

ADMINISTRATIVE OPERATIONS

TO: Members of the Board of Trustees
FR: Michael B. Cline, Senior Vice President for Administrative Operations
DATE: April 1, 2019
RE: Approval to Execute Ground Lease and Steam Purchase Agreement with Duke Energy Indiana, LLC and to Plan, Finance, Construct, and Award Construction Contract for Wade Utility Plant Connection to External CHP Plant

Attachments:

- Resolution
- Exhibit A: Draft Steam Purchase and Sale Agreement (together with summary of terms)
- Exhibit B: Draft Ground Lease (together with summary of terms)
- Exhibit C: Location of the New Duke Energy CHP Plant

Project Description:

- This project includes the following components:
 - The lease of one acre of land immediately west of the Wade Utility Plant to Duke Energy for a term of 35 years to build, own and operate a new, 16 MW combined heat and power (CHP) plant;
 - A steam purchase agreement for a term of 35 years;
 - The planning, financing, constructing and awarding of the construction contract to connect the Wade Utility Plant to the Duke Energy CHP Plant.
- The new Duke Energy CHP Plant will produce both steam and electricity. The steam will be purchased by the University, and the electricity will go to the grid for Duke Energy customers.
- Specific to the project to connect the Wade Utility Plant to the Duke Energy CHP Plant:
 - Project delivery method: Construction Manager as Constructor
 - Guaranteed Maximum Price delivery: February 2020
 - Construction start: March 2020
 - Construction completion: December 2020

Project Benefits:

- This project creates a cost-effective way for the University to purchase steam and mitigate future fiscal risk.
- The University's operations and maintenance cost on existing university-owned assets will be reduced.
- The need to make future capital investments at Wade Utility Plant will be deferred.

- In the event of a major regional grid disruption, the Duke Energy CHP Plant will provide back-up, emergency power to the University.

Project Cost and Funding:

- Specific to the project to connect the Wade Utility Plant to the Duke Energy CHP Plant:
 - Estimated Total Project Cost: \$6,500,000
 - Source of Funds: Bond Proceeds – Fee Replaced (Series X): \$6,500,000

c: Chairman Mike Berghoff
President Mitch Daniels
Treasurer Bill Sullivan
Provost Jay Akridge
Assistant Treasurer Jim Almond
Corporate Secretary Janice Indrutz
Legal Counsel Steve Schultz

RESOLUTION OF THE BOARD OF TRUSTEES (“BOARD OF TRUSTEES”) OF THE TRUSTEES OF PURDUE UNIVERSITY (THE “CORPORATION”)

- 1. APPROVING THE MATERIAL TERMS OF A GROUND LEASE AND EASEMENT AGREEMENT (“GROUND LEASE”) WITH DUKE ENERGY INDIANA, LLC (“DUKE”) FOR THE CONSTRUCTION OF A SIXTEEN MEGAWATT COMBINED HEAT AND POWER GENERATION FACILITY (“CHP”); AND**
- 2. APPROVING THE MATERIAL TERMS OF A STEAM PURCHASE AND SALE AGREEMENT (“SPSA”) WITH DUKE; AND**
- 3. DECLARING THE NECESSITY FOR THE PLAN, FINANCE, CONSTRUCTION AND AWARD OF A CONSTRUCTION CONTRACT FOR THE WADE UTILITY PLANT CONNECTION TO DUKE CHP (THE “CONNECTION PROJECT”); AND**
- 4. AUTHORIZING DESIGNATED OFFICERS OF THE CORPORATION TO OBTAIN SUCH APPROVALS AND TAKE SUCH ACTIONS AS MAY BE NECESSARY OR INCIDENTAL TO THE ACCOMPLISHMENT OF THE PURPOSES AND INTENT OF THIS RESOLUTION**

WHEREAS, Duke is engaged in the generation, transmission, distribution and sale of electric energy in Indiana;

WHEREAS, the Ground Lease, SPSA, and Connection Project are referred to collectively as the CHP Project;

WHEREAS, combined heat and power is an efficient and clean approach to generating power and thermal energy from a single fuel source, and Duke’s CHP will recover otherwise wasted thermal energy to produce steam for use by Purdue University (the “University”) in the generation of electric power, provide heat to campus and be available for additional auxiliary uses;

WHEREAS, CHP systems typically achieve enhanced total system efficiencies for producing electricity and thermal energy by using waste recovery technology;

WHEREAS, CHP systems are more efficient than traditional systems because less fuel is required to produce a given energy output than with separate heat and power systems, with this higher efficiency translating into lower operating costs and reduced emissions of pollutants;

WHEREAS, CHP distributed energy can also increase reliability and power quality, reduce grid congestion, and minimize distribution losses;

WHEREAS, the CHP will be a natural gas power plant with a capacity of 16 megawatts consisting of one natural gas turbine and a heat recovery steam generator interconnected to Duke’s transmission system, with the power generated by the CHP to be exported to Duke’s system to serve its customers;

WHEREAS, the steam recovered from the process of power generation at the CHP will be sold to the University, thereby allowing the University to significantly delay major capital costs that would be otherwise required to upgrade existing boiler facilities or purchase an additional turbine or boiler;

WHEREAS, pursuant to the SPSA, in the event of a major grid disturbance, the CHP will be available to provide up to 16 MW of back-up, emergency power generation to the University;

WHEREAS, the SPSA attached hereto as Exhibit A sets forth the material terms and conditions of the steam supply and electric islanding capabilities from Duke to the University for an agreement term of thirty-five (35) years;

WHEREAS, pursuant to the SPSA, the University will purchase steam produced by the CHP and pay an extra facilities charge related to the availability of the CHP to island and power the University campus during a major grid outage;

WHEREAS, the CHP will be located on approximately one acre of land located to the west of the Wade Utility Plant to be leased by the Corporation to Duke as more fully described the Ground Lease (the “Real Estate”) that is attached hereto as Exhibit B;

WHEREAS, given that the rental value of the Real Estate has been incorporated into the price at which the University will purchase steam from Duke under the SPSA, the Board finds that it is in the Corporation’s and University’s best interests to enter into the Ground Lease for a thirty-five year (35) period coterminous with the SPSA at a nominal rent of One Hundred Dollars (\$100);

WHEREAS, the Connection Project is necessary to provide the required condensate to the CHP and to transport the CHP produced steam to the Wade Power Plant;

WHEREAS, having reviewed the general terms and benefits of the proposed CHP Project, the Board has determined that it is in the best interests of the Corporation and of the University to approve the transactions identified above and authorize the necessary actions to move forward with it;

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

1. The Board hereby approves the Ground Lease by the Corporation (in its own name or in the name of the University) to Duke on the material terms set forth therein, with such changes thereto as may be approved by the Treasurer in his discretion in the course of finalizing the Ground Lease (with the execution thereof by the Treasurer to be conclusive evidence of such approval).

2. The Board further approves the SPSA between the University and Duke on the material terms set forth therein, with such changes thereto as may be approved by the Treasurer in his discretion in the course of finalizing the SPSA (with the execution thereof by the Treasurer to be conclusive evidence of such approval).

3. The Board hereby finds that a necessity exists for the planning, financing and construction of the project identified as the Connection Project at the Purdue University West

Lafayette Campus, as well as for the awarding of one or more contracts for the completion of such project.

4. In order to provide funds with which to accomplish the Connection Project, the Treasurer of the Corporation is hereby authorized to use Bond Proceeds – Fee Replaced (Series X) in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000) (the “Authorized Cost Level”).

5. The Board authorizes and directs the Treasurer of the Corporation to select, retain and contract with an engineering firm to provide such planning and design services for the Connection Project for such amount and on such terms as he in his sole discretion shall deem to be in the interests of the University.

6. For purposes of Article VII, Section 1(c) of the Bylaws, no change orders in connection with any of the above-referenced contracts shall require further Board’s authorization and approval unless and until such a change order, together with all other change orders previously authorized, approved and executed by the Treasurer, causes the aggregate amount of expenditures incurred under such contracts to exceed the Authorized Cost Level for this project (it being understood that any change order or any other action that would cause such Authorized Cost Level to be exceeded must, before it is given effect, receive the express prior approval of the Board of Trustees).

7. The Treasurer and Assistant Treasurer of the Corporation, and the Chief Financial Officer and Treasurer and the Senior Vice President and Assistant Treasurer of the University, and each of them, are hereby authorized, in the name and on behalf of the Corporation, or of the University, to negotiate, prepare and execute the Ground Lease and SPSA together with any such other documents as are deemed by them to be necessary or expedient to effectuate the transactions contemplated above, and the Secretary and Assistant Secretary of the Corporation, and each of them, are hereby authorized and empowered to attest the execution of all such documents.

8. The above-designated officers, together with the Chairman, Vice Chairman, General Counsel, Deputy General Counsel, Secretary and Assistant Secretary of the Corporation, and each of them, are hereby authorized and empowered for, on behalf and in the name of the Corporation, or of the University, to execute and deliver any and all such other documents and instruments, make such filings, seek such governmental approvals, and take such other actions as are deemed by them to be necessary and proper to carry out the purpose and intent of this Resolution, whether herein specifically authorized or not, except such actions as are specifically required by law to be taken by the Board of Trustees as the governing board of The Trustees of Purdue University.

9. The Treasurer of the Corporation be, and hereby is, further authorized and empowered to delegate to one or more officers and representatives of the Corporation or of the University such tasks and responsibilities with respect to the completion of the CHP Project as he, in his sole discretion, shall deem to be in the best interests of the Corporation and the University and consistent with the exercise of the authority granted above.

10. All acts of said officers in conformity with the intent and purposes of this Resolution, whether taken before or after this date, are ratified, confirmed, approved and adopted as the acts of the Corporation.

**SUMMARY OF STEAM PURCHASE AND SALE AGREEMENT
BETWEEN PURDUE UNIVERSITY AND DUKE ENERGY INDIANA**

Issue	Summary	SPSA Citation
Parties	Trustees of Purdue University (Buyer) and Duke Energy Indiana, LLC (Seller)	Preamble
Purpose	To provide the terms and conditions surrounding the sale of steam (both unfired and fired) from Duke to Purdue, from a combined heat and power (CHP) facility to be constructed by Duke on Purdue-owned land adjacent to Purdue's Wade power plant.	Preamble
Term	Effective upon signing, and continues in effect for 35 years from the date of commercial operation of the CHP facility (unless terminated earlier pursuant to the Agreement's termination provisions).	2.1
Commercial Operation Date	Target Commercial Operation Date is April 2022, which may be extended for up to 12 months upon the occurrence of certain circumstances. The Agreement provides that commercial operation date must be no later 3 years after receipt of approval to construct the facility from Indiana Utility Regulatory Commission.	
Seller's Obligations to Produce and Deliver Steam	Duke is obligated to produce certain hourly volumes of unfired steam, plus an amount of fired steam that may be requested by Purdue. All steam produced by Duke and delivered to Purdue must meet certain steam volume and quality specifications. Duke must operate and maintain the CHP facility in accordance with prudent utility operating practices and in compliance with all laws. To the extent possible, Seller must commit, dispatch, and operate the Facility so as to produce unfired steam on a continuous basis and in certain volumes each hour, plus the amount of fired steam requested by Buyer, without regard to the economics of such commitment, dispatch, or operation.	3.1, Ex. A
Purdue's Obligations to Purchase Steam	Except as provided below, Purdue must accept and pay for all unfired steam produced and delivered by Duke, and all fired steam produced and delivered at Purdue's request. Purdue has no obligation to accept and pay Duke for steam that fails to meet the Agreement's steam specifications— unless the steam is determined not to meet the specifications due to Purdue's delivery to Duke of non-conforming condensate. In such case, Purdue will be responsible for paying Duke a minimum payment obligation and Duke will be relieved of its obligations to produce and deliver steam, unless/until the condensate nonconformity is remedied.	3.3, Ex. A, Ex. C
Purdue's Obligations to Supply Condensate	Purdue is obligated to deliver condensate to Duke to be used to produce the steam, in accordance with certain condensate specifications.	6.1, Ex. A
Steam Pricing	For unfired steam: monthly payment = unfired steam volume x natural gas price x unfired steam multiplier (1.55) Fired steam: Purdue's monthly cost (paid to natural gas company) = natural gas volume x natural gas price (no multiplier)	Ex. C
Purdue's Obligations to Provide Construction Power and Water	Purdue is obligated to provide construction power to Duke, as well as potable water and fire protection water services all at no separate cost to Duke. Purdue takes on no obligation to provide certain volumes or pressures or amounts – only what is available (although for prolonged interruptions of potable water, Purdue is obligated to Buyer shall undertake commercially reasonable efforts to provide potable water through a temporary water line or feed).	6.2., 6.3., 6.4
Natural Gas Hedging	Duke must develop and implement a natural gas hedging strategy for the natural gas used at the CHP facility – subject to Indiana Utility Regulatory Commission approval. Duke must meet with and consider Purdue's input when developing such hedging strategy.	6.6

Interconnection Facilities	Each party must install, own, operate, and maintain its own interconnection facilities, at its own expense.	7.1, 7.2
Interruptions	Duke must use best efforts to deliver unfired steam to Purdue on a continuous basis, with a target minimum annual availability of 95%. Duke must pay Purdue liquidated damages of \$10,000 per each 1% of availability below 95%, calculated on an annual 2-year rolling average basis. Duke will be in material breach of the Agreement if it falls below 50% availability in a contract year, or if an interruption continues for 75 days or more. Duke must also use best efforts to produce and deliver fired steam as and when requested by Purdue, with the same availability guarantee, liquidated damages, and material breach triggers as described above.	8.1
Change in Law	If there is a change in law (other than taxes), and the resulting costs will exceed the change in law threshold (\$10,000,000), then the parties shall meet and discuss any changes to payments under the Agreement to accommodate the change in law costs. If no agreement is reached, the non-claiming party may terminate the Agreement.	13.5
Default Events	Default events include typical default provisions, such as failure to pay if not remedied, materially misleading representations and warranties, failure to perform material covenants, material breaches, bankruptcy, fraud, etc.	15.1, 15.2
Termination Events and Consequences of Termination	Termination events include typical default provisions, such as expiration of the Agreement at the end of the term, force majeure events, change in law events, default events, etc. Note that upon termination for any of the above (except termination due to Purdue's default), Purdue will have the option, upon notice, to purchase the CHP facility at roughly its then-existing book value, net of accrued depreciation. Note also that, upon termination if Purdue does not exercise its purchase option, Duke has an obligation to return the site to its original condition.	16.1 – 16.6, Ex. D
Environmental Attributes	Purdue and Duke will share, on a 50/50 basis, any environmental attributes attributable to the CHP facility – such as emissions reduction credits or renewable energy credits.	4.4
Permits	Each party is responsible for obtaining and maintaining various required permits. Note that Duke or its EPC are required to obtain all anticipated permits and approvals (with exception that Purdue must obtain State of Indiana approval to enter into Ground Lease)	9.1, Ex. E
Living/Learning Laboratory	The CHP facility may be used for academic purposes, providing students and faculty with a learning laboratory.	19.2
Excess Facilities	As referenced in the Agreement, Duke and Purdue will also enter into an Excess Facilities Agreement, whereby Duke will provide, own, operate, and maintain black start and islanding equipment, related to the provision of electricity by Duke, particularly during times of grid failure. Purdue has the option to pay monthly fee or an upfront payment for the excess facilities equipment.	Excess Facilities Agreement
Confidentiality and Public Announcements	Each party is required to keep the other party's confidential information protected, including pricing information. The parties must coordinate public announcements, press releases, etc.	18.1 – 18.6
Other Provisions	Conditions Precedent, Metering, Monitoring, Payments, Planned Outages, Forced Outages, Emergencies, Force Majeure, Compliance with Law, Credit and Collateral Requirements, Representations and Warranties, Insurance, Indemnification, Limitation of Liability	Various provisions

STEAM PURCHASE AND SALE AGREEMENT

Between

DUKE ENERGY INDIANA, LLC

as Seller

and

PURDUE UNIVERSITY

as Buyer

Dated as of [●]

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STEAM PURCHASE AND SALE AGREEMENT

This STEAM PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into effective as of [●] (the “Effective Date”) between Duke Energy Indiana, LLC, an Indiana limited liability company (“Seller”), and the Trustees of Purdue University, a body corporate created and existing under the laws of the State of Indiana (“Buyer”). Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Buyer has a university campus located in West Lafayette, Indiana, which uses steam for various purposes, including but not limited to heating university academic, administrative and residential buildings and generating electricity for use on its campus;

WHEREAS, Buyer desires to engage Seller to convert water into steam that Buyer can purchase from Seller for use in Buyer’s facilities and is willing to lease to Seller a site on Buyer’s property at which Seller can produce and provide such steam and to provide other supplementary services to Seller related to the combined heat and power (“CHP”) operations;

WHEREAS, Seller is willing to be so engaged and accordingly is willing to construct, own, and operate at such site a combined heat and power facility consisting of a natural gas fired turbine and associated electric generator, along with an associated heat recovery steam generator and supplementary direct fired natural gas burner;

AND WHEREAS, Buyer and Seller have agreed to enter into Ground Lease and Easement Agreement contemporaneously with the execution of this Agreement to facilitate the construction and operation of the CHP Facility.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be bound hereby, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS AND USAGE

1.1. Definitions. As used in this Agreement, the following capitalized terms have the meanings set forth below.

“Affected Party” has the meaning set forth in Section 13.5(1).

“Affiliate” means, with respect to any specified Person (other than a natural person), any other Person who, directly or indirectly, through one or more intermediaries, owns or controls, is under common ownership or control with, or is owned or controlled by, such Person. For purposes of the foregoing, “control”, “controlled by”, and “under common control with” with respect to any Person will mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities,

by contract, of otherwise. In addition, for purposes of this Agreement, the term “Affiliate” includes the Purdue Research Foundation, whether or not it meets the ownership or control test.

“Agreement” has the meaning set forth in the first paragraph of this Agreement.

“Annual Steam Plan” means a plan developed by Seller, in consultation with Buyer, and communicated to Buyer prior to the beginning of each calendar year during the term of this Agreement, setting out the anticipated operational plans for the coming Contract Year, including projected steam volumes, Planned Outages and other relevant operational matters.

“Bankrupt” means, with respect to a Party or other entity, that such Party or other entity: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means any day except a Saturday, Sunday or a legal holiday recognized by Purdue University. A Business Day will open at 8:00 a.m. and close at 5:00 p.m., at the location of the Facility.

“Buyer” has the meaning set forth in the first paragraph of this Agreement.

“Buyer Conditions Precedent” has the meaning set forth in Section 2.3.

“Buyer Interconnection Facilities” means the Interconnection Facilities located on Buyer’s side of the applicable Delivery Point.

“Change in Law” means any binding, written change after the Effective Date in the judicial or administrative interpretation of, or adoption after the Effective Date of, any Environmental Law or Law relating to Taxes, which is inconsistent or at variance with any Law in effect on the Effective Date; *provided, however*, that a Change in Law will not include any change or adoption of any Law with respect to (a) Taxes assessed on income, profits, revenues or gross receipts, (b) Taxes that vary the compensation, benefits, or amounts to be paid to or on behalf or on account of employees, or (c) organization, existence, good standing, qualification, or licensing in any jurisdiction.

“Change in Law Costs” means the actual and verifiable change (whether on a one-time or cumulative basis) in the Affected Party’s operating costs under this Agreement that results from a Change in Law, excluding costs of any applicable greenhouse gas emissions credits or offsets (which are subject to the provisions of Section 13.5(3)); *provided, however*, that “Change in Law Costs” will not include any costs or expenses caused by or resulting from any failure by the Affected Party to comply, or delay by the Affected Party in complying, with any Law. “Change in Law Costs” include any additional amounts of federal, state or local Taxes that the Affected Party is required to pay as a result of reimbursement by the other Party of any Change in Law Costs under or pursuant to this Agreement.

“Change in Law Threshold Amount” means the amount of \$10,000,000.

“Change of Control” means the occurrence of any one of the following events with respect to Seller or Buyer or any direct or indirect owner of a majority of the ownership interests in Seller or Buyer: (a) a transfer of a majority of the ownership interests in Seller or Buyer or such owner resulting in a change in Control, or (b) any consolidation or merger of Seller or Buyer or such owner in which such entity is not the continuing or surviving entity, or (c) a sale or conveyance of any direct or indirect ownership interest in Seller following which Seller’s Ultimate Parent Entity no longer, directly or indirectly, Controls Seller; *provided, however*, that a Change of Control will not be deemed to have occurred as a result of a Permitted Transaction.

“CHP” means combined heat and power.

“Claim” means any demand, claim, action, suit, investigation, arbitration or proceeding (whether at law or in equity) before or by any Governmental Authority or by any other Person.

“Claiming Party” has the meaning set forth in Section 13.1.

“Commercial Operation Date” means the date identified in written notice from Seller to Buyer as the date upon which the Facility, including the natural gas supply thereto, is complete, and deliveries of Steam (other than test deliveries) will commence under this Agreement, which date shall be no later than three (3) years following approval of construction of the Facility by the Indiana Utility Regulatory Commission.

“Condensate” means the Steam condensate returned by Buyer to the Facility for use by Seller in the production of Steam, in accordance with the specifications set forth on Exhibit A. For the avoidance of doubt, condensate delivered to Seller shall consist of a single blended stream of condensate return supplemented with demineralized water from Buyer’s demineralized water treatment system.

“Condensate Delivery Point” means the physical point at which interconnection for delivery of Condensate is made between the Condensate systems of the Host and the Facility, as set forth on Exhibit B.

“Condensate Flow Meter” has the meaning set forth in Section 5.2(1).

“Condensate Interconnection Facilities” means those physical facilities of a quality and type reasonably required for the receipt and delivery of Condensate, including service stop valves,

meter stop valves, meter supports, meter(s), pipe system(s), pipeline(s), and other facilities of a quality and type reasonably required to effectuate the purposes of this Agreement.

“Confidential Information” has the meaning set forth in Section 18.1.

“Contract Price(s)” means the Steam price(s) to be paid by Buyer to Seller for Steam, as set forth in Exhibit C.

“Contract Year” means each calendar year during the Delivery Term, provided that if the first and last Contract Years are not full calendar years, the first Contract Year will mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year will mean the period from January 1 of the last Contract Year through the last day of the Term.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the current (A) rating issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (B) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

“Defaulting Party” has the meaning set forth in Section 15.1.

“Delivery Point” means the Steam Delivery Point and Condensate Delivery Point.

“Delivery Term” means the period of time commencing on the Commercial Operation Date and ending on the expiration or earlier termination of the Term.

“Disclosing Party” has the meaning set forth in Section 18.1(1).

“Dispute” has the meaning set forth in Section 19.5(1).

“Early Termination Date” has the meaning set forth in Section 15.4(1).

“Easements” has the meaning set forth in the Ground Lease.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“Electric Delivery Point” means the Delivery Point for electricity from Buyer to Seller for power during construction prior to the commencement of commercial operations of the Facility power purposes.

“Electric Power Attributes” means any current or future defined characteristic, certificate, tag (but not green tags or other Environmental Attributes), credit, benefit (including capacity benefits), incentive, rebate, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements or system stability and security benefits, resulting from, arising out of, or related to the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Electric Power Attributes are measured in MW and do not include any production tax credit, investment tax credit, or other renewable energy tax credits, or any other tax incentives existing now or in the future associated with the construction, ownership, or operation of the Facility.

“Emergency” means any occurrence that requires immediate action in order to prevent or mitigate serious actual or potential hazard to the safety of Persons or property, or material interference with the safe operation of the Facility or the Host, or violation of any applicable Environmental Law or other Law or Permit or any directive by a Governmental Authority.

“Emissions Reduction Credit” means any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under the Clean Power Plan promulgated by the Environmental Protection Agency under the Clean Air Act.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, including greenhouse gas offsets, “carbon credits,” emission credits, emission reduction credits, renewable energy credits, renewable energy certificates, environmental attributes, environmental credits, “green” credits, “green” certificates, “green” tags, emissions allowances, or other similar credits or certificates, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include any production tax credit, investment tax credit, or other renewable energy tax credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Environmental Laws” means all Laws relating to (i) facility siting, land use and environmental matters, (ii) the control of any pollutant, or protection of the air, water, or land, (iii) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation, (iv) exposure to hazardous, toxic or other harmful substances, and (v) the protection and enhancement of the environment. Environmental Laws will include the Clean Air Act, 42 U.S.C. §7401 et seq. (“CAA”), the Clean Water Act, 33 U.S.C. § 1251 et seq. (“CWA”), the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Resource Conservation Recovery Act, 42 U.S.C. §6901 et seq. (“RCRA”), the Safe Drinking Water Act, 42 U.S.C. §300f et seq., the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act, 32 U.S.C. §9601 et seq. (“CERCLA”), the Federal Insecticide, Fungicide and Rodenticide

Act, 7 U.S.C. § 136 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (“TSCA”), and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq., any state or local Laws relating to Permits, local land use control ordinances or similar Laws, and any state or local Laws implementing or substantially equivalent to the foregoing federal requirements.

“Environmental Noncompliance” means any violation of Environmental Laws, including: (a) the discharge, emission, release or threatened release (as such term is used in CERCLA, the CWA, the CAA or other similar Environmental Laws) of any Hazardous Materials in violation of any Environmental Laws; (b) any noncompliance with Environmental Laws regarding the construction, modification, operation and maintenance of physical structures, equipment, processes or facilities; (c) any noncompliance with federal, state or local requirements governing occupational safety and health related to Hazardous Materials; (d) any facility operations, procedures, designs, or other matters which do not conform to the statutory or regulatory requirements of Environmental Laws, including the CAA, the CWA, the TSCA and the RCRA; (e) the failure to have obtained or to maintain in full force and effect Permits, variances or other authorizations necessary for the legal operation of any equipment, process, facility or any other activity, to the extent required for compliance with Environmental Laws; or (f) the operation of any facility, process, or equipment in violation of any Permit condition, schedule of compliance, Order, to the extent required for compliance with Environmental Laws.

“Event of Default” has the meaning set forth in Section 15.1.

“Excess Facilities Lease and Services Agreement” means the agreement between the Trustees of Purdue University and Duke Energy Indiana, LLC, dated [___], relating to the installation and operation of excess facilities by Seller for Buyer in order to enable islanding capabilities and power supply during outages.

“Existing Environmental Conditions” means any environmental conditions, circumstances or other matters of fact pertaining to, relating to or otherwise affecting the environment and in existence prior to the Effective Date, including any environmental pollution, contamination, degradation, damage or injury caused by, related to, or arising from or in connection with (i) the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials), dumping or threatened release of Hazardous Materials in connection with the ownership, possession, construction, improvement, use or operation of the Site prior to the Effective Date, (ii) the offsite transport prior to the Effective Date of Hazardous Materials from the Site, or the treatment, storage or disposal of Hazardous Materials transported from the Site to another site prior to the Effective Date and (iii) the release prior to the Effective Date of Hazardous Materials from the Site into the atmosphere or any water course or body of water not included in the Site.

“Expiration Date” means the date which is 35 years from the Commercial Operation Date, plus any extensions of the Term pursuant to other provisions of this Agreement.

“Facility” means (i) the CHP facility to be constructed by Tenant on the Site as such facility is generally described on Exhibit B attached hereto, including the HRSG, and (ii) all other equipment related to the foregoing owned by Seller and located on the Site or the Easements, and (iii) any modifications or additions to any of the foregoing.

“Fired Steam” means the steam produced by the Facility via a direct combustion process utilizing the HRSG and delivered to the Steam Delivery Point in accordance with the specifications on Exhibit A.

“Force Majeure Event” means any event, condition or circumstance that: (i) is not a consequence or result of the fault or negligence of the affected Party or its Affiliates, (ii) cannot, despite the exercise of commercially reasonable efforts by the affected Party, be controlled, prevented, avoided or removed, and (iii) prevents in whole or in part performance of the obligations of the affected Party under this Agreement. The following events, the list of which is not exhaustive, will be considered to be Force Majeure Events to the extent they satisfy the requirements of the foregoing sentence: (a) lightning, earthquake, hurricane, storm, wind, drought, abnormal weather condition, or other similar natural calamities or acts of God; (b) fire, explosion or chemical contamination; (c) epidemic, quarantine restriction or plague; (d) act of war (declared or undeclared), invasion, armed conflict or act of foreign enemy, blockage, economic sanction or embargo, revolution, sabotage, riot, insurrection, civil unrest or disturbance, military or guerilla action, banditry, terrorist activity or a threat of terrorist activity, or tribal, religious or sectarian unrest; (e) radioactive contamination (and associated clean-up activities); and (g) other acts or occurrences beyond the control of the affected Party, including acts or omissions of Governmental Authorities (to the extent such act or omission is not a result of the failure of the affected Party to act on any lawful request of such Governmental Authority). “Force Majeure Event” expressly excludes: (w) governmental action (including any Order) that such Party could have prevented by compliance with applicable Law; (x) a Party’s financial inability to perform, (y) changes in market prices for products or services produced by a Party, (z) any failure to perform, and the effects of such failure, that could have been prevented, overcome or remedied by the exercise of reasonable efforts by the Party claiming excused performance by reason of a Force Majeure Event, or (aa) global economic or financial market conditions.

“Forced Outage” means an outage at the applicable facility that is not a Planned Outage and not the result of a Force Majeure, and that forces the applicable facility out of service and prevents the facility from providing or receiving Steam.

“GAAP” means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any national, state, provincial, local, tribal or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; *provided, however*, that “Governmental Authority” will not in any event include any Party.

“Ground Lease” means the Ground Lease and Easement Agreement between Seller, as Tenant, and Buyer, as Landlord, of even date herewith, pursuant to which Seller leases the Site.

“Hazardous Materials” means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed or regulated as hazardous, toxic or dangerous or as waste or a contaminant, or are otherwise listed or regulated, or for which liability or standards of care are imposed, under any Environmental Law, including petroleum products, asbestos, PCBs, coal combustion by-products, urea formaldehyde foam insulation, lead-containing paints or coatings, and any substances included in the definition of “hazardous debris,” “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “pollutants,” “contaminants” or words of similar import, under any Environmental Laws.

“Host” means Buyer’s university campus located in West Lafayette, Indiana, and all appurtenant structures, fixtures, improvements, equipment and other appurtenant personal property interests now or hereafter owned or leased by Buyer or any Affiliate of Buyer on the Host Premises, including the electrical, water supply and steam delivery systems (and other elements reflected in this Agreement) between the Host and the applicable Delivery Points, the Electric Delivery Point, and any and all other improvements installed on the Host Premises from time to time.

“Host Premises” means all premises other than the Site that are owned or leased by Buyer or its Affiliates and at which the Steam will be used or through which the Steam will be delivered.

“HRS” means the heat recovery steam generator located within the Facility.

“IFRS” means International Financial Reporting Standards as in effect from time to time.

“Indemnified Party” has the meaning set forth in Section 17.1.

“Indemnifying Party” has the meaning set forth in Section 17.1.

“Interconnection Facilities” means each of the Steam Interconnection Facilities and the Condensate Interconnection Facilities.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), plus one hundred basis points; and, (b) the maximum rate permitted by applicable Law.

“Landlord” means Buyer as Landlord under the Ground Lease.

“Laws” means all common law, laws, statutes, treaties, rules, orders, codes, ordinances, standards, regulations, restrictions, official guidelines, policies, directives, interpretations, Permits or like action having the effect of law of any Governmental Authority.

“Losses” has the meaning set forth in Section 17.1.

“Merger Event” means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to, another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or other entity under this Agreement, either by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party, (ii) the Credit Rating (from each of S&P and Moody’s, as applicable) of such of the resulting, surviving or transferee entity is not equal to or higher than the Credit Rating of such Party or other entity, or (iii) the resulting, surviving or transferee entity is not rated by at least one of S&P and Moody’s.

“Meter” means any Steam Flow Meter, Condensate Flow Meter, and any meter used to measure electricity usage.

“Metering Tolerances” means the accuracy bands set forth for diverse meter calibration requirements in Sections 5.1(2) and 5.2(2).

“Monthly Invoice” has the meaning set forth in Section 4.2.

“Monthly Payment” has the meaning set forth on Exhibit C.

“Moody’s” means Moody’s Investor Services, Inc. and any successor thereto.

“Net Book Value” shall mean, with respect to the Facility, the original capital cost less accumulated depreciation, as calculated in accordance with the FERC Uniform System of Accounts for Electric Utilities, as such may be revised from time to time, Generally Accepted Accounting Principles.

“Non-Defaulting Party” means, with respect to any Event of Default, the Party that is not the Defaulting Party.

“Order” means any order, judgment, writ, injunction, decree, settlement, stipulation or award of any Governmental Authority.

“Party” or “Parties” has the meaning set forth in the first paragraph of this Agreement and includes any permitted assignee of a Party.

“Permit” means the written permission or authorization granted by a Governmental Authority, including all licenses, permits, decrees, franchises, consents, authorizations, approvals, ratifications, certifications, registrations, exemptions, variances, exceptions, waivers, extensions and similar consents granted or issued by any Governmental Authority.

“Permitted Transaction” means: (a) transactions among Affiliates of Seller or Buyer, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller, Buyer or their Affiliates; (b) any collateral assignment for financing purposes; or (c) a transfer of the Facility packaged with all or substantially all of the assets of Seller’s Ultimate Parent Entity; *provided* that the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

“Person” means and includes an individual, a partnership, a joint venture, a corporation, a union, a limited liability company, a trust, an unincorporated organization, a Governmental Authority or any other separate legal entity recognized pursuant to law.

“Planned Outage” means a scheduled outage that may require removal of the Facility or the Host, in whole or in part, from service in order to perform specified work on specific components of the Facility. A Planned Outage has a pre-determined start date, an estimated duration, which may last for several weeks, and occurs as scheduled in a notice given by the Seller (with respect to the Facility) or Buyer (with respect to the Host) to the other Party in accordance with Section 8.3.

“Prudent Operating Practices” means, with respect to the Facility, the practices, methods and acts generally engaged in or approved by the CHP industry segment supplying thermal energy and electric energy to institutional, commercial, or industrial customers and selling electric energy to public utilities in the United States for similar facilities during a particular time period, or any of such practices, methods, and acts, that, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, economy and expedition, and which practices, methods and acts are consistent with any applicable operation and maintenance standards recommended by the Facility’s equipment suppliers and manufacturers, operational limits. Without limiting the foregoing, Prudent Operating Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of practices, methods or acts generally acceptable in the region during the relevant period in light of the circumstances.

“Qualified Operator” means an operator of generation facilities of a similar type and size as the Facility that is nationally recognized and that demonstrates to Buyer’s reasonable satisfaction that it has sufficient financial capability and technical and operational expertise and experience to successfully operate the Facility, including a minimum of 5 years’ experience in the operation of one or more CHP facilities.

“Receiving Party” has the meaning set forth in Section 18.1(1).

“Representatives” means, with respect to a Party, (i) the directors, officers, managers, employees, financial advisors, accountants, auditors, legal counsel, consultants and other representatives of such Party or its Affiliates and (ii) such Party’s or its Affiliates’ current or potential lenders, sources of funding or rating agencies.

“Required Credit Rating” means, in the case of any Person, that such Person’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) are rated by at least one of S&P and Moody’s, and that such Person has a Credit Rating of (i) if rated by only one of Moody’s or S&P, a Credit Rating of “Baa2” or higher by Moody’s or “BBB-” or higher by S&P, or (ii) if rated by both Moody’s and S&P, a Credit Rating of “Baa2” or higher by Moody’s and “BBB-” or higher by S&P.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Seller” has the meaning set forth in the first paragraph of this Agreement.

“Seller Conditions Precedent” has the meaning set forth in Section 2.4.

“Seller Interconnection Facilities” means the Interconnection Facilities located on Seller’s side of the applicable Delivery Point.

“Site” has the meaning set forth in the Ground Lease.

“State Regulatory Approvals” means a final, non-appealable Order from the Indiana Utility Regulatory Commission granting, without adverse conditions unacceptable to Seller in its sole discretion: (1) a certificate of public convenience and necessity for the Facility and determining that the retail jurisdictional costs incurred by Seller for the construction of the Facility up to a commission-approved cost estimate are recoverable from Seller’s retail electric customers pursuant to applicable Law; (2) approval of the rates shown on Exhibit A for the sale of steam by Buyer to Seller; and (3) approval of natural gas hedging by Seller as contemplated in this Agreement.

“Steam” means the Fired and Unfired Steam produced by the Facility and delivered to the Steam Delivery Point in accordance with the specifications on Exhibit A.

“Steam Delivery Point” mean the physical point at which interconnection for delivery of Steam is made between the Steam systems of the Host and the Facility, at the lease boundary as set forth in the Ground Lease. For the avoidance of doubt, the Steam Delivery Point refers to high pressure (600 psig) steam line.

“Steam Flow Meter” has the meaning set forth in Section 5.1(1).

“Steam Interconnection Facilities” means those physical facilities of a quality and type reasonably required for the receipt and delivery of Steam, including service stop valves, meter stop valves, meter supports, meter(s), pipe system(s), pipeline(s), and other facilities of a quality and type reasonably required to effectuate the purposes of this Agreement.

“Subcontractor” has the meaning set forth in Section 3.3(2).

“Target Commercial Operation Date” means April 2022 or any date to which the Target Commercial Operation Date may be extended in accordance with the provisions of this Agreement.

“Taxes” means all present and future license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, sales, use, privilege, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imports, duties, assessments, fees (customs or otherwise), charges and withholdings of any nature whatsoever, and all penalties, fines, additions to tax, and interest imposed by any Governmental Authority.

“Tenant” means Seller as Tenant under the Ground Lease.

“Term” has the meaning set forth in Section 2.1.

“Termination for Change in Law” has the meaning set forth in Section 16.1.

“Termination for Extended Force Majeure” has the meaning set forth in Section 16.1.

“Termination for Expiration of Term” has the meaning set forth in Section 16.1.

“Termination for Event of Default” has the meaning set forth in Section 16.1.

“Termination for Convenience” has the meaning set forth in Section 16.1.

“Termination Payment” means the applicable amount set forth in Exhibit D.

“Unfired Steam” means the steam produced from the heat recovery system of the combustion turbines at the Facility and delivered to the Steam Delivery Points in accordance with the specifications on Exhibit A.

“Ultimate Parent Entity” means, with respect to Seller, Duke Energy Corporation.

“Utilities” has the meaning set forth in the Ground Lease.

1.2. Interpretation

(1) Words singular and plural will be deemed to include the other, and pronouns having masculine or feminine gender will be deemed to include the other.

(2) Unless expressly stated otherwise, (i) reference to any Person includes such Person’s successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, (ii) reference to a Person in a particular capacity excludes such Person in any other capacity or individuality, and (iii) reference to a Governmental Authority includes any Person succeeding to its functions and capacities.

(3) Any reference in this Agreement to any Section, Article, or Exhibit means and refers to the Section or Article contained in, or Exhibit attached to, this Agreement.

(4) Other grammatical forms of defined words or phrases have corresponding meanings.

(5) A reference to writing includes typewriting, printing, lithography, photography, electronic mail, and any other mode of representing or reproducing words, figures or symbols in a lasting or visible form.

(6) Unless otherwise provided, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(7) A reference to a document, code, contract or agreement, including this Agreement, includes a reference to that document, code, contract or agreement as novated, amended, modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant provisions thereof. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement will continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.

(8) Unless otherwise expressly provided for as set forth herein, the term “day” will mean a calendar day, and whenever an event is to be performed or payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such event will be performed and such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next succeeding Business Day.

(9) Relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding,” and “through” means “through and including.”

(10) Where reference is made to an applicable Law, such reference, to give meaning to the intent of the Parties hereto, will be deemed to include all prior and subsequent enactments, amendments and modifications pertaining thereto.

(11) Any reference to the words “include” and “including” will be interpreted to mean “including without limitation,” and any reference to the words “hereof,” “hereunder,” or “herein” or words of similar import will refer to this Agreement as a whole and to a particular Article, Section, subsection, clause or other subdivision hereof.

(12) References to “or” will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, “or” will be interpreted to mean “and/or” rather than “either/or”).

(13) All monetary references contained herein refer to U.S. dollars.

(14) All accounting terms used herein will be construed in accordance with GAAP (or IFRS if required under applicable Law) unless the context or use requires a different interpretation. Any financial statements provided pursuant to this Agreement will be prepared in accordance with GAAP (or IFRS if required under applicable Law).

(15) Any words or phrases (including electrical, natural gas and CHP industry terms) not otherwise defined herein will have their common meanings.

ARTICLE 2.

TERM OF AGREEMENT; TERMINATION PRIOR TO COMMERCIAL OPERATION DATE

2.1. Term. The term of this Agreement (the “Term”) will commence on the Effective Date and will remain in effect for a period of 35 years from the Commercial Operation Date, unless earlier terminated in accordance with the provisions of this Agreement.

2.2. Termination Prior to Target Commercial Operation Date.

(1) Seller may terminate this Agreement, without incurring any liability for or as a result of such termination, by delivering written notice of termination to Buyer on or before the Target Commercial Operation Date if

(i) Any of the Seller Conditions Precedent set forth in Section 2.4 are not satisfied or waived by Seller;

(ii) Seller and Buyer mutually determine and agree that Seller will be unable to secure, through reasonable diligence and effort, any applicable State Regulatory Approvals or any Permits required for construction, use, environmental compliance, and public safety of the Facility or any Interconnection Facilities, including the Permits listed on Exhibit E;

(iii) In the event that Seller applies for State Regulatory Approvals or other Permit required under applicable Law in connection with the transactions contemplated in this Agreement, Seller receives (A) an Order rejecting any State Regulatory Approvals or imposing materially adverse conditions on any State Regulatory Approval that Seller, after consultation with Buyer, reasonably determines in its sole discretion that it is unwilling to accept, or (B) any determination rejecting or attaching material adverse conditions on any Permit required under applicable Law for Seller's performance of its obligations hereunder; or

(iv) Seller receives a final, unappealable Order from a Governmental Authority that prohibits or materially adversely affects the transactions contemplated in this Agreement or the Ground Lease.

(2) Buyer may terminate this Agreement, without incurring any liability for or as a result of such termination, by delivering written notice of termination to Seller on or before the Target Commercial Operation Date if Seller receives a final, unappealable Order from a Governmental Authority that prohibits or materially adversely affects Seller's ability to engage in natural gas hedging related to the fuel for the CHP.

(3) Subject to the Parties' rights to extend the Target Commercial Operation Date under Section 2.2(3), Buyer may terminate this Agreement, without incurring any liability for or as a result of such termination, by delivering written notice of termination to Seller, if:

(i) Seller fails for any reason to achieve the Commercial Operation Date on or before the Target Commercial Operation Date; or

(ii) Any of the Buyer Conditions Precedent set forth in Section 2.3 are not satisfied or waived by Buyer on or before the Target Commercial Operation Date.

(4) The Parties will have a right to extend the original Target Commercial Operation Date as follows:

(i) If Seller makes a reasonable determination that it will be unable to secure, through reasonable diligence and effort, any applicable State Regulatory Approval or any Permits required for construction, use, environmental compliance, and public safety of the Facility or any Interconnection Facilities, including the Permits listed on Exhibit E, Seller may extend the original Target Commercial Operation Date for a period of up to 12 months by written notice to

Buyer prior to the original Target Commercial Operation Date, provided that Seller exercises diligent and commercially reasonable efforts to secure any such State Regulatory Approval or Permit;

(ii) If Buyer makes a reasonable determination that it will be unable to deliver any of its required Buyer Interconnection Facilities, Buyer may extend the original Target Commercial Operation Date for a period of up to 12 months by written notice to Seller prior to the original Target Commercial Operation Date, provided that Buyer exercises diligent and commercially reasonable efforts to deliver the required Buyer Interconnection Facilities;

(iii) If a Force Majeure Event occurs prior to the original Target Commercial Operation Date, either Party may extend the original Target Commercial Operation Date for a period equal to the duration of such Force Majeure Event plus an additional 30 days; *provided, however,* that in no event may such extension exceed a period of 12 months.

(5) If this Agreement is terminated by Seller pursuant to Section 2.2(1) as a result of any failure of any of the Seller Conditions Precedent provided in Sections 2.4(4) or 2.4(5), Buyer will reimburse Seller for all actual and reasonable costs and expenses reasonably incurred by Seller for or in connection with the Seller Interconnection Facilities prior to such termination. If this Agreement is terminated by Buyer pursuant to Section 2.2(2) as a result of any failure of the Buyer Conditions Precedent provided in Sections 2.3(5), Seller will reimburse Buyer for all actual and reasonable costs and expenses reasonably incurred by Buyer for or in connection with the Buyer Interconnection Facilities prior to such termination. In all other cases involving termination, each Party will be responsible for its own costs and expenses incurred prior to termination.

2.3. Buyer Conditions Precedent. The following will be the “Buyer Conditions Precedent”:

(1) The completion by the Seller of the CHP consistent with the design reflected on Exhibit A and the occurrence of the Commercial Operation Date;

(2) The completion by Seller, and operability, of any and all Seller Interconnection Facilities necessary for the delivery of Steam to Buyer at the applicable Delivery Point and for the receipt of Condensate from Buyer at the applicable Delivery Point;

(3) Demonstration that Seller holds all Permits required under applicable Law to construct, own, and operate the Facility and provide the Steam to be provided by Seller to Buyer hereunder, as shown on Exhibit E;

(4) Receipt by Buyer of all Permits (including approval for Buyer to enter into the Ground Lease by the State of Indiana) required for the performance by it of its obligations under this Agreement and the Ground Lease and related easement and other agreements, as long as Buyer has diligently pursued the issuance of such Permits;

(5) Execution and delivery of the Ground Lease and related easement and other agreements by Seller; and

(6) The absence of (i) any Event of Default with respect to Seller or (ii) any facts and circumstances that, with the passage of time or giving of notice, would give rise to an Event of Default with respect to Seller.

2.4. Seller Conditions Precedent. The following will be the “Seller Conditions Precedent”:

(1) Receipt by Seller of all applicable State Regulatory Approvals and all Permits required under applicable Law to construct, own and operate the Facility, lease the Site and provide the Steam to be provided by Seller to Buyer hereunder, including the Permits described on Exhibit E, as long as Seller has diligently pursued the issuance of such State Regulatory Approvals and Permits.

(2) The completion by Buyer, and operability, of any and all Buyer Interconnection Facilities necessary for the receipt of Steam by Buyer at the applicable Delivery Point and for the delivery of Condensate to Seller at the applicable Delivery Point;

(3) Demonstration that Buyer holds all Permits required under applicable Law to construct, own, and operate the Buyer Interconnection Facilities and to deliver the Condensate to Seller pursuant to this Agreement, as shown on Exhibit A;

(4) Execution and delivery of the Ground Lease and related easement and other agreements by Buyer; and

(5) The absence of (i) any Event of Default with respect to Buyer or (ii) any facts and circumstances that, with the passage of time or giving of notice, would give rise to an Event of Default with respect to Buyer.

ARTICLE 3. PURCHASE AND SALE OF STEAM

3.1. Seller’s Obligations to Produce and Deliver Steam. During the Delivery Term, Seller will use Condensate to produce Steam at the Facility, in an amount each hour equal to the mass volume of Unfired Steam specified in Exhibit A, plus the amount of Fired Steam requested by Buyer, subject to the limits set forth in Exhibit A, that the Facility is reasonably capable of producing during such hour from such Condensate, and will deliver and sell such Steam to Buyer at the Steam Delivery Point.

(1) All Steam delivered by Seller to Buyer under this Agreement will be required to meet the Steam specifications set forth in Exhibit A.

(2) Seller will at all times during the Delivery Term, at its sole cost and expense, operate and maintain the Facility and the Seller Interconnection Facilities in accordance with Prudent Operating Practices and in compliance with applicable Law.

(3) To the extent possible, Seller will commit, dispatch, and operate the Facility so as to produce steam on a continuous basis and in an amount each hour equal to the mass volume of Unfired Steam specified in Exhibit A, plus the amount of Fired Steam requested by Buyer,

subject to the limits set forth in Exhibit A, without regard to the economics of such commitment, dispatch, or operation. Although Seller does not intend to offer the Facility into the wholesale power markets, in the event that in the future, Seller does offer the Facility into the wholesale power markets, it commits to do so on a “must run” basis (i.e., bidding at a price that will ensure the Facility is designated to run).

3.2. Retention by Seller of Qualified Operator and Subcontractors

(1) Seller will be entitled, with the prior written consent of Buyer, which consent shall not be unreasonably withheld, to retain a Qualified Operator to perform some or all of the responsibilities of Seller under this Agreement to operate and maintain the Facility. Notwithstanding any such retention of a Qualified Operator to perform some or all of the operation and maintenance responsibilities of Seller under this Agreement, Seller will, as between Seller and Buyer (but without in any way modifying the allocation of responsibilities and liabilities between Seller and such Qualified Operator), remain responsible and liable for the performance of such responsibilities. Notwithstanding the foregoing provision, but subject to Section 19.3, Seller will always remain as the single point of contact for Buyer for all issues relating to this Agreement.

(2) Subject to the terms and conditions of this Agreement, Seller may hire or engage one or more subcontractors or other third parties (each, a “Subcontractor”) to perform a portion of its obligations under this Agreement; *provided* that any Subcontractor that operates or maintains all or a material portion of the Facility must be a Qualified Operator that Seller engages in accordance with Section 3.2(1); *provided, further*, that Seller will ensure that each Subcontractor’s employees have received appropriate training to handle the tasks proposed to be undertaken by such employees at the Site, and have received instruction with respect to the security and safety precautions to be observed and taken at the Site. Seller will remain responsible for the acts and omissions of each Subcontractor as if those acts or omissions were Seller’s own acts and omissions, including each Subcontractor’s compliance with the terms and conditions of this Agreement.

(3) Seller shall follow and implement its supplier diversity programs, as set forth at <https://www.duke-energy.com/partner-with-us/suppliers/supplier-diversity>, in its performance of all of its obligations hereunder.

3.3. Buyer’s Obligations to Take and Pay for Steam.

(1) During the Delivery Term, Buyer will receive and purchase all Unfired Steam produced by the Facility and delivered to the Steam Delivery Point at the Contract Price set forth in Exhibit C. Additionally, during the Delivery Term, subject to Buyer’s request that Seller fire the HRSG, Buyer will receive and purchase 100% of Fired Steam produced by the Facility and delivered to the Steam Delivery Point in response to Buyer’s request, subject to the limits set forth in Exhibit A, in accordance with the pricing terms for Fired Steam set forth in Exhibit C.

(2) Non-conforming Steam:

(i) Buyer will have no obligation to take or pay Seller for any Steam that fails to meet the Steam specifications set forth in Exhibit A. If Buyer rejects nonconforming Steam, the responsibility to dispose of such nonconforming Steam will remain with Seller.

Notwithstanding the foregoing, to the extent such nonconformity arises from Buyer's delivery of Condensate, Buyer will be responsible for paying for the Minimum Pay Obligation, as defined and set forth in Exhibit C, for the duration of time such nonconforming Steam is being rejected. Further, to the extent such nonconformity arises from Buyer's delivery of Condensate and cannot be remedied through treatment as contemplated by Section 6.1, Seller shall be relieved of its obligations set forth in Section 3.1 hereunder to produce and deliver Steam until such Condensate nonconformity is remedied. To the extent such nonconformity arises for any reason other than Buyer's delivery of Condensate, if Buyer knowingly accepts nonconforming Steam, then it will be responsible for paying for such Steam on the same basis as if such Steam had conformed to the applicable specifications set forth in Exhibit A. Consistent with Article 5, in order to allow Buyer to determine whether or not Steam is nonconforming, Seller shall provide Buyer, in real-time, the volume, pressure, temperature, and pH/alkaline level of Steam being provided. Additionally, consistent with Article 5, Seller shall continuously monitor and test the quality and purity of the Steam, consistent with the requirements set forth in Exhibit A, and shall provide Buyer with the results of such monitoring and testing in real-time.

(ii) If Steam is discovered to be nonconforming, within no more than 24 hours from such discovery or notification of such discovery, the Seller shall identify the source of the nonconformity and/or cause for the nonconforming Steam and develop a plan to remedy the problem, unless the nonconformity arises from Buyer's delivery of Condensate. Further, within 24 hours from such discovery or notification of such discovery, unless the nonconformity arises from Buyer's delivery of Condensate, Seller shall commence remedy of the nonconforming steam problem. Until Seller remedies the nonconforming steam problem, Buyer shall be authorized to physically shut off the Steam Interconnection Facilities so as to prevent damage to its systems.

(3) In the event of a dispute over the cause of the nonconformity and/or any concomitant damages, Seller shall, with Buyer's input as discussed below, engage a qualified and independent third-party engineer to undertake an assessment of the CHP Facility and relevant installations to determine the (i) cause of the nonconformity and (ii) the nature and amount of any resulting damages. The independent engineer shall be selected by mutual agreement of the Buyer and Seller and shall be compensated by Seller, with Buyer reimbursing Seller for 50% of the costs of the independent engineer. Notwithstanding any other dispute resolution procedures set forth in this Agreement, Parties agree that the findings and determinations of the independent engineer shall be binding on both Parties and the Party determined by the independent engineer to have caused the nonconforming steam problem shall remedy the cause of the nonconformity; provided however, subject to Section 3.3(2)(i), the Buyer shall not be obligated to make any capital improvements to remedy nonconformities.

(4) Buyer may use Steam from the Facility to produce electric energy and distribute such electric energy to its current and future campus and within the footprint of its electric distribution system, including to Affiliates and third parties located within such footprint, however, Buyer will not use Steam delivered to Buyer from the Facility for purposes of producing and commercially selling retail electric energy to non-Affiliate third parties either within or beyond the Buyer's and its Affiliates' current and future campus and distribution facilities in the West Lafayette area.

(5) Buyer will not have any liability to Seller under this Agreement solely as a result of any failure of Buyer to take any Steam that Buyer is otherwise obligated to take hereunder, *provided* that Buyer pays for all such Steam in accordance with the requirements of this Agreement.

3.4. Transfer of Title and Risk of Loss.

(1) Title to and risk of loss of Steam sold by Seller to Buyer hereunder will pass to Buyer at the Steam Delivery Point.

(2) Title to and risk of loss of Condensate provided by Buyer to Seller hereunder will pass to Seller at the Condensate Delivery Point.

**ARTICLE 4.
PAYMENTS**

4.1. Monthly Payment. For each calendar month during the Delivery Term in which Steam is delivered to the Steam Delivery Point, Buyer will pay Seller the Contract Price as determined in accordance with Exhibit C.

4.2. Monthly Invoices.

(1) On or before the tenth Business Day of each calendar month during the Delivery Term following the calendar month in which the Commercial Operation Date occurs, Seller will prepare an invoice showing the Monthly Payment payable by Buyer to Seller pursuant to this Agreement (“Monthly Invoice”). If the first Contract Year does not begin on the first day of the month, then the first Monthly Invoice will include a prorated calculation for the period from the Commercial Operation Date to the end of the month in which the Commercial Operation Date occurs.

(2) Monthly Invoices will present such information and calculations in reasonable detail for the preceding month as are reasonably required to support the calculation of the Monthly Payment, including supporting data for the calculations set forth on Exhibit C.

(3) Any amount payable under this Section 4.2 by Buyer to Seller will be due and payable within 30 days from the date of the Monthly Invoice. Notwithstanding the foregoing, if Buyer disputes any amount of any Monthly Invoice, Buyer will notify Seller thereof within [15 Business Days] after receipt of the applicable Monthly Invoice and will pay only the undisputed amount of such Monthly Invoice within such 30-day period. Any such dispute notice must be accompanied by an itemization of each objection of Buyer to the applicable Monthly Invoice, with full details regarding the disputed items and the disputed amount. Not later than 30 Business Days after receipt of such dispute notice, Seller will either revise the applicable Monthly Invoice to reflect Buyer’s objections or provide written notice to Buyer that Seller does not agree with Buyer’s objections, along with the basis for such disagreement. Any dispute with respect to the amount of any Monthly Invoice will be resolved in accordance with the provisions of Section 19.5. If such dispute resolution process determines that an additional amount is payable by Buyer with respect to any Monthly Invoice, such amount will be paid by Buyer not later than 2 Business Days

thereafter with interest at the Interest Rate from the date on which payment of such amount was originally due to the date on which payment is made.

4.3. Taxes.

(1) Seller is liable for and will pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all Taxes (including sales Tax) that are imposed or arise on Seller’s side of the Delivery Points on the sale of Steam and receipt of Condensate under this Agreement. Seller will indemnify, defend and hold harmless Buyer from any Claims for such Taxes.

(2) Buyer is liable for and will pay, or cause to be paid, or reimburse Seller if Seller has paid, all Taxes that are imposed or arise on Buyer’s side of or at the Delivery Points on the purchase of Steam or provision of Condensate under this Agreement or use of any of the foregoing. Buyer will indemnify, defend and hold harmless Seller from any Claims for such Taxes.

4.4. Environmental Attributes; Electric Power Attributes. Seller and Buyer will each individually have the right to claim, bank, trade, sell, retire or retain one half (1/2) of the Environmental Attributes and Electric Power Attributes directly related to and arising from the production of Steam or electric energy at the Facility; provided, however, that Buyer will retain all rights to Environmental Attributes and Electric Power Attributes related to the ownership and operation of the Host or any other Buyer facilities or the generation or use of Steam or electric energy at the Host or any other Buyer facilities.

4.5. Late Payments. Any amounts payable by one Party to the other under this Agreement that are not paid when due will bear interest at the Interest Rate from the date such payment was due until the date such payment is actually paid.

4.6. Netting of Payments. The Parties hereby agree that they will discharge mutual undisputed debts and payment obligations due and owing to each in the same month through netting, in which case all amounts owed by each Party to the other Party for such monthly period, including any related payments calculated pursuant to Article 15, interest, and payments or credits, will be netted so that only the excess amount remaining due will be paid by the Party that owes it.

ARTICLE 5. METERING

5.1. Steam Monitoring and Metering.

(1) Seller will install, at its sole cost, (i) a meter at the Steam Delivery Point to determine the total amount of Steam delivered to the Steam Delivery Point by Seller (each such meter, a “Steam Flow Meter”); (ii) an instrument to measure Steam pressure located near the Steam Flow Meter; and (iii) an instrument to be installed near the Steam Flow Meter to measure the delivered Steam temperature. The Steam Flow Meter will continuously measure the flow of Steam delivered from the Facility to the Host. The Steam pressure instrument and the Steam temperature instrument will continuously measure the pressure and temperature of Steam delivered from the Facility to the Host. Seller will provide, at no cost to the Buyer, an access point to information from the Steam Flow Meters to enable Buyer to continuously monitor the flow in as close to real time as is reasonably possible. Seller will operate, service, maintain, and replace (as needed), at

Seller's sole cost and expense, the Steam Flow Meters, Steam pressure measure instruments, and Steam temperature measure instruments during the Delivery Term.

(2) Steam Flow Meters shall be calibrated to measure steam flow and pressure to an accuracy of not less than plus or minus two percent (+/- 2%). Steam temperature instrument shall be calibrated to measure steam temperature to an accuracy of not less than plus or minus two degrees Fahrenheit (+/- 2°F). The steam flow meter must be pressure and temperature compensated.

(3) The Steam Flow Meter will be sealed by both Parties, and such seal will be broken only by both Parties for inspection, testing or adjustment of the Steam Flow Meters.

(4) Seller shall monitor steam quality and purity to confirm that Steam conforms to the applicable specifications set forth in Exhibit A. Daily grab sample testing shall be performed by the Seller for the applicable specifications set forth in Exhibit A. Upon request by Buyer, and if steam non-conformity is confirmed not to be attributable to the Buyer, Seller shall provide semi-annual continuous sampling in accordance with Article 2.3 of Exhibit A. Results of all monitoring and testing relating to steam quality and purity shall be provided to the Buyer.

5.2. Condensate Monitoring and Metering

(1) Seller will install, at its sole cost, (i) a Meter at the Condensate Delivery Point to determine the amount of Condensate delivered to the Condensate Delivery Point by Buyer (the "Condensate Flow Meter"); (ii) an instrument located near the Condensate Flow Meter to measure Condensate pressure; and (iii) an instrument to be installed near the Condensate Flow Meter to measure the delivered Condensate temperature. The Condensate Flow Meter will continuously measure the flow of Condensate delivered from the Host to the Facility, but will be used only for process purposes and will not be a revenue Meter. The Condensate pressure instrument and the Condensate temperature instrument will continuously measure the pressure and temperature of Condensate delivered from the Host to the Facility. Seller will provide, at no cost to the Buyer, 4 to 20 milli amp signal from Condensate Flow Meter to enable Buyer to monitor the flow in real time. Seller will operate, service, maintain, and replace (as needed), at Seller's expense, the Condensate Flow Meter during the Delivery Term.

(2) Condensate Flow Meter shall be calibrated to measure condensate flow and pressure to an accuracy of not less than plus or minus two percent (+/- 2%). Condensate temperature instrument shall be calibrated to measure condensate temperature to an accuracy of not less than plus or minus five degrees Fahrenheit (+/- 5°F)

(3) The Condensate Flow Meter will be sealed by both Parties, and such seal will be broken only by both Parties for inspection, testing or adjustment of the Condensate Flow Meter.

5.3. Meter Testing

(1) Seller will be responsible for reading, testing, servicing and maintaining the Meters, and, subject to Section 5.4, for providing real time data to the Buyer. The Meters will conform to Prudent Operating Practices, and Seller will cause the Meters to be tested and calibrated

no less often than once each Contract Year by designated representatives of a reputable and qualified third party service provider in accordance with Prudent Operating Practice. The selection of a reputable independent service company that will test and calibrate flow meters will be subject to mutual agreement of the Parties. Copies of all test reports and result will be provided simultaneously to the Buyer and Seller, as soon as they are available, and Buyer will have the right to have a representative present during any such test. Either Party may at any time request a retest of any Meter if such Party has reasonable cause to believe that the accuracy of such Meter is not within stipulated Metering Tolerances. The Party requesting any such retest will pay for such retest and will provide the other Party with reasonable prior notice of such retest. Such other Party will have the right to have a representative present during such retest.

(2) If, for any reason, any Meter is out of service or out of repair, or if any tested or retested Meter is found not to be accurate within Metering Tolerances, Seller will promptly arrange for the repair, correction or replacement of the Meter, at Seller's sole cost and expense, and the Parties will use the measurements from any back-up Meters to determine the amount of the inaccuracy. Either Party may, at its option and expense, have back-up Meters installed. If there are no back-up Meters or if the back-up Meters are not in service or are found not to be accurate within the Metering Tolerances and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be determined, using as the basis therefor the best data available, (i) by calibration, test or mathematical calculation, if the percentage of inaccuracy is ascertainable by calibration, test or such calculation, (ii) by regression analysis based on historical consumption and ambient air temperature, or (iii) by such other method as is in accordance with Prudent Operating Practices. For purposes of such correction, if the inaccuracy is traceable to a specific event or occurrence at a reasonably ascertainable time, then the adjustment will extend back to that time; otherwise, it will be assumed that the error has existed for a period equal to one-half of the time elapsed since the Meter was installed or one-half of the time since the last Meter test, whichever is later. Once Seller becomes aware that the Meter at any Delivery Point is outside of Metering Tolerances, Seller will not permit such Meter to remain outside of Metering Tolerances for a period in excess of ten (10) days. To the extent that the correction of the issues identified herein requires, based on Prudent Operating Practice, the Facility to be taken offline, the Parties shall mutually agree on the timing and duration of any necessary outage for such corrections. Any such resulting outage, unless the underlying issue necessitating correction in the Meter arises from tampering by any representative of Buyer, shall be considered a Forced Outage and taken into consideration for purposes of the Mechanical Availability Guarantee.

(3) Notwithstanding the provisions of Section 5.4(2), if any Meter is out of service or out of repair, or if any tested or retested Meter is found not to be accurate within Metering Tolerances, as a result of tampering by any representatives of Buyer, Buyer will be required to pay Seller the positive difference (if any) obtained by subtracting (a) the amount paid by Buyer for the quantities of Steam delivered to Buyer at the applicable Delivery Point, as recorded by the tampered Meter, during the entire period of the service interruption or inaccuracy from (b) the Contract Price that would have been payable by Buyer with respect to the same period for an amount of Steam calculated on the basis of the maximum historical recorded monthly quantity of Steam delivered to Buyer at the same Delivery Point.

(4) Notwithstanding the provisions of Section 5.4(2), if any Meter is out of service or out of repair, or if any tested or retested Meter is found not to be accurate within

Metering Tolerances, as a result of tampering by any representatives of Seller, Seller will be required to compensate Buyer in an amount equal to the positive difference (if any) obtained by subtracting (a) the Contract Price that would have been payable by Buyer with respect to the same period for an amount of Steam calculated on the basis of the maximum historical recorded monthly quantity of Steam delivered to Buyer at the same Delivery Point, from (b) the amount paid by Buyer for the quantities of Steam delivered to Buyer at the applicable Delivery Point, as recorded by the tampered Meter, during the entire period of the service interruption or inaccuracy.

(5) Any amounts payable by Buyer or to be refunded by Seller as a result of any faulty measurements by any Meter that is not accurate within the Metering Tolerances will be paid by or credited to Buyer, as the case may be, within 30 days after discovery of such inaccuracy.

(6) Seller will provide Buyer with reasonable access to all Meters for the purpose of monitoring and verifying the accuracy of measurements made by such Meters. Buyer will provide Seller with reasonable advance notice of any access by Buyer to any Meter, and Seller and Buyer will coordinate such access so as to minimize interruption to Seller's business activities. Seller will be entitled to have a representative accompany Buyer at all times during any such access by Buyer.

5.4. Meter Data. Seller will transmit to Buyer on a monthly basis an electronic data file containing the monthly metered quantity and other measurements of Steam set forth in Section 5.1, and the monthly metered quantity and other measurements of Condensate set forth in Sections 5.2, for the relevant month at the same time that Seller provides Monthly Invoices under Section 4.2. Upon request of Buyer, and at Buyer's sole cost and expense, Seller shall also establish systems, methods, and protocols for supplying Buyer with real-time meter data, and shall make such real-time meter data available to Buyer.

5.5. Meter Failures. Seller shall promptly notify Buyer of any Meter failures and fully remedy any such Meter failures as soon as possible, not to exceed seven (7) days.

ARTICLE 6. CONDENSATE AND OTHER SERVICES

6.1. Return of Condensate for Steam Production

(1) Buyer will be responsible, at its sole cost and expense, for the return of Condensate to Seller during the Delivery Term at the Condensate Delivery Point, solely for use at the Facility. The Parties acknowledge and agree that the production of Steam from the Facility, and the Seller's ability to achieve the Mechanical Availability Guarantee set forth in Section 8.1, is reliant, upon Buyer's return of Condensate in conformity with the requirements set forth in Exhibit A.

(2) Buyer will ensure that the Condensate supplied by Buyer to Seller under this Agreement meets the specifications and the volume set forth in Exhibit A. If any component of the Condensate fails to meet the specifications or the volume set forth in Exhibit A, Buyer will notify Seller promptly of such non-compliance and correct the source or cause of such non-compliance as quickly as practicable at Buyer's sole cost and expense. Buyer will pay any costs and expenses reasonably incurred by Seller to treat Condensate until such required corrections or

modifications are made. Any and all delays, outages or other Facility downtime resulting directly from the failure of the Condensate supplied by Buyer to meet the specifications or the volume set forth in Exhibit A shall not be attributable to Seller and shall not be factored into the calculation of the Mechanical Availability Guarantee in Section 8.1. If the cost of treating the Condensate exceeds its monetary value, Seller will, at its option, either dispose of such Condensate or require that Buyer dispose of such Condensate, in each case at Buyer's sole cost and expense.

6.2 Potable Water Services. Buyer will provide Seller with potable water services. Seller understands that Buyer's provision of potable water is dependent upon availability of potable water at the Host and that the Buyer is not required to install or maintain redundant permanent water main feeds to the Facility. In the event of any prolonged interruptions lasting more than 2 hours, Buyer shall undertake commercially reasonable efforts to provide potable water through a temporary water line or feed.

6.3 Fire Protection Water Services. Buyer will provide Seller with fire protection water services. Seller understands that Buyer's provision of fire protection water services is dependent upon of the availability of fire protection water services at the Host. Accordingly, Buyer shall not be considered in any manner an insurer of property or persons, or to have undertaken to extinguish fire or to protect Seller, persons, or property against have no liability on account of any injury to property or persons against loss or damage by fire and Buyer shall have no liability on account of any injury to Seller, property, or persons by reason of fire, water used for the extinguishment of fire, or failure of water supply or pressure during a fire.

6.4 Construction Electricity. To the extent available, Buyer will provide Seller with electricity for construction activities prior to commercial operations of the Facility.

6.5 Wastewater Treatment. Seller shall obtain and maintain throughout the Term all required industrial pre-treatment permits and shall be solely responsible for sampling and metering of discharged process flows, in accordance with all relevant standards and regulations. Seller shall also be responsible for paying wastewater fees and charges directly to the City of West Lafayette, Indiana.

6.6 Unfired Steam Gas Hedging. Seller shall develop and implement a natural gas hedging strategy for the fuel for the Facility's production of Unfired Steam and associated electricity, subject to approval by the Indiana Utility Regulatory Commission, to the extent such approval is required. Seller and Buyer shall meet periodically, but not less than annually, to discuss such hedging strategy, and Seller agrees to consider Buyer's input when developing and implementing its hedging strategy.

ARTICLE 7. INTERCONNECTION FACILITIES

7.1 Steam Interconnection Facilities.

(1) Seller will, at its sole cost and expense, install, own, operate, maintain, repair, and, as necessary, replace any portion of the Steam Interconnection Facilities located on the Site.

(2) Buyer will, at its sole cost and expense, install, own, operate, maintain, repair, and, as necessary, replace any portion of the Steam Interconnection Facilities located on the Host Premises.

7.2. Condensate Interconnection Facilities.

(1) Seller will, at its sole cost and expense, install, own, operate, maintain, repair, and, as necessary, replace any portion of the Condensate Interconnection Facilities on the Site.

(2) Buyer will, at its sole cost and expense, install, own, operate, maintain, repair, and, as necessary, replace any portion of the Condensate Interconnection Facilities located on the Host Premises.

7.3. Approval of Changes in Interconnection Facility Locations. If Buyer wishes to change the location of any Interconnection Facilities located on the Host Premises, or if Seller wishes to change the location of any Interconnection Facilities located on the Site, the Party wishing to make such change will notify the other Party of such proposed change, and will provide such other Party notice including sufficiently detailed specifications regarding the proposed change to permit the other Party to analyze appropriately the reasonably likely ramifications, including costs to such other Party, of such changes. The Party receiving such notice will approve the proposed changes or provide comments thereon within 30 days after receipt of such notice. If the Party receiving notice of the proposed change provides comments on any aspect of the proposed change, then the Parties will meet within 30 days after delivery of such comments to seek to resolve any issues between the Parties. Buyer and Seller will seek diligently and in good faith to reach agreement on any such matters. Whenever a Party's approval is required under the terms of this Section 7.3, such approval will not be unreasonably withheld or delayed; *provided, however*, that a Party will be deemed reasonable in withholding its approval of any changes in the location of any Interconnection Facilities that might interfere with or impair the safe and efficient operation of such Party's premises or facilities.

ARTICLE 8.

INTERRUPTIONS; EMERGENCIES; PLANNED OUTAGES; FORCED OUTAGES

8.1. Interruptions. Consistent with Article 3, Seller will operate and dispatch the Facility without regard to the wholesale power market economics of such operation and dispatch. Seller will employ best efforts to deliver Steam to Buyer on a continuous basis in accordance with the requirements of this Agreement, with a target minimum annual Unfired Steam availability of 95%, inclusive of Planned Outages (“Unfired Mechanical Availability Guarantee”). If Seller's deliveries of Unfired Steam to Buyer are interrupted at any time for any reason, Seller will use commercially reasonable efforts to restore such deliveries as quickly as practicable, and will be deemed to be in material breach of this Agreement if any such interruption continues for 75 days or more. Notwithstanding the above, in the event that during any Contract Year, the annual Unfired Steam availability (based on a rolling average of the current and immediately preceding prior Contract Year) falls below 95% (ninety-five percent), the Seller shall make a liquidated damages payment calculated at ten thousand (\$10,000) for every 1% (one percent) (or pro rata as the case may be) below the 95% (ninety-five percent) threshold. In the event that the annual Unfired Steam

Facility mechanical availability falls below 50% in a Contract Year, the Seller will be deemed to be in material breach of this Agreement. Additionally, Seller will use best efforts to deliver Fired Steam to Buyer on whenever requested by Buyer, consistent with Exhibit A the requirements of this Agreement, with a target minimum annual Fired Steam mechanical availability of 95%, inclusive of Planned Outages (“Fired Mechanical Availability Guarantee”). If Seller’s deliveries of Fired Steam to Buyer are interrupted at any time for any reason, Seller will use reasonable efforts to restore such deliveries as quickly as practicable, and will be deemed to be in material breach of this Agreement if any such interruption continues for 75 days or more. Notwithstanding the above, in the event that during any Contract Year, the annual Fired Steam availability falls below 95% (ninety-five percent), the Seller shall make a liquidated damages payment calculated at ten thousand (\$10,000) for every 1% (one percent) (or pro rata as the case may be) below the 95% (ninety-five percent) threshold. In the event that the annual Fired Steam availability falls below 50% (fifty percent) in a Contract Year, the Seller will be deemed to be in material breach of this Agreement.

8.2. Emergencies. Notwithstanding anything to the contrary herein, Seller will take immediate and diligent actions in accordance with Prudent Operating Practices and applicable Law as necessary in the case of an Emergency to prevent any threatened damage, injury or loss (other than wholesale power market loss) or to counteract or otherwise mitigate the effects of such Emergency. Seller will provide Buyer with telephonic notice of any Emergency as soon as practicable following the occurrence thereof, and will follow up such telephonic notice promptly with written notice. Such written notice will include detail with respect to any action being taken by Seller in response to the Emergency and any expenditures incurred, or expected to be incurred, by Seller in connection with such Emergency. Seller will take all reasonable steps to minimize the cost of the Emergency to Buyer, having due regard to the circumstances and the need to act promptly. At the request of Buyer, the Parties will promptly after such written notice discuss further actions that should reasonably be taken as a result of the Emergency, and the estimated expenditures associated therewith; *provided, however* that Buyer will have no obligation to pay for any actions necessary to address an Emergency relating to the Facility or the Seller Interconnection Facilities unless the Emergency was caused by the negligent acts or omissions of Buyer, and Seller will have no obligation to pay for any actions necessary to address an Emergency relating to the Host or the Buyer Interconnection Facilities unless the Emergency was caused by the negligent acts or omissions of Seller. Subject to the provisions of Section 8.1, Section 8.3, and Section 8.4 and Article 13, Seller will have the right to curtail or discontinue deliveries of Steam when necessary for Seller to comply with any Order or request of any Governmental Authorities or as necessary for safety purposes in case of any Emergency. To the extent such Emergency causes an outage of Seller’s distribution system serving Host and such Emergency does not prevent the safe delivery of electric energy from the Facility to the Buyer, Seller shall, subject to the terms and conditions of the Excess Facilities Lease and Service Agreement, deliver electric energy from the Facility to Buyer during such Emergency.

8.3. Planned Outages.

(1) No later than 60 days prior to the Commercial Operation Date, Seller, after consultation with Buyer, will submit to Buyer the initial Annual Steam Plan for the Facility, including a schedule of Planned Outages for the first Contract Year, and the Parties will mutually agree on the substance of such plan and when those planned outages will occur. Not later than 90

days prior to the end of the first Contract Year and each subsequent Contract Year, Seller will submit to Buyer the Annual Steam Plan for the Facility, including a schedule of Planned Outages, for the immediately following Contract Year, and the Parties will mutually agree on the substance of that plan and when those planned outages will occur. To the extent commercially practicable, Seller will coordinate and schedule such Planned Outages of the Facility to coincide with Buyer's Planned Outages of the Host.

(2) Seller will provide notice to Buyer, as far in advance as is practicable under the circumstances but in any event not less than 30 days, of any additional Planned Outages of the Facility that Seller reasonably determines are necessary in order to operate and maintain the Facility in accordance with Prudent Operating Practices and that will interfere with or reduce the provision of Steam to Buyer, *provided* that such interference or reduction will be only to the extent and for the duration reasonably required by such outage or overhaul. To the extent commercially practicable, Seller will coordinate and schedule such Planned Outages of the Facility to coincide with Buyer's Planned Outages of the Host.

(3) Buyer will provide notice to Seller, as far in advance as is practicable under the circumstances but in any event not less than 30 days of any additional Planned Outages of the Host that Buyer reasonably determines are necessary in order to operate and maintain the Host prudently and that will interfere with or reduce the provision of Condensate, or Utilities to Seller, *provided* that such interference or reduction will be only to the extent and for the duration reasonably required by such outage or overhaul.

(4) The Parties acknowledge and agree that nothing in this Section 8.3 is intended to alter in any way the monthly payment obligation under Article 4 and that all Planned Outages and Forced Outages will be counted as downtime for purposes of Exhibit C.

8.4. Notice of Forced Outages

(1) Seller will provide to Buyer (i) notice of any Forced Outage of the Facility as soon as practicable after the outage occurs and (ii) a schedule (date and hour of day) as to when the Facility is reasonably expected to return to service as soon as practicable after reliable information becomes available. Seller will provide Buyer with updates of the status and changes in the expected schedule of the Facility during Forced Outages when such information becomes available in a reliable form.

(2) Buyer will provide to Seller (i) notice of any Forced Outage of the Host that materially impairs Buyer's ability to receive Steam as soon as practicable after the outage occurs and (ii) a schedule (date and hour of day) as to when such Host are reasonably expected to return to service as soon as practicable after reliable information becomes available. Buyer will provide Seller with updates of the status and changes in the expected schedule of such Host during Forced Outages when such information becomes available in a reliable form.

(3) Neither Party will be liable for any Forced Outages or derates of the Facility that are caused by any failure of any natural gas transmission or distribution company to deliver any required amounts of natural gas fuel to the Facility, nor shall such Forced Outages or derates of the Facility caused by any failure of natural gas transmission or distribution company to deliver

required amounts of natural gas fuel to the Facility be included in any calculations of Facility Mechanical Availability Guarantee purposes.

**ARTICLE 9.
PERMITS**

9.1. Responsibility for Obtaining Permits

(1) Each Party will, promptly following the Effective Date, make application for all Permits not previously applied for or obtained and required for such Party’s performance of its obligations under this Agreement, including the Permits listed on Exhibit E. Each Party will make timely and good faith efforts to secure all such Permits and will advise the other Party promptly after all such Permits have been received.

(2) A Party will not be deemed to be in breach of its obligations to obtain any Permit from any Governmental Authority to the extent that such Party is in good faith contesting the application, interpretation, Order or other legal direction that would mandate a Party to obtain such Permit or the decision of any Governmental Authority with respect thereto.

9.2. Maintenance of Permits

(1) Seller will maintain in effect during the Term all Permits that are required for the construction, development, operation, and maintenance of the Facility and the Seller Interconnection Facilities in accordance with the requirements of this Agreement and for the performance by Seller of its other obligations hereunder.

(2) Buyer will maintain in effect during the Term all Permits that are required for the construction, development, operation, and maintenance of the Host and the Buyer Interconnection Facilities in accordance with the requirements of this Agreement and for the performance by Buyer of its other obligations hereunder.

**ARTICLE 10.
COMPLIANCE WITH APPLICABLE LAW**

10.1. Compliance with Applicable Laws. Seller will at all times comply with all applicable Laws to which it or any part of the Facility may be subject. Buyer will at all times comply with all applicable Laws to which it or any part of the Host may be subject. A Party will not be deemed to be in breach of its obligations to comply with any applicable Laws to the extent that such Party is in good faith contesting the application, interpretation, Order or other legal direction pursuant to which it, the Facility or the Host, as applicable, would be rendered subject to any such applicable Laws or the Order of any Governmental Authority with respect thereto.

10.2. Compliance with Orders. If a Party is subject to the jurisdiction of any Governmental Authority, then, subject to Section 2.3 or Section 2.4, as applicable, such Party agrees to abide by any and all applicable Orders issued by such Governmental Authority.

**ARTICLE 11.
CREDIT AND COLLATERAL REQUIREMENTS**

11.1. Uniform Commercial Code Waiver. This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in this Agreement, neither Party (a) has or will have any obligation to post credit assurance or collateral, pay deposits, make any other prepayments or provide any other financial assurances in any form whatsoever, or (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of this Agreement. The Parties hereby waive all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.

**ARTICLE 12.
REPRESENTATIONS AND WARRANTIES**

12.1. Representations and Warranties of Seller.

(1) Seller is a limited liability company duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation. Seller is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Seller's ability to perform such actions under this Agreement.

(2) Seller has all requisite limited liability company power and authority to execute and deliver this Agreement and any related agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and the related agreements to which Seller is a party, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary limited liability company action. This Agreement and each related agreement to which Seller is a party has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(3) The execution and delivery by Seller of this Agreement and the related agreements to which Seller is a party do not and will not, and the performance by Seller of its obligations under this Agreement and the related agreements to which Seller is a party does not and will not:

(i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Seller;

(ii) subject to the satisfaction of the Seller Conditions Precedent set forth in Section 2.4, be in violation of or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under (with or without the giving of notice, the lapse

of time, or both) any material contract or Permit to which Seller is a party, except for any such violations or defaults (or rights of termination, cancellation or acceleration) that would not, in the aggregate, reasonably be expected to result in a material adverse effect on Seller’s ability to perform its obligations hereunder; and

(iii) subject to the satisfaction of the Seller Conditions Precedent set forth in Section 2.4, and assuming any other notifications provided in the ordinary course of business have been made, obtained or given, (i) conflict with, violate or breach any term or provision of any applicable Law, except as would not reasonably be expected to result in a material adverse effect on such Seller’s ability to perform its obligations hereunder or (ii) require any consent or approval of any Governmental Authority, or notice to, or declaration, filing or registration with, any Governmental Authority, under any applicable Law, other than such consents, approvals, notices, declarations, filings or registrations that, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Seller’s ability to perform its obligations hereunder.

(4) Seller has not been served with notice of any Claim, no Claim is pending, and, to Seller’s knowledge no Claim is threatened against Seller, which seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement.

(5) Seller is not in violation of, or in default under, any applicable Law or Order, the effect of which, in the aggregate, would reasonably be expected to hinder, prevent or delay Seller from performing its obligations under this Agreement.

12.2. Representations and Warranties of Buyer.

(1) Buyer is a statutory body corporate created and existing under the Laws of the State of Indiana.

(2) Buyer has all requisite power and authority to execute and deliver this Agreement and any related agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the related agreements to which Buyer is a party, and the performance by Buyer of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary action of Buyer’s Board of Trustees. This Agreement and each related agreement to which Buyer is a party has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(3) The execution and delivery by Buyer of this Agreement and the related agreements to which Buyer is a party do not and will not, and the performance by Buyer of its obligations under this Agreement and the related agreements to which Buyer is a party does not and will not:

(i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the statutory responsibilities and obligations of Buyer;

(ii) subject to the satisfaction of the Buyer Conditions Precedent set forth in Section 2.3, be in violation of or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under (with or without the giving of notice, the lapse of time, or both) any material contract or Permit to which Buyer is a party, except for any such violations or defaults (or rights of termination, cancellation or acceleration) that would not, in the aggregate, reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder; and

(iii) subject to the satisfaction of the Buyer Conditions Precedent set forth in Section 2.3, and assuming any other notifications provided in the ordinary course of business have been made, obtained or given, (i) conflict with, violate or breach any term or provision of any applicable Law, except as would not reasonably be expected to result in a material adverse effect on such Buyer's ability to perform its obligations hereunder or (ii) require any consent or approval of any Governmental Authority, or notice to, or declaration, filing or registration with, any Governmental Authority, under any applicable Law, other than such consents, approvals, notices, declarations, filings or registrations that, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

(4) Buyer has not been served with notice of any Claim, no Claim is pending, and, to Buyer's knowledge no Claim is threatened against Buyer, which seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement.

(5) Buyer is not in violation of, or in default under, any applicable Law or Order, the effect of which, in the aggregate, would reasonably be expected to hinder, prevent or delay Buyer from performing its obligations under this Agreement.

12.3. Buyer Disclosure Obligations with Respect to Environmental Matters. Promptly after becoming aware of any Existing Environmental Conditions, any violation of any Environmental Laws, or any Environmental Noncompliance at the Site, and any claims or actions relating to any of the same by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged Environmental Noncompliance or alleged presence of Hazardous Materials, Buyer will promptly disclose such information to Seller.

12.4. No Other Warranties. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTIES AS TO THE CONSTRUCTION, OPERATION OR PERFORMANCE OF THE FACILITY OR THE EQUIPMENT THEREIN, INCLUDING ITS INTERCONNECTION FACILITIES, OR THE CONFORMANCE TO SPECIFICATIONS OTHER THAN THOSE SPECIFIED IN THIS AGREEMENT OR REQUIRED BY APPLICABLE LAW. WITHOUT LIMITING THE

FOREGOING, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER MAKES NO WARRANTIES AS TO THE CONSTRUCTION, OPERATION OR PERFORMANCE OF THE HOST OR THE EQUIPMENT THEREIN, INCLUDING ITS INTERCONNECTION FACILITIES, OR THE CONFORMANCE TO SPECIFICATIONS OTHER THAN THOSE SPECIFIED IN THIS AGREEMENT OR REQUIRED BY APPLICABLE LAW.

**ARTICLE 13.
FORCE MAJEURE EVENT; CHANGE IN LAW**

13.1. Effect of Force Majeure Event. To the extent either Party is prevented by Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure Event to the other Party as soon as practicable, then the Claiming Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure Event). The Claiming Party will give prompt notice to the other Party of the Force Majeure Event and the extent of the Claiming Party’s inability to fulfill its obligations under this Agreement. If the Claiming Party provides such notice orally, the Claiming Party will promptly follow such oral notice with written notice provided in accordance with the requirements of this Agreement. The Claiming Party will use commercially reasonable efforts to (a) remove or remedy such inability to perform within a reasonable period of time, and (b) mitigate the impacts on the other Party of such inability to perform. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure Event.

13.2. Notice of Force Majeure Event. The Claiming Party will (a) promptly notify the other Party upon the occurrence of any Force Majeure Event, which notice will indicate the scope and cause of the Force Majeure Event and the anticipated period of impact of such Force Majeure Event, (b) promptly provide such available information about the Force Majeure Event and its impact as may be reasonably requested by the other Party and (c) provide updated information regarding such Force Majeure Event and its impact from time to time as reasonably requested or periodically (but not less than once per month) until such Force Majeure Event and its impact on the obligations of the Claiming Party cease to exist. When the Claiming Party is able to resume performance of its obligations under this Agreement, it will give the other Party written notice and the Parties will resume performance under this Agreement. Subject to Section 2.2(4)(ii) and Section 13.4, if any Force Majeure Event excuses performance of the Parties’ obligations under this Agreement for a period in excess of 30 days, the Term will be extended for a period equal to the period of such excuse of performance. The Parties will amend this Agreement in writing to reflect any such extension of the Term.

13.3. Scope of Force Majeure Event.

(1) The suspension of performance by a Party due to a Force Majeure Event will be of no greater scope and no longer duration than that which is necessary. The Party claiming that a Force Majeure Event has occurred will use its commercially reasonable efforts to cure the cause(s) preventing its performance of this Agreement. When the non-performing Party is able to resume

performance of its obligations under this Agreement, it will immediately give the other Party written notice to that effect and will resume performance under this Agreement as soon as practicable after such notice is delivered.

(2) The settlement of strikes, lockouts and other labor disputes will be entirely within the discretion of the affected Party and such Party will not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable in its sole and absolute discretion.

13.4. Termination for Extended Force Majeure. In the event that the Force Majeure Event continues for a period in excess of twelve (12) consecutive months, the non-Claiming Party shall have the right to terminate the Agreement pursuant to Section 16.3 of the Agreement.

13.5. Change in Law.

(1) Without limiting any other provision of this Agreement, if either Party (the “Affected Party”) reasonably determines that the Change in Law Costs caused by, resulting from or arising out of an Change in Law are reasonably quantifiable, and that the amount of any Change in Law Costs is reasonably likely to equal or exceed the Change in Law Threshold Amount, then, not later than 20 Business Days following any request from the Affected Party, the Parties will commence to negotiate in good faith regarding any adjustments that should be made to the amounts payable under this Agreement to compensate the Affected Party for such Change in Law Costs (including, if any Changes in Law require one-time capital improvements in connection with the Facility or the Host, the terms on which the applicable Change in Law Costs are to be amortized over the remainder of the Term). Prior to such negotiations, the Affected Party will provide the other Party with documentation reasonably evidencing the Affected Party’s calculation of such Change in Law Costs, and an opportunity to discuss such documentation with the Affected Party.

(2) The Change in Law Threshold Amount will constitute a threshold to any sharing by the non-Affected Party in Change in Law Costs, and will not constitute a deductible amount unless otherwise agreed by the Parties. Once the aggregate Change in Law Costs have equaled or exceeded the Change Event Threshold Amount, the non-Affected Party will, subject to satisfaction of the requirements of Section 13.5(1), be responsible for the non-Affected Party’s agreed share of any and all Change in Law Costs (unless otherwise agreed by the Parties).

(3) If, following the Effective Date, applicable Law imposes any enforceable and unappealable limits or other enforceable and unappealable compliance obligations related to emissions produced from the combustion of fuel by the Facility, and such limits or obligations are reasonably likely to have a substantial and materially adverse impact on the economics of this Agreement to Seller or Seller’s rights and obligations under this Agreement, then the following will apply:

(i) Upon the occurrence of any event described in Section 13.5(3) above, Seller will promptly transmit to Buyer a copy or notice thereof, as appropriate, and will, within 10 days after delivery of such notice, give to Buyer an explanation in reasonable detail indicating why the terms and conditions of such limits or obligations are reasonably likely to have a material adverse effect on the economics of this Agreement to Seller or Seller’s rights and

obligations under this Agreement, including an analysis in appropriate detail showing the economic impact of such limits or obligations upon Seller;

(ii) If Buyer so chooses, Buyer and Seller will meet and negotiate in good faith to determine if appropriate alterations to this Agreement or other arrangements can be agreed to that will address the operational or economic issues caused by such limits or obligations; and

(iii) If the Parties are unable or unwilling to reach agreement pursuant to Section 13.5(3)(ii), Seller will have the right to terminate this Agreement, without liability or any further obligations to Buyer, upon 180 days prior written notice to Buyer.

13.6. Termination for Change in Law. In the event that the Parties do not, within a period of 180 days following the Affected Party's request for negotiation regarding the Change in Law Costs pursuant to Section 13.5(1), reach agreement that such Change in Law Costs are reasonably likely to exceed the Change in Law Threshold Amount, or regarding any adjustment that should be made to the amounts payable under this Agreement to compensate the Affected Party for such Change in Law Costs, the Affected Party may terminate the Agreement pursuant to Section 16.4.

ARTICLE 14. INSURANCE

14.1. Required Insurance.

(1) Seller will maintain during the term of this Agreement, and will require any general contractor of Seller retained to perform significant construction or demolition work at the Facility or on the Site to maintain during the term of such work, the insurance coverage set forth below with insurance companies having an A.M. Best credit rating of "A-, VII" or better, with minimum coverage limits indicated below on policies issued on an "occurrence" basis, and naming Buyer and Seller, and their respective officers, directors, shareholders, agents, independent contractors and Affiliates as additional insureds for ongoing and completed operations on all policies except workers compensation and employers liability:

(i) Umbrella insurance coverage in the amount of \$5,000,000 and excess or umbrella liability insurance coverage with a limit of not less than \$5,000,000 per occurrence and per project. These limits will apply in excess of each of the below mentioned policies;

(ii) Workers' compensation insurance (or qualification as a self-insurer) covering its employees in amounts at least equal to the minimum coverage amounts provided under the laws of the State of Indiana, notwithstanding any provision limiting requirements to a particular number of employees. Seller will provide for, or require any Subcontractor to maintain, similar coverage for the Subcontractor's employees employed in connection with this Agreement. The insurance required under this Section 14.1(1)(ii) will bear an endorsement evidencing a waiver of the right of subrogation against Buyer;

(iii) Employers' liability insurance that covers both "bodily injury by accident" and "bodily injury by disease" with limits of not less than \$1,000,000 each accident/\$1,000,000 disease policy limit/\$1,000,000 each employee;

(iv) Commercial general liability insurance that covers bodily injury, personal injury, and property damage, including products liability and contractual liability coverage, with per occurrence limits of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000 and (x) which will include "contractual" coverage for the indemnity clauses set forth in this Agreement and the Ground Lease and (y) with coverage written on a primary and non-contributory basis;

(v) Automobile liability insurance coverage (including coverage for claims against Buyer for injuries to employees of Seller or any of its Subcontractors) for owned, non-owned, and hired autos with a limit of not less than \$1,000,000 per accident;

(vi) Commercial property insurance insuring all improvements, fixtures and personal property located on the Site from time to time in an amount equal to 100% of the full replacement cost thereof, subject to a deductible reasonably acceptable to Buyer; said commercial property insurance policy will insure against the perils of fire and extended coverage and will include "special form" property insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief; and

(vii) During any period within which any construction or installation of any improvements, fixtures or personal property at the Site is taking place, "special form" builder's risk insurance upon such improvements, fixtures or personal property to the full replacement value thereof. Such builder's risk insurance policy will insure against the perils of fire and extended coverage and will include "special form" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief.

(2) With respect to the insurance provided to Buyer hereunder, (i) Seller will procure from each insurer a waiver of subrogation in Buyer's favor and (ii) such insurance will be primary to any other insurance carried by Buyer. Insurance coverage provided by Seller under this section will not include any of the following: (i) any claims made insurance policies; (ii) any self-insured retention or deductible amount greater than \$250,000.00, unless approved in writing by Buyer; (iii) any endorsement limiting coverage available to Buyer which is otherwise required by this section; and (iv) any policy or endorsement language that (A) limits the duty to defend Buyer under the policy or (B) provides coverage to Buyer only if Seller is negligent.

(3) Notwithstanding the minimum limits of coverage set forth above, Seller will name Buyer, its officers, directors, employees, subsidiaries, successors, and assigns as additional insureds for the full limits of insurance coverage purchased by Seller, and will provide Buyer with copies of policy endorsements reflecting Buyer's status as an additional insured thereunder. The additional insured coverage provided pursuant to this Section 14.1(3) will provide coverage to Buyer for all claims, losses, demands, liens, causes of action or suits, judgments, fines, assessments, liabilities, damages and injuries (including death), including those covered by Article 17. Seller is responsible for payment of all deductibles, self-insured retentions or similar charges for the additional insured coverage required pursuant to this Section 14.1(3).

(4) Prior to commencing operations hereunder, and thereafter upon Buyer's reasonable request, Seller will provide to Buyer a certificate of insurance evidencing Seller's compliance with the requirements of this Section 14.1, bearing applicable endorsements and specifically stating that such insurance will provide prior notice to Buyer in the event of cancellation or any material change of such insurance policies. Seller also agrees to provide Buyer with a copy of any such notice it receives from its insurance company promptly after receiving such notice. Seller hereby agrees that if it fails to furnish the policy endorsements or the certificates of insurance required hereunder, or if Buyer receives notice that any policy of insurance issued to Seller has been canceled or no longer meets the requirements of this Section 14.1, then Buyer (i) may suspend this Agreement until insurance is obtained; (ii) may terminate this Agreement immediately for cause; or (iii) may, but will have no obligation to, obtain forced placement insurance that meets the requirements of this Section 14.1 at Seller's sole cost from any broker or insurer satisfactory to Buyer.

14.2. Right to Self-Insure. Notwithstanding anything herein to the contrary, and except as provided in this Section 14.2, Seller will have the right to self-insure as to any insurance required under this Agreement, provided that with respect to any self-insurance by Seller:

(1) such self-insurance by Seller is permitted by all Laws and Orders affecting the Site and the Facility or otherwise applicable to Seller;

(2) Seller will maintain a tangible net worth of at least \$1,000,000,000;

(3) Seller will maintain loss histories and will establish and maintain reserves adequate to cover losses projected by such loss histories;

(4) Seller will protect Buyer to the same extent as it would if it had the commercial general liability policy required hereunder; and

(5) Seller will provide annually to Buyer and Buyer's mortgagee, if any, a certificate indicating Seller's decision to self-insure, which certificate will certify that Seller's net worth is not less than \$1,000,000,000. In addition, simultaneously with the delivery of said notice, Seller will deliver to Buyer and Buyer's mortgagee, if any, unaudited financial statements of Seller for Seller's most recent fiscal year, which financial statements will be prepared in accordance with Generally Accepted Accounting Principles and certified as true and correct by an officer of Seller.

(6) This right to self-insure is personal to Duke Energy Indiana, LLC, and shall not apply to any assignee unless Buyer consents to such in writing.

14.3. Subcontractor and Qualified Operator Insurance. Seller will require that each Subcontractor and Qualified Operator maintains the following types of insurance in at least the following amounts:

(1) Workers' compensation insurance satisfying applicable statutory limits;

(2) Employer's liability insurance with the following minimum limits: \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 aggregate policy limit for bodily injury by disease;

(3) Commercial general liability insurance with the following minimum limits: \$2,000,000 general aggregate per project, \$2,000,000 premises, products and completed operations aggregate, \$2,000,000 bodily injury/property damage per occurrence, and \$2,000,000 personal injury and advertising injury limit, with products completed operations coverage provided for not less than 3 years from the date of final completion of the applicable project; and

(4) Automobile liability covering any Subcontractor auto (including owned, non-owned and hired autos), with minimum required limits of \$1,000,000 combined single limit each accident.

14.4. Right to Cure. If Seller fails to procure or maintain any insurance required pursuant to Section 14.1, Buyer will have the right, but not the obligation, upon not less than 30 days prior written notice from Buyer to Seller, to procure such insurance on behalf of Seller and in any such event Buyer will be entitled to recover the premiums paid for such insurance as an amount due under this Agreement. Buyer shall cause all cash that it receives from any such insurance procured on behalf of Seller to be applied and used in connection with the Facility.

ARTICLE 15. EVENTS OF DEFAULT

15.1. Events of Default. The occurrence at any time with respect to a Party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such Party (the “Defaulting Party”):

(1) The failure to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within forty-five (45) days after written notice;

(2) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or repeated;

(3) The failure to perform any material covenant or obligation set forth in this Agreement (other than to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after written notice;

(4) Such Party becomes Bankrupt;

(5) A Party’s actual fraud or willful misconduct in connection with this Agreement;

(6) A Party assigns this Agreement or any of its rights in this Agreement, except as may be permitted under Section 19.1;

(7) A Merger Event occurs with respect to such Party;

(8) Pursuant to Section 8.1, Seller commits a material breach due to the annual Facility mechanical availability falling below 50% in a Contract Year.

15.2. Remedies for Event of Default. If an Event of Default will occur and is continuing, the Non-Defaulting Party will have the right (but not the obligation) to pursue any or all of the following remedies:

- (1) Suspend performance of the Non-Defaulting Party's obligations under this Agreement;
- (2) Subject to the express limitations on remedies set forth in this Agreement, including the provisions of Section 15.4, receive from the Defaulting Party direct damages incurred by the Non-Defaulting Party as a result of or in connection with such Event of Default (including during any applicable cure period, whether or not the Non-Defaulting Party has elected to suspend performance during such cure period);
- (3) Terminate the Agreement, pursuant to Section 16.5; and
- (4) Exercise all other remedies available to the Non-Defaulting Party at law or in equity.

15.3. Additional Default Rights. The Parties shall have the following additional rights:

(1) Payment or performance by the Non-Defaulting Party of any of the Defaulting Party's obligations will not waive or cure any breach occasioned by the Defaulting Party's failure or refusal to pay or perform same. Any sums expended by the Non-Defaulting Party in curing any defaults will be repaid by the Defaulting Party to the Non-Defaulting Party within 30 days after demand. Any such sums that are not paid within such 30-day period will bear interest at the Interest Rate.

(2) If Buyer is at any time during the Term in default of any of Buyer's obligations under the Ground Lease, Seller will be entitled to suspend performance of any or all of its obligations under this Agreement until such time as Buyer has cured such defaults.

15.4. Remedies Cumulative. The amount determined in accordance with Section 16.5 will be the Parties' sole and exclusive remedy under this Agreement or otherwise for termination for an Event of Default. Subject to the express limitations set forth in the foregoing sentence, each right or remedy of the Parties provided for in this Agreement will be cumulative of and will be in addition to every other right or remedy provided for in this Agreement. A Party's exercise of any one or more of the rights or remedies provided for in this Agreement will not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement.

15.5. Closeout Setoffs. The Non-Defaulting Party will be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the Non-Defaulting Party to the Defaulting Party under this Agreement, any amounts due and owing from the Defaulting Party to the Non-Defaulting Party under this Agreement or any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this section will be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

15.6. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages, and that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement, *provided* that in no event will such mitigation obligations include any requirement that either Party pay any amounts to the other Party.

15.7. Survival. Notwithstanding any provisions herein to the contrary, any provision hereof which by its terms applies to the period after termination of this Agreement and any provisions hereof necessary to give effect to the intent of the Parties hereunder after the termination or expiration of this Agreement will survive in full force the termination or expiration of this Agreement, including the obligations set forth in Section 2.2(4), Section 4.3, Section 4.4, Section 4.5, Article 10, Article 14, Article 15 (other than Section 15.1), Article 16, Article 17, Article 18, and Article 19 (other than Section 19.1).

ARTICLE 16.

TERMINATION AND CONSEQUENCES OF TERMINATION

16.1. Termination Events. The following circumstances shall give rise to the ability of one Party to terminate this Agreement: (1) the Expiration Date is reached and the Term of the Agreement is fulfilled (“Termination upon Expiration of the Term”); (2) one of the Parties has experienced a Force Majeure Event as set forth in Section 13.4 (“Termination for Extended Force Majeure”); (3) one of the Parties has experienced a Change of Law as set forth in Section 13.5 (“Termination for Change of Law”); or (4) one of the Parties has committed or experienced an Event of Default as set forth in Section 15.1 (“Termination for Event of Default”); or (5) Buyer is entitled to terminate the Agreement before the Expiration Date for its convenience, as described below (“Termination for Convenience”).

16.2. Termination upon Expiration of the Term.

(1) Upon the expiration of the Term, Seller shall remove the Facility from the Site and restore the Site to its original condition at Seller’s sole cost and expense, pursuant to the terms of the Ground Lease.

(2) Buyer may, by submission of written notice to Seller within 180 days of the scheduled expiration of the Term, elect to purchase the Facility pursuant to the process set forth herein. If Buyer fails to submit notice to Seller within 180 days of the scheduled expiration of the Term, or otherwise notifies Seller that it will not elect to purchase the Facility, Buyer’s purchase rights as set forth herein shall be null and void, and Seller shall have no further obligations hereunder to Buyer relating to the sale of the Facility.

(i) In the event that Buyer provides timely written notice to Seller of its intent to purchase the Facility, the purchase and sale of the Facility will be made on a date mutually acceptable to Seller and Buyer that is within three hundred (300) days of Seller’s receipt of Buyer’s election notice. Such purchase and sale will be made on an “AS IS, WHERE IS” basis, and otherwise pursuant to agreements customary for transactions of this nature, and the price shall be set at the Net Book Value of the Facility, calculated as of the date of Buyer’s election notice. Such purchase and sale shall also be subject to the receipt of any applicable State and federal regulatory

approvals. Seller and Buyer shall work cooperatively to obtain any such required governmental approvals.

(ii) Unless Buyer has notified Seller that it does not elect to purchase the Facility, during the final 365 days of the term of this Agreement, Seller shall permit Buyer to conduct reasonable inspections of the Facility and conduct reasonable due diligence related to the purchase of the Facility. During such time period, Seller will permit Buyer and its advisors access to the Facility, documents, records, key employees and advisors as Buyer may reasonably request for the purpose of completing its inspections and due diligence. If, at any time during such three hundred (300) day period from Seller's receipt of Buyer's notice and the date designated for the closing of the purchase transaction, Buyer desires to withdraw its election and terminate the purchase of the Facility, it shall immediately provide written notice thereof to Seller and neither Buyer nor Seller shall have any further obligation to sell or purchase, respectively, the Facility.

16.3. Termination for Extended Force Majeure.

(1) If a Force Majeure Event prevents the Claiming Party (as defined in Section 13.1) from performing a material obligation of such Party under this Agreement for a period of 12 consecutive months, then the other Party will have the right to terminate this Agreement by written notice to the Claiming Party, in which case this Agreement will terminate 90 days after the date of such termination notice unless, within such 90-day period, (a) full performance has resumed hereunder or the Party giving the termination notice has withdrawn such notice or (b) the Claiming Party demonstrates, to the reasonable satisfaction of the other Party, that the Claiming Party is exercising sustained and diligent efforts to overcome the effects of the Force Majeure Event and reasonably expects that the Claiming Party will be able, within a period of 6 months from the end of such 90-day period, to resume performance of the obligations affected by the Force Majeure Event.

(2) Buyer may, by submission of written notice to Seller within 60 days of the scheduled expiration of the Term for Force Majeure Event, elect to purchase the Facility pursuant to the process set forth herein. If Buyer fails to submit notice to Seller within 60 days of the scheduled expiration of the Term, or otherwise notifies Seller that it will not elect to purchase the Facility, Buyer's purchase rights as set forth herein shall be null and void, and Seller shall have no further obligations hereunder to Buyer relating to the sale of the Facility.

(i) In the event that Buyer provides timely written notice to Seller, the purchase and sale of the Facility will be made on a date mutually acceptable to Seller and Buyer that is within three hundred (300) days of Seller's receipt of Buyer's election notice. Such purchase and sale will be made on an "AS IS, WHERE IS" basis, and otherwise pursuant to agreements customary for transactions of this nature, and the price shall be set at the Net Book Value of the Facility, calculated as of the date of Buyer's election notice. Such purchase and sale shall also be subject to the receipt of any applicable State and federal regulatory approvals. Seller and Buyer shall work cooperatively to obtain any such required governmental approvals.

(ii) Upon Seller’s receipt of Buyer’s election notice, Buyer shall be permitted to conduct reasonable inspections of the Facility and reasonable due diligence related to the purchase of the Facility. At such time, Seller will permit Buyer and its advisors access to the Facility, documents, records, key employees and advisors as Buyer may reasonably request for the purpose of completing its due diligence. If, at any time during such three hundred (300) day period from Seller’s receipt of Buyer’s notice and the date designated for the closing of the purchase transaction, Buyer desires to withdraw its election and terminate the purchase of the Facility, it shall immediately provide written notice thereof to Seller and neither Buyer nor Seller shall have any further obligation to sell or purchase, respectively, the Facility.

(3) Upon the effective date of such Termination by Extended Force Majeure Event, neither Party will have any further rights or obligations under this Agreement, except those rights and obligations arising before the effective date of such termination and those rights and obligations provided in Section 15.7 of this Agreement. Further, neither Party will be liable to the other Party for any Termination Payment or otherwise owe to the other Party any damages of any kind for or as a result of such termination; *provided, however*, that such termination will not relieve either Party of any obligations or any liability arising under or in connection with this Agreement prior to such termination.

16.4. Termination for Change of Law.

(1) In the event that the Parties do not, within a period of 180 days following the Affected Party’s request for negotiation regarding the Change in Law Costs, pursuant to Section 13.5, reach agreement that such Change in Law Costs are reasonably likely to exceed the Change in Law Threshold Amount, or regarding any adjustment that should be made to the amounts payable under this Agreement to compensate the Affected Party for such Change in Law Costs, the Affected Party will be entitled at any time within 60 days thereafter, in its sole and absolute discretion, effective 180 days following written notice from the Affected Party to the other Party, and without any liability whatsoever (including liability for any Termination Payment) on the part of the Affected Party to the other Party or any other Person, to terminate this Agreement, and, pending the effectiveness of such termination, suspend performance of each and all of the obligations of the Affected Party under or pursuant to this Agreement; *provided, however*, that such termination will not relieve either Party of any obligations or any liability arising under or in connection with this Agreement prior to such termination.

(2) Buyer may, by submission of written notice to Seller within 30 days of the scheduled expiration of the Term for Change in Law, elect to purchase the Facility pursuant to the process set forth herein. If Buyer fails to submit notice to Seller within 30 days of the scheduled expiration of the Term, or otherwise notifies Seller that it will not elect to purchase the Facility, Buyer’s purchase rights as set forth herein shall be null and void, and Seller shall have no further obligations hereunder to Buyer relating to the sale of the Facility.

(i) In the event that Buyer provides timely written notice to Seller, the purchase and sale of the Facility will be made on a date mutually acceptable to Seller and Buyer that is within three hundred (300) days of Seller’s receipt of Buyer’s election notice. Such purchase and sale will be made on an “AS IS, WHERE IS” basis, and otherwise pursuant to agreements customary for transactions of this nature, and the price shall be set at the Net Book

Value of the Facility, calculated as of the date of Buyer’s election notice. Such purchase and sale shall also be subject to the receipt of any applicable State and federal regulatory approvals. Seller and Buyer shall work cooperatively to obtain any such required governmental approvals.

(ii) Upon Seller’s receipt of Buyer’s election notice, Buyer shall be permitted to conduct reasonable inspections of the Facility and reasonable due diligence related to the purchase of the Facility. At such time, Seller will permit Buyer and its advisors access to the Facility, documents, records, key employees and advisors as Buyer may reasonably request for the purpose of completing its due diligence. If, at any time during such three hundred (300) day period from Seller’s receipt of Buyer’s notice and the date designated for the closing of the purchase transaction, Buyer desires to withdraw its election and terminate the purchase of the Facility, it shall immediately provide written notice thereof to Seller and neither Buyer nor Seller shall have any further obligation to sell or purchase, respectively, the Facility.

16.5. Termination for an Event of Default.

(1) If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Section 15.1, the Non-Defaulting Party will have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in Section 15.3, to:

(i) designate by notice to the Defaulting Party a day, no earlier than the day such notice becomes effective and no later than 60 days after the day such notice becomes effective, on which this Agreement will terminate (the “Early Termination Date”);

(ii) recover in connection with such termination an amount calculated pursuant to Section 16.5(3) below; and

(iii) subject to the express limitations on remedies set forth in this Agreement, including the provisions of Section 15.5, pursue any other right or remedy available under this Agreement or applicable Law. If notice of termination has not been received by the date that is 180 days following the last day of any applicable cure period, the Event of Default is waived by the Non-Defaulting Party and no further damages will accrue with respect to such Event of Default.

(2) Effect of Designation. If notice designating an Early Termination Date is given under Section 16.5, the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing. Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under this Agreement will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Section 16.5(3).

(3) Termination Payment. On or as soon as reasonably practicable following the occurrence of an Early Termination Date, the Non-Defaulting Party will determine (i) the Termination Payment payable by the Defaulting Party, as set forth in Exhibit D, plus (ii) any costs incurred by the Non-Defaulting Party as a result of the termination of this Agreement due to the Defaulting Party’s default, plus (iii) any unpaid amounts owing under this Agreement from the

Defaulting Party to the Non-Defaulting Party that arose before the Early Termination Date, minus (iv) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to the Defaulting Party, minus (v) any amounts that the Non-Defaulting Party is able to recover pursuant to mitigation under Section 15.7. If the resulting amount is a positive amount, the Defaulting Party will pay such amount to the Non-Defaulting Party. If the resulting amount is a negative amount, the Non-Defaulting Party will pay the absolute value of such amount to the Defaulting Party.

(4) Buyer may, by submission of written notice to Seller on or before the scheduled expiration of the Term for an Event of Default by Seller, elect to purchase the Facility pursuant to the process set forth herein. If Buyer fails to submit notice to Seller on or before the scheduled expiration of the Term, or otherwise notifies Seller that it will not elect to purchase the Facility, Buyer's purchase rights as set forth herein shall be null and void, and Seller shall have no further obligations hereunder to Buyer relating to the sale of the Facility.

(i) In the event that Buyer provides timely written notice to Seller, the purchase and sale of the Facility will be made on a date mutually acceptable to Seller and Buyer that is within three hundred (300) days of Seller's receipt of Buyer's election notice. Such purchase and sale will be made on an "AS IS, WHERE IS" basis, and otherwise pursuant to agreements customary for transactions of this nature, and the price shall be set at the Net Book Value of the Facility, calculated as of the date of Buyer's election notice. Such purchase and sale shall also be subject to the receipt of any applicable State and federal regulatory approvals. Seller and Buyer shall work cooperatively to obtain any such required governmental approvals.

(ii) Upon Seller's receipt of Buyer's election notice, Buyer shall be permitted to conduct reasonable inspections of the Facility and reasonable due diligence related to the purchase of the Facility. At such time, Seller will permit Buyer and its advisors access to the Facility, documents, records, key employees and advisors as Buyer may reasonably request for the purpose of completing its due diligence. If, at any time during such three hundred (300) day period from Seller's receipt of Buyer's notice and the date designated for the closing of the purchase transaction, Buyer desires to withdraw its election and terminate the purchase of the Facility, it shall immediately provide written notice thereof to Seller and neither Buyer nor Seller shall have any further obligation to sell or purchase, respectively, the Facility.

16.6. Termination for Convenience. Notwithstanding any other provision of this Agreement, if Buyer at any time after the end of the 10th Contract Year elects to terminate this Agreement for a convenience, Buyer may terminate this Agreement by providing notice of termination to Seller, such termination to be effective 180 days after such notice is provided to Seller, and paying any Termination Payment, as set forth in Exhibit D, applicable to the Contract Year in which such termination occurs. If in connection with any such Termination for Convenience, Buyer as Landlord under the Ground Lease is no longer able to provide the Utilities, then, prior to any termination of this Agreement under this Section 16.6, Buyer will provide Seller with access and rights of entry for Seller to provide the Utilities for itself, at Seller's sole cost and expense, from the existing facilities at the Host or otherwise. If Buyer terminates this Agreement pursuant to this Section 16.6 and makes any applicable Termination Payment on or before the effective date of such termination, Buyer will not be considered in default of this Agreement or have any other liability to Seller on account of such termination and Seller will have no rights or remedies against Buyer except as expressly provided in this Section 16.6.

16.7. Effect of Termination. Except as provided in this Article 16 and Section 15.7, upon a termination of this Agreement pursuant to this Article 16, the Parties will be relieved of all of their respective obligations under this Agreement arising from and after the effective date of such termination; *provided, however*, that such termination will not relieve either Party of any obligations or any liability arising under or in connection with this Agreement prior to such termination.

ARTICLE 17. INDEMNIFICATION; LIMITATION OF LIABILITY

17.1. Seller and Buyer Indemnification. To the extent permitted by law, [including the provisions and limitations of the Indiana Tort Claims Act (Ind. Code ch. 34-13-3)], each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party (the “Indemnified Party”) from and against all claims, demands, damages, losses, liabilities, fines, penalties, judgments, amounts paid in settlement, deficiencies, charges, Taxes, obligations, demands, fees, interest, costs, and expenses (including attorneys’ and other professionals’ fees) (“Losses”) to the extent caused by, resulting from, or arising out of any breach or violation of this Agreement by the Indemnifying Party, any Event of Default with respect to the Indemnifying Party under this Agreement, or any negligence or intentional misconduct by or of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. Nothing in this Section 17.1 will affect any liability of either Party to the other for any breach of this Agreement or for any event or occurrence for which any specific remedy is provided hereunder. The indemnification obligations under this Agreement will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of any insurance policy.

17.2. Notice of Third-Party Claims; Procedure. The Indemnified Party will, with reasonable promptness after obtaining knowledge of a third party claim, provide the Indemnifying Party with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification; *provided, however*, that failure to give prompt notice will not adversely affect any claim for indemnification hereunder except to the extent the Indemnifying Party’s ability to contest any claim by any third party is materially adversely affected as a result thereof. The notice will include (i) a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, (ii) a good faith estimate of the amount of Losses, and (iii) copies of any pleadings or demands from the third party. The Indemnifying Party will have 30 days after its receipt of the claim notice to notify the Indemnified Party in writing whether or not the Indemnifying Party agrees that the claim is subject to this Article 17 and, if so, whether the Indemnifying Party elects to undertake, conduct and control, through counsel of its choosing and at its sole risk and expense, the settlement or defense of the claim. If within 30 days after its receipt of the claim notice, the Indemnifying Party notifies the Indemnified Party that it elects to undertake the settlement or defense of the claim, the Indemnified Party will cooperate with the Indemnifying Party in connection with the settlement or defense of the claim, including by making available to the Indemnifying Party all relevant information and the testimony of employees and agents material to the defense of the claim. The Indemnifying Party will reimburse the Indemnified Party for reasonable out-of-pocket costs incurred in connection with such cooperation. If the Indemnifying Party exercises its right to undertake the settlement or defense of the claim in accordance with the provisions of this Section 17.2 and the Indemnified Party notifies the Indemnifying Party that the Indemnified Party desires to retain separate counsel

in order to participate in or proceed independently with such contest, defense or litigation, the Indemnified Party may do so at its own expense. The Indemnified Party will have the right to pay or settle any claim at any time without the consent of the Indemnifying Party; *provided, however*, that if the Indemnifying Party is contesting the claim in good faith and with diligence and the Indemnified Party pays or settles the claim without the Indemnifying Party's consent, the Indemnified Party will be deemed to have waived any right to indemnification with respect to such claim. If the Indemnifying Party does not provide a responsive notice within the 30-day period set forth in this Section 17.2, the Indemnified Party will have the right to contest, settle or compromise the claim at its exclusive discretion, at the Indemnifying Party's sole cost and expense, and the Indemnifying Party will be deemed to have waived any claim, defense or argument that the Indemnified Party's settlement or defense of such claim is in any respect inadequate or unreasonable.

17.3. Survival; Limitations. The indemnity obligations and rights of the Parties set forth in this Article 17 will survive the termination of this Agreement for 2 years after expiration or termination for any reason of this Agreement.

17.4. Insurance Proceeds. If the Indemnifying Party is obligated to indemnify the Indemnified Party under this Article 17, the amount payable to the Indemnified Party will be the amount of the Indemnified Party's Losses net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party, which will not be deemed to include commencing legal action against the issuer of any insurance policy, to obtain such insurance proceeds.

17.5. Limitation of Liability. **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. WITHOUT PREJUDICE TO THE CALCULATION OF ANY TERMINATION PAYMENT AMOUNT, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING INDIRECT DAMAGES IN THE NATURE OF LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL THE FOREGOING LIMITATIONS OF LIABILITY BE APPLIED TO LIMIT THE EXTENT OF THE LIABILITY OF EITHER PARTY TO THE OTHER FOR OR WITH RESPECT TO ANY THIRD PARTY CLAIMS OR FOR OR WITH RESPECT TO ANY BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT. IT IS THE INTENT OF**

THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NOTHING IN THE FOREGOING WILL BE CONSTRUED TO LIMIT ANY LEGAL, EQUITABLE OR STATUTORY RIGHTS OF SETOFF OR ANY RIGHTS UNDER ANY PERFORMANCE ASSURANCE, OR TO PROHIBIT ANY ACTION TO ENFORCE ANY REMEDY PROVIDED UNDER THIS AGREEMENT.

**ARTICLE 18.
CONFIDENTIALITY**

18.1. Confidential Information. The term “Confidential Information” as used in this Agreement means:

(1) the specific terms of this Agreement (including the pricing terms thereof) and other information that would reasonably be understood to be confidential or proprietary by a reasonable person and that is provided by or on behalf of one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) or its Representatives in connection with this Agreement, whether transmitted or disclosed to the Receiving Party or its Representatives in person, electronically, by telephone or facsimile transmission, in writing, by drawings, orally, or in any other manner or form, and the substance and content of such information;

(2) any other information ascertained through discussions between Representatives of the Parties concerning this Agreement or in connection with this Agreement; and

(3) any notes, analysis, compilations, studies, interpretations, memoranda, or other documents and writings prepared by the Receiving Party or its Representatives that contain, reflect, or are based upon, in whole or in part, any information described in clause (i) or (ii) above;

provided, however, that Confidential Information will not include:

(i) information already lawfully in the Receiving Party’s possession at the time of its receipt from the Disclosing Party;

(ii) information that is lawfully obtained by the Receiving Party from a third party subsequent to its receipt from the Disclosing Party, if the third party is free from any obligation of confidentiality to the Disclosing Party or its Affiliates with respect to such information;

(iii) information that (A) at the time of disclosure by the Disclosing Party to the Receiving Party, is available to the public, or (B) after disclosure by the Disclosing Party to

the Receiving Party, becomes available to the public, except where such availability arises out of the breach of this Agreement by the Receiving Party;

(iv) information independently developed by the Receiving Party without violating its obligations under this Agreement; and

(v) information that the Disclosing Party, in writing, specifically authorizes the Receiving Party to disclose prior to such disclosure.

18.2. Disclosure and Use of Confidential Information. The Receiving Party:

(1) will hold in strict confidence all Confidential Information and, without the prior written consent of the Disclosing Party, will not disclose any Confidential Information to any Person (other than the Receiving Party's Representatives), using at a minimum the same degree of care to avoid disclosure of such Confidential Information as the Receiving Party uses with respect to its own confidential information, but in any event not less than a reasonable degree of care;

(2) will use the Confidential Information solely in connection with this Agreement; and

(3) will not disclose any Confidential Information to the Receiving Party's Representatives unless such individuals have a need to know such Confidential Information for a purpose specifically allowed under this Agreement, have been informed of this Agreement and the terms hereof, and have agreed to be bound by such terms, provided that the Receiving Party will be liable for any breach of the confidentiality provisions of this Agreement by its Affiliates or Representatives.

18.3. Required Disclosure. The confidentiality requirements of this Agreement will not apply to Confidential Information to the extent that the Receiving Party is required to disclose such Confidential Information pursuant to applicable Law, including the Indiana Access to Public Records Act, or stock exchange rule. If the Receiving Party is compelled by any such Law or legal process to disclose any Confidential Information, the Receiving Party, to the extent not prohibited by applicable Law, will provide the Disclosing Party with prompt notice of such requirement, will use commercially reasonable efforts to resist such compelled disclosure, and will cooperate with the Disclosing Party in obtaining appropriate protective Order(s) for such compelled disclosure (in each case at the Disclosing Party's sole cost and expense). If the Receiving Party is ordered or instructed to disclose Confidential Information by a court of competent jurisdiction or, in the professional judgment of the Receiving Party's counsel, the Receiving Party is compelled to permit such disclosure or else risk civil or criminal liability, or if the Disclosing Party waives compliance with the confidentiality provisions of this Agreement, then the Receiving Party may so disclose such Confidential Information or other information without liability hereunder, *provided* that (x) to the extent not prohibited by applicable Law, the Receiving Party has given the Disclosing Party a reasonable opportunity under the circumstances to review the text of such disclosure before it is made and (y) the Receiving Party (at the Disclosing Party's sole cost and expense) uses commercially reasonable efforts to obtain from the Person to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information that is disclosed.

18.4. Specific Performance; Injunctive Relief. The Receiving Party acknowledges and agrees that, because of the sensitive and confidential nature of the Confidential Information, the breach by the Receiving Party of the terms of this Agreement with regard to disclosure of Confidential Information may cause the Disclosing Party irreparable harm and damage and that a monetary remedy for any such breach will be inadequate and will be impracticable and extremely difficult to prove. Therefore, the Receiving Party agrees that, in the event of such breach, the Disclosing Party will have the right to exercise all remedies available at law and equity, including specific performance and temporary and permanent injunctive relief, including temporary restraining Orders, preliminary injunctions and permanent injunctions, without the necessity of posting a bond or making any undertaking in connection therewith and without the necessity of proving actual damages. Any such requirement of a bond or undertaking is hereby waived by the Receiving Party, and the Receiving Party acknowledges that in the absence of such a waiver, a bond or undertaking might be required by the court. The Receiving Party hereby submits to the subject matter jurisdiction of any court granting such relief.

18.5. Survival of Obligations. The confidentiality obligations of the Receiving Party under this Agreement will remain in full force and effect for a period of 2 years from the date of termination of this Agreement, except for obligations related to trade secrets of a Party, which obligations will extend indefinitely. Upon termination of this Agreement and upon the request of the Disclosing Party, the Receiving Party will, at the election of the Disclosing Party, either return all Confidential Information of the Disclosing Party to the Disclosing Party or certify to the Disclosing Party that the Receiving Party has destroyed all such Confidential Information.

18.6. Public Announcements. Neither Party may issue or make any public announcement, press release or statement regarding this Agreement unless the public announcement, press release or statement is issued jointly by the Parties or, before the release of the public announcement, press release or statement, the Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. However, no Party will be prohibited from issuing or making any such public announcement, press release or statement, without obtaining approval from the other Party, if it is necessary to do so to comply with applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party or if it is necessary to do so in connection with such Party or its Affiliates' financial statements.

ARTICLE 19. MISCELLANEOUS

19.1. Assignment.

(1) Except as provided in Section 19.1(2) below, any Change of Control or sale, transfer, or assignment of this Agreement or any interest in the Facility or the Host will be null and void and a breach of this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed so long as (i) the assignee expressly assumes the transferring Party's payment and performance obligations under this Agreement, and (ii) the transferring Party delivers evidence satisfactory to the non-transferring

Party of the proposed assignee’s technical and financial capability to fulfill the assigning Party’s obligations hereunder.

(2) Either Party may sell, transfer or assign this Agreement or its interests in the Facility or the Host on notice to the other Party but without the other Party’s consent if such sale, transfer or assignment is in connection with a Permitted Transaction.

(3) This Agreement will be binding on and inure to the benefit of the Parties and their permitted successors and assigns.

19.2. Living, Learning Laboratory and Academic Collaboration. The Seller recognizes that in pursuit of the Buyer’s academic mission, the Facility may, without interruption or disruption to the operation of the Facility, be used from time to time for academic purposes, providing students and faculty with a learning laboratory integrating academics, operations and facilities. The Seller shall use reasonable efforts to provide Host students and faculty with reasonable access to the Facility for learning purposes and the Parties shall coordinate activities to leverage the Facility for educational purposes, as commercially reasonable.

19.3. Relationship of the Parties.

(1) Seller is an independent contractor and nothing contained herein will be construed as constituting any relationship with Buyer other than that of purchaser and independent contractor, nor will it be construed as creating any relationship whatsoever between the Parties, including employer/employee, partners or joint venture parties.

(2) Each Party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Without limiting any other provision of this Agreement, neither Party is relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement will not be considered investment advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other Party will be deemed to be an assurance or guarantee as to the expected results of this Agreement except as otherwise expressly set forth herein.

(3) Each Party is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

(4) Neither Party is acting as a fiduciary for or an adviser to the other Party in respect of this Agreement.

(5) Each Party is entering into this Agreement and any other documentation relating to this Agreement as principal (and not as agent or in any other capacity, fiduciary to otherwise).

19.4. Notices. All notices, requests, statements or payments will be made to the addresses and persons specified in Exhibit H. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile; *provided* that no such copy of e-mail notices will be required for notifications sent in the ordinary course of business by e-mail and notifications of Forced Outages sent by e-mail. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 19.4.

19.5. Resolution of Disputes.

(1) If any dispute (including payment dispute), controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the Parties (a “Dispute”), the Party wishing to declare a Dispute will deliver to the other Party a written notice identifying the disputed issue.

(2) Following delivery and receipt of a notice of Dispute, members of management of both Parties will meet at a mutually acceptable time and place within 10 Business Days after receipt of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute; *provided, however*, in the event of a threatened or actual breach of the confidentiality provisions of this Agreement, the Disclosing Party may bypass such meeting requirement and immediately seek relief in a court of competent jurisdiction to stay any such threatened or actual breach of this Agreement. In such meetings and exchanges, a Party will have the right to designate as confidential any information that such Party offers. If the matter has not been resolved in the aforementioned manner within 30 days after delivery of the notice of the Dispute by a Party, or if the Parties fail to meet within 10 Business Days as required above, either Party may initiate any legal action, suit or other proceeding available to it to resolve such Dispute.

19.6. Governing Law; Venue; Waiver of Jury Trial.

(1) This Agreement and all provisions hereof, shall be governed by and interpreted in accordance with the laws of the State of Indiana, without regard to its principles of conflict of laws.

(2) BUYER AND SELLER HEREBY CONSENT TO EXCLUSIVE JURISDICTION AND VENUE IN THE CIRCUIT OR SUPERIOR COURT OF MARION COUNTY, INDIANA, FOR ANY ACTION OR PROCEEDING ARISING OUT OF OR

RELATING TO THIS AGREEMENT. ANY SUCH ACTION OR PROCEEDING BROUGHT AGAINST THE OTHER SHALL BE BROUGHT ONLY IN SUCH STATE COURTS. A FINAL NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAWS. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE (I) THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF THE ABOVE NAMED COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT AND (II) TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO ABOVE. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(3) EACH OF BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT IF ANY DISPUTE WHATSOEVER ARISES BETWEEN THE PARTIES RELATING TO THIS AGREEMENT, ANY RESULTING LITIGATION WILL BE DECIDED BY A JUDGE AND NOT A JURY.

19.7. Entire Agreement. This Agreement, including the Exhibits attached hereto and incorporated herein, together with the Ground Lease, contain the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous discussions, agreements and commitments between the Parties with respect hereto and thereto, and any prior and contemporaneous confidentiality agreements executed by the Parties in respect of the transactions contemplated by this Agreement. There are no agreements or understandings between the Parties respecting the subject matter hereof or thereof, whether oral or written, other than those set forth herein or therein, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

19.8. Amendments. This Agreement may be modified or amended only by an instrument in writing signed by the Parties hereto.

19.9. Severability. If any of the terms and conditions of this Agreement is held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any Governmental Authority having jurisdiction over the subject matter of this Agreement, such contravention or invalidity will not invalidate the entire Agreement. Instead, this Agreement will be construed as

if it did not contain the particular provision or provisions held to be invalid, and an equitable adjustment will be made and necessary provisions added so as to give effect to the intention of the Parties as expressed in this Agreement at the time of the execution of this Agreement and of any amendments to this Agreement

19.10. Record Retention; Audit. Each Party agrees to retain all records relating to the performance of such Party's obligations hereunder for a period of 5 years from and after the creation of such records, and to cause its Affiliates to retain all such records for the same period. Either Party will have the right during such period, on an annual basis and upon reasonable prior notice, to audit the other Party's metering and other records relating to this Agreement to the limited extent necessary to verify the basis for any claim by either Party regarding payments hereunder. Each Party will make such metering and other records available at its corporate office during normal business hours and the auditing Party will reimburse the other Party for those reasonable out of pocket costs incurred by it in respect of such audit, as supported by appropriate documentation.

19.11. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto, and except as specifically provided herein, nothing in this Agreement or any action taken hereunder will be construed to create any duty, liability or standard of care to any Person not a party to this Agreement. Except as specifically provided herein, no Person not a Party hereto will have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both. The Parties specifically disclaim any intent to create any rights in any Person as a third-party beneficiary to this Agreement or the services to be provided hereunder, or both.

19.12. No Recourse. This Agreement is solely and exclusively between Buyer and Seller, and any obligations created herein will be the sole obligations of the Parties hereto. No Party will have recourse to any director, officer, Affiliate, partner, or joint venturer of the other Party for performance of said obligations, unless the obligations are assumed or guaranteed in writing by the Person against which recourse is sought.

19.13. Non-Waiver. No waiver of any of the terms of conditions of this Agreement will be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof will be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof will not be construed as a waiver of such Party's right in the future to insist on such strict performance.

19.14. Forward Contract; Forward Agreement. The Parties acknowledge and intend that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, and that Buyer and Seller are "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any Dispute or otherwise, or otherwise take any position to the effect that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same "forward contract" and "forward agreement" within the

meaning of the Bankruptcy Code, or that Buyer and Seller are not “forward contract merchants” and “swap participants” within the meaning of the Bankruptcy Code.

19.15. Expenses. Each Party will be responsible for its own costs and expenses (including the fees and expenses of its legal counsel) incurred in the preparation, review, execution and delivery of this Agreement and all related documents.

19.16. Headings. The headings to Articles, Sections and Exhibits of this Agreement are for ease of reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

19.17. Further Assurances. Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

19.18. Counterparts; Execution by Facsimile or Electronic Mail. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original. Delivery of an executed counterpart of this Agreement by facsimile or by electronic transmission will be equally effective as delivery of an original executed counterpart of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Seller and Buyer have entered into this Agreement effective as of the Effective Date.

SELLER

DUKE ENERGY INDIANA, LLC

BY: _____

Title: _____

BUYER

THE TRUSTEES OF PURDUE UNIVERSITY

BY: _____

Title: _____

EXHIBIT A – NOTE: DUKE IS STILL REVIEWING SOME REQUIREMENTS**TECHNICAL REQUIREMENTS**

The Purdue University CHP plant consists of a single industrial sized natural gas fired combustion turbine generator (CTG) capable of producing nominal 16 MWe with fired heat recovery steam generator (HRSG). The Purdue CHP will be designed to provide base load steam to the University to complement the existing Wade Utility Plant. The Purdue CHP plant design will incorporate a duct burner in the HRSG capable of producing up to 150,000 lb/hr total steam supply matching the Wade plant high pressure header conditions. The design will incorporate a bypass damper and stack to allow for simple cycle operation if required. The CHP will be located near the existing Wade Utility Plant and within proximity of the switchyard to which the CHP will be connected.

1.0 Steam & Condensate Interconnections**1.1 High Pressure Steam Delivery**

- (a) Seller shall provide steam to Buyer's HP steam header at an unfired flow rate ranging from a minimum of 48,000 lb/hr to a maximum of 50,000 lb/hr depending upon ambient air conditions. The total Steam flow rate is expected to be 150,000 lb/hr at ambient air temperature of 59°F.
- (b) Seller shall provide High Pressure (HP) superheated steam at a nominal pressure of 575-625 psig and nominal temperature of 750-800°F. Acceptable transient or upset temperature range is 725-825°F.
- (c) The maximum allowable working pressure of Seller's HP steam system shall match Buyer's piping design conditions of 675 psig at 900°F.

1.2 Medium Pressure Steam Delivery

- (a) Seller shall have capability to reduce the pressure of a portion of the HP steam capacity and provide up to 80,000 lb/hr of Medium Pressure steam when requested from Buyer. The nominal delivery conditions for Medium Pressure steam shall be 125 psig at 400-450°F. Seller shall provide attemperation of the reduced-pressure steam to achieve the stated steam temperature range.
- (b) For up to two (2) weeks per year, Buyer will be able to accept only Medium Pressure steam.
- (c) The maximum allowable working pressure of the Seller's Medium Pressure steam system shall be compatible with the Buyer's piping design conditions.

1.3 HRSG Warming Steam Provisions

- (a) Buyer shall provide Seller up to 1,000 lb/hr warming steam from Buyer's 125 psig steam header for HRSG pre-warming during a normal cold CHP unit start up.

- (b) Up to 2,000 lb/hr of warming steam shall be available to Seller for occasional freeze-proofing of HRSG and condensate tank in the event the CHP facility must be shut down during extremely cold weather.

1.4 Condensate Delivery

- (a) Seller is 100% dependent on Buyer’s condensate delivery for steam generation and CHP unit operation.
- (b) Buyer’s condensate delivered to Seller shall consist of a single blended stream of condensate return supplemented with demineralized water from Buyer’s demineralized water treatment system.
- (c) Buyer shall provide condensate at nominal temperature of 130°F for delivery to Seller’s 100,000 gallon insulated condensate storage tank at a pressure and flow to be mutually agreed to by Seller and Buyer.
- (d) Seller shall include hook-up provisions for temporary and occasional use of a mobile demineralized water trailer if required to supplement Buyer’s condensate.

2.0 Steam & Condensate Quality

Steam quality is primarily dependent on condensate quality. The following condensate, boiler water and steam quality requirements meet or exceed the guidelines of the American Society of Mechanical Engineers for industrial water tube applications operating at 601-750 psig that include a superheater and supply steam to turbine drives.

2.1 Condensate Quality

- (a) Condensate shall be sufficiently free of impurities consistent with electric and steam generation utility practices and meet the following standards:

Condensate Quality	
pH range at 25°C	8.3 < pH < 10.0
Conductivity (Targeted Range)	5-50 umhos/cm
Total Hardness (mg/l as CaCO ₃)	< 0.20
Silica:	≤ 30 ppm

2.2 Steam Quality

- (a) Seller’s HRSG drum steam and superheater outlet steam to Wade Utility Plant will be monitored with installed sampling and analysis equipment. Steam samples will be taken from the steam headers using EPRI Isokinetic Sampling Nozzles. The sampling nozzles shall be procured by the Seller from a qualified provider subject to prior review and concurrence by the Buyer.

- (b) Monitoring of sodium in the steam, when required, shall be performed with portable analyzer having integral condensing equipment, or samples to be analyzed may be sent offsite to a third-party lab for analysis.
- (c) The steam purity shall meet the specifications of Buyer’s existing boilers and steam distribution system as identified in the table listed in this section of the Agreement. Seller shall provide steam conforming to the following purity requirements:

Steam Quality	
Silica (SiO ₂) ppb	≤ 20 ppb
Total dissolved solids (TDS) ppb	≤ 50 ppb
Sodium (Na) ppb maximum	≤ 20 ppb
Specific Conductance umhos/cm at 25°C	≤ 0.2 umhos/cm

- (d) Monitoring of Seller’s amine injection rate to the HP steam system will be a coordinated effort between Buyer and Seller to insure the reagent feed is sufficient but not to excess. To assist in maintaining proper amine injection rate, Seller’s sampling system will include monitoring of cation conductivity as well as specific conductivity downstream of the amine injection point.

2.3 Special Requirements for Steam Quality Monitoring During Commissioning

- (a) Shortly after initial startup/commissioning of the HRSG, steam purity will be sampled and monitored for conformance to the standards. Three (3) steam condensate “grab” samples will be collected for lab analysis with the unit running at full load.
- (b) Monitoring for sodium will be trended over a 30 day period with the unit running at partial and full load conditions. Samples and monitoring will be collected at the saturated steam line leaving the HRSG.

3.0 Water Supply and Wastewater Treatment

3.1 Potable Water and Fire Protection Water Supply

- (a) A single connection from the Buyer’s water system shall provide potable water, utility service water and fire water to the Seller. Buyer’s water supply shall be used at existing system conditions and pressures.
- (b) Potable water for sanitary use shall be metered within the CHP auxiliary building for sewage billing. Utility service water and fire protections feeds shall not be metered. All subsystems connected to the water supply shall have indoor backflow prevention located within CHP.

- (c) When coordinated CHP/Wade Plant operations require use of a mobile demineralized water trailer be set up to serve at CHP, the utility service water will be the source of raw water feed to the treatment trailer. Demin trailer will utilize offsite regeneration.

3.2 Process and Sanitary Wastewater

- (a) Process and sanitary wastewater shall conform at a minimum with any required industrial pre-treatment permit and associated regulations required by West Lafayette WWTP. Sampling and metering of discharged process flow at CHP shall be required.
- (b) Discharge rate shall be compatible with Purdue sanitary sewer collection system. Waste stream will be directed to the West Lafayette WWTP for treatment.

4.0 Allowable Noise

- 4.1 The specified sound pressure level at the lease boundary shall not exceed 85 dBA.

EXHIBIT B

SITE PLAN

The proposed location for the CHP project is located to the west of the existing Wade Utility Plant on Purdue University Campus, located in West Lafayette, Tippecanoe County, Indiana.

The approximate center of the parcel is located at:

Latitude: 40°25'1.60"N

Longitude: 86°54'51.66"W

The parcel available is approximately 50,000 square feet in area and is shown by the blue rectangle in Figure 1 below. The Ground Lease provides additional details regarding the site plan, layout, and lease boundaries.

Figure 1: Site Map



EXHIBIT C**PAYMENT CALCULATIONS****1. Monthly Payment Calculation**

The Monthly Payment shall be determined by the Unfired Steam Volume Calculation, the Natural Gas Price, and the Unfired Steam Multiplier.

Monthly Payment = Unfired Steam Volume (k-lbs) * Natural Gas Price * Unfired Steam Multiplier

2. Unfired Steam Volume Calculation

The Unfired Steam Volume shall be the difference between the Total Steam Volume delivered, per the Steam Flow Meter, and the Fired Steam Volume as calculated from the Duct Burner Gas Flow Meter reading.

All measurements and calculations shall be performed and reported from the CHP Digital Control System (DCS).

The Fired Steam Volume shall be calculated on an hourly basis from the Duct Burner Gas Flow Meter, an input constant for the heating value of the fuel gas, and the enthalpy rise from the condensate condition to the delivered steam condition. Reported heating value of the gas provided by the Local (Natural Gas) Distribution Company, will be monitored, and if necessary, the heating value input used in the calculation may be adjusted by mutual agreement between the parties.

Total Steam Volume shall be recorded on an hourly basis from the Steam Flow Meter, and an hourly calculation of the Unfired Steam Volume shall be recorded based on the Total Steam Volume less the Fired Steam Volume. These hourly calculations shall be summed to determine the monthly total.

Example of the Hourly inputs and calculated values:

Hourly readings of the input parameters

- *Steam Flow Meter - 150,000 lb*
- *Steam pressure – 600 psig*
- *Steam temperature – 775°F*
- *Condensate temperature – 130°F*
- *Duct Burner Gas Flow Meter – 138,828 SCF*
- *Heating Value of the Gas – 1,050 Btu/SCF HHV input constant from pipeline data*

Hourly calculated values

- *Enthalpy of delivered steam – 1,395 Btu/lb*
- *Enthalpy of condensate return – 98.0 Btu/lb*
- *Lower Heating Value of the Gas – 945.95 Btu/SCF (HHV ÷ 1.11)*
- *Duct Burner Heat Addition – 131.3 MMBtu/hr (from Gas Flow Meter and heating value LHV)*
- *Calculated Fired Steam – 101,252 lb (from cond/steam enthalpy rise)*
- *Calculated Unfired Steam – 48,748 lb (by difference)*

3. Natural Gas Price

The natural gas price for each 12-month period from July 1 through June 30 (or portion thereof) during the Term shall be the average of the monthly NYMEX Henry Hub (HH) contract closing prices for each month during such 12-month period, as determined on the basis of the contract closing price for each such month on the last trading day of June immediately preceding the commencement of such 12-month period.

For example, the last trading day in June 2018 for the July 2018 and subsequent 11 months' NYMEX HH contracts is June 29, 2018. The natural gas price for the 12-month period from July 1, 2018 through June 30, 2019 would be the average of the contract closing prices for the monthly NYMEX HH contracts from July 2018 through June 2019, as determined on the basis of the contract closing prices on June 29, 2018. For example, if the NYMEX HH 12 month strip on June 29, 2018 is \$3.00/mmBtu, the Natural Gas Price for July 2018 is \$3.00/mmBtu.

From time to time, the Parties may agree to use a longer NYMEX HH time period such as 2-5 years for determining the natural gas price. The one year strip or other strips as mentioned may be agreed to at any time during the year. *For example, if the Parties agree to a NYMEX HH 3 year strip, then the steam price for the relevant 3-contract-year period would be fixed at that amount for all 3 years.*

4. Unfired Steam Multiplier

The Unfired Steam Multiplier shall be applied to the Unfired Steam Volume only, which is also the minimum must take volume of steam that Purdue will accept. The Unfired Steam Multiplier shall not be applied to the Fired Steam Volume, which is requested at the discretion of the Buyer. The Unfired Steam Multiplier shall be 1.55.

5. Duct Burner Gas Cost

The Duct Burner Gas Cost shall be the monthly bill from the Local Distribution Company (LDC) for the Duct Burner Gas Meter only. As of December, 2018, Vectren Corporation is the Local Distribution Company and Rate 260 is the applicable tariff for Gas Distribution. The monthly bill includes the natural gas volumes associated with Fired Steam (measured in Dekatherms), Gas Transportation Services, and Taxes. The LDC will own the Duct Burner Gas Meter and the Buyer is responsible for making Duct Burner Gas payments. The Seller shall complete the installation from the Duct Burner Gas Meter to the HRSG.

6. Monthly Contract Payment Formula

The Monthly Contract Payment shall be based upon the following formula on a monthly basis:

Unfired Steam Volume (k-lbs) * Natural Gas Price * Unfired Steam Multiplier

For example, from the information above (assuming the same hourly profile 24/7 for 31 days), the Unfired Steam Volume (as calculated) is 36,268 k-lbs. The Natural Gas Price is \$3.00/mmBtu. The Unfired Steam Multiplier is 1.55. The Monthly Contract Payment equals:

$$36,268 * \$3.00 * 1.55 = \$168,646$$

7. Buyer Minimum Take or Pay

Consistent with Article 3, Buyer shall pay for all Unfired Steam, conforming to the requirements of Exhibit A, produced by the Facility and delivered to Buyer. In the event that Buyer (1) rejects any conforming Unfired Steam, or (2) rejects any nonconforming Unfired Steam where such nonconformity arises from Buyer's delivery of Condensate, Buyer shall pay the following amounts on an hourly basis for the duration of such rejection:

Assumed Unfired Steam Production Rate: 48,748 lb/hr

NYMEX Gas Price: based on rate determined above.

Steam Multiplier: 1.55

Minimum Pay Obligation = Unfired Steam Production Rate (k-lb/hr) * Duration of Rejected Steam (hours) * NYMEX * Steam Multiplier

*For example, Buyer communicates to seller that they will not be able to receive steam for 10 hours the following day. The NYMEX Gas Price for the current day is \$3.00/MMbtu. The Steam Multiplier is 1.55. The penalty is calculated as: 48.748 (k-lbs/hr) * 10 (hr) * \$3.00 * 1.55 = \$2,267.*

EXHIBIT D – NOTE: DUKE IS STILL REVIEWING TERMINATION PAYMENTS**EARLY TERMINATION COMPENSATION CALCULATIONS**

Termination Payment Payable under Section 16.5: Per the schedule below:

Year (from Commercial Operation)	Termination Payment (\$000s)
Year 1	27,392
Year 2	27,392
Year 3	27,392
Year 4	27,392
Year 5	25,532
Year 6	23,932
Year 7	22,663
Year 8	20,929
Year 9	19,032
Year 10	18,037
Year 11	16,823
Year 12	15,787
Year 13	14,559
Year 14	13,332
Year 15	12,105
Year 16	10,877
Year 17	9,758
Year 18	8,517
Year 19	7,276
Year 20	6,034
Year 21	4,793
Year 22	3,355
Year 23	2,182
Year 24	1,750
Year 25	1,750
Year 26	1,750
Year 27	1,750
Year 28	1,750
Year 29	1,750
Year 30	1,750
Year 31	1,750
Year 32	1,750
Year 33	1,750
Year 34	1,750
Year 35	1,750

Termination Payment Payable under Section 16.6:

Contract Years 1-10: No termination for convenience by either Party.

Contract Years 11 and later: Per the schedule below:

Year (from Commercial Operation)	Termination Payment (\$000s)
Year 11	16,823
Year 12	15,787
Year 13	14,559
Year 14	13,332
Year 15	12,105
Year 16	10,877
Year 17	9,758
Year 18	8,517
Year 19	7,276
Year 20	6,034
Year 21	4,793
Year 22	3,355
Year 23	2,182
Year 24	1,750
Year 25	1,750
Year 26	1,750
Year 27	1,750
Year 28	1,750
Year 29	1,750
Year 30	1,750
Year 31	1,750
Year 32	1,750
Year 33	1,750
Year 34	1,750
Year 35	1,750

EXHIBIT E**REQUIRED PERMITS AND APPROVALS**

Permit/Task Name	Regulatory Agency	Status/Party Responsible
Clean Air Act (CAA), Construction Permit	IDEM	Duke Energy to obtain. Prevention of Significant Deterioration (PSD) permit is not anticipated.
CAA, Operating Permit	IDEM	Duke Energy to obtain and hold.
Clean Water Act (CWA) Industrial Wastewater Pretreatment (IWP) Permit including Sewage Disposal	IDEM/City of West Lafayette	EPC/Duke Energy to obtain and hold. Wastewater disposal to the City of West Lafayette.
Industrial Wastewater Treatment Construction Permit	IDEM/City of West Lafayette	EPC to obtain. Local sewer authority (City of West Lafayette) may take primacy as permit authority.
Sanitary Sewer Construction Permit	IDEM/ City of West Lafayette	EPC to obtain. Local sewer authority (City of West Lafayette) may take primacy as permit authority.
Potable Water	IDEM/Purdue University	Drinking water connections to be supplied by Purdue University.
CWA Industrial Stormwater Permit	IDEM	EPC/Duke Energy to obtain and hold. Exclusion Certification Letter from local sewer authority (City of West Lafayette) may apply.
CWA Construction General Stormwater Permit, Erosion & Sediment Control (E&SC) Plan, NOI, SWPPP	IDEM/Purdue University MS4	EPC to obtain. Purdue University is a MS4 and stormwater permits are required for disturbances > 0.5 acres.
Federal Aviation Administration (FAA) Determination	FAA	EPC to obtain.
Spill Prevention Control and Countermeasure Plan (SPCC), Construction	EPA	EPC to obtain.
SPCC Plan, Operations	EPA	EPC/Duke Energy to prepare and implement upon commencement of operations.
Endangered Species Act (ESA)	USFWS	Not anticipated.
Nat'l Historic Preservation Act (NHPA)	IDNR-DHPA	Not anticipated.
Jurisdictional Determination	USACE	Not anticipated.
CWA Section 404 Permit (dredge/fill)	USACE	Not anticipated.
CWA Section 401 Water Quality Certification(WQC)	IDEM	Not anticipated.

EPA = Environmental Protection Agency; IDEM = Indiana Department of Environmental Management; IDNR-DHPA = Indiana Department of Natural Resources - Division of Historic Preservation and Archaeology; USACE = U.S. Army Corps of Engineers; USFWS = U.S. Fish & Wildlife Service;

EXHIBIT F

NOTICES ADDRESSES

Seller: Duke Energy Indiana, LLC

Buyer: Purdue University

All Notices:

All Notices:

Street:

Street:

City:

City:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

E-mail:

E-mail:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

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Phone:

Phone:

Facsimile:

Facsimile:

E-mail:

E-mail:

Scheduling:

Scheduling:

Attn:

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Phone:

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Facsimile:

Facsimile:

E-mail:

E-mail:

Payments:

Payments:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

E-mail:

E-mail:

Wire Transfer:

Wire Transfer:

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

Credit and Collections:

Credit and Collections:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

E-mail:

E-mail:

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

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

Attn:

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Phone:

Phone:

Facsimile:

Facsimile:

E-mail:

E-mail:

**SUMMARY OF GROUND LEASE AND EASEMENT AGREEMENT
BETWEEN PURDUE UNIVERSITY AND DUKE ENERGY INDIANA**

ISSUE	SUMMARY	GROUND LEASE CITATION
Parties	Trustees of Purdue University and Duke Energy Indiana, LLC	Preamble
Purpose	To facilitate the construction and operation of a combined heat and power (CHP) facility, from which Duke will sell to Purdue steam, for use by Purdue in heating its campus and in generating electricity for its campus	Preamble
Term	From no later than the commencement of construction, for 35 years of operation of the CHP Facility, or earlier if the Steam Purchase and Sale Agreement is terminated prior to the end of the 35-year period	Sec. 2
Construction Start Date	No later than 180 days following the date by which Indiana Utility Regulatory Commission approval and all other required permits are obtained	Ex. B
Commercial Operation Date	No later than 36 months after the construction start date, subject to an extension for force majeure or mutual agreement of the parties	Ex. B
As Is Condition	The site and easements are leased in an “as is” condition, with no warranties, etc.	Sec. 2.2
Rent	\$100 for the entire term	Sec. 4
Surrender Upon Early Termination	Duke shall dismantle and facility and return the site to Purdue essentially as it was at the start of the lease	Sec. 6
Non termination	The lease shall not terminate in the absence of certain “termination events” – and shall not terminate in the absence of the termination of the Steam Purchase and Sale Agreement [except, Purdue proposes, with respect to an independent breach of the environmental covenants]	Sec. 7
Use of Site / Construction of Facility	The site shall be used for the construction and operation of a CHP facility. Duke is required to obtain all necessary permits for the construction and operation of the facility; all improvements made at the site shall be made in accordance with industry standards; Purdue shall not materially interfere (or allow anyone else to materially interfere) with Duke’s use of the site for the intended purposes; Duke must submit architectural plans to Purdue for its review and approval; all of Duke’s improvements will be made at Duke’s expense; Duke will conduct criminal background checks on all employees working at the site; Duke is responsible for the cost of installing a wastewater lateral from the site to the existing sanitary sewer system.	Sec. 9.1, 9.2
Government Approvals	Duke’s ability to use the site is conditioned upon its receipt of all required governmental approvals.	Sec. 9.2
Operation and Maintenance	Duke will develop, construct, maintain, operate and manage the site, the CHP facility, and any other installed improvements, in good order and consistent with comparable industry standards. Purdue has no obligation to maintain, repair, or replace the site, the facility, etc.	Sec. 9.3

Damage or Destruction of Facility	In the event of damage or destruction of the facility, Duke must repair, replace or rebuild within 12 to 24 months. However, Duke may terminate the lease if the damage occurs in the last 60 months of the lease period.	Sec. 11
Default and Remedies for Default	<p>Default events by Duke include: nonpayment (if not cured after notice); failure to comply with material terms (if not cured); any default event under the Steam Purchase and Sale Agreement that results in termination of the SPSA; bankruptcy.</p> <p>Purdue’s remedies in the event of Duke’s default include: Purdue may cure the default (and charge Duke for it); Purdue may seek Duke’s performance through the legal system; or terminate the Ground Lease IF the SPSA has been terminated.</p> <p>Default events by Purdue include: nonpayment (if not cured after notice); failure to comply with material terms (if not cured).</p> <p>Duke’s remedies include: Duke may cure the default (and charge Purdue for it); Duke may seek Purdue’s performance through the legal system.</p>	Sec. 13
Governing Law and Venue	Indiana; Marion County court	Sec. 14
Environmental	<p>Purdue must at its cost perform a Phase I environmental assessment, and if indicated as necessary by such assessment, a Phase II assessment. If further investigation reveals, or if construction activities reveal, environmental issues, the parties have 4 options:</p> <p>(1) Purdue Landlord may, in its sole discretion, decide whether or not to undertake such further investigations and remediation as needed to render the Site and the Easement Areas usable for the Facility, at its sole cost and expense;</p> <p>(2) if Purdue, in its sole discretion, decides not to further investigate and remediate the Site and Easement Areas to render them usable for the Facility, Duke may at its sole cost and expense undertake such further investigations and remediation;</p> <p>(3) Purdue and Duke may mutually agree to a sharing of the costs and expenses); or</p> <p>(4) if Purdue, in its sole discretion, decides not to further investigate and remediate the Site and Easement Areas to render them usable for the Facility, and Duke, in its sole discretion, decides not to further investigate and remediate the Site and Easement Areas to render them usable for the Facility, then either Purdue or Duke may terminate this Ground Lease and the Steam Purchase and Sale Agreement with no liability or termination fees or expenses owing from one party to the other.</p>	Sec. 18
Confidentiality	Incorporates confidentiality provisions from Steam Purchase and Sale Agreement	Sec. 24

40 herein sometimes collectively referred to as the "Term". The last day of the Operational Term or
41 the date of termination of the SPSA, if earlier, is herein sometimes referred to as the "Term
42 Expiration Date".

43 2.1.1 If Tenant is unable to commence construction of the Facility due to
44 a Force Majeure Event on or before the Construction Commencement Start Date or is unable to
45 complete construction of the Facility during the Development Period due to a Force Majeure
46 Event on or before the Commercial Operation Start Date, Tenant shall notify Landlord with
47 details of the Force Majeure Event and the duration thereof. The Construction Commencement
48 Start Date and/or the Commercial Operation Start Date shall be extended day for day for the
49 Force Majeure Event and the Development Period shall not expire on its scheduled expiration
50 date but shall be automatically extended until the occurrence of the Commercial Operation Start
51 Date with respect to the Facility, subject to Section 2.1.2 hereof. For purposes of this Section
52 2.1.1, Tenant shall have "commenced construction" of the Facility if and when Tenant first
53 notifies Landlord that Tenant has taken possession and secured the Site, commences the grading
54 on the Site, and is diligently pursuing construction of the Facility on the Site. After such notice
55 from Tenant, Landlord and Tenant shall execute a modification or amendment of this Ground
56 Lease to document the Construction Commencement Start Date.

57 2.1.2 Notwithstanding anything in this Section 2.1 to the contrary, if (a)
58 Tenant has not commenced construction of the Facility by the Construction Commencement
59 Start Date, as may be extended by a Force Majeure Event; or (b) the Operational Term has not
60 commenced on or before the Commercial Operation Start Date, as may be extended by a Force
61 Majeure Event, Landlord may terminate this Ground Lease by notice to Tenant.

62 2.1.3 Notwithstanding anything in this Section 2.1 to the contrary,
63 Tenant may terminate this Ground Lease, without incurring any liability for or as a result of such
64 termination, by delivering written notice of termination to Landlord on or before the Target
65 Commercial Operation Date (as defined in the SPSA), if Tenant has terminated the SPSA
66 pursuant to Section 2.2(1) thereof.

67 2.1.4 Notwithstanding anything in this Section 2.1 to the contrary,
68 Landlord may terminate this Ground Lease, without incurring any liability for or as a result of
69 such termination, by delivering written notice of termination to Tenant on or before the Target
70 Commercial Operation Date, if Landlord has terminated the SPSA pursuant to Sections 2.2(2) or
71 2.2(3) thereof.

72 2.2 AS IS Condition. Except as otherwise expressly provided in this Ground
73 Lease, Tenant hereby agrees, for itself and on behalf of its successors and assigns, (a) that its
74 acceptance of the Site and the Recorded Easement Areas shall be AS IS, WHERE IS and
75 without warranty of any kind as to condition, fitness for Tenant's purpose or otherwise, and (b)
76 waives, releases and discharges Landlord and its successors and assigns, from any and all claims,
77 demands, liability, damages, costs and expenses caused by, related to or arising out of the
78 condition of the Site and the Recorded Easement Areas.

79 3. Severance. The parties agree that all improvements at any time constructed by or
80 for Tenant on the Site or within any Recorded Easement Areas, whether prior to the Effective

81 Date or after same, and all equipment at any time acquired by or for Tenant and located on the
82 Site or within any Recorded Easement Areas, including (without limitation) all improvements and
83 equipment comprising the Facility, are hereby severed by agreement and intention of the parties
84 and shall remain severed from the Site and any Recorded Easement Areas during the Term. All
85 such improvements and equipment shall be considered with respect to the interests of the parties
86 hereto as the sole and exclusive property of Tenant or a Financing Party designated by Tenant
87 during the Term, and, even though attached to or affixed to or installed upon the Site or within
88 any Recorded Easement Areas, shall not be considered to be fixtures or a part of the Site or such
89 Recorded Easement Area and shall not be or become subject to the lien of any mortgage or deed
90 of trust heretofore or hereafter placed on the Site or any Recorded Easement Areas by Landlord.
91 Landlord hereby waives any rights it may have during the Term under the laws of the State of
92 Indiana arising under this Ground Lease or otherwise to any lien upon, or any right to distress or
93 attachment upon, or any other interest in, any item constituting all or any portion(s) of the
94 Facility or any other equipment or improvements constructed or acquired by or for Tenant and
95 located on the Site or within any Recorded Easement Areas.

96 4. Rent. Rent for the entire Term (both the Development Period and the Operational
97 Term) of this Ground Lease shall consist of the payment on or before the Effective Date in the
98 amount of One Hundred and No/100 Dollars (\$100.00), the receipt and sufficiency of which
99 Landlord hereby acknowledges. In the event of early termination of this Ground Lease before
100 the Term Expiration Date, no part of the Rent paid to Landlord by Tenant shall be repaid or
101 refunded to Tenant.

102 5. Further Assurances. Landlord and Tenant each agree to execute and deliver all
103 further instruments and documents and take any further action that may be reasonably necessary
104 to effectuate the purposes and intent of this Ground Lease regarding the Facility. To such end,
105 Landlord shall grant to Tenant for the benefit of Tenant and Tenant's Parties, or to such entity as
106 Tenant may reasonably request in connection with the development, construction, ownership,
107 operation and maintenance of the Facility, at no additional consideration, nonexclusive easements
108 on land selected by Landlord in close proximity to the Site and which is owned or controlled by
109 Landlord, and any improvements thereon, as Landlord and Tenant deem reasonably necessary or
110 desirable in connection with the development, construction, ownership, operation and
111 maintenance of the Facility (the "Operational Easements") as well as an easement for purposes of
112 interconnection with Tenant's main distribution system (the "Electrical Interconnection
113 Easement") (the Operational Easements and the Electrical Interconnection Easement herein
114 collectively referred to as the "Easements", each also herein sometimes referred to as an
115 "Easement" and the area(s) burdened thereby, the "Easement Areas"). During the Development
116 Period, Tenant will determine the location of the Easement Areas, with Landlord's prior
117 approval, by one or more ALTA/ACSM Land Title Surveys obtained by Tenant at its expense
118 and certified to Landlord and Tenant and Landlord will execute one or more easement
119 agreements prepared by Tenant, in forms and contents reasonably satisfactory to both Landlord
120 and Tenant, reflecting the Easements and the Easement Areas, which easement agreements shall
121 be recorded in the Official Records at Tenant's expense and copies thereof (the "Recorded
122 Easements") provided to Landlord promptly after such recording. The Easement Areas identified
123 in the Recorded Easements are sometimes referred to herein as the "Recorded Easement Areas".
124 Landlord shall grant Tenant for the benefit of Tenant and Tenant's Parties, or to such entity as

125 Tenant may reasonably request in connection with the development, construction, operation and
126 maintenance of the Facility, at no additional consideration, one or more temporary, nonexclusive
127 license agreements from time to time during the Term on land selected by Landlord in close
128 proximity to the Site to facilitate the staging of any development, construction, operation and
129 maintenance of the Facility. To such end, Landlord and Tenant shall enter into separate license
130 agreements, the terms and conditions of which shall be mutually satisfactory to both Landlord
131 and Tenant and which shall identify the purpose of the license, the area to be licensed, the term of
132 the license, the insurance required of Tenant or any Tenant Parties and Tenant's indemnification
133 of Landlord and Landlord Parties during the term of the license. Landlord shall not grant or
134 convey any easement or other interest on the Site or the Recorded Easement Areas that, if used
135 or enjoyed in accordance with its terms: (i) would materially interfere with Tenant's operation,
136 use and enjoyment of the Facility, the Site, and/or the Recorded Easements, Tenant's
137 performance under the terms of the SPSA, or Tenant's production of electricity at the Site, (ii)
138 would materially interfere with Landlord's operation, use and enjoyment of Landlord's Property,
139 or (iii) would materially adversely affect Landlord's title to the Site and the Recorded Easement
140 Areas, the reversionary interest therein, or Landlord's interests under the Ground Lease and the
141 Recorded Easements. All Recorded Easements associated with the operation of the Facility shall
142 automatically terminate as of the date the Term terminates or expires, inclusive of any recognized
143 and permitted holdover period and shall acknowledge the expiration or early termination of this
144 Ground Lease will constitute the termination of the Recorded Easements. If there are any
145 mortgages, deeds of trust or other security interests or the like encumbering the Site (or any
146 portion(s) thereof) or any Recorded Easement Areas described in the Recorded Easements which
147 would have priority over this Ground Lease, within 30 days after Tenant's written request,
148 Landlord shall obtain a commercially reasonable subordination, non-disturbance and attornment
149 agreement, in a form satisfactory to Tenant, from any lender or beneficiary which provides,
150 among other things, that Tenant's occupancy or use of the Site and the Recorded Easements in
151 accordance with the terms of this Ground Lease and any applicable Recorded Easements will not
152 be disturbed. Landlord reserves to itself, its successors and assigns, together with the right to
153 grant and transfer all or a portion of the same, the following (collectively, "Landlord
154 Easements"): nonexclusive easements for ingress and egress and for the installation, placement,
155 maintenance and replacement of electric, gas, telephone, cable television, water and sanitary
156 sewer lines, drainage facilities or any other utilities (collectively, "Landlord Utilities"), and of
157 landscaping on, over, under or across those portions of the Site not improved with the Facility or
158 other major structures existing from time to time pursuant to the terms and conditions of this
159 Ground Lease, together with the right, at reasonable times and following reasonable prior written
160 notice to Tenant, to enter upon the Site in order to service, maintain, repair, reconstruct, relocate
161 or replace any of such Landlord Utilities or landscaping; provided, however, no prior written
162 notice shall be necessary in the event of an Emergency. In using the rights reserved hereunder,
163 Landlord agrees that such use shall be at times and in a manner that shall not materially interfere
164 with Tenant's operation, use and enjoyment of the Facility, the Site, and/or the Recorded
165 Easements, emergencies excepted.

166 6. Surrender of Site Upon Early Termination. Upon the early termination of this
167 Ground Lease pursuant to Sections 11, 13.2 or 15 hereof and provided the SPSA is terminated,
168 Tenant shall surrender to Landlord the Site and any applicable Recorded Easements related to
169 the Site, as provided in this Section 6. Except as herein provided, in accordance with and subject

170 to the terms of Section 3 above, within 60 days after the early termination pursuant to Sections
171 11, 13.2 or 15 hereof and so long as the SPSA has been terminated, Tenant shall commence to
172 clear the Site and decommission, dismantle and remove the damaged Facility and all other
173 property of Tenant located on the Site and the applicable Recorded Easement Areas, returning
174 same to their condition as of the Effective Date to the extent reasonably practical, and shall fully
175 complete such clearing, decommissioning, dismantling and removal (the "Decommissioning
176 Activities") within 270 days of commencement of such Decommissioning Activities ("Final
177 Decommissioning Date"). Notwithstanding any of the foregoing, if Landlord is entitled to
178 purchase the Facility pursuant to the provisions of Section 16 of the SPSA and notifies Tenant of
179 its desire to so purchase the Facility, the Final Decommissioning Date shall not occur prior to the
180 date that is 270 days following Landlord's notice to Tenant that it no longer desires to purchase
181 the Facility. Landlord hereby grants to Tenant and Tenant's Parties a license to enter upon the
182 Site and the Recorded Easement Areas to perform the activities required to be performed by
183 Tenant for the Decommissioning Phase pursuant to this Section 6, which license shall be effective
184 commencing upon the date of termination pursuant to Sections 11, 13.2 or 15 hereof and shall
185 terminate upon the date on which such Decommissioning Activities are fully complete, but no
186 later than the Final Decommissioning Date, or such later date as may be agreed to by Landlord.
187 Tenant shall notify Landlord at least twenty (20) days before Tenant commences the
188 Decommissioning Activities, which Tenant may only commence after Tenant or its contractors
189 secure the Site and take all reasonable safety precautions with respect to the Decommissioning
190 Activities to be performed and shall comply with all reasonable safety measures and with all
191 applicable Laws for the safety of persons or property. Tenant further covenants and agrees that
192 Decommissioning Activities shall be at times and conducted in a manner that will not cause
193 disruption to the operations of Landlord's Property.

194 All property of Tenant not removed on or before the last day of the Final
195 Decommissioning Date, as same may have been extended, shall be deemed abandoned. Tenant
196 hereby agrees that Landlord may, at Landlord's option: (a) remove all such property of Tenant
197 from the Site after the Final Decommissioning Date and cause its transportation and storage, all
198 at the sole cost and risk of Tenant, and Landlord shall not be liable for damage, theft,
199 misappropriation or loss thereof or in any manner in respect thereto; or (b) declare any or all of
200 such property of Tenant the sole property of Landlord. Landlord shall be entitled to dispose or
201 take control and ownership of such property, as Landlord deems fit, without the requirement of
202 an accounting. Tenant shall pay all costs and expenses of such removal, transportation and
203 storage. Tenant shall reimburse Landlord upon demand for any expenses reasonably and actually
204 incurred by Landlord with respect to removal or storage of abandoned property and with respect
205 to restoring the Site and Recorded Easement Areas in accordance with the terms and conditions
206 of this Ground Lease. Tenant shall indemnify and hold harmless Landlord from any loss or
207 liability including, without limitation, reasonable attorneys' fees and expenses, resulting from
208 Tenant's failure to observe or perform this Section 6, which indemnification shall survive the
209 expiration or termination of the Term.

210 7. Nontermination. Notwithstanding anything in this Ground Lease to the contrary,
211 this Ground Lease shall not terminate, nor shall Tenant's interest under this Ground Lease and
212 the Recorded Easements in the Site, the Recorded Easement Areas, or the Facility be
213 extinguished, lost, conveyed or otherwise impaired, or be merged into or with any other interest
214 or estate in the Site, the Recorded Easement Areas or any other property interest granted to

215 Tenant under this Ground Lease and the Recorded Easements, in whole or in part, by any cause
216 or for any reason whatsoever, except as a result of a Termination Event. Without limiting the
217 generality of the foregoing, the Parties hereto acknowledge and agree that, absent a Termination
218 Event, this Ground Lease shall not be terminated by Landlord; provided, however, subject to the
219 provisions of Section 13.5 below, upon a Termination Event, this Ground Lease shall be
220 terminated and of no further force and effect, except for the provisions herein that expressly
221 survive expiration or termination of this Ground Lease.

222 8. Possession and Quiet Enjoyment. As long as no Tenant Event of Default under
223 this Ground Lease has occurred and is continuing beyond any applicable cure period, Landlord
224 covenants and agrees that Tenant shall enjoy quiet possession of the Site and the Recorded
225 Easements without any disturbance from Landlord or any person lawfully claiming by or through
226 Landlord, subject to the terms and provisions of this Ground Lease and the Recorded Easements.

227 9. Use of Site; Development of Facility.

228 9.1 Use. During the Term, Tenant shall have exclusive use of the Site subject
229 to the terms and conditions of this Ground Lease. Tenant shall use the Site and the Recorded
230 Easement Areas for purposes related to due diligence investigations and studies, and the
231 construction, use, operation, repair, ownership, replacement, modification, upgrade or
232 maintenance of the Facility, subject to the terms and conditions set forth in this Ground Lease,
233 and for no other purpose whatsoever.

234 9.2 Construction of the Facility.

235 (a) General Provisions. Tenant, at its expense, and with Landlord's
236 reasonable cooperation (at no third party cost to Landlord), shall be responsible for obtaining any
237 Governmental Approvals (hereinafter defined) necessary for the construction and operation of
238 the Facility. To the extent permitted by applicable Laws, all permits, licenses, exemptions and
239 certifications for the construction of the Facility shall be in the name of and for the benefit of
240 Tenant or any Tenant Party designated by Tenant.

241 (b) Facility.

242 (i) Subject to the terms and conditions set forth in this Ground
243 Lease, Tenant, at its expense, shall commence construction of the Facility on or before the
244 Construction Commencement Start Date. All improvements and alterations to the Site and
245 Facility, including the electrical interconnection facilities located within the Recorded Easement
246 Areas, shall be made in accordance with Comparable Industry Standards.

247 (ii) Landlord shall ensure that neither Landlord nor any other
248 person or entity claiming by or through Landlord shall materially interfere with or obstruct in any
249 way Tenant's use of the Site for the construction, installation, maintenance, repair or replacement
250 of the Facility, except as expressly set forth in this Ground Lease. Without limiting the generality
251 of the foregoing, Landlord shall not locate any new equipment, construct any new improvements,
252 or relocate any existing equipment or other improvements upon the Site (or permit any other

253 person or entity claiming by or through Landlord to do so) without Tenant's prior written
254 consent, which consent shall not be unreasonably withheld, conditioned or delayed.

255 (iii) Prior to any installation or alterations of the Facility, Tenant
256 will submit applicable architectural plans and specifications to Landlord for review and approval
257 as set forth in Exhibit C attached hereto and made a part hereof. Tenant will not commence any
258 installation or alteration work until Landlord is reasonably satisfied that the installations or
259 alterations can be completed and the equipment installed can be operated and maintained without
260 unreasonable interference with Landlord's operations at Landlord's Property. Any material
261 replacement, modification or upgrade of the Facility during the Term after the Commercial
262 Operation Start Date and during the Operational Term (not to include periodic equipment
263 repairs, replacements and/or upgrades) may only be made after the applicable architectural plans
264 and specifications as set forth in Exhibit C have been submitted to and approved by Landlord's
265 Capital Program Management Team (the "Planning Office"), which approval by Landlord's
266 Planning Office shall not be unreasonably withheld, conditioned or delayed. Landlord's approval
267 of any of Tenant's architectural plans and specifications shall not imply Landlord reviewed and
268 approved the same for quality, design, code compliance or other like matters and neither
269 Landlord nor its Planning Office shall have any liability whatsoever in connection therewith and
270 shall not be responsible for any omissions or errors contained in Tenant's engineering plans and
271 specifications.

272 (iv) All improvements to the Facility located within the Site and
273 the electrical interconnection facilities located within the Recorded Easement Areas shall be at
274 Tenant's expense. Tenant shall have the right to replace, repair, add or otherwise modify its
275 equipment or any portion(s) thereof, whether the equipment is specified or not on any exhibit
276 attached hereto, during the Term of this Ground Lease provided such activities are performed in
277 compliance with all applicable Laws. Further, such activities shall not unreasonably interfere
278 with Landlord's Condensate Interconnection Facilities, without Landlord's prior written consent.
279 Landlord will, at its sole cost and expense, install, own, operate, maintain, repair, and, as
280 necessary, replace all portions of the Condensate Interconnection Facilities located anywhere
281 external to the Site; provided, however, Landlord will not be required to make repairs or
282 replacements of the Condensate Interconnection Facilities caused by Tenant's replacement,
283 repairs, additions or modifications of Tenant's equipment or any portion(s) thereof without
284 Landlord's prior written consent.

285 (v) At all times during the Term, Landlord shall not take or
286 permit any action on or about the Site or any Recorded Easement Areas that would materially
287 interfere with Tenant's use and operation of the Facility. If Tenant believes Landlord has
288 materially interfered with Tenant's use and operation of the Facility, Tenant shall notify Landlord
289 and give Landlord a reasonable opportunity to cure such interference.

290 (vi) As of the Effective Date of this Ground Lease, Landlord
291 represents that, to Landlord's Knowledge, there are no installations, equipment or facilities of any
292 type or nature on the Site or within the Electrical Interconnection Easement Area which will
293 materially interfere with Tenant's use and operation of the Facility, fulfilling its obligations under
294 the SPSA or producing and delivering electricity throughout the Term.

295 (vii) Tenant will conduct criminal background checks on all
296 employees working on the Project and will refrain from bringing or sending any employee(s) to
297 the Site, Purdue University or other property owned by Landlord that Tenant reasonably believes
298 poses a threat to property or persons. Additionally, Tenant shall not knowingly allow any
299 registered offenders under Ind. Code ch. 11-8-8 to work on the Project or, at Tenant's request, to
300 visit the Site. Tenant agrees to impose this same criminal background check requirement on any
301 contractors used by Tenant in fulfillment of its responsibilities under this Ground Lease.

302 (viii) It is understood and agreed that Tenant shall be permitted
303 to use contractors to perform its obligations under this Ground Lease. Notwithstanding the use
304 of contractors engaged by Tenant, Tenant shall remain fully liable for the performance of its
305 obligations and such delegation shall not relieve Tenant from any of Tenant's obligations or
306 liabilities under this Ground Lease. Tenant shall cause the contractor to comply with the terms
307 and conditions of this Ground Lease in the performance of any work performed hereunder.

308 (ix) If Tenant desires to perform any construction or alterations
309 outside of the Site and the Recorded Easements related to the Project after the Development
310 Period, prior to commencing any such construction or alteration, Tenant must submit the
311 applicable plans and specifications to Landlord as set forth in Exhibit C for Landlord's review and
312 approval as described in said Exhibit C and the proposed new Easement Areas for Landlord's
313 review and approval. Tenant will not commence any such construction or alteration work outside
314 of the Site until Landlord and Tenant have agreed and documented the Easement Areas and new
315 Recorded Easements ("New Recorded Easements") and Landlord is reasonably satisfied that the
316 construction or alteration can be completed without unreasonable interference with Landlord's
317 operations at Landlord's Property. Landlord's approval of Tenant's applicable architectural plans
318 and specifications (as defined in Exhibit C) shall be for its sole purpose and shall not imply
319 Landlord reviewed and approved the same for quality, design, code compliance or other like
320 matters, and Landlord shall not have any liability whatsoever in connection therewith and shall
321 not be responsible for any omissions or errors related to Tenant's architectural plans and
322 specifications. Any such construction or alteration related to the Project outside of the Site shall
323 be at Tenant's sole cost and expense and shall be consistent with the terms of the applicable New
324 Recorded Easements.

325 (x) Landlord will install, at Landlord's sole cost and expense, a
326 wastewater lateral over Landlord's Property from the Site to Landlord's existing sanitary sewer
327 system. Such installation shall be located in a Recorded Easement Area and documented in a
328 Recorded Easement following the process and procedure set forth in Section 5 hereof. On and
329 after substantial completion of such wastewater lateral and Landlord's notice thereof to Tenant,
330 Tenant shall be required, at Tenant's sole cost and expense, to periodically maintain, repair
331 and/or replace, as reasonably necessary, the wastewater lateral, based on Landlord's reasonable
332 requirements as set forth in such Recorded Easement.

333 (c) Governmental Approvals. It is understood and agreed that
334 Tenant's ability to use the Site is contingent upon its obtaining, after the Effective Date of this
335 Ground Lease, all of the certificates, permits and other approvals, including but not limited to,
336 approval of the state regulatory commission, that may be required by any Federal, State or Local

337 authorities (collectively the "Governmental Approvals") in order to permit Landlord to enter into
338 this Ground Lease and to permit Tenant's use of the Site or the Recorded Easement Areas as set
339 forth above. At Tenant's request, Landlord shall, at no additional expense to Landlord,
340 reasonably cooperate with Tenant in obtaining such Governmental Approvals and shall join with
341 Tenant in all such applications and proceedings reasonably required to facilitate the issuance of
342 such Governmental Approvals. In the event that any of such applications for such Governmental
343 Approvals should be finally rejected prior to the Construction Commencement Start Date and
344 Tenant determines that such Governmental Approvals may not be obtained prior to the
345 Construction Commencement Start Date and absent a mutual extension of the Construction
346 Commencement Start Date, Tenant or Landlord shall have the right to terminate this Ground
347 Lease. Notice of the Tenant's or Landlord's exercise of its right to terminate pursuant to the
348 foregoing sentence shall be given to the other Party in writing prior to the Construction
349 Commencement Start Date.

350 (d) Inspections. Tenant shall permit Landlord and its authorized
351 agents and employees, upon reasonable prior written notice, to enter the Site and Facility
352 periodically during the Term for the purpose of inspecting the same to ensure Tenant is
353 developing, constructing, operating and maintaining the Site and Facility in conformity with the
354 requirements of this Ground Lease or performing any work that may be necessary by reason of
355 Tenant's default under this Ground Lease. Landlord shall use commercially reasonable efforts to
356 ensure any such entry will not materially interfere with Tenant's use and operation of the Facility,
357 fulfilling its obligations under the SPSA or producing and delivering electricity throughout the
358 Term. Nothing herein shall imply a duty on the part of Landlord to do any work, and the
359 performance thereof by Landlord shall not constitute a waiver of any default of Tenant.

360 9.3 Operation and Maintenance. At all times during this Term, Tenant
361 covenants and agrees that it will, at its own cost and expense, develop, construct, maintain,
362 operate and manage the Site, the Facility and any other improvements installed by Tenant on the
363 Recorded Easement Areas in a good order, condition and repair (including replacement if
364 warranted) consistent with Comparable Industry Standards and consistent with its obligations
365 under the SPSA, reasonable wear and tear excepted. Landlord is not obligated to maintain,
366 repair or replace the Site, the Facility or the Recorded Easements.

367 9.4 Access Drive. During the Term, Landlord shall allow (and Tenant may
368 construct) a permanent means of ingress and egress to and from the Facility between the Facility
369 and the most convenient public road (or private road consistently maintained by Landlord and
370 constantly available for Tenant's use) (the "Access Drive"), which shall be operated and
371 maintained by Tenant and shall be cleared, graded, improved and maintained with a surface
372 passable at all times by a two-wheel drive vehicle. The improvements to the Access Drive shall
373 be made in accordance with applicable Laws. Prior to any installation of such improvements,
374 Tenant will submit detailed engineering plans to Landlord's Planning Office for review and
375 approval, including the location of the Access Drive and such improvements to the Access Drive.
376 Tenant will not commence any installation work until Landlord is reasonably satisfied that the
377 installations can be completed and the equipment installed can be operated and maintained
378 without unreasonable interference with Landlord's operations at Landlord's Property, and
379 Landlord's Planning Office has approved all construction plans and specifications, such approval

380 by Landlord's Planning Office not to be unreasonably withheld, conditioned or delayed.
381 Landlord's approval of all such construction plans and specifications shall be for its sole purpose
382 and shall not imply Landlord reviewed and approved the same for quality, design, code
383 compliance or other like matters and neither Landlord nor its Planning Office shall have any
384 liability whatsoever in connection therewith and shall not be responsible for any omissions or
385 errors contained in such approved construction plans and specifications. The improvements to
386 the Access Drive will be surrendered to Landlord in good condition and repair, reasonable wear
387 and tear excepted, on the earlier of the Term Expiration Date or the Final Decommissioning
388 Date. At Landlord's sole discretion, Landlord and Tenant will enter into a separate access drive
389 easement, which when recorded, will become one of the Recorded Easements.

390 9.5 Liens. Tenant shall keep the Site and Recorded Easement Areas free and
391 clear of any lien or encumbrance arising out of work performed, materials furnished or
392 obligations incurred in connection with Tenant's obligations for construction, utilities and
393 services, repairs or alterations under this Ground Lease. In the event any lien is placed upon the
394 Site or Recorded Easement Areas as a result of any act or omission of Tenant or any Tenant
395 Parties, Tenant shall pay such lien or may provide a bond or otherwise insure Landlord against
396 such lien within 60 calendar days after notice to Tenant of such lien being perfected, and may
397 thereafter contest such lien or payment at Tenant's sole cost and expense. Tenant shall indemnify
398 Landlord against any loss, damage, cost or expenses in connection with any such lien or
399 encumbrance that may be claimed or asserted against the Site or Recorded Easement Areas. If
400 Tenant fails to discharge any lien created or established in violation of Tenant's covenant herein,
401 Landlord, without declaring a default hereunder and without relieving Tenant of any liability
402 hereunder, may, but shall not be obligated to, discharge or pay such lien (either by paying the
403 amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding
404 proceedings), and any amount so paid by Landlord and all costs and expenses incurred by
405 Landlord in connection therewith shall be paid immediately by Tenant to Landlord upon demand.
406 If any liens or encumbrances, as described in this Section 9.5, are filed against the Facility, which
407 liens constitute liens against the Site or Recorded Easement Areas, Landlord may, if Tenant fails
408 to discharge such liens as herein provided, discharge such liens as set forth herein. Tenant's
409 obligations under this Section 9.5 shall survive the expiration or termination of the Term.

410 10. Insurance.

411 10.1 Tenant's Coverage. Tenant will maintain during the Term of this Ground
412 Lease, and will require any general contractor of Tenant retained to perform significant
413 construction or demolition work at the Facility or on the Site to maintain during the term of such
414 work, the insurance coverages and amounts required of Seller as set forth in the SPSA.

415 10.2 Landlord's Coverage. Landlord shall maintain its customary commercial
416 general liability insurance coverage (including self-insurance) (not less than \$2,000,000 per
417 occurrence/\$10,000,000 aggregate) covering legal liability for bodily injury (including death),
418 property damage and personal injury. This insurance shall include under each of its respective
419 policies its employees with respect to their participation in this Ground Lease while they are
420 carrying out their official duties for the Landlord.

421 10.3 Certificates. Prior to the date Tenant has "commenced construction" of
422 the Facility as referenced in Section 2.1.1., Tenant shall provide Landlord with written evidence
423 of the insurance required in Section 10.1 above in the form of appropriate insurance certificates
424 specifying amounts of coverage and expiration dates of all policies in effect. Tenant agrees to
425 make Landlord an additional insured on Tenant's commercial general liability and automobile
426 liability policies, and will provide Landlord with copies of policy endorsements reflecting
427 Landlord's status as an additional insured thereunder. With respect to the insurance provided to
428 Landlord hereunder, (i) Tenant will procure from each insurer a waiver of subrogation in
429 Landlord's favor and (ii) such insurance will be primary to any other insurance carried by
430 Landlord. Insurance coverage provided by Tenant under this section will not include any of the
431 following: (i) any claims made insurance policies; (ii) any self-insured retention or deductible
432 amount greater than \$250,000.00, unless approved in writing by Landlord; (iii) any endorsement
433 limiting coverage available to Landlord which is otherwise required by this section; and (iv) any
434 policy or endorsement language that (A) limits the duty to defend Landlord under the policy or
435 (B) provides coverage to Landlord only if Tenant is negligent.

436 10.4 Full Limits Coverage. Notwithstanding the minimum limits of coverage
437 set forth above, Tenant will name Landlord, its officers, directors, employees, subsidiaries,
438 successors, and assigns as additional insureds for the full limits of insurance coverage purchased
439 by Tenant. The additional insured coverage provided pursuant to this Section 10.4 will provide
440 coverage to Landlord, its officers, directors, employees, subsidiaries, successors, and assigns, for
441 all claims, losses, demands, liens, causes of action or suits, judgments, fines, assessments,
442 liabilities, damages and injuries (including death) covered by Section 12 herein below. Tenant is
443 responsible for payment of all deductibles, self-insured retentions or similar charges for the
444 additional insured coverage required pursuant to this Section 10.4.

445 10.5 Waiver of Insurance; Right to Self-Insure. Notwithstanding anything
446 herein to the contrary, Tenant shall have the right to self-insure through Duke Energy
447 Corporation ("DEC") as to any insurance required hereunder, subject to the terms and conditions
448 set forth in, and in accordance with, the provisions of the SPSA. With respect to any self-
449 insurance by any Tenant, (i) such self-insurance by Tenant must be permitted by all federal, state,
450 county, municipal and other governmental statutes, laws, rules, orders, regulations and
451 ordinances affecting the Site and the Facility or otherwise applicable to Tenant, and (ii) Tenant
452 will protect Landlord to the same extent as it would if it had the insurance policies required
453 hereunder. As set forth in the SPSA, this right to self-insure is personal to Duke Energy Indiana,
454 LLC, and shall not apply to any permitted assignee or subtenant unless Landlord consents to such
455 in writing. The minimum amounts of insurance coverage required of Tenant hereunder will not
456 be construed to create a limit on Tenant's liability with respect to its indemnification obligations
457 hereunder.

458 10.6 Right to Cure. If a Party fails to procure or maintain any insurance
459 required pursuant to Section 10, the other Party will have the right, but not the obligation, upon
460 not less than 30 days prior written notice from such other Party to the non-performing Party, to
461 procure such insurance on behalf of the non-performing Party and in any such event such other

462 Party will be entitled to recover the premiums paid for such insurance as an amount due under
463 this Ground Lease.

464 11. Damage or Destruction of Facility. If, at any time during the Term of this Ground
465 Lease, the Facility shall be wholly or partially damaged or destroyed by Casualty, then Tenant
466 shall cause the same to be repaired, replaced, or rebuilt in accordance with this Section 11 and all
467 requirements of Section 9.2 within twenty-four (24) months after the occurrence of any major
468 damage or destruction and if not major, then within twelve (12) months after the occurrence.
469 The repairs shall restore the Facility to a condition which is not less than the condition it was in
470 immediately prior to the Casualty. The repairs shall be made in a good and workmanlike manner
471 using new, quality materials, products and equipment; and the Facility, after completion of the
472 repairs, shall conform and otherwise comply in all material respects with all applicable Laws. All
473 insurance proceeds paid by Tenant's insurers on account of the Casualty shall be paid to Tenant
474 as its sole property, to be used by Tenant in connection with repairing the Facility, if applicable.
475 Notwithstanding anything to the contrary contained herein, Tenant shall have the option to
476 terminate this Ground Lease by written notice to Landlord given within ninety (90) days after the
477 occurrence of any material damage or destruction that renders the Facility unfit, in Tenant's
478 commercially reasonable discretion, for the generation and delivery of Steam, if the damage or
479 destruction occurs within the last sixty (60) months of the Term of this Ground Lease and Tenant
480 shall surrender the Site, the Facility and the Recorded Easement Areas as provided in Section 6
481 above and subject to the provisions of the SPSA.

482 12. Liabilities.

483 12.1 General.

484 (a) Tenant shall indemnify, defend and hold harmless Landlord and
485 Landlord's Parties from any and all third party claims, losses, expenses, liabilities, actions, suits,
486 or judgments for personal injury or property damage, including without limitation reasonable
487 attorneys' fees and costs of enforcement (collectively, "Losses") by reason of, resulting from,
488 whether directly or indirectly, or arising out of or related to (i) Tenant's or Tenant's Parties'
489 ownership, operation, use or maintenance of the Facility, the Recorded Easement Areas or the
490 Site; (ii) the negligence or willful misconduct of Tenant or any Tenant Party in connection with
491 the transactions contemplated by this Ground Lease; (iii) any release of Hazardous Materials on
492 the Site caused or permitted by Tenant or any Tenant Party; or (iv) any environmental claim from
493 a third party or by Landlord with regard to a violation or alleged violation of any Environmental
494 Laws by Tenant or any Tenant Party. Tenant's indemnification under this Section 12 should be
495 construed to be in addition to, and not in lieu of, the indemnifications made by Tenant, as seller,
496 for the benefit of Landlord, as buyer, under the SPSA.

497 (b) The provisions of this Section 12.1 shall survive the expiration or
498 termination of the Term.

499 12.2 Consequential Damages. Notwithstanding anything to the contrary in this
500 Ground Lease, neither Party hereto shall be liable to the other for consequential or punitive
501 damages, including but not limited to loss of use or loss of profit or revenue.

502 13. Default.

503 13.1 Events of Default. The following events shall be deemed to be events of
504 default by Tenant ("Tenant Events of Default") under this Ground Lease:

505 (a) Failure to pay any payment required to be made hereunder,
506 including taxes or any other sum to be paid hereunder within 20 Business Days after the date the
507 same is due which shall have remained unpaid for 20 Business Days after written notice of such
508 failure has been given to Tenant by Landlord.

509 (b) Failure to comply in any material respect with any material term,
510 provision or covenant of this Ground Lease, other than the payment of sums to be paid
511 hereunder, without curing such failure within 30 days after due written notice thereof from
512 Landlord to the extent such failure is capable of being cured within such 30 day period; or if such
513 failure cannot reasonably be cured within the said 30 days and Tenant shall not have commenced
514 to cure such failure within said period and shall not thereafter with reasonable diligence and good
515 faith proceed to cure such failure.

516 (c) Any Event of Default (as defined in the SPSA) by Tenant under the
517 SPSA which results in the termination of the SPSA.

518 (d) Tenant shall file in any court pursuant to any statute, either of the
519 United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for
520 the appointment of a receiver or trustee of all or any portion of Tenant's property, or makes an
521 assignment for benefit of creditors; or there is filed against Tenant in any court pursuant to any
522 statute either of the United States or any state, a petition in bankruptcy or insolvency, or for
523 reorganization, or for the appointment of a receiver or trustee of all or any portion of Tenant's
524 property, and within 90 days after the commencement of any such proceeding against Tenant,
525 such petition shall not have been dismissed.

526 13.2 Landlord's Remedies. Upon the occurrence of any Tenant Event of
527 Default and after notice thereof from Landlord to Tenant (the "Default Notice"), Landlord may,
528 at its option, and in addition to and cumulatively of any other rights Landlord may have at law or
529 in equity or under this Ground Lease, (a) cure the Tenant Event of Default on Tenant's behalf, in
530 which event Tenant shall reimburse Landlord on demand for all reasonable sums so expended by
531 Landlord or Landlord may elect to offset any such reasonable amounts against subsequent
532 installments of any sums due from Landlord to Tenant hereunder or under the SPSA, (b) in the
533 event that the SPSA has been terminated, terminate this Ground Lease and Tenant's possession
534 of the Site and Recorded Easements, (c) in the case of a Tenant Event of Default pursuant to
535 Section 13.1(c), seek injunctive relief or specific performance against Tenant, (d) enforce, by all
536 proper and legal suits and other means, its rights hereunder, including the collection of sums due
537 hereunder, in which event Landlord shall have all remedies available at law or in equity, and
538 should it be necessary for Landlord to take any legal action in connection with such enforcement,
539 the Tenant shall pay Landlord all reasonable attorney's fees and expenses incurred in such legal
540 action (as determined in the discretion of the court hearing such matter), all without prejudice to
541 any remedies that might otherwise be used by Landlord for recovery or arrearages of sums due
542 hereunder, damages as herein provided, or breach of covenant. In the event of Landlord's

543 termination of this Ground Lease and Tenant's possession of the Site and Recorded Easements,
544 Tenant will hand over the Project to Landlord as if the date of termination of the Ground Lease
545 and Tenant's possession of the Site and Recorded Easements was the Term Expiration Date.

546 13.3 Landlord Events of Default. The following events shall be deemed to be
547 events of default by Landlord ("Landlord Events of Default") under this Ground Lease:

548 (a) Failure to pay any payment required to be made hereunder within
549 20 Business Days after the date the same is due which shall have remained unpaid for 20
550 Business Days after written notice of such failure has been given to Landlord by Tenant.

551 (b) Failure to comply in any material respect with any material term,
552 provision or covenant of this Ground Lease, other than the payment of sums to be paid
553 hereunder, without curing such failure within 60 days after due written notice thereof from
554 Tenant; or if such failure cannot reasonably be cured within the said 60 days and Landlord shall
555 not have commenced to cure such failure within said period and shall not thereafter with
556 reasonable diligence and good faith proceed to cure such failure.

557 13.4 Tenant's Remedies. Upon the occurrence of any Landlord Event of
558 Default and after notice thereof from Tenant to Landlord (the "Default Notice"), Tenant may, at
559 its option, and in addition to and cumulatively of any other rights Tenant may have at law or in
560 equity or under this Ground Lease, (a) cure the Landlord Event of Default on Landlord's behalf,
561 in which event Landlord shall reimburse Tenant on demand for all reasonable sums so expended
562 by Tenant or Tenant may elect to offset any such reasonable amounts against subsequent
563 installments of any sums due from Tenant to Landlord hereunder, or (b) enforce, by all proper
564 and legal suits and other means, its rights hereunder, including the collection of sums due
565 hereunder, in which event Tenant shall have all remedies available at law or in equity, all without
566 prejudice to any remedies that might otherwise be used by Tenant for recovery or arrearages of
567 sums due hereunder, damages as herein provided, or breach of covenant. Landlord
568 acknowledges and agrees that if there is a Landlord Event of Default pursuant to Section 13.3(b)
569 above, which is not timely cured after written notice from Tenant to Landlord to the extent
570 contemplated in Section 13.3(b), and such Landlord Event of Default has a direct material
571 adverse effect on, and results in a material interference with Tenant's business or operations at
572 the Site or the amount of Steam or electricity generated by the Facility, Tenant shall have the
573 right to injunctive relief and specific performance to enjoin Landlord.

574 13.5 Resolution of Disputes. Notwithstanding anything in this Article 13 to the
575 contrary, upon the occurrence of any Tenant Event of Default or any Landlord Event of Default,
576 the defaulting party may dispute the event of default by notice (the "Dispute Notice") to the non-
577 defaulting party within five (5) business days after receipt of a Default Notice from the non-
578 defaulting party. In such event, the Parties shall attempt to resolve the Dispute in accordance
579 with Section 19.5 (2) of the SPSA before pursuing its remedies under this Ground Lease;
580 provided, however, this Section 13.5 shall not delay any applicable actions in the event of an
581 Emergency.

582 14. Governing Law and Venue. This Ground Lease and all provisions hereof, shall be
583 governed by and interpreted in accordance with the laws of the State of Indiana, without regard

584 to its principles of conflict of laws. Landlord and Tenant hereby consent to jurisdiction and
585 venue in the Circuit or Superior Court of Marion County, Indiana, for any action or proceeding
586 arising out of or relating to this Ground Lease. Any such action or proceeding brought against
587 the other shall be brought only in such state courts. The Parties hereto hereby waive personal
588 service of any process in connection with any such action or proceeding and agree that the
589 service thereof shall be made by certified or registered mail at the address for such Party set forth
590 in Section 24.1. A final non-appealable judgment in any such action or proceeding shall be
591 conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other
592 manner provided by applicable Laws.

593 15. Condemnation. If at any time the Site, the Easements, or any portion thereof is
594 condemned or transferred in lieu of condemnation, the net proceeds of such condemnation or
595 transfer shall be divided between Landlord and Tenant (or Tenant's designee) in the proportions
596 specified in the condemnation award or agreement of transfer or, if not so specified, in
597 proportion to the fair value of Landlord's and Tenant's respective interests in the Site and the
598 Easements, provided that to the extent that the net proceeds of any condemnation or transfer in
599 lieu of condemnation are attributable to the Facility or improvements constructed by or on behalf
600 of Tenant on the Site and/or the Easements, such proceeds shall be paid solely to Tenant or
601 Tenant's designee, with Landlord receiving any proceeds attributable solely to the residual value
602 of the fee estate of the Site. For the purpose of this Section 15 the net proceeds of a
603 condemnation or transfer in lieu of condemnation shall mean the total proceeds of such
604 condemnation or transfer less the costs and expenses incurred in connection therewith (including
605 legal fees). If the entire Site is condemned or transferred in lieu of condemnation, the Term shall
606 terminate at the time title vests in the condemning authority. If a portion of the Site is
607 condemned or transferred in lieu of condemnation, the Lease shall continue in full force and
608 effect with respect to that portion of the Site which has not been so condemned or transferred.
609 Notwithstanding the foregoing, Tenant may terminate this Ground Lease without penalty by
610 giving written notice of termination to Landlord if, in Tenant's reasonable discretion, the Site or
611 the Easements are not suitable for Tenant's intended use following such condemnation or transfer
612 in lieu thereof.

613 16. Maintenance Responsibilities of Parties. No Party shall have any duty or
614 responsibility to the other Party in respect of the Site or the Recorded Easement Areas or the
615 use, maintenance or condition thereof except such obligations of such Party as are specifically set
616 forth in this Ground Lease, the SPSA, or any instrument creating the Recorded Easements.

617 17. Mortgage of Tenant's Interest.

618 17.1 Landlord understands that any real estate interest of Tenant under this
619 Ground Lease will automatically be subject to an existing deed of trust/mortgage which
620 automatically encumbers any real estate interests acquired by Tenant under this Ground Lease
621 and the Recorded Easements (and that same shall constitute a Financing Document (as defined
622 below and shall not encumber Landlord's interest in the Property.) Further, and provided Tenant
623 is not in default of its obligations under this Ground Lease or the SPSA beyond any applicable
624 notice and cure periods, Tenant may at any time, with Landlord's prior written consent, which
625 consent shall not be unreasonably withheld, conditioned or delayed, elect to finance a portion of
626 the cost of the Facility with one or more financial institutions, leasing companies, institutions or

627 affiliates or subsidiaries thereof (each a "Financing Party," collectively, the "Financing Parties")
628 and in connection therewith Tenant would enter into various agreements and execute various
629 documents relating to such financing, which documents may, among other things, assign Tenant's
630 interests under this Ground Lease and the Easements to a Financing Party or grant a first priority
631 security interest in Tenant's interest in the Facility and/or this Ground Lease and Tenant's other
632 interests in and to the Site, including, but not limited to, any easements, rights of way or similar
633 interests (such documents, "Financing Documents"). Landlord acknowledges notice of the
634 foregoing and, subject to the provisions of this Section 17, consents to the foregoing actions and
635 Financing Documents described above, provided that in no event shall Tenant be released from
636 any liability under this Ground Lease and in no event shall Landlord's fee interest in the Site or
637 land underlying any easements, rights of way or similar interest be encumbered by such Financing
638 Documents. Upon reasonable prior notice to Landlord, Landlord agrees to execute, and agrees
639 to use good faith reasonable efforts to obtain from any and all of Landlord's lenders, such
640 subordination agreements, consents, estoppels and other acknowledgements of the foregoing as
641 Tenant or the Financing Parties may reasonably request and which are reasonably acceptable to
642 Landlord and its lenders. Landlord agrees that if requested in writing by Tenant, Landlord will
643 thereafter furnish the Financing Parties with a counterpart of each notice or other document
644 delivered by Landlord to Tenant in connection with this Ground Lease; provided that, in no way
645 shall Landlord be liable to any Financing Party for failure to send a counterpart of each notice or
646 other document delivered by Landlord to Tenant in connection with this Ground Lease.

647 17.2 Provided Landlord has been provided with written notice by a Financing
648 Party requesting that the Financing Party be given notice of a default by Tenant under this
649 Ground Lease, Landlord agrees that it shall not terminate this Ground Lease unless it has given
650 each such Financing Party at least 30 days' prior written notice of its intent to terminate this
651 Ground Lease, or such longer period (not to exceed ninety (90) days) in the event Financing
652 Party may need to acquire the rights of the Tenant under the Ground Lease and possession of the
653 Site in order to cure such default, and the Financing Party fails to cure the condition giving rise
654 to such right of termination within such time period, as same may be extended; provided that, in
655 no way shall Landlord be liable to any Financing Party for failure to give notice as provided
656 herein.

657 17.3 If the default by Tenant under this Ground Lease is of such a nature that it
658 cannot be practicably cured without first taking possession of the Facility and the Site or if such
659 default is of a nature that is not susceptible of being cured by a Financing Party and provided
660 Landlord has been provided with written notice by a Financing Party requesting that the
661 Financing Party be given notice of a default by Tenant under this Ground Lease, then Landlord
662 shall not be entitled to terminate this Ground Lease by reason of such default if and so long as the
663 Financing Party proceeds diligently to obtain possession of the Facility and the Site pursuant to
664 the rights of the Financing Party under the Financing Documents (but in no event more than 30
665 days after Landlord delivers notice of a default by Tenant under this Ground Lease to the
666 Financing Party) and upon obtaining such possession, the Financing Parties shall proceed
667 diligently to cure such default.

668 17.4 A Financing Party shall not be required to continue to proceed to obtain
669 possession, or to continue in possession of the Site, pursuant to Section 17.3 if and when such

670 default is cured so long as the Facility and the Site are operated by a Qualified Operator. If the
671 Financing Party, or a purchaser through foreclosure under the Financing Documents or
672 otherwise, shall (a) acquire title to the Facility and the Tenant's leasehold estate created by this
673 Ground Lease, (b) cure all defaults (including without limitation, the payment of all monetary
674 obligations of Tenant due under the Lease), (c) assume all the obligations of Tenant hereunder,
675 and (d) provide Landlord with adequate assurances, as determined in Landlord's reasonable
676 discretion, that the obligations of the Tenant to provide Landlord services under the SPSA shall
677 continue uninterrupted by a Qualified Operator, notwithstanding the acquisition of the Facility
678 and the Tenant's leasehold estate, then Landlord shall recognize the Financing Parties or such
679 purchaser, as the case may be, as if such party had been the Tenant under this Ground Lease;
680 provided, however, that Landlord's recognition of the Financing Party or its purchaser pursuant
681 to this Section 17.4 shall not constitute a waiver of such default and Landlord's rights as a result
682 thereof as against Tenant or the ownership, management and operation of the Facility and the
683 Site by a Qualified Operator.

684 18. Landlord's Representations and Covenants.

685 18.1 Condition of Title; Authority; Enforceability. Landlord represents as of the Effective
686 Date that to Landlord's Knowledge, Landlord owns fee title to the Site and the Easement Areas
687 free and clear of any lien, interest or encumbrance, [none of which, to Landlord's Knowledge,]
688 [subject only to Permitted Exceptions, none of which, to the current actual knowledge of
689 Landlord], would adversely impair Tenant's performance under the terms of this Ground Lease
690 or under the SPSA. At any time on or after the Effective Date Tenant may obtain for itself
691 and/or any Financing Party, at Tenant's expense, an ALTA Extended Coverage policy of title
692 insurance in a form and with exceptions acceptable to Tenant in its sole discretion (the "Title
693 Policy"). Landlord agrees to cooperate fully and promptly with Tenant in its efforts to obtain the
694 Title Policy, and Landlord shall take such actions as Tenant may reasonably request in
695 connection therewith at no cost to Landlord. Landlord represents that as of the Effective Date,
696 to Landlord's Knowledge: (a) there are no pending or threatened claims, actions or suits
697 affecting the Site or Landlord's interest in the Site or the Easement Areas; (b) the execution and
698 performance of this Ground Lease by Landlord does not violate any contract, agreement or
699 instrument to which Landlord is a party; (c) the execution, delivery and performance by Landlord
700 under this Ground Lease have been duly authorized by all necessary action by Landlord, and do
701 not violate any provision of any current Laws applicable to Landlord, the Site or the Easement
702 Areas or any order, judgment or decree of any court or other agency presently binding on
703 Landlord or conflict with or result in a breach of or constitute a default under any contractual
704 obligation of Landlord; and (d) this Ground Lease is the legally valid and binding obligation of
705 Landlord enforceable against it in accordance with its terms except as enforcement may be
706 limited by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable
707 principles relating or limiting creditors rights generally.

708 18.2 Environmental. Prior to the Effective Date, Landlord, at its sole cost and
709 expense, shall have undertaken a current Phase I Environmental Site Assessment (the scope and
710 performance of which meets or exceeds the requirements set forth in 40 CFR Part 312) of the
711 Site and the Easement Areas prepared by a qualified company selected by the Landlord and
712 reasonably acceptable to the Tenant. If the Phase I Environmental Site Assessment recommends

713 or otherwise indicates that further site investigation be performed, such as a Phase II
714 Environmental Assessment, Landlord shall undertake, at its sole cost and expense, such further
715 site investigation prepared by a qualified company selected by Landlord and reasonably
716 acceptable to Tenant. If a Phase II Environmental Assessment undertaken by Landlord reveals
717 any existing Environmental Condition(s) that is/are reasonably acceptable to Tenant, then Tenant
718 will not seek any further Landlord investigation or remediation. However, if either such further
719 investigation, or Tenant's subsequent pre-construction or construction activities reveal any
720 Existing Environmental Conditions which are not reasonably acceptable to Tenant, then Landlord
721 shall obtain a firm estimate for further investigations (i.e., supplemental Phase II) and/or
722 remediation needed to render the Site and Easement Areas usable for the Facility. The Parties
723 shall then have the following options: (1) Landlord may, in its sole discretion, decide whether or
724 not to undertake such further investigations and remediation as needed to render the Site and the
725 Easement Areas usable for the Facility, at its sole cost and expense ("Option 1"); (2) if Landlord,
726 in its sole discretion, decides not to further investigate and remediate the Site and Easement
727 Areas to render them usable for the Facility, Tenant may at its sole cost and expense undertake
728 such further investigations and remediation ("Option 2"); (3) Landlord and Tenant may mutually
729 agree to a sharing of the costs and expenses ("Option 3"); or (4) if Landlord, in its sole
730 discretion, decides not to further investigate and remediate the Site and Easement Areas to
731 render them usable for the Facility, and Tenant, in its sole discretion, decides not to further
732 investigate and remediate the Site and Easement Areas to render them usable for the Facility,
733 then either Landlord or Tenant may terminate this Ground Lease and the Steam Purchase and
734 Sale Agreement with no liability or termination fees or expenses owing from Landlord to Tenant
735 or from Tenant to Landlord ("Option 4"). In the case of Option 4, Tenant shall promptly
736 commence to clear the Site and remove all of the improvements and all other property of Tenant
737 located on the Site and the applicable Recorded Easement Areas, returning same to their
738 condition as of the Effective Date to the extent reasonably practical, and shall fully complete such
739 clearing and removal within 90 days.

740 18.3 Subordination Agreements. Landlord shall, at its expense, promptly
741 remove, or cause to be subordinated to the Ground Lease all monetary obligations and any
742 related monetary liens that are described as exceptions in the Title Policy. Any such
743 subordination agreement shall be in a form as may be reasonably acceptable to Landlord and
744 Tenant, which provides, among other things, that Tenant's occupancy or use of the Site in
745 accordance with the terms of this Ground Lease will not be disturbed so long as Tenant is not in
746 default under the terms of this Ground Lease or the SPSA beyond any applicable notice and cure
747 period. Under no circumstances shall Landlord be required to subordinate its right, title and
748 interest in the Site and Recorded Easement Areas or its rights under this Ground Lease to the
749 liens and security interests Tenant may grant a Financing Party during the Term.

750 19. Tenant's Representations, Warranties, and Covenants.

751 19.1 Authority; Enforceability. Tenant represents and warrants that (a) the
752 execution and performance of this Ground Lease by Tenant does not violate any contract,
753 agreement or instrument to which Tenant is a party; (b) the execution, delivery and performance
754 by it under this Ground Lease have been duly authorized by all necessary action by Tenant, and
755 do not violate any provision of any current Laws applicable to Tenant, the Site or the Recorded

756 Easement Areas or any order, judgment or decree of any court or other agency presently binding
757 on Tenant or conflict with or result in a breach of or constitute a default under any contractual
758 obligation of Tenant; and (c) this Ground Lease is the legally valid and binding obligation of
759 Tenant enforceable against it in accordance with its terms except as enforcement may be limited
760 by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable principles
761 relating or limiting creditors rights generally.

762 19.2 Compliance With Laws. Tenant shall, at its sole expense (regardless of the
763 cost thereof), (i) use and maintain the Project and conduct its business thereon in a safe, clean,
764 careful, reputable and lawful manner in accordance with all Comparable Industry Standards; and
765 (ii) comply with all applicable Laws, now or hereafter in force and all judicial and administrative
766 decisions pertaining thereto, pertaining to either or both of the Project and Tenant's development,
767 construction, ownership, operation and maintenance of the Project during the Term. If any
768 license or permit is required for the development, construction, ownership, operation and
769 maintenance of the Project and the conduct of Tenant's business thereon, Tenant, at its expense,
770 shall procure such licenses and permits prior to the Commercial Operation Start Date or earlier
771 during the Development Period as required by applicable Laws, and shall maintain such licenses
772 and permits in good standing throughout the Term.

773 19.3 Environmental. Tenant hereby covenants that Tenant and its agents,
774 employees and contractors will not generate, store, use, treat or dispose of any Hazardous
775 Materials in, on or at the Site or any part of the Facility, except for Hazardous Materials as are
776 commonly legally used or stored (and in such amounts as are commonly legally used or stored)
777 as a consequence of using the Facility for the permitted use hereunder, but only so long as the
778 quantities thereof do not pose a threat to public health or to the environment or would
779 necessitate a "response action", as that term is defined in CERCLA, and so long as Tenant
780 strictly complies or causes compliance with all applicable Environmental Laws concerning the
781 use or storage of such Hazardous Materials. Tenant further covenants that neither the Site nor
782 any part of the Facility shall ever be used by Tenant or its agents, contractors or employees as a
783 dump site or (except as provided hereinabove) storage site (whether permanent or temporary)
784 for any Hazardous Materials during the Term.

785 Tenant shall promptly (a) notify Landlord of (i) any violation by Tenant or any Tenant
786 Parties of any Environmental Laws on, under or about the Project, which Tenant is provided
787 written notice from a Governmental Authority, or (ii) the presence or suspected presence of any
788 Hazardous Materials on, under or about the Site and Recorded Easement Areas, and (b) deliver
789 to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source.
790 Tenant shall execute affidavits, representations and the like within five (5) business days of
791 Landlord's request therefor concerning Tenant's actual knowledge and belief (without
792 independent investigation) regarding the presence of any Hazardous Substances on, under or
793 about the Project. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's
794 managing agent from and against any and all claims, losses, liabilities, costs, expenses, penalties
795 and damages, including attorneys' fees, costs of testing and remediation costs, reasonably
796 incurred by Landlord or Landlord's Parties in connection with any breach by Tenant of Tenant's
797 obligations under this Section 19.3. The covenants and obligations under this Section 19.3 shall
798 survive the expiration or earlier termination of this Ground Lease.

799 20. Utilities. As set forth in the SPSA, Landlord shall ensure that the Utilities are
800 available for use by Tenant at the boundaries of the Site and the Recorded Easement Areas.
801 However, Landlord shall not be responsible for the quantities or adequacy of such Utilities, or
802 the outage of such Utilities, for the development, construction, ownership, operation and
803 maintenance of the Facility during the Term. To [Landlord's Knowledge] [the best of Landlord's
804 actual knowledge,] Landlord has disclosed to Tenant the location of all utilities currently buried
805 on the Site. [Further, Landlord shall, at its expense, be responsible for locating and relocating (as
806 necessary) any utilities currently buried on the Site that are inconsistent with Tenant's
807 construction of the Facility at least thirty (30) days prior to the Construction Start Date.] Tenant
808 shall pay for all Utilities consumed by Tenant at the Site during the Term.

809 21. Taxes.

810 21.1 Covenant to Pay Taxes and Assessments. Tenant shall be responsible for
811 and shall pay the Taxes and Assessments, if any, as hereinafter defined, which are imposed on the
812 Site, the Facility and Tenant's operations at the Site. "Taxes and Assessments" shall mean all
813 taxes, assessments or other impositions, general or special, ordinary or extraordinary, of every
814 kind or nature, which may be levied, assessed or imposed upon or with respect to the Site, the
815 Facility and Tenant's operations at the Site or any improvements, fixtures, equipment or personal
816 property of Tenant at any time situated thereon, including, but not limited to, any ad valorem and
817 inventory taxes. Landlord shall pay any transfer or conveyance tax arising out of this Ground
818 Lease. Landlord shall also timely pay all taxes, assessments or other impositions which may be
819 levied, assessed or imposed upon or with respect to the Recorded Easement Area(s) (and with
820 respect to the Recorded Easement Areas regarding the Electrical Interconnection Easement, any
821 buildings, improvements, fixtures, equipment or personal property situated thereon belonging to
822 anyone other than Tenant), if any. Tenant shall not be responsible for the payment of any income
823 or similar tax due and payable on Landlord's receipt of the rental payment under this Ground
824 Lease. If the real property comprising the Site is a part of a larger tax parcel, Tenant's share of
825 taxes regarding the Site shall be proportional to the acreage of the Site as compared to the
826 acreage of such larger parcel.

827 21.2 Tenant's Right to Contest Taxes. Tenant shall have the right to contest
828 any Taxes or Assessments payable by Tenant, provided, Tenant shall, in good faith and with due
829 diligence, contest the same or the validity thereof by appropriate legal proceedings which shall
830 have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of
831 any lien for such tax or assessment. Tenant shall have the right, at its sole expense, to institute
832 and prosecute any suit or action to contest any Taxes or Assessments payable by Tenant or to
833 recover the amount of any such Taxes or Assessments payable by Tenant but, in such event,
834 Tenant hereby covenants and agrees to indemnify and save Landlord harmless from any and all
835 reasonable and documented costs and expenses, including attorneys' fees, in connection with any
836 such suit or action. Any funds recovered by Tenant as a result of any such suit or action shall
837 belong to Tenant except to the extent any such recovery relates to a period of time that is not
838 part of the Term. Any part of such recovery relating to a period not part of the Term shall be
839 paid to Landlord. The terms and provisions of this Section shall survive the termination or earlier
840 expiration of this Ground Lease.

841 22. Assignment.

842 22.1 Assignment by Landlord. Landlord may sell, assign or transfer all (but not
843 less than all) of its interest in the Site or this Ground Lease at any time to a successor in interest
844 (who must expressly assume the obligations of Landlord hereunder), and Landlord shall
845 thereafter be released or discharged from all of its covenants and obligations hereunder, except
846 such obligations as shall have accrued prior to any such sale, assignment or transfer, and Tenant
847 agrees to look solely to such successor in interest of Landlord for performance of such
848 obligations arising after such sale, transfer or assignment. In the event of such sale, assignment
849 or transfer of its interest, Landlord shall promptly notify Tenant of same. Landlord shall also
850 have the right to place a mortgage or deed of trust upon the Site, in which event this Ground
851 Lease shall be subordinate to the lien of any deed of trust or mortgage, provided that the
852 beneficiary of such deed of trust or mortgage shall agree in writing, that so long as Tenant is not
853 in default under the terms of this Ground Lease beyond any applicable notice and cure period as
854 set forth herein, such beneficiary shall not disturb Tenant's rights under this Ground Lease and
855 shall otherwise comply with the terms and provisions of this Ground Lease applicable to
856 Landlord.

857 22.2 Assignment by Tenant. Tenant may not sell, assign, sublease, mortgage,
858 pledge, or otherwise transfer its interest in the Project, this Ground Lease and its rights and
859 obligations under the SPSA, without the prior written consent of Landlord, which consent shall
860 not be unreasonably withheld, conditioned or delayed so long as (i) the assignee expressly
861 assumes in writing Tenant's payment and performance obligations under this Ground Lease and
862 the SPSA, and (ii) Tenant delivers evidence satisfactory to the Landlord of the proposed
863 assignee's technical and financial capability to fulfill Tenant's obligations hereunder and under
864 the SPSA. Notwithstanding the immediately preceding sentence, Tenant may, without the
865 consent of Landlord, assign this Ground Lease as part of a Permitted Transaction (as defined in
866 the SPSA.

867 23. Ownership of Electricity and Environmental Attributes And Incentives. Pursuant
868 to Section 4.4 of the SPSA, Landlord and Tenant will each individually have the right to claim,
869 bank, trade, sell, retire or retain one half (1/2) of the Environmental Attributes (as defined in the
870 SPSA) and Electric Power Attributes (as defined in the SPSA) directly related to and arising
871 from the production of Steam or electric energy at the Facility; provided, however, that Landlord
872 will retain all rights to Environmental Attributes and Electric Power Attributes related to the
873 ownership and operation of the Landlord's Property or any other Landlord facilities or the
874 generation or use of Steam or electric energy at the Landlord's Property or any other Landlord
875 facilities.

876 24. Miscellaneous.

877 24.1 Notices. Any notice, consent or other formal communication required or
878 permitted to be given by a Party pursuant to the terms of this Ground Lease shall be in writing
879 and shall be deemed delivered (a) when delivered personally or by email, unless such delivery is
880 made (i) on a day that is not a business day in the place of receipt or (ii) after 5:00 p.m. local time
881 on a business day in the place of receipt, in either of which cases such delivery will be deemed to
882 be made on the next succeeding business day, (b) on the next business day after timely delivery to

883 a reputable overnight courier and (c) on the business day actually received if deposited in the
884 U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as
885 follows (or to such other address or having such other contact information as either Party may
886 hereafter specify for such purpose by like notice to the other Party from time to time):

887 *if to Tenant, addressed to:*

888 Duke Energy Indiana, LLC

889 _____

890 _____

891 _____

892 Attention: _____

893 Phone: (____) ____ - ____

894 Email: _____@duke-energy.com

895 With a copy to:

896 Duke Energy _____, LLC

897 _____

898 _____

899 _____

900 Attention: John B. Scheidler

901 Phone: (317) 838-1839

902 Email: John.Scheidler@duke-energy.com

903 *if to Landlord, addressed to:*

904 Purdue University

905 _____

906 _____

907 _____

908 Attention: _____

909 with a copy to:

910 _____

911 _____

912 _____

913 Attention: _____

914 or to such other address as either Party shall from time to time designate in writing to the other
915 Party.

916 24.2 Counterparts; Signatures. This Ground Lease may be executed in
917 counterparts. All executed counterparts shall constitute one agreement, and each counterpart
918 shall be deemed an original. The parties hereby acknowledge and agree that facsimile signatures
919 or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding
920 and shall have the same full force and effect as if an original of this Ground Lease had been
921 delivered. Landlord and Tenant (i) intend to be bound by the signatures on any document sent by
922 facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and
923 (iii) hereby waive any defenses to the enforcement of the terms of this Ground Lease based on
924 the foregoing forms of signature.

925 24.3 Amendments. Neither this Ground Lease nor any of the terms hereof may
926 be terminated, amended, supplemented, waived or modified orally, but only by an instrument in
927 writing signed by the Party against which the enforcement of the termination, amendment,
928 supplement, waiver or modification shall be sought.

929 24.4 Headings, etc. The headings of the various Sections of this Ground Lease
930 are for convenience of reference only and shall not modify, define, expand or limit any of the
931 terms or provisions hereof.

932 24.5 Successors and Assigns. The terms of this Ground Lease shall be binding
933 upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted
934 assigns.

935 24.6 Confidentiality. Landlord and Tenant each agree that all of Section 18 of
936 the SPSA captioned CONFIDENTIALITY, including without limitation, Section 18.1 thereof
937 containing the definition of "Confidential Information" is hereby incorporated and made a part of
938 this Section 24.6 as if fully set forth herein, except all references to "this Agreement" found in all
939 of Section 18 of the SPSA, as hereby incorporated into this Ground Lease, shall be replaced so
940 as to read "this Ground Lease" in lieu of all references therein to "this Agreement."

941 24.7 Interpretation. The Parties acknowledge that this Ground Lease, as
942 executed, is the product of negotiations between Landlord and Tenant and that it shall be
943 construed fairly, in accordance with its terms, and shall not be construed for or against either
944 Party. No inferences as to the intention of the Parties shall arise from the deletion of any
945 language or provisions of this Ground Lease.

946 24.8 Memorandum of Ground Lease. At such time as Tenant has
947 commissioned and delivered an ALTA/ACSM Land Title Survey of the Site reasonably
948 satisfactory to Landlord and provided this Ground Lease has not been terminated during the
949 Development Period, Landlord and Tenant shall execute, acknowledge before a notary public,
950 and deliver a short form memorandum of ground lease in recordable form (the "Memorandum"),
951 which shall be recorded by Tenant in the Official Records at Tenant's sole cost and expense and a

952 copy of the recorded Memorandum will promptly be delivered to Landlord upon receipt of the
953 recorded original from the Official Records. The Memorandum shall identify the location of the
954 Site. Upon termination of this Ground Lease, the Parties agree to execute and deliver a
955 memorandum of termination of this Ground Lease and the Recorded Easements, each in
956 recordable form.

957 24.9 Severability. If any term or provision of this Ground Lease is, to any
958 extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the
959 remainder of this Ground Lease shall not be affected thereby, and each remaining term and
960 provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by
961 law.

962 24.10 Time is of the Essence. Time is of the essence of this Ground Lease and
963 each and every provision of this Ground Lease.

964 24.11 Consent and Approvals. Any consent or approval that a Party is obligated
965 to give to the other Party shall not be unreasonably withheld or delayed, subject to any specific
966 provision to the contrary contained in this Ground Lease. Wherever in this Ground Lease
967 Landlord's consent or approval is required, if Landlord refuses to grant such consent or
968 approval, whether or not Landlord expressly agreed that such consent or approval would not be
969 unreasonably withheld, Tenant shall not make, and Tenant hereby waives, any claim for money
970 damages (including any claim by way of set-off, counterclaim or defense) based upon Tenant's
971 claim or assertion that Landlord unreasonably withheld or delayed its consent or approval.
972 Tenant's sole remedy shall be an action or proceeding to enforce such provision, by specific
973 performance, injunction or declaratory judgment. In no event shall Landlord be liable for, and
974 Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect,
975 consequential or punitive damages, including loss of profits or business opportunity, arising
976 under or in connection with this Ground Lease.

977 24.12 Entire Agreement. This Ground Lease and the SPSA, including any
978 exhibits and attachments hereto and thereto, constitute the entire agreement between Landlord
979 and Tenant relative to the matters and transactions contemplated herein. Landlord and Tenant
980 agree hereby that all prior or contemporaneous oral or written agreements, or letters of intent,
981 between and among themselves or their agents including any leasing agents and representative,
982 relative to such matters and transactions are merged in or revoked by this Ground Lease and the
983 SPSA.

984 24.13 Broker's Commission. Tenant represents and warrants that it has not dealt
985 with any broker or agent in connection with this Ground Lease and Tenant agrees to indemnify
986 and save Landlord harmless from any claims made by any brokers or agents claiming to have
987 dealt with Tenant. Landlord represents and warrants that it has not dealt with any brokers or
988 agents in connection with this Ground Lease, and Landlord agrees to indemnify and save Tenant
989 harmless from any claims made by any brokers or agents claiming to have dealt with Landlord.
990 The terms and provisions of this Section shall survive the termination or earlier expiration of this
991 Ground Lease.

992 24.14 EXCULPATION. TENANT AGREES THAT TENANT SHALL LOOK
993 SOLELY TO LANDLORD'S INTEREST IN THE SITE AND INSURANCE,
994 CONDEMNATION AND SALES PROCEEDS THEREFROM FOR THE SATISFACTION OF
995 ANY CLAIM, JUDGMENT OR DECREE REQUIRING THE PAYMENT OF MONEY BY
996 LANDLORD BASED UPON ANY UNCURED DEFAULT BY LANDLORD HEREUNDER,
997 AND NO OTHER PROPERTY OR ASSETS OF LANDLORD, ITS SUCCESSORS OR
998 ASSIGNS, SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER ENFORCEMENT
999 PROCEDURE FOR THE SATISFACTION OF ANY SUCH CLAIM, JUDGMENT,
1000 INJUNCTION OR DECREE.

1001 25. Handover Upon Landlord's Purchase of Facility. If Landlord purchases the Facility
1002 from Tenant pursuant to Article 16 of the SPSA, Tenant will handover the Project to Landlord in
1003 accordance with the terms and provisions set forth such Article 16 of the SPSA. Upon Landlord's
1004 purchase of the Facility, the Ground Lease and Recorded Easements shall be terminated and of
1005 no further force and effect, except for the provisions herein that expressly survive expiration or
1006 termination of this Ground Lease or any of the Recorded Easements.

1007

1008

[Signatures Begin on Next Page]

1010
1011
1012
1013

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be duly executed by their respective officers thereto duly authorized as of the day and year first above written.

1014

LANDLORD:

1015
1016
1017
1018
1019
1020

The Trustees of Purdue University

By: _____
Name: _____
Title: _____

1021

1023

1024

TENANT:

1025

Duke Energy Indiana, LLC

1026

By: _____

1027

Name: _____

1028

Title: _____

1030

EXHIBIT A: SITE MAP

The proposed location for the CHP project is located to the west of the existing Wade Utility Plant on Purdue University Campus, located in West Lafayette, Tippecanoe County, Indiana.

The approximate center of the parcel is located at:

Latitude: 40°25'1.60"N
Longitude: 86°54'51.66"W

The parcel available is approximately 50,000 square feet in area and is shown by the blue rectangle in Figure 1 below.

Figure 1: Site Map



EXHIBIT B

to Ground Lease

Definitions

"Access Drive" has the meaning set forth in Section 9.4 hereof.

"Affiliate" has the meaning set forth in the SPSA.

"ALTA" means the American Land Title Association or any successor organization.

"ALTA/ACSM Land Title Survey" means a survey prepared to current ALTA and ACSM standards of the Site and/or Easement Areas, prepared at Tenant's expense by a registered surveyor approved by Landlord and certified to Landlord and Tenant.

"Approved Plans and Specifications" has the meaning set forth in Exhibit C.

"ACSM" means the American Congress of Surveying and Mapping or any successor organization.

"Business Day" means any day except a Saturday, Sunday or a legal holiday recognized by Landlord. A Business Day will open at 8:00 a.m. and close at 5:00 p.m., at the location of the Facility.

"Casualty" means any loss or destruction of or damages to the Facility or the Site resulting from any act of God, fire, explosion, earthquake, accident or the elements, whether or not covered by insurance and whether or not caused by the fault or negligence of either Party, or such Party's employees, agents, contractors, or visitors.

"Change of Control" has the meaning set forth in the SPSA.

"CHP" means combined heat and power.

"Commercial Operation Date" has the meaning set forth in the SPSA.

"Commercial Operation Start Date" means the date upon which Tenant notifies Landlord that the Facility is commercially operational, and that is no later than 36 months after the Construction Commencement Start Date, subject to extension for a Force Majeure Event or by mutual agreement between the Parties.

"Comparable Industry Standards" means all applicable architectural, engineering and construction design and specifications for the construction of applicable CHP facilities during the development and construction of the Facility during the Development Period, and once completed and operational, means Prudent Operating Practices and with generally acceptable industry standards.

"Completion Date" has the meaning set forth in Exhibit C.

"Condensate Interconnection Facilities" has the meaning set forth in the SPSA.

"Confidential Information" has the meaning set forth in Section 24.6.

"Construction Commencement Start Date" means a date that is no later than one hundred eighty (180) days following the date on which both (i) the Indiana Utility Regulatory Commission approves Tenant's construction of the CHP Facility, and (ii) all other permits necessary to begin construction have been obtained, and which must be communicated to Landlord by Tenant not less than thirty (30) days prior to such Construction Commencement Start Date, subject to extension for a Force Majeure Event or by mutual agreement of Landlord and Tenant.

"DEC" has the meaning set forth in Section 10.5.

"Decommissioning Activities" has the meaning set forth in Section 6.

"Development Period" means the period of approximately [36] [48] months commencing no later than the Construction Commencement Start Date and continuing until the Commercial Operation Start Date, during which period Tenant shall perform development activities, including but not limited to, obtaining permits, securing its position to interconnect into the grid and constructing the Facility.

"Easements" or "Easement" each has the meaning set forth in Section 5.

"Easement Areas" has the meaning set forth in Section 5.

"Effective Date" has the meaning set forth in the Preamble.

"Electrical Interconnection Easement" has the meaning set forth in Section 5.

"Emergency" means any occurrence that requires immediate action in order to prevent or mitigate serious actual or potential hazard to the safety of Persons or property, or material interference with the safe operation of the Facility or the Host, or violation of any applicable Environmental Laws or other Laws or Permit or any directive by a Governmental Authority.

"Energy Output" has the meaning set forth in Section 23.

"Environmental Incentives" has the meaning set forth in Section 23.

"Environmental Laws" has the meaning set forth in the SPSA.

"Environmental Liability" means any action, lawsuit, claim or proceeding arising under or related in any way to the Environmental Laws or which seeks to impose liability for (a) noise; (b) pollution or contamination of the air, surface water, ground water or land or the clean-up of such pollution or contamination; (c) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (d) exposure to or contamination by Hazardous Materials; (e) the safety or health of employees or (f) the manufacture, processing, distribution in commerce or

use of Hazardous Materials. An "Environmental Liability" includes a common law action, whether direct or indirect, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress violations of an applicable permit, license, or regulation as alleged by any governmental authority.

"Environmental Permit" means any permit, license, approval or other authorization under any applicable Environmental Laws.

"Existing Environmental Conditions" means any environmental conditions, circumstances or other matters of fact pertaining to, relating to or otherwise affecting the environment and in existence prior to the Effective Date, including any environmental pollution, contamination, degradation, damage or injury caused by, related to, or arising from or in connection with (i) the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials), dumping or threatened release of Hazardous Materials in connection with the ownership, possession, construction, improvement, use or operation of the Site prior to the Effective Date, (ii) the offsite transport prior to the Effective Date of Hazardous Materials from the Site, or the treatment, storage or disposal of Hazardous Materials transported from the Site to another site prior to the Effective Date and (iii) the release prior to the Effective Date of Hazardous Materials from the Site into the atmosphere or any water course or body of water not included in the Site.

"Facility" means a combined heat and power facility or facilities and related utilities, improvements, equipment, facilities, appurtenances and other improvements to be developed and constructed by Tenant during the Development Period and owned, operated and maintained by Tenant on the Site and any applicable Recorded Easement Area(s) during the Operational Term, including but not limited to all structures, machinery, equipment, meters, fixtures, interconnections, ancillary equipment and materials, and all additions, alterations and modifications thereto as may be permitted under this Ground Lease and located on the Site and the Recorded Easement Areas.

"Final Decommissioning Date" has the meaning set forth in Section 6.

"Financing Parties" or "Financing Party" each has the meaning set forth in Section 17.

"Financing Documents" has the meaning set forth in Section 17.

"Force Majeure Event" has the meaning set forth in the SPSA.

"Governmental Approvals" has the meaning set forth in Section 9.2(c).

"Governmental Authority" means any national, state, provincial, local, tribal or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department,

bureau, or entity with authority to bind a Party at law; *provided, however*, that "Governmental Authority" will not in any event include any Party.

"Ground Lease" has the meaning set forth in the Preamble.

"Hazardous Materials" has the meaning set forth in the SPSA.

"Host" has the meaning set forth in the SPSA

"Landlord" has the meaning set forth in the Preamble.

"Landlord's Cap" has the meaning set forth in Section 18.2.

"Landlord's Construction Representative" has the meaning set forth in Exhibit C.

"Landlord Easements" has the meaning set forth in Section 5.

"Landlord Events of Default" has the meaning set forth in Section 13.3.

"Landlord's Knowledge" means the actual (and not the imputed) knowledge of Landlord's Construction Representative and [TBD].

"Landlord's Property" means all premises other than the Site and the Recorded Easement Areas that are owned or leased by Landlord or its Affiliates and at which the Steam will be used or through which the Steam will be delivered.

"Landlord's Parties" means Landlord, its officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees (other than Tenant), sublessees, licensees, invitees, contractors, subcontractors, consultants, agents, trustees and any of their respective successors and assigns.

"Landlord Utilities" has the meaning set forth in Section 5.

"Laws" means all common law, laws, statutes, treaties, rules, orders, codes, ordinances, standards, regulations, restrictions, official guidelines, policies, directives, interpretations, permits or like action having the effect of law of any Governmental Authority.

"Losses" has the meaning set forth in Section 12.1(a).

"Memorandum" has the meaning set forth in Section 24.8.

"New Recorded Easements" has the meaning set forth in Section 9.2(b)(ix).

"Official Records" means the Official Records maintained by the office of the Register of Deeds of Tippecanoe County, Indiana.

"Operational Easements" has the meaning set forth in Section 5.

"Operational Term" means the period during which the Facility is generating and delivering Steam as such term(s) are defined in the SPSA, commencing upon the Commercial Operation Date for the Facility and terminating upon Term Expiration Date or earlier termination as provided herein in Section 2.1.2.

"Operational Term" means the period during which the Facility is generating and delivering Steam and electricity and if it occurs, shall commence on the Commercial Operation Start Date for the Facility or such earlier date as designated by Tenant in writing, and continue to the date that is thirty-five (35) years following the Commercial Operation Start Date or such earlier termination date in the event of a termination of the SPSA.

"Option 1", "Option 2", "Option 3" and "Option 4" each have the meaning set forth in Section 18.2.

"Party" or "Parties" means Landlord and/or Tenant, as applicable.

"Permit" has the meaning set forth in the SPSA.

"Permitted Exceptions" means the lien, if any, of all real estate taxes, all general and special assessments and all other governmental dues, charges and impositions not delinquent; all applicable zoning, building and land use and other governmental restrictions, laws, ordinances, rules and regulations; all matters that would be discovered or disclosed by an accurate inspection and a current, accurate ALTA/ACSM Land Title Survey of the Site and the Recorded Easement Areas; all other easements, restrictions, agreements, covenants and other matters of record created or first arising prior to the Effective Date; and any other matters disclosed in the Title Policy.

"Permitted Transaction" has the meaning set forth in the SPSA.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization or other business entity, or any governmental authority.

"Plan Changes" has the meaning set forth in Exhibit C.

"Project" means the Site, the Facility and any improvements made by Tenant during the Term in or to the Recorded Easements Areas.

"Prudent Operating Practices" has the meaning set forth in the SPSA.

"Recorded Easements" has the meaning set forth in Section 5.

"Recorded Easement Areas" has the meaning set forth in Section 5.

"Release" means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Material whether on, under or migrating to or from the property of any Party.

"Site" means that certain land located in Tippecanoe County, Indiana, as more particularly shown and described on Exhibit A attached hereto, the exact legal description of which shall be determined by an ALTA/ACSM Land Title Survey of the Site.

"SPSA" means that certain Steam Purchase and Sale Agreement dated as of the Effective Date, between Tenant, as "Seller", and Landlord, as "Buyer", as amended, modified, restated or supplemented between the Parties from time to time during the Term.

"State" has the meaning set forth in Section 10.1(b).

"Steam" has the meaning set forth in the SPSA.

"Substantial Completion Certificate" has the meaning set forth in Exhibit C.

"Taxes and Assessments" has the meaning set forth in Section 21.1.

"Tenant" has the meaning set forth in the Preamble.

"Tenant Events of Default" has the meaning set forth in Section 13.1.

"Tenant's Construction Representative" has the meaning set forth in Exhibit C.

"Tenant's Knowledge" means the actual (and not the imputed knowledge) of Tenant.

"Tenant's Parties" means Tenant, its officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees, sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

"Term" has the meaning set forth in Section 2.1.

"Termination Event" means [(i) the termination of the SPSA, (ii) Tenant's failure to timely observe or perform Section 19.3 of this Ground Lease, or (iii) a termination of this Ground Lease pursuant to Section 18.2 hereof], with the proviso that the Parties hereto acknowledge and agree that if this Ground Lease is terminated pursuant to [either Section 18.2 or Section 19.3 hereof] [Sections 2.1.2, 2.1.3, 2.1.4, 9.2(c), 11, 15 or 18.2 of this Ground Lease], the SPSA shall also be terminated.

"Term Expiration Date" has the meaning set forth in Section 2.1.

"Title Policy" has the meaning set forth in Section 18.1.

"Utilities" means the services and related improvements, equipment and facilities necessary for the operation of the Facility, including, but not limited to, natural gas, electrical power, water, storm and waste water, sanitary sewer, roads, telephone and telecommunication services, improvements, equipment and facilities.

EXHIBIT "C"

CONSTRUCTION

SECTION 1.1 Construction Representatives.

(a) Landlord shall designate a construction representative ("Landlord's Construction Representative") to serve as its liaison with Tenant with respect to issues related to the construction of the Facility. Landlord's initial Construction Representative is [TBD]. Landlord shall designate a successor Construction Representative by written notice to Tenant in the event the person named above is unable to perform such function or is replaced by Landlord. For purposes of this Exhibit C: (i) submission of any information or request required to be submitted to Landlord shall be submitted to Landlord's Construction Representative and (ii) where any approval or request of Landlord is required to be given or made in writing, such approval or request executed by Landlord's Construction Representative shall be deemed the approval or request of Landlord.

(b) Tenant shall designate a construction representative ("Tenant's Construction Representative") to serve as its liaison with Landlord with respect to issues related to the construction and equipping of the Facility. Tenant's initial Construction Representative is [TBD]. Tenant shall designate a successor Construction Representative by written notice to Landlord in the event the person named above is unable to perform such function or is replaced by Tenant. For purposes of this Exhibit C: (i) submission of any information or request required to be submitted to Tenant shall be submitted to Tenant's Construction Representative, and (ii) where any approval or request of Tenant is required to be given or made in writing, such approval or request shall be executed by Tenant's Construction Representative.

(c) Landlord's Construction Representative and Tenant's Construction Representative shall meet at regular agreed-upon intervals for the purpose of reviewing and discussing the status of the construction of the Facility (the "Work"). In addition, upon reasonable prior notice to Tenant, Landlord and employees, agents, consultants, and/or contractors designated by Landlord shall have the right, but not the obligation, to inspect the progress of the Work; provided, however, that such inspections shall not materially interfere with or disrupt Tenant's construction activities and shall be made only when accompanied by a representative of Tenant. Any such inspection by Landlord shall not relieve Tenant of its obligations hereunder or be deemed to create any liability on the part of Landlord to Tenant or to any third parties.

SECTION 1.2 Plans and Specifications. Generally, Plans and Specifications relating to the Facility shall not be subject to design and engineering requirements or prior approval by the Landlord, except as set forth herein.

(a) Exterior Facility Design and Appearance: The exterior design and appearance of Site and Facility, including façades, are to be generally consistent with those of the Utility Plant Service Building, including the use of similar materials and colors for siding and facades. Prior to construction, Tenant shall provide Landlord with five copies and samples of exterior siding specifications and color samples for review and approval by Landlord.

(b) ASME Standards: All pipe, fittings, valve and auxiliaries for steam and condensate that connect with Landlord systems shall meet appropriate ASME requirements for temperatures and pressures, as referenced in Exhibit A of the Steam Purchase and Sale Agreement. Some data points readings from instrumentation will be shared between Tenant and Landlord and those points will be determined and mutually agreed to during construction.

(c) Approval Process: Tenant shall accommodate all reasonable objections of Landlord to such Plans and Specifications requiring Landlord approval, as specified herein. If Landlord has made no objections to the applicable Work within ten (10) business days of receipt of such from Tenant, such Work shall be deemed approved. In the event Tenant determines that it is necessary or appropriate to deviate from, to make revisions to or to supplement the approved Work ("Plan Changes") in a manner-affecting (i) the exterior design or appearance of the Facility (including changes to exterior Facility materials),-or (ii) the functional operation of the Facility as a CHP materially affecting compliance with the approved Work, Tenant shall submit such Plan Changes to Landlord for Landlord's review, and Landlord shall have the right to object as provided above. All other Plan Changes may be made without the requirement of any review and right to object of Landlord.

In the event of any Plan Change for which Landlord's review and right to object is required, Tenant shall submit to Landlord drawings and/or written descriptions depicting and/or describing in reasonable detail the proposed Plan Change. Landlord shall notify Tenant in writing of any objection to the proposed Plan Change within five (5) business days after receipt of such drawings and/or descriptions from Tenant. If Landlord objects to the Plan Change, its written notice of objection shall set forth in reasonable detail Landlord's objections to the proposed Plan Change. Landlord and Tenant shall cooperate in good faith to resolve Landlord's objection to the proposed Plan Change.

Landlord's review of any proposed Work or any Plan Change shall not constitute an assumption of liability on the part of Landlord for the conformity of such plans with the applicable legal requirements, but shall be for its sole purpose and shall neither constitute an assumption of liability on the part of Landlord for the conformity of such plans with the applicable legal requirements nor imply Landlord reviewed and approved the same for quality, design, code compliance or other like matters and Landlord shall not have any liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the proposed Work or any Plan Change.

Tenant shall ensure through the design of the Facility that no asbestos or asbestos-containing materials or lead based paint will be contained therein.

SECTION 1.3 Compliance. The Work shall at all times be carried on with diligence and continuity as expeditiously as possible to such an extent that such construction will begin no later than one hundred eighty (180) days after receiving the necessary approvals from State Agencies. The Project shall be completed, if practicable, on or before the Commercial Operation Start Date, free and clear of liens or claims for liens for materials supplied, and for labor or services performed in connection with the construction.

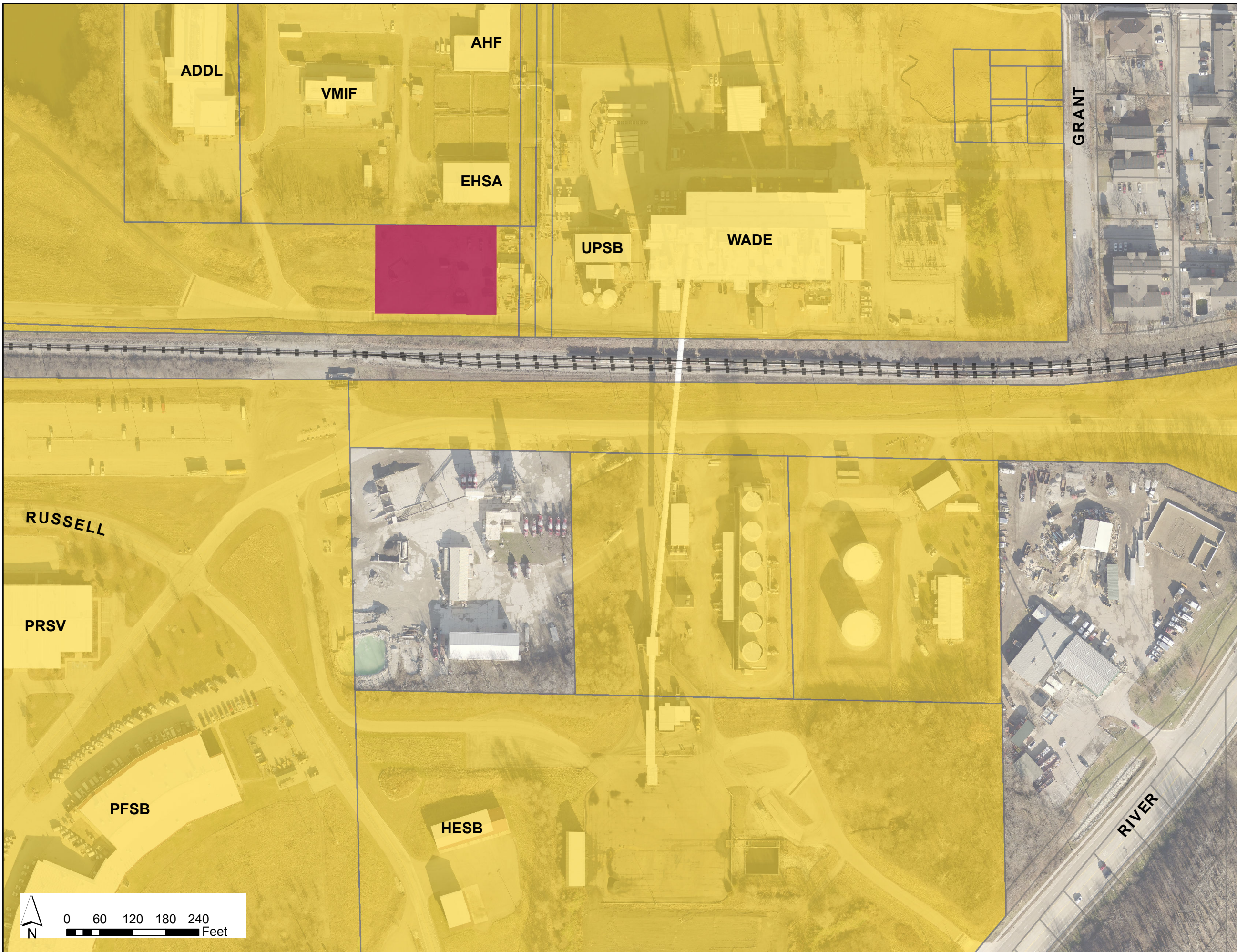
SECTION 1.4 Adjustments. Landlord will assist and cooperate with Tenant in connection with reasonable requests by Tenant for lot line adjustments, tentative or final parcel, tract or subdivision approval, variances of development standards and any other permit, license or other approval from any governmental authority which may be reasonable necessary for or which will facilitate the development, operation and use of the Facility pursuant to this Ground Lease.



SECTION 1.5 Signage. The Work shall also include plans and specifications for all exterior signage. All exterior signage to be installed by Tenant on or about the Facility or the Site shall be consistent in appearance (including letter style and size) with any signage program adopted for Landlord's Property and shall include Landlord's logo or other similar marks, if requested by Landlord. Any changes to the signage requested by Landlord after the initial approval of such signage shall be at the sole cost and expense of Landlord.

SECTION 1.6 As Built Plans. Tenant shall furnish to Landlord an equipment layout upon completion.

EXHIBIT "C"
LOCATION OF THE NEW
DUKE ENERGY CHP PLANT

3/20/2019



-  NEW DUKE ENERGY CHP PLANT
-  PURDUE UNIVERSITY
PURDUE UNIVERSITY PHYSICAL FACILITIES