**Summary of Changes**

During the pandemic, many contracting organizations within BPA added pandemics and endemics to their Uncontrollable Forces clause. We propose adding those two into the Provider of Choice contracts to align with other BPA contracts. Additionally, BPA is proposing to name cyberterrorism as a form of terrorism that is covered under this clause.

**Edits of Particular Note**

N/A

**Reservation of Rights**

The following draft language to Section 21, including but not limited to the proposed edits and comments provided by WPAG below, are not agreed to by any WPAG member and are provided for discussion purposes only. The draft Provider of Choice contracts, including this section, are subject to WPAG’s ongoing review and recommended revision. WPAG reserves all rights to subsequently reject the language below, in whole or in part, and/or propose alternative language, including the right to reject or propose alternatives to the edits proposed by WPAG in this draft.

**21. UNCONTROLLABLE FORCES*(03/21/2024 Version)***

21.1 A Party shall not be in breach of an obligation under this Agreement to the extent its failure to fulfill the obligation is due to an Uncontrollable Force. “Uncontrollable Force” means an event beyond the reasonable control, and without the fault or negligence, of the Party claiming the Uncontrollable Force, that prevents that Party from performing its obligations under this Agreement and which that Party could not have avoided by the exercise of reasonable care, diligence and foresight. Uncontrollable Forces include each event listed below, to the extent it satisfies the foregoing criteria, but are not limited to these listed events:

(1) any curtailment or interruption of firm transmission service on BPA’s or a Third Party Transmission Provider’s System that prevents delivery of Firm Requirements Power sold under this Agreement to «Customer Name»;

(2) any failure of «Customer Name»’s distribution or transmission facilities that prevents «Customer Name» from delivering power to end-users;

(3) strikes, work stoppage, or terrorist acts (including acts of cyber terrorism);

(4) floods, earthquakes, other natural disasters, epidemics, or pandemics; and

(5) final orders or injunctions issued by a court or regulatory body having subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court having subject matter jurisdiction.

21.2 Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

21.3 If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:

(1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable;

(2) use commercially reasonable efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable;

(3) keep the other Party apprised of such efforts on an ongoing basis; and

(4) provide written notice of the resumption of performance.

Written notices sent under this section must comply with Exhibit I.

24.4 As soon as reasonably practical, but in no event later than 30 days after the commencement of an Uncontrollable Force experienced by BPA, BPA shall provide an estimate of how long such Uncontrollable Force will continue. In the event that (1) (i) BPA projects that the Uncontrollable Force will continue for a period exceeding 180 days or (ii) the Unconrtollable Force continues for an unitterupted period of 180 days and (2) BPA is unable to mitigate the effects of such Uncontrollable Force pursuant to Section 21.3(2), then BPA shall commence a process under Exhibit \_\_ with customers receiving service under a PoC Contract to determine how to address the Uncontrollable Force and BPA’s inability to mitigate its effects. Said process shall commence within 10 days after BPA’s projection under this Section 24.4 or within 10 days after the 180th day of the Uncontrollable Event, whichever comes first.