



Appendix B-3

Model Wind Build-Own-Transfer Acquisition Agreement Term Sheet

for

2025 Request for Proposals

for

Renewable Resources

for

Entergy Mississippi, LLC

Entergy Services, LLC
April 22, 2025

Wind BOT Agreement Term Sheet

The following term sheet (this “**Term Sheet**”) describes certain terms and conditions of a potential agreement between Buyer (as defined in item 2 below) and the seller proposed by the applicable bidder (“**Bidder**”) in Bidder’s proposal submitted pursuant to the 2025 Request for Proposals for Renewable Resources for Entergy Mississippi, LLC (“**RFP**”) (“**Seller**” and, together with Buyer, the “**Parties**”) for the purchase by Buyer of a developmental wind-powered electric generation resource meeting the requirements of the RFP, together with related assets. In this Term Sheet, the term “including” (and other grammatical forms of same) will be construed to mean “including, without limitation.” The terms and conditions set forth in this Term Sheet will establish the basis for the negotiation and execution of a definitive agreement between Buyer and each Seller whose proposal is selected from the RFP for contract negotiations (together with any agreements and other documents ancillary thereto, the “**Definitive Agreement**”), with necessary changes to accurately reflect any special exceptions set forth in Bidder’s proposal that are accepted by Buyer in its sole and absolute discretion. Buyer will provide the initial draft of the Definitive Agreement to the selected Bidder (if any) at the beginning of contract negotiations.

If Bidder is unable or unwilling to accept one or more of the terms and conditions in this Term Sheet or wishes to propose any alternate or additional terms or conditions, Bidder should indicate in the special exceptions/special considerations section of its Proposal Package (i) the terms and conditions to which Bidder takes exception, describing with specificity any terms and conditions that Bidder proposes in substitution, and/or (ii) the additional terms and conditions that Bidder proposes as a supplement to the terms and conditions in this Term Sheet. Bidder is advised to refer to Section 2.3 in the Main Body for additional information pertaining to special exceptions/special considerations.

	Term	Description of Term
1	Product Description:	<p>The product described in this Term Sheet is designated as the “Asset Acquisition-Wind Developmental Resource (B-O-T) Product.”¹</p> <p>“Net Generation Capacity” means the sum of the WTG Capacities (as defined below) of all wind turbines in the Facility that continue to satisfy the requirements for Substantial Completion (as defined in item 14 below) applicable thereto, less losses to the Electric Interconnection Point (as defined in item 5 below) determined based on engineering calculations taking into account, among other things, line losses and any constraint imposed by the continuous active output power rating at a power factor of 0.95 (leading or lagging) of the Facility main step-up transformer.</p> <p>“WTG Capacity” means, with respect to each wind turbine, (a) the lesser of (i) the manufacturer’s nameplate rating of such wind turbine or (ii) the continuous active power output rating at the expected operating power factor of the individual step-up transformer associated with such wind turbine, less (b) any deratings (including pursuant to wind sector management or other</p>

¹ **NTD:** This Term Sheet does not reflect battery storage. If Bidder has offered and Buyer selects Bidder’s battery option to move forward with Bidder’s applicable proposal for a developmental wind-powered electric generation resource, the terms contemplated by this Term Sheet will be adjusted to incorporate battery storage on substantially the same terms as those reflected in Appendix B-1 to the RFP for developmental solar photovoltaic electric generation resources.

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		operational parameters or as a result of any defects or deficiencies) to such capacity rating for such wind turbine.
2	Buyer:	“ Buyer ” will be Entergy Mississippi, LLC (“ EML ”) or its designee. For purposes of the RFP and the Definitive Agreement, Buyer will be considered an entity entirely separate and distinct from, and unaffiliated with, any Entergy transmission organization (including the EML transmission organization (collectively, “ EML Transmission ”)), and, without limiting the foregoing, the acts and omissions of EML Transmission will be deemed not to be acts and omissions of Buyer and its affiliates for all purposes arising out of or relating to the RFP or the Definitive Agreement.
3	Seller:	“ Seller ” will be the party specified by Bidder in the applicable proposal.
4	Facility:	The “ Facility ” will be a developmental wind-powered electric generation resource (including major equipment), as specified by Bidder in the applicable proposal in accordance with the terms of the RFP.
5	Electric Interconnection / Transmission Service:	<p>The “Electric Interconnection Point” will be a point located in local resource zone 10 in MISO South and represented by a CP Node (as defined in the MISO rules) where the Facility will be interconnected to the host utility, as specified by Bidder in the applicable proposal. The Electric Interconnection Point must be consistent with Bidder’s generator interconnection application submitted to MISO for the Facility prior to submission of the applicable proposal under the RFP.²</p> <p>Seller will be responsible for the arrangement, procurement, and receipt by Mechanical Completion (as defined in item 14 below), and operation and maintenance through the Substantial Completion Payment Date (as defined in item 6 below), of the interconnection, deliverability, and transmission facilities and services required for the Facility at its sole cost and expense, including (i) the arrangement, procurement, payment for, construction, installation, and readiness for energization by Mechanical Completion, and subsequent energization, operation, and maintenance through the Substantial Completion Payment Date, of the Facility electric interconnection facilities and any system interconnection and transmission upgrades (including any coordination with the host utility and transmission provider with respect thereto); (ii) by no later than Mechanical Completion, the establishment and recognition by MISO and other applicable balancing authorities of (A) the Facility as a separate generating resource at the Electric Interconnection Point, including for settlement, scheduling, offering, and bidding purposes, and (B) the Electric Interconnection Point as a separate (and the exclusive) CP Node (as defined in the MISO rules) for the Facility (the “Required Facility Recognition”); and (iii) by no later than Mechanical Completion,</p>

² **NTD:** This draft generally assumes that the Facility will be connected directly to the EML Transmission. If the Facility connects directly to another host utility’s transmission system, affected provisions of this Term Sheet will be subject to change.

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		<p>(A) the interconnection of the Facility to the host utility with energy resource interconnection service from MISO (“ERIS”) that equals or exceeds the maximum net energy capability of the Facility at the Electric Interconnection Point, as specified by Bidder in the applicable proposal (which may be no less than the Guaranteed Capacity (as defined in item 19 below)), and network resource interconnection service with MISO (“NRIS”) that equals or exceeds the Guaranteed Capacity,³ (B) full deliverability from the Facility to Buyer’s load at the NRIS level on a firm network resource basis for the life of the Facility, and (C) qualification and recognition by MISO of the Facility as a firm network resource and, if sought, Capacity Resource (as defined in the MISO rules) with such level of deliverability (collectively, “Full Deliverability”). In addition, Seller will be responsible for entering into and maintaining through the Closing the agreements and approvals required or advisable for Full Deliverability and the Required Project Recognition, and will not take or omit to take any action that results in the breach, revocation, termination, loss, or reduction of, or otherwise changes in any manner adverse to Buyer, any of Full Deliverability, the Required Project Recognition, the required deliverability arrangements or agreements, or such approvals, or any rights of Buyer with respect thereto, except to the extent expressly instructed by Buyer under the MISO Agreement or, if any, the post-Closing operations section of the Agreement.</p> <p>Seller will be responsible for causing Buyer to obtain all auction revenue right allocations, financial transmission or congestion rights, and other similar allocations and entitlements associated with the Facility, and, if requested by Buyer, will act (at Seller’s expense) at Buyer’s reasonable direction in connection therewith. Without limiting the foregoing, Seller will support fully, and not take any action or position to oppose or prevent, Buyer’s entitlement to or receipt of such allocations and entitlements.</p>
6	Closing:	<p>The closing of the sale and purchase of the Closing Assets (as defined in item 7 below) (the “Closing”) will occur ten (10) business days after the Facility has achieved Mechanical Completion and all Closing conditions (as detailed in items 14 and 15 below) have been satisfied or waived by the applicable Party, <u>provided</u> that, as of such date, such conditions (to the extent satisfied and not waived by the applicable Party) continue to be satisfied. At the Closing, Seller will transfer to Buyer the Closing Assets, free and clear of all encumbrances and liabilities, except Permitted Encumbrances (as defined below) and certain liabilities expressly set forth in the Definitive Agreement that will be assumed by Buyer.</p>

³ **NTD:** This draft assumes Seller has obtained or is seeking to obtain NRIS from MISO and has not elected in the RFP proposal that is the basis for the transaction for Buyer to obtain, at Seller’s cost and risk, network integration transmission service (“**NITS**”) that equals or exceeds the Guaranteed Capacity. The draft Agreement will require modification if Full Deliverability includes NITS instead of NRIS.

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		<p>Additional asset transfers from Seller to Buyer will occur after the Closing with respect to assets incorporated into, or acquired for or in connection with, the Facility during punchlist completion or otherwise as part of achieving Substantial Completion (as defined in item 15 below) and Final Completion (as defined in item 21 below).</p> <p>For purposes of the Definitive Agreement, “Permitted Encumbrances” will be limited to (i) liens for Property Taxes and other charges and assessments of Governmental Authorities (a) that are not yet due and payable or (b) the validity of which is being contested in good faith by appropriate proceedings as described in a schedule attached to the Definitive Agreement, (ii) mechanics’, materialmens’, and other similar liens arising in the ordinary course of the performance of the Work (as defined below in item 10) by operation of law for sums not yet due and payable and that have not been filed of record (<u>provided</u> that, if any such Encumbrance exists at or after the Closing Date, Seller (a) shall have (1) bonded over such Encumbrance in accordance with Law at a ten percent (10%) premium or otherwise in a manner reasonably satisfactory to Buyer or (2) provided to Buyer another assurance of the release of such encumbrance that is acceptable to Buyer in its sole and absolute discretion and, in each case, (b) thereafter will be in compliance with compliance with and have maintained such bond or other assurance, as applicable, or caused the discharge or release of such encumbrance), (iii) any Seller construction financing or similar liens that are listed on a schedule to the Definitive Agreement and will be and are discharged or released (at Seller’s expense) prior to or simultaneously with the Closing, (iv) liens with respect to the Project assets created by, through, or under Buyer, (v) liens in favor of Buyer resulting from the Definitive Agreement, and (vi) liens expressly agreed to or expressly waived in writing by Buyer.</p>
7	Closing Assets:	<p>The “Closing Assets” will be the Facility and the assets, properties (including real and personal property), contracts, and other rights and interests, of every kind and nature, of Seller and its affiliates relating to, generated by, used by or for, or held for use by or for, the Facility, or the ownership, possession, use, operation, maintenance, servicing, repair, or replacement thereof, that Seller or one of its affiliates obtains on or prior to the Closing, <u>except</u> those expressly excluded under the Definitive Agreement (the “Excluded Assets”).</p> <p>Examples of Closing Assets include each of the following, to the extent (i) relating to, generated by, used by or for, or held for use by or for, the Facility or the ownership, possession, use, operation, maintenance, servicing, repair, or replacement thereof and (ii) not an Excluded Asset: equipment; systems; parts; fixtures; goods; permits; books; records; inspection and other reports; logs; registrations; operating data; engineering, design, construction, and other drawings and plans (including AutoCAD), safety, maintenance,</p>

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		<p>and other manuals (including turnover manuals), specifications, procedures, and similar items; other documents; intellectual property owned by Seller and intellectual property rights licensed by Seller; real property and related rights (including leases, easements, licenses, rights-of-way, and other rights with respect to the Facility site); electric interconnection, transmission, and related contracts, credits, and other rights; service and maintenance agreement(s) (“SMA(s)”) for the wind turbines and the balance of plant and any liquidated damages or other amounts for reduced availability payable thereunder (whether attributable to the period prior to or after the Closing);⁴ other project contracts; capacity credits and other capacity-related benefits and emissions allowances and other environmental attributes (in each case, whether attributable to the period prior to or after the Closing, except as otherwise agreed); tax credits (excluding federal production tax credits corresponding to pre-Closing energy generation that are not transferable to Buyer), abatements, and similar benefits; and unexpired warranties, spare parts/special tools supply commitments, indemnities, and guarantees.</p> <p>Buyer will require, as part of the Closing Assets, SMA(s) for the wind turbines and the balance of plant, a lifetime spare parts/special tools supply commitment and, if available, technology escrow from the wind turbine manufacturer, certain specific contractor and subcontractor warranties and guarantees, at least one (1) year of historical on-site climatological data measured at hub height (the “Historical Climatological Data”), the Closing Wind Resource Assessment Report (as defined in item 14 below), relevant wildlife and other environmental studies, and certain specific permits (including, if applicable, any incidental take permit(s) and associated habitat conservation plan(s)).⁵</p> <p>Buyer will require the following items (in each case, acceptable to Buyer in its sole and absolute discretion) to be provided to Buyer prior to execution of the Definitive Agreement:</p> <ul style="list-style-type: none"> • a basic Facility design (including preliminary site layout); • the Historical Climatological Data;
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⁴ **NTD:** The RFP solicits proposals from Bidders for SMAs (of varying terms) for the wind turbines, the balance of plant, and the wind turbines and balance of plant together. This Term Sheet assumes that Bidder will make, and Buyer will accept one or more of, such proposals, and, pursuant thereto, the Definitive Agreement will include the procurement by Seller for Buyer, as part of the Closing Assets (and included in the Purchase Price), of SMA(s) for the wind turbines and balance of plant consistent with the proposal(s) accepted by Buyer. To the extent such assumptions do not hold (e.g., (i) Seller does not make, or Buyer does not accept, any such proposals or (ii) Seller and Buyer agree to enter into an SMA pursuant to which Seller will provide some or all of the SMA services directly to Buyer), the terms contemplated by this Term Sheet will need to be adjusted accordingly.

⁵ **NTD:** Buyer contemplates that the SMA(s) for the wind turbines and balance of plant will include an obligation for the SMA provider to procure and maintain a fully stocked spare parts/special tools inventory on-site during the SMA term, with an option for Buyer to purchase that inventory at the end of the SMA term. In the absence of such provision in the SMA(s), such a spare parts/special tools inventory would be required as a Closing Asset.

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		<ul style="list-style-type: none"> • a wind resource assessment report from a recognized independent wind resource assessment provider acceptable to Buyer (the “Wind Resource Assessment Provider”), validating the Historical Climatological Data and setting forth the P50 and P90 expected energy output and the P50 and P90 12x24 generation profile for the Facility based on the basic Facility design (including preliminary site layout), the Historical Climatological Data, and other factors considered relevant by the Wind Resource Assessment Provider (which P50 and P90 expected energy output and P50 and P90 12x24 generation profile should be consistent with those specified by Bidder in the applicable proposal in accordance with the terms of the RFP) (the “Base Case Report”); • an environmental site assessment from an environmental consultant retained at Buyer’s direction with respect to the Facility and the Facility site for purposes of, among other things, satisfying CERCLA § 101(35)(B), 42 U.S.C. § 9601(35)(B), and the regulations thereunder defining “all appropriate inquiry,” 40 CFR Part 312, and ASTM E1527-13, including, if applicable, a vapor intrusion assessment per ASTM E 2600 (an “ESA”);⁶ • all other wildlife and other environmental studies;⁷ and • all real property rights and related agreements;⁸ <p>and, without limiting any other conditions to full notice to proceed (“FNTP”) specified in item 12 below, will require any wildlife and other environmental permits (acceptable to Buyer in its sole and absolute discretion), including (if applicable) any incidental take permit(s) and associated habitat conservation plan(s), to be in place and provided to Buyer prior to FNTP. Based on the results of due diligence conducted by or for Buyer, Buyer may also require other arrangements to be in place prior to execution of the Definitive Agreement and/or FNTP.</p>
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⁶ **NTD:** This Term Sheet generally reflects Buyer’s desire for Seller, by execution of the Definitive Agreement, to have in place (and approved by Buyer) the environmental site assessment. If the process is not complete by that time, Buyer expects the process to be complete before FNTP, with updating to occur near the Closing, and the terms contemplated by this Term Sheet to be modified accordingly.

⁷ **NTD:** This Term Sheet generally reflects Buyer’s desire for Seller, by execution of the Definitive Agreement, to have conducted (to Buyer’s satisfaction) all wildlife and environmental studies that are necessary or advisable for the Facility. To the extent any of such studies are not complete by that time, Buyer expects the process to be complete before FNTP, with updating to occur near the Closing, and the terms contemplated by this Term Sheet to be modified accordingly.

⁸ **NTD:** This Term Sheet generally reflects Buyer’s desire for Seller, by execution of the Definitive Agreement, to have in place (and approved by Buyer) all real property rights and related agreements that are necessary or advisable for the Facility. The final real estate terms and conditions in the Definitive Agreement, including the timing and scope of the deliverables, will be driven by the status of title to the Facility site and the title commitment process at the time of execution of the Definitive Agreement. If the process is not complete by that time, Buyer expects the process to be complete before FNTP, with updating to occur near the Closing, and the terms contemplated by this Term Sheet to be modified accordingly.

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		<p>The Excluded Assets will include, and Buyer will not be required (whether at the Closing or thereafter) to acquire, any EPC or other subcontract for the Work, any Work-related permits (other than any such permits that are also required for the ownership, possession, use, operation, maintenance, servicing, repair, or replacement of the Facility after the Closing and have been obtained and maintained according to the Definitive Agreement), or any contracts, permits, or other rights (or associated obligations) that have not been entered into or obtained and maintained according to the Definitive Agreement. For this purpose, any new contracts, permits, or other specified rights (or modifications to previously approved contracts, permits, and other specified rights) will require the approval of Buyer, in Buyer's sole and absolute discretion, in order to be included in the Closing Assets or any subsequent transfer of assets. There will also be specific baseline requirements applicable to the procurement of certain project assets, including the SMA(s) for the wind turbines and the balance of plant, contractor and subcontractor warranties and guarantees, the lifetime spare parts/special tools supply commitment from the wind turbine manufacturer, intellectual property rights, certain other contracts, and certain permits.</p> <p>Buyer will not own, acquire title to, or pay for any of the Closing Assets (or any other assets) prior to the Closing.</p>
8	Purchase Price and Payment Terms:	<p>The purchase price for the Closing Assets and subsequent asset transfers (the "Purchase Price") will be as specified by Bidder in the applicable proposal and agreed to by the Parties, subject to adjustments set forth in the Definitive Agreement, including adjustments reflecting (i) the final Net Generation Capacity of the Facility (see item 20 below), (ii) the P50 expected energy output and P50 12x24 generation profile in the Closing Wind Resource Assessment Report (see item 14 below), (iii) change orders issued to Seller in Buyer's discretion, (iv) change orders for the actual increased direct costs incurred by Seller as a result of Buyer-Caused Delay (as defined in item 29 below), (v) any actual, documented unaffiliated third-party costs of curing title objections in excess of the cap therefor that Buyer agrees to pay, if applicable (see item 22 below), (vi) the proration of specified proratable items (e.g., property taxes) as of the Closing, (vii) set-offs permitted in the Definitive Agreement, and (viii) other items specified in the Definitive Agreement.</p> <p>A portion of the Purchase Price will be paid at the Closing.⁹ The balance (the "Substantial Completion Payment") will be paid at the Substantial</p>

⁹ **NTD:** As provided in the RFP, if third party construction financing is contemplated, Buyer will pay approximately 80% of the Purchase Price at the Closing so that all lender liens on the Project can be released at the Closing. The Closing holdback amount would be approximately 20% of the Purchase Price, which would be paid at the Substantial Completion Payment Date less the Final Completion Holdback and the dollar amount of any indemnity claims existing at the time of payment.

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		<p>Completion Payment Date (as defined below), less an amount (the “Final Completion Holdback”) equal to (i) 175% of the agreed estimated costs to complete any punchlist items for the Facility (“Punchlist Holdback”) plus (ii) an additional amount to be specified in the Definitive Agreement to secure delivery of drawings, manuals, and other items deliverable by Seller to Buyer on or before, and the performance of other requirements of, Final Completion. The Final Completion Holdback amount will also include the dollar amount of any outstanding Buyer indemnity claims at the time of the Substantial Completion Payment. The Final Completion Holdback will be released as a lump sum payment to Seller five (5) business days after the Facility’s achievement of Final Completion and written request by Seller to Buyer.</p> <p>The Purchase Price will not be earned or payable except as set forth above.</p>
9	Seller Credit Support:	<p>Seller will deliver to Buyer and maintain in favor of Buyer a letter(s) of credit issued by a U.S. commercial bank or U.S. branch office of a foreign bank with (i) a local long-term issuer credit rating of “A-” or better by S&P and a senior unsecured long-term debt rating of “A3” or better by Moody’s (or, if the issuer has a local long-term issuer credit rating by S&P or a senior unsecured long-term debt rating by Moody’s, but not both, a local long-term issuer credit rating of “A-” or better by S&P or a senior unsecured long-term debt rating of “A3” or better by Moody’s) and (ii) total assets of at least \$10,000,000,000. If any such letter of credit ceases to meet the requirements above or ceases to be in full force and effect in the required amount, Seller must provide a substitute letter of credit meeting such requirements within three (3) business days and, if Seller does not do so, Buyer will be permitted to immediately draw upon the affected letter of credit (if still in effect).</p> <p>The letter(s) of credit provided by Seller will secure Seller’s obligations under the Definitive Agreement and must be adjusted to equal the following amounts at each of the following adjustment dates, subject to the immediately following paragraph:¹⁰</p>

For projects not utilizing third party construction financing, Buyer will make a payment of approximately 20% of the Purchase Price at the Closing (or, if applicable, the larger percentage of the Purchase Price specified in its proposal in accordance with the requirements of the RFP, unless the Parties have agreed to a different percentage), with the remainder to be paid at the Substantial Completion Payment Date less the Final Completion Holdback and the dollar amount of any Buyer indemnity claims existing at the time of payment. Bidders should indicate whether they will use third party construction financing and require the higher payment at the Closing to release all liens. If Seller requires a larger payment at the Closing than is specified in this footnote, Seller must provide a letter of credit to cover any additional payment amount at the Closing as is specified in the footnote to Section 24.13(a)(ii) and this Agreement will be modified accordingly. Additional provisions may be added or existing provisions may require modification depending on how the Project is financed.

¹⁰ **NTD:** As detailed in Appendix F to the RFP, the credit support amounts to be supplied by Seller at the Closing and thereafter may also be provided in the form of a cash holdback of the Purchase Price or a combination of letter(s) of credit

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		Adjustment Date	Amount
		Execution of Definitive Agreement	\$2,500,000 plus \$15,000 per MW of Guaranteed Capacity (the “ Execution Date Credit Support Amount ”)
		FNTP	\$100,000 per MW of Guaranteed Capacity
		Closing	20% of the Purchase Price, excluding Purchase Price adjustments other than pursuant to change orders issued to Seller in Buyer’s discretion or resulting from Buyer-Caused Delay (the “ Unadjusted Purchase Price ”), <u>plus</u> the amount of any pending claim of Buyer or its group
		Substantial Completion Payment Date	15% of the Unadjusted Purchase Price, <u>plus</u> the amount of any pending claim of Buyer or its group (<u>provided</u> that such pending claims will not increase the required amount of the letter of credit at the Closing)
		12 months after the Closing	10% of the Unadjusted Purchase Price <u>plus</u> the amount of any pending claim of Buyer or its group (<u>provided</u> that such pending claims will not increase the required amount of the letter of credit above the required amount of the letter credit at the Closing less any amounts drawn on such letter of credit after the Closing)
		24 months after the Closing	<ul style="list-style-type: none"> • If there are no pending claims of Buyer or its group at such time, then the letter of credit will be returned to Seller • If there are pending claims of Buyer or its group at such time, the letter of credit will be adjusted to the amount of such pending claims,

and a cash holdback. For simplicity, this Term Sheet assumes the liquid credit support will be provided in the form of a letter of credit.

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		<p>provided that the required amount of the letter of credit will not exceed the required amount of the letter credit on the 12-month anniversary of the Closing less any amounts drawn on such letter of credit after the 12-month anniversary of the Closing</p>
		<p>Seller may not provide more than two (2) letters of credit at any one time to satisfy its obligations in this item 9. If two (2) letters of credit are simultaneously in effect and Buyer is entitled to draw on such letters of credit, Buyer may draw on either or both letters of credit, in each case as Buyer deems appropriate in its sole and absolute discretion.</p> <p>Buyer will have no obligation to post any independent credit support to or in support of Seller or the Facility.</p>
10	Seller's Work:	<p>Seller will be responsible for all items, services, and work necessary or advisable to, among other things, (i) develop, finance, design, engineer, manufacture, procure, supply, transport, deliver to and unload at the Facility site, store, perform maintenance during storage or following installation or construction, assemble, erect, construct, install, test, start-up, commission, and otherwise provide to Buyer a complete, fully functional Facility that conforms to the Scope Book and meets the performance standards specified in the Definitive Agreement (including all permits and other assets, properties, rights, and interests necessary or advisable for Buyer to operate, maintain, own, possess, deliver power to the Electric Interconnection Point (and thereafter with Full Deliverability) from and otherwise use, replace, and repair the Facility from and after the Closing), (ii) consummate the transactions contemplated by the Definitive Agreement, and (iii) perform Seller's other obligations under the Definitive Agreement as and when due thereunder (the "Work"). The Work will include all items, services, and work that are incidental to or reasonably can be inferred to be part of the scope described above, even if not specifically mentioned in the Definitive Agreement. All Work will be required to be performed in accordance with (and so that the Facility complies with) the performance standards specified in the Definitive Agreement, including, among other things, prudent utility practices, applicable laws, permits, and other legal or quasi-legal (e.g., balancing authority, NERC, ISO) requirements, manufacturers' manuals, requirements, recommendations, specifications, standards, and warranties, the design certificate for the wind turbines, the basic design for the Facility established as of execution of the Definitive Agreement (as further developed and otherwise updated according to the Scope Book), Seller's quality management plan, applicable insurance requirements, the Scope Book, the</p>

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		<p>warranties for the Facility and Work provided by Seller’s EPC contractor for the Facility (the “Facility Warranty”), the third-party contracts relating to the Facility, and all other requirements of the Definitive Agreement. The portion of the Facility Warranty from Seller’s EPC contractor will be required to meet or exceed the terms included as an exhibit to the Definitive Agreement and otherwise be acceptable to Buyer. Unless the parties have already agreed on the terms of the Facility Warranty prior to execution of the Definitive Agreement, Buyer’s acceptance of the Facility Warranty will be based on a review and comment process that will apply until Buyer provides or is deemed to have provided such acceptance.</p> <p>Seller will retain responsibility (including financing, project execution, and construction risk) for the Work at all times prior to completion of the Work, including during the period between the Closing and Final Completion.</p>
11	Care, Custody, Control; Operation and Maintenance	<p>Seller will have care, custody, and control (including responsibility for the protection, security, and safekeeping) of the Facility and related assets (including the Facility site) through the Substantial Completion Date. In addition, Seller will be responsible, at its sole cost and expense (except to the extent otherwise expressly provided in the immediately following sentence), for the operation (subject to Buyer’s or its agents’ express instructions pursuant to the MISO Agreement (defined in item 46 below) or otherwise the Definitive Agreement) and maintenance of the Facility and related assets from the Closing through the Substantial Completion Payment Date. Without limiting the foregoing, Seller will be responsible for all costs and expenses associated with the Facility and related assets until the Closing, including property taxes, any lease or other real property payments, SMA payments, MISO costs and expenses, and other costs and expenses, <u>but excluding</u> (i) any amounts for which Seller is expressly entitled to indemnification or (to the extent the Purchase Price becomes earned by Seller and payable by Buyer) a change order under the Definitive Agreement and (ii) limited MISO costs and expenses for which Buyer is responsible under the MISO Agreement. Notwithstanding the foregoing, Seller will not synchronize with the host utility, or energize, the Facility (or any portion thereof) prior to the [first] Business Day after the Closing Date, and, from and after the date on which the Facility (or any portion thereof) achieves initial synchronization with the host utility, Seller will not operate, or sell or deliver any electric energy, capacity, or other electric product from or attributable to, the Facility other than to conduct required performance testing under the Definitive Agreement.</p> <p>Seller will develop and deliver to Buyer a project execution plan for the Work, the Facility, and the Facility site (the “Project Execution Plan”). The Project Execution Plan will consist of several individual plans, including for the care, custody, and control (including protection, security, and</p>

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		<p>safekeeping) of the Facility and related assets (including the Facility site) through the Substantial Completion Payment Date and, with respect to any portion thereof that is not incorporated into the Facility until after Closing, thereafter until such later time as such portion is incorporated into the Facility, and is further described in the Model Wind Scope Book (as defined in the Main Body). Among other things, the Project Execution Plan will (a) comply with the requirements of the performance standards for the Work, (b) not eliminate, condition, or otherwise limit any rights granted to Buyer (or any member of the Buyer group) under the Definitive Agreement, and (c) be subject to the prior approval by Buyer, not to be unreasonably withheld or delayed (<u>provided</u> that it will not be unreasonable for Buyer to withhold its approval if a proposed plan does not comply with the requirements of clauses (a) and (b) above).</p> <p>From and after the Closing, Seller's rights to access to the Facility site will be subject to compliance with Buyer's health, safety, quality, construction, workplace, security and other site access rules, procedures, and programs and the requirements of the Definitive Agreement, including applicable laws, permits, and the other performance standards applicable to the Work. The approved Project Execution Plan shall reflect such rules, procedures, programs, and requirements. Further, Seller's access after the Closing must be coordinated in advance with Buyer and exercised in such a manner as to minimize the effect on the use, operation, and maintenance of the Facility and the activities of Buyer and its invitees at the Facility site. In addition, any personnel of Seller or its contractors or subcontractors will be required to successfully complete Buyer's standard training prior to having access to the Facility site after the Closing.</p> <p>Without limiting Seller's indemnities (see item 34 below) and other responsibilities under the Definitive Agreement (including to remedy loss or damage to the Facility or related assets, as and to the extent provided in item 29 below), Buyer will have care, custody, and control (including responsibility for the protection, security, and safekeeping) of the Facility and the Facility site after the Substantial Completion Payment Date and will take over operation and maintenance of the Facility after the Closing.</p>
12	FNTP Conditions:	<p>Buyer will issue FNTP to Seller promptly after satisfaction (and continued satisfaction as of FNTP) or waiver by Buyer of specified conditions to FNTP, including:</p> <ul style="list-style-type: none"> • Buyer has, on terms and conditions acceptable to Buyer in its sole and absolute discretion, all approvals and other authorizations from governmental authorities deemed necessary or advisable by Buyer for it to consummate the transactions contemplated by the Definitive Agreement that, as specified on an agreed disclosure schedule, will

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		<p>be obtained on or prior to FNTF,¹¹ and such approvals and authorizations are in full force and effect, final, and not subject to appeal or other challenge or modification.</p> <ul style="list-style-type: none"> • Buyer has, on terms and conditions acceptable to Buyer in its sole and absolute discretion, all non-governmental consents required by Buyer. • There is no preliminary or permanent order invalidating or rendering unenforceable the Definitive Agreement in any respect or restraining or otherwise prohibiting the consummation of the transactions contemplated by the Definitive Agreement, and no action taken by a governmental authority, or law applicable to such transactions, directly or indirectly prohibits the consummation of such transactions. • Since the execution of the Definitive Agreement, there has been no Change in Law (as defined in item 30 below) that requires the review of the transactions contemplated by the Definitive Agreement (including the effects thereof), in whole or in part, by the Department of Justice, the Federal Trade Commission, or any other governmental authority under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or any other law, or that requires notices to, applications or other filings with, or consents of or from any other governmental authority, excluding any such notices, applications, filings, or consents determined by Buyer, in its sole and absolute discretion, to be immaterial to the transactions contemplated by the Definitive Agreement, Buyer, and the conduct of its business. • Seller has in place all agreements and arrangements (and any and all associated approvals and other authorizations) necessary for Full Deliverability (including the GIA), and such agreements, arrangements, approvals, and other authorizations are on terms and conditions satisfactory to Buyer in its sole and absolute discretion, in full force and effect, final, and not subject to appeal or other challenge or modification (<u>provided</u> that any such agreements, arrangements, approvals, and other authorizations that were provided to, and approved in writing by, Buyer prior to the execution of the Definitive Agreement will require the further approval of Buyer (in Buyer's sole and absolute discretion) as part of this condition only to the extent subsequently modified). • Seller has in place the wind turbine warranties and guarantees, the Facility Warranty, the spare parts/special tools supply commitment and intellectual property rights from the wind turbine manufacturer, the SMA with the wind turbine manufacturer, all real property rights
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¹¹ **NTD:** The Buyer regulatory approvals to be obtained on or prior to FNTF are intended to encompass all major approvals (e.g., APSC approvals), leaving for after FNTF only customary minor approvals for transactions of this type (e.g., approval of FCC radio license transfer, if necessary).

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		<p>and related agreements, and any other major project contracts that may be specified in the Definitive Agreement (and any and all associated approvals and other authorizations) necessary or advisable for the use, ownership, possession, operation, maintenance, and repair of the Facility from and after the Closing according to good industry practices and the other performance standards specified in the Definitive Agreement, and such contracts, approvals, and other authorizations are on terms and conditions satisfactory to Buyer in its sole and absolute discretion, in full force and effect, final, and not subject to appeal or other challenge or modification (<u>provided</u> that any such contracts, approvals, and other authorizations that were provided to, and approved in writing by, Buyer prior to the execution of the Definitive Agreement will require the further approval of Buyer (in Buyer's sole and absolute discretion) as part of this condition only to the extent subsequently modified).</p> <ul style="list-style-type: none">• Seller has provided to Buyer (A) bringdowns of the wildlife and environmental studies provided by Seller to Buyer prior to execution of the Definitive Agreement from the same consultant that issued such prior studies and (B) any other wildlife or environmental studies that (as determined by Buyer in its good faith discretion) are necessary or advisable with respect to the Facility and the Facility site, which bringdowns and studies are, in each case, dated no earlier than sixty (60) days prior to FNTTP and satisfactory to Buyer in its good faith discretion (including as to form, substance, and results).• Seller has an incidental take permit and associated habitat conservation plan for each listed (or, as determined by Buyer in its sole and absolute discretion, likely to be listed) species of fish or wildlife that (as determined by Buyer in its sole and absolute discretion) is likely to be taken by the use, ownership, possession, operation, maintenance, and repair of the Facility from and after energization (if conducted without curtailment or other mitigation measures) and all other permits (including other wildlife or other environmental) necessary or advisable for the ownership, possession, use, operation, maintenance, servicing, repair, or replacement of the Facility from and after the Closing according to good industry practices and the other performance standards specified in the Definitive Agreement, and such permits are in form and substance satisfactory to Buyer in its sole and absolute discretion, in full force and effect, final, and not subject to appeal or other challenge or modification (<u>provided</u> that any such permits that were provided to, and approved in writing by, Buyer prior to the execution of the Definitive Agreement will require the further approval of Buyer (in Buyer's sole and absolute discretion) as part of this condition only to the extent subsequently modified).
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	<ul style="list-style-type: none">• There has been no actual or threatened taking of the Facility site, in whole or in part, by condemnation, eminent domain, or comparable proceedings that could reasonably be expected to adversely affect, in whole or in part, Buyer's use of the Facility or Facility site for its intended use.• Seller has delivered to Buyer landlord estoppel certificates in the form required by the Definitive Agreement for all leased real property and easements relating to the Facility (if any).• Buyer holds and is the beneficiary of the credit support required from Seller at FNTF (see item 9 above).• Seller has in place and in full force and effect valid and binding full replacement builder's all risk insurance on the terms required by the Definitive Agreement and reflecting Buyer's reasonable review and comment and delivered to Buyer an insurance certificate from Seller's insurer or broker demonstrating Seller's compliance with the insurance requirements of the Definitive Agreement.• Seller has delivered to Buyer, in form and substance reasonably acceptable to Buyer, the progress and incident reports required by the Definitive Agreement to be delivered to Buyer prior to FNTF.• Seller has provided to Buyer a type approval certificate (including annexes thereto) from a recognized certification entity (to be defined in the Definitive Agreement) with respect to the particular wind turbine model and hub height selected for the Facility, and such type approval certificate is in form and substance satisfactory to Buyer in its sole and absolute discretion, valid, and in full force and effect.• Seller has provided to Buyer (i) any additional climatological data captured by Seller at the Facility site since the Historical Climatological Data through at least the date that is ten (10) days prior to FNTF (the "FNTF Climatological Data Update") and (ii) an updated wind resource assessment report, issued no earlier than ten (10) days prior to FNTF, from the Wind Resource Assessment Provider, setting forth an updated P50 and P90 expected energy output and P50 and P90 12x24 generation profile for the Facility, taking into account the Historical Climatological Data, the particular wind turbine model and hub height selected for the Facility, any updated siting for the Facility, any other development of, or other updates to, the design for the Facility, wind sector management requirements (including those identified in the site verification report described below, if any), and any other matters that have changed since the Base Case Report (which updated P50 and P90 expected energy output is no less than, and which updated P50 and P90 12x24 generation profile is not less favorable to Buyer (as determined by
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	<p>Buyer in its sole and absolute discretion) than, the corresponding amounts therefor in the Base Case Report).</p> <ul style="list-style-type: none">• Seller has provided to Buyer a site verification report from the wind turbine manufacturer with respect to the particular wind turbine model and hub height selected for the Facility, stating that, based on its review of the Historical Climatological Data, any additional climatological data captured by Seller at the Facility site since the Historical Climatological Data through at least the date that is ten (10) days prior to FNTTP, and according to the site review criteria ordinarily used by such wind turbine manufacturer (which includes a calculation and analysis of both extreme and fatigue loads for the Facility site) (the “Site Review Criteria”) and subject only to wind sector management requirements expressly set forth therein (if any), (i) the conditions at the Facility site are such that the wind turbine manufacturer, acting reasonably, can provide the warranties and guaranties with respect to the wind turbines that such wind turbine manufacturer is providing with respect to the Facility, and (ii) the site loads are (A) within the design criteria set forth in the specifications for the wind turbines, the Site Review Criteria and the design certificate for the wind turbines and (B) within those accepted by the applicable certification entity for certification of the design life (which must be at least twenty (20) years) contained in the design certificate for the wind turbines. <p>FNTTP conditions in addition to those set forth above may be included in the Definitive Agreement as a result of EPC, real property/title, environmental, physical, or operational aspects of the Facility, necessary property tax abatements or similar reductions, due diligence conducted by or for Buyer, the status of applicable laws and markets, regulatory conditions, and other factors as Buyer deems relevant in its sole and absolute discretion.</p> <p>Without limiting termination for cause rights that may be available as described under item 37 below, if FNTTP has not occurred by the “FNTTP Expiration Date” specified by Bidder in the applicable proposal and agreed to by the Parties (the “FNTTP Expiration Date”), either Seller or Buyer will have the right to terminate the applicable Definitive Agreement without liability to the other, except that this right will not be available to a Party whose material breach of the Definitive Agreement was the primary cause of such failure.</p> <p>Within three (3) business days after FNTTP, Seller will provide to Buyer an officer’s certificate from Seller certifying that (i) the representations and warranties of Seller in the Definitive Agreement are true and correct in all material respects as of such date (except that fundamental representations of Seller and any representations and warranties of Seller qualified by</p>
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		<p>materiality are true and correct in all respects as of such date), (ii) Seller and its affiliates have performed or complied in all material respects with all covenants, obligations, and agreements of Seller or its affiliates contained in the Definitive Agreement that are required to be performed or complied with at or prior to such date, and (iii) as of such date, no material adverse effect exists with respect to Seller or the Facility.</p>
13	Buyer's Closing Conditions:	<p>The obligation of Buyer to consummate the Closing will be subject to the satisfaction (and continued satisfaction as of the Closing) or waiver by Buyer of specified Buyer's conditions to Closing, including:</p> <ul style="list-style-type: none"> • Seller and its affiliates have performed or complied in all material respects with all Definitive Agreement covenants, obligations, and agreements of Seller or its affiliates that are required to be performed or complied with at or prior to the Closing. • There is no preliminary or permanent order invalidating or rendering unenforceable the Definitive Agreement in any material respect or restraining or otherwise prohibiting the consummation of the transactions contemplated by the Definitive Agreement, and no action taken by a governmental authority, or law applicable to such transactions, directly or indirectly prohibits the consummation of such transactions. • Buyer has, on terms and conditions acceptable to Buyer in its reasonable discretion, all approvals and other authorizations from governmental authorities deemed necessary or advisable by Buyer for it to consummate the transactions contemplated by the Definitive Agreement (other than those that, as specified on an agreed disclosure schedule, will be obtained at or prior to FNTP), and such approvals and authorizations are in full force and effect, final, and not subject to appeal or other challenge or modification. • The representations and warranties of Seller in the Definitive Agreement are true and correct in all material respects (except that fundamental representations of Seller and any representations and warranties of Seller qualified by materiality are true and correct in all respects) as of execution of the Definitive Agreement, FNTP and Closing (except to the extent that such representations and warranties by their terms speak exclusively as of one or more such dates, in which event they shall be true and correct as of such dates). • Mechanical Completion has occurred and, since achievement of Mechanical Completion, no event or circumstance has occurred and is continuing that causes any of the criteria described in the definition of "Mechanical Completion" to cease to be true. • Buyer has received an officer's certificate from Seller certifying that the first (compliance with covenants), fourth (accuracy of representations), and fifth (Substantial Completion still true)

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		<p>conditions above and tenth (no material adverse effect) condition below are satisfied as of the Closing.</p> <ul style="list-style-type: none">• Buyer has received (i) certain required organizational documents and certificates (e.g., Secretary's and incumbency certificates) from Seller, (ii) a bringdown of the ESA provided by Seller to Buyer prior to execution of the Definitive Agreement that shows no new environmental conditions and is dated within 180 days prior to the Closing, (iii) bringdowns of the wildlife and environmental studies provided by Seller to Buyer prior to execution of the Definitive Agreement, or thereafter pursuant to the FNTTP conditions, from the same consultant that issued such prior studies, which bringdowns are, in each case, dated no earlier than ten (10) days prior to the Closing and satisfactory to Buyer in its reasonable discretion (including as to form, substance, and results), (iv) landlord estoppel certificates in the form required by the Definitive Agreement for all leased real property and easements relating to the Facility (if any) issued no earlier than ten (10) days prior to the Closing, and (v) other required Closing deliverables from Seller (including certain certifications, affidavits, consents, approvals, and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Seller pertaining to the Closing and other documents and instruments reasonably required by Buyer for the Closing, executed by a duly authorized representative of Seller to the extent required).• Seller has delivered to Buyer complete and accurate copies of engineering, design, and construction and other deliverables required to be provided to Buyer at or prior to the Closing pursuant to the Scope Book.• The MISO Agreement is in full force and effect, Buyer (or its specified agent) has been at all times prior to the Closing, and will be as of the Closing, the "Market Participant" for the Facility, and, as of the Closing, there is no pending notice or other submission to MISO that could result in Buyer (or its specified agent) not being the Market Participant for the Facility after the Closing, excluding any such notice or other submission made by Buyer or any of its affiliates.• Since the signing of the Definitive Agreement, no material adverse effect with respect to Seller or the Facility has occurred that has not been cured.• There has been no actual or threatened taking of any Closing Assets (including the Facility site), in whole or in part, by condemnation, eminent domain, or comparable proceedings that could reasonably be expected to adversely affect, in whole or in part, Buyer's use of same for its intended use.
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		<ul style="list-style-type: none">• Evidence reasonably satisfactory to Buyer that any encumbrance on Seller, the Facility, the Facility real property, or any other asset or interest of Seller to be conveyed to Buyer at the Closing has been removed as of the Closing, other than Permitted Encumbrances not required to be removed at the Closing.• Seller has delivered to Buyer executed valid lien waivers, in the form required by the Definitive Agreement, from each major contractor and major subcontractor with respect to all Work performed prior to the Closing and required supporting documentation.• Seller has delivered to Buyer the required title insurance policy for the Facility site, or a binding title insurance commitment and other title work and documentation (including title affidavits and surveys/updates) necessary for issuance of the required title insurance policy after recordation of documents, in either case, effective as of the Closing, subject only to Permitted Encumbrances as of the Closing (which excludes liens to be discharged or released prior to or simultaneously with the Closing), and in form and substance as required by the Definitive Agreement (including required endorsements).• Buyer has received a legal opinion, in form and substance satisfactory to Buyer, on the tax benefits accruing to Buyer upon the Closing in connection with the transactions contemplated by the Definitive Agreement and the Facility (the “Closing Tax Opinion”), issued no earlier than ten (10) days prior to the Closing, from tax counsel selected by Buyer (“Tax Credit Counsel”), and an officer’s certificate from Seller in a form to be attached to the Definitive Agreement with respect to certain related matters addressed in the Closing Tax Opinion, issued no earlier than ten (10) days prior to the Closing] .• The Facility (i) has not been synchronized or provided, transmitted, or delivered any electric energy, capacity, or any Other Electric Product to the EML Transmission System or any other transmission or distribution system and (ii) does not include FERC-jurisdictional transmission assets, and Seller has tendered to Buyer the required certification to that effect.• Buyer has approved the statement distributing the entire Purchase Price (as adjusted) against the retirement units of Buyer.• (i) Seller has in place (a) for the Facility, Full Deliverability (including the completion, testing, and entry into service by the host utility (or other applicable entity) of any system interconnection and transmission upgrades required therefor) and the Required Facility Recognition, and (b) without limiting the foregoing, all agreements and all approvals and other authorizations necessary for Full
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	<p>Deliverability and the Required Facility Recognition (all of which are final and not subject to appeal or legal challenge, in full force and effect, and available for immediate use by the Facility from and after the Closing), and (ii) the Facility satisfies the requirements of, and is in compliance with, all such agreements, approvals, and authorizations (including the GIA) (collectively, the “FD/FR Condition”).</p> <ul style="list-style-type: none">• Buyer holds and is the beneficiary of the credit support required from Seller at the Closing (see item 9 above).• No change or other modification to any tax law has occurred that would adversely affect the tax benefits available to Buyer with respect to the Facility. <p>“Mechanical Completion” means that the specified requirements for Mechanical Completion have been satisfied (and continue to be satisfied as of Mechanical Completion) or waived by Buyer, including:</p> <ul style="list-style-type: none">• The Facility is mechanically and electrically complete and pre-operational testing (including all functionality tests contemplated by the Scope Book to be conducted prior to, or as part of achieving, Mechanical Completion) has been successfully completed.• The Facility (including the components and systems thereof) is assembled, constructed, and installed, and is ready to commence commissioning, testing, and operation, all according to the performance standards specified in the Definitive Agreement.• All required system interfaces for the Facility are complete and all process and safety systems for the Facility are ready for operational testing in accordance with the Definitive Agreement.• The FD/FR Condition is satisfied.• The Facility satisfies the requirements of, and is in compliance with, all laws and applicable permits. <p>For purposes of the Definitive Agreement, the achievement of Mechanical Completion will be deemed to occur on the earlier of (i) Buyer confirming in writing to Seller that it agrees with Seller’s certification of Mechanical Completion or (ii) if within fifteen (15) business days after receipt of Seller’s certification of Mechanical Completion, Buyer has neither confirmed in writing to Seller that it agrees with such certification nor provided to Seller a notice of objections, the fifteenth (15th) business day after Seller issued to Buyer such certification.</p> <p>Conditions to Mechanical Completion, Substantial Completion and Buyer Closing conditions in addition to those set forth above in this item 13 may be included in the Definitive Agreement.</p>
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14	Seller's Closing Conditions:	<p>The obligation of Seller to consummate the Closing will be subject to the satisfaction (and continued satisfaction as of the Closing) or waiver by Seller of the following Seller's conditions to Closing:</p> <ul style="list-style-type: none"> • Buyer and its affiliates have performed or complied in all material respects with all Definitive Agreement covenants, obligations, and agreements of Buyer or its affiliates that are required to be performed or complied with at or prior to the Closing. • There is no preliminary or permanent order invalidating or rendering unenforceable the Definitive Agreement in any material respect or restraining or otherwise prohibiting the consummation of the transactions contemplated by the Definitive Agreement, and no action taken by a governmental authority, or law applicable to such transactions, directly or indirectly prohibits the consummation of such transactions. • Seller has all approvals and other authorizations from governmental authorities, and all non-governmental consents, necessary for Seller to consummate the transactions contemplated by the Definitive Agreement, as scheduled in the Definitive Agreement, on terms and conditions reasonably acceptable to Seller, and such approvals and authorizations are in full force and effect, final and not subject to appeal or other challenge or modification. • The representations and warranties of Buyer in the Definitive Agreement are true and correct in all material respects (except that fundamental representations of Buyer and any representations and warranties of Buyer qualified by materiality are true and correct in all respects) as of execution of the Definitive Agreement, FNTP and Closing (except to the extent that such representations and warranties by their terms speak exclusively as of an earlier date (or dates), in which event they shall be true and correct as of such date(s)). • Seller has received an officer's certificate from Buyer certifying that the first (compliance with covenants) and fourth (accuracy of representations) conditions above are satisfied. • Seller has received (i) certain required organizational documents and certificates (e.g., Secretary's and incumbency certificates) from Buyer and (ii) other required Closing deliverables from Buyer.
15	Buyer's Substantial Completion Payment Conditions:	<p>The obligation of Buyer to make the Substantial Completion Payment will be subject to the satisfaction (and continued satisfaction as of the Substantial Completion Payment Date) or waiver by Buyer of specified Buyer's conditions to the Substantial Completion Payment, including:</p> <ul style="list-style-type: none"> • Seller and its affiliates have performed or complied in all material respects with all Definitive Agreement covenants, obligations, and agreements of Seller or its affiliates that are required to be performed

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		<p>or complied with at or prior to the Closing and are certified as such to Buyer in writing by a duly authorized officer of Seller.</p> <ul style="list-style-type: none">• Specified representations and warranties of Seller in the Definitive Agreement are true and correct in all material respects (except that fundamental representations of Seller and any representations and warranties of Seller qualified by materiality are true and correct in all respects) as of the Substantial Completion Payment Date and certified to Buyer as such in writing by a duly authorized officer of Seller.• Substantial Completion has occurred and, since achievement of Substantial Completion, no event or circumstance has occurred and is continuing that causes any of the criteria described in the definition of “Substantial Completion” to cease to be true.• Seller has delivered to Buyer complete and accurate copies of engineering, design, and construction and other deliverables required to be provided to Buyer at or prior to the Substantial Completion Payment Date pursuant to the Scope Book.• Seller has delivered to Buyer (i) a down-date endorsement to the title policy updating the date of the policy to the Substantial Completion Payment Date and reflecting no encumbrances other than Permitted Encumbrances and (ii) a binding written commitment from the title insurer to issue an endorsement to delete the general exception for mechanics’ liens from the policy not later than one hundred eighty (180) days after the Substantial Completion Payment Date.• Seller has delivered to Buyer executed valid lien waivers, in the form required by the Definitive Agreement, from each major contractor and major subcontractor with respect to all Work performed prior to the Closing and required supporting documentation.• Seller has completed all training of Buyer personnel required by the Scope Book.• Buyer holds and is the beneficiary of the credit support required from Seller at the Closing (see item 9 above).• Buyer has received a tax opinion, in form and substance satisfactory to Buyer, on the tax benefits accruing to Buyer upon the Substantial Completion Payment Date in connection with the transactions contemplated by the Definitive Agreement and the Facility (the “Substantial Completion Payment Date Tax Opinion”), issued no earlier than ten (10) days prior to the Closing, from Tax Credit Counsel and an officer’s certificate from Seller in a form to be attached to the Definitive Agreement with respect to certain related matters addressed in the Substantial Completion Payment Date Tax Opinion, issued no earlier than ten (10) days prior to the Substantial Completion Payment Date.
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	<p>“Substantial Completion” means that the specified requirements for Substantial Completion have been satisfied (and continue to be satisfied as of Substantial Completion) or waived by Buyer, including:</p> <ul style="list-style-type: none">• Mechanical Completion and the Closing have occurred and, since achievement of Mechanical Completion, no event or circumstance has occurred and is continuing that causes any of the criteria described in the definition of “Mechanical Completion” to cease to be true.• All Work (other than punchlist items and other Seller obligations concerning the Work under the Definitive Agreement that expressly arise after Substantial Completion) is complete in accordance with the Definitive Agreement and free from violations of the Facility Warranty and other defects and deficiencies.• The Facility has successfully completed start up, commissioning, and testing (including all functionality tests contemplated by the Scope Book to be conducted prior to, or as part of achieving, Substantial Completion) in accordance with the performance standards specified in the Definitive Agreement.• Without limiting any other requirement for Substantial Completion, the Facility satisfies the requirements of, and is in compliance with, all agreements and arrangements necessary for Full Deliverability (including the GIA).• The Facility is synchronized with the host utility and available for normal and continuous operation and fully capable of reliably producing energy, capacity, capacity-related benefits, and other electric products as contemplated by the Definitive Agreement and delivering the same to the host utility at the Electric Interconnection Point.• The Facility’s local control system (LCS), communications, and telemetry equipment required by the Scope Book or other provisions of the Definitive Agreement (i) are properly programmed, installed, and interconnected to the appropriate interconnection provider equipment and systems, (ii) have been commissioned and tested, (iii) are fully capable of (A) safely, accurately, and reliably transmitting real-time data to the interconnection provider and (B) allowing for the receipt and use of such data by the interconnection provider, in each case, in accordance with the Scope Book and the performance standards specified in the Definitive Agreement, and (iv) have demonstrated such capability.• All Facility performance testing and Net Generation Capacity calculations (see item 20 below) have been successfully completed and all required reports and certifications have been delivered to, and approved by, Buyer in accordance with the requirements of the Definitive Agreement, with the final test results showing that the
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		<p>Facility has achieved at least the Minimum Facility Availability (as defined in item 19 below) and the other minimum performance characteristics required by the Definitive Agreement (including the Scope Book) and the final Net Generation Capacity calculation showing that the Net Generation Capacity of the Facility is at least the Minimum Net Generation Capacity (as defined in item 19 below).</p> <ul style="list-style-type: none">• Seller has provided to Buyer (i) the as-built documentation for the Facility, which was developed according to the Scope Book, and (ii) an updated wind resource assessment report, issued no earlier than ten (10) days prior to Substantial Completion, from the Wind Resource Assessment Provider, setting forth an updated P50 and P90 expected energy output and P50 and P90 12x24 generation profile for the Facility, taking into account the Historical Climatological Data, the as-built characteristics of the Facility (including final siting), and any other matters that have changed since the wind resource assessment report provided at FNTF (the “Substantial Completion Wind Resource Assessment Report”).• Either (i) the Substantial Completion Wind Resource Assessment Report sets forth an updated P50 expected energy output that is no less than, and an updated P50 12x24 generation profile that is not less favorable to Buyer (as determined reasonably by Buyer) than, the corresponding amounts therefor in the Base Case Report or (ii) Seller has acknowledged in writing its obligations to pay to Buyer, pursuant to a reduction in the portion of the Purchase Price payable at the Substantial Completion Payment Date, liquidated damages equal to (A) for any deficiency in the P50 expected energy output, the product of the Purchase Price multiplied by a fraction, the numerator of which is equal to the P50 expected energy output in the Base Case Report and the denominator of which is equal to the P50 expected energy output in the Substantial Completion Wind Resource Assessment Report, plus (B) for any deficiency in the P50 12x24 generation profile, [an amount determined based on a formula to be agreed and set forth in the Definitive Agreement].• If the Net Generation Capacity as of the Closing is less than the Guaranteed Capacity, Seller has acknowledged in writing its obligations to pay to Buyer, pursuant to a reduction in the portion of the Purchase Price payable at Closing, the liquidated damages associated with such failure as described in item 20 below.• The punchlist for the Facility has been approved by Buyer.• Without limiting the design life requirements for the Facility (and all equipment, systems, materials, and components included as part of the Project) set forth in the Scope Book, Seller has provided to Buyer a site-specific design assessment for the wind turbines, issued by the
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		<p>same certification entity that issued the type approval certificate for the wind turbines, certifying that the wind turbines are designed to withstand Facility site conditions (including wind conditions, loads, and environmental conditions) for at least twenty (20) years. The site-specific design assessment shall be performed in accordance with the latest edition of IEC 61400-1 and with other requirements to be set forth in the Definitive Agreement.</p> <p>The payment of the Substantial Completion Payment to Seller, and the purchase and sale between the Parties of post-Closing assets, will occur ten (10) business days after the Facility has achieved Substantial Completion and all conditions the Substantial Completion Payment (as detailed above) have been satisfied or waived by Buyer, <u>provided</u> that, as of such date, such conditions (to the extent satisfied and not waived by Buyer) continue to be satisfied. At the Substantial Completion Payment Date, Seller will transfer to Buyer the Closing Assets, free and clear of all encumbrances and liabilities, except Permitted Encumbrances (as defined below) and certain liabilities expressly set forth in the Definitive Agreement that will be assumed by Buyer.</p>
16	Buyer Remedies for Delay in Substantial Completion:	<p>If Substantial Completion does not occur by the “Guaranteed Substantial Completion Date” (expected to be as specified by Bidder in the applicable proposal) (as may be adjusted according to the Definitive Agreement, the “Guaranteed Substantial Completion Date”), Seller will pay to Buyer liquidated damages in the amount of \$[●] per MW¹² of Guaranteed Capacity per day, for each day after the Guaranteed Substantial Completion Date that Substantial Completion has not been achieved until the earliest of (i) the date Substantial Completion is achieved, (ii) the date the Definitive Agreement is validly terminated, and (iii) the date (as may be adjusted according to the Definitive Agreement, the “Substantial Completion Termination Trigger Date”) that is ninety (90) days after the Guaranteed Substantial Completion Date. The foregoing right to delay liquidated damages will not limit Buyer’s rights or remedies with respect to any Seller breach or default under the Definitive Agreement for the consequences thereof other than the failure of Substantial Completion to be achieved on or prior to the Guaranteed Substantial Completion Date. If and to the extent applicable, the payment of such delay liquidated damages will be a condition to payment of the portion of the Purchase Price due at the Closing and the Substantial Completion Payment.</p>
17	Buyer Remedies for Lost PTCs:	<p>If, at the time of Substantial Completion, the actual MW-weighted average number of days between the “placed in service” (as defined for purposes of</p>

¹² **NTD:** The delay damage value is anticipated to be \$550/MW per day not counting the liquidated damage value for lost MISO zonal resource credits (which will be separately negotiated) and any PTC run-off liquidated damages (see item 17 below).

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		<p>the federal production tax credit (“Placed in Service”) date(s) for the MW of the Facility and the date of the Closing (the “Actual PTC Run-Off”), exceeds the “Guaranteed Max PTC Run-Off per MW” (expected to be as specified by Bidder in the applicable proposal) (the “Guaranteed Max PTC Run-Off per MW”), Seller will pay to Buyer, for each day that the Actual PTC Run-Off exceeds the Guaranteed Max PTC Run-Off per MW, liquidated damages in the amount of \$[●]¹³ per MW of Net Generation Capacity at the Closing; <u>provided, however</u>, that such amount will not be payable by Seller with respect to an applicable portion of the Facility, to the extent (a) the Guaranteed Closing Date has been extended beyond the Placed in Service date for such portion of the Facility by change order(s) as described in item 29 below as a result of Buyer discretionary changes to the Work, Force Majeure (as defined in item 30 below), and/or Buyer-Caused Delay, (b) such portion of the Facility was Placed In Service by the Guaranteed Closing Date, and (c) such portion of the Facility was not Placed in Service earlier solely as a result of a delay in such Placement In Service caused solely by such Buyer discretionary changes to the Work, Force Majeure, and/or Buyer-Caused Delay, as reflected in such change order(s).</p> <p>The foregoing rights to liquidated damages will not limit Buyer’s rights or remedies with respect to any Seller breach or default under the Definitive Agreement for the consequences thereof other than (i) the Actual PTC Run-Off exceeding the Guaranteed Max PTC Run-Off per MW and (ii) the failure of all or any portion of the Facility to qualify for the Full PTC, respectively. If applicable, the payment of such liquidated damages will be a condition to payment of the portion of the Purchase Price at Closing,</p>
18	Excluded Liabilities:	<p>Notwithstanding the occurrence of the Closing, Seller will retain, and Buyer will not assume or be obligated to pay, perform, or otherwise discharge, certain liabilities (the “Excluded Liabilities”), including:</p> <ul style="list-style-type: none"> • Liabilities relating to, or based in whole or in part on any fact, event, circumstance, condition (including any environmental condition), or occurrence (or set of facts, events, circumstances, conditions, or occurrences) occurring or existing during, the period on or prior to the Closing (or after the Closing with respect to obligations performed by or for Seller after the Closing, or other acts or omissions of Seller’s group, or other liability allocated to Seller, under the Definitive Agreement), including any act or omission of predecessor of Seller but excluding liabilities for which Buyer provides express indemnification to Seller under the Definitive Agreement. • Liabilities related to Excluded Assets. • Liabilities concerning the Closing Assets other than liabilities expressly assumed by Buyer under the Definitive Agreement.

¹³ NTD: The expected liquidated damages value is expected to be in the range of \$[200]/MW/day.

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		<ul style="list-style-type: none"> Liabilities of Seller or any of its affiliates incurred or accruing after the Closing, other than the liabilities for which Buyer provides express indemnification under the Definitive Agreement. <p>The Excluded Liabilities will include taxes for which Seller is responsible, labor-related, employment-related, and employee benefit plan-related liabilities of Seller, related persons of Seller, Seller’s ERISA affiliates, Seller’s contractors and subcontractors of any tier, and others, payment liabilities under any of Seller’s vendor, service, engineering, or other contracts, and environmental liabilities arising out of any environmental condition or matter existing or caused prior to the Closing, liabilities for non-compliance with laws, including the applicable provisions of the Inflation Reduction Act (including fines, penalties, charges, and costs, including costs of cure), and indebtedness of Seller or any affiliate thereof.</p>
19	Guaranteed and Minimum Performance Characteristics:	<p>The Guaranteed Capacity will be, and the minimum performance characteristics will include, the following:</p> <ul style="list-style-type: none"> The “Guaranteed Capacity” will be the expected Net Generation Capacity of the Facility, in MW, expected to be as specified by Bidder in the applicable proposal. There will also be a “Minimum Net Generation Capacity” equal to 95% of the Guaranteed Capacity. The “Minimum Facility Availability” will be an availability rate for the Facility during the Facility performance test specified in the Definitive Agreement (a “Facility Availability Rate”) of 99%. The Facility Availability Rate is expected to be calculated over a five (5)-consecutive day period.
20	Facility Performance Testing; Net Generation Capacity Calculation:	<p>The Definitive Agreement will provide for tests of the performance of the Facility (including the wind turbines), including tests to be conducted in connection with Substantial Completion or after Substantial Completion (e.g., certain power curve tests). The tests will cover the Minimum Facility Availability and other plant performance metrics and criteria set forth in the Definitive Agreement, including reliability, remote operation capabilities, operating set point and other curtailment capabilities, vibration levels, noise/sound, and diligence-related items. In addition to performance testing, the Definitive Agreement will provide for the calculation of the Net Generation Capacity. The performance tests and Net Generation Capacity calculation will be performed (at Seller’s expense) by an independent testing contractor. The results of the tests and the Net Generation Capacity calculation will be compared against the corresponding values specified in the Definitive Agreement. The tests and the Net Generation Capacity calculation will be performed within a specified period prior to Substantial Completion pursuant to an agreed detailed testing and calculation protocol, and certain of these tests will be required to be conducted simultaneously. Subsequent tests and calculations may be required depending on the results</p>

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	<p>of the previous tests and calculations, material delays in achievement of Substantial Completion after such tests and calculations, and/or intervening events or circumstances (e.g., material casualty/repairs to the project) after Substantial Completion and before the Closing. Unless Buyer otherwise directs, each subsequent test will be performed by the testing contractor that performed the initial test.</p> <p>Final performance test results and the final calculation of the Net Generation Capacity may give rise to liquidated damages, a reduction in the Purchase Price, and/or termination of the Definitive Agreement, as described below. Seller will not be entitled to any increase in the Purchase Price or any other compensation from Buyer if the final performance test results and/or calculation of the Net Generation Capacity indicates that performance for a particular metric or criteria is better than required by the Definitive Agreement.</p> <p>If, pursuant to the most recent performance tests before Substantial Completion, the Facility does not achieve all of the minimum performance characteristics (including the Minimum Facility Availability) required by the Definitive Agreement, Seller will be required to re-test and will not achieve Substantial Completion until the Facility has achieved all such minimum performance characteristics. Likewise, if pursuant to the most recent Net Generation Capacity calculation, the Facility does not achieve the Minimum Net Generation Capacity, Seller will be required to take remedial action and recalculate. The Facility will not achieve Substantial Completion, and, as a result, Buyer will not be required to make the Substantial Completion Payment, until all minimum performance characteristics have been met. If, as a result of the Facility not meeting such minimum performance characteristics, Substantial Completion is delayed, Buyer's remedies described in item 16 above (i.e., delay liquidated damages and termination rights, as applicable) and item 17 above (i.e., liquidated damages for (i) the Actual PTC Run-Off exceeding the Guaranteed Max PTC Run-Off per MW and (ii) the failure of all or any portion of the Facility to qualify for the Full PTC, as applicable) could apply, as described therein.</p> <p>If, pursuant to the most recent performance tests of the Facility and Net Generation Capacity calculation before Substantial Completion, the Facility achieves all of the minimum performance characteristics (including the Minimum Facility Availability and Minimum Net Generation Capacity) required by the Definitive Agreement but does not achieve 100% of the Guaranteed Capacity, Seller may elect to (i) take remedial action and recalculate (subject to Buyer's approval in its sole and absolute discretion if the remedial action and recalculation may cause Substantial Completion not to be achieved sufficiently in advance for Substantial Completion to be achieved by the Substantial Completion Termination Trigger Date) or (ii) pay</p>
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		to Buyer, pursuant to a reduction in the portion of the Purchase Price payable at the Closing, liquidated damages in the amount of 1.25% of the Purchase Price for each 1.0% (prorated for any fraction thereof) by which the final calculated Net Generation Capacity of the Facility is below the Guaranteed Capacity.
21	Final Completion Conditions:	<p>“Final Completion” means that the specified requirements for Final Completion have been satisfied (and continue to be satisfied as of Final Completion) or waived by Buyer, including:</p> <ul style="list-style-type: none"> • Substantial Completion has occurred. • All Work (including the punchlist) is complete in accordance with the Definitive Agreement and free from violations of the Facility Warranty and other defects and deficiencies. • Buyer has approved the statement distributing the entire Purchase Price (as adjusted) against the retirement units of Buyer. • Seller has provided evidence, in form and substance reasonably satisfactory to Buyer, that all encumbrances on the Facility and related assets have been removed and that there are no encumbrances arising out of the Work against or applicable to such assets. • Seller has delivered to Buyer a complete and accurate list of all assets (including contracts, intellectual property, and other intangibles) transferred to Buyer as part of the acquisition. • Seller has delivered to Buyer all engineering, design, and construction drawings and plans related to the Facility, including as-built drawings, and all other deliverables required to be provided to Buyer at Final Completion pursuant to the Scope Book. • Seller has delivered final lien waivers reasonably satisfactory to Buyer from all major contractors and subcontractors. • Seller and each of its contractors and subcontractors of any tier have demobilized and removed from the Facility site all personnel and all equipment, materials, and other items and have left the Facility site in the condition required by the Definitive Agreement. <p>For purposes of the Definitive Agreement, the achievement of Final Completion will be deemed to occur on the earlier of (i) Buyer confirming in writing to Seller that it agrees with Seller’s certification of Final Completion or (ii) if within fifteen (15) business days after receipt of Seller’s certification of Final Completion, Buyer has neither confirmed in writing to Seller that it agrees with such certification nor provided to Seller a notice of objections, the fifteenth (15th) business day after Seller issued to Buyer such certification.</p> <p>Conditions to Final Completion in addition to those above may be included in the Definitive Agreement.</p>

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22	Buyer's Remedies for Delay in Final Completion:	<p>If Final Completion has not occurred by ninety (90) days after the Guaranteed Closing Date (the “Final Completion Expiration Date”), Buyer will have the right to (i) step in and complete all or any of the punchlist items that have not been completed by Seller and/or (ii) waive all remaining requirements for Final Completion.</p> <ul style="list-style-type: none"> • If Buyer elects to step in and complete all or any of the punchlist items that have not been completed by Seller without waiving all remaining requirements for Final Completion, then Buyer will be entitled to retain the Punchlist Holdback for each punch list item that is completed by Buyer, and such punch list items will be deemed completed for purposes of Seller achieving Final Completion. • If Buyer elects to waive all remaining requirements for Final Completion, then Buyer will be entitled to retain the entire Final Completion Holdback, except that Buyer will pay to Seller, within five (5) business days, the Punchlist Holdback for each punch list item that was completed by Seller.
23	Representations and Warranties:	<p>The Definitive Agreement will include customary representations and warranties to be made by Buyer and Seller as of each of (i) the execution date of the Definitive Agreement, (ii) the FNTP date, and (iii) the Closing. The representations and warranties to be made by Seller will include:</p> <ul style="list-style-type: none"> • Organization, existence, power, and authority* • Execution, delivery, and enforceability* • No conflicts*[as to organizational documents] • Compliance with laws • Litigation (including absence of nuisance litigation) • Land/land contracts*[as to title] • Tangible personal property*[as to title] • Contracts and warranties*[as to title] • Permits*[as to title] • Consents and approvals • Sufficiency of the Closing Assets (e.g., as of the Closing, the Closing Assets constitute all assets, rights (including intellectual property rights), and interests reasonably necessary for the use, ownership, possession, operation, maintenance, and repair of the Facility from and after the Closing according to good industry practices and the other performance standards specified in the Definitive Agreement, including applicable law and permits) • Environmental • Historical Climatological Data/wind resource assessment report • Other representations and warranties of Seller customary for wind resource acquisitions of the type described in this Term Sheet, including representations and warranties pertaining to bankruptcy, taxes,*

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		<p>employment, labor, and employee benefits matters (covering Seller and its affiliates, including Seller's ERISA affiliates, contractors and subcontractors, and all individuals providing services at the Facility),* title,* intellectual property* (with respect to infringement), financing encumbrances,* NERC compliance (if applicable), brokers,* insurance, and diligence-related and other matters.</p> <p>In addition, Seller will make a narrower set of representations and warranties to Buyer at the Substantial Completion Seller's and Buyer's representations and warranties in the Definitive Agreement, other than Seller's and Buyer's "fundamental" representations and warranties and Seller's environmental representations and warranties, will survive until twenty-four (24) months after the Closing. Seller's fundamental representations and warranties will include those marked above by an asterisk and those included in the Related Tax Certificates and will survive for the applicable statute of limitations plus thirty (30) days thereafter. Seller and Buyer representations and warranties will be limited to those expressly set forth in the Definitive Agreement.</p>
24	Covenants:	<p>The covenants (including negative covenants) and agreements in the Definitive Agreement are expected to be customary for wind resource acquisitions of the type described in this Term Sheet and will include covenants and agreements covering Seller's conduct and actions taken by Seller with respect to the Closing Assets, Seller's compliance with, and execution or modification of, contracts, regulatory approvals, transfers of permits, title to real and personal property, risk of loss, insurance (including builder's all risk and contractor and subcontractor insurance), taxes and tax credits (including detailed terms involving compliance with the Inflation Reduction Act and prevailing wage and apprenticeship rules and requirements), employees, employee benefits, and labor, utilities, Full Deliverability and Required Facility Recognition, Seller's non-solicitation obligations, notice and reporting obligations, maintenance of books/records, confidentiality and public announcements, removal of encumbrances, developmental obligations, Buyer's access to Seller's books and records and property, inspection rights, tax equity and O&M operator participation, and technical and diligence-related matters.</p>
25	Effect of Knowledge:	<p>The right to indemnification, reimbursement, or any other remedy based upon the representations, warranties, covenants, obligations, and agreements in the Definitive Agreement will not be affected by any information made available or furnished to, or any investigation or audit conducted (or that could have been conducted) by, any Party or any knowledge of any Party acquired at any time, whether before, on, or after the execution of the Definitive Agreement or the Closing, with respect to the transaction or the accuracy or inaccuracy of, or compliance or non-compliance with, any such representation, warranty, covenant, obligation, or agreement. Each Party will be entitled to rely upon the representations, warranties, covenants, obligations, and agreements of the</p>

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		other Party notwithstanding (i) any investigation or audit conducted (or that could have been conducted) by such Party or any information received by such Party before, on, or after the signing of the Definitive Agreement or Closing or (ii) the decision of such Party to complete the Closing.
26	Disclosure Schedule Updates:	<p>The Definitive Agreement will include various schedules as attachments, including schedules of assets and liabilities included and excluded from the transaction, disclosure schedules corresponding to specific representations and warranties of the Parties, schedules of required regulatory approvals and consents of each Party, and other miscellaneous schedules (such as a listing of persons with knowledge, description of the Facility, etc.). Each of Seller and Buyer will have the obligation to deliver to the other Party any necessary updates (including additions or deletions) to any of its schedules within periodic intervals (the frequency of which increase as the Closing date draws nearer); however, certain updates will require the other Party's approval to be given effect for purposes of the Definitive Agreement. For example, Seller will be required to obtain Buyer's approval, such approval to be granted in Buyer's sole and absolute discretion prior to FNTF and not to be unreasonably withheld after FNTF, to update schedules listing contracts (including real property contracts, intellectual property licenses, and other commercial agreements) to be acquired by Buyer at the Closing, Seller's required regulatory approvals, recognized environmental conditions on the project site, exceptions to numerous Seller representations, and, in general, other items where the update, if given effect, could result in an incremental liability or risk to Buyer. In general, Seller will be permitted to add physical assets to the schedules describing the assets to be transferred to Buyer if they were entered into or acquired in compliance with the Definitive Agreement (which, as described in item 7 above, may require the consent of Buyer) and are within the general scope of the transaction (e.g., relate to the Facility and are not required exclusively for the Work).</p>
27	Scope Book:	<p>A draft Scope Book has been issued with the RFP and contains important requirements for the Work that should be taken into account and validated in preparing Bidder's proposal. Seller will be required in the Definitive Agreement to adopt the final Scope Book as its own and to take responsibility for the contents of, and compliance with, the Scope Book. In particular, Bidder should be aware that:</p> <ul style="list-style-type: none"> • The major equipment components of the Facility (e.g., wind turbines, transformers, and switchgear) must be manufactured by manufacturers specified in the Scope Book as pre-approved for such components or otherwise acceptable to Buyer in its sole and absolute discretion. • Seller is required to purchase for the Facility other goods and services specified in the Scope Book (e.g., control systems) from vendors, manufacturers, service providers, and other contractors identified in the

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		<p>Scope Book as pre-approved for a particular good or service or otherwise acceptable to Buyer in its sole and absolute discretion.</p> <ul style="list-style-type: none"> • The Scope Book requires that certain items included in or services provided for the Facility or other Closing Assets be of a make, type, product, and/or class and/or have properties, characteristics, standards, functionality, and/or attributes specified therein for such items and services. Without limiting the foregoing, the Scope Book requires that the technology and equipment (including wind turbines, transformers, and switchgear) produce a generation profile consistent with the wind resource assessment report provided to Buyer prior to execution of the Definitive Agreement. • The Scope Book will include, as an attachment, a basic Facility design (including preliminary site layout) based on or derived from Bidder's applicable proposal. The detailed design of the Facility will be finalized in accordance with and subject to the terms of the Definitive Agreement (including taking into account comments from Buyer, if any). Notwithstanding anything to the contrary, the detailed design work and other design updates permitted by the Definitive Agreement may not reduce the design life of the Facility, decrease the P50 expected energy output, or make less favorable, the P50 12x24 generation profile, of the Facility, adversely affect the reliability of the Facility, or increase the costs to Buyer of ownership, possession, use, operation, maintenance, servicing, repair, or replacement of the Facility or products therefrom, including the levelized costs of energy.
28	Observation and Inspection:	<p>Buyer and Buyer's authorized representatives will have the right to observe and inspect the Work and to maintain personnel at the Facility sites for such purpose, certain approval rights, and certain other rights and protections related to Seller's performance of the Work commensurate with Buyer's interests in the Facility. Such rights (or the exercise thereof) will in no way relieve Seller of its obligations under the Definitive Agreement.</p>
29	Change Orders:	<p>Buyer will have the right, through change orders issued to Seller from time to time, to make discretionary changes to the Work, subject to an aggregate cost cap on such modifications of 7.5% of the Purchase Price, <u>provided that</u> such cap will not apply to discretionary change(s) in connection with remedying damage or loss to the Facility or related assets after the Closing for which Buyer is responsible under the Definitive Agreement and that, after taking into account the last sentence of this paragraph, requires a Buyer discretionary change. If Buyer issues any such change order, Seller will be entitled to equitable changes to, as applicable, the Guaranteed Substantial Completion Date [any change in the Guaranteed Substantial Completion Date by Change Order will result in an automatic adjustment to the Substantial Completion Termination Trigger Date], and/or the Purchase Price (at direct costs plus 10%) resulting exclusively from such Buyer discretionary change,</p>

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		<p>except as Buyer and Seller may otherwise agree. Notwithstanding anything to the contrary, Seller will be obligated, as part of the Work and without requirement for any Buyer discretionary change, to proceed with and complete the Work despite the occurrence of any loss or damage to the Facility or related assets, including remedying such loss or damage (regardless of the cause thereof), and, in full and final consideration thereof, Seller will be entitled to any builder's all risk insurance proceeds (excluding pursuant to delays in startup, advance loss of profits, or similar coverage), net of the deductible (except the first Two Hundred Fifty Thousand Dollars (\$250,000) of the deductible if Buyer has risk of loss and Seller is not responsible for the loss or damage under the terms of the Definitive Agreement), to the extent such proceeds are required to fund the remedy of the affected portions of the Facility by Seller, but Seller will not be entitled to any increase in the Purchase Price or any other compensation arising out of the subject matter of such loss or damage.</p> <p>Seller will not otherwise be entitled to any cost or schedule relief with respect to the performance of the Work, <u>except</u> that Seller will be entitled to:</p> <ul style="list-style-type: none"> • a change order adjusting the Guaranteed Substantial Completion Date for any actual delay in achieving Substantial Completion by the Guaranteed Substantial Completion Date resulting exclusively from Force Majeure, up to a maximum period of extension (for all Force Majeure change orders in the aggregate) of one hundred fifty (150) days;¹⁴ and • a change order adjusting the Purchase Price for any actual net increase in direct costs (plus ten percent (10%)), and/or the Guaranteed Substantial Completion Date for any actual delay in achieving Substantial Completion by the Guaranteed Substantial Completion Date, resulting exclusively from (i) a material breach or default under the Definitive Agreement by Buyer or (ii) property damage resulting from the negligence (including gross negligence but excluding any actual or alleged negligence that is not a physical tort, such as, for example and not by way of limitation, any actual or alleged negligence with respect to design or engineering, professional negligence, negligent review or oversight of the Work, negligent approval of an action, or negligent failure to enforce (or negligent waiver of) any safety, insurance, or other provision of the Definitive Agreement) ("Physical Negligence"), fraud, or willful misconduct of Buyer ((i) and (ii) collectively, "Buyer-Caused Delay"); <p><u>provided</u> that, in order to qualify for such relief, Seller will have to satisfy certain conditions specified in the Definitive Agreement, including advising</p>
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¹⁴ **NTD:** If the Guaranteed Substantial Completion Date is earlier than December 31, 2028, the 150-day force majeure cap will be increased one day for each day that the Guaranteed Substantial Completion Date is before December 31, 2028, up to a maximum of thirty (30) additional days.

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		<p>Buyer of the actual or potential effect of the Force Majeure or Buyer-Caused Delay within seven (7) days after the occurrence of such Force Majeure or Buyer-Caused Delay. If Seller does not notify Buyer of the actual or potential effect of a Force Majeure or Buyer-Caused Delay in accordance with the requirements of the Definitive Agreement within such seven (7)-day period, Seller will be deemed to have irrevocably waived any and all claims for adjustment to the Purchase Price and the Guaranteed Closing Date (or other relief under the Definitive Agreement) arising out of or related to such Force Majeure or Buyer-Caused Delay. If there are mutually concurrent delays, one resulting from Force Majeure, the other not, the Party claiming Force Majeure shall not be entitled to relief to the extent such Party's actions or omissions contributed to such concurrent delay.</p> <p>Notwithstanding anything to the contrary, (i) the FNTP Expiration Date will not be adjusted pursuant to any change order described above (and may be changed only by express amendment to the Definitive Agreement), and (ii) the Substantial Completion Termination Trigger Expiration Date and the Final Completion Expiration Date may be changed by change order only indirectly through a change to the Guaranteed Substantial Completion Date.</p>
30	Force Majeure Definition:	<p>"Force Majeure" will mean the occurrence of an event that meets all of the following criteria: (i) the event occurs after the execution of the Definitive Agreement, (ii) the event and its effects are not within the reasonable control, directly or indirectly, of the Party claiming Force Majeure (or such Party's agents, contractors, or subcontractors of any tier), (iii) the event and its effects are unavoidable and could not be prevented, overcome, or removed by the reasonable foresight, efforts, and diligence of the Party claiming Force Majeure (or such Party's agents, contractors, or subcontractors of any tier), (iv) the event and its effects do not result from the negligence, gross negligence, willful misconduct, breach, or other fault of the Party claiming Force Majeure (or of such Party's agents, contractors, or subcontractors of any tier), and (v) the event causes the Party claiming Force Majeure, despite such Party's (and such Party's agents, contractors, and subcontractors of any tier) use of reasonable efforts and diligence, to be actually delayed in performing or unable to perform the Work or its obligations under the Definitive Agreement, in whole or in part (for reasons other than economic hardship, including lack of money). Provided the event meets all of the criteria described immediately above and is not otherwise excluded by the immediately following paragraph, Force Majeure will include the following events: (A) tornadoes, hurricanes, earthquakes, tsunamis, one hundred (100)-year (or greater) floods, and other storms and similar acts of God of equivalent magnitude (<u>provided</u> that flooding will not be considered Force Majeure except to the extent within or immediately adjacent to the project site for the Facility and adversely affecting immediate access thereto); (B) acts of war, undeclared war, revolution, riot, sabotage, terrorism, and</p>

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		<p>blockades, (C) mandatory quarantines, mandatory shelter-in-place orders, and other equivalent mandatory restrictions applicable to the Project Site, in each case, enacted and enforced by a Governmental Authority; (D) Change in Law (as defined below); (E) fires and explosions causing damage to or destruction, in whole or in part, of the Work or the equipment necessary to perform the Work; (F) pandemic; and (G) nationwide or industry-wide labor strikes, slowdowns, or stoppages.</p> <p>Notwithstanding the foregoing, “Force Majeure” will not include: (i) mechanical failure or other breakdown, flaw, defect, or failure of parts, machinery, equipment, facilities, systems, materials, or other items not the direct and proximate result of a Force Majeure event described in clause (A), (B), or (D) of the preceding paragraph or similarly independent, identifiable Force Majeure event; (ii) sabotage by the Party claiming Force Majeure (including any of its employees) or any agent, contractor, subcontractor (including vendor) of any tier, or representative of such Party; (iii) the failure or other act or omission of the Party claiming Force Majeure (including its employees) or any agent, contractor, subcontractor (including vendor) of any tier, or representative of such Party (including the failure of such Party or a contractor or subcontractor thereof of any tier to furnish machinery, equipment, spare parts, materials, consumables, labor, services, or other items in accordance with its contractual obligations), the consequences thereof, or any non-delivery, delayed delivery (including of interconnection, deliverability, and/or transmission upgrades, services, studies, and other items, including under the arrangements for Full Deliverability), shortage, or other unavailability of, or inability to obtain, machinery, materials, facilities, systems, consumables, labor, equipment, services, or other items (including any interruption or curtailment of electric transmission), <u>except</u>, with respect solely to the failure of the Party claiming Force Majeure or a contractor or subcontractor thereof of any tier to provide a service or item, if (A) such Party has a firm contract for the applicable service or item and (B) the provider, if it were a party hereto, would be entitled to Force Majeure relief for the provision of such service or item as an affected party; (iv) any weather event or condition or similar act of God that does not qualify as Force Majeure under clause (A) of the immediately preceding paragraph; (v) a Party’s financial inability to perform; (vi) any delay in obtaining, inability to obtain, or modification or revocation of, any permit; (vii) events that affect the cost of services, equipment, materials, or other items (including, without limiting clause (xi) below, additional or changes to taxes, tariffs, fees, or other charges or costs imposed by governmental authorities) or other costs of developing, financing, designing, engineering, manufacturing, procuring, supplying, transporting, delivering, unloading, storing, assembling, erecting, constructing, installing, testing, starting up, commissioning, otherwise providing, owning, possessing, using, operating, maintaining, studying,</p>
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		<p>repairing, or replacing the Facility, in whole or in part (including equipment and other items therefor), or changes in market conditions affecting the economics of a Party (including a change in commodity prices or increased inflation) or any other economic hardship (including lack of money); (viii) any event stated in the technical specifications (including the design certificate for the wind turbines) of the Facility, or any component thereof, or required by the Definitive Agreement (including the Scope Book), to be within the tolerance of the Facility or such component thereof; (ix) without limiting clause (iv) above, a lack of, or insufficient, or excessive, wind, or other events or conditions (including other climatic conditions and then-existing parameters of the electrical grid) outside of the operational specifications of the wind turbines or the relevant Facility systems, or the safety or other parameters for the applicable Work, that limit or prevent the production of energy or other products by, or other activities (including transportation, unloading, assembly, erection, construction, installation, testing, start-up, commissioning, operation, maintenance, studying, repair, or replacement) with respect to, the Facility, <u>except</u> any event that qualifies as Force Majeure under clause (A) of the immediately preceding paragraph; (x) labor strikes, slowdowns, or stoppages that (A) are not nationwide or industry-wide or (B) without limiting clause (iii) above, if Seller is the Party claiming Force Majeure, are initiated or otherwise arise as a result of the conduct or other acts or omissions of Seller (including its employees), any other member of Seller's group, or any agent, contractor, subcontractor (including vendor) of any tier, or representative of Seller at the Facility site or with respect to the Work; and (xi) any change or other modification to any law that would not meet the requirements of a Change in Law.</p> <p>"Change in Law" will mean the enactment, adoption, promulgation, issuance, modification, or repeal after the execution of the Definitive Agreement, or material change after the execution of the Definitive Agreement in the interpretation, of any applicable law (which, for the avoidance of doubt, does not include permits) by any governmental authority, <u>except</u> any such enactment, adoption, promulgation, issuance, modification, repeal, or material change that (i) relates to income taxes (including any change in any income tax rate), (ii) is published prior to the execution of the Definitive Agreement (even if it becomes effective after such execution), or (iii) relates to an applicable law outside of the United States.</p> <p>The occurrence of a Force Majeure does not necessarily entitle Seller to relief under the Definitive Agreement; Seller is entitled to relief for Force Majeure only to the extent specifically set forth in item 29 above.</p>
31	Seller Diligence:	<p>Seller will acknowledge and agree that, prior to the execution of the Definitive Agreement, it has taken (or elected not to take), in its opinion both as the developer of the Facility site and a power generation facility owner and</p>

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	<p>developer with substantial experience, directly and through its affiliates, in work of this type, the steps necessary to investigate and ascertain the nature and location of the Work and the sufficiency of the Purchase Price to cause the Work to be performed and the transactions to be completed in accordance with the Definitive Agreement, and has investigated and satisfied itself as to (or elected not to investigate or satisfy itself), and has factored into its determination that the Purchase Price is sufficient for performance of the Work and completion of the transactions, the matters and conditions that can affect the time or ability to perform or the cost of the Work or the transactions, including: (a) the general and local conditions at or affecting use of the Facility site, such as, for purposes of illustration only, availability and condition of roads, railways, and waterways, climate (including wind and wind conditions (including shear), temperature, humidity, rainfall, seismic conditions, and proximity to bodies of salt or fresh water), and seasonal conditions (including the effect thereof on wind conditions), physical conditions at the Facility site, including existing structures or buildings, hazardous substances, Facility site topography, ground surface and subsurface conditions (e.g., soil composition, compaction, drainage/hydrology, and underground obstructions or interferences or geology; (b) the information and material included in the Scope Book; (c) the obligations and requirements under all laws and permits applicable to the Work and/or the Facility (including the Facility site), including laws relating to health and safety, hiring or employment, project design, engineering, procurement, and construction, licensing, permits, contracts, taxes, zoning, or building; (d) the conditions and contingencies bearing upon the transportation, importation, delivery, receipt, unloading, handling, storage, disposal, erection, use, or cost of equipment, material, and other items relating to the Work (recognizing, for the avoidance of doubt, that any required updates and other improvements to public roads is the responsibility of Seller); (e) the availability, reliability, and (if applicable) cost of wind, utilities, and related services during unloading, assembly, erection, construction, installation, testing, start-up, and commissioning of the Facility; (f) the availability and cost of contractors and subcontractors, labor, and personnel to perform the Work and the competency and reliability of each; (g) the uncertainties of climate, weather (including wind conditions), or similar conditions at the Facility site or affecting the Work; (h) the risk of (i) damage to the Facility (including the Facility site), items used in connection with performance of the Work (including plant equipment and material), and other property, (ii) injury to individuals, whether located at or near the Facility site or elsewhere, (iii) delays in the schedule for, and performance deficiencies and other defects of, the Facility, (iv) incurring liabilities in connection with the Work, including fines and penalties, (v) off-site laydown and storage, and (vi) not using and removing existing improvements and other assets that are Excluded Assets and the plan for the</p>
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		<p>Work (in each case to the extent permitted in the Scope Book or otherwise provided for in the Definitive Agreement); and (i) all other matters that can affect performance or completion of the Work, including the cost or schedule associated with the performance of the Work. None of the foregoing will relieve Seller from the schedule for, the costs of, or successfully performing the Work in accordance with the requirements of this Agreement, except to the limited extent expressly provided in item 29 above with respect to any of the events described in the first paragraph of item 30 above, in each case, that meets the criteria for treatment as Force Majeure according to item 30 above.</p>
32	Warranties:	<p>The Definitive Agreement will require Seller to procure the Facility Warranty and warranties from the major equipment manufacturers (e.g., wind turbine, transformer, and switchgear manufacturers) and other contractors and subcontractors (including suppliers), and related guarantees, indemnities, insurance, credit support, and other rights (collectively, the “Warranty Package”), in accordance with good industry practices and the other performance standards specified in the Definitive Agreement (including an exhibit setting forth the Warranty Package or required terms thereof). Without limiting the foregoing, Seller will procure the Warranty Package on terms and conditions that are as beneficial to the owner or holder thereof as reasonably practicable, can be obtained on a commercially reasonable basis from the applicable contractor or subcontractor, are financeable on a tax equity basis, and are consistent or better than those customarily obtained by Seller and its affiliates for projects similar to the Facility in which Seller or an affiliate thereof will retain a majority or controlling interest after substantial completion (e.g., projects supporting power purchase agreements). Seller will maintain and provide to Buyer upon reasonable request a log of all warranties and guarantees that have been obtained and will become or are a part of the Warranty Package.</p> <p>Seller will transfer to Buyer all spare parts/special tools supply commitments and unexpired third-party warranties and guarantees (including indemnities and credit support) related to the Facility or the other purchased assets at the Closing or, with respect to any such contract rights that do not exist as of the Closing, upon the effective date thereof. Seller will cause such contract rights (and related credit support) to be fully paid-up and transferrable to Buyer at, and not require any further payment to obtain or maintain the warranty for its stated term, or other commitments or other consideration (excluding compliance by Buyer with standard terms that, if not complied with, would void the applicable warranty), to the applicable contractor or subcontractor after, the warranty transfer to Buyer (except, in the case of the spare parts/special tools supply commitments only, payment of the price therefor as established therein). From the date of such transfer through the earlier of (i) the expiration of the applicable warranty period for such warranty and (ii) the defined expiration date of EPC Contractor’s (or Seller’s) obligations with</p>

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		respect to such warranty, Buyer will provide to Seller the benefit of any third-party warranties transferred to Buyer, to the extent responsive to a claim by Buyer under the Definitive Agreement but without limiting Buyer's right to enforce and pursue any warranty claim.
33	Insurance:	<p>Seller will procure and maintain, at its expense, with qualified insurers, appropriate types and agreed levels of insurance to protect against typical project development, EPC, and ownership risks, including worker's compensation, business auto liability, comprehensive general liability, errors and omissions, equipment, excess liability insurance, and full replacement value builder's all risk insurance, along with insurance required by applicable laws, permits, lenders or other third-party persons financing the Facility (if any), or applicable contracts. Certain insurance will be required to be in effect upon the execution of the Definitive Agreement and certain insurance will be required to be provided initially and in effect by FNTF. All such insurance will be maintained by Seller until at least Final Completion, except that builder's all risk insurance for the Facility and related assets will be maintained by Seller only until the Substantial Completion Payment Date.</p> <p>Subject to limited exceptions, Buyer, its affiliates, and other specified parties will be additional insureds on the foregoing policies. The insurance policies will be Facility-specific, primary to Buyer's policies, require Seller to waive subrogation rights against Buyer, its affiliates, and other specified parties, have stipulated deductible maximums, and contain other customary terms. Insurance will be required to be obtained from reputable, qualified insurers having a rating of "A-VII" or better by A.M. Best.</p> <p>Seller will cause its agents and contractors of any tier to carry appropriate levels of insurance and will provide to Buyer specified insurance-related notices, reports, and certifications.</p>
34	Indemnification :	<p>Each Party will defend, indemnify, and hold harmless the other Party and its respective employees, representatives, officers, directors, affiliates, and agents from and against any and all damages and losses arising out of:</p> <ul style="list-style-type: none"> • any breach or violation of any covenant, obligation, or agreement of the indemnifying Party or its affiliates in the Definitive Agreement (including any certificate or agreement delivered pursuant thereto); • any breach or inaccuracy of any representation or warranty made by the indemnifying Party or its affiliates in the Definitive Agreement (including any Closing or Substantial Completion Tax Certificate and any other certificate or agreement delivered pursuant thereto); or • any of the Excluded Liabilities (in the case of Seller as the indemnifying Party) or the liabilities expressly assumed by Buyer at the Closing (in the case of Buyer as the indemnifying Party);

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	<p>in the case of each of the first two bullet points above, except to the extent otherwise provided in the first bullet point of the immediately following paragraph (Seller's indemnity).</p> <p>In addition, Seller will defend, indemnify, and hold harmless Buyer and its respective employees, representatives, officers, directors, affiliates, and agents from and against any and all damages and losses arising out of any of the following:</p> <ul style="list-style-type: none">• bodily injury or death, or property damage or loss, to Seller, its affiliates or contractors or subcontractors arising in connection with the performance of the Definitive Agreement (including the Work) or any ancillary agreement, except to the extent resulting from the Physical Negligence, gross negligence, or willful misconduct of Buyer or any member of Buyer's group, <u>provided</u> that, subject to the other terms of Definitive Agreement, this bullet point will apply to property damage or loss to the Facility or related assets or any portion thereof until risk of loss thereof is transferred to Buyer under the Definitive Agreement;• bodily injury or death, or property damage or loss, to any third party (other than those described in the immediately preceding bullet point or in the first bullet point of the immediately following paragraph) arising in connection with the performance of the Definitive Agreement (including the Work) or any ancillary agreement, except to the extent resulting from the Physical Negligence, gross negligence, or willful misconduct of Buyer or any member of Buyer's group;• the use or release of hazardous substances by Seller or any of its contractors or subcontractors;• without limiting any of the foregoing, breach of title warranties with respect to, or any claimed defect (including liens) in title to, the Facility or related assets;• any intellectual property infringement claims arising out of the Work (with the additional obligation for Seller to obtain the necessary rights to allow the continued use of the infringing property or to replace such property with non-infringing equivalent property);• the removal of any employee of a Seller service provider from the Work following a request therefor by Buyer in accordance with the Definitive Agreement and any Seller group employee claim and any and all Losses imposed upon or incurred by any member of the Buyer group that arise out of or relate to any Seller group employee claim;• any mechanic's or materialmen's claims related to the Work until any exception for mechanic's or materialmen's claims has been removed from the title policy for the project or such title policy includes an appropriate endorsement covering mechanic's or materialmen's claims' and
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		<ul style="list-style-type: none"> the cure by Buyer of the failure of the project to satisfy the applicable labor requirements (including prevailing wage and apprenticeship) under the Inflation Reduction Act. <p>Further, Buyer will defend, indemnify, and hold harmless Seller and its respective employees, representatives, officers, directors, affiliates, and agents from and against any and all damages and losses arising out of:</p> <ul style="list-style-type: none"> bodily injury or death, or property damage or loss, to Buyer, its affiliates or contractors or subcontractors arising in connection with the performance of the Definitive Agreement, except to the extent resulting from the breach, negligence, gross negligence, or willful misconduct of Seller or any member of Seller's group or any Excluded Liabilities, <u>provided</u> that, subject to the other terms of Definitive Agreement, this bullet point (i) will not apply to property damage or loss to the Facility or related assets or any portion thereof until risk of loss thereof is transferred to Buyer under the Definitive Agreement and (ii) is subject to, and does not limit, Seller's obligations in item 29 above and otherwise under the Definitive Agreement to perform the Work; or bodily injury or death, or property damage or loss, to any third party (other than those described in the immediately preceding bullet point or in the first bullet point of the immediately preceding paragraph) arising in connection with the performance of the Definitive Agreement, to the extent resulting from the Physical Negligence, gross negligence, or willful misconduct of Buyer or any member of Buyer's group. <p>The foregoing indemnity obligation will apply from and after execution of the Definitive Agreement with respect to third-party claims and from and after Closing with respect to all other claims.</p>
35	Limitations of Liability:	<p>From and after the Closing, Seller's liability for indemnity for breach of Seller's representations and warranties will be limited to twenty percent (20%) of the Unadjusted Purchase Price, <u>provided</u> that this limitation will not apply to fraud, willful misconduct, or Seller's fundamental representations.</p> <p>In addition, except with respect to fraud or willful misconduct, Seller's aggregate liability under the Definitive Agreement will be limited to (i) if the Closing does not occur, (A) any amounts related to third-party claims (including fines or penalties issued by any governmental authority and costs of complying with a remediation or other order from a governmental authority) plus (B) any liquidated damages due and unpaid by Seller to Buyer under the Definitive Agreement plus (C) if Seller owes to Buyer a termination payment for a termination prior to Closing, the excess of \$100,000 per MW of Guaranteed Capacity over the amount described in clause (B) above, <u>provided</u> that if such termination is prior to FNTP, the amount will be limited</p>

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		as provided in clause (i) of item 37 (Termination for Cause by Seller) below, and (ii) if the Closing occurs, 100% of the Purchase Price.
36	Consequential Damages:	No Party to the Definitive Agreement will be liable to another Party for indirect, consequential, or punitive damages arising out of the Definitive Agreement, except (i) liquidated damages and replacement contract losses expressly contemplated by the Definitive Agreement or, subject to the other liability limitations in the Definitive Agreement, “cover” damages, (ii) any termination payment payable pursuant to the Definitive Agreement, (iii) any claim for indemnification pursuant to the Definitive Agreement for any punitive, indirect, or consequential damages owed to a third person, (iv) damages attributable to a Party’s fraud, gross negligence, or willful misconduct, (v) damages arising out of or relating to a breach of a representation or warranty in a Seller tax certificate or Inflation Reduction Act monthly compliance report or of Seller’s intellectual property representations and warranties in the Definitive Agreement, (vi) claims under the intellectual property indemnity, and (vii) claims for diminution in value of the Facility or related assets.
37	Termination:	<p>The Definitive Agreement will include termination rights customary for wind resource acquisitions of the type described in this Term Sheet, including:</p> <ul style="list-style-type: none"> • by mutual written consent of the Parties; • by either Party, if FNTP has not occurred by the FNTP Expiration Date, except that this right will not be available to a Party whose material breach of the Definitive Agreement was the primary cause of such failure; • by Buyer, if Substantial Completion has not occurred by the Substantial Completion Termination Trigger Date;* • by Seller in accordance with the second paragraph of item 17 above (PTC Liquidated Damages Cap);* • by either Party, if, at any time prior to the Closing, (i) any governmental authority of competent jurisdiction has issued a permanent order declaring the Definitive Agreement invalid or unenforceable in any material respect or restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated thereby, and such order has become final and non-appealable (a “Termination Order”); (ii) prior to FNTP, any of Seller’s required regulatory approvals or Buyer’s required regulatory approvals is denied in a final, non-appealable order or other final, non-appealable action issued or taken by a governmental authority with jurisdiction; or (iii) any action shall have been taken, or law enacted, promulgated, or deemed applicable to the transactions contemplated by the Definitive Agreement, by a governmental authority with competent jurisdiction that, directly or indirectly, prohibits the consummation of such transactions as contemplated; provided, however, that a Party will not have the right to

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		<p>terminate the Definitive Agreement pursuant to clause (i) above if such Party or any of its affiliates has sought the entry of, or has failed to use commercially reasonable efforts to oppose the entry of, the applicable Termination Order;</p> <ul style="list-style-type: none"> • without limiting any other termination right, by either Party, if there has been a material breach or material default by the other Party that is not cured within thirty (30) days after notice plus, if it is not possible to cure within such thirty (30) days but can be cured in an additional sixty (60) days, an additional sixty (60) days so long as the defaulting Party continues to diligently pursue cure (<u>provided</u> that (i) if the material breach or default is with respect to Seller's credit support obligation, the cure period will be three (3) business days with no extensions, and (ii) if the material breach or default is a failure to pay an amount when due under the Definitive Agreement, the cure period will be ten (10) business days with no extensions);* • by either Party, if the other Party becomes Bankrupt;* • at any time prior to the Closing, by Seller in accordance with the third paragraph of item 42 below (Title Defect Cap);* and • by Buyer, if there is a change of control of Seller before the Closing.* <p><i>Termination for Cause by Seller prior to Closing.</i> If Seller terminates the Definitive Agreement prior to the Closing due to the material default or material breach by Buyer (including a failure to pay an amount due and owing to Seller thereunder and not disputed in good faith) or Buyer becoming Bankrupt, then, unless otherwise directed by Buyer, Seller will be required to undertake certain transition actions and, at Buyer's request, transfer to Buyer the existing Facility and related assets. In such case, Buyer will be required to pay to Seller, as Seller's sole remedy for and in connection with such termination, (i) the direct costs incurred by Seller for the Work performed prior to termination and in performing the transition actions required as a result of such termination, plus 10% of such direct costs; <u>provided</u> that the aggregate amount payable pursuant to this clause (i) will not exceed the Execution Date Credit Support Amount for termination prior to FNTF or 100% of the Purchase Price after FNTF and prior to the Closing, less (ii) all liquidated damages (<u>provided</u> that liquidated damages pursuant to item 17 above will be payable, if applicable, as if the Closing occurred on the date of termination and subject to refund to Seller if the Facility later qualifies for the PTC) and other amounts due Buyer by Seller under the Definitive Agreement. Seller will not be entitled to terminate for any reason after the Substantial Completion Payment Date. Payment by Buyer of any amount under this paragraph will be conditioned on Seller's completion of the transition actions required of Seller upon the applicable termination.</p> <p><i>Termination for Cause by Seller after Closing.</i> If Seller terminates the Definitive Agreement after the Closing due to the material default or material</p>
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	<p>breach by Buyer (including a failure to pay an amount due and owing to Seller thereunder and not disputed in good faith) or Buyer becoming Bankrupt, then, unless otherwise directed by Buyer, Seller will be required to undertake certain transition actions and, at Buyer's request, transfer to Buyer the related project assets (to the extent not previously transferred to Buyer). In such case, Buyer will be required to pay to Seller, as Seller's sole remedy for and in connection with such termination, (i) the unpaid portion of the Purchase Price at the Closing, plus (ii) the direct costs incurred by Seller in performing the transition actions required as a result of such termination, plus 10% of such direct costs, less (iii) the costs Seller did not incur that it reasonably would have been expected to incur to perform the balance of the Work as of such termination, less (iv) all amounts due Buyer by Seller under the Definitive Agreement or any ancillary agreement; <u>provided</u> that the sum of the amounts in clauses (i) and (ii) above, less the amount of clause (iii) above, shall not exceed the unpaid portion of the Purchase Price.</p> <p><i>Termination for Cause by Buyer prior to Closing.</i> If the Definitive Agreement is terminated pursuant to any default marked above by an asterisk (<u>including</u> any asterisked defaults with respect to which Seller is the terminating Party, <u>but excluding</u> any termination by Seller for material breach by Buyer or Bankruptcy of Buyer) prior to the Closing, Seller will pay to Buyer (i) liquidated damages of (A) if the termination is prior to FNTP, the Execution Date Credit Support Amount, or (B) if the termination is on or after FNTP, \$100,000 per MW of Guaranteed Capacity, less (ii) all liquidated damages (if any) previously paid by Seller to Buyer under the Definitive Agreement, plus (iii) all damages and losses related to third-party claims due Buyer by Seller under the Definitive Agreement.</p> <p><i>Termination for Cause by Buyer after Closing.</i> If the Definitive Agreement is terminated pursuant to any default marked above by an asterisk after the Closing, Seller will be required to undertake certain transition actions and will pay to Buyer, as Buyer's sole remedy arising out of such termination, an amount equal to (i) the total reasonable and necessary costs and expenses actually incurred and accrued by Buyer in connection with such termination, including for the completion of the Work and to replace the warranties and guaranties under the Definitive Agreement (including additional reasonable and necessary overhead and all legal fees and related expenses), plus (ii) the diminution in value resulting from, to the extent applicable, (a) termination of the warranty, guaranty, and liquidated damage provisions under the Definitive Agreement and the ancillary agreements, net of the value of any replacement provisions obtained by Buyer for which Seller compensates Buyer according to clause (i) above, and (b) only in the case of a termination before the Substantial Completion Payment Date, reduced Facility capabilities below the guaranteed test requirements (e.g., capacity and</p>
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		<p>availability) and other reduced Facility capabilities that may be preventing, or may prevent, the Substantial Completion Payment Date, plus (iii) 10% of the amounts described in clause (i) above, plus (iv) all damages (including, if applicable, liquidated damages and indemnifiable Buyer losses) and other amounts payable by Seller to Buyer under the Definitive Agreement. If such sum is greater than the unpaid portion of the Purchase Price, Seller will pay to Buyer the difference equal to such sum, less the unpaid portion of the Purchase Price. If such sum is less than the unpaid portion of the Purchase Price, Buyer will pay to Seller the difference equal to the unpaid portion of the Purchase Price, less such sum, but only if Seller has completed the transition actions required of Seller upon termination.]</p> <p><i>No-Fault Termination.</i> If the Definitive Agreement is terminated pursuant to any termination event above that is <u>not</u> marked by an asterisk, there will be no liability of either Party arising out of such termination.</p> <p>The termination of the Definitive Agreement will not relieve a Party of (a) any undischarged liability of such Party in respect of the period prior to such termination (including for unpaid amounts owing under the Definitive Agreement in respect of the period prior to such termination) or (b) any obligation or liability arising out of any such termination. In addition, the Definitive Agreement will specify other provisions that survive termination.</p>
38	Suspension for Cause by Buyer:	<p>Without prejudice to the limitations on access to the Facility site after the Closing in the Definitive Agreement (see item 11 above), Buyer will be entitled, upon notice to Seller, to suspend performance of all or any portion of the Work as a result of (i) any breach of the Definitive Agreement that poses an imminent threat to the safety of any individual or the Work or (ii) any material violation of any applicable law or permit. Notices of any such suspension delivered by Buyer to Seller will specify the scope and period of suspension (or Buyer's good faith estimate thereof) and the reason(s) therefor. Upon receiving a notice of any such suspension, Seller will be required immediately to suspend the Work or portion of the Work, as applicable, and take such other actions as specified and reasonably required by Buyer to protect individuals and property and to cure any condition that resulted in such suspension. Buyer will withdraw the suspension upon the elimination of the condition(s) that resulted in such suspension. On the specified date of withdrawal, Seller will, as promptly as practicable, resume performance of the Work for which the suspension was withdrawn. The exercise by Buyer of its suspension rights will not limit or relieve Seller of its obligations or adversely affect Buyer's rights and remedies under the Definitive Agreement (including Seller's responsibility, to the extent provided in item 11 above, for the care, custody, and control (including the protection, security, and safekeeping) of the Facility and related assets).</p>

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39	Assignment and Financing Assistance:	<p>The rights and obligations under the Definitive Agreement may not be assigned or otherwise transferred by Buyer without the prior written consent of Seller or by Seller without the prior written consent of Buyer, in each case, which consent may be granted or withheld in the respective sole and absolute discretion of the applicable Party.</p> <p>Notwithstanding the foregoing:</p> <ul style="list-style-type: none"> (i) Buyer may, without the prior written consent of Seller, (x) collaterally assign or otherwise encumber all or any portion of its rights and/or interest in and to the Definitive Agreement to its and any of its affiliates' lenders or other persons providing financing to Buyer or such affiliates, and grant to such lenders or financing parties the power to assign the same in connection with an exercise of remedies, and (y) transfer or assign its rights and obligations under the Definitive Agreement (1) prior to the Substantial Completion Payment Date, to any affiliate of, or in connection with a tax equity financing vehicle for the benefit of, Buyer that (A) is a regulated electric utility or (B) provides to Seller a separate guaranty from the assignor (or another regulated electric utility or parent thereof) of payment of such assignee's obligations under the Definitive Agreement to which such affiliate is a party or (C) agrees with Seller to remain liable for payment to Seller of any amounts due and unpaid by such assignee under the Definitive Agreement as if such obligations were imposed on the assignor directly, (2) within two (2) years after the Closing, to (A) any person succeeding to all or substantially all of the assets of Buyer or (B) any person acquiring all or substantially all of the Facility and related assets (or Buyer's rights thereto), and (3) thereafter, in its sole and absolute discretion; and (ii) Seller may, without the prior written consent of Buyer, transfer or assign its rights and obligations under the Definitive Agreement (in whole but not in part) to any affiliate of Seller, <u>provided</u> that such assignee (x) acquires all of the Facility and all other assets, properties, and interests of Seller in and with respect to the Facility and the Work and (y) continues to comply with the obligations of Seller to provide and maintain credit support according to the Definitive Agreement. <p>In order for a transfer or assignment permitted above (other than a collateral assignment) to be effective, the assignee must be bound by the terms of the Definitive Agreement and have assumed all of the obligations of the assignor thereunder relating to the period from and after the date of assignment. Upon any such assignment (other than a collateral assignment), the assignor will be released from any and all obligations and liabilities under the Definitive Agreement relating to the period from and after the date of assignment (and any other obligations and liabilities assumed by the assignee), except to the</p>
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		<p>extent otherwise provided in clause (i)(y)(1)(B) or (i)(y)(1)(C) above, as applicable.</p> <p>Buyer acknowledges that Seller may enter into one or more financings for the performance of the Work in accordance with the Definitive Agreement. In connection with and contingent upon the closing of any such financing, Buyer agrees that it will, at Seller's sole cost and expense, enter into an agreement with the financing parties regarding such financing substantially in the form attached to the Definitive Agreement.</p>
40	Certain Accounting Matters:	<p>At times specified in the Definitive Agreement, Seller will prepare and provide to Buyer a statement estimating the distribution of the full Purchase Price over Buyer's "retirement units" listed in an exhibit to the Definitive Agreement and a statement estimating the distribution of the full Purchase Price, on a percentage basis, to the accounting/project subcategories listed in another separate exhibit to the Definitive Agreement. Buyer will approve or disapprove, in whole or in part, such statements within an agreed number of days after receipt thereof and, if it disapproves of any such statement, notify Seller of the basis therefor.</p> <p>In negotiations of the Definitive Agreement, Seller and Buyer will consider and address to each other's satisfaction any lease, variable interest, and other accounting issues raised by either of them during such negotiations.</p>
41	Certain Tax Matters:	<p>The Definitive Agreement will allocate to Seller (and, as between Seller and Buyer, Seller will be responsible for the payment of) (i) any and all sales, use, and other taxes legally due with respect to the Work (including any portion thereof) and all transfer and similar taxes relating to the purchase and sale of the Facility and related assets or to the transactions contemplated by the Definitive Agreement, whether before, on, or after the Closing (including any export or import (including customs) duties, fees, tariffs, or taxes, any taxes associated with procuring the real estate rights to or assets incorporated into the Facility or purchased as part of the Work, and any taxes on the purchase by Buyer of the Closing Assets and post-Closing assets); (ii) all taxes relating to the pre-Closing period (including property taxes); and (iii) certain other taxes. Seller will use commercially reasonable efforts to (a) minimize taxes payable by Buyer or any of its affiliates related to the Facility or related assets or Buyer's conduct of the business of owning, financing, using, operating, maintaining or repairing the Facility after the Closing and (b) obtain and maintain or, if requested by Buyer, allow Buyer to obtain and maintain, all material federal, state, and local tax exemptions, credits, incentives, abatements, reductions, and similar tax benefits available with respect to the Facility or related assets that would reasonably be expected to be sought by an experienced owner/renewable power project developer using good industry practices (the "Facility Tax Benefits"). The Definitive Agreement</p>

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		<p>will contain several other covenants and agreements and several Seller representations regarding taxes.</p> <p>Seller will, and will cause and its contractors and subcontractors, to satisfy the applicable labor and other requirements under the Inflation Reduction Act with respect to the Work (including warranty work) and the Facility, including those relating to wages and apprenticeship or the portion of the Work constituting construction, alteration, or repair under applicable laws (including guidance and notices), and cause the related records to be maintained for at least seven (7) years following the Closing. Seller will provide to Buyer and the “PWA Records Agent” appointed by Buyer under the Definitive Group , (i) or will cause EPC Contractor and all applicable contractors and subcontracts to do so, on a periodic basis (e.g., monthly), payroll reports prepared in compliance with the labor requirements under Inflation Reduction Acting wage reporting requirements thereunder, (ii) reports certified by Seller demonstrating the source of the applicable prevailing wage determination in accordance with IRS Notice 2022-61 and other relevant requirements, and (iii) such other certified reports as Buyer may reasonable request to demonstrate compliance with the prevailing wages and apprenticeship requirements of the Inflation Reduction Act with respect to the Project Seller will notify Buyer immediately if it fails to satisfy the requirements of the first sentence of this paragraph.</p>
42	Certain Real Estate Matters: ¹⁵	<p>To the extent not provided by the Effective Date, Seller will deliver the following to Buyer no later than thirty (30) days after the execution of the Definitive Agreement: (i) a title commitment, from a mutually agreed upon title insurance company (to be specified in the Definitive Agreement), insuring Buyer’s fee, leasehold, easement, and other real property interests, as applicable, in, or appurtenant to, the Facility site, the associated improvements and easements, and all insurable appurtenances, subject only to Permitted Encumbrances, in an amount specified by Buyer not to exceed the Purchase Price and with (A) endorsements for zoning (land under development) (ALTA 3.2-06 or equivalent) and minerals and other subsurface substances (land under development) (ALTA 35.3-06 or equivalent, including Electricity Facility definition). and (B) such other endorsements as Buyer may reasonably require (e.g., comprehensive (e.g., encroachments, restrictions), same as survey, zoning, contiguity, energy project, tax credit, M&M liens, etc.); (ii) complete and legible copies of all exception documents listed in the title commitment; and (iii) a land title survey of the Facility site meeting specified requirements. If (a) the title commitment discloses (1) that any person other than Seller has title to or a valid interest in the insured property covered by the title commitment or (2) any title exception that is not a Permitted Encumbrance (including any</p>

¹⁵ **NTD:** These provisions may be modified if Buyer has obtained, as of the execution of the Definitive Agreement, the required title commitment on terms and conditions acceptable to Buyer.

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	<p>title exception that Seller, when delivering the title commitment to Buyer, specifies as a title exception that Seller will cause to be deleted from the title commitment at or prior to the Closing) or that Buyer reasonably believes could adversely affect Buyer's use and enjoyment of the Facility described herein, or (b) the survey discloses any matter that is not a Permitted Encumbrance or is or represents a change in the physical location, configuration, or layout of the Facility (in whole or in part) that results in any encroachment onto an otherwise Permitted Encumbrance or the need for additional access rights or consents, then Buyer may notify Seller in writing of such title objection no later than ninety (90) days after receiving the latest of the title commitment, the exception documents, or the survey. Prior to the Closing but subject to the second following paragraph, Seller will, at its sole cost and expense, cure each title objection made by Buyer and take all steps required by the title company to eliminate such title objection as an exception to the title commitment.</p> <p>No later than thirty (30) days prior to the Closing, Seller will furnish to Buyer (A) an updated title commitment having an effective date no earlier than thirty (30) days prior to the Closing; (B) complete and legible copies of all exception documents listed in the title commitment; and (C) an "as-built" update to the original survey that reflects the completion of the Work. If the updated title commitment, exception documents, or survey discloses any matter described in clause (a) or (b) of the immediately preceding paragraph that was not disclosed on the original title commitment (or a previous title objection that has not been cured), Buyer may notify Seller of its objection to such matter no later than twenty (20) days after receiving the latest of the updated title commitment, exception documents, and survey. Prior to the Closing but subject to the immediately following paragraph, Seller will, at its sole cost and expense, cure each title objection made by Buyer and take all steps required by the title company to eliminate such title objection as an exception to the title commitment.</p> <p>Notwithstanding the preceding two paragraphs, if the aggregate unaffiliated third-party costs to cure the title objections made by Buyer, excluding any title objection concerning a Seller financing encumbrance or other encumbrance incurred by, through, or under, or for the benefit of, Seller, exceeds 8.0% of the Purchase Price as of the Effective Date, Seller may elect, at any time prior to the Closing, to provide a notice of intent to terminate the Definitive Agreement. If Seller delivers such a notice of intent to terminate, Buyer will have the right (in its sole and absolute discretion) to prevent the termination provided for in such notice by notifying Seller, prior to the later of FNTP or ninety (90) days after such delivery, of Buyer's election to waive title objections such that the cost cap will not be exceeded or to agree to pay, through an increase to the Purchase Price, the actual, documented unaffiliated third-party costs above the cost cap to cure the title objections. If Buyer does</p>
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		<p>not provide such a notice, Seller's notice of intent to terminate will be deemed a termination by Seller, effective on the later of the scheduled date for FNTP or ninety (90) days after Seller's delivery of its notice of intent to terminate pursuant to this paragraph.</p> <p>Without limiting the obligations of Seller to cure title objections as set forth above, if any title objection made by Buyer is not timely cured in a manner reasonably satisfactory to Buyer, then Buyer will not be required to Close and may elect either to terminate the Definitive Agreement if the Closing has not occurred by the Substantial Completion Termination Trigger Date or to waive such title objection and accept such title as Seller is able to convey, without a reduction in Purchase Price.</p> <p>Any termination of the Definitive Agreement pursuant to this item 42 (whether by Seller or by Buyer) will be treated as a termination for cause by Buyer, and Seller will pay to Buyer the applicable termination payment amount described in item 39 (which amount will depend on whether such termination is prior to after FNTP).</p> <p>The fees, charges, and other costs and expenses associated with obtaining the required endorsements, performing, documenting, and updating the survey, curing the title objections (except to the limited extent provided in third preceding paragraph), documentary stamps, and recording and filing documentation and materials with respect to the transfer of the interest in or to any Facility site from Seller to Buyer each will be at Seller's sole cost and expense. All other costs of the title commitments and title policy will be borne by Buyer, including the charges and costs of the title insurer to issue the title commitment or title policy.</p>
43	Certain Employment, Benefits, and Labor Matters:	<p>The Definitive Agreement will contain several Seller representations, covenants, and agreements regarding employment, employee benefits and benefits plans, and labor matters, including Seller representations to Buyer that no collective bargaining agreement with respect to the Work or liabilities under the Employment Retirement Income Security Act of 1974 (as amended) will be assigned to or assumed by Buyer.</p>
44	Transaction Expenses:	<p>Except as otherwise provided in the Definitive Agreement, the Party incurring costs in connection with the transactions will be responsible for paying them, including, in the case of Seller, the costs of all Seller deliverables before and after the execution of the Definitive Agreement, such as, for example and not by way of limitation, the costs of (x) all wildlife and other environmental studies (and associated bringdowns), including all environmental consultant charges (except as provided below with respect to the ESA), (y) obtaining all Historical Climatological Data and updated climatological data, and (z) providing all wind resource assessment reports. In addition to the taxes allocated to Seller as described in item 41 above and</p>

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		<p>real estate items allocated to Seller as described in item 42 above, Seller will pay all (i) documentary, recording, contractual (including license), consent, and other conveyance or assignment charges, fees, and other costs related to the purchase and sale of the Facility and related assets (including permit transfer fees), (ii) the fees, charges, and payments associated with all filings or other submissions to a governmental authority required in connection with obtaining or maintaining all available Facility Tax Benefits up to and including the Closing, (iii) 50% of the amounts charged by the environmental consultant in connection with the ESA (and bringdown thereof at Closing), and (iv) the costs of providing any and all supporting documentation and the Related Tax Certificate[s] required in connection with the Tax Opinions and the first \$75,000 of fees and expenses of Tax Credit Counsel in connection with the Tax Opinions (including, in each case, the Tax Opinion to be provided prior to the execution of the Definitive Agreement). In addition to the taxes allocated to Buyer as described in item 41 above and real estate items allocated to Buyer as described in item 42 above, Buyer will pay any fees and expenses of Tax Credit Counsel in connection with the Tax Opinions in excess of the first \$75,000 and 50% of the amounts charged by the environmental consultant in connection with the ESA (and bringdown thereof at Closing).</p>
45	MISO Agreement:	<p>As part of the transactions contemplated by the Definitive Agreement, Seller and Buyer will enter into an agreement setting forth the terms and conditions that, as between the Parties, will govern and apply to certain MISO matters applicable to the Facility (the “MISO Agreement”). Subject to the terms of the MISO Agreement, Buyer (or its designee) will serve as the “market participant” for the Facility in MISO (the “Market Participant”). As the Market Participant, Buyer (or its designee) will represent the Facility in MISO and have the right to execute and submit documents and take (or refrain from taking) other actions in its capacity as the Market Participant, subject to certain limitations set forth in the MISO Agreement.</p> <p>In its capacity as the Market Participant for the Facility, Buyer (or its designee) will, on behalf of Seller, submit such documents, and take and refrain from taking such other actions, as Seller reasonably directs Buyer to submit or to take or not take pursuant to Seller’s instructions provided in accordance with the MISO Agreement solely to the extent necessary and reasonable for Seller to (i) perform its obligations prior to the Closing under and in accordance with the Definitive Agreement and applicable laws and permits in the capacity of subcontractor to Seller (with Seller remaining responsible for such obligations, absent the gross negligence or willful misconduct of Buyer), or (ii) dispute with MISO the amount of any cost, charge, payment, or credit assessed against or provided to Buyer (or its designee) as the Market Participant and allocated to Seller pursuant to the MISO Agreement, including registering the Facility in MISO’s commercial</p>

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	<p>models, arranging with MISO capacity demonstration and any other testing of the Facility required or desired under the MISO rules, offering energy from the Facility into the MISO markets during tests of the Facility, and financially settling with MISO (for subsequent allocation between the Parties as set forth below) on matters related to the Facility. Notwithstanding the foregoing, Seller may not require Buyer to designate the Facility as a Capacity Resource (as defined in the MISO rules) or offer the Facility into any MISO planning resource auction (or successor process) (which decisions will be in the sole and absolute discretion of Buyer) and, to the extent that Seller requires Buyer to schedule any products from the Facility into MISO in order for Seller to perform its obligations under and in accordance with the Definitive Agreement and/or applicable laws and permits, Buyer will have sole and absolute discretion on how and on what terms those products are offered or otherwise scheduled, so long as Buyer does so in a manner intended to enable Seller to perform such obligations.</p> <p>Seller will be responsible for the out-of-pocket costs and charges reasonably incurred by Buyer (or its designee) in its capacity as the Market Participant and all MISO costs and charges with respect to the Facility and participation in the MISO markets that relate to the period through the Closing, <u>including</u> costs with respect to satisfying the FD/FR Condition, <u>but excluding</u>, subject to certain exceptions set forth in the MISO Agreement (e.g., failure by Seller or the Facility to comply with resulting MISO dispatch instructions), any costs and charges assessed by MISO solely as a result of the schedules or offers of electric products from the Facility made by Buyer to MISO. Buyer will be entitled to all MISO payments and credits attributable to the Facility that relate to the period before, at, and after the Closing. Buyer may net or set-off any MISO cost or charge or other cost or charge payable by Seller to Buyer under the MISO Agreement against any MISO or other payment or credit payable by Buyer to Seller (whether under the MISO Agreement or otherwise), including against the payment of the Purchase Price (or portion thereof) due to Seller (including at the Closing).</p> <p>If Buyer (or its designee) is the Market Participant and the Definitive Agreement terminates (other than in the case of a termination where Buyer acquires Seller's rights and interest in the Facility), Seller and Buyer will, at Seller's sole cost and expense, cause MISO to qualify and recognize Seller (or its designee) as the Market Participant at the earliest possible time after such termination event in accordance with the MISO rules.</p>
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