

Subpart C
Form of
Wholesale Market Participation Agreement

(Project Identifier # [REDACTED])

WHOLESALE MARKET PARTICIPATION AGREEMENT

Among

PJM INTERCONNECTION, L.L.C.

And

[REDACTED]

And

[REDACTED]



WHOLESALE MARKET PARTICIPATION AGREEMENT

By and Among
PJM Interconnection, L.L.C.

And

[Name of Wholesale Market Participant]

And

[Name of Transmission Owner]

(Project Identifier # [])

This Wholesale Market Participation Agreement (“WMPA”), including the Specifications, Appendices, and Schedules attached hereto and incorporated herein, is entered into by and among PJM Interconnection, L.L.C., the Regional Transmission Organization for the PJM Region (“Transmission Provider” or “PJM”), [] (“Project Developer” or “Wholesale Market Participant” [OPTIONAL: or “[short name]”]), and [] (“Transmission Owner” {OPTIONAL: or “[short name]”}) (referred to individually as a “Party” and collectively as the “Parties”) in order to effectuate Wholesale Transactions by Wholesale Market Participant in PJM’s markets. [Use as/when applicable: This WMPA supersedes the [] {insert details to identify the agreement being superseded, the effective date of the agreement, the service agreement number designation, the prior position number or project identifier, and the FERC docket number, if applicable.}]

WITNESSETH

WHEREAS, Wholesale Market Participant is developing and will own and control a generation or storage resource that it intends to use to engage in Wholesale Transactions in PJM’s markets (the “Generating Facility”), and desires to maintain its proposed Generating Facility in the Cycle of projects that PJM studies for potential reliability impacts to the Transmission System;

WHEREAS, Wholesale Market Participant is seeking to physically interconnect its Generating Facility at a local distribution or sub-transmission facility that at this time is not subject to the PJM Open Access Transmission Tariff (“Tariff”) under Federal Energy Regulatory Commission (“FERC” or “Commission”) jurisdiction;

WHEREAS, Wholesale Market Participant and ([Transmission Owner] [or if there is a point of common coupling {point of common coupling is where the Generating Facility attaches to the Municipality/Cooperative facilities, and should be depicted as a blue pyramid in Schedule B} with a Municipality/Cooperative, insert the name of the Municipality/Cooperative []]) or its affiliate have entered into a separate non-FERC jurisdictional two-party interconnection agreement in order to address issues of physical interconnection, local upgrades, and local charges that may be presented by the interconnection of the Generating Facility to the local distribution or sub-transmission facility (the “Interconnection Agreement”); and

WHEREAS, the Interconnection Agreement is a Condition Precedent to this WMPA, and this WMPA is hereby made expressly contingent upon the satisfaction of the Condition Precedent as described in section 3.0 below, and, in the event the Condition Precedent is not satisfied, then this WMPA automatically will be null and void *ab initio* and will have no further force or effect, and, moreover, the Interconnection Agreement must remain in full force and effect in order for Wholesale Market Participant to use the Generating Facility to engage in Wholesale Transactions in PJM's markets under this WMPA.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, along with other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by Transmission Provider, Transmission Owner, and Wholesale Market Participant; the Parties agree to assume all of the rights and obligations consistent with the rights and obligations relating to Network Upgrades and metering requirements as set forth in the Tariff as of the effective date of this WMPA, required for Wholesale Market Participant to engage in Wholesale Transactions in PJM's markets using the Generating Facility; and the Parties mutually covenant and agree as follows:

Article 1 – DEFINITIONS and EFFECTIVE DATE

- 1.0 Defined Terms.** All capitalized terms used and not otherwise defined herein shall have the meanings set forth in Appendix 1 hereto.
- 1.1 Effective Date.** This WMPA shall become effective on the date it is executed by all Parties, or, if this WMPA is filed with FERC unexecuted, on the date specified by FERC. This WMPA shall terminate on such date as mutually agreed upon by the Parties, unless earlier terminated consistent with the provisions of section 3.0 or Appendix 2, section 8 of this WMPA.

Article 2 - NOTICES and MISCELLANEOUS

- 2.0 Notices.** Any notice, demand, or request required or permitted to be given by any Party to another Party and any instrument required or permitted to be tendered or delivered by any Party in writing to another Party shall be provided electronically or may be so given, tendered, or delivered by recognized national courier or by depositing the same with the United States Postal Service, with postage prepaid for delivery by certified or registered mail addressed to the Party, or by personal delivery to the Party, at the electronic or other address specified below.

Transmission Provider:

PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403-2497
interconnectionagreementnotices@pjm.com

Wholesale Market Participant:

Transmission Owner:

Any Party may change its address or designated representative for notice by giving notice to the other Parties in the manner provided for above.

- 2.1 Construction with Other Parts of the Tariff.** This WMPA shall not be construed as an application for service under Tariff, Part II or Tariff, Part III.
- 2.2 Warranty for System Impact Studies.** In analyzing and preparing the System Impact Studies, and in specifying the Network Upgrades that are required for reliability reasons as described in Schedule D of this WMPA, Transmission Provider, Transmission Owner, and any other subcontractors employed by Transmission Provider have had to, and shall have to, rely upon information provided by Wholesale Market Participant and possibly by third parties, and may not have control over the accuracy of such information. Accordingly, NEITHER TRANSMISSION PROVIDER, TRANSMISSION OWNER, NOR SUBCONTRACTORS EMPLOYED BY TRANSMISSION PROVIDER OR TRANSMISSION OWNER MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION, OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE ACCURACY, CONTENT, OR CONCLUSIONS OF THE SYSTEM IMPACT STUDIES, OR OF THE NETWORK UPGRADES. Wholesale Market Participant acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 2.3 Waiver.** No waiver by any Party of one or more defaults by another Party in performance of any of the provisions of this WMPA shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
- 2.4 Amendment.** This WMPA or any part thereof may not be amended, modified, or waived other than by a written document signed by all Parties. Parties acknowledge that, subsequent to execution of this agreement, errors may be corrected by replacing the page of the agreement containing the error with a corrected page, as agreed to and signed by the

Parties, without modifying or altering the original date of execution, dates of any milestones, or obligations contained therein.

If an amendment is desired, then, consistent with Tariff, Part IX, section 1, Transmission Provider shall tender an agreement to amend to Wholesale Market Participant for execution. No later than fifteen (15) Business Days after Transmission Provider tenders for execution the agreement, Wholesale Market Participant shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 5 (“Operating Agreement”); or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. The agreement shall be deemed to be terminated and withdrawn if Wholesale Market Participant fails to comply with these requirements. Following tender of the agreement and no later than fifteen (15) Business Days after execution by Wholesale Market Participant, Transmission Owner shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) file the agreement unexecuted with the Commission. Transmission Provider also may file the agreement unexecuted with the Commission if Transmission Owner does not comply with the requirements above.

2.5 Assignment

2.5.1 Assignment by Wholesale Market Participant with Prior Consent

Except as provided in section 2.5.2 of this WMPA, Wholesale Market Participant shall not assign its rights or delegate its duties under this WMPA without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned, or delayed, and any such assignment or delegation made without such prior written consent shall be null and void.

If written consent is desired, then, consistent with Tariff, Part IX, section 1, Transmission Provider shall tender a consent to assignment agreement to Wholesale Market Participant for execution. No later than fifteen (15) Business Days after Transmission Provider tenders for execution the agreement, Wholesale Market Participant shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. The agreement shall be deemed to be terminated and withdrawn if Wholesale Market Participant fails to comply with these requirements. Following tender of the agreement and no later than fifteen (15) Business Days after execution by Wholesale Market Participant, Transmission Owner shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or

(iii) request that Transmission Provider file the agreement unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) file the agreement unexecuted with the Commission. Transmission Provider also may file the agreement unexecuted with the Commission if Transmission Owner does not comply with the requirements above.

2.5.2 Assignment by Wholesale Market Participant without Prior Consent

2.5.2.1 Assignment to Owners:

If the Interconnection Agreement provides that it may be assigned, and the Interconnection Agreement was assigned, then Wholesale Market Participant may assign its rights or delegate its duties under this WMPA, without Transmission Provider's or Transmission Owner's prior consent, to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all of the Generating Facility, provided that prior to the effective date of any such assignment (1) the assignee shall demonstrate to Transmission Provider that, as of the effective date of the assignment, the assignee has the technical and operational competence to comply with the requirements of this WMPA and (2) assignee assumes all rights, duties, and obligations of Wholesale Market Participant under this WMPA in a writing to Transmission Provider and Transmission Owner. Any assignment described herein shall not relieve or discharge Wholesale Market Participant from any of its obligations hereunder absent the written consent of Transmission Provider, such consent not to be unreasonably withheld, conditioned, or delayed.

Wholesale Market Participant may elect to enter into a consent to assignment agreement to effectuate an assignment allowed by this section 2.5.2.1. If so elected, then, consistent with Tariff, Part IX, section 1, Transmission Provider shall tender a consent to assignment agreement to Wholesale Market Participant for execution. No later than fifteen (15) Business Days after Transmission Provider tenders for execution the agreement, Wholesale Market Participant shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. The agreement shall be deemed to be terminated and withdrawn if Wholesale Market Participant fails to comply with these requirements. No later than fifteen (15) Business Days after execution by Wholesale Market Participant, Transmission Owner shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) file the

agreement unexecuted with the Commission. Transmission Provider also may file the agreement unexecuted with the Commission if Transmission Owner does not comply with the requirements above.

2.5.2.2 Assignment to Lenders:

If the Interconnection Agreement provides that it may be assigned to any Project Finance Entity(ies), and the Interconnection Agreement was so assigned, then Wholesale Market Participant may assign this WMPA to such Project Finance Entity(ies) without Transmission Provider's or Transmission Owner's consent, provided that such assignment does not alter or diminish Wholesale Market Participant's duties and obligations under this WMPA. If Wholesale Market Participant provides Transmission Provider and Transmission Owner with notice of an assignment to such Project Finance Entity(ies) and identifies such Project Finance Entity(ies) as contact(s) for notice of Breach consistent with Appendix 2, section 7.3 hereto, then Transmission Provider and Transmission Owner shall provide notice and reasonable opportunity for such Project Finance Entity(ies) to cure any Breach under this WMPA in accordance with this WMPA. Transmission Provider or Transmission Owner shall, if requested by such Project Finance Entity(ies), provide such customary and reasonable documents, including consents to assignment, as may reasonably be requested with respect to the assignment and status of this WMPA, provided that such documents do not alter or diminish the rights of Transmission Provider or Transmission Owner under this WMPA, except with respect to providing notice of Breach to such Project Finance Entity(ies) consistent with Appendix 2, section 7.3 hereto. Upon presentation of Transmission Provider's or Transmission Owner's invoice therefor, Wholesale Market Participant shall pay Transmission Provider's or Transmission Owner's reasonable documented cost of providing such documents and certificates as requested by such Project Finance Entity(ies). Any assignment described herein shall not relieve or discharge Wholesale Market Participant from any of its obligations hereunder absent the written consent of Transmission Provider and Transmission Owner.

2.5.3 Assignment by Transmission Owner

Transmission Owner shall be entitled, subject to applicable laws and regulations, to assign this WMPA to an Affiliate or successor that owns and operates all or a substantial portion of Transmission Owner's transmission facilities.

2.5.4 Successors and Assigns:

This WMPA and all of its provisions are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

Article 3 – CONTINGENCIES and PROJECT-SPECIFIC MILESTONES

- 3.0 Contingencies.** This WMPA is hereby made expressly contingent on Wholesale Market Participant having entered into the Interconnection Agreement (the “Condition Precedent”). Notwithstanding anything to the contrary in this WMPA, in the event that the Condition Precedent is not satisfied, then this WMPA automatically will be null and void *ab initio* and will have no further force or effect. Further, the Interconnection Agreement must remain in full force and effect in order for Wholesale Market Participant to use the Generating Facility to engage in Wholesale Transactions in PJM’s markets under this WMPA. The effectiveness of this WMPA is expressly contingent on the effectiveness of the Interconnection Agreement, and this WMPA shall automatically terminate upon termination of the Interconnection Agreement.
- 3.1 Project-Specific Milestones.** During the term of this WMPA, Wholesale Market Participant shall ensure that it meets each of the following milestones:

[Specify Project-Specific Milestones]

[As appropriate include the following standard Milestones]

- 3.1.1 Substantial Site work completed.** On or before [redacted] Wholesale Market Participant must demonstrate completion of at least 20% of project site construction.
- 3.1.2 Commercial Operation.** On or before [redacted], Wholesale Market Participant must demonstrate commercial operation of all generating units in order to achieve the full Maximum Facility Output set forth in section 1.0(c) of the Specifications to this WMPA. Failure to achieve this Maximum Facility Output may result in a permanent reduction in Maximum Facility Output of the Generating Facility, and, if necessary, a permanent reduction of the Capacity Interconnection Rights to the level achieved. Demonstrating commercial operation includes achieving Initial Operation and making commercial sales or use of energy, as well as, if applicable, obtaining capacity qualification in accordance with the requirements of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.
- 3.1.3 Documentation.** Within one (1) month following full commercial operation of the Generating Facility, Wholesale Market Participant must provide certified documentation demonstrating that the “as-built” Generating Facility is consistent with the applicable PJM studies and agreements. Wholesale Market Participant must also provide PJM with “as-built” electrical modeling data or confirm that previously submitted data remain valid.

[Add Additional Project Specific Milestones as appropriate]

Wholesale Market Participant shall demonstrate the occurrence of each of the foregoing milestones to Transmission Provider's reasonable satisfaction. Transmission Provider may reasonably extend any such milestone dates in the event of delays that Wholesale Market Participant (i) did not cause and (ii) could not have remedied through the exercise of due diligence.

[Include the below optional Article 4 when Municipality/Cooperative facilities reside between the Generating Facility and Transmission Owner facilities.]

Article 4 – POINT of COMMON COUPLING

- 4.0 Rights to Facilities.** Nothing in this WMPA provides any rights with regard to the use of the non-FERC jurisdictional distribution or sub-transmission facilities owned, operated, and maintained by [insert name of Municipality/Cooperative].
- 4.1 Point of Common Coupling.** The electrical Point of Interconnection for the Generating Facility under this WMPA, for the purpose of engaging in Wholesale Transactions in PJM's markets, is located at a point where Transmission Owner's facilities are interconnected to facilities owned by [insert name of Municipality/Cooperative], to which Wholesale Market Participant's facilities are or will be physically connected, at a point of common coupling, pursuant to the Interconnection Agreement referenced in this WMPA. Therefore, the Parties acknowledge and agree that interconnection of the Generating Facility under this WMPA depends upon the physical availability of, and Wholesale Market Participant's right to utilize, the [insert name of Municipality/Cooperative] facilities and the interconnection of the [insert name of Municipality/Cooperative] facilities with those of Wholesale Market Participant and Transmission Owner. Accordingly, the following shall apply:
- 4.1.1** Wholesale Market Participant shall obtain [insert name of Municipality/Cooperative]'s agreement to grant to Wholesale Market Participant the rights to utilize the [insert name of Municipality/Cooperative] facilities to transport energy produced by the Generating Facility to the Point of Interconnection as shown in Schedule B of this WMPA.
- 4.1.2** Concurrently with execution of this WMPA, Wholesale Market Participant shall provide Transmission Provider with copies of any and all agreements pursuant to which [insert name of Municipality/Cooperative] agrees to grant to Wholesale Market Participant the rights as described in section 4.1.1.
- 4.1.3** In the event that any of the [insert name of Municipality/Cooperative] facilities used to provide interconnection of the Generating Facility become unavailable for any reason to carry energy produced by the Generating Facility to and across the Point of Interconnection as shown in Schedule B of this WMPA, Wholesale Market Participant's rights to interconnect under this WMPA, and thus Wholesale Market Participant's rights to inject energy into the Transmission System as set forth in Specifications, section 2 of this WMPA, will be suspended for the duration of such

unavailability, and Transmission Provider and Transmission Owner shall incur no liability to Wholesale Market Participant in connection with such suspension.

4.1.4 In the event that [insert name of Municipality/Cooperative] ceases operations at its facility where the Generating Facility is located, or removes from service any of the electrical facilities on which the Generating Facility's physical interconnection depends, it shall be Wholesale Market Participant's responsibility to acquire and install, or to obtain rights to utilize, any facilities necessary to enable Wholesale Market Participant to deliver energy produced by the Generating Facility to and across the Point of Interconnection as shown in Schedule B of this WMPA.

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IN WITNESS WHEREOF, Transmission Provider, Wholesale Market Participant, and Transmission Owner have caused this WMPA to be executed by their respective authorized officials. By each individual signing below, each represents to the others that they are duly authorized to sign on behalf of their company and have the actual and/or apparent authority to bind the respective company to this WMPA.

(Project Identifier # [redacted])

Transmission Provider: **PJM Interconnection, L.L.C.**

By: [redacted] [redacted] [redacted]
Name Title Date

Printed name of signer: [redacted]

Wholesale Market Participant: **[Name of Party]**

By: [redacted] [redacted] [redacted]
Name Title Date

Printed name of signer: [redacted]

Transmission Owner: **[Name of Party]**

By: [redacted] [redacted] [redacted]
Name Title Date

Printed name of signer: [redacted]

**SPECIFICATIONS FOR
WHOLESALE MARKET PARTICIPATION AGREEMENT**

**By and Among
PJM INTERCONNECTION, L.L.C.**

And

[Name of Wholesale Market Participant]

And

[Name of Transmission Owner]

(Project Identifier # [redacted])

1.0 Description of Generating Facility owned and controlled by Wholesale Market Participant to engage in Wholesale Transactions in PJM's markets under this WMPA:

a. Name of Generating Facility:

[redacted]
[redacted]

b. Location of Generating Facility:

[redacted]
[redacted]

c. Size in megawatts of Generating Facility:

Maximum Facility Output of [redacted] MW

d. Description of the equipment configuration, including the interconnection facilities owned by Wholesale Market Participant that physically interconnect the Generating Facility to the local distribution or sub-transmission facility:

[redacted]
[redacted]
[redacted]

2.0 Rights

2.1 Capacity Interconnection Rights: {Instructions: This section will not apply if the Generating Facility is exclusively an Energy Resource and thus is granted no CIRs; see alternate section 2.1 below.}

Consistent with the applicable terms of the Tariff, and subject to construction of any Network Upgrades required for reliability reasons as described in Schedule D of this WMPA, Wholesale Market Participant shall have Capacity Interconnection Rights at the Point of Interconnection specified in Schedule B of this WMPA in the amount of [REDACTED] MW; provided, however, that nothing in this WMPA provides any rights with regard to the use of local distribution or sub-transmission facilities. {Instructions: This number is the total of the CIRs granted under this WMPA, plus any prior CIRs if this is a superseding WMPA.}

[Instructions: Include the following language when the projected Initial Operation is in advance of the study year used for the System Impact Studies, and CIRs are only interim until the study year.

Consistent with the applicable terms of the Tariff, and subject to construction of any Network Upgrades required for reliability reasons as described in Schedule D of this WMPA, Wholesale Market Participant shall have Capacity Interconnection Rights at the Point of Interconnection specified in Schedule B of this WMPA in the amount of [REDACTED] MW commencing [REDACTED] {e.g., June 1, 2023}. From the effective date of this WMPA until [REDACTED] {e.g., May 31, 2023} (the “interim time period”), Wholesale Market Participant may be awarded interim Capacity Interconnection Rights in an amount not to exceed [REDACTED] MW. The availability and amount of such interim Capacity Interconnection Rights shall depend upon the completion and results of an interim deliverability study. To the extent applicable, during the interim time period, PJM reserves the right to limit total injections of the Generating Facility consistent with the results of the interim deliverability study (which may be less than the Maximum Facility Output). Any interim Capacity Interconnection Rights awarded during the interim time period shall terminate on [REDACTED] {e.g., May 31, 2023}.]

- 2.1a** To the extent that any portion of the Generating Facility is not a Capacity Resource with Capacity Interconnection Rights, such portion of the Generating Facility shall be an Energy Resource. Pursuant to this WMPA, Wholesale Market Participant may sell energy into PJM’s markets in an amount equal to the Generating Facility’s Maximum Facility Output indicated in section 1.0c of these Specifications. PJM reserves the right to limit injections in the event reliability would be affected by output greater than such quantity.

{Instructions: This version of section 2.1 will be used in lieu of section 2.1 above when a Generating Facility will be an Energy Resource and therefore will not be granted CIRs.}

- [2.1] Energy Resource:** The Generating Facility described in section 1.0 of these Specifications shall be an Energy Resource. Pursuant to this WMPA, Wholesale Market Participant may sell energy into PJM’s markets in an amount equal to the Generating Facility’s Maximum Facility Output indicated in section 1.0c of these Specifications. PJM reserves the right to limit injections in the event reliability would be affected by output greater than such quantity.

3.0 Ownership and Location of Metering Equipment. The metering equipment to be constructed, the capability of the metering equipment to be constructed, and the ownership thereof as required for Wholesale Market Participant to use the Generating Facility to engage in Wholesale Transactions in PJM's markets shall be identified in Schedule B to this WMPA, and provided consistent with the PJM Manuals.

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APPENDICES:

- **APPENDIX 1 - DEFINITIONS**
- **APPENDIX 2 - STANDARD TERMS AND CONDITIONS**

SCHEDULES:

- **SCHEDULE A - SITE PLAN**
- **SCHEDULE B - SINGLE-LINE DIAGRAM**
- **SCHEDULE C - LIST OF METERING EQUIPMENT**
- **SCHEDULE D - LIST OF NETWORK UPGRADES**
- **SCHEDULE E - APPLICABLE TECHNICAL REQUIREMENTS AND STANDARDS**
- **SCHEDULE F - SCHEDULE OF NON-STANDARD TERMS AND CONDITIONS**

APPENDIX 1

DEFINITIONS

**From the Generation Interconnection Procedures accepted for filing by the Commission as
of the effective date of this agreement**

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APPENDIX 2

STANDARD TERMS AND CONDITIONS

1 Survival:

The Wholesale Market Participation Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while the Wholesale Market Participation Agreement was in effect.

2 No Transmission Services:

The execution of a Wholesale Market Participation Agreement does not constitute a request for transmission service, or entitle Project Developer to receive transmission service, under Tariff, Part II or Tariff, Part III. Nor does the execution of a Wholesale Market Participation Agreement obligate Transmission Owner or Transmission Provider to procure, supply, or deliver to Project Developer or the Generating Facility any energy, capacity, Ancillary Services, or Station Power (and any associated distribution services).

3 Metering

3.1 General:

Project Developer shall have the right to install, own, operate, test, and maintain the necessary Metering Equipment. In the event that Project Developer exercises this option, Transmission Owner shall have the right to install its own check meter(s), at its own expense, at or near the location of the Metering Equipment. If both Project Developer and Transmission Owner install meters, the meter installed by Project Developer shall control unless it is determined by testing to be inaccurate. If Project Developer does not exercise the option provided by the first sentence of this section, Transmission Owner shall have the option to install, own, operate, test, and maintain all necessary Metering Equipment at Project Developer's expense. If Transmission Owner does not exercise this option, Project Developer shall install, own, operate, test, and maintain all necessary Metering Equipment. Transmission Provider shall determine the location where the Metering Equipment shall be installed, after consulting with Project Developer and Transmission Owner. All Metering Equipment shall be tested prior to any operation of the Generating Facility. Power flows to and from the Generating Facility shall be compensated to the Point of Interconnection, or, upon the mutual agreement of Transmission Owner and Project Developer, to another location.

3.2 Standards:

All Metering Equipment installed pursuant to this Appendix 2 to be used for billing and payments shall be revenue quality Metering Equipment and shall satisfy applicable ANSI standards and Transmission Provider's metering standards and requirements. Nothing in this Appendix 2

precludes the use of Metering Equipment for any retail services of Transmission Owner provided, however, that in such circumstances Applicable Laws and Regulations shall control.

3.3 Testing of Metering Equipment:

The Interconnected Entity that, pursuant to section 3.1 of this Appendix 2, owns the Metering Equipment shall operate, maintain, inspect, and test all Metering Equipment upon installation and at least once every two (2) years thereafter. Upon reasonable request by the other Interconnected Entity, the owner of the Metering Equipment shall inspect or test the Metering Equipment more frequently than every two (2) years, but in no event more frequently than three (3) times in any 24-month period. The owner of the Metering Equipment shall give reasonable notice to the other Parties of the time when any inspection or test of the owner's Metering Equipment shall take place, and the other Parties may have representatives present at the test or inspection. If Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired, or replaced in order to provide accurate metering. Where Transmission Owner owns the Metering Equipment, the expense of such adjustment, repair, or replacement shall be borne by Project Developer, except that Project Developer shall not be responsible for such expenses where the inaccuracy or defect is caused by Transmission Owner. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than 1% from the measurement made by the standard meter used in the test, the owner of the Metering Equipment shall inform Transmission Provider, and Transmission Provider shall inform the other Interconnected Entity, of the need to correct all measurements made by the inaccurate meter for the period during which the inaccurate measurements were made, if the period can be determined. If the period of inaccurate measurement cannot be determined, the correction shall be for the period immediately preceding the test of the Metering Equipment that is equal to one-half of the time from the date of the last previous test of the Metering Equipment, provided that the period subject to correction shall not exceed nine (9) months.

3.4 Metering Data:

At Project Developer's expense, the metered data shall be telemetered (a) to a location designated by Transmission Provider; (b) to a location designated by Transmission Owner, unless Transmission Owner agrees otherwise; and (c) to a location designated by Project Developer. Data from the Metering Equipment at the Point of Interconnection shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Generating Facility to the Point of Interconnection, provided that Transmission Provider's rules applicable to Station Power as set forth at Tariff, Attachment K-Appendix, section 1.7.10(d) shall control with respect to a Project Developer's consumption of Station Power.

4 Communications

4.1 Project Developer Obligations:

Project Developer shall install and maintain satisfactory operating communications with Transmission Provider's system dispatcher or its other designated representative, and with Transmission Owner. Project Developer shall provide standard voice line, dedicated voice line,

and electronic communications at its Generating Facility control room. Project Developer also shall provide and maintain backup communication links with both Transmission Provider and Transmission Owner for use during abnormal conditions as specified by Transmission Provider and Transmission Owner, respectively. Project Developer further shall provide the dedicated data circuit(s) necessary to provide Project Developer data to Transmission Provider and Transmission Owner as necessary to conform with Applicable Technical Requirements and Standards.

4.2 Remote Terminal Unit:

Unless otherwise deemed unnecessary by Transmission Provider and Transmission Owner, prior to any operation of the Generating Facility, a remote terminal unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Project Developer, or by Transmission Owner at Project Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider and Transmission Owner through use of a dedicated point-to-point data circuit(s). Instantaneous bi-directional real power and, with respect to the Generating Facility, reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider and Transmission Owner.

5 Force Majeure

5.1 Notice:

A Party that is unable to carry out an obligation imposed on it by this Appendix 2 due to Force Majeure shall notify the other Parties in writing or by telephone within a reasonable time after the occurrence of the cause relied upon.

5.2 Duration of Force Majeure:

A Party shall not be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing as soon as reasonably possible after the occurrence of the cause relied upon. Those notices shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred, and when the Force Majeure is reasonably expected to cease. Written notices given pursuant to this Article shall be acknowledged in writing as soon as reasonably possible. The Party affected shall exercise Reasonable Efforts to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance. The Party affected has a continuing notice obligation to the other Parties, and must update the particulars of the original Force Majeure notice and subsequent notices, in writing, as the particulars change. The Party affected shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt written notice thereof to the other Parties.

5.3 Obligation to Make Payments:

A Party's obligation to make payments for services shall not be suspended by Force Majeure.

5.4 Definition of Force Majeure:

For the purposes of this section, Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, or any other cause beyond a Party's control that, in any of the foregoing cases, by exercise of due diligence, such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. Force majeure does not include (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.

6 Indemnity

6.1 Indemnity:

Each Party shall indemnify and hold harmless the other Parties, and the other Parties' officers, shareholders, stakeholders, members, managers, representatives, directors, agents, and employees, and Affiliates, from and against any and all loss, liability, damage, cost, or expense to third parties, including damage and liability for bodily injury to or death of persons, or damage to property or persons (including reasonable attorneys' fees and expenses, litigation costs, consultant fees, investigation fees, sums paid in settlements of claims, penalties or fines imposed under Applicable Laws and Regulations, and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent arising out of, in connection with, or resulting from (i) the indemnifying Party's breach of any of the representations or warranties made in, or failure of the indemnifying Party or any of its subcontractors to perform any of its obligations under, this Wholesale Market Participation Agreement (including Appendix 2), or (ii) the negligence or willful misconduct of the indemnifying Party or its contractors; provided, however, that no Party shall have any indemnification obligations under this section 6.1 in respect of any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

6.2 Indemnity Procedures:

Promptly after receipt by a Person entitled to indemnity ("Indemnified Person") of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in section 6.1 may apply, the Indemnified Person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party. The Indemnified Person shall cooperate with the indemnifying Party with

respect to the matter for which indemnification is claimed. The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the indemnifying Party, and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit, or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit, or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit, or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Party, in such event the indemnifying Party shall pay the reasonable expenses of the Indemnified Person; and (ii) shall not settle or consent to the entry of any judgment in any action, suit, or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned, or delayed.

6.3 Indemnified Person:

If an Indemnified Person is entitled to indemnification under this section 6 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under section 6.2 of this Appendix 2, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle, or consent to the entry of any judgment with respect to, or pay in full, such claim.

6.4 Amount Owing:

If an indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this section 6, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

6.5 Limitation on Damages:

Except as otherwise provided in this section 6, the liability of a Party under this Appendix 2 shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances shall any Party or its Affiliates, directors, officers, employees, and agents, or any of them, be liable to another Party, whether in tort, contract, or other basis in law or equity for any special, indirect, punitive, exemplary, or consequential damages, including lost profits. The limitations on damages specified in this section 6.5 are without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint, or concurrent, or active or passive. This limitation on damages shall not affect any Party's rights to

obtain equitable relief as otherwise provided in this Appendix 2. The provisions of this section 6.5 shall survive the termination or expiration of the Wholesale Market Participation Agreement.

6.6 Limitation of Liability in Event of Breach:

A breaching Party (“Breaching Party”) shall have no liability hereunder to the other Parties, and the other Parties hereby release the Breaching Party, for all claims or damages that either of them incurs that are associated with any interruption in the availability of the Generating Facility, Interconnection Facilities and Transmission Owner Upgrades, Transmission System, or Interconnection Service, or damages to a Party’s facilities, except to the extent such interruption or damage is caused by the Breaching Party’s gross negligence or willful misconduct in the performance of its obligations under this Wholesale Market Participation Agreement (including Appendix 2).

6.7 Limited Liability in Emergency Conditions:

Except as otherwise provided in the Tariff or Operating Agreement, no Party shall be liable to any other Party for any action that it takes in responding to an Emergency Condition, so long as such action is made in good faith, is consistent with Good Utility Practice, and is not contrary to the directives of Transmission Provider or Transmission Owner with respect to such Emergency Condition. Notwithstanding the above, Project Developer shall be liable in the event that it fails to comply with any instructions of Transmission Provider or Transmission Owner related to an Emergency Condition.

7 Breach, Cure, and Default

7.1 Breach:

A Breach of this Wholesale Market Participation Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Appendix 2 or of the other portions of the Wholesale Market Participation Agreement or any attachments or Schedule hereto, including but not limited to any material breach of a representation, warranty, or covenant (other than in subsections (a), (c), and (d) of this section) made in this Appendix 2;
- (c) Assignment of the Wholesale Market Participation Agreement in a manner inconsistent with its terms;
- (d) Failure of a Party to provide information or data required to be determined under this Appendix 2 to another Party for such other Party to satisfy its obligations under this Appendix 2.

7.2 Continued Operation:

In the event of a Breach or Default by either Interconnected Entity, and subject to termination of the Wholesale Market Participation Agreement under section 8 of this Appendix 2, the Interconnected Entities shall continue to operate and maintain, as applicable, such DC power systems, protection and Metering Equipment, telemetering equipment, SCADA equipment, transformers, Secondary Systems, communications equipment, building facilities, software, documentation, structural components, and other facilities and appurtenances that are reasonably necessary for Transmission Provider and Transmission Owner to operate and maintain the Transmission System, and for Project Developer to operate and maintain the Generating Facility, in a safe and reliable manner.

7.3 Notice of Breach:

A Party not in Breach shall give written notice of an event of Breach to the Breaching Party, to Transmission Provider, and to other persons that the Breaching Party identifies in writing to the other Parties in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. In the event of a Breach by Project Developer, Transmission Provider or Transmission Owner agree to provide notice of such Breach and in the same manner as its notice to Project Developer, to any Project Finance Entity provided that Project Developer has provided the notifying Party with notice of an assignment to such Project Finance Entity(ies) and identifies such Project Finance Entity(ies) as contacts for notice purposes pursuant to section 12 of this Appendix 2.

7.4 Cure and Default:

A Breaching Party that does not take steps to cure the Breach pursuant to this section 7.4 is automatically in Default of this Appendix 2 and of the Wholesale Market Participation Agreement, and this Wholesale Market Participation Agreement shall be deemed terminated. Transmission Provider shall take all necessary steps to effectuate this termination, including submitted the necessary filings with FERC.

7.4.1 Cure of Breach:

The Breaching Party (a) may cure the Breach within thirty (30) days from the receipt of notice of the Breach; or (b) if the Breach cannot be cured within thirty (30) days, may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty (30) day time period and thereafter diligently pursue such action to completion pursuant to a plan to cure, which shall be developed and agreed to in writing by the Parties. Such agreement shall not be unreasonably withheld.

7.5 Right to Compel Performance:

Notwithstanding the foregoing, upon the occurrence of a Default, a non-Defaulting Party shall be entitled to exercise such other rights and remedies as it may have in equity or at law. Subject to section 11.1 of this Appendix 2, no remedy conferred by any provision of this Appendix 2 is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or

in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

8 Termination

8.1 Termination of the Wholesale Market Participation Agreement:

This Wholesale Market Participation Agreement may be terminated by the following means:

8.1.1 By Mutual Consent:

The Wholesale Market Participation Agreement may be terminated as of the date on which the Parties mutually agree.

8.1.2 By Project Developer:

Subject to its payment of Cancellation Costs, Project Developer may unilaterally terminate the Wholesale Market Participation Agreement pursuant to Applicable Laws and Regulations upon providing Transmission Provider and the Transmission Owner sixty (60) days prior written notice thereof.

8.1.3 Upon Default of Project Developer:

Transmission Provider may terminate the Wholesale Market Participation Agreement upon the Default of Project Developer of its obligations under the Wholesale Market Participation Agreement by providing Project Developer and Transmission Owner prior written notice of termination.

8.1.4 Cancellation Cost Responsibility Upon Termination

In the event of cancellation pursuant to section 8.1 of this Appendix 2, Project Developer shall be liable to pay to Transmission Owner or Transmission Provider all Cancellation Costs in connection with the Wholesale Market Participation Agreement. Cancellation costs may include costs for Network Upgrades assigned to Project Developer, in accordance with the Tariff and as reflected in this Wholesale Market Participation Agreement, that remain the responsibility of Project Developer under the Tariff. This shall include costs including, but not limited to, the costs for such Network Upgrades to the extent such cancellation would be a Material Modification, or would have an adverse effect or impose costs on other Project Developers in the Cycle. In the event Transmission Owner incurs Cancellation Costs, it shall provide Transmission Provider, with a copy to Project Developer, with a written demand for payment and with reasonable documentation of such Cancellation Costs. Project Developer shall pay Transmission Provider each invoice for Cancellation Costs within thirty (30) days after, as applicable, Transmission Owner's or Transmission Provider's presentation to Project Developer of written demand therefor, provided that such demand includes reasonable documentation of the Cancellation Costs that the invoicing Party seeks to collect. Upon receipt of each of Project Developer's payments of such invoices of

Transmission Owner, Transmission Provider shall reimburse Transmission Owner for Cancellation Costs incurred by the latter.

8.2 FERC Approval:

Notwithstanding any other provision of this Appendix 2, no termination hereunder shall become effective until the Interconnected Entities and/or Transmission Provider have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with the FERC of a notice of termination of the Wholesale Market Participation Agreement, and acceptance of such notice for filing by the FERC.

8.3 Survival of Rights:

Termination of this Wholesale Market Participation Agreement shall not relieve any Party of any of its liabilities and obligations arising under this Wholesale Market Participation Agreement (including Appendix 2) prior to the date on which termination becomes effective, and each Party may take whatever judicial or administrative actions it deems desirable or necessary to enforce its rights hereunder. Applicable provisions of this Appendix 2 will continue in effect after termination to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from events or acts that occurred while the Wholesale Market Participation Agreement was in effect.

9 Confidentiality:

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. If requested by any Party, the disclosing Party shall provide in writing the basis for asserting that the information referred to in this section warrants confidential treatment, and the requesting Party may disclose such writing to an appropriate Governmental Authority. Any Party shall be responsible for the costs associated with affording confidential treatment to its information.

9.1 Term:

During the term of the Wholesale Market Participation Agreement, and for a period of three (3) years after the expiration or termination of the Wholesale Market Participation Agreement, except as otherwise provided in this section 9, each Party shall hold in confidence, and shall not disclose to any person, Confidential Information provided to it by any other Party.

9.2 Scope:

Confidential Information shall not include information that the receiving Party can demonstrate: (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third

party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Appendix 2; or (vi) is required, in accordance with section 9.7 of this Appendix 2, to be disclosed to any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under the Wholesale Market Participation Agreement. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Parties that it no longer is confidential.

9.3 Release of Confidential Information:

No Party shall disclose Confidential Information to any other person, except to its Affiliates (limited by the Commission's Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation in Project Developer or to potential purchasers or assignees of Project Developer, on a need-to-know basis in connection with the Wholesale Market Participation Agreement, unless such person has first been advised of the confidentiality provisions of this section 9 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this section 9.

9.4 Rights:

Each Party retains all rights, title, and interest in the Confidential Information that it discloses to any other Party. A Party's disclosure to another Party of Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

9.5 No Warranties:

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to any other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

9.6 Standard of Care:

Each Party shall use at least the same standard of care to protect Confidential Information it receives as the Party uses to protect its own Confidential Information from unauthorized disclosure, publication, or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under the Wholesale Market Participation Agreement or to comply with Applicable Laws and Regulations.

9.7 Order of Disclosure:

If a Governmental Authority with the right, power, and apparent authority to do so requests or requires a Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the Party that provided the information with prompt prior notice of such request(s) or requirement(s) so that the providing Party may seek an appropriate protective order or waive compliance with the terms of this Appendix 2 or the Wholesale Market Participation Agreement. Notwithstanding the absence of a protective order or agreement, or waiver, the Party that is subjected to the request or order may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

9.8 Termination of Wholesale Market Participation Agreement:

Upon termination of the Wholesale Market Participation Agreement for any reason, each Party shall, within ten (10) calendar days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or to return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the requesting Party.

9.9 Remedies:

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this section 9. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this section 9, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this section 9, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental or consequential, or punitive damages of any nature or kind resulting from or arising in connection with this section 9.

9.10 Disclosure to FERC or its Staff:

Notwithstanding anything in this section 9 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Wholesale Market Participation Agreement, the Party shall provide the requested information to FERC or its staff within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.122, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other

Parties prior to the release of the Confidential Information to the Commission or its staff. A Party shall notify the other Parties to the Wholesale Market Participation Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.

9.11 Non-Disclosure

Subject to the exception in section 9.10 of this Appendix 2, no Party shall disclose Confidential Information of another Party to any person not employed or retained by the Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the Party that provided such Confidential Information, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Wholesale Market Participation Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. Prior to any disclosures of another Party's Confidential Information under this subparagraph, the disclosing Party shall promptly notify the other Parties in writing and shall assert confidentiality and cooperate with the other Parties in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order, or other reasonable measures.

9.12 Information in the Public Domain

This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

9.13 Return or Destruction of Confidential Information:

If a Party provides any Confidential Information to another Party in the course of an audit or inspection, the providing Party may request the other Party to return or destroy such Confidential Information after the termination of the audit period and the resolution of all matters relating to that audit. Each Party shall make Reasonable Efforts to comply with any such requests for return or destruction within ten (10) days of receiving the request and shall certify in writing to the other Party that it has complied with such request.

10 Information Access and Audit Rights

10.1 Information Access:

Consistent with Applicable Laws and Regulations, each Party shall make available such information and/or documents reasonably requested by another Party that are necessary to (i) verify the costs incurred by the other Party for which the requesting Party is responsible under this Appendix 2; and (ii) carry out obligations and responsibilities under this Appendix 2, provided that the Parties shall not use such information for purposes other than those set forth in this section 10.1 and to enforce their rights under this Appendix 2.

10.2 Reporting of Non-Force Majeure Events:

Each Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Appendix 2 for a reason other than an event of Force Majeure as defined in section 5.4 of this Appendix 2. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation, or information provided under this section shall not entitle the receiving Party to allege a cause of action for anticipatory breach of the Wholesale Market Participation Agreement.

10.3 Audit Rights:

Subject to the requirements of confidentiality under section 9 of this Appendix 2, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the pertinent other Party, to audit at its own expense the other Party's accounts and records pertaining to such Party's performance and/or satisfaction of obligations arising under this Appendix 2. Any audit authorized by this section shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Appendix 2. Any request for audit shall be presented to the Party to be audited not later than twenty-four (24) months after the event as to which the audit is sought. Each Party shall preserve all records held by it for the duration of the audit period.

11 Disputes

11.1 Submission:

Any claim or dispute that any Party may have against another arising out of the Wholesale Market Participation Agreement may be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.

11.2 Rights Under the Federal Power Act:

Nothing in this section shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.

11.3 Equitable Remedies:

Nothing in this section shall prevent any Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations.

12 Notices

12.1 General:

Any notice, demand, or request required or permitted to be given by any Party to another, and any instrument required or permitted to be tendered or delivered by any Party in writing to another, shall be provided electronically or may be so given, tendered, or delivered by recognized national courier or by depositing the same with the United States Postal Service with postage prepaid for delivery by certified or registered mail addressed to the Party, or personally delivered to the Party, at the electronic or other address specified in the Wholesale Market Participation Agreement.

12.2 Emergency Notices:

Moreover, notwithstanding the foregoing, any notice hereunder concerning an Emergency Condition or other occurrence requiring prompt attention, or as necessary during day-to-day operations, may be made by telephone or in person, provided that such notice is confirmed in writing promptly thereafter. Notice in an Emergency Condition, or as necessary during day-to-day operations, shall be provided (i) if by Transmission Owner, to the shift supervisor at, as applicable, a Project Developer's Generating Facility; and (ii) if by Project Developer, to the shift supervisor at Transmission Owner's transmission control center.

12.3 Operational Contacts:

Each Party shall designate, and provide to each other Party, contact information concerning, a representative to be responsible for addressing and resolving operational issues as they arise during the term of the Wholesale Market Participation Agreement.

13 Miscellaneous

13.1 Regulatory Filing:

In the event that this Wholesale Market Participation Agreement contains any terms that deviate materially from the form included in the Tariff, Transmission Provider shall file the Wholesale Market Participation Agreement on behalf of itself and Transmission Owner with FERC as a service schedule under the Tariff within thirty (30) days after execution. Project Developer may request that any information so provided be subject to the confidentiality provisions of section 9 of this Appendix 2. Project Developer shall have the right, with respect to a Wholesale Market Participation Agreement tendered to it, to request (a) dispute resolution under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (b) that Transmission Provider file the agreement unexecuted with the Commission. With the filing of any unexecuted Wholesale Market Participation Agreement, Transmission Provider may, in its discretion, propose to FERC a resolution of any or all of the issues in dispute between or among the Parties.

13.2 Waiver:

Any waiver at any time by a Party of its rights with respect to a Breach or Default under this Wholesale Market Participation Agreement, or with respect to any other matters arising in connection with this Appendix 2, shall not be deemed a waiver or continuing waiver with respect to any subsequent Breach or Default or other matter.

13.3 Amendments and Rights Under the Federal Power Act:

This Wholesale Market Participation Agreement may be amended or supplemented only by a written instrument duly executed by all Parties. An amendment to the Wholesale Market Participation Agreement shall become effective and a part of this Wholesale Market Participation Agreement upon satisfaction of all Applicable Laws and Regulations. If an amendment is desired, then, consistent with Tariff, Part IX, section 1, Transmission Provider shall tender an agreement to amend to Wholesale Market Participant for execution. No later than fifteen (15) Business Days after Transmission Provider tenders for execution the agreement, Wholesale Market Participant shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. The agreement shall be deemed to be terminated and withdrawn if Wholesale Market Participant fails to comply with these requirements. Following tender of the agreement and no later than fifteen (15) Business Days after execution by Wholesale Market Participant, Transmission Owner shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) request that Transmission Provider file the agreement unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12, or consistent with Operating Agreement, Schedule 5; or (iii) file the agreement unexecuted with the Commission. Transmission Provider also may file the agreement unexecuted with the Commission if Transmission Owner does not comply with the requirements above.

Notwithstanding the foregoing, nothing contained in this Wholesale Market Participation Agreement shall be construed as affecting in any way any of the rights of any Party with respect to changes in applicable rates or charges under section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any Party under section 206 of the Federal Power Act and/or FERC's rules and regulations thereunder. The terms and conditions of this Wholesale Market Participation Agreement and every appendix referred to therein shall be amended, as mutually agreed by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.

13.4 Binding Effect:

This Wholesale Market Participation Agreement, including this Appendix 2, and the rights and obligations thereunder shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Parties.

13.5 Regulatory Requirements:

Each Party's performance of any obligation under this Wholesale Market Participation Agreement for which such Party requires approval or authorization of any Governmental Authority shall be subject to its receipt of such required approval or authorization in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated

therewith. Each Party shall in good faith seek, and shall use Reasonable Efforts to obtain, such required authorizations or approvals as soon as reasonably practicable.

14 Representations And Warranties

14.1 General:

Each Interconnected Entity hereby represents, warrants, and covenants as follows with these representations, warranties, and covenants effective as to the Interconnected Entity during the time the Wholesale Market Participation Agreement is effective:

14.1.1 Good Standing:

Such Interconnected Entity is duly organized or formed, as applicable, validly existing, and in good standing under the laws of its State of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated and operates as stated in the Wholesale Market Participation Agreement.

14.1.2 Authority:

Such Interconnected Entity has the right, power, and authority to enter into the Wholesale Market Participation Agreement, to become a party hereto, and to perform its obligations hereunder. The Wholesale Market Participation Agreement is a legal, valid, and binding obligation of such Interconnected Entity, enforceable against such Interconnected Entity in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

14.1.3 No Conflict:

The execution, delivery, and performance of the Wholesale Market Participation Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of the Interconnected Entity, or with any judgment, license, permit, order, material agreement, or instrument applicable to or binding upon the Interconnected Entity or any of its assets.

14.1.4 Consent and Approval:

Such Interconnected Entity has sought or obtained, or, in accordance with the Wholesale Market Participation Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery, and performance of the Wholesale Market Participation Agreement and it will provide to any Governmental Authority notice of any actions under this Appendix 2 that are required by Applicable Laws and Regulations.

SCHEDULE A
SITE PLAN

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SCHEDULE B

SINGLE-LINE DIAGRAM

{If Municipality/Cooperative: Make sure the point of common coupling is designated in the Single-Line Diagram *in addition to* the Point of Interconnection.}

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SCHEDULE C

LIST OF METERING EQUIPMENT

{Include the following language if not required:}

Not Required.

{If Municipality/Cooperative: Make sure to account for the fact that metering may be installed at the point of common coupling. *For example:*

Wholesale Market Participant shall be responsible for the installation of metering and telemetry at the point of common coupling (as shown in Schedule B) between the Generating Facility and the [insert name of Municipality/Cooperative] system as required by PJM Manuals M-01 and M14D. [Insert name of Municipality/Cooperative] and Wholesale Market Participant will together determine meter ownership.

Wholesale Market Participant shall make its metering data at the point of common coupling available to [insert name of Municipality/Cooperative], or its affiliate, via telemetry for use by [insert name of Municipality/Cooperative] and Transmission Owner for balancing, settlement, and audit purposes. Wholesale Market Participant may purchase and install its own backup metering.}

DRAFT

SCHEDULE D

LIST OF NETWORK UPGRADES

{Include the following language if not required:}

Not Required.

{Otherwise, list the Network Upgrades identified through the System Impact Studies, with Stand Alone Network Upgrades, if any, listed separately, and include the sentence below.}

[List]

Construction of these Network Upgrades listed in Schedule D of this WMPA is subject to the terms and conditions of a separate facilities construction agreement between Wholesale Market Participant and Transmission Owner.

DRAFT

SCHEDULE E

APPLICABLE TECHNICAL REQUIREMENTS AND STANDARDS

{Include the following language if not required:}

Not Required.

{Otherwise, include the following language:}

Except as otherwise provided in the Interconnection Agreement, as applicable, the following technical requirements and standards shall apply:

*{Instructions: If the relevant TO Applicable Technical Requirements and Standards **are** posted on the PJM website, use the following language:}*

[Name of TO Standards] [version number (if known and applicable)] dated [insert effective date of the Standards] shall apply. The [Name of TO Standards] [version number (if known and applicable)] dated [insert effective date of the Standards] is available on the PJM website. To the extent that these Applicable Technical Requirements and Standards conflict with the terms and conditions of the Tariff or any other provision of this WMPA, the Tariff and/or this WMPA shall control.

*{Instructions: If the relevant TO Applicable Technical Requirements and Standards **are not** posted on the PJM website, use the following language:}*

[Name of TO Standards] [version number (if known and applicable)] dated [insert effective date of the Standards] shall apply. To the extent that these Applicable Technical Requirements and Standards conflict with the terms and conditions of the Tariff or any other provision of this WMPA, the Tariff and/or this WMPA shall control.

SCHEDULE F

SCHEDULE OF NON-STANDARD TERMS & CONDITIONS

{Include the following language if not required:}

Not Required.

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