

Appendix E

Desired Contract Terms. In conjunction with the requirements in Section 3 and the product descriptions in the Appendices, IREA requests that all proposals contain the following desired contract terms. These terms are the preferred general terms, but are subject to modification to clarify or address specific circumstances.

Governing Law	The agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to the conflict of law principles thereof that would otherwise direct the application of the laws of a different jurisdiction.
Payment Terms	Unless otherwise agreed by the Parties in a transaction, all invoices shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.
Force Majeure	To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to

	<p>the obligations of the Claiming Party excused by Force Majeure.</p> <p>“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.</p>
Representations and Warranties	<p>Each Party represents and warrants to the other Party that on the date of execution of the agreement and on the date of each transaction under the agreement thereafter:</p> <p>it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;</p> <p>it has all regulatory authorizations necessary for it to legally perform its obligations under the agreement and each transaction;</p>

the execution, delivery and performance of the agreement and each transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

the agreement, each transaction, and each other document executed and delivered in accordance with the agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;

it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

there is not pending or, to its knowledge, threatened against it, its Guarantor, or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under the agreement and each transaction;

no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the agreement and each transaction;

it is acting for its own account, has made its own independent decision to enter into the agreement and each transaction and as to whether the agreement and each such transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the agreement and each transaction;

it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

	<p>it has entered into the agreement and each transaction in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the transaction to which it is a Party;</p> <p>with respect to each transaction involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such transaction for purposes related to its business as such; and</p> <p>the material economic terms of each transaction are subject to individual negotiation by the Parties.</p>
Confidentiality	<p>Neither Party shall disclose the terms or conditions of a transaction under the agreement to a third party (other than the Party's agents, member systems, credit rating agencies, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.</p>