

**This draft agreement contains AEP's contractual expectations and requirements for the transfer of ownership of the transmission facilities constructed by an interconnection customer under applicable option-to-build provisions as part of the interconnection of generation facilities. It does not create a legally binding or enforceable offer or agreement unless and until a definitive agreement has been duly executed and delivered by both parties. The actual terms of this draft agreement may vary based on required consents and approvals, the nature of the facilities to be transferred and other factors. This draft agreement is subject to due diligence in all respects, including all legal, financial, tax, environmental, real estate, permit, equipment, and construction matters. This draft agreement remains subject to further review and changes by AEP.**

**ASSET TRANSFER AGREEMENT**

**BETWEEN**

**[TRANSFEROR]**

**AND**

**[TRANSFeree]**

**DATED AS OF [\_\_\_\_\_, \_\_\_\_]**

# ASSET TRANSFER AGREEMENT

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## **EXHIBITS AND SCHEDULES**

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of Contractor Assignment of Warranties
Exhibit D	Form of General Warranty Deed
Schedule 1.1	Definitions
Schedule 2.1.2	Tangible Personal Property
Schedule 2.2	Excluded Assets
Schedule 4.3	Required Transferor Approvals
Schedule 4.7.1	Real Property
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Schedule 5.3            Required Transferee Approvals

Schedule 6.9.1        Punch List Items

Schedule 6.11         Partially Assigned Contracts

## ASSET TRANSFER AGREEMENT

This **Asset Transfer Agreement** (the “Agreement”) is made to be effective as of [\_\_\_\_\_, 20\_\_] (the “Execution Date”) between [\_\_\_\_\_] a [\_\_\_\_\_] (“Transferor”), and [\_\_\_\_\_] a [\_\_\_\_\_] (“Transferee”), as follows:

### RECITALS

- A. [Transferor, Transferee, and [REGIONAL TRANSMISSION ORGANIZATION] have entered into [DESCRIBE INTERCONNECTION AGREEMENTS] (the “Interconnection Agreement”).]
- B. Pursuant to the “Option-to-Build” provisions of the [INTERCONNECTION AGREEMENT], Transferor has constructed and owns certain transmission facilities located in [LOCATION], including a [VOLTAGE] transmission station known as the [STATION] (collectively, the “Transmission Facilities”).
- C. [Transferor and [CONTRACTOR] (“Contractor”) are parties to [CONTRACT] pursuant to which Contractor constructed the Transmission Facilities.]
- D. Transferor and Transferee are parties to that certain letter agreement dated [\_\_\_\_\_] (“Transfer of Operational Control Agreement”), pursuant to which Transferor transferred operational control of the Transmission Facilities to [REGIONAL TRANSMISSION ORGANIZATION] and Transferee on [\_\_\_\_\_] (the “Control Date”).
- E. Pursuant to the [INTERCONNECTION AGREEMENT], Transferor desires to transfer to Transferee the Transmission Facilities, subject to the terms and conditions set forth in this Agreement.

### AGREEMENTS

NOW, THEREFORE, the parties hereby agree as follows:

#### 1. DEFINITIONS; RULES OF CONSTRUCTION

##### 1.1. Definitions.

As used in this Agreement, terms defined in Schedule 1.1 have the meanings set forth therein.

##### 1.2. Rules of Construction.

Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural, and “including” has the inclusive meaning of “including without limitation.” The words “hereof”, “herein”, “hereby”, “hereunder”, and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof

will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the Person or Persons may require. Unless otherwise expressly provided, any agreement, instrument, or Applicable Law defined or referred to herein means such agreement or instrument or Applicable Law as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Law) by succession of comparable successor law and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

## **2. TRANSFER**

### **2.1. Transfer of Assets.**

Subject to the terms and conditions set forth herein, at the Closing, Transferor shall sell, assign, transfer, convey and deliver to Transferee, and Transferee shall purchase and assume from Transferor, free and clear of all Encumbrances other than Permitted Encumbrances, all of Transferor's right, title and interest in, to and under the following assets, properties and rights of Transferor (collectively, the "Transferred Assets"):

- 2.1.1. all warranty rights (but no obligations) under the contracts set forth on Schedule 6.11 (the "Partially Assigned Contracts"), consistent with the Assignment and Assumption Agreement executed by the parties [and the Contractor Assignments of Warranties executed by Transferee and the Contractor];
- 2.1.2. all fixtures, equipment, supplies and other tangible personal property comprising the Transmission Facilities and held for the operation of the Transferred Assets, including the items set forth on Schedule 2.1.2 ("Tangible Personal Property");
- 2.1.3. all intellectual property rights owned or held by Transferor and primarily related to the Tangible Personal Property;
- 2.1.4. originals, or where not available, copies, of the latest version of all existing books and records in Transferor's or its Affiliates' possession or control relating to the plan, design, construction, ownership, or maintenance of the Transferred Assets, including real estate records, machinery and equipment maintenance files, inspection reports, manuals, and similar items (including all correspondence with any Governmental Authority) related to the Transferred Assets (collectively, the "Records");
- 2.1.5. the Real Property; and
- 2.1.6. all Permits, including Environmental Permits, which are held by Transferor and required for the ownership or use of the Transferred Assets, including, without limitation, those listed on Schedule 4.9.3, but only to the extent such Permits may be transferred under Applicable Law (but if any Permit cannot

be transferred under Applicable Law, Transferor agrees to cooperate with and reasonably assist Transferee in obtaining such Permit).

2.2. Excluded Assets.

Other than the Transferred Assets identified in Section 2.1, Transferee expressly understands and agrees that it is not purchasing or acquiring, and Transferor is not selling, transferring or assigning, any other assets or properties of Transferor, and all such other assets and properties shall be excluded from the Transferred Assets (the “Excluded Assets”). For the avoidance of doubt, the Excluded Assets include all Excluded Assets identified on Schedule 2.2.

2.3. Assumed Liabilities.

Subject to the terms and conditions set forth herein, except to the extent liabilities and obligations relating to the Transferred Assets are governed by an inconsistent provision in a written agreement among the parties hereto [(such as the Interconnection Agreement)], Transferee shall assume and agree to pay, perform and discharge when due only the following liabilities and obligations of Transferor arising out of or relating to the Transferred Assets and no other liabilities or obligations (collectively, the “Assumed Liabilities”):

- 2.3.1. all liabilities and obligations for Taxes relating to the Transferred Assets or the Assumed Liabilities for the portion of such taxable period that occurs on and after the Effective Time;
- 2.3.2. all other liabilities and obligations arising out of or relating to Transferee’s ownership [and operation] of the Transferred Assets on or after the Effective Time, save and except the Excluded Liabilities described in Section 2.4, and only to the extent such liabilities and obligations do not relate to any breach, default, or violation by Transferor on or prior to the Closing; and
- 2.3.3. [all other liabilities and obligations arising out of or relating to Transferee’s operation of the Transferred Assets on or after the Control Date, save and except the Excluded Liabilities described in Section 2.4].

2.4. Excluded Liabilities.

Except to the extent any of the following liabilities or obligations are governed by an inconsistent provision in a written agreement among the parties hereto [(such as the Interconnection Agreement)], Transferee shall not assume and shall not be responsible to pay, perform or discharge any liabilities or obligations of Transferor other than the Assumed Liabilities (collectively, the “Excluded Liabilities”), regardless of whether such Excluded Liabilities are asserted before or after the Effective Time. Notwithstanding anything to the contrary in this Agreement, Transferor’s indemnification obligations with respect to Excluded Liabilities as set forth in Section 8.2.3 shall survive the Closing. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

- 2.4.1. any liabilities or obligations arising out of or relating to (i) the ownership of the Transferred Assets prior to the Effective Time; (ii) the operation of the Transmission Facilities prior to the Control Date; or (iii) the design, engineering, or construction of the Transmission Facilities, including without limitation any completion of construction by Transferor after the Effective Time pursuant to Section 6.9;
- 2.4.2. any liabilities or obligations arising out of or relating to any payment claims or lien rights which may be asserted by any contractor, subcontractor or vendor of any tier, whether such assertion is made before or after the Effective Time and whether such rights relate to work performed before the Effective Time or after the Effective Time pursuant to Section 6.9;
- 2.4.3. any liabilities or obligations arising out of or relating to any Permit or Governmental Order for the construction of the Transmission Facilities, or the failure by Transferor or any of its Affiliates to comply with any Applicable Law, Permit or Governmental Order relating to the Transferred Assets;
- 2.4.4. any liabilities or obligations arising out of or relating to the siting of the Transmission Facilities, including without limitation, any failure to obtain necessary approvals or Permits for the siting of the Transmission Facilities;
- 2.4.5. any liabilities or obligations under any Partially Assigned Contract and not resulting from any amendment entered into by Transferee;
- 2.4.6. any liabilities or obligations relating to or arising out of the Excluded Assets, including without limitation Transferor's generation facilities;
- 2.4.7. any liabilities or obligations for (i) Taxes relating to the Transferred Assets or the Assumed Liabilities for any taxable period ending prior to the Effective Time and with respect to any taxable period beginning before and ending after the Effective Time, the portion of such taxable period that occurs before the Effective Time, and (ii) any other Taxes of Transferor or any Affiliates of Transferor for any taxable period;
- 2.4.8. any liabilities or obligations in respect of any pending or threatened action or claim relating to Transferor, its Affiliates, or the Transferred Assets;
- 2.4.9. any liabilities or obligations of Transferor or its Affiliates for any present or former employee or independent contractor; and
- 2.4.10. any liabilities or obligations associated with debt, loans or credit facilities of Transferor or its Affiliates.

### 3. CLOSING

#### 3.1. Closing.

Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at such time, date, and place as Transferor and Transferee mutually agree, after all of the conditions to Closing set forth in Article 7 are either satisfied or waived (the “Closing Date”). The Closing shall be effective as of the first moment in time in [LOCATION], local time on the Closing Date (the “Effective Time”).

#### 3.2. Closing Deliverables.

##### 3.2.1. Transferor Deliveries.

At the Closing, Transferor shall deliver to Transferee the following:

- (a) a duly executed bill of sale in the form of Exhibit A attached hereto (the “Bill of Sale”);
- (b) an assignment of the Contractor’s warranties pursuant to a duly executed assignment and assumption agreement in the form of Exhibit B attached hereto (the “Assignment and Assumption Agreement”);
- (c) an assignment of the warranties from the Contractor’s subcontractors and vendors set forth on Schedule 6.11 duly executed by Contractor in the form of Exhibit C attached hereto, including executed copies of any required vendor consents to such assignment (the “Contractor Assignment of Warranties”);
- (d) with respect to the Real Property, the Real Property Instruments duly executed and, as applicable, notarized by Transferor;
- (e) an owner’s title insurance policy with respect to owned Real Property, issued by a nationally recognized title insurance company acceptable to Transferee, written as of the Closing Date, insuring Transferee in such amounts and together with such endorsements, and otherwise in such form as Transferee shall require (the “Title Insurance Policy”);
- (f) a duly executed termination agreement with respect to the Transfer of Operational Control Agreement;
- (g) the As-Built Survey;
- (h) a FIRPTA certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Transferor is not a foreign person within the

meaning of Section 1445 of the Internal Revenue Code, duly executed by Transferor;

- (i) written evidence, in form satisfactory to Transferee, of the release of all Encumbrances related to the Transferred Assets other than Permitted Encumbrances, including all applicable affidavits of completion provided by all contractors;
- (j) the Required Transferor Approvals;
- (k) any documents, notices, consents or approvals reasonably required by Transferee to enable Transferee to obtain all Permits necessary for Transferee to operate the Transferred Assets as of the Closing Date; and
- (l) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Transferee, as may be required to give effect to this Agreement.

3.2.2. Records.

Transferor shall deliver the Records to Transferee within 5 days of the Closing.

3.2.3. Transferee Deliveries.

At the Closing, Transferee shall deliver to Transferor the following:

- (a) duly executed and countersigned Transaction Documents; and
- (b) the Required Transferee Approvals.

**4. REPRESENTATIONS AND WARRANTIES OF TRANSFEROR**

Transferor represents and warrants to Transferee that the statements contained in this Article 4 are true and correct as of the date hereof and as of the Closing.

4.1. Organization and Qualification of Transferor.

Transferor is a [limited liability company/corporation] duly organized, validly existing and in good standing under the Applicable Laws of the state of [STATE]. Transferor has full corporate power and authority to own the Transferred Assets. Transferor is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Transferred Assets makes such licensing or qualification necessary.

4.2. Authority of Transferor.

Transferor has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Transferor is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Transferor, and (assuming due authorization, execution and delivery by Transferee) this Agreement constitutes a legal, valid and binding obligation of Transferor enforceable against Transferor in accordance with its terms. When each other Transaction Document to which Transferor is or will be a party has been duly executed and delivered by Transferor (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Transferor enforceable against it in accordance with its terms.

4.3. No Conflicts; Consents.

The execution, delivery, performance, and consummation of this Agreement do not and will not: (a) conflict with any organizational documents of Transferor; (b) conflict with any Applicable Law or Governmental Order applicable to Transferor; (c) conflict with or give rise to a right of notice, termination, acceleration, or modification of any obligation or loss of any benefit under any contract of Transferor; or (d) except as identified on Schedule 4.3 (“Required Transferor Approvals”), give rise to any consent, approval, waiver, Permit, Governmental Order, or authorization that must be obtained by Transferor from any person or entity (including any Governmental Authority), or any right to receive any notice or filing.

4.4. Partially Assigned Contracts.

The Partially Assigned Contracts to which Transferor is a party are valid and binding on Transferor in accordance with their terms and are in full force and effect. None of Transferor or, to Transferor’s knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Partially Assigned Contract to which Transferor is a party. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any such Partially Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Partially Assigned Contract have been made available to Transferee. There are no material disputes pending or threatened under any Partially Assigned Contract.

4.5. Title to Transferred Assets.

Transferor has good and valid title to all of the Transferred Assets free and clear of Encumbrances except for Permitted Encumbrances.

4.6. Condition and Sufficiency of Transferred Assets.

- 4.6.1. [As of the Control Date,] the Tangible Personal Property is in good operating condition and repair, is adequate for its intended use, and is not in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Tangible Personal Property is sufficient for its intended operation as electric transmission facilities and such operation has not infringed, misappropriated, or otherwise violated the intellectual property rights of any person. None of the Excluded Assets are material to the operation of the Transferred Assets.
- 4.6.2. Transferor has not received any written notice to re-locate or modify the Transferred Assets, and Transferor is not aware of any facts which would give rise to such a notice.
- 4.6.3. [As of the Control Date,] none of the Transferred Assets have been damaged or destroyed by fire or other casualty.
- 4.6.4. To Transferor's knowledge, all supervision and administration of, and all labor, materials, supplies, and equipment incorporated into, the work to construct the Transmission Facilities were performed in conformance with all drawings, specifications, and written requirements prepared with respect to the Transmission Facilities and all Applicable Law.
- 4.6.5. Except as described in Schedule 4.6.5, none of Transferor or any of its contractors, subcontractors, materialmen, suppliers or vendors has furnished to the Transmission Facilities any labor or materials, including any repair work, since [DATE].

4.7. Real Property.

- 4.7.1. Schedule 4.7.1 sets forth all real property interests to be transferred to Transferee pursuant to the terms of this Agreement and the other Transaction Documents, including owned real property, easements, crossing agreements, deeds, mortgages, licenses, special use permits, setback waiver agreements, and rights of way or other contracts set forth in Schedule 4.7.1 (collectively, the "Real Property"). Transferor has good and marketable fee simple title, easement, or other valid interests in the Real Property as indicated on Schedule 4.7.1, free and clear of all Encumbrances, except Permitted Encumbrances. [Schedule 4.7.1 also sets forth all real property interests to be transferred from Transferee to Transferor immediately following Transferor's conveyance of the Real Property to Transferee.]
- 4.7.2. Transferor has not leased or otherwise granted to any Person the right to use or occupy such Real Property or any portion thereof. There are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Real Property or any portion thereof or interest therein.

- 4.7.3. Transferor has not received any written notice of existing, pending or threatened (i) condemnation proceedings affecting the Real Property, or (ii) zoning, building code or other moratorium proceedings, or similar matters which would reasonably be expected to materially and adversely affect the Real Property. None of the Real Property has been damaged or destroyed by fire or other casualty.
- 4.7.4. The Real Property is sufficient for the intended operation of the Transferred Assets after the Closing and constitutes all the real property necessary to operate the Transferred Assets.
- 4.8. Legal Proceedings; Governmental Orders.
  - 4.8.1. There are no actions, suits, claims, investigations or other legal proceedings pending or, to Transferor's knowledge, threatened against or by Transferor or any Affiliate of Transferor relating to or affecting the Transferred Assets or the Assumed Liabilities or that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.
  - 4.8.2. There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Transferred Assets.
- 4.9. Laws; Permits.
  - 4.9.1. Transferor has complied, and is now complying, with all Applicable Laws applicable to the construction, ownership and operation of the Transferred Assets.
  - 4.9.2. Transferor has not received from any Person, with respect to the Transferred Assets, any notice that Transferor is not in compliance with any Applicable Laws or Permits, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements.
  - 4.9.3. All Permits required for the construction and ownership of the Transferred Assets have been obtained by Transferor and are valid and in full force and effect and have been maintained in full force and effect by Transferor through the Closing Date. All fees and charges due with respect to such Permits have been paid in full. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit. Schedule 4.9.3 lists all current Permits issued to Transferor which are related to the ownership or use of the Transferred Assets, including the names of the Permits and their respective dates of issuance and expiration.
  - 4.9.4. Transferor has established and implemented policies, programs, and procedures that are necessary and appropriate, including administrative, technical, and physical safeguards, to protect the integrity and security of the Transferred Assets and control against unauthorized access, use,

modification, or other misuse. Transferor has not experienced any loss, damage, or unauthorized access, use, or breach of security of any Transferred Assets.

4.10. Environmental Matters.

- 4.10.1. The construction, ownership and operations of Transferor with respect to the Transferred Assets are currently and have been in compliance with all Environmental Laws. Transferor has not received from any Person, with respect to the Transferred Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.
- 4.10.2. Transferor is not aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership or operation of the Transferred Assets.
- 4.10.3. There has been no release of Hazardous Materials in contravention of Environmental Law with respect to the Transferred Assets, and Transferor has not received an Environmental Notice that any of the Transferred Assets has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Transferor.
- 4.10.4. There has been no active or abandoned aboveground or underground storage tanks owned or operated by Transferor in connection with the Transferred Assets or otherwise on the Real Property.
- 4.10.5. Transferor has not retained or assumed, by contract or operation of Applicable Law, any liabilities or obligations of third parties under Environmental Law with respect to the Transferred Assets.

4.11. Taxes.

- 4.11.1. All Taxes due and owing by Transferor (whether or not shown on any Tax Return) with respect to the Transferred Assets have been, or will be, timely paid.
- 4.11.2. All Tax Returns required by Transferor with respect to the Transferred Assets for any pre-Closing tax period have been timely filed and are materially correct.
- 4.11.3. No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes with respect to the Transferred Assets.

- 4.11.4. All deficiencies asserted, or assessments made, against Transferor with respect to the Transferred Assets as a result of any examinations by any Tax authorities have been fully paid.
- 4.11.5. Transferor is not a party to any action by any Tax authorities with respect to the Transferred Assets. There are no pending or threatened actions, examinations, investigations, audits or claims by any Tax authorities with respect to the Transferred Assets.
- 4.11.6. There are no Encumbrances for Taxes upon any of the Transferred Assets nor, to Transferor's knowledge, are any Tax authorities in the process of imposing any Encumbrances for Taxes on any of the Transferred Assets (other than for current Taxes not yet due and payable).

4.12. No Brokers.

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Transferor.

4.13. No Undisclosed Liabilities.

Except as otherwise provided in this Agreement, Transferor has no liabilities or obligations of any nature, whether absolute, accrued, or contingent and whether due or to become due, arising out of or relating to the Transferred Assets that will survive Closing and for which Transferee may be liable after Closing.

4.14. Transferred Asset Value.

For the purpose of memorializing the costs incurred by Transferor in constructing the Transferred Assets, Schedule 4.14 sets forth the costs, including applicable Taxes, incurred by Transferor to design, engineer, acquire, and construct the Transferred Assets (the "Transferred Assets Value").

**5. REPRESENTATIONS AND WARRANTIES OF TRANSFEEE**

Transferee represents and warrants to Transferor that the statements contained in this Article 5 are true and correct as of the date hereof and as of the Closing.

5.1. Organization of Transferee.

Transferee is a [limited liability company/corporation] duly organized, validly existing and in good standing under the Applicable Laws of the state of [STATE].

5.2. Authority of Transferee.

Transferee has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Transferee is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Transferee, and (assuming due authorization, execution and delivery by Transferor) this Agreement constitutes a legal, valid and binding obligation of Transferee enforceable against Transferee in accordance with its terms. When each other Transaction Document to which Transferee is or will be a party has been duly executed and delivered by Transferee (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Transferee enforceable against it in accordance with its terms.

5.3. No Conflicts; Consents.

The execution, delivery, performance, and consummation of this Agreement do not and will not: (a) conflict with any organizational documents of Transferee; (b) conflict with any Applicable Law or Governmental Order applicable to Transferee; (c) conflict with or give rise to a right of notice, termination, acceleration, or modification of any obligation or loss of any benefit under any contract of Transferee; or (d) except as identified on Schedule 5.3 (“Required Transferee Approvals”), give rise to any consent, approval, waiver, Permit, Governmental Order, or authorization that must be obtained by Transferee from any person or entity (including any Governmental Authority), or any right to receive any notice or filing.

5.4. Legal Proceedings.

There are no actions, suits, claims, investigations or other legal proceedings pending or, to Transferee’s knowledge, threatened against or by Transferee or any Affiliate of Transferee that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

**6. COVENANTS**

6.1. Access.

Prior to Closing, Transferor will provide Transferee and its Representatives with reasonable access during normal business hours, for any purpose relating to this Agreement, to the Real Property, the Transferred Assets, the Records, and the officers and management employees of Transferor and its Affiliates who are responsible for any of the foregoing, in such a manner so as not to unreasonably interfere with the business or operations of Transferor or its Affiliates; provided, however, that Transferor shall have the right to (i) have a representative present for any communication with employees or officers of Transferor or its Affiliates and (ii) impose reasonable restrictions and requirements for safety or operational purposes. Notwithstanding the foregoing, Transferor shall not be required to provide any information or allow any

inspection which it reasonably believes it may not provide to Transferee or allow by reason of Applicable Law.

6.2. Governmental Approvals and Consents.

Each party hereto shall use its commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall reasonably cooperate with the other party and its Affiliates in seeking to obtain all such consents, authorizations, orders and approvals.

6.3. Closing Conditions.

From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 7 hereof.

6.4. Title and Survey Matters.

6.4.1. Within 30 days after the Execution Date, Transferor shall cause a commitment for the Title Insurance Policy to be delivered to Transferee (the "Commitment") in a coverage amount of the Transferred Assets Value as of Closing, showing good and indefeasible fee simple title, leasehold interest, or other interest as the case may be, with any survey, mechanic's lien, parties in possession, and encroachment exceptions deleted, and showing all encumbrances and other matters, if any, relating to the Real Property, together with a true, correct, and legible copy of, or link to, each document referred to in the Commitment. The cost of the Commitment and the Title Insurance Policy, inclusive of the deletion of the above-described exceptions, shall be borne by Transferor. Within 30 days after the Execution Date, Transferee, at Transferor's sole cost and expense, may obtain a written report of searches made of state and local secured transaction records setting out all financing statements filed against Transferor, or pertaining to the Transferred Assets, together with true and complete copies of said financing statements.

6.4.2. Within 60 days of the Execution Date, Transferor, at Transferor's sole cost and expense, shall provide Transferee with a current as-built survey and metes and bounds description of the Real Property prepared by a registered land surveyor or engineer, duly licensed in the state of [STATE] (i) in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 1999, and including items 1-4, 6, 7(a), 8-10, 11(a) and (b), and 14-16 of Table A thereof, and (ii) pursuant to the "Accuracy Standards" (as adopted by ALTA, NSPS and ACSM and in effect on the date thereof), with survey measurements made in accordance with the

“Minimum Angle Distance and Closure Requirements for survey measurements which control land boundaries for ALTA/ACSM Land Title Surveys” (the “As-Built Survey”).

- 6.4.3. No later than 30 days after Transferee has received the last of the Commitment and As-Built Survey, Transferee shall provide a written notice (“Objection Notice”) to Transferor of any material defects or exceptions disclosed by the Commitment, secured transaction search, or As-Built Survey to which Transferee reasonably objects and which Transferee is not willing to accept as a Permitted Encumbrance. Transferee shall be deemed to have accepted all defects and exceptions disclosed by the Commitment, secured transaction search, and As-Built Survey to which Transferee does not object in a timely Objection Notice, and such accepted defects and exceptions shall be deemed to be Permitted Encumbrances hereunder. Transferor shall have 60 days (the “Cure Period”) from receipt of the Objection Notice to cure any defect or exception which is the subject of an Objection Notice, failing which, Transferee shall have the option to either (i) terminate this Agreement by giving written notice to Transferor no later than 15 business days following the expiration of the Cure Period or (ii) be deemed to have accepted the Real Property subject to all such uncured defects and exceptions disclosed by the Commitment, secured transaction search, or As-Built Survey, all of which shall be Permitted Encumbrances hereunder.

## 6.5. Risk of Loss

- 6.5.1. Prior to the Closing, all risk of loss or damage to the Transferred Assets shall be borne by Transferor. If prior to the Closing all or any portion of the Transferred Assets is damaged or destroyed by fire, flood, storm, explosion, or other casualty or insured risk or becomes subject to (or is threatened with) condemnation, Transferor shall promptly notify Transferee of such fact.
- 6.5.2. If the fair market value of the portion so damaged, destroyed, or condemned (determined without regard to such event) is less than 10% of the Transferred Assets Value, Transferor shall, upon the mutual agreement of the parties, either (i) before Closing, repair or replace such damaged, destroyed, or condemned portion so as to restore it to the condition required by this Agreement, or (ii) subject to Transferee’s termination right under Section 6.5.4, reimburse Transferee for all costs of repair or replacement of such damaged, destroyed, or condemned portion.
- 6.5.3. If the fair market value of the portion so damaged, destroyed, or condemned (determined without regard to such event) is at least 10% of the Transferred Assets Value, Transferee may, at its option, terminate this Agreement or require Transferor to tender or assign to Transferee, as an adjustment to the Transferred Assets Value, all condemnation proceeds or proceeds of insurance relating thereto. At Transferee’s request, Transferor shall promptly provide Transferee, prior to Transferee’s exercise of its option under this

Section 6.5.3, all information available concerning the nature and extent of any such condemnation proceeds or proceeds of insurance.

- 6.5.4. If the time to restore the Transferred Assets to normal operating condition in all material respects as a result of any fire, flood, storm, explosion, or other casualty, loss or damage is at any time reasonably expected to extend more than 60 days beyond the anticipated Closing Date, Transferee may terminate this Agreement.

6.6. Further Assurances.

Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

6.7. Tax Matters.

- 6.7.1. Prorations of Taxes and Non-Tax Items. Ohio real or personal property Taxes levied on the Transmission Facilities for the year in which the Closing occurs will be prorated at Closing based on an estimate of the Taxes and the number of days the Transmission Facilities was owned by Transferor and the number of days in such year on and after the Closing Date. Transferor will be responsible for remitting the personal property Taxes for the year in which the Closing occurs to the appropriate taxing jurisdictions. In the event the estimated proration of Taxes does not reflect the actual Tax liability for the year in which the Closing occurs, the Parties agree to pay and/or refund such amounts as necessary to reflect the payment of the Taxes based on the actual Tax liability for such year.

- 6.7.2. Transfer and Excise Taxes. Transferor will be responsible for any and all federal, state, or local sales, use, or transfer Taxes, fees, or assessments which may be imposed as a result of the sale of the Transmission Facilities. In no event shall Transferee be responsible for Transferor's federal or state income, net worth, franchise, margins, commercial activity, license, privilege, gross receipts or other similar Taxes as a result of the sale of the Transmission Facilities. [If the sale of the Transferred Assets results in a taxable contribution in aid of contribution to Transferee, then Transferor will reimburse Transferee for Transferee's corresponding Taxes from the contribution in aid of construction consistent with the terms of Section 24 of Appendix 2 of the Interconnection Agreement.]

- 6.7.3. Taxes Other Than Transfer and Excise Taxes. Transferee and Transferor are each responsible for paying its own Taxes other than property, ad valorem, transfer and excise Taxes, as described in Section 6.7.1 and Section 6.7.2

above, including, but not limited to, income, net worth, franchise, gross receipts, margins, commercial activity, license, and privilege Taxes.

6.8. Notice of Certain Events.

From the date hereof until the Closing, Transferor shall promptly notify Transferee in writing of any fact, event, notice, or action that could: (a) materially affect the Transferred Assets or Transferor's ability to consummate the transactions contemplated by this Agreement; (b) result in any representation or warranty made by Transferor not being true or correct; or (c) result in the failure of any of the conditions set for in Section 7.2 to be satisfied.

6.9. Post-Closing Completion.

6.9.1. Following the Closing, Transferor shall be responsible for those punch list items set forth on Schedule 6.9.1 with respect to the Transmission Facilities, to the reasonable satisfaction of Transferee.

6.9.2. Transferor and its contractors, employees and agents shall comply with Transferee's safety, security and work rules, environmental guidelines and training requirements with respect to all post-Closing activities contemplated by this Section.

6.9.3. Transferor and its contractors, employees and agents shall comply with the requirements of any applicable generator interconnection agreement and all Applicable Law while performing the post-Closing activities contemplated by this Section.

6.9.4. Transferor and its contractors, employees and agents shall coordinate access to the Transmission Facilities with Transferee prior to access or performing work at the Transmission Facilities.

6.9.5. Transferee shall have the right to stop, or to order corrective measures with respect to, any such work that reasonably could be expected to have an adverse effect on reliability, safety or security of persons or of property of Transferee or any portion of the transmission system.

6.10. Liens.

After the Closing, Transferor shall notify Transferee of the filing or written threat of any claims, liens, or claim of lien for payment or performance of the Transferor, and any contractor, subcontractors, materialmen, suppliers, and vendors of any tier whether arising prior to or after the Effective Time ("Mechanics' Liens") against the Transferred Assets promptly upon learning of the existence or filing of such a Mechanics' Lien. Transferor shall, at Transferor's sole expense, discharge and cause to be released, whether by payment or posting an appropriate surety bond in accordance with Applicable Law within 14 days after receipt of a written demand from Transferee, any such Mechanics' Lien.

6.11. Warranty Rights.

Transferee shall have the right to demand and receive the benefits of any and all warranty rights from third parties to the extent related to the Transferred Assets, including such rights assigned to Transferee under the Partially Assigned Contracts and Contractor Assignment of Warranties. Schedule 6.11 sets forth the third party vendors providing the warranties and their stated warranty durations. Transferor agrees to provide, for the benefit and upon request of Transferee, reasonable cooperation in enforcing any claim or right of any kind with respect to such rights; provided that Transferee agrees to give Transferor reasonable prior written notice of any request for cooperation hereunder. To the extent that such rights are not properly assigned to Transferee, or Transferee is prohibited from exercising such rights for any reason, Transferor, at its expense, shall act as Transferee's agent in order to pursue all available claims and exercise of such rights or make alternative arrangements designed to provide such warranty benefits to Transferee. Transferee shall have the right to reasonably participate in and direct any such claim or exercise of such rights by Transferor for the benefit of Transferee.

6.12. Confidentiality.

6.12.1. From and after the Closing, Transferor agrees to keep confidential and not disclose, and to cause its Affiliates to keep confidential and not disclose, the Records and any and all other information, whether written or oral, directly or indirectly, concerning the Transmission Facilities (the "Confidential Information") without the prior written consent of Transferee, except to the extent that Transferor can demonstrate that such information (i) is generally known or available within the industry or the public through no fault of Transferor or its Affiliates; or (ii) was lawfully acquired by Transferor after the Closing from a third party who became aware of it through no fault of Transferor and who is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation.

6.12.2. Notwithstanding the foregoing restrictions, Transferor may disclose such Confidential Information to Persons who provide financial analysis, banking, legal, accounting, project finance or other services to Transferor or its Affiliates in connection with Transferor's implementation of the transactions contemplated by this Agreement, so long as such Persons have first been provided with a copy of Section 6.12 of this Agreement and have been informed of the duties required hereby. Transferor shall be responsible for any breach of this Agreement caused by any such Persons. Transferor shall also be permitted to disclose Confidential Information if Transferor is required to disclose such Confidential Information by any Governmental Authority or by Applicable Law; provided, however, that (i) Transferor shall notify Transferee of the same in writing prior to the disclosure if practicable, and not later than 3business days following the disclosure; (ii) Transferor shall disclose only that portion of such information which Transferor is advised by its counsel in writing is legally required to be disclosed; and (iii)

Transferor shall use commercially reasonable efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded such information.

6.12.3. Transferor acknowledges that a breach of the covenants contained in this Section 6.12 will cause irreparable damage to Transferee, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Transferor agrees that in the event Transferor breaches any of the covenants contained in this Section 6.12, Transferee shall be entitled to seek specific performance and injunctive relief, without posting bond or other security, in addition to any other remedy available at law or in equity.

6.13. Permits.

[DESCRIBE PRE-CLOSING AND POST-CLOSING OBLIGATIONS TO GOVERNMENTAL AUTHORITIES UNDER EXISTING OR MODIFIED PERMITS.]<sup>1</sup>

**7. CONDITIONS TO CLOSING**

7.1. Conditions to Obligations of all Parties.

The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

7.1.1. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

7.1.2. Transferor shall have received the Required Transferor Approvals each in form and substance satisfactory to Transferor in Transferor's discretion, and Transferee shall have received the Required Transferee Approvals each in form and substance satisfactory to Transferee in Transferee's discretion. No such consent, authorization, order and approval shall have been revoked.

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<sup>1</sup> Some transfers may require modification of existing permits with respect to mitigation or monitoring of environmental factors or ongoing maintenance or other obligations to be divided between generation and transmission facilities; revise as needed to describe covenants with respect to modifying permits or memorializing other obligations related to such permits.

7.2. Conditions to Obligations of Transferee.

The obligations of Transferee to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Transferee's waiver, at or prior to the Closing, of each of the following conditions:

- 7.2.1. The representations and warranties of Transferor contained in Article 4 shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) as of the Closing Date with the same effect as though made at and as of such date.
- 7.2.2. Transferor shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.
- 7.2.3. No action shall have been commenced against Transferee or Transferor, which would prevent the Closing.
- 7.2.4. From the date of this Agreement, no event or events shall have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a material adverse effect on the Transferred Assets or Transferor's ability to consummate the transactions contemplated by this Agreement.
- 7.2.5. Transferor shall have delivered to Transferee duly executed counterparts to the Transaction Documents and such other documents and deliveries set forth in Section 3.2.1.
- 7.2.6. Transferee shall have obtained all Permits that are necessary for it to operate the Transferred Assets as of the Closing Date, and all Permits included in the Transferred Assets shall have been modified to describe the obligations of Transferor and Transferee, respectively, as determined by Transferee in its sole discretion.
- 7.2.7. All Encumbrances relating to the Transferred Assets other than the Permitted Encumbrances shall have been released in full, and Transferor shall have delivered to Transferee written evidence, in form satisfactory to Transferee in its sole discretion, of the release of such Encumbrances.
- 7.2.8. Transferor shall have delivered to Transferee such other documents or instruments as Transferee reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.
- 7.2.9. Transferor shall have delivered its certification of the Transferred Assets Value as of the Closing Date.

### 7.3. Conditions to Obligations of Transferor.

The obligations of Transferor to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Transferor's waiver, at or prior to the Closing, of each of the following conditions:

- 7.3.1. The representations and warranties of Transferee contained in Article 5 shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) as of the Closing Date with the same effect as though made at and as of such date.
- 7.3.2. Transferee shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.
- 7.3.3. Transferee shall have delivered to Transferor duly executed counterparts to the Transaction Documents and such other documents and deliveries set forth in Section 3.2.3.

## 8. INDEMNIFICATION

### 8.1. Survival.

Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date; provided that the representations and warranties in Section 4.1 (Organization and Qualification of Transferor), Section 4.2 (Authority of Transferor), Section 4.5 (Title to Transferred Assets), Section 4.6 (Condition and Sufficiency of Transferred Assets), Section 4.7.1 (Title to Real Property), Section 5.1 (Organization of Transferee), and Section 5.2 (Authority of Transferee) shall survive indefinitely, and the representations and warranties in Section 4.11 (Taxes) shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. None of the covenants or other agreements contained in this Agreement shall survive the Closing other than those which by their terms contemplate performance after the Closing, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. No action, demand or claim for indemnification may be asserted against either party for breach of any representation, warranty, covenant or agreement contained herein, unless written notice of such action, demand or claim is received by such party describing in reasonable detail the facts and circumstances with respect to the subject matter of such claim on or prior to the date on which the representation, warranty, covenant or agreement on which such action, demand or claim is based ceases to survive as set forth in this Section. Notwithstanding any other provision of this Agreement, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-

breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period, and such claims shall survive until finally resolved.

## 8.2. Indemnification by Transferor.

Subject to the other terms and conditions of this Article 8, Transferor shall indemnify Transferee and its Affiliates and their respective Representatives (“Transferee Indemnitees”) against, and shall hold Transferee Indemnitees harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Transferee Indemnitees regarding any third-party or direct claim based upon, arising out of, with respect to or by reason of:

- 8.2.1. any inaccuracy in or breach of any of the representations or warranties of Transferor contained in this Agreement;
- 8.2.2. any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Transferor pursuant to this Agreement;
- 8.2.3. any Excluded Asset or any Excluded Liability; or
- 8.2.4. any Mechanics’ Lien against the Transferred Assets.

## 8.3. Indemnification by Transferee.

Subject to the other terms and conditions of this Article 8, Transferee shall indemnify Transferor, its Affiliates and their respective Representatives (“Transferor Indemnitees”) against, and shall hold Transferor Indemnitees harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Transferor Indemnitees regarding any third-party or direct claim based upon, arising out of, with respect to or by reason of:

- 8.3.1. any inaccuracy in or breach of any of the representations or warranties of Transferee contained in this Agreement;
- 8.3.2. any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Transferee pursuant to this Agreement; or
- 8.3.3. any Assumed Liability.

## 8.4. Certain Limitations.

- 8.4.1. The party making a claim under this Article 8 is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this Article 8 is referred to as the “Indemnifying Party”. The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 8.2.1, 8.2.2, 8.3.1, or 8.3.2 as the case may be, shall not exceed the Transferred Asset Value.

8.4.2. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, OR LOSS OF USE OR DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS SECTION 8.4.2 SHALL NOT LIMIT THE RECOVERY UNDER THIS ARTICLE 8 BY AN INDEMNIFIED PARTY OF ANY AMOUNT PAID OR PAYABLE TO THIRD PARTIES IN RESPECT OF ANY THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION HEREUNDER IS OTHERWISE REQUIRED.

8.5. Indemnification Procedures.

If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed). Any direct claim by an Indemnified Party on account of a Loss which does not result from a third party claim shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof. Such notice by the Indemnified Party shall describe the direct claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. If the Indemnifying Party does not so respond in writing within 30 days of notice of a direct claim, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

8.6. Exclusive Remedies.

The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or intentional misconduct on the part of a party hereto in connection with the transactions

contemplated by this Agreement or claims related to Transferee's permanent and ongoing obligations and responsibilities with respect to the condition and construction of the Transferred Assets prior to the Effective Time) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article 8. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Applicable Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Applicable Law, except pursuant to the indemnification provisions set forth in this Article 8. Nothing in this Section 8.6 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## **9. TERMINATION**

### **9.1. Termination.**

This Agreement may be terminated at any time prior to the Closing:

9.1.1. by the mutual written consent of Transferor and Transferee;

9.1.2. by Transferee by written notice to Transferor if:

(a) Transferee is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Transferor pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 7 and such breach, inaccuracy or failure cannot be cured by Transferor by the Outside Date; or

(b) any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been fulfilled by the Outside Date, unless such failure shall be due to the failure of Transferee to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

9.1.3. by Transferor by written notice to Transferee if:

(a) Transferor is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Transferee pursuant to this Agreement that would give rise to the failure of any of the conditions specified in

Article 7 and such breach, inaccuracy or failure cannot be cured by Transferee by the Outside Date; or

- (b) any of the conditions set forth in Section 7.1 or Section 7.3 shall not have been fulfilled by the Outside Date, unless such failure shall be due to the failure of Transferor to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

9.1.4. by Transferee or Transferor in the event that:

- (a) there shall be any Applicable Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or
- (b) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

9.2. Effect of Termination.

In the event of the termination of this Agreement in accordance with this Article 9, Section 6.4.3, Section 6.5.3, or Section 6.5.4, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

9.2.1. as set forth in this Article 9; and

9.2.2. that nothing herein shall relieve any party hereto from liability for any breach of any provision hereof, fraud, or intentional misconduct.

**10. MISCELLANEOUS**

10.1. Notices.

Any notice that is required or permitted under this Agreement may be given by personal delivery to the party entitled thereto, by e-mail (with confirmation of receipt), by any courier service which guarantees overnight, receipted delivery, or by U.S. Certified or Registered Mail, return receipt requested, addressed to the party entitled thereto, at:

If to Transferee: [ \_\_\_\_\_ ]  
Attention: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
e-mail: [ \_\_\_\_\_ ]

with copy to: American Electric Power Service Corporation

Attention: John W. Seidensticker, Senior Counsel  
1 Riverside Plaza  
Columbus, OH 43215  
e-mail: jwseidensticker@aep.com

If to Transferor: [\_\_\_\_\_  
Attention: [\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
e-mail: [\_\_\_\_\_]

with copy to: [\_\_\_\_\_  
Attention: [\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
e-mail: [\_\_\_\_\_]

Either party may change its address or email for notice by written notice to the other party in accordance with this Section 10.1. Any notice given (a) by personal delivery shall be deemed to be given upon such delivery, (b) by email shall be deemed given upon receipt, (c) by overnight courier service shall be deemed given on the date noted on the courier's receipt for delivery, or (d) by U.S. Certified or Registered Mail, return receipt requested, shall be deemed given upon the date noted on such return receipt, provided, however, that if in any case delivery is made on a day other than a business day or after 5:00 p.m. local time on a business day, delivery shall be deemed to be given upon the next business day.

10.2. Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

10.3. Entire Agreement.

This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter, except as otherwise set forth in Section 2.3 and Section 2.4. Notwithstanding the foregoing, this Agreement shall not affect the validity of the Interconnection Agreements and they remain in full force and effect. In the event of any inconsistency between this Agreement and the Interconnection Agreement, this

Agreement shall control with respect to all matters related to the transfer of the Transferred Assets.

10.4. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, Transferee may, without the prior written consent of Transferor, assign all or any portion of its rights under this Agreement to one or more of its Affiliates.

10.5. No Third Party Beneficiaries.

Except for Transferee Indemnitees and Transferor Indemnitees as applicable under Article 8, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.6. Amendment and Modification; Waiver.

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

10.7. Governing Law; Venue.

10.7.1. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the state of [STATE] without giving effect to any choice or conflict of law provision or rule (whether of the state of [STATE] or any other jurisdiction).

10.7.2. Any legal suit, action or proceeding arising out of or based upon this Agreement, the other Transaction Documents, or the transactions contemplated must be instituted in the federal courts of the United States of America or the courts of the state of [STATE] in each case located in the city of [CITY], and each party irrevocably submits to the exclusive jurisdiction of such courts. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

10.8. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

**[The remainder of this page is intentionally left blank.  
The next page of this document is S-1.]**

This Asset Transfer Agreement is executed to be effective as of the Execution Date:

[PARTY NAME]

[PARTY NAME]

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

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

## SCHEDULE 1.1

### DEFINITIONS

Terms defined in this Schedule 1.1 will have the meanings set forth in this Schedule.

<b>TERM</b>	<b>DEFINITION</b>
1. ACSM	American Congress of Surveying and Mapping.
2. Affiliate	An “Affiliate” of a Person is any Person directly or indirectly controlling, controlled by, or under common control with the first such Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other management rights, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.
3. Agreement	This Asset Transfer Agreement between Transferor and Transferee, together with all exhibits, schedules, and appendices attached hereto, as any of the same may be amended from time to time in accordance with the provisions hereof.
4. ALTA	The American Land Title Association.
5. Applicable Law	Any statute, law, treaty provision, ordinance, executive order, rule, procedure, or regulation (including a regulation that has been formally promulgated in a rule making proceeding but, pending final adoption, is in proposed or temporary form having force of law), guideline, or notice having force of law; or approval, permit, license, franchise, judgment, order, decree, injunction, or writ of any Governmental Authority, in each case as applicable to a specified Person or specified property, as in effect from time to time. “Applicable Law” includes NERC Reliability Standards.
6. As-Built Survey	As defined in Section 6.4.2.

7.	Assignment and Assumption Agreement	As defined in Section 3.2.1(b).
8.	Assumed Liabilities	As defined in Section 2.3.
9.	Bill of Sale	As defined in Section 3.2.1(a).
10.	Closing	As defined in Section 3.1.
11.	Closing Date	As defined in Section 3.1.
12.	Commitment	As defined in Section 6.4.1.
13.	Confidential Information	As defined in Section 6.12.1.
14.	[Contractor]	[As defined in Recital C.]
15.	[Contractor Assignment of Warranties]	[As defined in Section 3.2.1(c).]
16.	Control Date	As defined in Recital D.
17.	Cure Period	As defined in Section 6.4.3.
18.	Effective Time	As defined in Section 3.1.
19.	Encumbrance	Any claim, condition, defect, interest, lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment, restriction of any kind, or other similar encumbrance.
20.	Environmental Claim	Any Governmental Order, action, suit, claim, investigation or other legal proceeding by any Person alleging liability of whatever kind or nature arising out of, based on or resulting from any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

21. Environmental Law Any Applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.
22. Environmental Notice Any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.
23. Environmental Permit Any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.
24. Excluded Assets As defined in Section 2.2.
25. Excluded Liabilities As defined in Section 2.4.
26. Execution Date As defined in the first paragraph.
27. FERC The Federal Energy Regulatory Commission or its successor energy regulatory agency.
28. Governmental Authority Any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority, and any applicable regional transmission organization, to the extent that the rules, regulations or orders of such organizations or authorities have the force of law, or any arbitrator, court or tribunal of competent jurisdiction. “Governmental Authority” includes NERC and FERC.

29.	Governmental Order	Any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.
30.	Hazardous Materials	(a) Any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.
31.	Indemnified Party	As defined in Section 8.4.1.
32.	Indemnifying Party	As defined in Section 8.4.1.
33.	[Interconnection Agreement]	[As defined in Recital A.]
34.	Losses	Any and all demands, claims, causes of action, judgments, losses, obligations, liabilities, amounts paid pursuant to settlement, damages, fines, penalties, deficiencies, costs, and expenses (including interest, court costs, reasonable fees of attorneys, accountants, and other experts or other reasonable expenses of litigation or other proceedings).
35.	Mechanics' Liens	As defined in Section 6.10.
36.	NERC	North American Electric Reliability Corporation or its successor electric reliability organization.
37.	NERC Reliability Standards	The mandatory electric reliability standards established and enforced by NERC.
38.	NSPS	The National Society of Professional Surveyors.
39.	Objection Notice	As defined in Section 6.4.3.

40.	Outside Date	One year from the Execution Date.
41.	Partially Assigned Contracts	As defined in Section 2.1.1.
42.	Permits	All permits, Environmental Permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities.
43.	Permitted Encumbrances	Any title exceptions referred to and accepted by Transferee in the Title Insurance Policy.
44.	Person	Any individual, corporation, partnership, limited liability company, other business organization of any kind, association, trust, or governmental entity, agency, or instrumentality.
45.	Real Property Instruments	A general warranty deed, a form of which is included as Exhibit D, attached hereto, and such other documents reasonably required to transfer to Transferee fee simple title to the Real Property, and any applicable easements and rights of way with respect to the Real Property.
46.	Real Property	As defined in Section 4.7.1.
47.	Records	As defined in Section 2.1.4.
48.	Representative	With respect to any Person, any and all directors, officers, managers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.
49.	Required Transferee Approvals	As defined in Section 5.3.
50.	Required Transferor Approvals	As defined in Section 4.3.
51.	Tangible Personal Property	As defined in Section 2.1.2.

52. Tax or Taxes All federal, state, local, foreign and other income, gross receipts, margin, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.
53. Tax Return Any return, declaration, report, claim for refund, or information return or statement (including, but not limited to, information returns or reports related to back-up withholding and any payments to third parties) relating to any Tax, including any schedule or attachment thereto, and including any amendment thereof.
54. Title Insurance Policy As defined in Section 3.2.1(e).
55. Transaction Documents This Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Contractor Assignment of Warranties, Real Property Instruments, and the other agreements, instruments and documents required to be delivered at the Closing.
56. Transfer of Operational Control Agreement As defined in Recital D.
57. Transferee As defined in the first paragraph.
58. Transferee Indemnitees As defined in Section 8.2.
59. Transferor As defined in the first paragraph.
60. Transferor Indemnitees As defined in Section 8.3.
61. Transferred Assets As defined in Section 2.1.

62. Transferred Assets Value As defined in Section 4.14.

63. Transmission Facilities As defined in Recital B.

**EXHIBIT A**  
**FORM OF**  
**BILL OF SALE**

This **Bill of Sale** is made as of [DATE, 20\_\_], between [TRANSFEROR NAME] (“Transferor”), and [TRANSFeree NAME] (“Transferee”), as follows:

**RECITALS**

- A. Transferor and Transferee have entered into that certain Asset Transfer Agreement, dated as of the date of this Bill of Sale (the “Transfer Agreement”). Capitalized terms used herein not otherwise defined herein have the meanings set forth in the Transfer Agreement.
- B. This Bill of Sale is executed and delivered pursuant to the Transfer Agreement.

**AGREEMENT**

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Transferor and Transferee agree as follows:

**1. TRANSFER**

Effective as of the Effective Time, Transferor hereby grants, bargains, transfers, sells, conveys, delivers, and sets over to Transferee, all of Transferor’s right, title, and interest in and to the Transferred Assets.

**2. TRANSFER AGREEMENT**

This Bill of Sale is subject to, in all respects, the terms and conditions of the Transfer Agreement, and nothing contained herein is meant to enlarge, diminish, or otherwise alter the terms and conditions of the Transfer Agreement or the parties’ duties and obligations contained therein. To the extent there is a conflict between this Bill of Sale and the Transfer Agreement, the terms of the Transfer Agreement control. The Transfer Agreement sets out the exclusive representations, warranties, covenants, agreements and indemnities of the parties with respect to the Transferred Assets. The representations, warranties, covenants, agreements and indemnities of the parties to the Transfer Agreement as set forth therein shall survive the execution and delivery of this Bill of Sale to the extent provided in the Transfer Agreement.

**3. GENERAL PROVISIONS**

3.1. Governing Law.

The interpretation and construction of this Bill of Sale and the rights of the parties hereunder will be interpreted, construed, and governed by the laws of the state of [STATE], without regard to its conflicts of law principles.

3.2. Multiple Counterparts.

This Bill of Sale may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

**[Remainder of Page Intentionally Left Blank.]  
The next page is labeled S-1.]**

This Bill of Sale is executed to be effective as of the Effective Time:

**[TRANSFeree NAME]**

**[TRANSFEROR NAME]**

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

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

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

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

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

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

**EXHIBIT B**  
**FORM OF**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This **Assignment and Assumption Agreement** (the “Assignment”) is made as of [DATE], between [\_\_\_\_], a [\_\_\_\_] (“Assignor”), and [\_\_\_\_], a [\_\_\_\_] (“Assignee”), as follows:

**RECITALS**

- A. Assignor and Assignee have entered into that certain Asset Transfer Agreement, dated as of [DATE] (the “Transfer Agreement”), pursuant to which, among other things, Assignor has agreed to assign all of its warranty rights in the Partially Assigned Contracts. Capitalized terms used herein not otherwise defined herein have the meanings set forth in the Transfer Agreement.
- B. This Assignment is executed and delivered pursuant to the Transfer Agreement.

**AGREEMENTS**

NOW, THEREFORE, the parties hereby agree as follows:

**1. ASSIGNMENT; NO DELEGATION**

Effective as of the Effective Time and subject to the limitations set forth herein, Assignor hereby sells, assigns, grants, conveys and transfers to Assignee all of Assignor’s right, title and interest in and to its warranty rights contained in the Partially Assigned Contracts to the extent related to the Transmission Facilities, any legal, equitable or other remedy available to Assignor and all related powers, privileges, and immunities under such warranty rights, and Assignor’s right to receive the benefits of and to make claims under such warranty rights under any applicable provision of the Partially Assigned Contracts (collectively, “Warranty Rights”). Notwithstanding any contrary provision, Assignor makes no delegation of its obligations under the Partially Assigned Contracts other than those obligations and limitations set forth in the Partially Assigned Contracts that relate to enforcement of the Warranty Rights assigned to Assignee. For the avoidance of doubt, nothing herein affects any liabilities or obligations of Assignor under the Partially Assigned Contracts for which performance is now due or due to be performed from or after the Effective Time.

**2. ACCEPTANCE**

Effective as of the Effective Time, Assignee hereby accepts the assignment of Assignor’s Warranty Rights under the Partially Assigned Contracts from Assignor; provided, however, Assignee does not assume any and shall have no payment obligations or any other obligations or liabilities under or related to the Partially Assigned Contracts, and shall not pay, perform or discharge any obligation of Assignor under any Partially Assigned Contract, other than those obligations and limitations set forth in the Partially Assigned Contracts that relate to enforcement of the Warranty

Rights assigned to Assignee. Effective as of the Effective Time, Assignee is authorized to enforce and receive the benefits of any and all of the Warranty Rights and to institute and prosecute any proceedings that Assignee may deem necessary to enforce any claim or right of any kind with respect to the Warranty Rights.

### **3. TERMS OF TRANSFER AGREEMENT**

This Assignment is subject to, in all respects, the terms and conditions of the Transfer Agreement, and nothing contained herein is meant to enlarge, diminish, or otherwise alter the terms and conditions of the Transfer Agreement or the parties' duties and obligations contained therein. To the extent there is a conflict between this Assignment and the Transfer Agreement, the terms of the Transfer Agreement control. The representations, warranties, covenants, agreements and indemnities of the parties to the Transfer Agreement as set forth therein shall survive the execution and delivery of this Assignment to the extent provided in the Transfer Agreement.

### **4. GENERAL PROVISIONS**

#### **4.1 Modification of Partially Assigned Contracts.**

Assignor agrees not to amend, modify or supplement the Partially Assigned Contracts in any manner that would affect the Warranty Rights, or impose additional obligations on Assignee with respect to enforcement of the Warranty Rights, without the prior written consent of Assignee. Assignor agrees not to act in a manner that affects the Warranty Rights or Assignee's ability to enforce the Warranty Rights.

#### **4.2 Governing law.**

The interpretation and construction of this Assignment and the rights of the parties hereunder will be interpreted, construed, and governed by the laws of the state of [STATE], without regard to its conflicts of law principles.

#### **4.3 Multiple Counterparts.**

This Assignment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

#### **4.4 No Novation.**

The parties agree that this Assignment does not constitute a novation of the Partially Assigned Contracts.

**[The remainder of this page is intentionally left blank.  
The next page of this document is S-1.]**

This Assignment and Assumption Agreement is executed to be effective as of the Effective Time.

**[ASSIGNOR]**

**[ASSIGNEE]**

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

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

**EXHIBIT C**

**FORM OF**

**CONTRACTOR ASSIGNMENT OF WARRANTIES**

This ASSIGNMENT OF WARRANTY RIGHTS AND BILL OF SALE (this “Assignment”) is entered into effective as of [\_\_\_\_\_] the “Effective Date”) by and between [\_\_\_\_\_] a [\_\_\_\_\_] (“Assignor”) and [\_\_\_\_\_] a [\_\_\_\_\_] (“AEP”).

A. [\_\_\_\_\_] a [\_\_\_\_\_] (“Project Owner”), and AEP are parties to that certain Asset Transfer Agreement dated as of the Effective Date (as may be amended from time to time, the “Transfer Agreement”) regarding the transfer and conveyance by Project Owner to AEP of certain facilities known as [\_\_\_\_\_] station in [\_\_\_\_\_] (the “Transmission Facilities”).

B. Assignor purchased equipment, materials and services related to the Transmission Facilities pursuant to those certain purchase orders and related contracts, terms and conditions and warranties described on Exhibit A to this Assignment (as may be amended from time to time, each a “Purchase Order” and collectively, the “Purchase Orders”), under which each respective vendor may have certain ongoing warranty and other obligations, all as set forth in each Purchase Order.

C. Assignor has transferred all rights, title, and interest in the Transmission Facilities to the Project Owner; however, the Purchase Orders remain in the name of Assignor.

D. In connection with the transfer and conveyance of the Transmission Facilities to AEP under the Transfer Agreement, Assignor desires to assign to AEP its rights to warranties under the Purchase Orders and any other subcontractor and supplier warranties related to the Transmission Facilities (“Warranty Rights”), subject to the terms and provisions contained in the Purchase Orders, and AEP desires to accept such assignment.

E. Assignor has the necessary consent and authority to assign the Warranty Rights on the terms and conditions set forth in this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound thereby, the parties hereto agree as follows:

1. **Transfer.** To the extent Assignor has retained any right, title or interest in the Transferred Assets (as defined in the Transfer Agreement), Assignor hereby grants, bargains, transfers, sells, conveys, delivers, and sets over to AEP, all of Assignor’s right, title, and interest in and to such Transferred Assets.

2. **Assignment.** Assignor hereby irrevocably assigns to AEP, as of the Effective Date, Assignor's rights and interests in and to the Warranty Rights and any legal, equitable or other remedy available to Assignor and all related powers, privileges, and immunities under the Purchase Orders; provided, however, that Assignor shall retain any and all obligations (including but not limited to payment obligations) under and relating to the Purchase Orders, whether arising before or after the Effective Date (the "**Excluded Liabilities**"). AEP acknowledges that its exercise of the Warranty Rights is subject to any conditions (such as maintenance obligations) set forth in each Purchase Order. The parties agree that this Assignment does not constitute a novation of the Purchase Orders.

3. **Acceptance.** Subject to Section 2, AEP hereby accepts assignment of the Warranty Rights from Assignor and assumes all rights of Assignor thereunder as of the Effective Date. Notwithstanding the immediately preceding sentence, or anything to the contrary contained in the Purchase Orders, AEP does not assume any, and shall have no, and Assignor makes no delegation of, liabilities or obligations under or related to the Purchase Orders.

4. **Indemnification.** Assignor ("**Indemnifying Party**") shall indemnify, hold harmless, and defend AEP and its affiliates, and its and their officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorney fees, that are incurred by Indemnified Party, arising out of or relating to any of the Excluded Liabilities.

5. **AEP Authority.** By accepting assignment of the Warranty Rights, AEP, as assignee, shall have the right to demand and receive the benefits of any and all warranties and other rights transferred pursuant to this Assignment. Assignor agrees to provide, for the benefit and upon request of AEP, reasonable cooperation in enforcing any claim or right of any kind with respect to the Warranty Rights; provided that AEP agrees to give Assignor reasonable prior written notice of any request for cooperation hereunder. To the extent that Assignor's Warranty Rights are not properly assigned to AEP under this Assignment, or AEP is prohibited from exercising such rights for any reason, Assignor, at its expense, shall act as AEP's agent in order to pursue all available claims and exercise of the Warranty Rights and shall reasonably cooperate with AEP in any other reasonable arrangement designed to provide such benefits to AEP. AEP shall have the right to reasonably participate in and direct any such claim or exercise of the Warranty Rights by Assignor for the benefit of AEP.

6. **Further Assurances and Agreements of Assignor.**

(a) Assignor hereby agrees that promptly following the Effective Date, Assignor will promptly notify the vendors under the Purchase Orders of the assignment of rights hereunder.

(b) Assignor hereby agrees that, from time to time after the delivery of this Assignment, it will, at the request of AEP and without further consideration, within a reasonable time period, take such further action and execute and deliver such additional assignments, consents

or other similar instruments as necessary in connection with this Assignment to permit AEP to enforce the Warranty Rights.

(c) Assignor shall promptly provide to AEP (i) notice of any warranty claim or other claim by Assignor under a Purchase Order of which Assignor becomes aware, and (ii) upon AEP's request, other information held by Assignor which is reasonably related to the work performed by a vendor under a Purchase Order with respect to the Transmission Facilities, including without limitation equipment instruction manuals and other manufacturer-provided information with respect to the Transmission Facilities.

(d) Assignor acknowledges and agrees that any warranties granted by Assignor to Project Owner pursuant to any prior agreement may apply to the equipment and materials which are the subject of the Purchase Orders notwithstanding that the vendors granted additional and/or duplicate warranties and notwithstanding that Assignor is hereunder assigning to AEP the benefit of such additional and/or duplicate warranty rights granted by such vendors.

7. **Successors and Assigns.** The provisions of this Assignment are for the benefit of AEP, its successors and assigns, and all rights hereby granted to AEP may be exercised by AEP, its successors and assigns. This Assignment shall be binding on all successors and assigns of AEP.

8. **Representations and Warranties.** Assignor represents and warrants the following as of the Effective Date:

(a) The execution, delivery and performance by Assignor of this Assignment have been duly authorized by all necessary corporate or other action on the part of Assignor.

(b) To Assignor's knowledge, unless previously expired under the terms of the Purchase Order, each Purchase Order is in full force and effect and is valid and enforceable against all parties thereto in accordance with its terms.

(c) Each Transferred Asset is transferable, and each Purchase Order is assignable, by Assignor without the consent or approval of any other person or entity, or such consent or approval has been obtained by Assignor.

(d) Assignor has not taken any action, or failed to take any action, which would materially and adversely affect the Transferred Assets or the Warranty Rights.

(e) Assignor has made no warranty claims under any of the Purchase Orders with respect to the Transmission Facilities, and to Assignor's knowledge no warranty claim exists with respect to any work performed or to be performed by any vendor thereunder with respect to the Transmission Facilities.

(f) Exhibit A is complete list of all Purchase Orders issued by Assignor in connection with construction of the Transmission Facilities, and AEP has been provided true correct and complete copies of all such Purchase Orders. Assignor is not a party to, nor does

Assignor have knowledge of, any other agreement, event or condition that may affect enforcement by AEP of any of Assignor's rights or the vendors' obligations with respect to such Purchase Orders.

(g) No outstanding claims exist to date by Assignor, and Assignor has received no notice of any outstanding claims by the vendor or any third party with respect to any Purchase Order as such claims relate to the Assignor's rights thereunder, except for claims for amounts which have not been billed or are not yet due and payable to vendor by Assignor with respect to matters associated with the acquisition, construction, installation and testing of the equipment or work performed by the vendor under a particular Purchase Order. To Assignor's actual knowledge, without inquiry, no event has occurred or circumstance exists that may give rise to any such claims by either Assignor or any of the vendors or any other third party with respect to the Purchase Orders.

(h) To Assignor's actual knowledge, without inquiry, the Purchase Orders are subject to no known claim, set-off or defense by the vendors.

9. **Agreement of Assignor.** Assignor shall not amend or otherwise modify or supplement the Purchase Orders in any manner that would materially and adversely affect AEP's rights thereunder, or impose additional obligations on AEP with respect to the enforcement of the warranties or other rights, without the prior written consent of AEP, which consent shall not be unreasonably withheld or delayed. Assignor shall not take any other action that would materially and adversely affect AEP's rights, or AEP's ability to enforce its rights, under the Purchase Orders.

10. **Governing Law.** This Assignment shall be governed and construed and interpreted in accordance with the laws of the State of [STATE], irrespective of the application of any conflict of laws provision.

11. **Waivers.** The failure of a party to insist in any one or more instance upon strict performance of any of the provisions of this Assignment or take advantage of any of its rights under this Assignment shall not be construed as a general waiver of any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect, except with respect to the particular instances. A waiver under this Assignment must be in writing and state that it is a waiver.

12. **Entire Agreement.** This Assignment constitutes the entire agreement between the parties relating to the subject matter hereof and its execution supersedes all previous agreements, discussions, communications and correspondence with respect to such subject matter.

13. **Severability.** If any provision or provisions of this Assignment shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

14. **Counterparts**. This Assignment may be executed in two or more counterparts all of which will be considered one and the same document, and each of which will be deemed an original.

*~signatures are on the next page~*

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed on their behalf by their respective duly authorized representatives as of the Effective Date.

[AEP ENTITY]

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

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

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

[ASSIGNOR ENTITY]

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

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

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

**EXHIBIT D**  
**FORM OF**  
**GENERAL WARRANTY DEED**

Tax Map No.: \_\_\_\_\_

*This Document Prepared* \_\_\_\_\_ *by and Return to:*

*Christine L. Liberto*

*Senior Counsel – Real Estate*

*American Electric Power Service Corporation*

*1 Riverside Plaza*

*Columbus, Ohio 43215*

*for and on behalf of* \_\_\_\_\_

*Title Insurance:* \_\_\_\_\_

*Consideration: \$* \_\_\_\_\_

**THIS DEED** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_,  
as Grantor, and \_\_\_\_\_, a \_\_\_\_\_ corporation, whose tax mailing address is 1  
Riverside Plaza, 16th Floor, Columbus, Ohio 43215, as Grantee;

WITNESSETH:

THAT, IN CONSIDERATION of the sum of TEN DOLLARS (\$10.00) cash in hand paid by Grantee to Grantor, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby GRANT and CONVEY with General Warranty Covenants, unto the Grantee all that certain parcel of land located in \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_, and more particularly described as follows:

Beginning ...

Being part of the same property conveyed to \_\_\_\_\_ from \_\_\_\_\_,  
by Deed dated \_\_\_\_\_, recorded in the \_\_\_\_\_ of \_\_\_\_\_ County,  
\_\_\_\_\_ in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_.

This conveyance is hereby made subject to the following:

1. The lien of real estate taxes and assessments for the year 20\_\_\_\_, which shall be prorated as of the date of Closing. Grantor shall pay all real estate taxes and assessments due

prior to the Closing, and Grantee shall pay all real estate taxes and assessments due from and after the date of Closing.

2. Without reimposing any of the reservations, restrictions, easements and conditions of record affecting the hereinabove described property, this conveyance is made subject to all of them.

To have and to hold the above premises with the appurtenances thereunto belonging to said Grantee, its successors and assigns forever.

**[SIGNATURE PAGE FOLLOWS]**

WITNESS the following signature and seal:

\_\_\_\_\_(SEAL)

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) To-wit:  
CITY/COUNTY OF \_\_\_\_\_ )

The foregoing Deed was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Notary Registration No.: \_\_\_\_\_