the latest "Earliest Vintage Month" that can be elected by Seller shall be June 2029. If COD is on July 15, 2028, then the latest "Earliest Vintage Month" that can be elected by Seller shall be June 2030.

Buyer a copy of the interconnection agreement for the Project pursuant to Section 5.6 and a copy of the Labor Peace Agreement for the Project pursuant to Section 6.5(c).

(c) As of COD [Commenter 14 note: Why is this prohibition included? What if the Initial Contract Capacity exceeds Proposed Contract Capacity, or there are opportunities to improve project capacity within the term of the ISC Contract? Is the Seller prohibited from adding additional storage capacity and selling it to a third party?], (i) the Initial Contract Capacity shall be at least 20 MW and cannot exceed the Proposed Contract Capacity; (ii) the Project shall be able to operate for a duration of 4 hours of continuous discharge of the Initial Contract Capacity per hour; and (iii) the RTE shall be at least 85%. If the Initial Contract Capacity, duration, or RTE does not meet these requirements at COD, Seller shall be granted a cure period of 90 days from COD to rectify any deficiencies in these three items; provided that Seller indicates any such deficiencies and requests for a cure period in its notice to the Buyer (and the IPA) pursuant to Section 2.5(a). The IPA may extend such cure period in its reasonable discretion. The Earliest Vintage Month, if applicable, shall be delayed until all three requirements are confirmed by Buyer to be met and the Seller notifies the Buyer (and the IPA) of such accordingly. In such case, the Earliest Vintage Month, if delayed, shall be the month following Buyer's confirmation of the requirements, and the Acceptable Vintage Period shall commence on the first of such Earliest Vintage Month.<sup>3</sup>

(d) Upon Buyer's acceptance of supporting documentation and confirmation of Project's initial operational characteristics for a Delivery Year, following any deficiency cures pursuant to Section 2.5(c), if applicable, Buyer shall send to Seller (and copy IPA) a partially executed Product Order to confirm the Project's operational characteristics for purposes of calculating payment for the initial Delivery Year. Seller shall fully execute and return the Product Order to Buyer (and copy IPA) within five (5) Business Days of Seller's receipt of such Product Order.

(e) If the Project has not met the above requirements set forth in Section 2.5(c) and (i) Seller does not intend to cure the deficiency; or (ii) does not notify Buyer (and the IPA) in its written notice pursuant to Section 2.5(a) of its intention to cure the deficiency; or (iii) fail to meet the requirements within the 90 days of COD, then an Event of Default is deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to this Section 2.5(c), Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that

(A) Buyer shall be damaged by the failure of Seller to comply with this section, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.5(e) shall be Buyer's sole and exclusive remedy for an Event of Default pursuant to this Section 2.5(e).

(f) In the event the Initial Contract Capacity is less than the Proposed Contract Capacity [Commenter 14 note: The proposed bid assurance collateral amount of \$20,000/MW is prohibitively high and will have a significant negative impact on projects. Other states, which have similar programs, Maryland (PSC NGEA Storage Solicitations), New York (NYSERDA Bulk Storage ISC) and New Jersey (Garden State Energy Storage Program (GSESP) do not have bid assurance requirements nearly as costly. New York does not impose a bid assurance collateral. Suggest reducing this cost to mirror other state programs or capping the bid assurance collateral amount per project.], then

Buyer shall be entitled to payment by Seller in the amount of \$50,000 per MW for each MW (rounded to the third decimal place) that the Project falls short of the Proposed Contract Capacity. Unless payment is made by Seller within ten (10) Business Days of Buyer's written notice, Buyer shall draw on Seller's Performance Assurance for this purpose. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller if the Initial Contract Capacity is less than the Proposed Contract Capacity, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in

<sup>3</sup> For example, assuming COD is on September 15, 2028 and Seller elects October 2028 to be the Earliest Vintage Month. Notwithstanding, if the Project is deficient in regard to these items on COD, then Seller is afforded 90 days from COD to cure such deficiency. If Buyer confirms that Seller has cured such deficiency on November 5, 2028, then December 2028 shall be the Earliest Vintage Month for purposes of this Agreement.

this Section 2.5(f) shall be Buyer's sole and exclusive remedy in such event.

## 2.6 Minimum Operational Requirements

(a) Following COD, the Project shall maintain the following through the remainder of the Term of the Agreement.

- (i) minimum Contract Capacity of 20 MW;
- (ii) ability to operate for a duration of four (4) hours of continuous discharge of the Contract Capacity per hour;
- (iii) minimum RTE of seventy percent (70%) provided that the RTE shall be at least eighty-five (85%) for the first Delivery Year; and
- (iv) minimum Availability of four thousand three hundred twenty hours (4,320) hours per Delivery Year of the Contract Capacity for such Delivery Year.

In meeting the requirement in Section 2.6(a)(iv), hours with partial Availability of the Project count in proportion to that partial Availability. For example, any event that results in the Project being Available for less than a full hour will count as an equivalent percentage of the applicable hour for this calculation. Additionally, if during any applicable hour the Project is Available, but is Available at a power capacity less than the Contract Capacity, this hour will count as an equivalent percentage of the applicable hour for this calculation.<sup>4</sup> If the Project is not Available in an hour due to an event of Force Majeure [Commenter 14 note: Suggest expanding the definition of Force Majeure to account for unforeseeable technical failures or equipment breakdowns that are not caused by the Seller. Alternatively, suggest establishing a safe harbor or cure period to enable sellers to correct issues before triggering contract defaults. This is essential because BESS is a highly complex and newer technology.], or due to Technical Curtailment, that hour will count as meeting the minimum Availability requirement for the Delivery Year. The total hours counted as Available for the purpose of meeting the minimum Availability for the Delivery Year shall be calculated using the Seller's monthly hourly availability report. As such, for the purposes of meeting the minimum Availability for the Delivery Year, each hour in the Delivery Year shall count as the number equal to the Available power capacity (in MW) of the Project as reported for that hour in the hourly availability report divided by the Contract Capacity (in MW) of the Project as applicable in that same hour, with adjustments as discussed in this clause to count hours where the Project is not Available due to an event of Force Majeure or due to Technical Curtailment. For purposes of such calculation under this Agreement, all references to "hour" or "hourly" shall mean the hour as measured in Eastern Standard Time, without any adjustment for daylight saving time.

(b) If Seller becomes aware the Project has failed to maintain the minimum operational requirements set forth in Section 2.6(a), Seller shall report the information to Buyer and the IPA as soon as practicable, which shall be no later than four (4) Business Days after Seller is first aware of such failure. Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a), whether informed by Seller or independently determined by Buyer or the IPA, shall constitute an Event of Default. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller or such failure has been excused by the IPA pursuant to Section 9.2(j). The cure period may be extended pursuant to Section 9.2 if Seller demonstrates good cause for the delay. For avoidance of doubt, a cure period shall only be afforded for an Event of Default due to Sections 2.6(a)(i) - 2.6(a)(iii), and no cure period shall be afforded for an Event of Default due to Section 2.6(a)(iv). No ISCs shall be generated during the period in which the minimum operational requirements set forth in Section 2.6(a) are not maintained. For avoidance of doubt, unless due to Force

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<sup>4</sup> For example, if a Project is Available at Contract Capacity for thirty-six (36) minutes and not Available for twenty-four (24) minutes in a given hour, this shall count as 0.6 hours and if a Project were Available at sixty percent (60%) of Contract Capacity for an hour this shall count as 0.6 hours for the purposes of meeting minimum Availability for a Delivery Year.

Majeure, the period in which the minimum operational requirements set forth in Section 2.6(a) are not maintained shall not cause the Acceptable Vintage Period to be extended regardless of whether such deficiencies were cured by Seller. For an Event of Default due to this Section 2.6 after allowing for any cures, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with this section, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.6 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with this Section 2.6 and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

## 2.7 Post-COD Obligations

(a) After the Project has achieved Commercial Operations, Seller shall submit the following operational characteristics along with supporting documents to Buyer and the IPA by May 1 annually for the immediately upcoming Delivery Year. For avoidance of doubt, if the Project has an expected COD in May, the following operational characteristics along with supporting documents shall still be submitted by May 1.

- (i) Contract Capacity (i.e., the power rating of the Project in MW);
- (ii) the project specific ELCC; [Commenter 14 note: ELCC is a non-controllable risk for a developer as an Independent Power Producer, this would reduce ability to bid into this process. An ELCC floor may not necessary be passed down to rate payers and puts the risk onto generators. A floor may under-compensate highly valuable projects, provide a mismatch with real capacity needs and operators would have no control over the ELCC value which would provide an unforeseen risk for investors/ financing requirements.]
- (iii) the duration of the Project (i.e., the number of hours of continuous discharge of the Contract Capacity in each hour); and
- (iv) the RTE of the Project.

(b) If information and supporting documentation is submitted pursuant to Section 2.7(a) on a timely basis, Buyer shall confirm by written notice to Seller the acceptability or rejection of the information and supporting documentation by May 15 following such submission. Once accepted, the operational characteristics shall be used for purposes of calculating payments for the upcoming Delivery Year, and Seller must maintain such operational characteristics throughout the specified Delivery Year.

(c) If at any time during a Delivery Year, the Project fails to maintain the operational characteristics, not including the project-specific ELCC, for such Delivery Year as confirmed by Buyer pursuant to Section 2.7(b), Seller shall inform Buyer of such failure and provide to Buyer the updated operational characteristics along with supporting documentation for Buyer's consideration. The updated operational characteristics [Commenter 14 note: This gives the Buyer too much discretion especially with respect to ELCC] may be used by Buyer to update the payment calculations for such Delivery Year starting from the point in time when the revised operational characteristics are deemed to be effective by Buyer in its reasonable discretion. Notwithstanding the foregoing, Buyer may update the operational characteristics of the Project for purposes of calculating payment based on information Buyer may obtain from RTO; and if so, Buyer shall provide to Seller such operational characteristics and supporting information from RTO. To the extent that the Project improves its operational characteristics during a Delivery Year as recognized by the RTO, Seller shall inform Buyer of such improvement. If any improvement exceeds the operational characteristics for such Delivery Year as confirmed by Buyer pursuant to Section 2.7(b), then the operational characteristics for such Delivery Year as confirmed by Buyer pursuant to Section 2.7(b) shall prevail starting on the first of the month following Buyer's confirmation of the improved operational characteristics through the end of such Delivery Year for purposes of payment calculations under this Agreement. For avoidance of doubt, in no event shall Contract Capacity exceed the Initial Contract Capacity. [Commenter 14 note: What is the rationale for restricting this? This creates a barrier to attaining greater efficiencies through project improvements or financing the project through multiple parties.]

(d) Upon acceptance of supporting documentation and confirmation of Project's operational characteristics by Buyer for a Delivery Year, Buyer shall send to Seller (and copy IPA) a partially executed Product Order to confirm the Project's updated operational characteristics for purposes of calculating

payment for the specified Delivery Year. Seller shall fully execute and return the Product Order to Buyer (and copy IPA) within five (5) Business Days of Seller's receipt of such Product Order.

(e) If Seller fails to submit the information required pursuant to Section 2.7(a), or respond to Buyer's request for information to cure any deficiencies in its submission, or to fully execute the Product Order to confirm the Project's updated operational characteristics pursuant to Section 2.7(d), then an Event of Default shall be deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to this Section 2.7, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with this section, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.7 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with this Section 2.7 and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

## **2.8 Cybersecurity Requirements**

(a) Seller shall ensure that Project complies with applicable required cybersecurity standards and requirements as mandated by the entity or entities overseeing the Project's approval for interconnection to the grid.<sup>5</sup> If Seller becomes aware of any hardware and/or firmware vulnerabilities of Project or becomes aware of Project's non-compliance with the requirements set forth herein, Seller shall report the information to Buyer and the IPA as soon as practicable, which shall be no later than four (4) Business Days after Seller is made aware of such vulnerabilities. In the event that IPA determines that Project failed to meet the cybersecurity requirements herein, IPA shall provide notice to Seller and shall provide Seller an opportunity to remedy such vulnerabilities within the timeframe set forth in such notice. The IPA may extend the cure period in its reasonable discretion. If Seller does not remedy or cure such deficiency to the satisfaction of IPA on a timely basis, IPA shall provide notice to Buyer and Seller of such non-compliance, and an Event of Default shall be deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement within twenty (20) Business Days after receiving such notice from the IPA unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to Section 2.8, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement (or Increased Collateral Requirement, if applicable). The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with Section 2.8, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.8 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with Section 2.8, and for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

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<sup>5</sup> At the primary and secondary distribution voltage level, such applicable entities typically include Commonwealth Edison Company or Ameren Illinois Company who employ interconnection tariffs provision, which currently require compliance with Institute of Electrical and Electronics Engineers (IEEE) Standard 1547. At the transmission level, the applicable entity is the North American Electric Reliability Corporation (NERC), which requires compliance with the NERC Critical Infrastructure Protection (CIP) standard.

## **2.9 Information from RTO**

(a) Supporting documents submitted pursuant to Sections 2.5, 2.6 and 2.7 must allow Buyer to verify and confirm the operational characteristics of the Project. For avoidance of doubt, documentation from RTO that confirms the Project's operational characteristics for the relevant specified period pursuant to Seller's participation in RTO's capacity market shall be deemed acceptable to Buyer. If Seller did not participate in RTO's capacity market for the upcoming delivery year, Seller may provide supporting documents that Seller would have provided to RTO for participation in the capacity market for Buyer's consideration to verify and confirm the Project's operational characteristics. If Buyer, in its reasonable discretion, determines that the information submitted by Seller is deficient, insufficient or inadequate to verify and confirm the Project's operational characteristics, Buyer shall provide written notice to Seller and IPA of such determination, and Seller must respond to Buyer's request for information within ten (10) Business Days (or extended deadline as may be agreed by Buyer). All information submitted by Seller shall be reviewed by Buyer as soon as practicable on a commercially reasonable basis. If the Parties disagree on the acceptability of the alternative sources of information, then the acceptability of alternative sources of information shall be at IPA's reasonable discretion.

(b) If the supporting documentation submitted by Seller pursuant to Sections 2.5, 2.6 or 2.7 is deficient, insufficient, or inadequate to verify and confirm the operational characteristics of the Project, Buyer may suspend payments to Seller related to ISCs of Vintage Month(s) which operational characteristics cannot be confirmed. Payments shall resume upon Seller's cure of any deficiencies and, if applicable, return of a fully executed Product Order.

## **2.10 Participation in RTO Administered Markets.**

The Project will generate ISCs in accordance with this Agreement regardless of its participation or non-participation in the RTO administered markets. For avoidance of doubt, nothing in this Agreement requires Seller or the Project to participate in RTO administered markets.

## **ARTICLE 3: PRODUCT ORDER; TERM OF AGREEMENT**

### **3.1 Incorporation of Product Order**

The terms of the Transaction are as specified in this Agreement and in the Product Order. Buyer and Seller shall execute a Product Order substantially in the form of Exhibit A to this Agreement to confirm the terms of the Transaction. The Effective Date of this Agreement shall constitute the “Trade Date” indicated in the Product Order.

If the Parties have entered into another agreement that governs transactions other than the Transaction set forth in this Agreement, such other agreement shall not apply for the purposes of the Transaction confirmed under this Agreement, and this Agreement shall be treated as separate and stand-alone from all other transactions between the Parties. This Agreement shall apply solely for purposes of the Transaction specified herein and shall not apply for the purposes of any other transactions between the Parties.

### **3.2 Term of Agreement**

Unless earlier terminated pursuant to the terms of this Agreement, the “Term” of this Agreement shall be from the Effective Date until the last day of the month immediately following the end of the Acceptable Vintage Period. The Parties acknowledge that the Agreement allows for the generation and settlement of ISCs from an Acceptable Vintage Period of a maximum total period of 240 months (excluding any Suspension Periods or suspension periods during which the Parties’ obligations are suspended as provided herein).

## **ARTICLE 4: ISC GENERATION**

### **4.1 ISC Generation.**

(a) For each day in which the ISC Daily Value is negative, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. For purposes of calculating the quantity of ISCs generated pursuant to this Section 4.1, Technical Curtailment shall be deemed as Planned Outage. On a day on which a Planned Outage occurred, the number of ISCs credited shall be prorated based on the MW of Contract Capacity not affected by the Planned Outage and number of hours not affected by the Planned Outage using the following formula:

$$ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Contract Capacity - Planned Outage_n)}{NumHrs}$$

*NumHrs*: twenty-four (24).

*Planned Outage<sub>n</sub>*: The size in MW of Planned Outage applicable in hour *n* in day *d*; in cases where the MW size of the Planned Outage is not uniform within hour *n*, the average MW size of the Planned Outage during hour *n* shall be used in this formula; rounded to the third decimal place. Seller will report *Planned Outage<sub>n</sub>* in Seller’s hourly availability report; in no case shall *Planned Outage<sub>n</sub>* exceed Contract Capacity; *Planned Outage<sub>n</sub>* equals zero (0) for any hours not part of a Planned Outage. For purposes of the aforementioned, all “hour” or “hourly” references are as measured in Eastern Standard Time, without any adjustment for daylight saving time.

*ISC<sub>d</sub>* shall be rounded to 3 decimal places.

(b) For each day in which the ISC Daily Value is positive, Seller is credited four (4) ISCs per MW of Contract Capacity, which shall be prorated based on the available MW of the Project (the amount of available MW is the MW power capacity of the Project that is Available, or in the case of partial availability the MW power capacity of the portion of the Project that is Available), and number of hours the Project is Available, using the following formula:

$$ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Available Capacity_n)}{NumHrs}$$

*Available Capacity<sub>n</sub>*: The amount in MW of power capacity of the Project that is Available in hour *n* in day *d*; in cases where the MW size of available power capacity is not uniform within hour *n*, the average MW size of available power capacity during hour *n* shall be used in this formula; rounded to the third decimal place. Seller will report *Available Capacity<sub>n</sub>* in Seller's hourly availability report; in no case shall *Available Capacity<sub>n</sub>* exceed *Contract Capacity*. For purposes of the aforementioned, all "hour" or "hourly" references are as measured in Eastern Standard Time, without any adjustment for daylight saving time.

*ISC<sub>d</sub>* shall be rounded to 3 decimal places.

#### 4.2 Planned Outages.

(a) Seller shall inform Buyer of any Planned Outages as approved by RTO with details around the MW of Contract Capacity and number of hours the Project is scheduled to be taken offline; Seller shall submit such information concurrent with the submission of Seller's hourly availability report pursuant to Section 6.1.

#### 4.3 Curtailment.

(a) In the event that the Project is curtailed or otherwise restricted by the RTO on a day within the Acceptable Vintage Period due to technical constraints, reliability concerns, or system stability, or other non-economic reasons (a "Technical Curtailment") that is not in the control of Seller and not due to technical issues related to the Project and to the extent Seller determines that the operations of the Project is adversely impacted by such Technical Curtailment, the obligations of Seller may be suspended and no ISCs may be generated for such day and the Acceptable Vintage Period shall be extended day for day for each day of such Suspension Period. If so, Seller shall submit to Buyer a written notice indicating such determination concurrent with the submission of Seller's hourly availability report pursuant to Section 6.1; such written notice must be substantiated by reasonable documentation or confirmation from the RTO evidencing the nature of the Technical Curtailment. For avoidance of doubt, Technical Curtailment excludes the Project not being dispatched by the RTO due to negative pricing, market-based congestion management, or other financial/economic conditions. In the event that transmission constraints or transmission congestion contributes to the Project being restricted by the RTO, the effects of those transmission constraints or that transmission congestion is considered market-based congestion management. [Commenter 14 note: We suggest eliminating the distinction between market-based congestion management and technical curtailment, and to classify all of it as technical curtailment. Alternatively, we suggest changing the reference prices for the calculation—specifically, using the actual settlement prices of BESS operators (the top and bottom 4-hour periods) rather than the simply using the prices for the day's highest and lowest 4-hour periods.]

#### 4.4 Maximum ISC Quantity.

(a) In a given Delivery Year, the maximum number of ISC that can be processed for payment shall not exceed the Delivery Year Maximum Quantity.

(b) Under this Agreement, the maximum number of ISC that can be processed for payment

shall not exceed the Maximum Contract Quantity.

## **ARTICLE 5: PAYMENT AND INVOICING**

### **5.1 Invoicing.**

During the Term of this Agreement, Seller shall render to Buyer an invoice for ISCs by electronic mail on or before the tenth (10<sup>th</sup>) day of the month immediately following each Vintage Month (“Invoice Due Date”) in which ISCs are generated, as may be extended pursuant to Section 5.2 below. For avoidance of doubt, Seller shall invoice Buyer regardless of whether the ISC Monthly Payment is positive or negative. Notwithstanding, and subject to the foregoing, Seller may request that Buyer issue an invoice to Seller if the ISC Monthly Payment is negative for documentary purposes.

If Seller fails to render an invoice for a Vintage Month by the Invoice Due Date, no payment will be processed for that Vintage Month if payment is due to Seller from Buyer, provided that if the invoice for the last Vintage Month under this Agreement is delivered after the Invoice Due Date, but prior to that date that is six (6) months after such Invoice Due Date, such invoice will be processed within thirty (30) calendar days after receipt by Buyer. For any amounts included in late invoices, those amounts shall be eligible to be submitted by including such amounts as additional line items in the following Vintage Month’s invoice for subsequent payment. The invoice shall specify the following, separately for each Vintage Month:

- (a) the Vintage Month in which ISCs were generated;
- (b) the applicable ISC Monthly Payment(s);
- (c) the quantity of ISCs generated, by day;
- (d) the ISC Daily Value, by day;
- (e) the ISC Monthly Price; and
- (f) the invoice amount to be paid.

Buyer shall not be obligated to pay any invoice that is delivered more than six (6) months after the end of the Term of this Agreement.

### **5.2 Payment.**

(a) Payment for timely submitted invoices under this Agreement shall be due and payable on the last Business Day of the month in which the invoice is rendered or the last Business Day of the following month if the invoice is rendered late and cannot be processed by the last Business Day of the month in which the invoice is rendered. No more than one (1) invoice will be processed for payment for each Vintage Month.

(b) The ISC Monthly Payment may be either positive or negative. Payment shall be made from Seller to Buyer if the ISC Monthly Payment is negative and payment shall be made from Buyer to Seller if the ISC Monthly Payment is positive. In instances in which a Party disputes the ISC Monthly Payment, the Party has until the end of ten (10) calendar days following issuance of the invoice to request review of the

payment and pricing calculations.

(c) Payment shall be made only for ISCs that have been generated of Vintages that are in the Acceptable Vintage Period.

(d) The Parties will discharge mutual debts and payment obligations due and owing to each other through netting, in which case all amounts owed by each Party to the other Party under this Agreement, including any interest, and payments or credits, will be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

(e) With respect to all payments due hereunder, the Party owing payments shall make payments by electronic funds transfer, or by other mutually agreed methods, to the account designated in Exhibit B or other such account as may be updated by written notice from Seller to Buyer or from Buyer to Seller, as applicable.

(f) In no event shall payment be processed for a quantity of ISCs that will (i) cumulatively cause the quantity of ISCs associated with the Vintage Months of a Delivery Year to exceed the Delivery Year Maximum Quantity for such Delivery Year; or (ii) cumulatively cause the quantity of ISCs associated with Vintages in the Acceptable Vintage Period to exceed the Maximum Contract Quantity. For avoidance of doubt, this paragraph relates to the quantity of ISCs only and payment amounts shall be subject to the provisions in Article 5, including but not limited to, the calculation of any interest on late payments pursuant to Section 5.3.

### **5.3 Disputes on Invoices.**

If the RTO revises the measurement of Availability or ISC Index Reference Price or any other data that impacts the calculation of an invoice amount, and the result of the impact would exceed +/-5% of such invoice amount, then the Parties shall adjust the payments accordingly as soon as practicable in accordance with this Section 5.3.

If the invoice amount is in dispute and such dispute is unresolved within five (5) Business Days following the Invoice Due Date, then the undisputed amount will be paid on or before the last Business Day of the month in which the invoice is rendered.

Each Party may, in good faith, dispute the correctness of any invoice issued by the other Party under this Article 5 within twelve (12) months after receipt of such invoice. Any such dispute must be in writing and state the basis for the dispute, which must be made in good faith. Subject to Section 9.5, a Party may withhold payment of the disputed amount until two (2) Business Days following the resolution of the dispute, and any amounts not paid when originally due and subsequently determined to be due and payable will bear interest at the Default Rate from the original due date.

Any undisputed amounts not paid by the applicable due date are delinquent and will accrue interest at the Default Rate. Inadvertent overpayments will be returned upon request or credited by the Party receiving such overpayment against amounts subsequently due from the other Party. Any dispute with respect to an invoice is waived unless the disputing Party notifies the other Party in accordance with this Section 5.3 within twelve (12) months after the invoice is rendered. If final resolution of the dispute is not completed within sixty (60) days after notification of the dispute, the Parties shall resolve such dispute pursuant to the dispute resolution procedures set forth in Section 15.2.

Except as provided in this Section 5.3, in no event will Buyer be liable whatsoever to Seller for any

payments of invoices issued more than six (6) months after the end of the Term of this Agreement.

#### 5.4 Cost Recovery through Tariffs.

(a) As provided by Section 1-75(d-20)(12) of the IPA Act, Seller shall be entitled to full, prompt, and uninterrupted payment under this Agreement, so long as at least one of the following conditions is met:

Condition (i). Buyer is allowed to recover all costs and other amounts incurred under this Agreement from its customers pursuant to an automatic adjustment clause tariff under Section 16-108(k) of the Illinois Public Utilities Act that is authorized by Section 16-111.5(b)(6)(iv) of the Illinois Public Utilities Act and approved by the ICC.

Condition (ii). Buyer is otherwise authorized and/or entitled to full, prompt, and uninterrupted recovery of its costs through any other mechanism. For purposes of this Condition (ii), “other mechanism” means any other cost recovery mechanism other than those specified Section 16-108(k) of the Public Utilities Act. In the event Buyer relies on any other mechanism, Buyer shall provide Seller with written notice immediately and no later than thirty (30) days after the commencement of Buyer’s reliance on such other mechanism.

(b) If Buyer is not allowed to or cannot recover its costs for the payment of ISCs for a Delivery

Year through Condition (i) or Condition (ii), then, Buyer shall provide written notice to Seller of such occurrence and notwithstanding anything to the contrary in the Agreement, Buyer shall not be required to advance payment to Seller for ISCs for the remainder of the Delivery Year. For avoidance of doubt, [Commenter 14 note: The lack of guaranteed payment significantly drives up risk, therefore risks for Sellers and costs for strike price calculation] the foregoing does not excuse Seller’s obligation to pay Buyer if payment is due to Buyer. Any payment for a Delivery Year due to Buyer shall be netted against unpaid ISCs, if any, for such Delivery Year, starting with the unpaid ISCs associated with the earliest Vintage first in such Delivery Year; and any such netted unpaid ISCs (where a payment is due from Buyer to Seller) shall be considered paid. All unpaid ISCs shall be the exclusive property of Seller, to be utilized in Seller’s sole discretion. [Commenter 14 note: Can these be sold to other parties?]

#### 5.5 Taxes and Fees.

Seller will be responsible for any taxes imposed on the creation, ownership, or transfer of Product, if applicable under this Agreement. Each Party will be responsible for the payment of any fees incurred by it in connection with this Transaction hereunder.

#### 5.6 Interconnection Agreement.

Concurrent with Seller’s notice pursuant to Section 2.5(a), Seller shall provide IPA (and Buyer) a copy of the fully executed interconnection agreement for the Project. As required by Section 1-75(d-20)(11) of the IPA Act, the submission of such interconnection agreement to the IPA shall be a pre-requisite for payments under this Agreement.

[Commenter 14 note: Suggest eliminating this entire section. This Section is missing from the Table of Comments]

## ARTICLE 6: REPORTING REQUIREMENTS

6.1 Hourly Availability Report [Commenter 14 note: How would PJM Reliability Backstop payments be treated? ]

Seller shall, on a monthly basis, provide to Buyer (i) [Commenter 14 note: Suggest adding a definition of this term. Would this be projects at the same point of interconnection, substation, or something else?] hourly data applicable to the Project's Availability, (ii) where the Project or a portion of the Project is not Available for a period during the Vintage Month, whether the MW of Contract Capacity and hours in which the Project is not Available is due to Planned Outage or not, and (iii) the dates, if any, in which Technical Curtailment has adversely impacted the operations of the Project as determined by Seller and no ISCs are deemed generated for such day(s) pursuant to Section 4.3(a). Seller shall provide such information for each calendar month of the Acceptable Vintage Period within five (5) Business Days after the conclusion of such Vintage Month. [Commenter 14 note: This decision is the culmination of multiple factors and financial inputs that make it difficult to determine at what point this becomes true or untrue] This information provided shall be rounded to the third decimal place and shall be provided in Microsoft Excel format following the form provided in Exhibit C. For purposes of verification, Buyer shall be granted read-only access of information for the Project by Seller within [PJM Power Meter system or MISO Market Portal], or successor, within thirty (30) days of COD; such data shall be treated and maintained as confidential and proprietary by Buyer. Should access within [PJM Power Meter system or MISO Market Portal] be unavailable, or if the relevant information cannot be verified by Buyer, the Parties shall work together to allow Buyer to be granted access to equivalent information that may be obtained from another source for purposes of independent verification. If the Parties disagree on the acceptability of the alternative sources of information, then the acceptability of alternative sources of information shall be at IPA's reasonable discretion. The Parties agree that payment under this Agreement may be delayed due to delays in granting Buyer access to such information.

## 6.2 Prevailing Wage Act Requirements

Seller, including its contractors and subcontractors, rendering services under this Agreement must comply with the requirements of the Prevailing Wage Act, including but not limited to, all wage requirements and notice and record keeping duties. The Prevailing Wage Act requires Seller, including its contractors and subcontractors, to pay laborers, mechanics and other workers employed in Construction Activities related to the Project an amount equal to or greater than the current "general prevailing rate of hourly wages", as defined in Section 3 of the Prevailing Wage Act. The Parties acknowledge that the IPA has provided the Parties with the Illinois Department of Labor's website address (<http://labor.illinois.gov/>) as a source of information for the general prevailing rate of hourly wages. The Illinois Department of Labor regularly revises the general prevailing rate of hourly wages available on its website.

Seller shall provide to the IPA documentation and verification demonstrating that all construction work performed by Seller, including its contractors and subcontractors, relating to construction, maintenance, repair, assembly, or disassembly work in relation to the Project has been performed by employees who received an amount equal to or greater than the "general prevailing rate of hourly wages," as defined in Section 3 of the Prevailing Wage Act. Such documentation and verification may include, but is not limited to, the certified transcripts of payroll required to be filed with the Illinois Department of Labor.

Such documentation and verification must be provided to the IPA within five (5) Business Days of COD. Seller is responsible and shall provide such documentation and verification throughout the Term of this Agreement to the IPA for any applicable work performed in a Delivery Year subsequent to Seller's initial submission of documentation and verification, which shall be provided no later than August 1 following the end of such Delivery Year. Seller's failure to provide such documentation or verification in a timely manner shall be deemed non-compliant with Section 2.2(e) and subject to the provisions in Section 2.2 for such non-compliance.

## 6.3 Project Labor Agreement Requirements

As required by Section 1-75(c)(1)(Q)(2.5) of the IPA Act, the Project is built by General Contractors that have entered into a pre-hire Project Labor Agreement prior to construction. That Project Labor Agreement shall be filed with the Director of the IPA, who shall determine whether the Project Labor Agreement is complete to the satisfaction of IPA in its reasonable discretion.

The Project Labor Agreement shall provide the names, addresses, and occupations of the owner of the Project and the individuals representing the labor organization employees participating in the Project Labor Agreement.

Unless instructed by the IPA otherwise, each Project Labor Agreement and any amendments thereto shall be filed with the Director of the IPA via email at the email address provided in Exhibit B within the later of: (a) sixty (60) days prior to the start of the Project's construction, (b) thirty (30) days of the execution of such Project Labor Agreement or amendment; or (c) thirty (30) days of the Commission Bid Approval Date. Seller shall inform the IPA of the start date of the Project's construction as soon as practicable, but no later than the Project Labor Agreement submission deadline set forth in the aforementioned sentence. Seller shall work constructively with the IPA to file such Project Labor Agreements in accordance with procedures established by the IPA. For avoidance of doubt, compliance with the requirements of this section shall be the sole responsibility of Seller and not Buyer or the IPA; and Seller shall hold Buyer and the IPA harmless of any non-compliance thereof.

Seller's failure to provide such Project Labor Agreements and amendments in a timely manner or Seller's material violation of the terms of such Project Labor Agreements and amendments shall be deemed non-compliant with Section 2.2(f) and subject to the provisions in Section 2.2 for such non-compliance.

#### **6.4 Minimum Equity Standard**

This section applies to Projects that are subject to the requirements of the Minimum Equity Standard as indicated in the Product Order. This section shall not apply if the Minimum Equity Standard is inapplicable as indicated in the Product Order.

(a) If Construction Activities have occurred or will occur on or after June 1, 2026, the Minimum Equity Standard shall apply to the Project through the Commercial Operation Date. The Product Order shall reflect the applicability or inapplicability of the Minimum Equity Standard requirement.

(b) Requests for waivers from the Minimum Equity Standard may be submitted to the IPA no later than COD during the Term of this Agreement, which approval shall be at the sole discretion of the IPA. Unless a waiver has been granted by the IPA, during a delivery year in which Construction Activities are carried out, the Project Workforce shall consist of Equity Eligible Persons such that these Equity Eligible Persons comprise at least the minimum percentage of the Project Workforce indicated in the Product Order for the Minimum Equity Standard. If Seller's subcontractor is an Equity Eligible Contractor, then each Equity Eligible Person of Seller's subcontractor shall be counted 1.5 times toward meeting the Minimum Equity Standard. For avoidance of doubt, the minimum percentage indicated in the Product Order for the Minimum Equity Standard shall not change during the Term of this Agreement.

(c) Seller shall demonstrate compliance with the Minimum Equity Standard by submitting the below reports to the IPA in accordance with procedures established by the IPA:

- (i) **First MES Compliance Plan.** The first MES Compliance Plan shall be submitted to the IPA within thirty (30) days prior to the commencement of Construction Activities. Starting with the second MES Compliance Plan, each MES Compliance Plan shall be combined

with the MES Report as described in Section 6.4(c)(ii) due on July 15 each year.

- (ii) **MES Compliance Plan and MES Report.** By July 15 of each delivery year, Seller shall submit to the IPA a combined report for MES Compliance Plan and the MES Report. The submission shall include a backward-looking MES Report (for entities to demonstrate how they achieved MES compliance in the previous delivery year), as well as a forward-looking MES Compliance Plan (for entities to demonstrate how they will achieve MES compliance in the new delivery year). The MES Report portion shall include data on actual performance compared to the information previously submitted as well as any major differences from the previously submitted MES Compliance Plan for such delivery year. These differences could include information such as new and innovative ways to provide employment opportunities to low-income participants and residents within the Environmental Justice Communities. The MES Compliance Plan portion shall include: [Commenter 14 note: Can this be changes to 30 days prior to the beginning of construction?] a narrative description of how Seller will meet the Minimum Equity Standard and a statement of intent to comply with equity accountability standards for the applicable delivery year and to hire a diverse project workforce including Equity Eligible Persons and Equity Eligible Contractors; (b) projected number of workers and the demographic breakdown by race, gender, and participation in job training or workforce development programs, or other means of compliance with the standard for Equity Eligible Persons; (c) plans for the use of Equity Eligible Contractors, if applicable; (d) Seller classification (i.e., Minority-owned, Woman-owned, Disabled-owned, Veteran-owned, Small Business, etc.), if applicable; (e) communication plan for local outreach to increase the utilization of Equity Eligible Persons and Equity Eligible Contractors; and (f) status of any corrective actions or adjustments from the prior delivery year's MES Compliance Plan.
- (iii) **Mid-Year MES Confirmation.** No later than December 1 of each delivery year, Seller shall provide to the IPA a statement confirming that Seller is on track to meet the Minimum Equity Standard and that there exist no impediments for Seller to meet the Minimum Equity Standard for such delivery year. If Seller is unable to provide such confirmation, Seller shall explain why it is unable to meet the Minimum Equity Standard for such delivery year. The Mid-Year MES Confirmation shall be submitted to IPA in accordance with procedures established by the IPA.
- (iv) **Exceptions.** Notwithstanding the terms set forth in 6.4(c)(i) and 6.4(c)(iii), if Commercial Operation Date occurred prior to the date that is thirty (30) days of the Commission Bid Approval Date, then neither the first MES Compliance Plan nor the Mid-Year MES Confirmation shall be required. However, if the Commercial Operation Date occurred prior to the date that is thirty (30) days of the Commission Bid Approval Date, then a MES Report shall be submitted as soon as practicable on or around the date that is thirty (30) days after the Commission Bid Approval Date.

(d) The IPA is the entity responsible for evaluating the submissions of Seller related to the

Minimum Equity Standard and for confirming Seller's compliance with the Minimum Equity Standard requirements. The Parties acknowledge and agree that the IPA shall have the right to request more information from Seller related to the Minimum Equity Standard requirements and to grant waivers or impose remedies should Seller fail to comply with the Minimum Equity Standard or the reporting requirements in this Section 6.4. The IPA may render a finding of non-compliance if Seller fails to address IPA's request for information related to MES compliance within twenty-one (21) days. Unless instructed by the IPA and consistent with the IPA's implementation of the Minimum Equity Standard as approved in ICC Docket No. 25-0945, no other remedies are contemplated under this Agreement for Seller's failure to comply with the

Minimum Equity Standard requirements as set forth in this Section 6.4.

(e) For avoidance of doubt, the Minimum Equity Standard requirement as set forth in this Section 6.4 shall apply only for delivery years for which Construction Activities have been performed up through the Commercial Operation Date, but the Prevailing Wage Act requirements pursuant to Section 6.2 shall apply for Construction Activities through the Term of this Agreement. Any additional information related to Minimum Equity Standard, including the reporting requirements and waiver process, is available at: <https://ipa.illinois.gov/diversity-equity-and-inclusion/minimum-equity-standard.html>

## **6.5 Labor Peace Agreement Requirements**

(a) As required by Section 1-75(d-20)(9) of the IPA Act, the Project shall be operated by an entity that has entered into a Labor Peace Agreement with a bona fide labor organization that is actively engaged in representing its employees; and the existence of the Labor Peace Agreement shall be an ongoing material condition of such entity's authorization to maintain and operate the Project.

(b) The Labor Peace Agreement shall provide the names, addresses, and occupations of the owner of the Project and the individuals representing the labor organization employees participating in the Labor Peace Agreement and the term length of the Labor Peace Agreement. Seller shall work constructively with the IPA to file such Project Labor Agreements in accordance with procedures established by the IPA. The IPA is the entity that shall determine whether such Labor Peace Agreement is complete to the satisfaction of IPA in its reasonable discretion. If IPA determines that the Labor Peace Agreement is incomplete, IPA shall provide such determination to Buyer and Seller.

(c) Concurrent with Seller's notice pursuant to Section 2.5(a), Seller shall provide IPA and Buyer a copy of the Labor Peace Agreement for the Project within ten (10) Business Days after COD. The submission of such Labor Peace Agreement to the IPA shall be a pre-requisite to payment for ISCs under this Agreement.

(d) Concurrent with Seller's submission pursuant to Section 2.7(a), Seller shall file the then effective Labor Peace Agreement to Buyer and the IPA by May 1 annually to confirm its compliance with Section 1-75(d-20)(9) of the IPA Act.

(e) If the Labor Peace Agreement fails to be effective and in full force during the Term of this Agreement, Seller shall disclose this fact to the IPA and Buyer as soon as practicable, which in no event shall be later than ten (10) Business Days after such occurrence.

(f) In the event that the Project is not in compliance with Section 1-75(d-20)(9) of the IPA Act because the IPA has determined that the Labor Peace Agreement is incomplete or the Labor Peace Agreement is not effective and in full force, then payments by Buyer under this Agreement shall be suspended and Seller shall have sixty (60) days from IPA's written notice pursuant to Section 6.5(b) or Seller's written notice pursuant to Section 6.5(e) to submit a compliant Labor Peace Agreement to the IPA and Buyer to cure such deficiency. Payments by Buyer under this Agreement shall resume upon IPA confirmation that Seller's submission is compliant with the Labor Peace Agreement requirements. The IPA may extend such cure period for good cause in its reasonable discretion. In the event Seller fails to remedy or cure such deficiency to the satisfaction of IPA on a timely basis, IPA shall provide notice to Buyer and Seller of such non-compliance, and an Event of Default shall be deemed to have occurred. For avoidance of doubt, compliance with the requirements of this section shall be the sole responsibility of Seller and not Buyer or the IPA; and Seller shall hold Buyer and the IPA harmless of any non-compliance thereof. Seller's failure to provide a compliant Labor Peace Agreement in a timely manner or Seller's material violation of the terms of such Labor Peace Agreement shall be deemed non-compliant with Section 2.2(g) and subject to the provisions in

Section 2.2 for such non-compliance.

**ARTICLE 7: CREDIT AND COLLATERAL REQUIREMENTS;  
PERFORMANCE ASSURANCE**

**7.1 Performance Assurance.**

(a) **Seller’s Performance Assurance.** Performance Assurance requirement is applicable with respect to Seller, but not with respect to Buyer.

For purposes of this Agreement, the Increased Collateral Requirement is applicable if the Project has not achieved Commercial Operations by the Commercial Operations Deadline and such deadline has been extended pursuant to Section 2.3.

If at any time Seller’s (or Seller’s Guarantor’s, if applicable) Collateral Threshold is lower than the Collateral Requirement (or Increased Collateral Requirement, if applicable), then Seller, upon request from Buyer, shall be required, within eight (8) Business Days of notice from Buyer, to post “Seller’s Performance Assurance” through either the: (i) posting of a Letter of Credit; or (ii) posting of cash collateral with Buyer. “Collateral Threshold” means, with respect to Seller or Seller’s Guarantor, if applicable, the amount determined in accordance with Table A below. The amount of such Seller’s Performance Assurance shall be equal to the positive difference, if any, between: (a) the Collateral Requirement (or Increased Collateral Requirement, if applicable); and (b) the Collateral Threshold, rounded up to the nearest \$10,000, as estimated by Buyer (“Performance Assurance Amount”). In the event that Seller fails to provide such Seller’s Performance Assurance within eight (8) Business Days of notice from Buyer subject to 7.1(b), then an Event of Default shall be deemed to have occurred pursuant to Section 9.2(d) and Buyer shall be entitled to the remedies set forth under Section 9.3, as the Non-Defaulting Party.

If Seller is relying on its own creditworthiness and Seller is a party to one or more additional agreements with Buyer pursuant to the conduct of the procurements by the IPA for energy storage resources, then Seller will be granted a single Collateral Threshold to be applied to all such agreements.

If Seller is relying on a Guarantor and Seller’s Guarantor has provided a Guaranty, the Collateral Threshold shall be the lesser of the Collateral Threshold as determined by (i) the table below or (ii) the amount of such Guaranty; provided, that Seller’s Guarantor will be granted a single Collateral Threshold to be applied to all agreements entered into with Buyer pursuant to the conduct of the procurements by the IPA for energy storage resources for which it guarantees payment obligations on behalf of one or more parties to such agreements.

<i>TABLE A</i>			
<b>Credit Rating</b>			<b>Collateral Threshold</b>
<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>	
BBB- or above	Baa3 or above	BBB- or above	\$2,500,000
Below BBB-	Below Baa3	Below BBB-	\$0

(b) For purposes of the initial posting of Seller’s Performance Assurance subsequent to the Commission Bid Approval Date, if Seller has posted cash in the RFP for purposes of bid assurance collateral and has requested for such cash to be retained by Buyer as Seller’s Performance Assurance, then such cash

shall be deemed to be Seller's Performance Assurance on the eighth (8<sup>th</sup>) Business Day after the Commission Bid Approval Date provided that all of the drawing conditions under the bid assurance collateral are no longer applicable. For avoidance of doubt, Seller is responsible to ensure that the amounts retained are sufficient to meet the creditworthiness requirements under this Article 7 and shall be responsible for posting additional collateral on a timely basis should the bid assurance collateral to be retained is insufficient to meet such creditworthiness requirements.

On the eighth (8<sup>th</sup>) Business Day after the Commission Bid Approval Date, Buyer shall notify Seller to confirm either that its bid assurance collateral has been deemed to be Seller's Performance Assurance or notify Seller that Buyer is unable to verify that all of the drawing conditions under the bid assurance collateral are no longer applicable; and if so, Seller shall post alternative Seller's Performance Assurance in an amount equal to the required Performance Assurance Amount or demonstrate that all of the drawing conditions under the bid assurance collateral are no longer applicable within three (3) Business Days of notice from Buyer. In the event that Seller fails to provide such Seller's Performance Assurance on a timely basis under this Section 7.1(b), then an Event of Default shall be deemed to have occurred pursuant to Section 9.2(d) and Buyer shall be entitled to the remedies set forth under Section 9.3, as the Non-Defaulting Party.

(c) If a Letter of Credit is posted for purposes of Seller's Performance Assurance, such Letter of Credit shall remain in full force and effect throughout the Term of the Agreement. If the date of expiration of such Letter of Credit is prior to the end of the Term of this Agreement, it is Seller's responsibility to ensure that the validity period of such Letter of Credit is extended prior to the date of expiration of such Letter of Credit. Buyer may draw on the Letter of Credit and hold Seller's Performance Assurance in the form of cash if the validity of such Letter of Credit is not extended prior to the date that is twenty (20) calendar days prior to the date of expiration of such Letter of Credit.

(d) Upon the completion of final ISC generation and payment obligations under this Agreement, Seller may request for the return of Seller's Performance Assurance. Any such request (along with any Letter of Credit amendment if applicable) shall be honored by Buyer as soon as practicable.

## **7.2 Guaranty.**

If Seller is relying on a Guarantor for purposes of its Collateral Threshold in accordance with Section 7.1, then Seller will provide, concurrently with the execution and delivery of the Agreement, a Guaranty.

# **ARTICLE 8: REPRESENTATIONS AND WARRANTIES**

## **8.1 Mutual Representations and Warranties.**

On the Trade Date, each Party represents and warrants to the other that:

(a) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization;

(b) it has the power and authority to enter into this Agreement and to perform its obligations hereunder;

(c) its execution and performance do not violate or conflict with applicable law, any provision of its constituent documents, or any contract binding on or affecting it or any of its assets or any order or

judgment of any Governmental Authority applicable to it or its assets;

(d) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with;

(e) its obligations hereunder are legal, valid and binding, enforceable in accordance with their respective terms, subject to applicable bankruptcy or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law;

(f) no Event of Default, or Potential Event of Default, has occurred and is continuing, and none will occur as a result of its entering into or performing this Agreement;

(g) it is not relying upon any representations of the other Party other than those expressly set forth herein, and it is acting for its own account, and not as agent or in any other capacity, fiduciary or otherwise;

(h) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(i) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into a Transaction, and understands that information and explanations related to the terms and conditions of any Transaction will not be considered investment advice or a recommendation to enter into that Transaction;

(j) it has made its own independent trading and investment decisions to enter into each Transaction and as to whether such Transaction is appropriate or proper for it based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party;

(k) it has not received from the other Party any assurance, guarantee or promise as to the expected or projected success, profitability, return, performance, result, effect, consequence or benefit (either economic, legal, regulatory, tax, financial, accounting or otherwise) hereunder;

(l) to its knowledge there is no pending or threatened litigation, arbitration or administrative proceeding before any Governmental Authority or any arbitrator that is likely to materially adversely affect the ability of either Party to perform its obligations hereunder;

(m) it is a "forward contract merchant" within the meaning of United States Bankruptcy Code §101(26), and this Agreement and all Transactions hereunder constitute "forward contracts" within the meaning of United States Bankruptcy Code §101(25);

(n) it is an "eligible commercial entity", and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively, and all Transactions hereunder have been subject to individual negotiation by the Parties; and

(o) all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document

or statement misleading.

## **8.2 Additional Warranties of Seller.**

Seller represents and warrants to Buyer upon the COD through the expiry of the Acceptable Vintage Period that all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to performing this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with, and that the Product is Regulatorily Continuing and complies with the Applicable Program.

## **8.3 Limitation of Warranties.**

All other representations or warranties, written or oral, express or implied, including any representation or warranty of merchantability or of fitness for any particular purpose or with respect to conformity with any model or samples, are disclaimed. Without limiting the generality of the foregoing, except with respect to the Product stated to be Regulatorily Continuing, and in that case only to the extent set forth herein, neither Party makes any representation or warranty hereunder with respect to any future action or failure to act or approval or failure to approve by any Governmental Authority.

## **8.4 Regulatory Intent.**

The Parties intend that this Agreement be structured, administered, and performed as a bona fide commercial arrangement for the future issuance and delivery of ISCs, representing attributes based on the performance of a specific new energy storage system developed pursuant to the Illinois Energy Storage System Portfolio Standard established under 20 Ill. Comp. Stat. 3855/1-75(d-20). Payments hereunder are expressly conditioned upon the Project achieving Commercial Operations as recognized by the RTO, providing evidence of grid interconnection, and delivering actual Availability for such specific Project. The Parties shall administer, perform, and interpret all provisions consistent with such intent.

# **ARTICLE 9: EVENTS OF DEFAULT; REMEDIES**

## **9.1 Events of Default in Respect of Buyer**

An “Event of Default” means, with respect to Buyer (as the “Defaulting Party”), the occurrence of any of the following:

(a) any representation or warranty made by Buyer that is false or misleading in any material respect when made or repeatedly made unless Buyer as the Potentially Defaulting Party demonstrates, within a twenty (20) Business Day period from the time of notice by Seller as the Potentially Non-Defaulting Party, that such Potential Event of Default has not occurred or has occurred and is remedied;

(b) the failure of Buyer to make, when due, any payment required pursuant hereto if such failure is not remedied within twenty (20) Business Days after written notice;

(c) the failure of Buyer to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) Business Days after written notice; and

(d) such Party becomes Bankrupt.

## 9.2 Events of Default in Respect of Seller

An “Event of Default” means, with respect to Seller (as the “Defaulting Party”), the occurrence of any of the following:

(a) any representation or warranty made by Seller that is false or misleading in any material respect when made or repeatedly made unless Seller as the Potentially Defaulting Party demonstrates, within a twenty (20) Business Day period from the time of notice by Buyer as the Potentially Non-Defaulting Party, that such Potential Event of Default has not occurred or has occurred and is remedied;

(b) the failure of Seller to make, when due, any payment required pursuant hereto if such failure is not remedied within twenty (20) Business Days after written notice;

(c) such Party becomes Bankrupt;

(d) the failure of such Party to satisfy the creditworthiness and collateral requirements agreed to pursuant to Article 7 or the failure of the issuer of the Letter of Credit to maintain during the Term the credit rating required under the Letter of Credit as of the Date of Issuance (as that term is used in the Letter of Credit) provided that Seller does not post alternative Seller’s Performance Assurance in an amount equal to the required Performance Assurance Amount within eight (8) Business Days of notice from Buyer;

(e) Seller’s failure to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) Business Days after written notice;

(f) with respect to Seller’s Guarantor, if any, the occurrence of any of the following (provided that Seller does not post Seller’s Performance Assurance in an amount equal to the Performance Assurance Amount within eight (8) Business Days):

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure is not remedied within three Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor’s guaranty to be in full force and effect for purposes hereof (other than in accordance with its terms) prior to the satisfaction of all obligations of Seller under each Transaction to which such guaranty relates without the written consent of Buyer; or

(v) a Guarantor repudiates, disaffirms, disclaims, or rejects or challenges, in whole or in part, the validity of any guaranty.

(g) failure of Seller to achieve Commercial Operations by the Commercial Operations Deadline or extended deadline, as applicable pursuant to Section 2.3, in which case Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates,

within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred. For such Event of Default, Buyer shall be, as Buyer's sole and exclusive remedy, entitled to payment by Seller in the amount of the Collateral Requirement (or Increased Collateral Requirement, if applicable);

(h) Seller's Project fails to comply with the requirements set forth in Section 2.2(a) through Section 2.2(g) (inclusive), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be, as Buyer's sole and exclusive remedy, entitled to payment by Seller in the amount of the sum of: (i) the Collateral Requirement (or Increased Collateral Requirement, if applicable) and (ii) 100% of the total payments Seller has received from Buyer under this Agreement;

(i) Seller fails to meet the requirements pursuant to pursuant to Section 2.5(c) and an Event of Default has occurred pursuant to Section 2.5(e), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by IPA to Buyer and Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.

(j) Seller fails to maintain the minimum operational requirements set forth in Section 2.6(a) and an Event of Default has occurred pursuant to Section 2.6(b), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured or (ii) the IPA has provided written notice to Buyer and Seller granting a waiver excusing such failure by Seller. For avoidance of doubt, a cure period shall only be afforded for an Event of Default due to Sections 2.6(a)(i) - 2.6(a)(iii), and no cure period shall be afforded for an Event of Default due to Section 2.6(a)(iv). Upon Seller's receipt of such Buyer's written notice, Seller may provide a written request along with supporting documentation to the IPA requesting that Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a) be excused; such written request shall be provided to the IPA no later than five (5) Business Days from the date of Buyer's written notice to Seller. Approval of waivers may be granted by the IPA on a case-by-case basis upon a demonstration of good cause by Seller to the satisfaction of the IPA at its sole discretion. For the avoidance of doubt, Buyer and Seller agree that the IPA has authority to make such a determination on good cause and to grant a waiver excusing Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a). The approval of any such requests shall be at the IPA's sole discretion. If approved, the IPA shall provide to Buyer and Seller a written notice indicating its approval of the Seller's request and any corrective action to be taken; such IPA's written notice shall be provided within the twenty (20) Business Day period from the date of Buyer's initial written notice to Seller indicated above in this section. Notwithstanding the foregoing, the IPA may extend the twenty (20) Business Day period by written notice to Buyer and Seller; provided that such written notice indicates the date which the IPA shall confirm whether it approves or rejects Seller's written request to waive Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a). If the IPA does not provide a written notice to Buyer and Seller indicating its approval or rejection of the waiver request within the twenty (20) Business Day period or extended deadline, Seller's request shall be deemed rejected. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.

(k) Seller fails to submit the information required pursuant to Section 2.7(a), or respond to

Buyer's request for information to cure any deficiencies in its submission, or to fully execute the Product Order to confirm the Project's updated operational characteristics pursuant to Section 2.7(d), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by IPA to Buyer and Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.

(l) Seller fails to comply with the cybersecurity requirements pursuant to Section 2.8, in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by IPA to Buyer and Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement (or Increased Collateral Requirement as applicable) as Buyer's sole and exclusive remedy.

#### **Extension of Demonstration Periods and Cure Periods**

Notwithstanding the foregoing, the IPA may extend any of the time periods in this Section 9.2 at its reasonable discretion by written notice to Buyer and Seller to allow additional time for Seller to demonstrate that the Event of Default has not occurred or that the failure has been remedied, as applicable. It is expected that any extension granted by the IPA pursuant to this Section 9.2 shall be no longer than twenty (20) Business Days.

### **9.3 Declaration of Early Termination Date**

Except as otherwise set forth in this Agreement, if an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the "Non-Defaulting Party") will have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party will calculate a Settlement Amount with respect to this Agreement pursuant to Section 9.4 as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party such Terminated Transaction is commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law by the Early Termination Date, as soon thereafter as is reasonably practicable). The calculation of the Settlement Amount indicated in this Section 9.3 shall not apply to an Event of Default described in Sections 9.2(g), 9.2(h), 9.2(i), 9.2(j), 9.2(k) or 9.2(l). For any such Event of Default, unless Seller pays the payment amount specified in the respective section in full, Seller's Performance Assurance held by Buyer shall be applied to the payment amount, with any excess Performance Assurance Amount returned to Seller. Notwithstanding anything in this Section 9.3 to the contrary, in the event of an Early Termination Date prior to the COD due to a Seller's Event of Default, Seller shall pay to Buyer a Settlement Amount in an amount equal to the Collateral Requirement (or Increased Collateral Requirement, if applicable).

### **9.4 Calculation of Settlement Amount.**

(a) Except as otherwise set forth in this Agreement, in the Event of Default with respect to Buyer as the "Defaulting Party", the following shall occur:

- (i) Buyer shall return Seller's Performance Assurance held by Buyer by the date the Settlement Amount is due;
- (ii) Seller shall calculate a Settlement Amount as a single amount by subtracting: (a) any or all

other amounts due to Buyer under this Agreement from (b) any or all other amounts due to Seller under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the “Settlement Amount”);

- (iii) if the Settlement Amount is a positive amount that is due to Seller, Buyer shall pay the Settlement Amount to Seller;
- (iv) if the Settlement Amount is a negative amount, there shall not be a Settlement Amount and Seller shall not owe any amount to Buyer; and
- (v) the Settlement Amount, if any, is due to Seller as the Non-Defaulting Party within two (2) Business Days following notice by Seller to Buyer pursuant to Section 9.3.

(b) Except as otherwise set forth in this Agreement, in the Event of Default with respect to Seller as the “Defaulting Party”, the following shall occur:

- (i) Buyer shall calculate a Settlement Amount as the sum of the Collateral Requirement and the result obtained by subtracting: (a) any or all other amounts due to Seller under this Agreement from (b) any or all other amounts due to Buyer under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the “Settlement Amount”);
- (ii) if the Settlement Amount is a positive amount that is due to Buyer, Seller shall pay the Settlement Amount to Buyer;
- (iii) if the Settlement Amount is a negative amount, there shall not be a Settlement Amount and Buyer shall not owe any amount to Seller; and
- (iv) the Settlement Amount, if any, is due to Buyer as the Non-Defaulting Party within two (2) Business Days following notice by Buyer to Seller pursuant to Section 9.3. Unless Seller pays the Settlement Amount in full during this two (2) Business Day period, Seller’s Performance Assurance held by Buyer shall be applied to the Settlement Amount, with any excess Performance Assurance Amount returned to Seller.

(c) For avoidance of doubt, the Non-Defaulting Party shall not owe any amount as Settlement Amount to the Defaulting Party and payment of the Settlement Amount shall only be from the Defaulting Party to the Non-Defaulting Party.

### **9.5 Calculation Disputes.**

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount, in whole or in part, the Defaulting Party will, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that the Defaulting Party must first transfer to the Non-Defaulting Party the undisputed portion of the Settlement Amount. All disputes related to the Settlement Amount shall be settled in accordance with Section 5.3. References to Defaulting Party and Non-Defaulting Party in this Section 9.5 include the Potentially Defaulting Party and Potentially Non-Defaulting Party, as applicable.

### **9.6 Suspension of Performance.**

Notwithstanding any other provision hereof, if an Event of Default has occurred and is continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, has the right to suspend performance under this Agreement.

**9.7 Not a Penalty.**

The Parties acknowledge that (a) the Non-Defaulting Party shall be damaged by the Defaulting Party, (b) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (c) the remedies specified herein are fair and reasonable and do not constitute a penalty and (d) the remedies specified in Section 9.2 and Section 9.4 shall be the Non-Defaulting Party's sole and exclusive remedy in the Event of Default.

## ARTICLE 10: FORCE MAJEURE

### 10.1 Force Majeure.

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, that upon such Party's (the "Claiming Party") giving notice and full particulars, along with supporting documentation, of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, confirmed in writing, then the obligations of the Claiming Party will, to the extent it is affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer a period than the continuance of said inability, and the Claiming Party will not be in breach hereof or liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure during such Suspension Period. The Party receiving such notice of Force Majeure will have until the end of the twentieth (20th) Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of Force Majeure. If Seller is the Claiming Party, then such notification must be made to both Buyer and the IPA, and a determination of whether to object to or dispute the existence of Force Majeure may be made by Buyer. Any determination to object to or dispute the existence of Force Majeure by Buyer shall be subject to the concurrence of the IPA (who, upon receipt, shall promptly confer to consider the Force Majeure notice).

"Force Majeure" means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the date such Transaction was entered into and which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of due diligence. Force Majeure includes acts of God (such as tornadoes, fires, earthquakes and floods), pandemics as declared by the WHO, explosions, war, hostilities, riots and acts or threats of terrorism (any such event, an "External Event") that disrupt the development or operation of the Project. [Commenter 14 note: Suggest adding major, unforeseeable equipment failures beyond the reasonable control of the Seller, or alternatively create a cure period under Section 2.6 to avoid default. This is because BESS are newer, complex technologies that may experience unforeseeable internal failures. Sellers are unable to control the product quality and would like the opportunity to correct any capacity degradation due to a manufacturing issues.] In the case of a Party's obligation to make payments hereunder, Force Majeure will only be an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

If Force Majeure adversely affects the ability of Seller to achieve Commercial Operations by the Commercial Operations Deadline or extended deadline, then the Commercial Operations Deadline shall be extended day for day for each day of any Suspension Period pursuant to this Section 10.1; provided that in no event shall any extension under this Section 10.1 extend beyond May 31, 2035. In the event that the Commercial Operations Deadline has been extended pursuant to a Suspension Period and the COD has not occurred by May 31, 2034, then Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. In the event that the Commercial Operations Deadline is extended pursuant to a Suspension Period and the COD has not occurred by May 31, 2035, then Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. If Force Majeure adversely affects the development of the Project such that Seller is unable to complete construction of the Project due to such Force Majeure event, then Seller may provide a written notice to Buyer and the IPA of such determination. Unless such determination is refuted by Buyer within twenty (20) Business Days of Buyer's receipt of Seller's written notice, which shall be subject to the concurrence of the IPA, this Agreement shall terminate and Seller's Performance Assurance shall be returned.

If the COD has occurred by the Commercial Operations Deadline or extended deadline and Force Majeure adversely affects the ability of Seller to maintain the minimum operational requirements set forth in Section 2.6(a), then there shall be a Suspension Period with respect to that Project's obligations under this Agreement, and the Acceptable Vintage Period shall be extended day for day for each day of any Suspension Period. If the Acceptable Vintage Period is extended for a period that exceeds seven hundred thirty (730)

days, then this Agreement shall be terminated and Seller's Performance Assurance shall be returned. If Force Majeure adversely affects the operability of the Project and Seller has determined that the damage to the Project is irreparable, then Seller may provide a written notice to Buyer and the IPA of such determination. Unless such determination is refuted by Buyer within twenty (20) Business Days of Buyer's receipt of Seller's written notice, which shall be subject to the concurrence of the IPA, this Agreement shall terminate and Seller's Performance Assurance shall be returned.

Force Majeure may not be based on: (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) Seller's ability to sell the Product to another at a price greater than the Strike Price; or (iv) the loss of tax credits, the denial of deductions or the imposition of additional taxes.

## **ARTICLE 11: GOVERNMENT ACTION**

### **11.1 Government Action.**

The Parties acknowledge that the Applicable Program, which among other things establishes the conditions for a market for certain Products, may be the subject of Government Action (including court challenge) that could adversely affect the eligibility of a Product to meet the requirements of an Applicable Program or otherwise alter the requirements of the Applicable Program, make a Product unavailable or dramatically diminished or increased in value, or adversely affects the development of the Project. With respect to the Transaction, Seller represents that the Product complies with the Applicable Program and such representation is made and effective as of each ISC Generation Date, and regardless of any Government Action occurring after the Trade Date, Seller must generate Product that complies with the Applicable Program as of each ISC Generation Date. Government Action that changes in any respect the value of a Product (without rendering the Product out of compliance with the Applicable Program), will have no effect on the obligation of the Parties to purchase and sell such Product at the price and on the terms set forth in this Agreement. For avoidance of doubt, all payment obligations shall be suspended, and any non-compliant ISCs generated in a Delivery Year as a result of such Government Action shall be excused from the date of Government Action through the date the Product again complies with the Applicable Program; such period shall be deemed a Suspension Period provided, that such Suspension Period shall not exceed three hundred sixty-five (365) days, and the Acceptable Vintage Period shall be extended day for day for each day of any Suspension Period.

To the extent that Government Action after the Trade Date (i) renders the generation of ISCs for payment under this Agreement illegal under applicable law, (ii) renders generation of ISCs financially unreasonable for the Seller or (iii) [Commenter 14 note: As an alternative to the post-award renegotiation discussed below, Seller should be entitled to terminate the ISC Contract without penalty in the event that a Government Action renders the project financially infeasible] renders the Product ineligible to comply with the Applicable Program in such a manner that no commercially reasonable modification to the Product or action taken by Seller would allow the Product to comply with the Applicable Program, (a) such Transaction will be terminated, (b) Seller's Performance Assurance shall be returned, (c) that portion of whatever has been paid for non-conforming Products will be refunded by the applicable Party, to the extent it is lawful to do so, and (d) neither Seller nor Buyer will have any liability to the other after such termination. For purposes of the foregoing, Seller shall be deemed to have used "commercially reasonable" efforts if Seller provides to Buyer evidence of expenditures or estimated expenditures in an amount that exceeds the Commercially Reasonable Threshold; provided such evidence of expenditures or estimated expenditures shall be submitted to the IPA and Buyer within 365 days of the Government Action and such evidence be acceptable to Buyer, in its reasonable discretion. Notwithstanding the foregoing, no Transaction will be affected, cancelled, or otherwise impaired by Government Action that is specific to a Party under applicable law taken by a Governmental Authority

alleging that Party's violation thereof.

Notwithstanding the preceding, in the event of a Government Action that fundamentally impacts the Project, the generation of ISCs, or other contractual obligation, either the Buyer or Seller may petition the ICC to consider contract amendments. If the ICC determines that the proposed modification is in the public interest, the IPA shall draft an amendment that faithfully implements the ICC's direction and both Buyer and Seller shall execute such amendment within ten (10) Business Days of written notice by the IPA.

### 11.2 Risk Allocation.

The Product is Regulatorily Continuing.

[Commenter 14 note: We suggest adding post-award renegotiation process and allow for inflation-related adjustments, similar to the provisions in recent IREC contracts. Additionally, we suggest permitting price-related changes due to Government Action because generators require greater flexibility in the event of significant Government Actions.]

### 11.3 Investment Tax Credit (ITC) or Clean Electricity Investment Credit Contingency

In the event that the federal investment tax credit or clean electricity investment credit for energy storage systems, as available under Section 48 of the Internal Revenue Code (or any successor provision), is eliminated, materially reduced, or otherwise rendered unavailable for the Project prior to COD, Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. Such request must be made in writing to Buyer and the IPA as soon as practicable, [Commenter 14 note: Why is this option limited to pre-COD? If ITC law changes after COD, this materially changes project financing. We would like the option to leave the project with no recourse from the IPA or State as this is out of the control of the Seller] but no later than six months of the enactment of government action that eliminates, materially reduces or renders unavailable such credit; further, such written request must be substantiated by reasonable documentation evidencing that COD has not occurred. Such request will be subject to the approval of the IPA in its reasonable discretion. If approved by the IPA, Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. No Settlement Amount shall be due from or to either Party as a result of any such termination pursuant to this Section 11.3.

## ARTICLE 12: GOVERNING LAW

### 12.1 Applicable Program.

The Illinois Energy Storage System Portfolio Standard, as established under Section 1-75(d-20) of the IPA Act (20 Ill. Comp. Stat. 3855/1-75(d-20)) is the Applicable Program for this Agreement.

### 12.2 Governing Law.

This Agreement is governed by and construed in accordance with the laws of the State of Illinois. To the full extent permitted under applicable law, if the Parties have agreed on the terms of a Transaction, the Parties agree not to contest, or to enter any defense concerning the validity or enforceability of a Transaction on the grounds that the documentation for such Transaction fails to comply with the requirements of a jurisdiction's Statute of Frauds or other applicable law requiring agreements to be written or signed.

## ARTICLE 13: ASSIGNMENT

### 13.1 Assignment.

(a) Neither Party may assign this Agreement or any Transaction without the prior written

consent of the other, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, either Party may, without the consent of the other, (i) pledge, encumber or collaterally assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (but, in the case of Section 13.1(i) only, without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party on the Effective Date, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party on the Effective Date; provided, however, that in the case of an assignment pursuant to Section 13.1(ii) and (iii), any such assignee must, prior to any assignment, agree in writing to be bound by all of the terms and conditions hereof, including but not limited to the requirements set forth in Section 13.1(b), and the transferring Party must deliver such enforceability assurance as the non-transferring Party may reasonably request and, in the case of an assignment pursuant to Section 13.1(i), the transferring Party must give notice to the other Party within ten (10) days of any such collateral assignment. This Agreement will bind each Party's successors and permitted assigns. Any attempted assignment in violation of this provision will be void *ab initio*.

(b) With respect to an assignment of this Agreement by Seller, Seller shall provide notice to the IPA and Buyer. Seller and assignee shall represent to Buyer and the IPA the following, and the IPA may request additional information from Seller, as may be reasonable, to determine assignee's compliance with the following requirements:

- (i) Consistent with Section 1-75(d-20)(10) of the IPA Act, the assignee is not an electric utility, as defined in Section 16-103 of the Public Utilities Act, serving more than 10,000 customers in Illinois.
- (ii) Consistent with Section 1-75(d-20)(6) of the IPA Act, if prior to COD, the assignee has demonstrable experience in developing to commercial readiness. For purposes of the aforementioned, "developing to commercial readiness" means having notice to proceed in owning or operating energy facilities with a combined nameplate capacity of at least 100 megawatts.
- (iii) Assignee is compliant with the Prevailing Wage Act requirements, Project Labor Agreement requirements, Labor Peace Agreement requirements, Minimum Equity Standard requirements as set forth in this Agreement.

### **13.2 Financing Cooperation.**

At request of Seller, Buyer shall execute the consent and agreement (with estoppel certificate), in the form of Exhibit H attached hereto, which shall be provided by Seller to Buyer at the time of its request. Buyer shall endeavor to execute such consent and agreement within the timeframe requested by Seller on a commercially reasonable basis, and may request additional information from Seller, as may be reasonable, in connection with Seller's request.

## **ARTICLE 14: LIMITATION OF LIABILITY**

### **14.1 Limitation of Liability.**

The express remedies and measures of damages provided herein satisfy the essential purposes hereof.

[Commenter 14 note: Buyer and seller shall be subject to the same level of liability. This Section weighs heavily in favor of the Buyer.]

Except as specifically set forth herein, no party shall be required to pay or be liable for special, [Commenter 14 note: These provisions prevent Sellers or their lenders from seeking alternate sources of equitable relief] consequential, incidental, punitive, exemplary, or indirect damages, by statute, in tort, contract or otherwise. To the extent any damages required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

Notwithstanding any other provisions of this Agreement, in no event shall Seller be liable to Buyer in an amount that exceeds the sum of the Collateral Requirement and one hundred percent (100%) of the total payments Seller has received from Buyer associated with ISCs from the Project. [Commenter 14 note: This provision will make financing very difficult]

## ARTICLE 15: MISCELLANEOUS

### 15.1 Notices.

All notices, requests, statements or payments will be made as specified in this Agreement. Notices, unless otherwise specified herein, must be in writing and delivered by electronic means. Notice is effective when transmitted, if transmitted before or during business hours on a Business Day, and otherwise will be effective on the next Business Day. A Party may change its addresses by providing notice of such change in accordance herewith and updating the information in Exhibit B. [Commenter 14 note: Sellers are spending significant amounts on capital expenditures prior to the delivery of ISCs with a reliance on the ISC Contract for payment from Buyer. Seller should not be prohibited from seeking to recover these costs]

### 15.2 Dispute Resolution.

Disputes under this Agreement will be resolved in accordance with the provisions of this Section 15.2.

#### Waiver of Jury Trial

Waiver of Jury Trial. Each Party knowingly, voluntarily, intentionally and irrevocably waives the right to a trial by jury in respect of any litigation based on this Agreement, or arising out of, under or in connection with this Agreement and any agreement executed or contemplated to be executed in conjunction with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto. This provision is a material inducement to each of the Parties for entering hereinto. Each Party hereby waives any right to consolidate any action, proceeding or counterclaim arising out of or in connection with this Agreement or any other agreement executed or contemplated to be executed in conjunction with this Agreement, or any matter arising hereunder or thereunder, in which a jury trial has not or cannot be waived.

#### Mediation

If any dispute or claim should arise between the Parties that cannot be resolved through negotiation, the Parties shall endeavor to settle the dispute by mediation. Either Party may request in writing that the other Party mediate the dispute; and such notice shall set forth the subject of the dispute and the relief requested (the "Dispute Notice"). The mediation shall be conducted by the IPA unless one or more of the Parties object to mediation with the IPA.

If no party objects to mediation with the IPA, the disputing Party shall provide a written request to the IPA for mediation. Such written request shall include a brief summary of the dispute with confidential

information so marked. The IPA shall undertake mediation procedures developed by the IPA for the purposes of implementing this Section 15.2.

If one or more of the Parties object to mediation with the IPA, the mediation shall be conducted by a mediator affiliated with and under the commercial rules of the American Arbitration Association ("AAA"). The AAA's mediation procedures under the commercial rules are available at [https://www.adr.org/sites/default/files/CommercialRules\\_Web.pdf](https://www.adr.org/sites/default/files/CommercialRules_Web.pdf).

### **Binding Arbitration**

(1) Unless otherwise settled by mediation or directly settled by the Parties, any dispute or claim arising out of or related hereto or any breach thereof or any need for interpretation related to any dispute arising out of or related hereto will be settled by binding arbitration administered by the AAA in Illinois. Either Party will have the right to commence an arbitration by written notice to the other Party after the expiration of ninety (90) calendar days from the Dispute Notice mentioned above, or if nonbinding mediation was terminated, ten (10) days after the termination of the mediation. The arbitration will be conducted as follows:

(A) There will be one arbitrator who has not previously been employed by either Party, is qualified by education or experience to decide the matters relating to the questions in dispute, and does not have a direct or indirect interest in either Party or a financial interest in the outcome of the arbitration and who is available within the time frames set forth herein. Such arbitrator will either be selected by mutual agreement by the Parties within thirty (30) days after written notice from the Party requesting arbitration, or failing agreement by such time, the arbitrator will be selected within the following fourteen (14) days by the AAA under the AAA Rules.

(B) Such arbitration will be held at a location within the State of Illinois. Absent agreement, the arbitrator shall set the precise location of the arbitration based on where it is most convenient and cost effective to resolve the dispute, and if it is an international matter, with regard to any special considerations raised by the Parties that may therefore be relevant.

(C) The AAA Rules (including the Optional Rules for Emergency Protection Measures) apply to the extent not inconsistent with the rules herein specified. If the dispute is international in scope as defined in the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, the AAA's Supplementary Procedures for International Commercial Disputes shall apply.

(D) The hearing will be conducted on a confidential basis and except as required by law, neither the Parties nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all the Parties.

(E) At the request of a Party, the arbitrator will have the discretion to order an examination of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions will be limited to a maximum of two depositions for each Party, may be held by video conferencing to reduce travel expenses, and each deposition will be limited to a maximum of three hours. All objections are reserved to the hearing except objections based on privilege and proprietary or confidential information.

(F) The arbitrator will issue a confidential award accompanied by a written statement

regarding the reasons for the decision.

(G) The arbitrator and the Parties will make every attempt to complete the arbitration within 90 days of appointment of the arbitrator. Upon the application of a Party and for good cause shown, the arbitrator may extend this time. Under no circumstances will the arbitration take longer than six months from the appointment of the arbitrator. However, failure to conclude the arbitration within the six-month period will not constitute grounds for vacating the award.

(H) Each Party will be responsible for its own filing fees and case service fees in connection with its claim. Other expenses and arbitrator compensation will be borne equally, subject to final apportionment by the arbitrator. Each Party will be responsible for its own expenses and those of its counsel and representatives.

(I) Any offer made or the details of any negotiation regarding the dispute prior to arbitration and the cost to the Parties of their representatives and counsel will not be admissible.

(2) Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction by the Party in whose favor such award is made.

(3) Regardless of any procedures or rules of the AAA: (i) the arbitrator will have no authority to award punitive damages, or any other form of damages waived by the Parties pursuant to the Agreement, or attorneys' fees; and (ii) the Parties may by written agreement alter any time deadline, locations for meetings, or procedure outlined in this section or in the AAA Rules, except that the provisions of subsection (1)(G) above will govern with respect to the time frame for the conclusion of the arbitration.

### **15.3 Waiver of Immunities.**

To the extent either Party possesses any immunity on the grounds of sovereignty or other similar grounds, each Party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any suit, action or proceedings relating hereto in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any suit, action or proceedings relating hereto.

### **15.4 Confidentiality.**

Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement. For clarity, this means each Party shall not disclose or release information received from the other Party to any third-party (other than the Party's employees, Guarantor, lenders, prospective Guarantors, prospective lenders, prospective purchasers, investors, prospective investors, counsel, accountants or advisors who have to know such information and have agreed to keep such terms confidential) without the disclosing Party's written consent; and further, each Party shall restrict access to such information to as few as possible of its employees. The foregoing shall not apply if: (a) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (b) such document or information is generally available to the public; (c) such document or information was available to the receiving Party on a non-confidential basis; or (d) such document or information was available to the receiving Party on a non-confidential basis from a third-party,

provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. If a Party is required or requested to disclose any confidential information as provided in (a) above, such Party shall provide the other Party with written notice within five (5) Business Days so that the other Party may seek on its own behalf a protective order or any other appropriate remedy. If such protective order or other remedy is not obtained, the disclosing Party will cooperate with the other Party's counsel to enable such Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the confidential information. The Parties shall maintain the confidentiality of the terms of the Transaction hereunder in compliance with Section 16-111.5(h) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(h)). All confidentiality obligations set forth herein shall survive following the expiration or termination of this Agreement, provided, however, that with respect to any confidential information that constitutes a "trade secret" under applicable law, these covenants shall apply for the life of the trade secret.

### **15.5 Day Conventions.**

Unless otherwise specifically provided herein or in a Product Order, (i) "day" means a calendar day and includes Saturdays, Sundays and holidays, and (ii) if a payment falls due on a day that is not a Business Day, the payment will be due on the next Business Day thereafter.

### **15.6 Indemnity.**

Each Party will indemnify, defend and hold harmless the other Party from and against any claims or demands made by others arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided herein, except to the extent arising from the indemnified Party's own gross negligence or willful misconduct. Each Party will indemnify, defend and hold harmless the other Party against any taxes for which such Party is responsible under Section 5.5.

### **15.7 General.**

(a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Any prior agreement or negotiation between the Parties with respect to the subject hereof is superseded. Any Product Order or any collateral, credit support or margin agreement or similar arrangement between the Parties will, upon designation by the Parties, be deemed part hereof and incorporated herein by reference, with this Agreement controlling in the event of a contradiction.

(b) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and not be construed against one Party or the other as a result of the preparation, substitution, organizational membership, submission or other event of negotiation, drafting or execution hereof.

(c) No amendment or modification hereto or to any written Product Order is enforceable unless in writing and executed by both Parties.

(d) Headings used herein are for convenience and reference purposes only.

(e) Nothing herein constitutes any Party a partner, agent or legal representative of the other

Party or creates any fiduciary relationship between them.

(f) The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach will not operate as a waiver of any default or breach.

(g) Except as provided in a Product Order or pursuant to Section 11.1, if any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

(h) This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same original instrument. Delivery of an executed counterpart of a signature page to the Agreement by electronic means shall be effective as delivery of a manually executed counterpart of the Agreement. Electronic copies of executed original copies of the Agreement shall be sufficient and admissible evidence of the content and existence of the Agreement to the same extent as the originally executed copy or copies (if executed in counterpart).

(i) Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

(j) Exhibits are provided as samples for convenience of Parties and the actual forms and reports issued under this Agreement may reflect differences that are non-material in nature to facilitate the administration of this Agreement, and if necessary to correct typographical errors, cure inconsistencies in the provisions of this Agreement or clarify the intent of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

\_\_\_\_\_  
Party A Name

By:

Name:

Title:

\_\_\_\_\_  
Party B Name

By:

Name:

Title:

## **LIST: ACCOMPANYING EXHIBITS**

Exhibit A – Form of Product Order

Exhibit B – Contact Information for Notices

Exhibit C – Form of Reports and Notices

Exhibit C-1 – Hourly Availability Report

Exhibit D – Form of Invoice

Exhibit E – Form of Security Instruments

Exhibit E-1 – Form of Letter of Credit

[Exhibit E-2 – Form of Guaranty (Ameren Illinois Company)]

[Exhibit E-2 – Form of Guaranty (Commonwealth Edison Company)]

[Exhibit E-2b – Schedule 1: Foreign Guarantor Requirement (Commonwealth Edison Company)]

Exhibit F – Examples

Exhibit F-1 – Example of Payment Calculation

Exhibit F-2 – Example of ISC Reference Energy Arbitrage Price Calculation

Exhibit G – [RESERVED]

Exhibit H – Form of Consent and Agreement (with Estoppel Certificate)

Exhibit H-1 – Payment Instructions

Exhibit H-2 – Addresses

Exhibit H-3 – Form of Estoppel Certificate

**EXHIBIT A**  
**Form of Product Order**

*(One Product Order to be completed for the Project selected through the RFP)*

Trade Date: \_\_\_\_\_

Amended as of: \_\_\_\_\_

<p>Project Information</p>	<p><u>Energy Storage System</u></p> <p>Project name: _____</p> <p>Description of Project:</p> <p>Duration: <u>4 hours of continuous discharge at Contract Capacity per hour</u></p> <p>RTE: _____</p> <p>Technology: _____</p> <p>Site Description: (See Site Map)</p>
<p>ELCC</p>	<p>___%</p>
<p>Earliest Commercial Operation Date</p>	<p>June 1, 2026</p>
<p>Commercial Operation Date and Acceptable Vintage Period</p>	<p>COD: _____</p> <p>Earliest Vintage Month: ___ (as elected by Seller)</p> <p>Latest Vintage Month: ___</p> <p>Acceptable Vintage Period: ___</p>
<p>Contact Capacity                  (MW, as recognized by RTO).</p> <p>For avoidance of doubt, the Contract Capacity shall equal the power capacity of the Project. In other words, building a Project with a larger power capacity than the Contract Capacity and selling the residual capacity under a different arrangement is not permitted.</p>	<p>Proposed Contract Capacity: _____ MW</p> <p>Initial Contract Capacity: _____ MW</p> <p>Contract Capacity: _____ MW</p>
<p>Strike Price (\$ per MWh)</p>	<p>\$ _____ per MWh</p>
<p>RTO/ ISC Delivery Point / ISC Resource Zone</p>	<p>[MISO / MISO CP Node AMIL.BGS6 / MISO LRZ 4 <b>OR</b>                  PJM/ ComEd Residual Aggregate, Pnode ID 116472935                  (COMED_RESID_AGG) / ComEd LDA]</p>
<p>Project Labor Agreement requirements</p>	<p><input checked="" type="checkbox"/> Yes, requirements apply to Project</p>
<p>Minimum Equity Standard</p>	<p><input checked="" type="checkbox"/> Yes, requirements apply to Project                  MES percentage = <u>10</u> %</p>
<p>Labor Peace Agreement requirements</p>	<p><input checked="" type="checkbox"/> Yes, requirements apply to Project</p>

Prevailing Wage Act requirements	<input checked="" type="checkbox"/> Yes, requirements apply to Project
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Notes:

Party A or Seller

By:  
Name:  
Title:

Party B or Buyer

By:  
Name:  
Title:

## EXHIBIT B Contact Information for Notices

**All notices (excluding Project Labor Agreements) to the Illinois Power Agency to be sent to:**  
IPA.Data@illinois.gov

**Project Labor Agreements and amendments thereto shall be sent to:** IPA.PLA@Illinois.gov

Party A: \_\_\_\_\_

Party B: \_\_\_\_\_

**All Notices:**

Street:

City:

State and ZIP:

Attn:

Phone:

Email:

Federal Tax ID Number:

**All Notices:**

Street:

City:

State and ZIP:

Attn:

Phone:

Email:

Federal Tax ID Number:

**Invoices:**

Attn:

Phone:

Email:

**Invoices:**

Attn:

Phone:

Email:

With a copy to:

Attn:

Email:

With a copy to:

Attn:

Email:

**Payments:**

Attn:

Phone:

Email:

**Payments:**

Attn:

Phone:

Email:

**Wire Transfer:**

BNK:

ABA:

ACCT:

**Wire Transfer:**

BNK:

ABA:

ACCT:

**ACH Transfer:**

BNK:

ABA:

ACCT:

**ACH Transfer:**

BNK:

ABA:

ACCT:

**Credit and Collections:**

Attn:

Phone:

Email:

**Credit and Collections:**

Attn:

Phone:

Email:

With additional Notices of an Event of  
Default or Potential Event of Default to:

Attn:

Phone:

With additional Notices of an Event of  
Default or Potential Event of Default to:

Attn:

Phone:

Email:

Email:

**EXHIBIT C**  
**Form of Reports and Notices**

**Exhibit C-1**  
**Hourly Availability Report<sup>6</sup>**

Date: \_\_\_\_\_

Vintage Month: \_\_\_\_\_

**Table 1. Hourly Data**

Date	Hour (1 to 24)	Available Power Capacity (MW)	Planned Outage (MW)	Notes

Instructions.

- a. Fill in for every date and hour of the Vintage Month.
- b. All “hour” or “hourly” references are as measured in Eastern Standard Time, without any adjustment for daylight saving time.
- c. For **Available Power Capacity (MW)**, enter the power capacity (in MW) of the Project that is Available (as defined in this Agreement) for the hour in question.
  - If the Project's Available power capacity is not uniform over the course of the hour in question, enter the average Available power capacity over that hour.
  - For example, if a Project is Available at Contract Capacity for only sixty percent (60%) of an hour, enter 0.6 \* Contract Capacity for that hour. Also, if the Available power capacity of a Project is sixty percent (60%) of Contract Capacity for a full hour, enter 0.6 \* Contract Capacity for that hour. For purposes of calculation, the Available power capacity shall be rounded to the third decimal place.
  - In no case shall the Available power capacity of the Project be above Contract Capacity for the purposes of filling in "Available Power Capacity (MW)" in the above table.
  - To the extent the Project is not Available due to an event of Force Majeure or due to Technical Curtailment, nonetheless, enter the Available power capacity of the Project, but enter in the "Notes" column the circumstance, an event of Force Majeure or Technical Curtailment, as appropriate.
- d. For **Planned Outage (MW)**, enter the power capacity (in MW) of the Project that is not Available (as defined in this Agreement) due to a Planned Outage (as defined in this Agreement) for the hour in question.

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<sup>6</sup> The report must be submitted in Microsoft Excel format.

- If the power capacity of the Project not Available due to a Planned Outage is not uniform over the course of the hour in question, enter the average power capacity of the Project not Available due to a Planned Outage over that hour.
  - For example, if a Project is in a Planned Outage at the beginning of an hour but that Planned Outage ends sixty percent (60%) of the way through that hour, enter for that hour: 0.6 \* the power capacity of the Project that was not Available due to that Planned Outage. Also, if only sixty percent (60%) of the Contract Capacity of the Project is not Available due to a Planned Outage during an hour, enter 0.6 \* Contract Capacity for that hour. For purposes of calculation, the Available power capacity shall be rounded to the third decimal place.
  - In no case shall the power capacity of the Project in a Planned Outage be above the Contract Capacity for the purposes of filling in “Planned Outage (MW)” in the above table.
- e. For **Notes**, enter any additional relevant information required to understand the data in the above table.

**Table 2. Outage Event Data**

Start of Outage Event		End of Outage Event		Size of Outage (MW)	Planned Outage (Y/N)	Notes
Start Date	Start Time	End Date	End Time			

Instructions.

- a. Fill in every outage event in the Vintage Month.
- b. For **Start Time** and **End Time** enter time to the second, in the following format: "hh:mm:ss", using 24 hours instead of AM or PM. For example, 1:04pm and 3 seconds would be entered as: "13:04:03" and 12:02 am and 4 seconds would be entered as "00:02:04".
- c. For **Size of Outage (MW)**, enter the power capacity (in MW) that is not Available due to the outage.
- d. For **Planned Outage**, indicate whether the outage qualifies as a Planned Outage as defined in this Agreement.
- e. For **Notes**, enter any additional relevant information required to understand the data on the above table.

**Table 3. Technical Curtailment Days**

No.	Date
1	
2	
3	
4	
..	

Instructions.

- a. List days where Technical Curtailment has adversely impacted the operations of the Project as determined by Seller.

**EXHIBIT D**  
**Form of Invoice**

*During the Term of the Agreement, Seller shall render to Buyer an invoice by electronic mail for the payment obligations of Buyer to Seller on or before the 10<sup>th</sup> day of the month immediately following each Vintage Month (“Invoice Due Date”) in which ISCs are generated. Payment for timely submitted invoices under this Agreement shall be due and payable on the last Business Day of the month in which the invoice is rendered or the last Business Day of the following month if the invoice is rendered late and cannot be processed by the last Business Day of the month in which the invoice is rendered.*

*(The Form of Invoice must contain information for the Project in this Agreement)*

Invoice Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Buyer Address: \_\_\_\_\_

Seller name: \_\_\_\_\_

Seller address: \_\_\_\_\_

Payment Due Date: \_\_\_\_\_

Vintage Month: \_\_\_\_\_

Quantity of ISCs generated, by Day:

\_\_\_\_\_

[add as needed]

ISCs Daily Value, by Day:

\_\_\_\_\_

[add as needed]

ISC Monthly Payment: \$ \_\_\_\_\_

ISC Monthly Price: \$ \_\_\_\_\_

Invoice Amount: \$ \_\_\_\_\_

REMIT PAYMENT TO:

Wire Transfer: \_\_\_\_\_

ACH Transfer: \_\_\_\_\_



**EXHIBIT E**  
**Form of Security Instruments**

**Exhibit E-1**  
**Form of Letter of Credit**

**OPTION 1**

IRREVOCABLE STANDBY LETTER OF CREDIT FORM  
DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, \_\_\_\_\_ (the “Issuing Bank”), hereby establish our Irrevocable Transferable Standby Letter of Credit (the “Letter of Credit”) in favor of \_\_\_\_\_ (you, the “Beneficiary”) for the account of \_\_\_\_\_ (the “Account Party”), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank’s location for presentments] on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by an Authorized Officer of the Beneficiary:

1. “An Event of Default (as defined in the Indexed Storage Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] (“Beneficiary”) and [Account Party’s Name] (“Account Party”), as the same may be amended (the “ISC Contract”)) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]”;
2. “An Early Termination Date (as defined in the Indexed Storage Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] (“Beneficiary”) and [Account Party’s Name] (“Account Party”), as the same may be amended (the “ISC Contract”)) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]”; or
3. “The expiration date of your Letter of Credit is less than twenty (20) days from the date of this statement, and Account Party under such Letter of Credit is required, but has failed, to provide a replacement letter of credit or other collateral beyond such expiration date in accordance with, and to assure performance of, its obligations under the Indexed Storage Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] (“Beneficiary”) and [Account Party’s Name] (“Account Party”), as the same may be amended (the “ISC Contract”). No event of default has occurred and is continuing under the ISC Contract with respect to the Beneficiary. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]”.

This Letter of Credit shall expire on \_\_\_\_\_. It is a condition of this Letter of Credit that it will be automatically extended for one year periods (to the immediately following anniversary of its then current expiration date) following its then current expiration date, unless at least sixty (60) days before its then current expiration date, we notify you, by electronic means to \_\_\_\_\_ Attn: \_\_\_\_\_ that we do not

intend to extend this Letter of Credit; provided that the original notice shall be simultaneously forwarded by overnight courier service to you at the above address; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the notice.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid by the Issuing Bank. Partial drawings and multiple presentations are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honored upon presentation as specified. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission or electronic means. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. Presentation of documents to effect a draw by electronic means must be made to the following email address: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600, or any successor publication thereto (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b), 16(d) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 14(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) Business Days, following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and shall inform the Beneficiary accordingly. With respect to Article 16(d) of the UCP, the notice required in sub-article 16C must be given no later than the banks' close of business on the third Business Day following the date of presentation.

Article 36 of the UCP as it applies to this Irrevocable Standby Letter of Credit is hereby modified to provide that in the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business. Article 36 of the UCP as it applies to this Irrevocable Standby Letter of Credit is hereby further modified to provide that any alternate place for presentation that we designate must be located in the United States.

We, the Issuing Bank, hereby certify that as of the Date of Issuance of this Irrevocable Standby Letter of Credit our senior unsecured debt is rated "A-" or better by S&P Global Ratings ("S&P") if rated by S&P, "A3" or better from Moody's Investors Service ("Moody's") if rated by Moody's, and "A-" or better by Fitch Ratings ("Fitch") if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody's, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.

As used herein, the term "Business Day" means any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system and the term "Authorized Officer" means President, Treasurer, any Vice President or any Assistant Treasurer.

This Letter of Credit is transferable in whole but not in part, in accordance with the procedures in UCP 600 through the submission of a Letter of Full Transfer utilizing one of the attached forms of Letter of Full Transfer (Schedules 1-3), accompanied by the original Letter of Credit and original amendments, if any, but otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank, and the Account Party.

This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. Foreign Assets Control Regulations or other applicable U.S. Laws and Regulations.

We will not make any payment under this Letter of Credit (1) to any entity or person who is subject to the sanctions issued by the United States Department of Commerce, or to whom payment is prohibited by the foreign asset control regulations of the United States Department of the Treasury, or (2) which otherwise is in contravention of United States laws and regulations.

[The Issuing Bank may add specific contact or additional information or administrative- only comments at this point. However, such comments shall not create or alter any rights that vary from the above language].

[BANK SIGNATURE]

**OPTION 2**

IRREVOCABLE STANDBY LETTER OF CREDIT FORM  
DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, \_\_\_\_\_ (the "Issuing Bank"), hereby establish our Irrevocable Transferable Standby Letter of Credit (the "Letter of Credit") in favor of \_\_\_\_\_ (you, the "Beneficiary") for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank's location for presentments] on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by an Authorized Officer of the Beneficiary:

1. "An Event of Default (as defined in the Indexed Storage Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract")) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]";
2. "An Early Termination Date (as defined in the Indexed Storage Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract")) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]"; or
3. "The expiration date of your Letter of Credit is less than twenty (20) days from the date of this statement, and Account Party under such Letter of Credit is required, but has failed, to provide a replacement letter of credit or other collateral beyond such expiration date in accordance with, and to assure performance of, its obligations under the Indexed Storage Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract"). No event of default has occurred and is continuing under the ISC Contract with respect to the Beneficiary. Wherefore, the undersigned does hereby demand payment of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_) [or the entire undrawn amount of the Letter of Credit]".

This Letter of Credit shall expire on \_\_\_\_\_. It is a condition of this Letter of Credit that it will be automatically extended for one year periods (to the immediately following anniversary of its then current expiration date) following its then current expiration date, unless at least sixty (60) days before its then current expiration date, we notify you, by electronic means to \_\_\_\_\_ Attn: \_\_\_\_\_ that we do not intend to extend this Letter of Credit; provided that the original notice shall be simultaneously forwarded by overnight courier service to you at the above address; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the notice.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid by the Issuing Bank. Partial drawings and multiple presentations are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honored upon presentation as specified. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission or electronic means. Presentation of documents

to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. Presentation of documents to effect a draw by electronic means must be made to the following email address: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

This Letter of Credit is subject to International Standby Practices (ISP98), International Chamber of Commerce (“ICC”) Publication No. 590, or any successor publication thereto. This Standby Letter of Credit shall be deemed to be made under the laws of the State of New York, including Article 5 of the Uniform Commercial Code, and shall, as to matters not governed by the International Standby Practices (ISP98), be governed by and construed in accordance with the laws of the State of New York, excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction.

Rule 3.14(a) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty (30) calendar days after the place for presentation reopens for business.

Rule 3.14(b) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby further modified to provide that any alternate place for presentation that we designate must be located in the United States.

We, the Issuing Bank, hereby certify that as of the Date of Issuance of this Irrevocable Standby Letter of Credit our senior unsecured debt is rated “A-” or better by S&P Global Ratings (“S&P”) if rated by S&P, “A3” or better from Moody’s Investors Service (“Moody’s”) if rated by Moody’s, and “A-” or better by Fitch Ratings (“Fitch”) if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody’s, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.

As used herein, the term “Business Day” means any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system and the term “Authorized Officer” means President, Treasurer, any Vice President or any Assistant Treasurer.

This Letter of Credit, except as expressly stated herein, is transferable in whole but not in part in accordance with the ICC Publication No. 590. Any transfer request must be presented to us utilizing one of the attached forms of Letter of Full Transfer (Schedules 1-3) together with the original Letter of Credit and original amendments, if any. Transfers to designated foreign nationals and/or specially designated nationals are not permitted as being contrary to the U.S. Treasury Department or foreign assets control regulations.

Except for the transfer, this letter of credit otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank, and the Account Party.

We will not make any payment under this Letter of Credit (1) to any entity or person who is subject to the sanctions issued by the United States Department of Commerce, or to whom payment is prohibited by the foreign asset control regulations of the United States Department of the Treasury, or (2) which otherwise is in contravention of United States laws and regulations.

[The Issuing Bank may add specific contact or additional information or administrative-only comments at this point. However, such comments shall not create or alter any rights that vary from the above language].

[BANK SIGNATURE]



**Schedule 1 to Exhibit E-1**

**LETTER OF FULL TRANSFER**

\_\_\_\_\_, 20\_\_\_\_

To:  
Bank Address

Ladies/Gentlemen:

RE: Credit Issued By \_\_\_\_\_

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and original amendments, if any, are returned herewith, and we ask you to endorse the Letter of Credit and amendments on the reverse thereof, and forward these direct to the transferee with your customary notice of transfer.

Enclosed is remittance of \$\_\_\_\_\_ in payment of your transfer commission and in addition thereto we agree to pay to you on demand any expenses which may be incurred by you in connection with this transfer.

Transfer Commission Charges

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

SIGNATURE AUTHENTICATED

Yours very truly,

The signatory/ies of this concern is/are authorized to withdraw corporate funds.

\_\_\_\_\_  
(BANK)

\_\_\_\_\_  
Signature of Beneficiary

\_\_\_\_\_  
(Authorized Signature)

SIGNATURE AUTHENTICATED

The signatory/ies of this concern is/are authorized to withdraw corporate funds.

\_\_\_\_\_  
(BANK)

\_\_\_\_\_  
Signature of Transferee

\_\_\_\_\_  
(Authorized Signature)

**Schedule 2 to Exhibit E-1**

**LETTER OF FULL TRANSFER**

Request for a Full Transfer of the below  
referenced Standby Letter of Credit

[Name of the Issuing Bank]

Date: \_\_\_\_\_

Reference: \_\_\_\_\_

(Issuing Bank’s Letter of Credit Number)

To: \_\_\_\_\_

\_\_\_\_\_

“Transferring Bank”

(Advising Bank’s Reference Number, if applicable)

We, the undersigned “First Beneficiary”, hereby irrevocably transfer all of our rights to draw under the above  
referenced Letter of Credit (“Credit”) in its entirety to:

\_\_\_\_\_  
(Print Name and complete address of the Transferee) “Second Beneficiary”

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

Advise through:

\_\_\_\_\_  
(Print Name/address of the Second Beneficiary’s Bank, if known—  
if left blank, the Transferring Bank will select the advising bank)

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

In accordance with UCP 600 Article 38 or ISP 98, Rule 6 regarding transfer of drawing rights (whichever set of rules the Credit is subject to), all rights of the undersigned First Beneficiary in such Credit are transferred to the Second Beneficiary. The Second Beneficiary shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the Second Beneficiary without necessity of any consent of or notice to the undersigned First Beneficiary.

The original Credit, including amendments to this date, is attached and the undersigned First Beneficiary requests that you endorse an acknowledgment of this transfer on the reverse thereof. The undersigned First Beneficiary requests that you notify the Second Beneficiary of this Credit in such form and manner as you deem appropriate, and the terms and conditions of the Credit as transferred.



Enclosed is remittance of \$[ ] in payment of your transfer commission and in addition thereto we agree to pay to you on demand any expenses which may be incurred by you in connection with this transfer.

Transfer Commission Charges

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

First Beneficiary represents and warrants to Transferring Bank that (i) our execution, delivery, and performance of this request to Transfer (a) are within our powers and have been duly authorized (b) constitute our legal, valid, binding and enforceable obligation (c) do not contravene any charter provision, by-law, resolution, contract, or other undertaking binding on or affecting us or any of our properties and (d) do not require any notice, filing or other action to, with, or by any governmental authority (ii) we have not presented any demand or request for payment or transfer under the Credit affecting the rights to be transferred, and (iii) the Second Beneficiary's name and address are correct and complete and the transactions underlying the Credit and the requested Transfer do not violate applicable United States or other law, rule or regulation, including without limitation U.S. Foreign Asset Control regulations.

In the event that we fail to remit to you, following your written demand, any funds paid to us despite the Transfer, we agree to reimburse you for your reasonable costs of collecting those funds from us.

The Effective Date shall be the date hereafter on which Transferring Bank effects the requested transfer by acknowledging this request and giving notice thereof to Second Beneficiary.

WE WAIVE ANY RIGHT TO TRIAL BY JURY THAT WE MAY HAVE IN ANY ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS TRANSFER.

Sincerely Yours

---

(Print Name of First Beneficiary)

---

(Print Authorized Signer's Name and Title)

---

(Authorized Signature)

---

(Print Second Authorized Signer's Name and Title, if required)

---

(Second Authorized Signature, if required)

---

(Telephone Number)

SIGNATURE GUARANTEED Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement.

---

(Print Name of Bank)

---

(Address of Bank)

---

(City, State, Zip Code)

---

(Print Name and Title of Authorized Signer)

---

(Authorized Signature)

---

(Telephone Number)

---

(Date)

**Schedule 3 to Exhibit E-1**

**LETTER OF FULL TRANSFER**

\_\_\_\_\_, 20\_\_

[TRANSFEROR]

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

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to the Transferee, named below:

Name of Transferee

Address

By this transfer all our rights as the transferor, including all rights to make drawings under the Letter of Credit, go to the transferee. The transferee shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the transferee without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the transferee with your customary notice of transfer.

The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form. The authorization of the Beneficiary's signature and title on this form also acts to certify that the authorizing financial institution (i) is regulated by a US. federal banking agency; (ii) has implemented anti-money laundering policies and procedures that comply with applicable requirements of law, including a Customer Identification Program (CIP) in accordance with Section 326 of the USA PATRIOT Act; (iii) has approved the Beneficiary under its anti-money laundering compliance program; and (iv) acknowledges that [the Transferor] is relying on the foregoing certifications pursuant to 31 C.F.R. Section 103.121 (b)(6)."

NAME OF BANK \_\_\_\_\_

AUTHORIZED SIGNATURE AND TITLE

PHONE NUMBER

NAME OF TRANSFEROR

NAME OF AUTHORIZED SIGNER AND TITLE

AUTHORIZED SIGNATURE

## **Exhibit E-2**

### **Form of Guaranty (Ameren Illinois Company)**

THIS GUARANTY (this “Guaranty”), dated as of \_\_\_\_\_, 20\_\_, is made by \_\_\_\_\_ (the “Guarantor”), a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, in favor of **Ameren Illinois Company d/b/a Ameren Illinois** (the “Guaranteed Party”), a corporation organized and existing under the laws of the State of Illinois.

Terms not defined herein shall have the meanings given to them in the [\_\_\_\_\_] dated \_\_\_\_\_, 20\_\_ (as amended, modified or extended from time to time, the “Agreement”), between the Guaranteed Party and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ (the “Counterparty”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement with the Counterparty. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment and performance when due, subject to any applicable grace period, of all payment obligations of the Counterparty to the Guaranteed Party arising out of the Agreement. Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Counterparty as a result of an Event of Default under the Agreement (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed \_\_\_\_\_ provided, that Guarantor will be responsible for all reasonable legal fees, costs, and expenses incurred by the Guaranteed Party in enforcing the obligations under this Guaranty apart from such liability cap. All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations.” This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by the Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Counterparty, and any right to require a proceeding first against the Counterparty.

3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any document or any person (including the Counterparty) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Counterparty to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Counterparty to the Guaranteed Party including any security therefor.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Counterparty concerning any provision of the Agreement in respect of any Guaranteed Obligations of the Counterparty; (b) the rendering of any judgment against the Counterparty or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, nonperfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement or the Guaranteed Obligations agreed to from time to time by the Counterparty and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the

Counterparty or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Counterparty or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Counterparty, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the Counterparty of amounts to be paid by it under the Agreement or any of the Guaranteed Obligations; and (h) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the Counterparty, any other guarantor, the Guaranteed Party or any other corporation, entity or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Counterparty or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been irrevocably paid in full.

6. The Guarantor will not exercise any rights which it may acquire by way of subrogation or any other right to payment until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been irrevocably paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and a Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which a Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of a Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement.

9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.

10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the Counterparty in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or electronic means (effective upon receipt of evidence that the electronic communication was received)

If to the Guarantor:

[To be completed]

If to the Guaranteed Party:

[To be completed]

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor in accordance with its terms; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its constituent documents or any law, regulation or contractual restriction binding on it or its assets.

14. This Guaranty and the rights and obligations of the Counterparty and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of New York. The Guarantor and Guaranteed Party agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Northern District of the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor only as such, and

every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement.

[GUARANTOR]

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

Title: \_\_\_\_\_

## EXHIBIT E-2 Form of Guaranty (Commonwealth Edison Company)

THIS GUARANTY (this “Guaranty”), dated as of \_\_\_\_\_, 20\_\_, is made by \_\_\_\_\_ (the “Guarantor”), a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, in favor of Commonwealth Edison Company (the “Guaranteed Party”), a corporation organized and existing under the laws of the State of Illinois.

Terms not defined herein shall have the meanings given to them in the Indexed Storage Credit Agreement dated \_\_\_\_\_, 20\_\_ (as amended, modified or extended from time to time, the “Agreement”), between the Guaranteed Party and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ (the “Seller”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement entered into with the Seller pursuant to the RFP. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party, upon written demand, the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the Seller to the Guaranteed Party arising out of the Agreement. Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall

*Option 1* [in no event exceed \$ \_\_\_\_.]

*Option 2* [in no event exceed the Collateral Requirement less the value of other liquid securities posted by the Seller under the Agreement.]

All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Seller, and any right to require a proceeding first against the Seller.
3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, the Agreement with respect to the Guaranteed Obligations or any person (including the Seller) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party including any security therefor.
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Seller concerning any provision of the Agreement governing any of the Guaranteed Obligations of the Seller; (b) the rendering of any judgment against the Seller or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification,

amendment, waiver, extension of or supplement to the Agreement or the Guaranteed Obligations agreed to from time to time by the Seller and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Seller or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Seller, its assets or the Guarantor; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Seller, the Guaranteed Party, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; and (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Seller or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor until such time as all Guaranteed Obligations are paid in full.
6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing Guaranty and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.
8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party, which consent shall not be unreasonably withheld or delayed; and provided further that the Guarantor may, without the prior written consent of the Guaranteed Party, assign all of its rights and obligations under this Guaranty to an entity that has succeeded to the Guarantor by merger or by purchase of all or substantially all of the assets of the Guarantor and, in either case, has expressly assumed in writing all of the obligations of the Guarantor under this Guaranty. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement.
9. Other than as provided in this Guaranty, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.
10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the Seller in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never

originally been received by the Guaranteed Party.

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally paid, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully paid.
12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or electronic means (effective upon receipt of evidence that the electronic communication was received)

If to the Guarantor: [To be completed with a U.S. address. If the Guarantor is not domiciled in the U.S., the address for its U.S.-based agent for service of process must be provided.]

If to the Guaranteed Party: [To be completed]

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as such enforceability may be limited by bankruptcy, insolvency, receivership and other similar laws affecting the rights of creditors generally, or by general principles of equity; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its \_\_\_\_\_ [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws, Certificate of Incorporation and by-laws, or constitutional documents] or any law, regulation or contractual restriction binding on it or its assets.
14. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Illinois (without regard to conflict of law principles that would require the application of the substantive law of any other jurisdiction). The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising

out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreement(s) between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.
17. Notwithstanding anything to the contrary contained herein or in the Agreement, but excepting any express remedy set for in the Agreement, the Guarantor shall in no event be required to pay or be liable to the Guaranteed Party for any consequential, indirect or punitive damages, opportunity costs or lost profits.
18. Nothing herein is intended to deny to the Guarantor, and it is expressly agreed that the Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights which Seller is or may be entitled arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement.

Accepted and Agreed to:

[GUARANTOR]

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Acknowledged and Accepted:

Commonwealth Edison Company

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT E-2b**

### **Schedule 1 – Foreign Guarantor Requirement (Commonwealth Edison Company)**

[Commenter 14 note: As discussed previously, this Exhibit should allow for flexibility in changes to Seller name or relation to Bidder and may be amended.] An entity that is proposing to serve as a Guarantor under a Guaranty, but that has not been formed or organized under the laws of a state of the United States or the District of Columbia, must meet the following additional requirements in order to be recognized as an acceptable Guarantor:

1. Such entity must deliver a legal opinion (“*Opinion*”) of a law firm or a counsel, in either case who is not an employee of such entity or any of its affiliates or subsidiaries and who is authorized and qualified to practice law and render legal opinions in the foreign jurisdiction in which such entity is formed or organized. The Opinion shall meet the minimum content requirements specified below.
2. Such entity must deliver the sworn certificate of the corporate secretary (or similar or comparable officer) of such entity that the person executing the Guaranty on behalf of such entity has the authority to execute the Guaranty on behalf of such entity and that the governing board of such entity has approved the execution and delivery of the Guaranty.
3. Such entity must deliver the sworn certificate of the corporate secretary (or similar or comparable officer) of such entity that such entity has been authorized by its governing board to enter into agreements of the same type as the Guaranty.
4. Such entity must maintain an agent for acceptance of service of process in the United States. By executing and delivering the Guaranty, such entity agrees that service of any process in any claim or proceeding relating to the Guaranty may be made or served upon such entity by United States mail (postage prepaid).
5. The country in which such entity is domiciled must have a long-term sovereign (or equivalent) rating of AA+/Aa1 from at least two of the following rating agencies: S&P, Moody’s or Fitch. Each rating agency’s sovereign rating for the domicile country will be considered to be the lowest of: country ceiling, senior unsecured government debt, long-term foreign currency sovereign rating, long-term local currency sovereign rating, or other equivalent measure.
6. Such entity must pay for all expenses incurred by Party B related to reviewing and acceptance of the documents to be delivered with the Guaranty as provided in paragraphs 1 to 3 (inclusive) above; provided, however, that such payment shall not exceed \$10,000.

Once the Opinion has been provided and accepted as sufficient by Party B, in lieu of repeating the above process, the proposed Guarantor may re-certify its status in a subsequent procurement event if there have been no changes that would have altered that Opinion. To re-certify, the proposed Guarantor must provide a current letter by its Corporate Secretary (or equal / higher Corporate Officer) that it certifies that there have been no changes in its status which would adversely affect the enforceability of the Guaranty, since the time that the original Opinion was rendered.

Party B shall have sole and absolute discretion, without liability or recourse to the proposed Guarantor or Party A, to evaluate the sufficiency of the documents submitted by such proposed Guarantor pursuant to the requirements of this Schedule 2B. The following minimum requirements are to be met by the Opinion mentioned in paragraph 1 above:

- (a) The Opinion must be in English.
- (b) The Opinion should contain a recitation of the documents that have been reviewed by such counsel as a basis for the opinions expressed. Such recitations should include statements that (i) counsel has reviewed the organizational documents for the entity in question and has reviewed the legal requirements and agreement(s) in question (i.e., the Indexed Storage Credit Agreement, the Guaranty,

the Rules and associated Appendices, Exhibits and Schedules), (ii) counsel has considered any necessary corporate, regulatory or governmental authorizations or approvals that may be required as a condition to the entity entering into and performing the Guaranty and (iii) counsel has reviewed evidence provided by the entity, which evidence has been satisfactorily identified or certified to counsel, of such corporate, regulatory and governmental authorizations or approvals.

- (c) Based upon the review described in the preceding paragraph (b), the Opinion should reach the legal conclusions that: (i) under the law of the jurisdiction where the entity is organized, the necessary steps have been taken to cause the Guaranty, when executed and delivered on behalf of the entity, to become a valid and enforceable obligation of that entity, (ii) the Guaranty, when executed and delivered on behalf of the entity, will be, to the extent that the law of the entity's jurisdiction of organization is applicable to the enforcement of the entity's obligations thereunder, a valid and enforceable obligation of that entity, enforceable against it in accordance with its terms, subject to any enumerated customary exceptions under the law of such jurisdiction, and (iii) under law of the jurisdiction where the entity is organized, the choice of [Illinois][New York] law to govern the Guaranty is valid and enforceable against such entity.

In rendering its opinions within the Opinion, counsel may state that it is not rendering any opinion with respect to the laws of the State of [Illinois][New York], which govern the Guaranty.

The following text provides an illustration of how the requirements in paragraphs (a) through (c) (inclusive) above might be presented in an opinion of counsel:

[Description of transaction background/reason for delivering opinion]

We are familiar with the proceedings taken by [entity] in connection with the Guaranty and the transactions contemplated thereby. In connection with the opinions hereinafter expressed, we have reviewed originals, or copies of originals certified to our satisfaction, of (i) [describe the organizational or governing documents of the entity], (ii) a certificate of the [corporate secretary (or similar or comparable officer)] of [entity] that the person executing the Guaranty on behalf of [entity] has the authority to execute and deliver the Guaranty and that the governing board of [entity] has approved the execution and delivery of the Guaranty, (iii) a certificate of the [corporate secretary (or similar or comparable officer)] of [entity] that [entity] has been authorized by its governing board to enter into agreements of the same type as the Guaranty, (iv) the Guaranty, (v) the ISC Contract, and (vi) [describe any other relevant documents]. We have considered the governmental or regulatory approvals that may be applicable to the execution, delivery and performance of the Guaranty by [entity]. We have also examined such questions of law and have satisfied ourselves as to such matters of fact as we have considered relevant and necessary as a basis for the opinions hereinafter expressed.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications hereinafter stated, it is our opinion that:

1. Under the law of [jurisdiction of organization or formation], [entity] has taken all necessary action to cause the Guaranty, when executed and delivered on behalf of [entity], to become a valid and binding obligation of [entity]
2. The Guaranty, when executed and delivered on behalf of [entity], will be, to the extent that the law of [jurisdiction of organization or formation] is applicable to the enforcement of [entity's] obligations thereunder, the valid and binding obligation of [entity], enforceable against [entity] in accordance with its terms, except as such enforceability may be affected by [describe any exceptions].
3. The choice of the parties to the Guaranty to have the laws of the State of [Illinois][New York] govern the enforceability of the parties' obligations under the Guaranty is valid and enforceable against [entity] under the laws of [jurisdiction of organization or formation].

[Concluding paragraphs and signature]

**EXHIBIT F**  
**Examples**

*(If there are any inconsistencies between the provisions of the Agreement and the information in these examples, the provisions of the Agreement shall govern.)*

**Exhibit F-1**  
**Example of Payment Calculation**  
*(All Quantities are Illustrative only)*

Vintage Month: January 2027

Date	ISC <sub>d</sub>	ISC Reference Energy Arbitrage Price (\$/MWh)	ISC Reference Capacity Price (\$/MWh)	ISC Index Reference Price (\$/MWh)	Strike Price (\$/MWh)	ISC Daily Value (\$/MWh)	ISC Daily Payment Amount (\$)
	$q$	$e$	$c$	$r = e + c$	$s$	$p = s - r$	$D = p * q$
1/1/2027	0	35	21	56	70	14	0.00
1/2/2027	400	47	21	68	70	2	800.00
1/3/2027	380	41	21	62	70	8	3,040.00
1/4/2027	320	50	21	71	70	-1	-320.00
1/5/2027	266.667	55	21	76	70	-6	-1,600.00
...	...	...	...	...	...	...	...
<b>ISC Monthly Payment Amount (Total)</b>							<b>...</b>

The table below provides a summary of daily statistics of a hypothetical Project, with an assumed Contract Capacity of 100 MW. The figures shown have been aggregated from the hourly availability report to a daily level for illustrative purposes. For the actual pro forma hourly availability report, please refer to Exhibit C. For accounting of the number of ISCs credited, please refer to Section 4.1 of the Agreement.

<b>Date</b>	<b>Average Available Power Capacity (MW) for a given day<sup>7</sup></b>	<b>Notes<sup>8</sup></b>	<b>ISC<sub>d</sub></b>
1/1/2027	0 MW	The entire Project was not Available for the entire day; no Planned Outages	0
1/2/2027	100 MW	The entire Project was Available for the entire day; no Planned Outages	400
1/3/2027	95 MW	The Project was partially Available; no Planned Outages	380
1/4/2027	80 MW	The Project was partially Available; no Planned Outages	320
1/5/2027	0 MW	The entire Project was not Available for the entire day; 8 hours due to Planned Outage; rest 16 hours due to operational reasons not excused by Planned Outage <sup>9</sup>	266.667
...	...	...	...

<sup>7</sup> This is calculated as (Sum of Available power capacity) / (Number of hours), where hourly average Available power capacity is referred in hourly availability report. Please see the below note for ISC<sub>d</sub> for details as referenced from Section 4.1 of the Agreement.

<sup>8</sup> To provide context for the example, for illustrative purposes only.

<sup>9</sup> Given the ISC Daily Value is negative for 1/5/2027 as illustrated on the prior table, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. In this example, the quantity of ISCs generated is 266.667 ISCs pursuant to Section 4.1. Should the ISC Daily Value be positive, the quantity of ISC generated for such day would be zero (0) ISC.

Parameter	Notes for Calculation
ISC <sub>d</sub>	<p>(a) For each day in which the ISC Daily Value is negative, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. On a day on which a Planned Outage occurred, the number of ISCs credited shall be prorated based on the MW of Contract Capacity not affected by the Planned Outage and number of hours not affected by the Planned Outage using the following formula:</p> $ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Contract\ Capacity - Planned\ Outage_n)}{NumHrs}$ <p><i>NumHrs</i>: twenty-four (24).</p> <p><i>Planned Outage<sub>n</sub></i>: The size in MW of Planned Outage applicable in hour <i>n</i> in day <i>d</i>; in cases where the MW size of the Planned Outage is not uniform within hour <i>n</i>, the average MW size of the Planned Outage during hour <i>n</i> shall be used in this formula, rounded to the third decimal place. Seller will report <i>Planned Outage<sub>n</sub></i> in Seller’s hourly availability report; in no case shall <i>Planned Outage<sub>n</sub></i> exceed Contract Capacity; <i>Planned Outage<sub>n</sub></i> equals zero (0) for any hours not part of a Planned Outage.</p> <p>(b) For each day in which the ISC Daily Value is positive, Seller is credited four (4) ISCs per MW of Contract Capacity, which shall be prorated based on the available MW of the Project (the amount of available MW is the MW power capacity of the Project that is Available, or in the case of partial availability the MW power capacity of the portion of the Project that is Available), and number of hours the Project is Available, using the following formula:</p> $ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Available\ Capacity_n)}{NumHrs}$ <p><i>Available Capacity<sub>n</sub></i>: The amount in MW of power capacity of the Project that is Available in hour <i>n</i> in day <i>d</i>; in cases where the MW size of available power capacity is not uniform within hour <i>n</i>, the average MW size of available power capacity during hour <i>n</i> shall be used in this formula; rounded to the third decimal place. Seller will report <i>Available Capacity<sub>n</sub></i> in Seller’s hourly availability report; in no case shall</p>

Parameter	Notes for Calculation
	<i>Available Capacity<sub>n</sub> exceed Contract Capacity.</i>
ISC Reference Energy Arbitrage Price (\$/MWh)	<p><i>ISC Reference Energy Arbitrage Price in \$/MWh for a given day d:</i></p> $\sum_{n=1}^4 \max \left( T_n - \left( \frac{B_n}{0.85} \right), 0 \right) / 4$ <p><i>T<sub>n</sub>: Locational Marginal Price for nth top-priced hour in day d</i>  <i>B<sub>n</sub>: Locational Marginal Price for nth bottom-priced hour in day d</i></p>
ISC Reference Capacity Price (\$/MWh)	<p><i>ISC Reference Capacity Price =</i>  <i>ELCC * [MISO's planning resource auction clearing price applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours / PJM's base residual auction resource clearing price applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours]</i></p>
ISC Index Reference Price (\$/MWh)	<p><i>ISC Index Reference Price =</i>  <i>ISC Reference Energy Arbitrage Price + ISC Reference Capacity Price</i></p>
Strike Price (\$/MWh)	<i>Bid price as offered by Seller through the RFP and as indicated in the Product Order</i>
ISC Daily Value (\$/MWh)	<i>ISC Daily Value = Strike Price - ISC Index Reference Price</i>
ISC Daily Payment Amount (\$)	<i>ISC Daily Payment Amount = ISC Daily Value * ISC<sub>d</sub></i>
ISC Monthly Payment Amount (\$)	<i>ISC Monthly Payment Amount is the sum of ISC Daily Payment Amount for the Vintage Month.</i>



**Exhibit F-2**  
**Example of ISC Reference Energy Arbitrage Price Calculation**  
*(All Quantities are Illustrative only)*

The Location Marginal Prices of day  $d$  are given in Table 1 and the ISC Reference Energy Arbitrage Price is calculated in Table 2.

**Table 1. Locational marginal price of day  $d$**

Hour	LMP (\$/MWh)	Hour	LMP (\$/MWh)
1	35.00	13	50.50
2	45.00	14	52.25
3	47.25	15	56.00
4	47.40	16	65.00
5	47.50	17	61.00
6	48.00	18	54.00
7	48.10	19	53.00
8	48.50	20	52.00
9	49.25	21	51.00
10	49.50	22	49.00
11	49.75	23	47.00
12	50.00	24	44.00

**Table 2. Calculation of ISC Reference Energy Arbitrage Price for day  $d$**

Rank	$T_n$	$B_n$	$T_n - \left(\frac{B_n}{0.85}\right)$	$\max \left(T_n - \left(\frac{B_n}{0.85}\right), 0\right)$
1	65.00	35.00	23.82	23.82
2	61.00	44.00	9.24	9.24
3	56.00	45.00	3.06	3.06
4	54.00	47.00	-1.29	0.00
Total				36.12
Total / 4 (rounded to 2 decimal places)				<b>9.03</b>

Note: Top four  $T_n$  hours are Hour 16, 17, 15, and 18, respectively, and Bottom four  $B_n$  hours are Hour 1, 24, 2, and 23, respectively, in this example.

## **EXHIBIT G**

[RESERVED]

## EXHIBIT H

### Form of Consent and Agreement (with Estoppel Certificate)

This **CONSENT AND AGREEMENT** (this “Consent”), dated as of \_\_\_\_\_, 20\_\_, is entered into by and among [Ameren Illinois Company d/b/a Ameren Illinois / Commonwealth Edison Company] (the “Contracting Party”), \_\_\_\_\_, in its capacity as collateral agent (in such capacity, together with its successors, designees and assigns in such capacity, the “Collateral Agent”) for the benefit of the Secured Parties (as defined below) and \_\_\_\_\_, a \_\_\_\_\_ (the “Project Company”).

#### RECITALS

WHEREAS, the Contracting Party and the Project Company entered into (i) that certain Indexed Storage Credit Agreement, dated as of \_\_\_\_\_, 20\_\_, (ii) that certain Product Order, dated as of \_\_\_\_\_, 20\_\_, [and (iii) that certain \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_, ] (each, as may be further amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, an “Assigned Agreement”, and collectively, the “Assigned Agreements”);

WHEREAS, the Project Company and its affiliates have entered into certain security documents with the Collateral Agent (collectively, as may be amended, restated, supplemented, or otherwise modified from time to time, the “Security Documents”);

WHEREAS, the Project Company has entered into that certain credit agreement, dated as of the date hereof (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among \_\_\_\_\_ (the \_\_\_\_\_ and, together with the Project Company, the “Borrowers”), the financial institutions from time to time party thereto as lenders and as issuing banks, \_\_\_\_\_, in its capacity as administrative agent (in such capacity, the “Administrative Agent”), the Collateral Agent and the other parties thereto;

WHEREAS, pursuant to the Security Documents, Project Company has agreed to collaterally assign all of its right, title, benefit and interest in, to and under the Assigned Agreements to the Collateral Agent on behalf of certain secured parties, including lenders, issuing banks, agents and specified swap counterparties (the “Secured Parties”) providing extensions of credit and letters of credit to or for the benefit of the Project Company and its affiliates pursuant to the Credit Agreement and certain other contracts and agreements (collectively, as may be amended, restated, supplemented, or otherwise modified from time to time, the “Financing Documents”);

WHEREAS, it is a condition precedent to the obligations of the Secured Parties under the Financing Documents that the Project Company shall have entered into this Consent with the Contracting Party and Collateral Agent; and

WHEREAS, the Contracting Party is willing to consent to such collateral assignment and grant Collateral Agent the rights in respect of the Assigned Agreements set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything in the Assigned Agreements to the contrary, as follows:

## **ARTICLE 1**

### **Assignment and Agreement**

SECTION 1.01 Consent to Assignment. The Contracting Party hereby acknowledges and consents to Borrowers' pledge, grant of a security interest and lien upon, and assignment to the Collateral Agent for the benefit of the Secured Parties of, all of the Project Company's right, title and interest in, to and under the Assigned Agreements pursuant to the terms and conditions of the Financing Documents, as collateral security for all of the obligations of the Project Company secured or purported to be secured by the Financing Documents. The assignment of the Assigned Agreements shall not relieve the Project Company of any obligations arising under the Assigned Agreements referred to in the preceding sentence. In the event that the Collateral Agent or any of its designees or assignees elects pursuant to the Financing Documents to succeed to the Project Company's interest under the Assigned Agreements, the Collateral Agent or such designee or assignee shall elect by written notice delivered to the Contracting Party and the Project Company to assume the Project Company's rights and obligations under the Assigned Agreements, including any payment and Performance Assurance obligations under the Assigned Agreements theretofore accrued but excluding any other non-payment obligations or liabilities that may have accrued prior to such foreclosure or assignment which by their nature are not capable of being cured. Until such time as the Collateral Agent gives written notice as provided herein, the Contracting Party shall, except as otherwise provided in this Consent, continue to deal directly with the Project Company with respect to its obligations to the Project Company under the Assigned Agreements. Upon the exercise (as contemplated above) by the Collateral Agent (or any of its designees or assignees meeting the requirements, if any, for assignees under the Assigned Agreements) of any of the remedies under the Financing Documents in respect of the Assigned Agreements, the Collateral Agent (or any of its designees or assignees) may assign its rights and interests and the rights and interests of the Project Company under the Assigned Agreements to any other entity if such entity shall assume liability for all of the obligations of the Project Company, including any payment and Performance Assurance obligations, under the Assigned Agreements theretofore accrued (but excluding any obligation to cure any then existing performance defaults, which by their nature are incapable of being cured).

#### SECTION 1.02 Right to Cure.

(a) In the event of any default by the Project Company in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreements which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Contracting Party to terminate or suspend its obligations under the Assigned Agreements, the Contracting Party shall (i) provide prompt written notice of such default, event or condition to the Collateral Agent contemporaneously with providing such written notice to Project Company, and (ii) not terminate or suspend its obligations under the Assigned Agreements until it permits the Collateral Agent to cure the default within the later of (A) a period of 30 days for a payment default or 45 days for a default other than a payment default, in each case, after the notice of default having been given to the Collateral Agent by the Contracting Party and (B) the expiration of the applicable cure period provided in the Assigned Agreements for the Project Company to cure the applicable default; provided, however, if the Collateral Agent is diligently seeking to foreclose and requires control of the Project to cure the default, such period shall be extended for a reasonable period not to exceed 90 days in the aggregate and if the Collateral Agent is prevented from curing the default or foreclosing during the course of a bankruptcy or similar event of the Project Company, such cure period shall continue for a reasonable period of time until the Collateral Agent is permitted to cure or foreclose.

(b) In connection with any cure of a default under the Assigned Agreements or any assumption by the Collateral Agent (or any of its designees or assignees) of such entity's liabilities thereunder, only those obligations and liabilities arising expressly under the terms of the Assigned Agreements shall be required to be cured, and there shall be no obligation by the Collateral Agent, or any Secured Party (or any of their respective

designees or assignees) to cure any non-contractual liability that may have arisen. No curing of any defaults under the Assigned Agreements shall be construed as an assumption by the Collateral Agent (or any of the Secured Parties) of any of the obligations, covenants or agreements of the Project Company under the Assigned Agreements.

SECTION 1.03 No Termination. The Contracting Party shall not, without the prior written consent of the Collateral Agent acting at the direction of the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned), cancel, terminate or suspend performance under the Assigned Agreements or consent to or accept any cancellation, termination or suspension thereof, or its performance thereunder, unless such cancellation, termination or suspension is expressly provided for in the Assigned Agreements (but subject to Section 1.02). Subject to the mutual agreement of the Contracting Party and Project Company, Contracting Party expressly reserves the right to enter into amendments, modifications and/or adjustments to the extent consistent with the terms of the Assigned Agreements. Project Company shall provide Collateral Agent with a written copy of any amendments, modifications and/or adjustments not more than ten (10) days after the execution thereof.

SECTION 1.04 Replacement Agreement. In the event that (a) the Assigned Agreements are rejected or terminated in any bankruptcy, insolvency or similar proceeding involving the Project Company, the Contracting Party or any other entity or (b) the assignment by way of security of the Assigned Agreements hereunder is ineffective or reasonably challenged as a result of such proceeding; and if within 60 days after such rejection, termination, ineffectiveness or challenge the Collateral Agent (or any of its designees or assignees) shall so request and shall certify in writing to the Contracting Party that it or they intend to perform the obligations of the Project Company as and to the extent required under the Assigned Agreements (as if the Assigned Agreements had not been rejected or terminated, but otherwise only to the extent such obligations would be undertaken had such entity succeeded to the Project Company thereunder pursuant to Section 1.01), the Contracting Party shall execute and deliver to the Collateral Agent (or its designees or assignees) replacement contracts (the “Replacement Assigned Agreements”) for the balance of the remaining term under the original Assigned Agreements containing the same terms and provisions as the original Assigned Agreements (except for any requirements which have already been fulfilled by the Project Company and the Contracting Party or which are not required to be undertaken by such entity as aforesaid) and in such case, reference in this Consent to the “Assigned Agreements” shall be deemed also to refer to any such Replacement Assigned Agreements. As a condition to such Replacement Assigned Agreements, all payment defaults then existing shall be cured.

SECTION 1.05 Limitation on Liability.

(a) The Contracting Party acknowledges and agrees that except as specifically provided in this Consent, neither the Collateral Agent nor any Secured Party (nor any of their respective designees or assignees) shall have any liability or obligation under the Assigned Agreements as a result of this Consent, the Financing Documents, or otherwise, except to the extent that the Collateral Agent (or any of its respective designees or assignees) elects to succeed to the Project Company’s interest under the Assigned Agreements pursuant to Section 1.01 or becomes a counterparty to a Replacement Assigned Agreement pursuant to Section 1.04. No claim shall be made by any party hereto or any of its affiliates, directors, employees, attorneys or agents against any other party hereto or any of its affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort, duty imposed by law or otherwise), arising out of this Consent and Agreement; and each party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(b) It is hereby agreed and acknowledged that in no event shall the Contracting Party be liable, whether based in contract, in tort (including negligence and strict liability) or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever, and any liability of the Contracting Party hereunder

shall be subject to all of the disclaimers, limitations of and protections against liability set forth in the Assigned Agreements. This Consent is not intended to obligate or expose Contracting Party to any liability beyond that assumed by Contracting Party hereunder.

SECTION 1.06 Payments. The Contracting Party shall pay all amounts payable by it to the Project Company under any Assigned Agreement in the manner and as and when required by such Assigned Agreement directly into the account specified on Exhibit H-1 hereto, or to such other entity or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing.

SECTION 1.07 Estoppel Certificate. Upon reasonable request (but not more than once per calendar year) of the Project Company or the Collateral Agent, the Contracting Party shall execute and deliver an estoppel certificate in favor of any indirect tax equity investor in the Project Company (and its successors and permitted assigns), the Administrative Agent and Collateral Agent at the funding of the tax equity financing for the Project, in the form attached hereto as Exhibit H-3.

## **ARTICLE 2**

### **Representations and Warranties**

SECTION 2.01 Representations and Warranties of the Contracting Party. The Contracting Party hereby represents and warrants to the Collateral Agent and each of the Secured Parties (such representations and warranties being made as of the date of this Consent):

(a) The Contracting Party is a corporation, duly organized and validly existing under the laws of the jurisdiction of its incorporation and is duly qualified to do business and is in good standing in Illinois.

(b) The Contracting Party (i) has the full power, authority and legal right to execute, deliver and perform its obligations under this Consent and the Assigned Agreements and such execution, delivery and performance have been duly authorized; (ii) has duly executed and delivered this Consent and the Assigned Agreements which constitute the legal, valid and binding obligations of the Contracting Party, enforceable against the Contracting Party in accordance with their respective terms, except as the enforceability thereof may be limited by (A) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (B) general equitable principles (whether considered in a proceeding in equity or at law), and (iii) has obtained, if required, each governmental approval required for the execution, delivery or performance of this Consent and the Assigned Agreements. The execution, delivery and performance by the Contracting Party of this Consent and the Assigned Agreements do not and will not result in a violation of (x) any law applicable to the Contracting Party (y) any provision of the governing documents of the Contracting Party or (z) any other agreement to which it is a party or by which it or its properties and assets are bound or affected, except, with respect to this clause (z), as could not reasonably be expected to result in a material adverse effect on its performance of the Assigned Agreements and this Consent.

(c) Contracting Party has not received service of any action, suit or proceeding at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the best knowledge of the Contracting Party, threatened against or affecting the Contracting Party relating to this Consent or the Assigned Agreements.

(d) Neither the Contracting Party nor, to the knowledge of the Contracting Party, the Project Company, is in default (nor will be in default after giving effect to the pledge and assignment referred to in Section 1.01) of any of their respective obligations under the Assigned Agreements. To the knowledge of Contracting Party, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable the Contracting Party, or, to the knowledge of the

Contracting Party, the Project Company, to terminate or suspend the Contracting Party's obligations under the Assigned Agreements. The Assigned Agreements are in full force and effect and the Contracting Party has not assigned any of its rights or delegated any of its duties under the Assigned Agreements.

(e) To the knowledge of Contracting Party, each representation and warranty made by the Contracting Party in the Assigned Agreements is true and correct in all material respects as of the date of this Consent (or, if stated to have been made solely as of an earlier date, each such representation and warranty was true and correct as of such earlier date).

(f) This Consent and the Assigned Agreements constitute and include all agreements entered into by the Contracting Party relating to, and required from the Contracting Party for the consummation of, the transactions contemplated by this Consent and the Assigned Agreements.

### **ARTICLE 3**

#### **Miscellaneous**

SECTION 3.01 Term. The obligations of the parties hereunder are absolute and unconditional, and no termination shall be effective except by an instrument in writing signed by each party hereto; provided that all rights and obligations of the parties shall terminate upon: (x) the release of the Project or the Assigned Agreement from the collateral in accordance with the Financing Documents as confirmed by the Collateral Agent, (y) the performance of all parties' obligations in accordance with the terms of the Assigned Agreements (except with regard to any applicable provisions that survive the termination of the Assigned Agreement) or (z) the \_\_\_\_\_.

SECTION 3.02 Amendments to This Consent. No amendment or waiver of any provision of this Consent, and no consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by each of the parties hereto, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 3.03 Notices. All notices and other communications provided for herein shall be in writing and shall be mailed by certified or registered mail, delivered by hand or overnight courier or sent by electronic mail to the address, electronic mail address or telephone number specified in Exhibit H-2 hereto or such other address, telecopier number, electronic mail address or telephone number as may be designated by a party in a written notice delivered to the other parties hereunder pursuant to this Section 3.03. Notices and other communications mailed by certified or registered mail or sent by hand or overnight courier service shall be deemed to have been given when received. Notices and other communications sent by electronic mail during the recipient's normal business hours shall be deemed to have been given when sent (and, if sent after normal business hours, shall be deemed to have been given at the opening of business on the next business day).

SECTION 3.04 No Waiver; Cumulative Remedies. No failure to exercise, and no delay in exercising, on the part of the Collateral Agent, Contracting Party, or any Secured Party any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, are cumulative and not exclusive of any rights, remedies, powers or privileges provided by law.

SECTION 3.05 Successors and Assigns; Third Party Beneficiaries. The provisions of this Consent shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby; provided that neither the Project Company nor the Contracting Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Collateral Agent

(which consent shall not be unreasonably withheld, delayed or conditioned), and any other attempted assignment or transfer by either the Project Company or the Contracting Party shall be null and void. Nothing in this Consent shall be construed to confer upon any entity (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Consent; provided that the Secured Parties are intended third party beneficiaries of this Consent.

SECTION 3.06 Entire Agreement. This Consent, including any agreement, document or instrument attached hereto or referred to herein, constitutes the entire contract among the parties relating to the subject matter hereof and supersedes all previous agreements and understandings, oral and written, with respect thereto and the terms, conditions and provisions of this Consent shall prevail in the event of any conflict with any such agreement, document or instrument (including, without limitation, the Assigned Agreements).

SECTION 3.07 Severability. If any term or provision of this Consent is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Consent or invalidate or render unenforceable such term or provision in any other jurisdiction and the parties hereto shall negotiate in good faith to modify this Consent so as to effect the original intent of the parties as closely as possible.

SECTION 3.08 Governing Law; Waiver of Jury Trial; Jurisdiction. THIS CONSENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS. The parties hereto agree to waive absolutely, unconditionally and irrevocably any right to trial by jury in any action or proceeding arising out of or in connection with this Consent or for the enforcement of any rights hereunder. The parties hereto hereby irrevocably (a) submit to the non-exclusive jurisdiction of any state or federal court sitting in the State of Illinois, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Consent, (b) agree that all claims in respect of such action or proceeding may be heard and determined in such state or federal court, (c) waive, to the fullest extent you may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding, (d) consent to the service of any and all process in the manner provided for in Section 3.03 and agree that nothing herein will affect the right of any party hereto to serve process in any other manner permitted by applicable law and (e) agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted by law.

SECTION 3.09 Collateral Agent. Any entity into which Collateral Agent may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which Collateral Agent shall be a party, or any entity to which all or substantially all of the corporate trust business of Collateral Agent may be sold or otherwise transferred shall be the successor Collateral Agent hereunder without any further act. The parties hereto acknowledge and agree that the Collateral Agent will be exercising its rights and remedies hereunder, and will be providing any consents, directions or approvals contemplated to be provided by it hereunder, on behalf of the Secured Parties and in accordance with directions from the Administrative Agent or Secured Parties, and accordingly the Collateral Agent will not be liable for taking any such actions, or failing to take any such actions, in accordance with such directions or for delay in taking such actions resulting from any failure or delay by the Administrative Agent or the Secured Parties in providing such directions.

SECTION 3.10 Execution in Counterparts. This Consent and any amendments, waivers, consents or supplements hereto may be executed in counterparts (and by different parties hereto in different counterparts), each shall constitute an original, but all when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Consent in electronic (i.e. "PDF" or "TIF") format shall be effective as delivery of a manually executed counterpart of this Consent. The words "execution," "signed,"

“signature,” “delivery,” and words of like import in or relating to this Consent or any document to be signed in connection with this Consent and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the federal Electronic Signatures in Global and National Commerce Act, the Illinois Electronic Commerce Security Act, 5 ILCS 175/1 et seq., or any other state laws based on the Uniform Electronic Transactions Act, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Consent to be duly executed and delivered as of the date first written above.

[Buyer],  
as Contracting Party

Signed by: \_\_\_\_\_  
Authorized Signature

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

Title: \_\_\_\_\_

\_\_\_\_\_,  
as Project Company

Signed by: \_\_\_\_\_  
Authorized Signature

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

Title: \_\_\_\_\_

\_\_\_\_\_,  
not in its individual capacity but solely in its capacity as Collateral Agent

Signed by: \_\_\_\_\_  
Authorized Signature

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

Title: \_\_\_\_\_

**Exhibit H-1**  
**Payment Instructions**

Any and all amounts owed to the Project Company shall be paid to the following account:

Wire Instructions:

Bank: \_\_\_\_\_  
SWIFT: \_\_\_\_\_  
ABA: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_

ACH Instructions:

Bank: \_\_\_\_\_  
SWIFT: \_\_\_\_\_  
ABA: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_

**Exhibit H-2**  
**Addresses**

Contracting Party

[Name of Buyer] \_\_\_\_\_

[Address] \_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

Project Company

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Collateral Agent

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

## Exhibit H-3 Form of Estoppel Certificate

### ESTOPPEL CERTIFICATE

\_\_\_\_\_, 20\_\_

Reference is made to that certain Indexed Storage Credit Agreement, dated \_\_\_\_\_, 20\_\_ (the “**Agreement**”), by and between \_\_\_\_\_, (the “**Project Company**”), and [Ameren Illinois Company d/b/a Ameren Illinois / Commonwealth Edison Company] (“**Contracting Party**”), for the \_\_\_\_\_ generation facility located in \_\_\_\_\_, Illinois (the “**Project**”). This certificate (this “**Certificate**”) is being delivered in pursuant to **Section 1.07** of the Consent and Agreement, dated \_\_\_\_\_, 20\_\_ (the, “**Consent**”) executed in connection with that certain Credit Agreement, dated as of \_\_\_\_\_, 20\_\_ (as amended and in effect on the date hereof, together with all Security Documents and ancillary documents, the “**Financing Documents**”), by and among Project Company, \_\_\_\_\_ (the “**Borrower**”), the financing institutions from time to time party thereto as lenders and as issuers of letters of credit (collectively, the “**Lenders**”), \_\_\_\_\_, in its capacities as administrative agent (in such capacity, the “**Administrative Agent**”) and as collateral agent (in such capacity, the “**Collateral Agent**”), and any other agents and persons party thereto. Capitalized terms used but not defined herein have their assigned meanings in the Consent.

Based on the foregoing, as of the date hereof Contracting Party hereby confirms the following to Administrative Agent and Collateral Agent:

1. Contracting Party is a corporation, validly existing and in good standing under the laws of Illinois. The execution, delivery and performance by Contracting Party of each of the Agreement, the Consent and this Estoppel Certificate have been duly authorized by all necessary corporate action on the part of Contracting Party and do not require any approvals, filings with or consents of any governmental entity or person which have not previously been obtained or made.
2. The Agreement is in full force and effect and has not been amended, supplemented or modified since the date of execution of such Agreement, except as described as an attachment to this estoppel certificate. Product Orders, invoices and other documents delivered pursuant to and in accordance with the Agreement shall not be deemed amendments, supplements or modifications of the Agreement for the purpose of this Certificate.
3. To Contracting Party’s knowledge, there exists no event or condition, which constitutes a default under the Agreement or gives rise to a right by Contracting Party to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a default under the Agreement or give rise to a right by Contracting Party to terminate the Agreement.
4. Contracting Party has not transferred or assigned any interest in the Agreement.
5. To Contracting Party’s knowledge, no [Force Majeure event] currently exists under the Agreement.
6. Contracting Party has no pending claims against Project Company for indemnity under the Agreement, nor to Contracting Party’s knowledge does a reasonable basis for any potential claim for indemnity exist.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed and delivered as of the date set forth above.

[NAME OF BUYER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# RESPONSE TO INVITATION TO COMMENT

Summer 2026 Energy Storage RFP – Initial Procurement



SUBMITTED ON: May 13, 2026

## 1. General Comments and Questions

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We respectfully submit the following questions and comments regarding the Initial Procurement process generally.

- I. **Post-Award Contract Changes** - Projects in the development stage carry a significant risk of cost escalation driven by factors beyond the developer's control, including but not limited to tariffs, changes in government import regulations, supply chain disruptions, and fluctuations in interconnection costs. These risks are particularly acute in the current market environment, where construction costs, interconnection charges, and the purchase price of energy storage systems remain highly volatile.

To address these concerns, we respectfully request that the Indexed Storage Credit Contract ("ISC Contract") include a "Post-Award Contract Change" provision. This provision should permit retroactive adjustment of bid terms, including prices, to account for documented cost increases that were not reasonably foreseeable at the time of bidding. Precedent for this approach already exists within the State's procurement framework: the Summer 2026 Indexed Renewable Energy Credit ("IREC") Contract permits a fifteen percent (15%) inflation adjustment to account for similar market uncertainties. Adopting a comparable mechanism for the ISC Contract would promote project viability, reduce the likelihood of project default, and ultimately serve the interests of Illinois ratepayers by ensuring that competitively bid projects can secure financing and proceed to completion despite unforeseen cost pressures.

In the alternative, or as a complementary measure, we request that the Agency permit Bidders to submit conditional bids. A conditional bid structure would allow developers to identify specific cost inputs, such as construction costs, interconnection charges, and energy storage system pricing, that are subject to market fluctuation and to propose adjustment mechanisms tied to verifiable benchmarks. This approach would preserve the competitive integrity of the bidding process while giving developers the flexibility needed to manage pricing risk responsibly.

- II. Excess Project Capacity** – Under the current contract framework, Sellers are prohibited from constructing a project larger than the Contract Capacity and may not sell residual capacity to third parties. At the same time, Sellers face severe penalties if actual project capacity falls short of the contracted amount. This asymmetry creates a strong disincentive for developers to build any capacity beyond the minimum required, even where doing so would be economically efficient and beneficial to the grid.

We respectfully suggest that the Agency revise the ISC Contract to permit Sellers to develop capacity in excess of the Contract Capacity and to sell such excess generation to the applicable Regional Transmission Organization ("RTO") or to third-party customers. Allowing developers to monetize incremental capacity would yield several meaningful benefits for the State of Illinois. Permitting the sale of excess capacity would improve project-level economics, reducing the risk of project failure and enhancing the long-term sustainability. Importantly, this modification can be structured to ensure that the Agency and ratepayers retain priority access to the contracted capacity, with only surplus generation available for third-party sale.

## 2. Topic-By-Topic Responses – Invitation to Comment (Appendix A)

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The questions below correspond directly to the topics listed in Appendix A of the Invitation to Comment dated April 22, 2026.

### I. Commercial Readiness

*Statutory basis: Section 1-75(d-20)(6) of the IPA Act – Bidders must demonstrate experience in developing to commercial readiness (notice to proceed in owning or operating energy facilities with a combined nameplate capacity of at least 100 MW).*

**Question 1:** *Is a recency requirement of 10 years reasonable? Why or why not?*

Response: *This is reasonable.*

**Question 4:** *Should there be a requirement for the minimum size of the energy facility? Why or why not? If yes, what size is appropriate?*

*Response: The 100 MW proposal is reasonable.*

**Question 6:** *Is the requirement that the Bidder be the Seller or parent of the Seller restrictive? If so, what additional arrangements may comply with the statutory language?*

*Response: Yes, the requirement that the Bidder be the Seller or the parent of the Seller may be unduly restrictive. This requirement could exclude joint ventures, special purpose vehicles formed specifically for a given project, and arrangements in which an affiliate of the Bidder serves as the Seller. Limiting eligibility solely to Bidder-as-Seller or parent-of-Seller relationships could exclude otherwise qualified and creditworthy participant.*

*To comply with the statutory language while accommodating legitimate project structures, the Agency should consider permitting the following additional arrangements: (1) an affiliate of the Bidder serving as the Seller; (2) a special purpose entity formed by the Bidder (or its affiliates) for the purpose of owning and operating the project; and (3) an assignment of the Seller's obligations to a successor entity following contract execution, subject to the Agency's prior written consent and satisfaction of creditworthiness and technical capability requirements substantially equivalent to those imposed on the original Bidder.*

*Additionally, the Agency should clarify that a mere change in the Seller's legal name or an internal corporate reorganization, such as a restructuring or merger of the Seller into a successor entity, does not constitute a default. Treating such routine corporate actions as defaults would create unnecessary risk for Bidders and could discourage participation, particularly by larger developers whose corporate structures evolve over the life of long-term energy contracts.*

## **Topic 2: Bid Assurance Collateral**

*Background: Bid Assurance Collateral is proposed at \$20,000/MW (AC rating), posted in the form of cash or letter of credit with the Part 2 Proposal.*

**Question 1:** *Is the proposed Bid Assurance Collateral amount of \$20,000/MW reasonable? Why or why not? If not, what amount would be more appropriate?*

*Response: The proposed Bid Assurance Collateral of \$20,000/MW is unreasonable and should be substantially reduced or eliminated. While we appreciate the reduction from prior proposals, the amount remains excessive relative to comparable programs in other jurisdictions and creates a barrier to participation that ultimately harms ratepayers.*

*First, the Bid Assurance Collateral must be considered alongside the non-refundable \$10,000 application fee. Together, these costs impose a significant burden on prospective participants. Disproportionate upfront costs are inevitably reflected in higher bid prices, increasing the risk that bids will exceed the confidential benchmark.*

*Second, the proposed amount is a significant outlier among analogous programs. NYSERDA's Bulk Storage Incentive Structure and Contracts impose no bid assurance fee, requiring only performance assurance collateral posted after project selection. New Jersey's Garden State Energy Storage Program assesses a non-refundable bid fee, rather than bid assurance collateral, of only \$200/MW. Similarly, Massachusetts (MA DER) imposes a non-refundable bid fee of \$500/MW.*

*Third, it is unclear what risk the Bid Assurance Collateral mitigates that post-selection performance security requirements do not already address. If the purpose is to deter speculative bids, a substantially lower amount would achieve that goal without discouraging legitimate participation.*

*We recommend either: (1) eliminating the Bid Assurance Collateral entirely, consistent with NYSERDA's approach, and relying on performance assurance collateral to ensure post-selection commitment; (2) reducing it; or (3) imposing a cap on the maximum Bid Assurance Collateral Amount.*

### **Topic 3: Performance Assurance**

*Background: Performance Assurance Collateral is proposed at \$50,000 × nameplate capacity (MW), due within 8 business days of the Commission decision.*

**Question 1:** *Is the proposed Performance Assurance Collateral amount of \$50,000/MW reasonable? Why or why not? If not, what amount would be more appropriate?*

*Response: The proposed Performance Assurance Collateral amount of \$50,000/MW is unreasonable and should be substantially reduced. While we appreciate the reduction from prior amounts, this figure remains significantly higher than comparable requirements in other states, creating an outsized financial burden that may discourage developer participation and reduce bid competitiveness.*

*By comparison, New Jersey requires a pre-development security of up to \$100,000/MW but caps total exposure at \$10,000,000, providing a meaningful ceiling regardless of project size. New York takes a phased approach that aligns collateral requirements with project development milestones: an initial contract security of \$20,000/MW upon the effective date of the indexed storage credit contract, an additional \$10,000/MW two years later if the seller has not provided proof of an interconnection agreement, and a further \$10,000/MW one year prior to the commercial operation date. This phased structure avoids front-loading the full collateral burden when project risk is lower and capital is most constrained.*

*The contract and proposal requirements also remain ambiguous regarding how the Performance Assurance Collateral will increase if a project misses its commercial operation date.*

*The Agency should clarify the specific escalation schedule, including the amount and timing of any increases, so that prospective bidders can accurately evaluate their total collateral exposure.*

*We respectfully recommend that the agency reduce or cap the Performance Assurance Collateral.*

#### **Topic 4: Double Payment (Section 5.7 – Disclosure of Economic Support)**

*Background: Section 5.7 requires Sellers to disclose corporate offtake payments, other economic support, co-located generation, and co-located load within 30 business days of receipt or commitment.*

**Question 1:** *Are the disclosure requirements and timelines in Section 5.7 clear and reasonable for all parties?*

*Response: Section 5.7 of the draft contract is very broadly written. As drafted, this language could encompass tax credit agreements, enterprise zone agreements, high impact business incentives, and numerous other forms of financial support. The provision does not define key terms with sufficient precision, creating ambiguity about what must be disclosed. For example, it is unclear whether a manufacturers' discount or an Investment Tax Credit would constitute "economic support" within the meaning of this section. Additionally, the purpose of requiring this information is not articulated, nor is there any indication of how compliance with this requirement would be monitored or enforced.*

*Section 5.7 also requires the Seller to certify that the project would not have been developed "but for" the ISC contract. This standard is problematic. Projects of this magnitude depend on numerous factors and financial inputs, making it exceedingly difficult to isolate any single factor as determinative. The "but for" framing creates an unreasonable binary test that does not reflect the reality of project finance. Moreover, because the ISC contract requires the Seller to assume all risk related to changes in state and federal policy, it is inconsistent to also require a certification suggesting that a single contractual relationship is the sole basis for the project's viability.*

*We recommend all of Section 5.7 be removed from the ISC Contract.*

#### **Topic 5: Labor Peace Agreement (Section 6.5)**

*Background: The IPA Act mandates a Labor Peace Agreement (LPA) with a bona fide labor organization for employees necessary for ongoing maintenance and operation. The Agency proposes limiting LPA coverage to onsite O&M employees.*

**Question 1:** *Should the LPA apply to offsite employees (scheduling/dispatch, interconnection/permitting, engineering/design)?*

*Response: The LPA applicability should be limited to on-site employees involved in project development.*

**Topic 7: ELCC Floor**

*Background: The ISC Reference Capacity Price is based on the project-specific ELCC recognized by the RTO. The Agency is considering whether an ELCC floor should be established.*

**Question 1:** *Is it appropriate to establish an ELCC floor? Please explain the rationale. If appropriate, propose a specific value.*

*Response: Establishing an ELCC floor is not appropriate. ELCC values are determined by the RTOs based on systemic factors that are entirely outside any individual seller's control. Imposing a floor thus allocates an uncontrollable risk to the party least able to manage it. This misallocation carries direct consequences for ratepayers. Lenders will price the risk of an ELCC shortfall into financing costs, and sellers will pass those costs through in the form of higher strike prices without any corresponding improvement in resource adequacy.*

**4. Preliminary Proposal Requirements – Comments**

Paragraph / Section	Comment/Question
Page 9, "Identification of the Project Team and Contributors"	Requires that "Seller must be formed as of the Part 1 Date"  Suggest eliminating this requirement. This could exclude creditworthy Sellers due to routine corporate restructuring and create an unnecessary risk for Bidders.
Page 10, "Basic Project Information"	"name of the Project that may not change through the process"  Suggest eliminating this requirement. As stated above, this creates an unnecessary risk for Bidders and could discourage participation, particularly by larger developers whose corporate structures evolve over the life of long-term energy contracts.
Page 13, "Certifications by Seller in each procurement event"	This section requires the Seller to certify that the project has 'reached appropriate development milestones to fully expect commercial operations by December 31, 2029.'  What are these specific milestones? How can developers demonstrate that they have attained them? Suggest adding more specific information to the Proposal Requirements.

<p>Page 14, “Certifications by Seller in each procurement event”</p>	<p><i>“[C]ollateral requirement may be increased if the Seller does not achieve Commercial Operation of the Project by December 31, 2029.”</i></p> <p>How much is the increased collateral? Who determines that increased amount?</p>
<p>Page 15, “Other Certifications by Seller”</p>	<p><i>“Agree to sign ISC Contract within the required timeframe if Project is selected and bid is approved by the Commission”</i></p> <p>What is the required timeframe? Suggest including this timeline in the Program Requirements.</p>

## 5. Draft ISC Contract – Redline / Markup Comments

See attached for redline comments. The table below summarizes these questions.

Section	Comment/Question
<p>Sec. 1.14</p>	<p>At what point is “Contract Capacity” measured (e.g. charging or dispatching)? This definition creates additional risk for developers because battery capacity decreases over time due to aging, ISCA requires a 4-hour discharge, making it necessary to reduce the contracted capacity annually. Despite this characteristic, current contracts do not allow for exceeding the contracted capacity and stipulate steep penalties for falling short, thereby imposing excessive risk on the Seller. Inflated risk premiums will ultimately increase strike prices for Illinois ratepayers.</p>
<p>Sec. 1.14, 2.5(f), and Exhibit A</p>	<p>Exhibit A and 1.14 explicitly prohibit building a project larger than the Contract Capacity and selling the residual power, and Section 2.5(f) imposes a severe \$50,000/MW penalty if the built capacity falls short of the original bid. This inflexibility contradicts standard project finance practices and will ultimately inflate risk premiums and Strike Prices for Illinois ratepayers.</p>

<p>Sec. 2.5(f)</p>	<p>The proposed Bid Assurance Collateral amount of \$20,000/MW is prohibitively high and will have a significant negative impact on projects. Other states, which have similar programs, Maryland (PSC NGEA Storage Solicitations), New York (NYSERDA Bulk Storage ISC) and New Jersey (Garden State Energy Storage Program (GSESP) do not have bid assurance requirements nearly as costly. New York does not impose a bid assurance collateral. Suggest reducing this cost to mirror other state programs or capping the bid assurance collateral amount per project.</p>
<p>Sec. 2.6(a)(iv)</p>	<p>We suggest expanding the definition of Force Majeure to account for unforeseeable technical failures or equipment breakdowns that are not caused by the Seller. Alternatively, we suggest establishing a safe harbor or cure period to enable sellers to correct issues before triggering contract defaults. This is essential because BESS is a highly complex and newer technology.</p>
<p>Sec. 2.7</p>	<p>ELCC is a non-controllable risk for a developer as an Independent Power Producer, this would reduce ability to bid into this process. An ELCC floor may not necessary be passed down to rate payers and puts the risk onto generators. A floor may under-compensate highly valuable projects, provide a mismatch with real capacity needs and operators would have no control over the ELCC value which would provide an unforeseen risk for investors/ financing requirements. We suggest eliminating this as a requirement.</p>
<p>Sec. 4.6</p>	<p>We suggest eliminating the distinction between market-based congestion management and technical curtailment, and to classify all of it as technical curtailment.</p> <p>Alternatively, we suggest changing the reference prices for the calculation—specifically, using the actual settlement prices of BESS operators (the top and bottom 4-hour periods) rather than the simply using the prices for the day’s highest and lowest 4-hour periods.</p>

<p>Sec. 5.4(b)</p>	<p>The lack of guaranteed payment significantly drives up risk, therefore risks for Sellers and costs for strike price calculation. The lack of guaranteed payment is a strong deterrent to lenders and Sellers. We suggest adding provision affirming the Buyer’s duty to remit payment to Seller. We also suggest clarifying what Seller is permitted to do with unpaid ISCs if other terms of the Contract limit the ability of Seller to transact with third parties.</p>
<p>Sec. 5.7</p>	<p>As noted above, Section 5.7 is very broadly written. We suggest eliminating the entire Section. If the Agency is unwilling to eliminate this Section, we suggest added clarity regarding the following items:</p> <ul style="list-style-type: none"> <li>• What is the purpose of collecting this information?</li> <li>• How will any of this information be used?</li> <li>• How will this be enforced? (e.g., audits)</li> <li>• What does “co-location mean in this context?</li> <li>• What discounts or concessions are required to be disclosed?</li> <li>• Is a 30-day commitment window realistic? (Enterprise zone agreements, investment tax credits, etc. may not be finalized in time)</li> <li>• How will bilateral agreements from the PJM Reliability Backstop Auction be treated under Section 5.7?</li> </ul>
<p>Sec. 6.4(c)</p>	<p>We suggest changing the first MES Compliance Plan deadline to at least 30 days prior to the commencement of Construction Activities. This is because developers may not have begun construction contracting by the time of the Bid Approval Date.</p>
<p>Sec. 10.1</p>	<p>This Section explicitly excludes "the performance or breakdown of equipment not directly caused by an External Event" from the definition of Force Majeure. Since BESS systems are highly complex, newer technologies, catastrophic and unforeseeable internal failures (such as a widespread battery cell defect or major</p>

	<p>software failure) could occur through no fault of the Seller. Because Section 2.6(a)(iv) offers "no cure period" for failing to meet the 4,320-hour annual availability target, an unexcused major equipment failure could easily trigger an Event of Default and contract termination.</p> <p>We request to broaden the definition of Force Majeure to include major, unforeseeable equipment failures that are beyond the reasonable control of the Seller, or, alternatively, provide a prolonged safe-harbor cure period under Section 2.6 for such catastrophic breakdowns before triggering a Default.</p>
<p>Sec. 11.1</p>	<p>We suggest adding post-award renegotiation process and allow for inflation-related adjustments, similar to the provisions in recent IREC contracts. Additionally, we suggest permitting price-related changes due to Government Action because generators require greater flexibility in the event of significant and unpredictable Government Actions. As an alternative to the post-award renegotiation, Seller should be entitled to terminate the ISC Contract without penalty in the event that a Government Action renders the project financially infeasible</p>
<p>Sec. 14.1</p>	<p>There is a significant imbalance of accountability in this Section. We suggest changes that balance out the share in liability.</p>
<p>Exhibit E-2b</p>	<p>As discussed previously, this Exhibit should allow for flexibility in changes to Seller name or relation to Bidder and may be amended.</p>