

**Master  
Renewable  
Energy Credit  
Purchase and Sale  
Agreement**

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**MASTER RENEWABLE ENERGY CREDIT  
PURCHASE AND SALE AGREEMENT**

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## MASTER RENEWABLE ENERGY CREDIT PURCHASE AND SALE AGREEMENT

THIS RENEWABLE ENERGY 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 / MidAmerican Energy 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 purchase of Renewable Energy Credits (“RECs”) 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 “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.

1.3 “Agreement” means this Master Renewable Energy Credit Purchase and Sale Agreement.

1.4 “Annual Quantity” means a quantity of RECs specified as such in the Product Order of the Agreement, which reflects the portion of the RFP Awarded Annual Quantity allocated to this Agreement.

1.5 “Applicable Program” means the Illinois Renewable Portfolio Standard, as established under 20 Ill. Comp. Stat. 3855/1-75, or successor.

1.6 “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.

1.7 “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.

1.8 “Buyer” means the buyer of the Product.

1.9 “Claiming Party” is defined in Section 10.1.

1.10 “Class of Resource” means the type of generating unit associated with the Project as specified in the Product Order of the Agreement.

1.11 “Collateral Requirement” shall be equal to four dollars (\$4) times the Annual Quantity; provided that if the Collateral Requirement is calculated to be less than \$20,000, then the Collateral Requirement shall be \$20,000. The Collateral Requirement for the last Delivery Year shall be reduced, if applicable, to reflect an amount equal to the product of the Delivery Year Requirement for the last Delivery Year and four dollars (\$4). Any Performance Assurance held at the time of the last payment will be returned to the Seller on or around the date on which Buyer makes the final payment under the Agreement.

1.12 “Collateral Threshold” is defined in Section 7.1.

1.13 “Commercially Reasonable Threshold” means the result obtained by multiplying \$2.50 and the RFP Awarded Annual Quantity, which shall be subject to a minimum of \$25,000 and a maximum of \$1,000,000. For example, if the RFP Awarded Annual Quantity is 6,000, then the Commercially Reasonable Threshold shall be \$25,000 given the result obtained by multiplying \$2.50 and the RFP Awarded Annual Quantity is less than \$25,000. Similarly, if the RFP Awarded Annual Quantity is 500,000, then the Commercially Reasonable Threshold shall be capped at \$1,000,000 given the result obtained by multiplying \$2.50 and the RFP Awarded Annual Quantity is greater than \$1,000,000.

1.14 “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 if such entity is a U.S. utility operating company with an investment grade rating, or the corporate issuer rating or corporate credit rating, discounted one notch, by S&P if such entity is not a U.S. utility operating company with an investment grade rating; 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.

1.15 “Daily Quantity” means a quantity of RECs, for a given day during the Delivery Term, equal to the Annual Quantity divided by 365 days (or by 366 days if such day is included in a Delivery Year that includes a leap year). With respect only to the first 365 days of the Delivery Term, for purposes of determining the applicable Delivery Year Requirement, the Daily Quantity can be reduced as described in Section 4.1(f).

1.16 “Date of First Operation” has meaning given to it in the PJM EIS GATS or M-RETS operating manuals.

1.17 “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.”

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

1.19 “Deliver” or “Delivered” or “Delivery” means the transfer from Seller to Buyer of the Product by Seller to Buyer’s PJM EIS GATS or M-RETS account.

1.20 “Delivery Date” means a date within the Delivery Term in which REC Deliveries were made by Seller to Buyer.

1.21 “Delivery Month” means any of calendar monthly periods within the Delivery Term.

1.22 “Delivery Term” means the period (i) starting on the later of June 1, 2023 or the date that the first REC is issued by PJM EIS GATS or M-RETS for the Project regardless of when the date initial REC Deliveries by Seller to Buyer occurs, and (ii) ending on the day that is one hundred eighty (180) months thereafter; provided that such one hundred eighty (180) month period shall be automatically extended day for day for each day of any Suspension Period up to a maximum extension of seven hundred thirty (730) days.

1.23 “Delivery Year” means the twelve (12) calendar months beginning with June of one calendar year through and including May of the following calendar year; provided that if the Delivery Term does not begin on June 1, (i) the period commencing at the start of the Delivery Term and ending on the immediately following May 31st and (ii) the period commencing on the June 1st immediately prior to the end of the Delivery Term and through the end of Delivery Term shall, in each case, be deemed to be a Delivery Year.

1.24 “Delivery Year Requirement” means the quantity of RECs for a given Delivery Year equal to the sum of the Daily Quantity for each day in the Delivery Year that is within the Delivery Term, rounded to the nearest integer; provided that the Delivery Year Requirement for any Delivery Year in which a Suspension Period occurs shall be adjusted based on the amount of Product actually Delivered prior to the start of such Suspension Period, and the Delivery Year Requirement for a Delivery Year that is extended as a result of the Suspension Period shall be correspondingly increased unless the Parties agree otherwise.

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

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

1.27 “Environmental Attributes” excludes electric energy and capacity produced, but means any other emissions, air quality, or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of a renewable energy resource or low-carbon resource now or in the future eligible for procurement under Illinois law (See 20 ILCS 3855/1-56, 20 ILCS 3855/1-75, et. seq.), whether existing as of the Effective Date or in the future, and whether as a result of any present or future local, state or federal laws or regulations or local, state, national or international voluntary program, as well as any and all generation attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future; and further, means: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Project’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any

certificates or credits issued pursuant to the PJM-EIS GATS or M-RETS in connection with energy generated by the Project; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of energy by the Project; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Project; or (iii) any state, federal or private grants relating to the construction or ownership of the Project or the output thereof.

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

1.29 “Excess RECs” is defined in Section 4.1(j).

1.30 “Fitch” means Fitch Ratings Ltd.

1.31 “Force Majeure” is defined in Section 10.1.

1.32 “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.

1.33 “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.

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

1.35 “Guaranty” means an irrevocable and unconditional guaranty made by Seller’s Guarantor, in the form attached hereto as Exhibit E-2, E-3 or E-5, as applicable, with such options as elected therefrom.

1.36 “ICC” means the Illinois Commerce Commission.

1.37 “Ineligible RECs” is defined in Section 4.1(c).

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

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

1.40 “Letter of Credit” means an irrevocable, transferable 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 sole discretion.

1.41 “Maximum Contract Quantity” means a quantity of RECs specified as such in the Product Order of the Agreement.

1.42 “Moody’s” means Moody’s Investors Service, Inc.

1.43 “M-RETS” means the Midwest Renewable Energy Tracking System or successor.

1.44 “Nameplate Capacity” means the aggregate rated generator output in kilowatts AC.

1.45 “Non-Defaulting Party” is defined in Section 9.3.

1.46 “Performance Assurance” means collateral in the form of cash or letters of credit, or other security acceptable to the requesting Party.

1.47 “Performance Assurance Amount” is defined in Section 7.1.

1.48 “PJM EIS GATS” means the PJM Environmental Information Services, Inc. Generation Attribute Tracking System or successor.

1.49 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.50 “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.

1.51 “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.

1.52 “Product” means the RECs to be Delivered under this Agreement, which shall include all Environmental Attributes.

1.53 “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.

1.54 “Project” means the Renewable Energy Facility identified in the Product Order of the Agreement that was selected through the RFP and from which the Product is sourced.

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

1.56 “Purchase Price” means the price to be paid for a particular Delivery of Product in a Transaction.

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

1.58 “Renewable Energy Credit” or “REC” means a tradable credit that represents all Environmental Attributes of one (1) megawatt hour of energy produced from a Renewable Energy Source.

1.59 “Renewable Energy Facility” means an electric generation unit or other facility or installation that produces electric energy using a Renewable Energy Source.

1.60 “Renewable Energy Source” means an energy source generated from wind.

1.61 “Renewable Portfolio Standard” or “RPS” means the Illinois RPS as established under 20 Ill. Comp. Stat. 3855/1-75.

1.62 “Reporting Year” means a twelve-month compliance reporting period required under the Applicable Program.

1.63 “RFP Awarded Annual Quantity” means a quantity of RECs specified as such in the Product Order of the Agreement, which reflects the total annual quantity of RECs that is awarded to Seller under the RFP.



1.64 “S&P” means S&P Global Ratings.

1.65 “Seller” means the seller of the Product.

1.66 “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.

1.67 “Shortfall Amount” is defined in Section 4.1(g).

1.68 “Shortfall Year” is defined in Section 4.1(g).

1.69 “Suspension Period” means the period of time during which the obligations of the Parties under this Agreement are suspended in accordance with Section 5.4 or Section 10.1.

1.70 “Term” is defined in Section 3.2.

1.71 “Terminated Transaction” is defined in Section 9.3.

1.72 “Termination Payment” is defined in Section 9.4.

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

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

1.75 “Utility-Scale Wind Project” means an electric generating facility that: (a) generates electricity using wind; and (b) has a Nameplate Capacity that is greater than 2,000 kilowatts.

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

1.77 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 Delivery 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) Renewable Energy Credits. The Product to be Delivered by Seller and received by Buyer under this Agreement is RECs generated from the Project, for which summary information is specified in the Product Order. Seller may not substitute RECs generated from a generator other than the Project. For avoidance of doubt, Buyer is not purchasing Seller's Project.

(b) Environmental Attributes. Seller acknowledges and agrees that any Environmental Attribute associated with or related to the Product will not be sold or otherwise made available to a third party, but will be sold to Buyer pursuant to this Agreement. For the avoidance of doubt, the Product sold hereunder must meet the definition of "renewable energy credit" under the IPA Act.

### **2.2 Project Information.**

The Product is unit specific; RECs Delivered under this Agreement must be from the Project specified in the Product Order and Seller represents as of each Delivery Date hereunder that:

(a) The Project is a new project such that the Date of First Operation of the Project as recorded by PJM EIS GATS or M-RETS (i) did not occur on or before June 1, 2017, and (ii) did not occur after the day that is three (3) years after the Commission Bid Approval Date or (iii) if the Date of First Operation of the Project occurred after the day that is three (3) years after the Commission Bid Approval Date, the delay of such occurrence is due to Force Majeure.

(b) As required by Section 1-75(c)(1)(J) of the IPA Act, the Project is not and will not be a generating unit whose costs are being recovered through rates regulated by Illinois or any other state or states.

(c) The Project is located in Illinois or located in a state adjacent to Illinois. If the Project is located in a state adjacent to Illinois, Seller further acknowledges that, subsequent to the Effective Date, if it is determined by the IPA that the Project does not meet the public interest criteria in accordance with the application of the public interest criteria as detailed in the IPA's long term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No.19-0995, then an Event of Default shall be deemed to have occurred.

(d) The Project is from the Class of Resource indicated in the Product Order and meets the requirements specified in the IPA Act or rules promulgated by the ICC for the designated Class of Resource.

(e) At least 50% of the Project is located within the physical location identified in the Site Description in the Product Order.

(f) If the Project is determined not to be in compliance with any of the provisions of Sections 2.2(a) through (e) (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 five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole discretion, that such Event of Default has not occurred. For such Event of Default, except for non-compliance with Section 2.2(b), Buyer shall be entitled to payment by Seller in the amount of the sum of: (i) the Collateral Requirement and (ii) 100% of the total payments Seller has received from Buyer. For an Event of Default due to Section 2.2(b), Buyer shall be entitled to payment by Seller in the amount of the sum of: (i) the Collateral Requirement and (ii) 110% 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 Sections 2.2(a) through (e) (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(f)

shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with one or more of Sections 2.2(a) through (e) (inclusive) and, for the avoidance doubt, neither Buyer nor Seller shall be entitled to any Termination Payment calculated pursuant to Section 9.4 under such circumstance.

### **2.3 REC Tracking Systems.**

(a) The Parties will use PJM EIS GATS or M-RETS, as selected by Seller, as the tracking system for the Product.

(b) The Parties shall abide by the applicable Delivery rules of PJM EIS GATS or M-RETS. Each Party shall bear the costs associated with performing its respective obligations in connection with such tracking system.

(c) If applicable in PJM EIS GATS and/or M-RETS, Seller represents that the RECs have been designated as "IL RPS eligible" by that registry, prior to transferring the RECs to Buyer's PJM EIS GATS account or M-RETS account.

(d) Seller shall Deliver the RECs in an unretired state.

### **2.4 Date of First Operation**

The Date of First Operation of the Project as recorded by PJM EIS GATS or M-RETS must occur by the day that is three (3) years after the Commission Bid Approval Date unless such occurrence after the day that is three (3) years after the Commission Bid Approval Date is due to Force Majeure.

## **ARTICLE 3: 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 earlier of (i) the date on which Buyer has made payments to Seller in the last Delivery Year that cumulatively equal the Maximum Contract Quantity multiplied by the Purchase Price; or (ii) the last day of the month immediately following the end of the Delivery Term. The Parties acknowledge that the Agreement allows for a maximum total period of Delivery of fifteen (15) years (excluding any Suspension Periods during which the Parties' obligations are suspended as provided herein).

## **ARTICLE 4: DELIVERY OBLIGATIONS**

#### 4.1 Deliveries and Quantity.

(a) Seller shall be permitted to Deliver RECs from the Project for payment by Buyer starting on the first day of the Delivery Term through the last day of the last Delivery Month.

(b) All RECs Delivered shall be from the Project. Each Delivery shall be deemed a representation by Seller to Buyer that the Product meets the requirements specified in this Agreement.

(c) RECs shall not be eligible for payment by Buyer if Delivered by Seller prior to the Delivery Term or if such REC(s) are related to generation of electricity that occurred more than two (2) months prior to the first day of the Delivery Term (such RECs, “Ineligible RECs”). Seller shall have no obligation to Buyer with respect to any Ineligible RECs.

(d) As specified in Section 9.2(f), Seller’s failure to Deliver at least one (1) REC from the Project by the date that is one thousand one hundred eighty-five (1,185) days after the Commission Bid Approval Date shall constitute an Event of Default unless excused by Force Majeure. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole discretion, that Seller has made such Delivery. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (i) Buyer shall be damaged by the failure of Seller to Deliver at least one (1) REC from the Project by the date that is one thousand one hundred eighty-five (1,185) days after the Commission Bid Approval Date, (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 4.1(d) shall be Buyer’s sole and exclusive remedy in such Event of Default and, for the avoidance doubt, neither Buyer nor Seller shall be entitled to any Termination Payment calculated pursuant to Section 9.4 under such circumstance. If Seller’s failure is excused by Force Majeure and the Suspension Period continues for more than seven hundred thirty (730) consecutive days, then Buyer may terminate this Agreement. No Settlement Amount or Termination Payment shall be due from or to either party as a result of any such termination.

(e) Prior to the deadline set forth in Section 4.1(d) for the Delivery of one (1) REC from the Project, if the Seller determines that it will not construct the Project in a timely manner, 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. Buyer shall terminate this Agreement within five (5) 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.

(f) Seller shall Deliver to Buyer, subject to Section 4.1(a), the Delivery Year Requirement in each Delivery Year. For purposes of calculating the Delivery Year Requirement during the first three hundred sixty-five (365) days of the Delivery Term, the Daily Quantity can be reduced by up to fifty percent (50%) based on the actual amount of RECs Delivered in such three hundred sixty-five (365) day period. (See Exhibit F for an example for the calculation of the Daily Quantity and the Delivery Year Requirement applicable in the first three hundred sixty-five (365) days of the Delivery Term).

(g) In the event that Seller fails to Deliver the Delivery Year Requirement for a Delivery Year under the terms of this Agreement (such Delivery Year a “Shortfall Year” and such amount of RECs that Seller fails to Deliver to satisfy the Delivery Year Requirement in a Delivery Year, the “Shortfall Amount”), Seller represents that no RECs from the Project issued by PJM EIS GATS or M-RETS in that same Delivery Year were willfully withheld or sold or otherwise transferred to another party (other than to **[delete as applicable: Ameren Illinois Company and/or] [Commonwealth Edison Company and/or] [MidAmerican Energy Company]** in connection with an IPA approved agreement), provided however that Seller shall not be deemed to have willfully withheld or sold or otherwise transferred RECs to another

party if Seller's performance is prevented by an action of Buyer that constitutes an Event of Default or if such actions occur during the pendency of suspension of the Agreement pursuant to Section 5.4 of the Agreement.

(h) As specified in Section 9.2(i), an Event of Default shall be deemed to occur if either (i) three (3) or more Shortfall Years occurred and the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds the Annual Quantity, or (ii) Seller breaches its representation under Section 4.1(g). Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole discretion that such event has not occurred. For such Event of Default, 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 the provisions set forth in (i) and/or (ii) of this Section 4.1(h), (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 remedy specified in this Section 4.1(h) shall be Buyer's sole and exclusive remedy in such Event of Default and, for the avoidance doubt, neither Buyer nor Seller shall be entitled to any Termination Payment calculated pursuant to Section 9.4 under such circumstance.

(i) All RECs Delivered by Seller under this Agreement must allow Buyer to meet its obligations under the Applicable Program for the Delivery Year in which such RECs were Delivered.

(j) Any RECs generated by the Project in excess of the Delivery Year Requirement in any Delivery Year during the Delivery Term ("Excess RECs") shall remain the exclusive property of Seller, to be utilized in Seller's sole discretion. Seller may, at its sole discretion, Deliver such Excess RECs to Buyer during any subsequent Delivery Year to satisfy such subsequent Delivery Year Requirement or, in the last Delivery Year, above the applicable Delivery Year Requirement (subject to the payment cap set forth in Section 5.2), in each case so long as such RECs satisfy all applicable requirements of this Agreement. For the avoidance of doubt, Seller's rights with respect to Excess RECs are as set forth in this section and no further actions are required in order for Seller to retain and, at Seller's sole discretion, utilize Excess RECs to satisfy a subsequent Delivery Year Requirement hereunder.

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

### **5.1 Invoicing.**

During the Term of this Agreement, Seller shall render to Buyer an invoice by electronic mail for the payment obligations of Buyer to Seller on or before the 10th day of the month immediately following each Delivery Month ("Invoice Due Date") in which RECs are Delivered.

If Seller fails to render an invoice for a Delivery Month by the Invoice Due Date, no payment will be processed for that Delivery Month, provided that if the invoice for the last Delivery 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 Delivery Month's invoice for subsequent payment. 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.

Each invoice shall include: (a) the invoice amount to be paid; (b) the quantity of RECs Delivered; (c) the Purchase Price; and (d) the PJM EIS GATS or M-RETS Unit ID, as applicable, for the Project.

### **5.2 Payment.**

All invoices, timely submitted, under this Agreement shall be payable and due on the last Business Day of the month that immediately follows a Delivery Month. No more than one (1) invoice will be processed for payment for each Delivery Month.

Buyer will make payments in accordance with the applicable invoice instructions by electronic funds transfer, or by other mutually agreed methods, to the account designated in Exhibit B.

In no event shall (i) payment by Buyer with respect to a Delivery Year (except for the last Delivery Year) exceed an amount equal to the product of the Purchase Price and the Delivery Year Requirement for such Delivery Year, plus interest on late payments as required herein, or (ii) payment by Buyer cumulatively exceed an amount equal to the product of the Purchase Price and the Maximum Contract Quantity, plus interest on late payments as required herein.

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

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.

Buyer may, in good faith, dispute the correctness of any invoice within six (6) months after receipt of such invoice. Any invoice 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 due date as originally invoiced.

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 six (6) 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 be free to pursue any available legal or equitable remedy.

### **5.4 Cost Recovery through Pass-Through Tariffs.**

Buyer is allowed to recover all costs and other amounts incurred under the Agreement from its customers pursuant to a pass-through tariff that is authorized by Section 16-111.5(1) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(1)) and approved by the ICC.

If, for whatever reason, Buyer is not allowed to or cannot recover such costs from its customers through its pass-through tariffs, then, notwithstanding anything to the contrary in the Agreement, the obligations of both Seller and Buyer, including Delivery of and payment for RECs, shall be suspended upon written notice from Buyer to Seller until Buyer provides written notice to Seller that Buyer is able to recover all of its costs under this Agreement through its pass-through tariff, whereupon the respective rights and obligations of the Parties under this Agreement shall resume as of the effective date indicated in such notice (pro-rated, as applicable, based on the duration of such suspension). During any such Suspension Period, Seller shall have no obligations to Buyer with respect to RECs from the Project. If the Suspension Period continues for more than three hundred sixty-five (365) consecutive days, then Seller may terminate this Agreement and if the Suspension Period continues for more than seven hundred thirty (730) consecutive days, then Buyer may terminate this Agreement. No Settlement Amount or Termination Payment shall be due from or to either Party as a result of any such termination.

**5.5 Taxes and Fees.**

Seller will be responsible for any taxes imposed on the creation, ownership, or transfer of Product under this Agreement up to and including the time and place of its Delivery. Buyer will be responsible for any taxes imposed on the receipt or ownership of Product at or after the time and place of its Delivery. Each Party will be responsible for the payment of any fees incurred by it in connection with this Transaction hereunder.

**ARTICLE 6: REPORTING REQUIREMENTS**

[Reserved]

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

### **7.1 Performance Assurance.**

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

If at any time Seller’s (or Seller’s Guarantor’s, if applicable) Collateral Threshold is lower than the Collateral Requirement, then Seller, upon request from Buyer, shall be required, within five (5) 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; 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 five (5) Business Days of notice from Buyer, then an Event of Default shall be deemed to have occurred pursuant to Section 9.2(c) and Buyer shall be entitled to the remedies set forth under Section 9.3, as the Non-Defaulting Party. After the first ten (10) Delivery Years during the Delivery Term, if the Performance Assurance Amount is equal to or less than \$20,000, then the Performance Assurance Amount shall be deemed to be zero; provided, that if Buyer’s calculation indicates that the Performance Assurance Amount exceeds \$20,000, then the Performance Assurance Amount shall be such full calculated amount.

If Seller is relying on its own creditworthiness and Seller is a party to one or more additional REC purchase agreements with Buyer pursuant to the conduct of the procurements pursuant to Section 1-75(c) of the IPA Act, then Seller will be granted a single Collateral Threshold to be applied to all such REC purchase 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 REC purchase agreements entered into with Buyer pursuant to the conduct of the procurements pursuant to Section 1-75(c) of the IPA Act for which it guarantees payment obligations on behalf of one or more parties to such REC purchase agreements.

<i><b>TABLE A</b></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

### **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.**

(a) Upon the Date of First Operations of the Project, Seller represents and warrants to Buyer on each Delivery Date through the expiry of the Delivery Term 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.

(b) Upon each Delivery, Seller represents and warrants to Buyer as follows:

- (i) at the time of Delivery, Seller has the right to convey title to any and all of the RECs Delivered to Buyer in accordance with this Agreement free and clear of any and all liens or other encumbrances or title defects;
- (ii) Seller has sold and transferred the RECs once and only once exclusively to Buyer; the RECs and any other Environmental Attributes sold hereunder have not expired and have not been, nor will be retired, claimed or represented as part of electricity output or sale, or used to satisfy any renewable energy or other carbon or renewable generation attributes obligations under Illinois law or in any other jurisdiction; and that it has made no representation, in writing or otherwise, that any third-party has received, or has obtained any right to, such RECs that are inconsistent with the rights being acquired by Buyer hereunder;
- (iii) no RECs from the Project issued by PJM EIS GATS or M-RETS were willfully withheld or sold or otherwise transferred to another party pursuant to Section 4.1(g); and
- (iv) 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.

## **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 fifteen (15) 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 that has occurred and is deemed to be remedied;

(b) the failure of Buyer to make, when due, any payment required pursuant hereto if such failure is not remedied within three (3) Business Days after written notice; and

(c) 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 not associated with the Project that is false or misleading in any material respect when made or repeatedly made unless Seller as the Potentially Defaulting Party demonstrates, within a fifteen (15) Business Day period from the time of notice by and to the satisfaction of Buyer as the Potentially Non-Defaulting Party in its sole discretion, that such Potential Event of Default has not occurred or that has occurred and is deemed to be remedied;

(b) such Party becomes Bankrupt;

(c) 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 five (5) Business Days of notice from Buyer;

(d) 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;

(e) 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 five (5) 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 such Party under each Transaction to which such guaranty relates without the written consent of the other Party; or
- (v) a Guarantor repudiates, disaffirms, disclaims, or rejects or challenges, in whole or in part, the validity of any guaranty.

(f) failure of Seller to Deliver at least one (1) REC from the Project by the date that is one thousand one hundred eighty-five (1,185) days after the Commission Bid Approval Date unless such deadline is extended due to Force Majeure, in which case Buyer shall terminate the Agreement five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole 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;

(g) Seller's Project is or becomes a generating unit whose costs were being recovered through rates regulated by Illinois or any other state or states, in which case, Buyer shall terminate the Agreement five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole 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 sum of: (i) the Collateral Requirement and (ii) 110% of the total payments Seller has received from Buyer under this Agreement;

(h) Seller's Project fails to comply with the requirements set forth in Sections 2.2(a), 2.2(c), 2.2(d) or 2.2(e), in which case, Buyer shall terminate the Agreement five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole 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 sum of: (i) the Collateral Requirement and (ii) 100% of the total payments Seller has received from Buyer under this Agreement; and

(i) breach by Seller of its representations under Section 8.2(b)(iii) or the occurrence of three (3) or more Shortfall Years and the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds the Annual Quantity, in which case, Buyer shall terminate the Agreement five (5) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such five (5) Business Day period and to the satisfaction of Buyer in its sole discretion, that such Event of Default has not occurred. 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.

### **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, in a commercially reasonable manner, a Settlement Amount 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(f), 9.2(g), 9.2(h) or 9.2(i). Notwithstanding anything in this Section 9.3 to the contrary, in the event of an Early Termination Date prior to the Date of First Operations of the Project due to a Seller's Event of Default, Seller shall pay to Buyer a Settlement Amount in an amount

equal to the Collateral Requirement.

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

Except as otherwise set forth in this Agreement, the Non-Defaulting Party will calculate a Settlement Amount as a single amount by netting out (a) all amounts that are due to the Defaulting Party for Product that has been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any cash, security or other Performance Assurance then available to the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the "Termination Payment"). If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, there shall not be a Termination Payment and the Non-Defaulting Party shall not owe any amount to the Defaulting Party. The Termination Payment, if any, is due to the Non-Defaulting Party within two (2) Business Days following notice.

For avoidance of doubt, the Non-Defaulting Party shall not owe any amount as Termination Payment to the Defaulting Party and payment of the Termination Payment 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 or Termination Payment, 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 in an amount equal to the full Termination Payment. References to Defaulting Party and Non-Defaulting Party in this Section 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 or a Potential Event of Default has occurred and is continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, has the right (a) to suspend performance under this Agreement and (b) to the extent an Event of Default has occurred and is continuing, to exercise any remedy available at law or in equity, except as limited by Section 14.1.

#### **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 9.4 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 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 tenth (10th) 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. Force Majeure may include delays associated with processing of permit requests or addressing regulatory requirements or delays in the establishment by the Project of an operating interconnection with the applicable transmission or distribution system as a result of the actions or inactions of the transmission or distribution provider, provided Seller can demonstrate to Buyer and the IPA that such delays are not primarily attributable to Seller’s failure to make in a timely manner permitting requests or a formal request for interconnection to such transmission or distribution provider or to provide in a timely manner the information or payment required by such transmission or distribution provider. Force Majeure may also include the failure or disruption in Deliveries of PJM EIS GATS or M-RETS. 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. Force Majeure may include curtailments of the Project for reliability purposes made by the Regional Transmission Organization responsible for the operation of the transmission system to which the Project is interconnected, provided that Seller can demonstrate to Buyer and the IPA that such curtailment: (a) is for reliability purposes and not for economic purposes, (b) occurs after the first five (5) Delivery Years of the Delivery Term, and (c) the amount of such curtailment prevents the Delivery of more than five percent (5%) of the Annual Quantity in a Delivery Year. Upon such Force Majeure event, the Shortfall Amount in a Delivery Year may be excused by the amount of such curtailment that exceeds five percent (5%) of the Annual Quantity. Seller shall provide written notice to Buyer within thirty (30) days of the commencement of any curtailment that meets the foregoing requirements and, in the event that Sellers fails to so notify Buyer, Seller shall not be relieved of its Delivery obligations as a result of such curtailment. Upon the occurrence and proper notice of a curtailment meeting the foregoing requirements, Seller shall estimate the amount of Deliveries prevented by such curtailment based on the most recent twelve (12) months of actual production data from the Project and utilizing actual meteorological conditions during the period of curtailment and shall provide such estimate to Buyer along with all supporting documentation, including any supporting information from the RTO that curtailed the Project’s generation.

If Force Majeure adversely affects the ability of Seller to Deliver RECs from the Project, then there shall be a Suspension Period with respect to that Project’s obligations to Deliver RECs under this Agreement. If the Suspension Period arising from such event lasts for a consecutive period of 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 ten (10) Business Days of Buyer’s receipt of Seller’s written notice, which shall be subject to the concurrence of the IPA, this Agreement shall

be terminated 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 Purchase Price; (iv) curtailment for economic purposes only made by the Regional Transmission Organization responsible for the operation of the transmission system to which the Project is interconnected; (v) insufficiency or unavailability of wind to operate the Project or generate sufficient quantities of Product; (vi) the performance or breakdown of equipment not directly caused by an External Event; or (vii) 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, or make a Product unavailable or dramatically diminished or increased in value. 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 Delivery Date, and regardless of any Government Action occurring after the Trade Date, Seller must Deliver Product that complies with the Applicable Program as of each Delivery Date. Government Action that changes in any respect the value of a Product (without rendering the Product out of compliance with the Applicable Program if Regulatorily Continuing), 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. To the extent that Government Action after the Trade Date (i) renders Delivery illegal under applicable law or (ii) 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 Products not yet Delivered or for non-conforming Products will be refunded by Seller, 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, however, such evidence of expenditures or estimated expenditures shall 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.

### **11.2 Risk Allocation.**

The Product is Regulatorily Continuing.

## **ARTICLE 12: GOVERNING LAW**

### **12.1 Applicable Program.**

The Illinois Renewable Portfolio Standard ("RPS"), as established under [20 Ill. Comp. Stat. 3855/1-75](#) 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.**

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 the terms and conditions hereof and the transferring Party must deliver such tax and enforceability assurance as the non-transferring Party may reasonably request and, in the case of an assignment pursuant to Section 13.1(i), the non-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*.

## **ARTICLE 14: INDEMNIFICATION AND LIABILITY**

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

The express remedies and measures of damages provided herein satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damage is provided, such remedy or measure shall be the sole and exclusive remedy therefor.

If no remedy or measure of damage is expressly provided, the obligor's liability shall be limited to direct actual damages only as the sole and exclusive remedy. Except as specifically set forth herein, no party shall be required to pay or be liable for special, consequential, incidental, punitive, exemplary, or indirect damages, lost profit or business interruption 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 and ten percent (110%) of the total payments Seller has received from Buyer associated with RECs from the Project.

Notwithstanding any other provisions of this Agreement, in no event shall Buyer be liable to Seller in an amount that exceeds one hundred and ten percent (110%) of the total payments Seller has received from Buyer associated with RECs from the Project.



## **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.

### **15.2 Dispute Resolution.**

Disputes under this Agreement will be resolved in accordance with applicable law, or 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.

#### **Binding Arbitration**

(1) 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 American Arbitration Association (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 a 30 day negotiation period. 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 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 statement regarding the reasons for the decision.

(G) The arbitrator and the Parties will make every attempt to resolve 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, the disclosing Party shall provide the other Party with written notice within one (1) Business Day 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.

Posted: January 19, 2021

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 [*Reserved*]

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-3 – Form of Guaranty (Commonwealth Edison Company)

Exhibit E-4 – Schedule 1: Foreign Guarantor Requirement (Commonwealth Edison Company)

Exhibit E-5 – Form of Guaranty (MidAmerican Energy Company)

Exhibit F – Examples

Exhibit F-1 – Example of Delivery Year Requirement Calculation

## EXHIBIT A Form of Product Order

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

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

Project Information	Class of Resource: Utility-Scale Wind Project  Site Description:
RFP Awarded Annual Quantity	_____ RECs
Annual Quantity	_____ RECs
Maximum Contract Quantity	_____ RECs (i.e. Annual Quantity x 15 years)
Purchase Price (\$ per REC)	
Certified by Tracking System	PJM EIS GATS or M-RETS

Party A Name  
 By:  
 Name:  
 Title:

Party B Name  
 By:  
 Name:  
 Title:

## EXHIBIT B Contact Information for Notices

**All notices to the Illinois Power Agency to be sent to:** \_\_\_\_\_

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:  
Phone:  
Email:

With a copy to:

Attn:  
Phone:  
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:  
Email:

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

Attn:  
Phone:  
Email:



Posted: January 19, 2021

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

*[Reserved]*

Posted: January 19, 2021

## **EXHIBIT D Form of Invoice**

*During the Term of this Agreement, Seller shall render to Buyer an invoice by electronic mail for the payment obligations of Buyer to Seller on or before the 10th day of the month immediately following each Delivery Month (“Invoice Due Date”) in which RECs are Delivered. All invoices under this Agreement shall be payable and due on the last Business Day of the month that immediately follows a Delivery Month. No more than one (1) invoice will be processed for payment for each Delivery Month.*

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

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

Project PJM-EIS GATS or M-RETS ID: \_\_\_\_\_

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

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

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

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

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

Delivery Month: \_\_\_\_\_

Quantity of RECs Delivered: \_\_\_\_\_

Purchase 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 Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC 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 Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC 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 Renewable Energy Credit Agreement between Account Party and the Beneficiary of the Letter of Credit (as the same may be amended, the "REC Contract"). No event of default has occurred and is continuing under the REC 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

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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.

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[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 Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC 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 Renewable Energy Credit Agreement dated as of \_\_\_\_\_ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "REC Contract")) has occurred and is continuing with respect to Account Party under the REC 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 the 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 Renewable Energy Credit Agreement between Account Party and the Beneficiary of the Letter of Credit (as the same may be amended, the "REC Contract"). No event of default has occurred and is continuing under the REC 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

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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 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]

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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

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

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

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

Yours very truly,

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

SIGNATURE AUTHENTICATED

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

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

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

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

**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: \_\_\_\_\_

(Advising Bank's Reference Number, if applicable)

"Transferring Bank"

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.

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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.

Posted: January 19, 2021

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)

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**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.



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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.

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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-3 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 REC Contract 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

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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 or by-laws, 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

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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-4**  
**Schedule 1 – Foreign Guarantor Requirement**  
**(Commonwealth Edison Company)**

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 REC Contract, the Master Renewable Energy Certificate Purchase and Sale 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 REC 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 E-5

### Form of Guaranty (MidAmerican Energy 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 MidAmerican Energy Company (the “Beneficiary”), a corporation organized and existing under the laws of the State of Iowa.

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 Beneficiary 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 Beneficiary to enter into, the Agreement with the Counterparty. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Beneficiary the full and prompt payment and performance when due, subject to any applicable grace period, of all payment obligations of the Counterparty to the Beneficiary 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, absolutely and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Counterparty 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 Beneficiary in enforcing the obligations or for the protection of Beneficiary’s rights 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 (a) notice of acceptance of this Guaranty, notice of the creation or existence of any of the Obligations and notice of any action by the Beneficiary in reliance hereon or in connection herewith; notice of the entry into any Contract or any waiver of consent under any Contract, including waivers of the payment and performance of the obligations thereunder; (b) presentment and demand concerning the liabilities of Counterparty or Guarantor; (c) notice of any dishonor or default by, or disputes with, Counterparty; (d) diligence; and (e) any right to require that Beneficiary bring any action or proceeding against Counterparty or any other person, or to require that Beneficiary seek enforcement of any performance against Counterparty or any other person, prior to any demand for payment or other action against Guarantor under the terms hereof. Guarantor agrees that Beneficiary may, at any time and from time to time, without notice to or consent of Guarantor and without impairing or releasing the liability and obligations of Guarantor hereunder: (i) take or fail to take any action of any kind in respect of any collateral for any Obligation or liability of Counterparty to Beneficiary; and (ii) compromise or subordinate any Obligation or liability of Counterparty to Beneficiary, including any collateral therefor.

3. The Beneficiary 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 Beneficiary 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 Beneficiary; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Counterparty to the Beneficiary 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 Beneficiary; (e) any change in the corporate existence (including its articles, bylaws, operating agreement, constitution, laws, rules, regulations or

powers, as each is applicable), 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 Beneficiary or any other entity 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 Beneficiary 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 Beneficiary therefor until all Guaranteed Obligations to the Beneficiary 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 Beneficiary 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 Beneficiary in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Beneficiary, 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 Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary. The assignment rights of the Beneficiary will be in accordance with any applicable terms of the Agreement.

9. Neither this Guaranty nor any provision hereof may be amended, modified, changed, waived, discharged or terminated except upon written agreement of the Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Beneficiary.

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 Beneficiary which termination shall be effective only upon receipt by the Beneficiary of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Beneficiary. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no

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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 and 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 Beneficiary:

[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 full 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 without regard to principles of conflict of laws. The Guarantor and the Beneficiary 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 Beneficiary 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. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE GUARANTOR AND THE BENEFICIARY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

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 Beneficiary and the Guarantor with respect to subject matter hereof. The Beneficiary 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

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written above to be effective as of the earliest effective date of any of the Agreement.

[GUARANTOR]

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

Title:

## **EXHIBIT F**

### **Examples**

#### **Exhibit F-1**

#### **Example of Delivery Year Requirement Calculation**

As specified in Section 4.1(f), for purposes of calculating the Delivery Year Requirement during the first 365 days of the Delivery Term, the Daily Quantity can be reduced by up to 50% based on the actual amount of RECs Delivered in such 365-day period. This exhibit provides an example to illustrate such calculation.

For example, if the Annual Quantity is 3,650 RECs and the Delivery starts on August 1, 2020, then the Delivery Term is August 1, 2020 through July 31, 2035 and, for each day during the 365-day period of August 1, 2020 through July 31, 2021, the Daily Quantity can be reduced from 10 RECs to 5 RECs. The maximum of 10 RECs is calculated by dividing the 3,650 RECs (Annual Quantity) by 365 days. The minimum of 5 RECs is calculated by dividing 3,650 RECs (Annual Quantity) by 365 days, and then multiplying by 50%.

With respect only to the first 365 days of the Delivery Term, the Daily Quantity shall be reduced by up to 50% based on the amount of RECs actually Delivered by Seller during such period. For example and based on the hypothetical above:

During the first Delivery Year ending on May 31, 2021, Seller must Deliver at least 1,520 RECs, but no more than 3,040 RECs. The minimum of 1,520 RECs is the result of multiplying 5 RECs by 304 days (i.e., the number of days from August 1, 2020 through May 31, 2021), and the maximum of 3,040 RECs is the result of multiplying 10 RECs by 304 days. The Delivery Year Requirement for the first Delivery Year will be an amount between the minimum 1,520 RECs and the maximum 3,040 RECs. Buyer will pay Seller for actual RECs delivered up to the maximum Delivery Year Requirement amount, or 3,040 RECs. If Seller fails to deliver the minimum Delivery Year Requirement of 1,520 RECs, the Delivery Year will be designated a Shortfall Year.

During the second Delivery Year starting on June 1, 2021 through May 31, 2022, Seller must Deliver at least 3,345 RECs, but no more than 3,650 RECs. The minimum of 3,345 RECs is the result of adding (i) 305 RECs, which is 5 RECs multiplied by 61 days (i.e., the number of days from June 1, 2021 through July 31, 2021), and (ii) 3,040 RECs, which is 10 RECs multiplied by 304 days (i.e., the number of days from August 1, 2021 through May 31, 2022). The maximum of 3,650 RECs is the result of taking a Daily Quantity of 10 RECs and multiplying by 365 days (i.e., number of days from June 1, 2021 through May 31, 2022). The Delivery Year Requirement for the second Delivery Year will be an amount between the minimum 3,345 RECs and the maximum 3,650 RECs. Buyer will pay Seller for actual RECs delivered up to the maximum Delivery Year Requirement amount, or 3,650 RECs. If Seller fails to deliver the minimum Delivery Year Requirement of 3,345 RECs, the second Delivery Year will be designated a Shortfall Year.

For clarity, the allowance of a reduced Delivery Year Requirement as specified in Section 4.1(f) and as illustrated above shall apply only to the first 365 days of the Delivery Term and will not be extended for any reason such as the inclusion of a leap year within the first 365 days of the Delivery Term.