

\_\_\_\_\_, 2008

**BALANCE OF PLANT  
WIND ENERGY PROJECT AGREEMENT**

**by and between**

**PACIFICORP,  
an Oregon corporation  
as Owner**

**and**

\_\_\_\_\_  
**a \_\_\_\_\_ corporation,  
as Contractor**

**dated as of**

**\_\_\_\_\_, 2007**

**[ \_\_\_\_\_ ] Project**

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**BALANCE OF PLANT WIND ENERGY PROJECT AGREEMENT**

THIS BALANCE OF PLANT WIND ENERGY PROJECT AGREEMENT (this “**Agreement**”), dated as of \_\_\_\_\_, 2007, (the “**Effective Date**”), by and between PacifiCorp, an Oregon corporation, (hereinafter, “**Owner**”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, (hereinafter, “**Contractor**”).

**WITNESSETH:**

WHEREAS, Owner is developing a wind-powered electric generation facility at the [\_\_\_\_\_] Site:

WHEREAS, Contractor has represented that it is experienced and qualified in providing technical assistance, licensing, engineering, procurement, supply, construction management, construction, unloading, erecting, installation, commissioning, start-up and testing services, and that it possesses the requisite expertise and resources to complete the Work;

WHEREAS, Owner desires to obtain, and Contractor desires to provide, through itself or through Subcontractors, the Work, including, among other things, engineering, procurement, construction and related services for the Contractor Facilities and engineering, construction, assembly, erection, and installation services for the WTGs, for the Contract Price; and

WHEREAS, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.1 Definitions. As used in this Agreement, the following terms have the meanings indicated:

“**Access Road Completion**” has the meaning set forth in **Section 6.1**.

“**Access Roads Completion Certificate**” means a certificate in the form of **Exhibit R**.

“**Affiliate**” means with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person. For purposes of this definition only, the term “**control**” (including, with correlative meaning, the terms “**controlled by**” and “**under common control with**”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise. For purposes of Owner, Affiliate shall be limited to MidAmerican Energy Holdings Company and its subsidiaries.

“**Agreement**” has the meaning set forth in the first paragraph hereof, and includes all exhibits attached hereto, as any of them may be amended, supplemented or modified from time to time in accordance with the terms hereof.

“**Applicable Laws**” means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any written interpretation or administration of, any of the foregoing by any Governmental Authority with jurisdiction over a Party (as to that Party), the Project, the Job Site, the performance of the Work or other services to be performed under this Agreement. For the avoidance of doubt, with regard to the project, “Applicable Laws” includes all \_\_\_\_\_ rules, regulations and other determinations with respect to reclamation obligations.

“**Applicable Permits**” means any valid waiver, exemption, variance, certificate, franchise, permit, interconnection agreement, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that have been obtained for the benefit of the Project or the project Site or are otherwise necessary for the performance of the Work.

“**Applicable Standards**” means Prudent Industry Practices, Prudent Engineering Practices, the Interconnection Agreement, and those construction and electrical standards and codes applicable to projects such as the Project, including those set forth in this Agreement; provided, however, that if any portion of such standards or codes conflicts with or is less stringent than any Applicable Law or Applicable Permit, such conflicting or less stringent portions of such standards shall not be deemed “applicable.”

“**Acceptable Letter of Credit**” The term shall mean an irrevocable letter of credit that (a) is issued by a Qualified Bank who is acceptable to Owner, in Owner’s sole discretion, (b) (i) in the case of the Performance LOC, has a stated amount equal to the amount of payments to Contractor through the Substantial Completion Guaranteed Date, as provided in Exhibit “ ” (\$\_\_\_\_\_), (ii) in the case of the Retainage LOC, has a stated amount equal to the Retainage, and (iii) in the case of the Warranty LOC, has a stated amount equal to five percent (5%) of the Contract Price, (c) has an expiration date of no earlier than the Letter of Credit Termination Date and (d) is in the form attached hereto as Exhibit “AC” with such deviations as are approved in writing by Owner.

“**As-Built Drawings**” has the meaning set forth in **Section 2.7**.

“**Business Day**” means every day other than a Saturday, Sunday or a day which is a legal holiday in the State of [state that project is located in].

“**Site**” means all those parcels of land subject to the Real Property Rights in \_\_\_\_\_ County, [state that project is located in], all as more particularly described in **Exhibit K**.



“**Commissioning**” means the start-up commission and testing activities to be conducted in accordance with the Commissioning Procedures.

“**Commissioning Procedures**” means the procedures set forth in Exhibit F to the Wind Turbine Supply Contract.

“**Confidential Information**” has the meaning set forth in **Section 17.1.1**.

“**Consumable Parts**” has the meaning set forth in **Section 2.8.8**.

“**Contract Documents**” means this Agreement and any documents delivered hereunder, each of which is hereby incorporated by reference and made a part hereof for all purposes.

“**Contract Price**” has the meaning set forth in **Section 4.1**.

“**Contractor**” has the meaning set forth in the first paragraph hereof, and includes its legal successors and permitted assigns, pursuant to the terms of this Agreement.

“**Contractor Equipment**” means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors for performance of the Work but which is not intended to be incorporated into the Project.

“**Contractor Event of Default**” has the meaning set forth in **Section 13.1**.

“**Contractor Facilities**” means, collectively, the Infrastructure Facilities, and all other structures, equipment and components comprising the Project other than the Owner-Furnished Equipment.

“**Contractor Indemnified Parties**” has the meaning set forth in **Section 10.1.2**.

“**Contractor Permits**” means those Applicable Permits required to be obtained by Contractor, as set forth in **Exhibit H**.

“**Contractor Termination for Cause**” has the meaning set forth in **Section 13.2.1**.

“**Critical Milestone**” means each “Critical Activity” designated as such in the Project Schedule.

“**Critical Milestone Date**” means each date identified in the Project Schedule as being the date by which the corresponding Critical Milestone is required to be achieved, each as extended pursuant to the terms hereof.

“**Defect**” means, any designs, engineering, drawings, components, tools, Equipment, installation, construction, workmanship or Work that (i) do not conform to the terms of this Agreement, (ii) are not of good quality, are not free from defects or deficiencies in design, application, manufacture or workmanship, or that contain improper or inferior workmanship or (iii) would adversely affect (A) the performance of the Project under anticipated operating conditions, (B) the continuous safe operation of the Project during the Project’s design life, or (C) the structural integrity of the Project. The term “Defect” shall neither be construed to include

material damage caused by Owner's acts or omissions to the extent arising out of abuse, misuse, or negligence in operation, maintenance or repair (unless such act or omission was taken or made at the direction of Contractor or any Subcontractor, including any written Design Documents, Job Books or other material supplied by any of them in accordance with this Agreement) or failure to follow Contractor's or manufacturers' written recommendations and directions and Applicable Standards, nor shall the term "Defects" be construed to include ordinary wear and tear, erosion, corrosion, or deterioration (unless as a result of a defect or deficiency).

**"Design Basis and Project Site Data"** means the Design Basis and Project Site Data set forth in **Exhibit N**.

**"Design Documents"** means (i) all specifications, calculations, designs, plans, drawings, engineering, analyses, electrical studies and analysis, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Work, including the structure and foundation thereof, and (ii) all technical drawings, operating drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-lines, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors all of which are and required to be submitted by Contractor, or any Subcontractor of Contractor, from time to time under this Agreement or at Owner's request which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

**"Dispute"** has the meaning set forth in **Section 15.1**.

**"Dollars"** or **"\$"** means the lawful currency of the United States of America.

**"Down Payment"** has the meaning set forth in **Section 4.3**.

**"Effective Date"** has the meaning set forth in the first paragraph hereof.

**"Electrical Works"** means the facilities and equipment, including the Interconnection Facilities, described in **Exhibits A and E**.

**"Electrical Works Completion"** has the meaning set forth in **Section 6.3**.

**"Electrical Works Completion Certificate"** means the certificate in the form of **Exhibit T**.

**"Equipment"** means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors that are installed or incorporated into the Project or otherwise form or are intended to form part of the Work or the Project (other than Contractor Equipment).

**"Final Completion"** has the meaning set forth in **Section 6.6**.

**"Final Completion Certificate"** means the certificate in the form of **Exhibit W**.

**“Final Completion Date”** means the date on which Final Completion occurs.

**“Force Majeure Event”** means any event that wholly or partly prevents or delays the performance by the Party affected of any obligation arising under the Contract Documents, but only if and to the extent: (i) such event is not within the reasonable control, directly or indirectly, of and not the fault of the Party affected; (ii) such event, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party; (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof; and (iv) such event is not the direct or indirect result of the affected Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement; provided, however, that such event is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; Wind Days to the extent described in **Section 8.4**; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared) or other armed conflict; chemical or Hazardous Materials contamination which prevents access by Contractor or Subcontractors to the Project Site; material physical damage to the Project caused by third parties; area-wide or regional strikes and other area-wide or regional labor disputes (including collective bargaining disputes and lockouts) involving Contractor or Subcontractors and not directed exclusively at Contractor and/or such Subcontractor; riot or similar civil disturbance or commotion; other acts of God, including unusual weather conditions (according to the records of the National Oceanic and Atmospheric Administration for the vicinity of the Project Site) including storms or wind gusts with a velocity of more than fifty (50) miles per hour (subject to the provisions of **Section 8.4**); acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a Governmental Authority (other than in respect of Contractor’s compliance with Applicable Laws and Applicable Permits required in connection with the Contractor’s performance under this Agreement). The definition of **“Force Majeure Event”** shall not include strikes, labor disputes or labor shortages (except as explicitly provided above), unavailability, late delivery or breakage of equipment or materials (except to the extent due to a Force Majeure Event otherwise excusable hereunder), economic hardship (including lack of money), delays in transportation other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities, and changes since the Effective Date in Applicable Laws (other than any such change that prohibits or impairs Contractor from performing the Work or importing equipment or machinery to be used in the Work into the United States).

**“Foundation”** means each Wind Turbine Generator foundation to be completed in accordance with this Agreement.

**“Foundation Completion”** has the meaning set forth in **Section 6.2**.

**“Foundation Completion Certificate”** means a certificate in the form of **Exhibit S**.

**“Geotechnical Investigation”** has the meaning set forth in **Section 9.5**.

**“Governmental Authority”** means any federal, state, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

**“Guaranteed Access Roads Completion Date”** means \_\_\_\_\_, 200\_ for the [\_\_\_\_\_] Site, as such date may be extended in accordance with the terms hereof.

**“Guaranteed Mechanical Completion Date”** means, subject to **Article IX**, a date twenty (20) days after the delivery of the applicable WTG Shipment at the location indicated in Wind Turbine Supply Contract.

**“Hazardous Materials”** shall mean any dangerous, hazardous or toxic substance or constituent or pollutant or contaminant which, pursuant to any Applicable Law, has been determined, or at any future time may be determined, to be hazardous, toxic or dangerous to human health or the environment, including but not limited to any hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C.A. § 9601 et seq.), any solid waste under the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.A. § 6901 et seq.), or any contaminant, pollutant, waste or toxic substance under the Clean Air Act, as amended (42 U.S.C.A. § 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C.A. § 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C.A. § 300f et seq.), the Emergency Planning and Community Right-To-Know Act, as amended (42 U.S.C.A. sec. 110001 et. seq.), the Occupational Safety and Health Act, as amended (29 U.S.C.A. sec. 651 et. seq.), the Hazardous Materials Transportation Act, as amended, (49 U.S.C.A. sec. 5101 et. seq.) or the Toxic Substances Control Act, as amended (15 U.S.C.A. § 2601 et seq.), and any equivalent or applicable state or local laws.

**“Import Taxes”** means taxes, customs duties, fees, imposts, value-added tax, sales tax and governmental charges of any kind (including interest and penalties related thereto, except in the case of interest and penalties resulting from actions or omissions taken at Owner’s written request), in each case that are payable upon or in relation to the importation of any component or portion of the Contractor Facilities, drawings or designs into the United States.

**“Indemnifying Party”** has the meaning set forth in **Section 10.2.1**.

**“Indemnified Person”** has the meaning set forth in **Section 10.2.1**.

**“Infrastructure Facilities”** means all of the works, buildings, roads, pad mounted transformers, Electrical Works and other permanent fixtures as more fully described in **Exhibits A, D, E and G**.

**“Intellectual Property Rights”** has the meaning set forth in **Section 17.2**.

**“Interconnection Agreement”** means that certain Large Generation Interconnection Agreement by and between Owner and Utility dated [\_\_\_\_\_].

**“Interconnection Date”** means as to the \_\_\_\_\_ Site \_\_\_\_\_, 200\_.

“**Interconnection Facilities**” means all facilities from the output of the Project Substation to the connection to the Utility’s transmission line, including but not limited to those defined in the Interconnection Agreement.

“**Interim Punch List**” has the meaning set forth in **Section 6.4.2**.

“**Job Book**” means all Contractor (and Subcontractor) engineering, design, purchasing and other information relating to the Work in the format and with the content as set forth in **Exhibit Z**.

“**Job Site**” means the Project Site and any other areas where Contractor may temporarily obtain care, custody and control, use, easement or license for purposes directly, indirectly or incidentally related to performance of, or as an accommodation to, the Work.

“**Labor**” means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers.

“**Lien**” means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

“**Major Subcontract**” means any agreement with a Subcontractor having an aggregate value in excess of two hundred thousand dollars (\$200,000) for performance of any part of the Work.

“**Major Subcontractor**” means any Subcontractor with whom Contractor has entered into a Major Subcontract.

“**Mechanical Completion Delay Liquidated Damages**” has the meaning set forth in **Section 6.8.3**.

“**Milestone**” means the “Activities” (including Critical Milestones) designated as such in the Project Schedule.

“**Milestone Date**” means the date identified in the Project Schedule as being the date by which the corresponding Milestone is required to be achieved, as extended pursuant to the terms hereof.

“**Milestone Payment**” has the meaning set forth in **Section 4.6**.

“**Monthly Progress Report**” means a monthly written report of actual progress of the Work in the form of **Exhibit O** showing in detail the progress to date and the then-current scheduling of all major elements of design, procurement, construction, testing and other aspects of the Work, including the incorporation of Scope Change Orders and delay and acceleration analyses where appropriate, as specified in the Project Schedule.

“**MW**” means megawatts.

**“O&M Personnel”** means either (i) employees of Owner or (ii) employees of any entity with which Owner enters into an operation and maintenance agreement, which are engaged by Owner to operate and maintain the Project.

**“Operating Manual”** means the complete system instructions and procedures for the operation and maintenance of the Work, which shall comply with the requirements of the Scope of Work, including Contractor’s, manufacturers’, vendors’, suppliers’ and Subcontractors’ recommended list of Spare Parts, all safety information and any precautionary measures therefor.

**“Owner”** has the meaning set forth in the first paragraph hereof, and includes its legal successors and permitted assigns, pursuant to the terms of this Agreement.

**“Owner-Caused Delay”** means a delay in Contractor’s performance of any Critical Milestone, to the extent that such delay is directly, actually and demonstrably caused by either (i) Owner’s failure (which is not excused due to a Force Majeure Event, default of Contractor, or other condition excused under this Agreement) to perform any covenant of Owner hereunder, or (ii) any action or inaction on the part of the Turbine Vendor or an Owner Subcontractor in violation of Applicable Law, Applicable Permits or its obligations under the Wind Turbine Supply Contract or the applicable Owner Subcontract or in breach of this Agreement and, in each case, which actually, demonstrably and adversely affects a Critical Milestone. Contractor expressly acknowledges and agrees that any delay that is caused or exacerbated by Contractor’s or any Subcontractor’s action or inaction is not an Owner-Caused Delay.

**“Owner Event of Default”** has the meaning set forth in **Section 13.2**.

**“Owner-Furnished Equipment”** means (i) \_\_\_\_\_; (ii) \_\_\_\_\_, and (iii) any other equipment or components of the Project to be furnished or procured by Owner as expressly set forth in **Exhibit A**.

**“Owner-Indemnified Party”** has the meaning set forth in **Section 10.1.1**.

**“Owner Permits”** means the Applicable Permits required to be obtained by Owner as set forth in **Exhibit H**.

**“Owner Subcontractor”** means the Turbine Vendor and any other subcontractor (other than the Contractor) engaged by Owner to perform work in connection with the Project.

**“Owner Termination for Cause”** has the meaning set forth in **Section 13.1.1**.

**“Party”** or **“Parties”** means, respectively, a party or both parties to this Agreement.

**“Payment Milestones”** means a list of activities to be performed by Contractor in its prosecution of the Work, all as set forth in **Exhibit B-1**.

**“Person”** means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, or Governmental Authority or other entity of whatever nature.

**“Pre-Existing Hazardous Materials”** means Hazardous Materials that existed on or in the Property Site prior to the date Contractor or any of its Subcontractors or other representatives are present on the Project Site (and not released or disposed of on the Project Site by Contractor prior to such date).

**“Prime Rate”** means the rate published in *The Wall Street Journal* as the “prime rate” from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises.

**“Project”** means the complete, integrated, wind-powered, electric generating facility to be located on the Project Site, consisting of all foundations, structures, facilities, appliances, lines, transformers, WTGs, Towers, conductors, instruments, equipment, apparatus, components, roads and other property comprising and integrating the entire facility described generally in the Scope of Work and the Technical Specifications.

**“Project Mechanical Completion”** means achievement of WTG Mechanical Completion for all WTGs at the Project Site.

**“Project Mechanical Completion Certificate”** means a certificate in the form of **Exhibit V**.

**“Project Schedule”** means the critical path schedule defining certain dates and Milestones for timely completion of the Work as set forth in **Exhibit C**, as amended in accordance with the terms of this Agreement.

**“Project Site”** means the [\_\_\_\_\_] Site.

**“Project Substantial Completion Date”** means the date that all WTGs have been Commissioned and all such WTGs are in commercial operation, as such date is notified to Contractor by Owner.

**“Project Substation”** means the substation at the Project Site.

**“Prudent Engineering Practices”** means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by professional construction and engineering firms performing engineering, procurement and construction services on wind energy facilities of the type, size and location similar to the project which, in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the construction and use of wind energy generating and operating equipment and other electrical equipment, facilities and improvements, with commensurate standards of safety, efficiency and economy, and as are in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to engineering, construction and project management practices. Prudent Engineering Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

**“Prudent Industry Practices”** means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the power industry for similar facilities in the United States) that at a particular time in the exercise of good judgment would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, safety, environmental protection, economy and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

**“Punch List”** has the meaning set forth in **Section 6.4.2**.

**“Punch List Items”** means each item of Work that:

- (a) Owner and Contractor agree remain to be performed by Contractor as provided in **Article VI**;
- (b) does not, in Owner’s reasonable judgment, affect the ability of Owner to safely operate the Project in accordance with Applicable Standards and in compliance with all Applicable Laws;
- (c) does not, in Owner’s reasonable judgment, affect the operability (including capacity, efficiency, reliability, or cost effectiveness), safety or mechanical or electrical integrity of the Project; and
- (d) does not, in Owner’s reasonable judgment, affect the ability to Commission and test the WTGs, Infrastructure Facilities and the other components of the Project.

**“Quality Assurance Plan”** shall mean the quality assurance plan to be prepared by Contractor and accepted by Owner and which is in accordance with **Section 2.8.3.4** and an outline of which is attached hereto as **Exhibit Y**.

**“Real Property Rights”** means all rights in or to real property, permits, easements, licenses, private rights-of-way, and utility and railroad crossing rights required to be obtained or maintained by Owner in connection with construction of the Project on the Project Site, transmission of electricity to the Utility, performance of the Work, or operation of the Project, a description of which is set forth in **Exhibit K**. **Exhibit K** also contains the form of the “Windpark Lease” to be used by the Owner in connection with the Project and a preliminary site map with respect to the Project Site.

**“Request for Payment”** has the meaning set forth in **Section 4.3**.

**“Requirements of this Agreement”** has the meaning set forth in **Section 2.5**.

**“Retainage”** has the meaning set forth in **Section 4.5**.

**“Sales Taxes”** means sales, use, local option or school local option taxes levied by the State of [state project is located in] or any county or local government of [state project is located in], on the Work pursuant to applicable State of [state project is located in] and any county or local government laws and regulations of the State of [state project is located in] that are not subject to a sales and use tax exemption available to the Party under such laws and regulations.



“**Scheduled Final Completion Date**” means the date described as such in the Project Schedule.

“**Scope Change**” has the meaning set forth in **Section 9.1**.

“**Scope Change Order**” has the meaning set forth in **Section 9.1** and in the form set forth in **Exhibit Q**.

“**Scope of Work**” means the services and work to be provided, or caused to be provided, by or through Contractor under this Agreement for the Contract Price, as more particularly described in **Exhibits A, D and E**, as the same may be amended from time to time in accordance with the terms hereof.

“**Spare Parts**” has the meaning set forth in **Section 2.8.9**.

“**Subcontract**” means an agreement between Contractor and any Subcontractor.

“**Subcontractor**” means any subcontractor or supplier/vendor of equipment or services to Contractor or any subcontractor or supplier/vendor of any Person engaged or employed by Contractor or any Subcontractor in connection with the performance of the Work.

“**Tax**” or “**Taxes**” means all fees, taxes (including Sales Taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), Import Taxes, levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any Governmental Authority (including penalties or other amounts payable pursuant to subtitle B of Title I of ERISA).

“**Technical Specifications**” means the description of the Work, including the technical specifications referenced or described therein for the Project, set forth as **Exhibits A, D, E, F and G**.

“**Termination Payment**” has the meaning set forth in **Section 4.9.1**.

“**Termination Without Cause**” has the meaning set forth in **Section 13.3**.

“**Tower**” means each steel tubular tower component of a Wind Turbine Generator (having a hub height of approximately 80 meters) as further described in the Wind Turbine Supply Contract.

“**Turbine Blade**” means a 77 meter rotor diameter turbine blade component of a Wind Turbine Generator as further described in the Wind Turbine Supply Contract.

“**Turbine Nacelle**” means the turbine nacelle component of a Wind Turbine Generator, including gearbox, generator, blade pitch controls, brakes, hydraulic systems, lightning protection system, and nacelle yaw controls, and associated control and ancillary equipment.

“**Turbine Vendor**” means General Electric Company.

“**Utility**” means the entity physically accepting delivery of energy at the Project Substation (which as of the Effective Date is expected to be the transmission function of Owner).

“**Warranty**” has the meaning set forth in **Section 7.1.1**.

“**Warranty Period**” has the meaning set forth in **Section 7.1.2**.

“**Warranty Service**” has the meaning set forth in **Section 7.1.3**.

“**Wind Day**” means a day or portion thereof consisting of at least 5 hours between the hours of 7 a.m. and 5 p.m. on which (i) the Contractor has scheduled construction activities at the Job Site involving erection of Towers and/or WTGs which cannot be performed due to sustained winds in excess of 30 mph for erection of Towers and Turbine Nacelles and 25 mph for the erection of the Turbine Blades or (ii) due to the necessary sequencing of Work or other scheduling considerations or contingencies, Contractor is unable to perform other Work at the Job Site that would not be affected by such sustained wind conditions; provided, however, in order to qualify as a Wind Day, such event and the scheduling and other impacts resulting therefrom must be beyond the reasonable control of the Contractor, be unavoidable or incapable of being prevented or overcome by the reasonable efforts and due diligence of the Contractor, and have an impact which will actually, demonstrably and adversely affect Contractor’s ability to complete a Critical Milestone by the Critical Milestone Date therefor.

“**Wind Turbine Generator**” or “**WTG**” means all or any portion of one (1) \_\_\_\_\_ wind turbine generator, including the following components: a Tower, a Turbine Nacelle, three (3) Turbine Blades, hub, controller, control panels, wind vanes and anemometers, all as more particularly described in the Technical Specifications in **Exhibit F** and to be delivered to the Project Site by the Turbine Vendor in accordance with the terms of the Wind Turbine Supply Contract.

“**Wind Turbine Supply Contract**” means that certain contract executed by and between Owner and Turbine Vendor and attached hereto as **Exhibit F**.

“**Work**” has the meaning set forth in **Section 2.1**.

“**WTG Construction Period**” has the meaning set forth in **Section 8.4**.

“**WTG Mechanical Completion**” has the meaning set forth in **Section 6.4**.

“**WTG Mechanical Completion Certificate**” means a certificate in the form of **Exhibit U**.

“**WTG Mechanical Completion Date**” means the date on which WTG Mechanical Completion occurs.

“**WTG Shipment**” means the shipments of controllers, towers, nacelle/hubs and blades for a WTG, each such complete shipment constituting a WTG Shipment. Scheduled WTG Shipments are shown in **Exhibit F**.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears:

- (a) capitalized terms used in this Agreement have the meanings specified in this **Article I**;
- (b) the singular shall include the plural;
- (c) references to “**Articles,**” “**Sections,**” “**Schedules,**” “**Annexes,**” “**Appendices**” or “**Exhibits**” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time hereunder;
- (d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns;
- (e) the words “**herein,**” “**hereof**” and “**hereunder**” shall refer to this Agreement as a whole and not to any particular Section or subsection of this Agreement;
- (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;
- (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and Exhibits hereto, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time;
- (h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (i) the use of the word “**including**” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and
- (j) references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

**ARTICLE II**  
**RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES**

2.1 Work to be Performed. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed all Work in accordance with the terms and conditions of this Agreement. Contractor shall, at its own cost and expense, (i) design

(or arrange for design pursuant to a Subcontract executed in accordance with this Agreement), engineer (or arrange for engineering pursuant to a Subcontract executed in accordance with this Agreement), procure, construct, start-up the Contractor Facilities, unload, assemble, erect, and install the WTG, conduct testing of the Contractor Facilities, and perform all of its other obligations hereunder, including without limitation completion of the Scope of Work in accordance with the Technical Specifications, (ii) manage, supervise, inspect and furnish or caused to be furnished all materials, equipment, machinery, tools, labor, transportation, temporary structures, temporary utilities, administration and other services and items required to complete and deliver to Owner the fully integrated and operational Project, all in accordance with this Agreement (including without limitation the Project Schedule and the Scope of Work, as each may be modified from time to time in accordance with the terms hereof by a Scope Change Order or other amendment hereto), Applicable Laws and Applicable Standards (all of the foregoing obligations of the Contractor being referred to herein collectively as the “**Work**”).

## 2.2 General; Applicable Standards.

2.2.1 Status of Contractor; No Partnership. Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under this Agreement. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party. Contractor shall be responsible for overall construction management of the Work, all civil and electrical infrastructure design, and the coordination and general management of the Work. Contractor shall procure, deliver, handle and store all materials and equipment used in the Work.

2.2.2 Applicable Standards for the Work. Subject to the remedies provided for herein, Contractor shall perform the Work and turn the Project over to Owner in a manner that is: (i) sufficient, complete and adequate in all respects necessary for the Project to successfully achieve WTG Mechanical Completion for each WTG Shipment on or before the Guaranteed Mechanical Completion Date for that WTG Shipment, respectively; (ii) in conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in wind power projects of similar size and nature to the Project; (iii) in compliance with the terms of this Agreement, the Utilities’ switching procedures, as set forth in **Exhibit L**, all Applicable Laws and Applicable Permits and Applicable Standards; and (iv) approved as to form, use and content by public and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the Project, or any portion thereof, is necessary for the construction, operation of the Project, or interconnection of the Project in compliance with the Interconnection Agreement.

2.3 Scope of Work; Exclusions Therefrom. In light of the foregoing, Contractor has included within the Contract Price the cost to complete the Work. Items need not be specifically listed in this Agreement or in the Exhibits in order to be deemed to be items included in the Work. It is understood that Contractor is better qualified to list exclusions than Owner is to list inclusions. Therefore, any item indicated on this Agreement, reasonably inferable therefrom, incidental

thereto or required in accordance with any Applicable Law or Applicable Permit, that is not specifically excluded from the Scope of Work in Contractor's exclusions set forth on **Exhibit A** of this Agreement, is to be considered part of the Work.

2.4 Storage; Security of WTG. Prior to the date of Project Mechanical Completion, and with respect to the WTGs upon delivery of the WTGs to the Project Site by the Turbine Vendor and with respect to the step-up transformers upon delivery of the step-up transformers to the Project Site by the step-up transformer supplier, Contractor shall provide appropriate storage and security for all Owner-Furnished Equipment, including the WTGs and step-up transformers, Consumable Parts, materials, supplies and other equipment required to unload, assemble, erect and install the WTGs and other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner, incorporated in the Owner-Furnished Equipment. Contractor shall use the same care to protect any of the Owner-Furnished Equipment at any time in its possession or under its control while performing the Work as it does with its own property, and shall be responsible for any damage to such property resulting from its failure to use such care and any damage or loss to such property until the date of Project Mechanical Completion.

2.5 Compliance. The Work shall meet professional standards utilized by design and construction professionals regularly involved in wind power projects. Without limiting the generality of the foregoing, Contractor shall ensure that: (i) Contractor shall comply with, and shall cause the Work including the Contractor Facilities and all components thereof (including the design, engineering, construction and testing of the Contractor Facilities) to comply with, Applicable Standards, Applicable Laws, and this Agreement, and to be capable of being operated at all levels and operating modes, in accordance with all Applicable Laws and Applicable Permits; (ii) all engineering and design services shall be provided in accordance with this Agreement, Applicable Laws and Applicable Standards and the generally accepted standard of care, skill and diligence as would be provided by, in the case of engineering services, a prudent engineering firm, and in the case of assembly, erection and installation services, by a prudent construction firm, in each case experienced in supplying engineering services or installation services in the U.S. to power-producing entities for projects of technology, complexity and size similar to the Project; and (iii) the Work shall be performed with Contractor's best skill and judgment, in a safe, expeditious, good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Contractor shall inspect or cause to be inspected all materials and equipment to be incorporated into the Infrastructure Facilities or used in the performance of the Work and shall reject those items determined not to be in compliance with the requirements of this Agreement. Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this **Section 2.5** shall apply to all aspects of the Work, and this **Section 2.5** shall be deemed to be incorporated by reference into each provision of this Agreement describing the Work, Contractor's obligations hereunder, or referring to the "**requirements of this Agreement**" or words of similar effect.

2.6 Commencement of Work; Scheduling and Milestones.

2.6.1 Notice to Proceed. The execution of this Agreement by the Parties shall be deemed to be Owner's notice to Contractor to proceed with the Work. On the Effective Date, Contractor shall

commence and shall thereafter diligently pursue the Work assigning to it a priority that will permit the attainment of Access Road Completion on or before the Guaranteed Access Road Completion Date, and WTG Mechanical Completion on or before the Guaranteed Mechanical Completion Dates. Contractor shall proceed with the performance of the Work in accordance with the Project Schedule.

2.6.2 Project Schedule. Contractor shall perform the Work in accordance with the Project Schedule, including completing the Work required on or before the Guaranteed Access Road Completion Date and the Guaranteed Mechanical Completion Dates, as such Project Schedule may be adjusted pursuant to the terms hereof. Contractor hereby covenants and warrants to Owner that in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays (including without limitation delays due to weather and Wind Days as and to the extent provided in **Section 8.4**) incident to such Work. Contractor shall meet or achieve each Critical Milestone noted as such on the Project Schedule no later than the date set forth opposite such Milestone on such Project Schedule. Contractor shall coordinate and incorporate the schedules of all Subcontractors and Owner Subcontractors into all applicable schedules, work plans and progress reports. Contractor shall provide the Project Schedule and any updates thereto that provide for the orderly, practicable and expeditious completion of the Work in accordance with the requirements of this Agreement on a weekly basis as the Work progresses, including the incorporation of delay and acceleration analyses where appropriate; provided, however, that Contractor shall not be relieved from the obligation to meet any Milestone Date set forth on the Project Schedule unless such date is extended pursuant to a Scope Change Order, or otherwise pursuant to a written notice from Owner. The current portion of the Project Schedule and any update shall be presented electronically on a weekly basis and in such reasonable detail as Owner may require and shall address all material elements of the Work. Contractor shall submit to Owner not later than the fifth (5<sup>th</sup>) day of each month a Monthly Progress Report. Additionally, the updated and complete Project Schedule shall be made available to the Owner monthly, and as otherwise reasonably requested by Owner. Contractor shall attend and participate in daily planning meetings at the Job Site between representatives of Owner, Owner Subcontractors and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there shall be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligation to meet the Milestone Dates specified hereunder.

2.6.3 Acceleration of Work. If, at any time or from time to time, Owner determines, in its reasonable discretion, that:

- (a) Contractor has failed to show adequate progress of the Work toward completion of a Milestone included in the Project Schedule by the Milestone Date therefor, or
- (b) Contractor has failed to achieve a Milestone included in the Project Schedule by the Milestone Date therefor,

then, on each such date, after receiving a written request from Owner, Contractor shall promptly but in any event within five (5) Business Days, submit for approval by Owner a written recovery plan to complete all necessary Work to achieve completion of the remaining Milestones included in the Project Schedule by the date set forth for such Milestone in the Project Schedule. Owner shall promptly approve or submit reasonable revisions to such written recovery plan, and Contractor shall incorporate such revisions into such recovery plan and thereafter diligently prosecute the Work in accordance with such recovery plan. Approval by Owner of such recovery plan shall not (i) be deemed in any way to have relieved Contractor of its obligations under this Agreement relating to the failure to timely achieve either of the Guaranteed Access Roads Completion Date or the Guaranteed Mechanical Completion Dates, or (ii) be a basis for an increase in the Contract Price. If Contractor cannot cause prosecution of the Work to conform to the Project Schedule within ten (10) days, then Owner shall have the right to direct Contractor to accelerate the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work. In the event of any acceleration pursuant to this **Section 2.6.3**, Contractor shall cause prosecution of the Work to conform to the Project Schedule within ten (10) days. Contractor shall receive no reimbursement for costs arising out of, Contractor shall not be entitled to a Scope Change Order with respect to, and Contractor shall be solely responsible for any costs or expenses incurred by Contractor as a result of, formulation and implementation of the recovery plan or the acceleration of the Work described in this **Section 2.6.3**. This **Section 2.6.3** shall not be construed to limit any of the rights and remedies Owner may have under any provision of this Agreement. Nothing herein shall be construed to excuse, limit, alter or amend Contractor's obligations to cooperate with Owner and, where appropriate, to participate in any dispute resolution proceedings.

2.6.4 Local Contracting. Contractor will designate a coordinator of local services who will act as a liaison between any individuals, businesses and contractors residing or doing business in the State of [state project is located in] who are interested in obtaining information about providing goods or services related to the construction of the Project. Additionally, Contractor will advertise in local newspapers in [state project is located in] for local contractors to perform work on the construction of the Project.

2.7 As-Built Drawings. Contractor shall prepare and submit to Owner a complete set of as-built drawings prepared by Contractor in accordance with the requirements of this Agreement, which accurately and completely represent in reasonable detail the physical placement of the Contractor Facilities and all Owner-Furnished Equipment as assembled, erected and installed (the "**As-Built Drawings**") no later than the Scheduled Final Completion Date. Such As-Built Drawings shall also be provided in [ ] editable electronic format.

2.8 Engineering and Design; and Other.

2.8.1 Engineering. Contractor shall perform (or arrange for performance pursuant to a Subcontract executed in accordance with this Agreement) all engineering and design services for completion of the Contractor Facilities in conformity with the requirements of this Agreement. All engineering work of or on behalf of Contractor requiring certification shall be certified, and all Design Documents requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in all appropriate

jurisdictions, which engineers and their qualifications shall be subject to Owner's review under **Section 2.8.11.2**. Engineering and design specifications for Owner-Furnished Equipment are set forth in **Exhibits F and G**, and Contractor shall design, prosecute and install the Work so as to effect complete integration of the Contractor Facilities with the Owner-Furnished Equipment according to Applicable Standards.

2.8.2 Design. Contractor shall design (or arrange for design pursuant to a Subcontract executed in accordance with this Agreement) the Contractor Facilities such that they are capable of complying with the requirements of this Agreement, Applicable Laws, and Applicable Standards. No later than is reasonably necessary to achieve the Critical Milestones, Contractor shall prepare (or arrange for preparation pursuant to a Subcontract executed in accordance with this Agreement) and submit all Design Documents for the Work for Owner's review. Based on the Technical Specifications, Contractor shall prepare comprehensive Design Documents setting forth in detail the requirements for the construction of the Work. As the drawings and specifications for the Work are issued, they shall be clearly identified as Design Documents.

### 2.8.3 Review of Design Documents, Reports and Manuals.

2.8.3.1 Plan for Review Schedule. Contractor shall provide to Owner within fifteen (15) days following the Effective Date a submittal schedule setting out the anticipated dates of issue of all other Design Documents sufficient to enable Owner to plan its review of the documentation. The timing of Design Document submittals in the schedule shall coordinate with the requirements of the Wind Turbine Supply Contract so as not to cause delay of any installations or other activities thereunder. Contractor shall transmit in a timely fashion one (1) set of reproducible Design Documents as prepared by Contractor or any Subcontractor in conjunction with the performance of the Work (in addition to the final As-Built Drawings and documentation to be included in the Job Books) for each Job Book deliverable to Owner under **Section 2.8.10.2**, and, pursuant to Owner's reasonable request therefor, any additional Design Documents and drawings not listed above.

2.8.3.2 Submission of Design Documents. Contractor shall submit to Owner, periodically through the date of Project Mechanical Completion, current complete copies of the Project Design Document list, and shall submit to Owner, within a reasonable time after the request therefor, each other document and drawing that Owner requires for the construction, operation and maintenance of the Contractor Facilities. If this Agreement is terminated prior to the Project Mechanical Completion Date, Contractor shall furnish Owner with any and all final documents which have been prepared, and the most up-to-date versions of documents which are not yet final.

2.8.3.3 Owner Comment. Except as otherwise provided in this Agreement, within fifteen (15) days of receipt of any Design Document required to be submitted to it for review under this Agreement, Owner shall notify Contractor of any resulting comments or queries. If Owner fails to respond within such period, then such Design Document shall be deemed to have been reviewed by Owner. Contractor shall, within ten (10) days of Owner's notification of any comments or queries on any Design Document, amend such drawing or document or otherwise respond to Owner's comments or queries. Notwithstanding anything contained herein to the



contrary, Owner's review and/or acceptance of the Design Documents, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including, but not limited to, its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Design Documents. Owner shall notify Contractor as soon as practicable after it becomes aware of any errors in such designs; provided, however, that failure to so notify Contractor will not constitute a breach of this Agreement by Owner or otherwise affect Owner's rights under this Agreement.

2.8.3.4 Quality Assurance Plan. Attached as **Exhibit Y** is an outline draft of a quality assurance plan. Contractor shall submit to Owner a detailed quality assurance plan for Owner's review within thirty (30) days of the Effective Date, which such plan sets forth Contractor's procedures regarding quality assurance which shall (i) enable Contractor to achieve the standards in the performance of the entire Scope of Work consistent with the requirements of this Agreement, and (ii) be consistent with the requirements of this Agreement in performing the Work (the "**Quality Assurance Plan**"). Owner may provide Contractor comments respecting the Quality Assurance Plan within thirty (30) days of receipt of such plan from Contractor. If Owner's comments are reasonable changes to the Quality Assurance Plan submitted by Contractor, Contractor will effect such changes at no additional cost to Owner and resubmit such Quality Assurance Plan to Owner within ten (10) days after Contractor receives Owner's comments. Owner will have ten (10) days after such resubmission to review and provide comments to such Quality Assurance Plan resubmitted by Contractor. Such procedure shall continue with the same ten (10) day time periods until Owner accepts such Quality Assurance Plan. If Owner fails to respond within any of the applicable periods specified above, Owner shall be deemed to have agreed to the last such Quality Assurance Plan submitted by Contractor.

2.8.4 Preparatory Work. Contractor pursuant to this Agreement shall undertake all geotechnical work at and a topographical survey of, the Project Site, including any required utility locating notifications. Contractor shall undertake all necessary site preparation. All such preparatory work contained in this **Section 2.8.4** shall be performed in accordance with the requirements of this Agreement.

2.8.5 Materials, Equipment, Construction Utilities and Related Services. Contractor shall procure and supply, at its own expense, whether by producing itself or by procuring from others, all materials, equipment and services required for performance of its obligations under this Agreement (whether on or off the Project Site), including the furnishing of labor, equipment, materials and tools for performance of the Work. Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the performance and completion of the Work. All equipment and materials purchased by Contractor shall be new (except as otherwise agreed to in writing by Owner and Contractor) and of suitable grade for their respective purpose, and plant identification shall be consistent throughout the Work. Contractor shall provide appropriate storage for materials, supplies and equipment for use in performance of the Work. Contractor shall have exclusive responsibility for construction methods, means, techniques and procedures and for the establishment of and compliance with safety procedures at the Project Site. All materials, supplies and equipment which may be used in performance of the Work and

which are stored at a location other than on the Project Site shall be segregated from other materials, supplies and equipment.

**2.8.6 Obtaining, Maintaining and Identifying Applicable Permits.** Contractor shall, at its sole cost and expense, timely obtain and maintain all Contractor Permits. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits, including, without limitation, witnesses testimony, depositions, preparation of exhibits, technical calculations and attending meetings. In the event that any Applicable Permit is required for the Project or to perform the Work that is not identified in this Agreement, Contractor or Owner, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. Contractor shall, at its sole cost and expense, be obligated to obtain and maintain any Applicable Permit required to be obtained by contractors performing work in [state project is located in]. Owner shall cooperate with Contractor in obtaining any Contractor Permits. All Applicable Permits (other than any building permits (but excluding any applicable occupancy certificates) or other Applicable Permits designated as either "To be issued in the name of Contractor" or "To be issued in the name of the Owner and Contractor" on **Exhibit H**) shall be issued in the name of Owner unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Owner or otherwise requires action by Owner, Owner shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate. Owner reserves the right to review any such application of Contractor; provided, however, that Owner's exercise of such right shall not under any circumstances, be considered an approval of the necessity, effect or contents of such application or related permit. Contractor shall deliver to Owner true and complete copies of all Applicable Permits obtained by Contractor upon its receipt thereof. Contractor shall notify Owner in writing if it has or hereafter obtains knowledge of any Applicable Permits or other government requirements necessary for performance of the Work but not identified in this Agreement. Contractor agrees that it has reviewed and accepted all terms and conditions of all Applicable Permits identified on **Exhibit H** and that Contractor shall not be entitled to a Scope Change in respect of the costs or schedule effects associated with compliance with such Applicable Permits. Contractor shall indemnify, defend and hold harmless Owner from and against all claims, losses, damages, expenses and liability (including attorney's fees and expenses) that Owner may incur as a result of signing any such Permit applications at Contractor's request, pursuant to this **Section 2.8.6**.

**2.8.7 Real Property Rights; Site-Specific Requirements.** Contractor shall comply with the terms of the Real Property Rights. As of the date hereof, Contractor represents and warrants that it has reasonably inspected and is familiar with the Project Site and the Real Property Rights as described in **Exhibit K**, and that (i) other than with respect to the status of Owner's title thereto (as to which Contractor makes no representation or warranty), nothing has come to the Contractor's attention that would lead it to believe that the Project Site and such Real Property Rights are not sufficient for Contractor to undertake and complete that portion of the Work to be located on such portion of the Project Site as described in such **Exhibit K** in accordance with the requirements of this Agreement, and (ii) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming the occurrence of a Force Majeure Event. Contractor shall provide all necessary information and documents within the

Scope of Work and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems, provided however, Owner shall be responsible for resolving such problems and timely obtaining Real Property Rights.

If the Real Property Rights do not allow the Contractor's currently contemplated route of access to the Project Site, the construction and use of alternative routes of access to the Project Site shall be at Contractor's sole cost and expense. If any lack of necessary Real Property Rights requires relocation of any utilities, transmission lines or other facilities from their existing or currently planned location, the Contractor shall bear the sole construction cost associated with relocating any such utilities, transmission lines or other facilities. Contractor shall not enter into any agreements regarding Real Property Rights without Owner's consent to the terms of such agreement, which consent will not be unreasonably withheld. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems. Contractor shall be required to reimburse Owner for any payment Owner is required to make to any other party to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work; provided that in no event shall Contractor be required to reimburse Owner for any operating period payments or other similar rental payments required to be made to landowners pursuant to the Real Property Rights agreements.

Contractor acknowledges that the Project Site is located on a former coal mine site, which has been reclaimed to federal and state standards and is under regulatory scrutiny of the Wyoming Department of Environmental Quality - Land Quality Division for regulatory performance. Contractor further acknowledges that Owner's reclamation activities are intended to result in the release of reclamation bonds. Contractor shall comply with all Applicable Laws and shall attend orientation meetings prior to commencement of the Work to understand concerns related to reclamation. Contractor shall designate a project manager to coordinate on-site activities with Owner's on-site reclamation/environmental specialist. Contractor further acknowledges that authority to locate, travel, access and perform the Work is allowed only on designated areas and travel ways having received the necessary post-mining land use change, as described on **Exhibit [BB]**, and access to and from the Project Site shall be via locked gates, which gates shall be locked daily at end of each shift. Hunting shall not be allowed.]

2.8.8 Consumable Parts. Contractor shall supply within the Contract Price all consumable parts required for assembling, erecting, installing, testing or otherwise performing the Work (the "**Consumable Parts**") (excluding consumable parts comprising the Owner-Furnished Equipment). All Consumable Parts not used during Project start-up and testing shall become the property of Owner.

2.8.9 List of Consumable Parts and Spare Parts. Sufficiently in advance of the first WTG Mechanical Completion Date to allow Owner to purchase timely and assemble and store same at the Project Site at or prior to commercial operation of the Project, Contractor shall provide a general list in Microsoft Excel format of recommended spare parts necessary to operate and maintain the Project (excluding spare parts comprising the Owner-Furnished Equipment) (the “**Spare Parts**”) and Consumable Parts necessary to operate and maintain the Project. For each Spare Part, the list shall indicate price, delivery lead time and maintenance cycle, if any, and shall be in Microsoft Excel format.

#### 2.8.10 Operating Manuals and Job Books.

2.8.10.1 Operating Manuals and Procedures. Contractor shall submit for Owner’s written approval a draft of the Operating Manual and operating procedures which shall be part of the Job Books and submitted and revised as provided in **Section 2.8.10.2.**

2.8.10.2 Job Books. Not later than the Project Mechanical Completion Date, Contractor shall deliver to Owner for Owner’s review and approval three (3) copies of the final Job Books, substantially in the format and having the contents set forth in **Exhibit Z.** The Job Books shall be prepared in English only. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an editable electronic copy of such information; and Owner shall have a non-exclusive, irrevocable, royalty-free license to use such information for the purposes of construction, operation, maintenance, service, and/or repair of the Project.

2.8.10.3 Contractor-Provided Training. Contractor shall provide on-the-job training in the specific operation and maintenance of the Project (specifically other than the Owner-Furnished Equipment) and shall coordinate and conduct all training sessions with competent trainers in a manner sufficient to provide the O&M Personnel with an adequate understanding of the basic and principal design, and the operation and maintenance aspects, of each dimension of the Contractor Facilities as an integrated part of the Infrastructure Facilities, such that Owner’s O&M Personnel are capable of operating and maintaining the facilities and components so that it shall comply with this Agreement and the requirements of manufacturers’ warranties and this Agreement. The cost of the O&M Personnel’s travel, lodging, food and other living expenses shall be borne by Owner.

#### 2.8.11 Labor and Personnel.

2.8.11.1 Engagement of Labor. Contractor shall provide, manage, oversee, hire, remove, promote and transfer all labor and personnel required in connection with the performance of the Work and of its obligations hereunder, all of whom shall have had experience (in the case of supervisors, managers and other key personnel) and appropriate levels of experience (in the case of other personnel) performing work similar in technology and magnitude to those portions of the Work each will perform on the Project, including: (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing; (b) a project engineer; (c) competent on-site staff to perform the Work; and (d) assembly, erection, installation, construction, testing, training and quality assurance

personnel and supervisors, all or a majority of whom shall have had experience with wind turbine equipment similar to the WTG in technology and magnitude and all of whom are competent to perform their assigned duties in a safe and secure manner. The Contractor shall use all reasonable efforts to cause its Subcontractors to adhere to the same standard with respect to their Labor. Contractor agrees, where required by Applicable Law, to employ only licensed personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed in accordance with Applicable Standards. To the extent required or necessary for the proper performance of the Work, Labor shall have received formal documented training in their area of expertise and, if applicable, certification.

2.8.11.2 Owner Review of Labor; Contractor Information. Contractor shall provide Owner with its corporate organizational chart (with names, titles and functions), as well as information as to the Contractor's key supervisory personnel and representatives both on the Job Site and at Contractor's home office. Upon Owner's request, Contractor shall provide Owner with the resumes of, and arrange for the interview by Owner of, any or all personnel employed in connection with the Work and Owner may require the replacement of any such personnel, at Contractor's sole expense if such person is not fully qualified to perform the Work, is impeding the orderly progress of the Work, or is otherwise causing interference or delays with respect to the Project. Rejection of Contractor's personnel by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under this Agreement.

2.8.11.3 Alcohol and Drugs. Contractor shall not possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law and so as not to interfere in any way with the proper execution of the Work) at the Job Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor and shall at all times assure that the Job Site is kept free of all such substances. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Job Site any person (whether in the charge of Contractor or any Subcontractor) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such person's performance of any portion of the Work, excluding any person using a prescription drug under supervision and approval from a medical doctor (provided the prescription drug does not interfere in any way with the proper execution of the Work), or any other person who does or whose actions may create any unsafe condition or other situation that may cause damage or harm to any person or property. Contractor shall also comply with the Owner's Drug & Alcohol Policy attached hereto as **Exhibit L**.

2.8.11.4 Arms and Ammunition. Except as required for Job Site security performed by specifically designated security personnel, Contractor shall not possess, give, barter or otherwise dispose of, to any person or persons, any arms or ammunition of any kind at the Job Site, or permit or suffer the same as aforesaid and shall at all times assure that the Job Site is kept free from arms and ammunition.

2.8.11.5 Disorderly Conduct. Contractor shall be responsible for the conduct and deeds of its Labor and its Subcontractors' Labor relating to this Agreement and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such Labor and for the preservation of peace, protection and safety of Persons and property in the area of the Job Site against the same. Contractor shall not interfere with any members of any authorized police, military or security force in the execution of their duties.

2.8.11.6 Labor Disputes. Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Taking account of the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.8.11.7 Personnel Documents. Contractor shall ensure that all its personnel and personnel of any Subcontractors performing the Work are, and at all times shall be, in possession of all such documents (including, without limitation, visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

2.8.11.8 Bilingual Employees. Contractor shall employ such reasonable number of bilingual employees as are reasonably necessary so as to ensure that use of non-English-speaking or limited-English-speaking employees by the Contractor or any of its Subcontractors will not impede or adversely affect the efficient and safe prosecution of the Work.

## 2.8.12 Safety and Emergencies.

2.8.12.1 Safety. Contractor shall initiate and maintain safety precautions and programs to conform with Applicable Laws and Applicable Standards designed to prevent injury to all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Owner, Contractor and its Subcontractors, and other Owner Subcontractors) and all public and private property (including structures, sewers and service facilities at the Job Site) that are at the Job Site or that could be affected by the performance of the Work. Such precautions and programs shall include prevention of injury by local flora and fauna. Contractor shall erect and maintain reasonable safeguards for the protection of workers and the public. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. Contractor shall, and shall cause all of its employees, agents and Subcontractors to, follow the safety plan as referenced in **Exhibit P** and to follow all other safety measures and procedures implemented by the Owner at the Project Site. Without limiting the generality of the foregoing, Contractor shall furnish and maintain all necessary safety equipment such as barriers, signs,

warning lights and guards as required to provide adequate protection to persons and property. In addition, Contractor shall give reasonable notice to owners of public and private property and utilities on or off the Job Site when such property is susceptible to injury or damage through the performance of the Work and shall make all necessary arrangements with such owners relative to the removal and replacement of protection of such property or utilities. As between the Parties, Contractor shall be responsible for (i) all damage it and its Subcontractors cause to public roads and highways, and (ii) all damage caused by it and its Subcontractors to private roads or property of third parties (including utilities), in each case in connection with performance of the Work.

2.8.12.2 Emergencies. In the event of any emergency endangering persons or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Owner. Whenever Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, Owner may, but shall be under no obligation to, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner's failure to do so shall not limit Contractor's obligations or liability hereunder. Contractor shall reimburse Owner for any costs incurred by Owner in taking such actions in the event of an emergency. Contractor shall assist Owner in any safety or accident investigation, and promptly provide information as requested by Owner related thereto.

2.8.12.3 Security. Contractor shall be responsible for the security and protection of the equipment, machinery and components comprising the Contractor Facilities and the Owner-Furnished Equipment upon delivery of such equipment to the Project Site through the date of Project Mechanical Completion, and for the other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Final Completion. Contractor shall take reasonable precautions to protect the Project Site. Contractor shall use the same care to protect any of Owner's property at any time in its possession or under its control while performing the Work as it does with its own property and shall be responsible for any damage to such property. Without limiting the foregoing provisions of this Section 2.8.12.3, security will be provided by the Contractor to control entry to the Project Site. Contractor-provided security personnel will enforce adherence to Owner's and Contractor's policies and procedures. Any necessary security fence at the Project Site will be provided and constructed by the Contractor. The fenced area will be used to prevent unauthorized entry and exit. Owner retains the right to restrict any individual's access to the Project Site and will be authorized to utilize the Contractor's security personnel to enforce this right. The Contractor will be responsible for bracing all Contractor personnel. In addition, the Contractor will provide for the security of its construction, letdown material, storage, office and parking area. The security for the Contractor's and the various subcontractors' tools, equipment, and materials will be the responsibility of the Contractor's and the various subcontractors, but not Owner's responsibility. All Contractor and subcontractor personnel employed at the Project Site will have a form of personal identification. This identification must be kept in the possession of all site personnel at all times while on the Project Site and will be presented for identification upon request. All visitors to the Project Site will enter by the main gate and are required to produce identification upon request and obtain clearance from the party to be visited through the security personnel, and complete and sign the

visitor registration upon entering the facility. The visitor will be issued a pass, hardhat, safety glasses, and earplugs and shall be escorted while at the Project Site. At the conclusion of the visit, the visitor will return all items to the security personnel at the main gate. Camera systems and/or other security systems will be in place to deter and document unauthorized activities at the Project Site. All personnel, vehicles, and equipment are subject to search while on the Project Site. Security personnel will be assigned assembly and accountability duties for personnel on site in cases of emergencies. A list will be maintained of all personnel on site at any particular time and date. Security personnel will not be armed and will be backed up with the local sheriff's department and other law enforcement agencies.

### 2.8.13 Hazardous Materials.

2.8.13.1 Contractor Duty to Monitor Compliance. Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Materials and all Applicable Permits. Without limiting the generality of the foregoing: (i) Contractor shall, and shall cause its Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Materials that are necessary, customary or advisable for the performance of the Work. Contractor shall, and shall cause its Subcontractors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Materials under this Agreement if and as required under Applicable Laws or Applicable Permits; (ii) Contractor shall conduct its activities under this Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Materials by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to, or otherwise in violation of, any Applicable Law; (iii) Contractor shall not cause or allow the release or disposal of Hazardous Materials at the Job Site, bring Hazardous Materials to the Job Site, or transport Hazardous Materials from the Job Site, except in accordance with Applicable Law and Applicable Permits. Contractor shall be responsible for the management of and proper disposal of all Hazardous Materials brought onto the Job Site by it or its Subcontractors, if any. Contractor shall cause all such Hazardous Materials brought onto the Job Site by it or its Subcontractors, if any, (A) to be transported only by carriers maintaining valid permits and operating in compliance with such permits and laws regarding Hazardous Materials pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (B) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such permits and laws regarding Hazardous Materials, from which, to the best of Contractor's knowledge, there has been and will be no release of Hazardous Materials. Contractor shall submit to Owner a list of all Hazardous Materials to be brought onto the Job Site prior to bringing such Hazardous Materials onto the Job Site. Contractor shall keep Owner informed as to the status of all Hazardous Materials on the Job Site and disposal of all Hazardous Materials by Contractor or any Subcontractor or any of their respective agents or employees from the Job Site. Notwithstanding the foregoing, Contractor shall not be responsible for the release or disposal of Pre-Existing Hazardous Materials, except to the extent such release is caused by Contractor's negligent acts or omissions and Contractor shall at no time be deemed to be the owner or be deemed to have title to such Pre-Existing Hazardous Materials.



2.8.13.2 Environmental Releases. If Contractor or any of its Subcontractors releases any Hazardous Materials on, at, or from the Job Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Materials on, at, or from the Job Site during the Work, Contractor, as soon as it becomes aware of such occurrence, shall immediately notify Owner in writing. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area. At Owner's request, Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by any Hazardous Materials that were brought onto the Job Site by Contractor or any of its Subcontractors, whether on or off the Job Site. If Contractor discovers any Pre-Existing Hazardous Materials that have been stored, released or disposed of at the Project Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor and its agents, officers, and employees from and against claims, damages, losses, and expenses, including but not limited to judgments, the cost of remediation of a Pre-Existing Hazardous Material, fines, penalties, civil sanctions, and attorneys fees, arising out of or resulting from Pre-Existing Hazardous Material, except to the extent that such claim, damage, loss or expense is due to the negligence of a party seeking indemnity.

2.8.13.3 Record-keeping. Contractor shall minimize the use of Hazardous Materials in performance of the Work and shall not utilize, or permit or cause or permit any Subcontractor to utilize, such Hazardous Materials as are prohibited under Applicable Laws from being imported into or used in the United States. Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Materials used by Contractor or its Subcontractors in connection with performance of the Work at or near the Project Site or at any construction area related to the Project.

2.8.14 Start-Up and Testing. Contractor shall perform the start-up and testing of the Contractor Facilities, including the calibration and functional testing of all controls and equipment in accordance with **Exhibits A, D, E and F**. Contractor shall conduct all start-up, synchronization, operation and testing of the Contractor Facilities in accordance with this Agreement, applicable manufacturers' instructions and warranty requirements, Applicable Laws, Applicable Standards, Applicable Permits, and any and all applicable rules as agreed to by Owner and the Contractor. Owner and its respective authorized representatives shall have the right to inspect the Work and to be present during the start-up, synchronization, operation and testing of the Contractor Facilities.

2.8.15 Clean-up; Non-Interference. Contractor shall at all times keep the Project Site reasonably free from waste materials and rubbish related to the Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. During the period from WTG Mechanical Completion to Final Completion, Contractor's performance of the Work shall not unreasonably interfere with the Commissioning of the WTGs or the commercial operation of the Project. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of **Article XIII**, Contractor shall: (i) remove all Contractor equipment from the Job Site (other than equipment, supplies and

materials necessary or useful to the operation or maintenance of the Project and equipment, supplies and materials directed by Owner to remain at the Job Site until completion of the Project); (ii) clean out all conduits; (iii) tear down and remove all temporary structures on the Job Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed power plant; (iv) remove all waste and rubbish from and around the Job Site; and (v) re-grade areas disturbed during the Work, as required by this Agreement and the conveyances and other documentation creating the Real Property Rights. During construction of the Project, Contractor shall use commercially reasonable efforts to minimize the disruption to public roads caused by the construction process and to repair any damages caused to a public road by Contractor during the construction process. After construction, Contractor shall leave such public roads in a state of equal condition as they were prior to construction, excepting normal wear and tear.

2.8.16 Waste Disposal. Contractor shall arrange and contract for the disposal, transportation, record-keeping and reporting of Hazardous Materials generated by or produced in connection with Contractor's performance of the Work and from the operation of the Project prior to Project Mechanical Completion from the Project by licensed, insured, competent and professional contractors in a safe manner and in accordance with Applicable Law and any Governmental Authority requirements.

2.8.17 Books and Records; Taxes. Contractor shall keep such full and detailed books, records and accounts as may be necessary for proper financial management under this Agreement. In addition, within a reasonable period of time after a request therefor, Contractor shall provide Owner with any information regarding quantities and descriptions of the Work that Owner reasonably deems necessary in connection with the preparation of its Tax returns and other regulatory compliance filings.

2.9 Delivery and Unloading of Owner-Furnished Equipment. Contractor shall unload the WTGs in compliance with the Wind Turbine Supply Contract, and Contractor shall be responsible for any reasonable costs and demurrage resulting from Contractor's failure to unload the WTGs in accordance with the terms and conditions of the Wind Turbine Supply Contract. Contractor shall unload the step-up transformers in compliance with **Exhibit G**, and Contractor shall be responsible for any reasonable costs and demurrage resulting from Contractor's failure to unload the step-up transformers in accordance with **Exhibit G**.

2.10 Interconnection. Contractor shall be responsible for performing all Work necessary to interconnect the WTGs, the Project Substation and other components of the Work, as set forth in the Scope of Work and Technical Specifications, and in compliance with the Interconnection Agreement.

2.11 Owner's Right to Inspect; Correction of Defects.

2.11.1 Right to Inspect. Owner and representatives authorized by Owner shall have the right to inspect the Work and to maintain personnel at the Project Site for such purpose, which representatives will comply with Contractor's safety plan as referenced in **Exhibit P**. Contractor shall give Owner at least one (1) Business Day's written notice of covering of any portion of the

Work. If any portion of the Work should be covered without proper notice to Owner or contrary to the requirements in this Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If Owner does not object to any properly noticed covering of any portion of the Work or request to view such work prior to its covering, Owner shall bear the cost of uncovering such work unless such portion of the Work is found not to be in accordance with the requirements of this Agreement, in which case, the cost and scheduling risk of uncovering, replacement and re-covering shall be charged to Contractor. If such other portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs and provide an extension of time to perform pursuant to an appropriate Scope Change Order in accordance with **Article IX**. Such inspection (or lack of inspection) of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work, including correcting any Defect, in accordance with this Agreement.

2.11.2 Correction of Defects. Contractor shall at its own cost and expense correct or replace any Work that contains a Defect, or is not otherwise in accordance with this Agreement. Equipment that has been replaced, if situated on the Job Site, shall be removed by Contractor from the Job Site at Contractor's own cost and expense. If Contractor or any Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and Contractor fails within a reasonable period of time (as reasonably determined by Contractor) after it knows or should have known of such default or neglects to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have under this Agreement, correct such deficiencies. In such event, an appropriate Scope Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such deficiencies, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within three (3) days from Owner's request therefor. Contractor shall correct any and all deficiencies as required by this Agreement notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section shall modify Contractor's obligation to achieve Final Completion in accordance with this Agreement.

2.12 No Liens. Contractor shall, at Contractor's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within ten (10) days after receipt of a written demand from Owner, any Lien in respect to the Project, this Agreement, the Work, the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing labor or materials within the scope of Contractor's Work. Notwithstanding the foregoing provision, as long as Owner, in its sole discretion, determines that the Job Site and the improvements thereon will not be subject to any liability, penalty or forfeiture, upon the written request of Contractor, Owner may permit Contractor to contest the validity, enforceability or applicability of any such Lien, in which event Owner shall provide, at no cost to Owner, such cooperation as Contractor may reasonably request in connection therewith. Contractor agrees to refrain from filing a lien statement or similar instrument until five (5) days before the expiration of the statutory period for filing liens,

and to prevent each Subcontractor in its subcontract from doing the same. Upon the failure of Contractor to promptly discharge or cause to be released any Lien as required by this **Section 2.12**, within thirty (30) days of notice of the existence thereof, Owner may, but shall not be obligated to, pay, discharge or obtain a surety bond for such Lien and, upon such payment, discharge or posting of surety bond therefor, shall be entitled to immediately recover from Contractor the amount thereof together with all expenses incurred by Owner in connection with such payment, discharge or posting, or set off all such amounts against any sums owed by Owner to Contractor. Notwithstanding any provision in this Agreement to the contrary, nothing herein shall affect Contractor's right to file or otherwise place any Lien on the Project, the Equipment, the Work or the Job Site, as a result of non-payment by Owner of any undisputed amounts owing to Contractor under this Agreement.

2.13 Cooperation. Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, Applicable Permits and Owner's Commissioning of the WTGs. Contractor acknowledges that work may be performed by others (including without limitation the Turbine Vendor and other Owner Subcontractors) at the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that Owner, through itself or through its employees, subcontractors or agents, will continue to work and perform activities in connection therewith at the Job Site during the execution of the Work under this Agreement. Contractor shall cooperate and cause its Subcontractors to cooperate with Owner, Owner's representatives and Owner Subcontractors who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors unreasonably hinders or increases the work being done by Owner and other unrelated contractors. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by Owner, whether such Work is partially or entirely complete, when, in the reasonable judgment of Owner, such access or use is necessary for the performance and completion of the work of others. All material and labor shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by this Agreement. In addition, Contractor shall use reasonable efforts, and cause its Subcontractors to use their reasonable efforts, to assist Owner in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the host community caused by the construction of the Project. Such programs shall include: (i) sequencing of the Work so as to minimize the impacts of noise and dust at and around the Job Site and (ii) using local labor and other resources whenever reasonably possible and cost effective. Owner shall require Owner Subcontractors to similarly cooperate with Contractor and to comply with Contractor's safety plan and safety requirements.

2.14 FAA Lighting. Upon Owner's request, Contractor shall supply and install the FAA lighting required for each WTG. Owner shall pay Contractor the per unit price set forth on **Exhibit B-3** for each WTG that Contractor installs the FAA required lighting.

2.15 Site Specific Requirements. Contractor

**ARTICLE  
SUBCONTRACTORS**

**III**

3.1 Subcontractors. Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written subcontracts between Contractor and such Subcontractors. Owner agrees to the use and engagement of Subcontractors by Contractor, provided, that Contractor may not enter into any contract with a Major Subcontractor unless the Major Subcontractor is named on **Exhibit I** or has been approved by Owner in accordance with **Section 3.2** and that Contractor shall provide Owner with the right to inspect all aspects of the Work at facilities of each Major Subcontractor during business hours and upon reasonable notice. Except as otherwise expressly provided in this Agreement, Contractor shall be solely responsible for engaging, managing, supervising and paying all such Subcontractors. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors are received, inspected and otherwise furnished in accordance with this Agreement, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of such Subcontractors. All contracts with Subcontractors shall be consistent with the terms and provisions of this Agreement. At a minimum, all Subcontracts shall require the Subcontractors to comply with Applicable Laws and Applicable Permits, shall provide that Owner has the right of inspection as provided hereunder and require such Subcontractors to (a) be subject to the labor obligations hereunder as well as the safety and security provisions of this Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the Equipment, (c) provide certificates of insurance as set forth herein, (d) be subject to the dispute resolution procedures as required herein and (e) provide partial Lien waivers in connection with each payment by Owner to Contractor (and final Lien waivers upon completion of the Work and Owner's payment therefor) with respect to any interest in the Project Site, the Equipment and the Owner-Furnished Equipment in advance of performing any portion of the Work. All Subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to enter into similar agreements with other Subcontractors. Except as hereinafter provided, no contractual relationship shall exist between Owner and any Subcontractor with respect to the Work to be performed hereunder. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of this Agreement. No Subcontractor is intended to be nor shall be deemed a third party beneficiary of this Agreement. Contractor agrees that it shall be fully responsible to Owner for the acts and omissions of Subcontractors and of Persons directly or indirectly employed by them, as it is for the acts or omissions of Persons directly employed by Contractor. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor in connection with the Project.

3.1.1 Assignment. No subcontract or purchase order between Contractor and Persons other than the Owner shall bind or purport to bind Owner, but each Major Subcontractor entering into a subcontract with respect to the Work shall name Owner as an intended third-party beneficiary and contain a provision substantially in the form of **Exhibit J** permitting its assignment to Owner

upon Owner's written request, following default by Contractor or termination or expiration of this Agreement.

3.1.2 Subcontractor Warranties. Without in any way derogating Contractor's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Work, Contractor shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, equipment, tools, supplies, and other items furnished by such Subcontractors. Contractor shall assign all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Owner, and without recourse to Contractor, to Owner upon default by Contractor or upon any termination or expiration of this Agreement; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Contractor has any liability under this Agreement. To the extent assignable, Contractor hereby assigns to Owner, effective as of the end of the Warranty Period for the Project, all representations, warranties, guaranties and obligations of all Subcontractors.

3.2 Major Subcontracts. Appended to this Agreement, as **Exhibit I**, is a list of approved Subcontractors. In the event that Contractor is considering the selection of a Subcontractor not listed in **Exhibit I** for a Major Subcontract, Contractor shall: (i) notify Owner of the proposed Major Subcontractor at the earliest practical point in its selection process and furnish to Owner all information reasonably requested by Owner with respect to the qualifications of proposed Major Subcontractors; and (ii) notify Owner no less than fifteen (15) Business Days prior to the proposed date of execution of a Major Subcontract. Owner shall have the right to reject for good cause any proposed Major Subcontractor and Contractor shall not enter into any Major Subcontract with a proposed Major Subcontractor rejected by Owner. Owner shall undertake in good faith to review the information provided by Contractor expeditiously and shall notify Contractor of any such rejection as soon as practicable after such decision is made. If at the end of the fifteen (15) Business Days after receipt of such information by Owner, Contractor has not received notice of Owner's rejection of the proposed Major Subcontractor, Contractor shall have the right to execute such agreement with the proposed Major Subcontractor, and such Major Subcontractor shall be deemed added to the list of approved Subcontractors in **Exhibit I**. Approval (or deemed approval) of any Major Subcontractor under this paragraph shall only be for the portion of the Work so approved. Contractor hereby acknowledges and agrees that the review and/or acceptance of any Subcontract by Owner and the acceptance of the approved Major Subcontractors shall not: (i) modify, in any way, the obligations of Contractor pursuant to this Agreement; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with this Agreement.

**ARTICLE**  
**CONTRACT PRICE**

**IV**

4.1 Contract Price. As consideration to Contractor for completing and furnishing the Work, Owner agrees to pay Contractor an amount equal to \_\_\_\_\_

Dollars (\$ \_\_\_\_\_), as full payment for all Work to be performed by Contractor under this Agreement, as may be adjusted pursuant to **Article IX** (the “**Contract Price**”). The Contract Price shall be increased by the amounts required to be paid by Owner to Contractor in accordance with **Section 2.14**. The following amounts and only the following amounts that may be payable to Contractor pursuant to the terms hereof are in addition to the Contract Price: (i) interest, if any, payable hereunder on delayed payments by Owner; (ii) Sales Tax reimbursement, if any, pursuant to **Section 4.2**; (iii) indemnification pursuant to **Article X**; and (iv) the Termination Payment, if any. The Contract Price is stated in U.S. Dollars and is not subject to adjustment for exchange rate fluctuations.

4.2 **Taxes.** Except as otherwise provided herein, Contractor shall pay all Import Taxes and any other Taxes levied on the Work, including without limitation, Sales Taxes on any of the materials and Work to construct the access roads, taxes based on or related to the income, receipt, capital or net worth of Contractor, Contractor’s or its Subcontractors’ labor or income, but excluding (i) net income taxes or franchise taxes imposed on Owner and (ii) real property taxes assessed against the Project Site and any permanent use charges or assessments such as water or sewer (but excluding charges and taxes for construction utilities and fuel to be supplied by Contractor as required hereunder, which shall be Contractor’s responsibility). When requested by Owner, Contractor shall make available to Owner and claim any and all applicable Sales Tax exemptions, credits or deductions relating to the Work available to itself or Owner, including (but not limited to) any exemption for wind energy conversion property, sale-for-resale exemption, and any manufacturing machinery and/or equipment exemption. At the direction of Owner, Contractor agrees to take such action as may be reasonably required to allow any of the property included within the Project to qualify for any applicable Sales Tax exemption. If required in connection with the purchase of any property from its vendors, Contractor agrees to provide its vendors resale certificates reflecting the fact that Contractor is purchasing such property for resale to Owner. To the extent Contractor is required by Applicable Law to collect Sales Tax from Owner, Contractor shall either collect Sales Tax from Owner on all materials physically incorporated in the Project that are not subject to exemption or Owner shall provide Contractor with a direct pay certificate issued to Owner by the applicable taxing jurisdiction. In the event that an assessment for Sales Taxes is levied against Contractor, Contractor shall promptly notify Owner and furnish to Owner a copy of such assessment. If Owner determines that the assessment should be contested and so notifies Contractor in writing, Owner may, at Owner’s sole cost and expense, file such documents as are necessary to contest such assessment. Owner shall exclusively control any contest, assessment or other action regarding any such taxes or assessments, or any penalties or interest in respect thereof. Contractor shall cooperate with and assist Owner, at Owner’s expense, in any contest or proceeding relating to Sales Taxes payable by Owner hereunder. If Owner provides to Contractor the necessary resale and exemption certificates under Applicable Law, Contractor shall not collect Sales Taxes from Owner; provided, that notwithstanding the provision of such certificates, Owner shall remain liable for such Sales Taxes that actually become due and shall reimburse Contractor for any amounts Contractor pays relating thereto, including any interest and penalties and other costs incurred by Contractor as a result of Owner not paying such taxes. Contractor shall timely administer and pay all Taxes for which Contractor is responsible, and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and furnish copies of such information and reports (other than information specifically pertaining

to Contractor's income and profit) to Owner. Contractor shall provide to Owner such further information reasonably requested by Owner to confirm that the correct amount of sale and use tax or other like-taxes will be paid on the Work and the Project.

Notwithstanding the foregoing, Contractor shall not be liable for and the Contract Price shall not include any Sales Taxes (other than Sales Taxes on access road materials and related Work). If Contractor is requested to pay such Sales Taxes not included in the Contract Price, then Owner shall reimburse Contractor for any and all such Sales Taxes paid by Contractor. Contractor shall invoice Owner for any such Sales Taxes, and the invoice shall include sufficient detail so that Owner can verify that the Sales Tax is appropriate.

4.3 Payment of the Contract Price. As full consideration for the satisfactory performance of Contractor's obligations under this Contract, (i) within five (5) Business Days of the Effective Date, Owner shall pay to Contractor the initial payment amount set out in **Exhibit B-1** (the "**Down Payment**"), and (ii) Owner will pay Contractor the Contract Price in accordance with Exhibit B-1 "Payment Milestones."

Owner shall pay Contractor all undisputed invoice amounts within twenty-one (21) days after receipt of a Request for Payment, as set forth below, in strict accordance with the Payment Milestones, less a retention as set forth in **Section 4.5**, however in no event shall any payment be due and owing until such time as the Work has been satisfactorily completed and accepted by Owner pursuant to the procedures set forth in Exhibit B-1 "Payment Milestones" and all other conditions have been satisfied. No payment shall be made unless the Contractor has achieved the Milestone for which the payment is requested prior to the Contractor submitting its Request for Payment with respect thereto.

Contractor shall, on the first (1st) day of each calendar month (or the following Business Day if the first (1st) of the month is not a Business Day), prepare and submit to Owner an application for payment (each, a "**Request for Payment**") in the form set forth in **Exhibit B-2** hereto specifying (i) components of the Work corresponding to Milestones set forth in the Payment Milestones which have achieved completion, (ii) the Work completed during the period commencing upon the date of the Request for Payment for the prior period and ending on the date of the Request for Payment for the current period, and (iii) the total payment sought in the Request for Payment based upon the Payment Milestones, including the appropriate supporting documentation of the foregoing including, but not limited to, any certificates of completion, as applicable.

Payment Milestones have been selected to clearly identify the actual status of Work completed, rather than anticipated Project Schedules. This will establish a tangible basis for mutual agreement that the Milestone objective has been met.

The Owner will consider all Work complete only when the Work is completed in accordance with the terms and conditions of this Agreement including, all training and documentation has been provided, all equipment and spares have been provided, the construction Work is finished, the final product has been inspected and tested, all make good deficiencies are corrected, all liquidated damages have been reconciled and paid and the equipment and the Work is operating



in a condition reasonably satisfactory to Owner, as specified herein.

4.4 Disputed Invoices. If there is any dispute about any amount invoiced by Contractor, the amount not in dispute shall be paid by Owner in accordance with this Agreement. Any such amount that is ultimately determined to have been payable shall be paid with interest calculated as provided in **Section 4.10**. If a payment dispute arises, Contractor shall continue its performance under this Agreement.

4.5 Retainage. There shall be withheld as retainage from each payment due and payable to Contractor hereunder (other than the Down Payment and payments due upon and after Project Mechanical Completion) fifteen percent (15%) of the amount of such payment (the "**Retainage**"). Such amount shall be held by Owner as security for the performance of Contractor's obligations hereunder and any interest thereon shall accrue for the account of Owner and not Contractor. As a form of Retainage, Contractor may post a letter of credit on terms and with such institutions as are reasonably acceptable to Owner, and the amount thereof shall be adjusted with each payment by Owner to equal the amount of the Retainage which would be otherwise withheld from time to time under this Agreement. Owner may use the Retainage to cure a Contractor Event of Default, for Mechanical Completion Delay Liquidated Damages, for payment of unpaid suppliers and payments made to remove Liens filed by Subcontractors, and any and all other amounts payable to Owner hereunder. Except as set forth in the next sentence, Owner shall hold the aggregate amount of the Retainage until the Project Mechanical Completion Date. On such date, Owner, as security for performance of Contractor's obligations to complete any remaining items on the Punch List, shall continue to withhold two hundred percent (200%) of the estimated cost to complete the items on the Punch List (which shall, for purposes of this **Section 4.5 and Section 6.6**, be deemed to include the value of Contractor deliverables required to be provided to Owner hereunder as a prerequisite to the achievement of Final Completion, including without limitation, Lien releases, As-Built Drawings, and other required documentation, as well as the value of performance of Job Site clean-up and other post-construction activities) as such costs are reasonably estimated by Owner. Subject to retention as security for completion of Punch List Items, at Final Completion Owner shall release to Contractor the remaining portion of the Retainage. Any interest accruing on such amount shall accrue for the account of Owner and not Contractor.

4.6 Conditions of Payment. Contractor's right to receive any payment to be paid to it hereunder is conditioned upon its submitting to Owner, in a form reasonably acceptable to Owner, evidence of achievement for that portion of the Work required to be achieved prior to such milestone payment, and appropriate written waivers and releases of Liens and security interests from all Subcontractors and other third parties to the extent of such payment and duly executed by Contractor and its Subcontractors in the applicable form set forth as **Exhibit AA** in order to assure an effective release to the extent permitted under Applicable Laws. To the extent of payments received (including payments received at the time of execution of such release) by Contractor, each waiver and release of Liens by a Subcontractor shall provide that all amounts that were due and payable to the certifying party in connection with the Work as of such date have been paid in full (subject to proper retention by Contractor pursuant to its Subcontract with such Person) and that the certifying party waives, releases or relinquishes any Lien, security interest or claim (whether for breach of contract, pursuant to Applicable Laws or otherwise) to

the extent set out in the first sentence of this subsection on account of the work to which it may be entitled by Applicable Laws (or this Agreement, in the case of Contractor). Contractor shall obtain such waiver and release of Lien in the form of a partial release effective upon delivery in accordance with Applicable Law. Notwithstanding the foregoing, Contractor shall at all times, with respect to any claim, have the option to bond with a reputable surety company any claim or Lien of any Subcontractor that Contractor is disputing in good faith, in lieu of paying or discharging the same. Contractor's obligation to provide the foregoing releases, waivers and bonds shall not excuse its obligation under **Section 2.12** to prevent or minimize their filing in the first instance. Within thirty (30) days after its receipt of a Request for Payment, provided that Contractor has satisfied the foregoing conditions, Owner shall pay to Contractor the amount that remains after the deduction from the amount requested in the applicable Request for Payment of the following amounts: (i) any portion thereof that Owner disputes in good faith as not being due and owing, (ii) any overpayment made by Owner for any previous period, (iii) any Mechanical Completion Delay Liquidated Damages (including interest thereon) payable by Contractor, and (iv) any amounts withheld pursuant to **Sections 4.5 and 4.7** (the "**Milestone Payment**").

4.7 Withholding Payment. Notwithstanding any other provision to the contrary contained herein, Owner may withhold payments to Contractor hereunder and Owner may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such extent as may be necessary in Owner's reasonable opinion to protect Owner from loss because of: (i) Defects in the Work not remedied; (ii) third party claims filed for which Contractor is responsible (including Liens) against the Work, the Project or the Project Site; (iii) the unexcused failure of Contractor to make payments when due to Subcontractors; (iv) damage to Owner or another contractor, for which Contractor is liable, including damage to the property of Owner or any of its Affiliates; (v) Contractor's, or any Subcontractor's failure to carry out the Scope of Work in accordance with this Agreement; (vi) the occurrence of a Contractor Event of Default; (vii) Contractor's failure to, or a good faith determination by Owner that Contractor cannot, with prompt and reasonable acceleration of the Work, achieve WTG Mechanical Completion for each WTG or any other Critical Milestone on or before the applicable Guaranteed Mechanical Completion Date or the Critical Milestone Date therefore; or (viii) Contractor's failure to deliver a recovery plan acceptable to Owner as set forth in **Section 2.6** or the failure of Contractor to cause the prosecution of the Work to conform to the recovery plan accepted by Owner; provided, however, the amount withheld or retained on account of clauses (vii) and (viii) shall not exceed the amount of Mechanical Completion Delay Liquidated Damages for which Contractor could ultimately be liable under **Section 6.10 and Section 11.1**. Contractor shall not have any rights of termination or suspension under such Sections as a result of Owner's exercise of its rights under this **Section 4.7**. Owner shall release payments withheld pursuant to this **Section 4.7** within five (5) days from the date when Contractor cures such breaches.

4.8 Intentionally Omitted.

4.9 Termination Payment.

4.9.1 Termination Payments Due to Contractor. Upon a termination of this Agreement pursuant to **Section 13.2, Section 13.3, Section 13.4(i)** or **Section 13.4(ii)** (only as to items (i)

and (ii) below), Contractor shall be entitled to a payment (the “**Termination Payment**”), which shall equal the sum of the following, without duplication: (i) that portion of the Contract Price that is applicable to Work performed up to the date of termination that has not previously been paid to Contractor (as determined below); (ii) the expenses reasonably incurred by Contractor in effecting the termination and withdrawing Contractor’s Equipment and personnel from the Job Site and in otherwise demobilizing; and (iii) the expenses reasonably incurred by Contractor in terminating or (to the extent so requested by Owner) assigning to Owner contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor). The Termination Payment shall not include any cost incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable diligent efforts to mitigate the costs associated with termination including a reasonable attempt to identify and pursue other uses for equipment or supplies manufactured or obtained pursuant to this Agreement. Contractor shall supply suitable invoices, information and other documentation to support its calculation of the Termination Payment.

4.9.2 Payment of Termination Payment. Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documents referred to in **Section 4.9.1**. Owner shall pay the undisputed portions of such invoice on the later of (i) thirty (30) days after its receipt of same and (ii) the date on which Contractor has complied with all of the requirements of **Section 13.5**.

4.9.3 Termination Payment Contractor’s Sole Remedy. Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement under **Section 13.2**, **Section 13.3** or **Section 13.4**, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination; provided, however, the foregoing shall not relieve Owner of any indemnification obligations Owner may have to Contractor pursuant to **Article X**. If this Agreement is terminated pursuant to **Section 13.1**, no Termination Payment shall be due and payable pursuant to this **Section 4.9** from Owner and any payment to Contractor shall be computed solely in accordance with **Section 13.1**.

4.10 Interest. Any amount owed to either Party beyond the date that such amount first becomes due and payable under this Agreement shall accrue interest from the date that it first became due and payable until the date that it is paid at the lesser of (a) the Prime Rate plus two hundred (200) basis points, and (b) the maximum rate permitted by Applicable Laws.

4.11 Effect of Payment. Payment of the Contract Price shall not constitute Owner’s approval of any portion of the Project or the Work which has been determined not to be, or subsequently is determined not to have been, performed in accordance with the requirements of this Agreement.

4.12 Set-off. Owner may deduct and set-off (including a draw on any bond or any other security held by Owner) against any part of the balance due or to become due to Contractor under this Agreement including (i) any Mechanical Completion Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder, (ii) any amounts due or to become

due to Owner under **Article IX**, (iii) any Retainage permitted by this Agreement, and (iv) any other amounts that are due from Contractor to Owner under or in connection with this Agreement.

4.13 Payment Dates. Notwithstanding anything to the contrary in this **Article IV**, in the event that a payment to be made under this Agreement falls due on any day that is not a Business Day, the payment shall be deemed due on the first Business Day thereafter.

4.14 No Payment in the Event of Material Breach. Notwithstanding any other provision to the contrary contained herein, Owner shall have no obligation to make any payment to Contractor at any time when a Contractor Event of Default has occurred and is continuing, except to the extent that amounts owing to Contractor (taking into account the Down Payment) any time following such Contractor Event of Default exceed the potential liability of Contractor to Owner hereunder as reasonably calculated by Owner (including without limitation potential liability in respect amounts necessary to discharge Liens of Subcontractors, pay Mechanical Completion Delay Liquidated Damages that have or may accrue, or to pay amounts due in respect of indemnification pursuant to **Article X**). Any payments not made pursuant to this **Section 4.14** shall be paid to Contractor within fifteen (15) Business Days following any reduction of the potential liability of Contractor to Owner hereunder.

## **ARTICLE OWNER RESPONSIBILITIES**

**V**

### 5.1 Project Site Access.

5.1.1 Easements and Project Layout. Owner shall obtain the Real Property Rights and provide reasonable access for construction mobilization not later than [\_\_\_\_\_ 1, 200X] with respect to the Project Site. Prior to the access dates described in the previous sentence, upon Contractor's reasonable request, Owner will take actions necessary to allow Contractor to access property covered by then existing Real Property Rights in order to obtain representative soil borings and conduct such other reasonable site investigations. Owner shall comply with the terms of the Real Property Rights and shall enforce the terms of the Real Property Rights in connection with the Work. If the WTGs, Civil Works or Electric Works are required to be relocated as a result of Owner not obtaining the Real Property Rights as described in **Exhibit K**, or in the event of changes to the preliminary Project layout attached in **Exhibit K** (to the extent such changes are not caused by Contractor), Contractor shall be entitled to a Scope Change in accordance with **Article IX**.

5.1.2 Owner is responsible for obtaining the Real Property Rights as described in **Section 5.1.1** above and is responsible to ensure that the terms of such Real Property Rights reasonably permit Contractor to perform the Work on the Project Site (including providing for construction laydown areas). Owner is not responsible for providing access to the Project Site (other than to ensure that the Project Site is reasonably accessible from public roads or from other parts of the Project Site that itself has access to public roads). Contractor shall be responsible at Contractor's sole cost for all Real Property Rights necessary (if any) to gain access to the Project Site and

shall be responsible for obtaining Real Property Rights for any property used by Contractor for a storage yard, construction office trailers and/or show-up location. Owner shall not prevent, obstruct or otherwise interfere with Contractor's reasonable rights of ingress or egress to and from the Project Site.

5.1.3 Real Property Rights Payments; Payments for Crops. Owner shall be responsible for all annual evaluation period, operating period and/or other fixed payments to the landowner under the terms of the Real Property Rights. Owner and Contractor shall use reasonable efforts to mitigate any payments that may be required to compensate the landowners under the Real Property Rights for crops (if any), including designating appropriate areas in which the landowners should refrain from planting crops. Owner shall be solely responsible for any compensation required to be paid for crops on acreage that is permanently lost to cultivation at the locations of the WTGs and access roads on the Project Site. Contractor shall be responsible for all other crop damages in accordance with **Section 2.8.7**.

5.1.4 Survey. Owner shall provide an ALTA survey to Contractor prior to [\_\_\_\_\_ 1, 200X] as it relates to the Project Site, that shall show the property covered by the Real Property Rights and the boundaries of the Project Site, in addition to such other information normally and customarily included in such surveys (and Owner will provide a draft survey at such time that they are available and upon Contractor's reasonable request). Contractor shall be responsible for flagging or otherwise marking the Project Site to the extent it determines such Work is required.

5.2 Owner-Furnished Equipment. Owner shall provide or cause to be provided all Owner-Furnished Equipment at the Project Site in accordance with the delivery schedule therefor set forth in **Exhibit F** (for the WTGs) and **Exhibit G** (for the step-up transformers).

5.3 Permits. Owner shall be responsible for obtaining and maintaining those Permits listed in **Exhibit H** as Owner's responsibility. Owner shall cooperate with Contractor in connection with Contractor's efforts to obtain the Permits required pursuant to **Section 2.6.8**. Owner shall promptly advise and keep Contractor advised regarding the terms and requirements (and changes thereto) applying to Permits which Owner is obliged to secure hereunder. If Owner fails to procure the Permits identified on **Exhibit H** that are necessary for Contractor and its Subcontractors to mobilize for construction on the Project Site by [\_\_\_\_\_ 1, 200X] with respect to the Project Site, Contractor shall be entitled to a Scope Change in accordance with **Section 9.3**.

## **ARTICLE COMPLETION OF WORK**

**VI**

6.1 Access Road Completion. Contractor shall achieve Access Road Completion on or before the Access Road Guaranteed Date and otherwise in accordance with the requirements of this Agreement. "**Access Road Completion**" shall mean that Contractor has achieved completion of the following:

- (a) the access roads to each applicable Foundation,

(b) the turning radius (which such turning radii satisfy the requirements set forth in the Wind Turbine Supply Contract) that are necessary for the public roads in the State of [state project is located in] and from the public roads to the private access roads,

(c) and other road improvements and work necessary to permit the delivery of the Wind Turbine Generator (including the Tower) to each Foundation, and otherwise in accordance with the requirements of this Agreement, and

(d) Owner has accepted or is deemed to have accepted an Access Roads Completion Certificate with respect to such Work pursuant to **Section 6.7**.

6.2 Foundation Completion. Contractor shall achieve Foundation Completion with respect to each individual Foundation on or before the Critical Milestone Date therefor and otherwise in accordance with the requirements of this Agreement. “**Foundation Completion**” means with respect to a Foundation the achievement of the following with respect to each individual Foundation:

(a) such Foundation is mechanically completed and installed in accordance with the Technical Specifications and the requirements of this Agreement;

(b) such Foundation is structurally complete and contains all necessary embedded inserts;

(c) the concrete portion of such Foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the base Tower of the WTG thereon;

(d) backfilling of the area surrounding such Foundation has been completed;

(e) Contractor has documented any changes to each Foundation and the Infrastructure Facilities (both above-ground and below-ground in the immediate surrounding area of the such Foundation); and

(f) Owner has accepted or is deemed to have accepted a Foundation Completion Certificate with respect to such Work pursuant to **Section 6.7**.

6.3 Electrical Works Completion. Contractor shall achieve Electrical Works Completion on a per-circuit basis and otherwise in accordance with the requirements of this Agreement. “**Electrical Works Completion**” with respect to an individual circuit of Electrical Works and equipment associated therewith means the achievement of the following milestones:

(a) The padmount foundations have been completed;

(b) all of the Electrical Works including the installation of all grounding, necessary to energize the WTGs, are completed in accordance with the requirements of this Agreement;

- (c) subject to Punch List Items, all materials and equipment associated with such Electrical Works have been installed in accordance with the Technical Specifications, the Commissioning checklist set forth in **Exhibits A and E**, and the other requirements of this Agreement and checked for adjustment;
- (d) such Electrical Works and all other Infrastructure Facilities necessary to achieve connection of such WTGs to the electricity transmission system interconnected at the Project Substation, are energized;
- (e) all of the Electrical Works necessary to achieve connection of such padmount transformers to the Project Substation in accordance with this Agreement have been installed, insulated, protected and tested, including synchronization with such system;
- (f) subject to Punch List Items, all of such Electrical Works have been properly constructed, installed, insulated and protected where required for such operation, correctly adjusted, tested and commissioned, are mechanically, electrically and structurally sound as set forth in the Technical Specifications, and can be used safely in accordance with the Contract Documents, Applicable Laws and Applicable Standards;
- (g) Contractor has prepared and submitted a list of Punch List Items with respect to such circuit of Electrical Works; and
- (h) Owner has accepted or is deemed to have accepted an Electrical Works Completion Certificate with respect to such Electrical Works pursuant to **Section 6.7**.

6.4 Mechanical Completion of WTGs. Contractor shall cause WTG Mechanical Completion with respect to each WTG to occur on or before the Guaranteed Mechanical Completion Date for the WTG Shipment of such WTG, and otherwise in accordance with the requirements of this Agreement. “**WTG Mechanical Completion**” means, as to a WTG, the achievement of the following:

- (a) Foundation Completion and valid delivery and acceptance by Owner of a Foundation Completion Certificate with respect to such WTG;
- (b) subject to Punch List Items, such WTG is assembled, erected and installed so as to be demonstrably completed in accordance with the Technical Specifications, the WTG Mechanical Completion Certificate set forth in **Exhibit U**, the Wind Turbine Supply Contract and the other requirements of this Agreement;
- (c) subject to Punch List Items, all materials and equipment associated with such WTG have been installed in accordance with the Technical Specifications and verified in accordance with the installation checklists set forth in **Exhibit F**;
- (d) Contractor has prepared and submitted a list of Punch List Items with respect to such WTG or other component;

- (e) the WTG is ready to commence Commissioning;
- (f) Electrical Works Completion with respect to the Electric Works circuit line to which the WTG is connected and valid delivery and acceptance by Owner of an Electric Works Completion Certificate with respect to such circuit;
- (g) Turbine Vendor acknowledges that all Work necessary for Turbine Vendor to commence to Commission the WTG has been successfully completed by Contractor; and
- (h) Owner has accepted or is deemed to have accepted a WTG Mechanical Completion Certificate with respect to such WTG pursuant to **Section 6.7**.

6.4.1 Commissioning of WTGs. Upon receipt by Owner of a WTG Mechanical Completion Certificate with respect to a WTG and promptly after Owner's countersignature thereof as provided in **Section 6.7**, Owner shall commence or shall cause to be commenced, with Contractor's cooperation and assistance, commissioning of such WTG; provided however, Contractor's obligation to provide assistance pursuant to this **Section 6.4.1** shall be limited to providing information, access, lockout/tagout and assistance solely relating to the interface between Contractor's Work and the work of the Turbine Vendor.

6.4.2 Punch List. In connection with and as a condition to the achievement of Electrical Works Completion for a particular circuit and the achievement of WTG Mechanical Completion as to each WTG, Contractor shall develop a list (each, an "**Interim Punch List**") setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of this Agreement. Contractor agrees that installation of the fiber optic cable and connection to the Project's SCADA system is not an Interim Punch List Item. In addition to Contractor providing the Interim Punch List to Owner in accordance with this **Article VI**, Contractor shall also promptly provide a copy of such list to Owner upon Owner's request. Contractor shall make such revisions to such list as and when requested by Owner from time to time.

As a condition to Project Mechanical Completion, Contractor shall prepare and submit to Owner a comprehensive list (the "**Punch List**") setting forth remaining Punch List Items, including any items from the Interim Punch Lists that have not been completed and also including a listing of Contractor deliverables required to be provided to Owner hereunder as a prerequisite to the achievement of Final Completion, including without limitation, Lien releases, As-Built Drawings, and other required documentation, as well as performance of Job Site clean-up and other post-construction activities, and also including Contractor's reasonable estimate of the cost to complete each such Punch List Item. Contractor shall make such revisions to the Punch List as and when reasonably requested by Owner from time to time.

The Owner shall reasonably estimate the cost to complete all items on the Punch List that have not been completed. The Parties agree that with respect to Punch List Items that remain uncompleted and which are preventing Final Completion, it may be more expedient for Owner to complete such Punch List Items, at its sole election and option. If Owner so elects, at its sole discretion, Owner may, in lieu of requiring Contractor to complete the Punch List Items, require



Contractor to pay to Owner an amount equal to one hundred percent (100%) of the commercial value of the remaining Punch List Items as established as provided above in this **Section 6.4.2**. Upon such election by Owner, such Punch List Items shall be deemed removed from the Punch List. Owner shall have the right to offset such amount owed by Contractor against any amounts owed by Owner to Contractor at Final Completion or otherwise under this Agreement.

6.5 **Project Mechanical Completion**. Contractor shall cause Project Mechanical Completion to occur timely following WTG Mechanical Completion of each of the WTGs and otherwise in accordance with the requirements of this Agreement. “**Project Mechanical Completion**” means the achievement of the following:

- (a) WTG Mechanical Completion has occurred with respect to each WTG;
- (b) except for Punch List Items, all WTGs have been properly assembled, erected, installed, is mechanically, electrically and structurally sound as set forth in the Technical Specifications, so that it can be used safely in accordance with this Agreement, Applicable Laws and Applicable Standards;
- (c) Contractor has prepared and submitted to Owner the final and complete Punch List in accordance with **Section 6.4.2**;
- (d) Contractor has delivered three (3) draft copies of the Job Books (which include Operating Manuals) in accordance with **Section 2.8.10**;
- (e) all quality assurance documentation has been provided to Owner in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Assurance Plan;
- (f) Contractor has provided appropriate and timely training as required hereunder; and
- (g) Owner has accepted or is deemed to have accepted a Project Mechanical Completion Certificate pursuant to **Section 6.7**.

6.5.1 **Punch List Work**. Notwithstanding achievement of Project Mechanical Completion, Contractor shall remain obligated to complete the Punch List Items in accordance with this Agreement. Contractor shall give Owner written notice at least five (5) Business Days prior to declaring that Project Mechanical Completion has occurred and shall provide on such date a written Punch List. Owner shall be entitled to verify and, if necessary, correct or add to, the list of Punch List Items provided by Contractor. Contractor agrees to update such Punch List from time to time (but not less often than monthly) after Project Mechanical Completion and until Final Completion.

6.6 **Final Completion**. Contractor shall cause Final Completion to occur on or before the Scheduled Final Completion Date. “**Final Completion**” means the achievement of the following as to the Project:

- (a) Project Mechanical Completion has been achieved in accordance with **Section 6.5**;
- (b) Contractor has performed all of the Work such that the Project may be operated as a fully-integrated wind-powered electricity generating plant and all the tests, electrical continuity and ground fault tests have been successfully completed and any Defects found have been corrected;
- (c) the Contractor Facilities are capable of being operated in a safe and proper manner in accordance with Applicable Laws and Applicable Permits (including for this purpose all variances or waivers of any Applicable Permits if such variances or waivers are final, irrevocable and permanent modifications to the requirements of Applicable Law or Applicable Permits);
- (d) Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof or bonds protecting Owner that are reasonably acceptable to Owner;
- (e) any and all Liens in respect to the Project, this Agreement, the Equipment, the Job Site or any fixtures, personal property or Equipment included in the Work created by, through or under, or as a result of any act or omission of, Contractor or any Subcontractor or other Person providing labor or materials in connection with the Work shall have been released or bonded in form satisfactory to Owner (provided that Contractor's final lien waiver, in substantially the form of **Exhibit AA** attached hereto from Contractor and Subcontractor's final lien waivers in the form of **Exhibit AA** attached hereto from each Major Subcontractor or bonds protecting Owner that are reasonably acceptable to Owner, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);
- (f) all of Contractor's supplies, personnel and waste have been removed from the Project Site and Contractor has satisfied all of its clean-up obligations hereunder;
- (g) all Punch List Items have been corrected or performed and all other Work required to be completed by Contractor has been performed in each case to Owner's reasonable satisfaction;
- (h) the Contractor Facilities have been constructed in accordance with this Agreement and the Design Documents and the final plans accurately reflect the Project as constructed;
- (i) Contractor shall have paid all Mechanical Completion Delay Liquidated Damages due under this Agreement, if any;
- (j) all As-Built Drawings and documentation shall have been delivered to, and accepted by, Owner; and
- (k) Owner has accepted or is deemed to have accepted a Final Completion Certificate pursuant to **Section 6.7**.

6.7 Achievement of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion, and Final

Completion. When Contractor believes that it has achieved any of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion or Final Completion, it shall deliver to Owner a completed Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, as the case may be. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain sufficient detail to enable Owner to determine that Contractor has achieved Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion or Final Completion, as the case may be.

Owner shall, within five (5) Business Days, in the case of Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, or a WTG Mechanical Completion Certificate and ten (10) Business Days, in the case of a Project Mechanical Completion Certificate or Final Completion Certificate, following receipt of such certificate, either (a) deliver to Contractor a countersigned Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, as the case may be, indicating its acceptance of the achievement of such milestone, or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner fails to notify Contractor of its acceptance or rejection of any of the foregoing certificates within the relevant time frame set forth in this paragraph, such certificate shall be deemed accepted by Owner.

If Owner delivers the notice under the preceding clause (b), Contractor shall promptly either (i) notify Owner that Contractor disputes Owner's determination or (ii) take such action, including the performance of additional Work, to achieve such milestone, and upon completion of such actions shall issue to Owner another certificate with respect to such milestone pursuant to this **Section 6.7**. Such procedure shall be repeated as necessary until such milestone has been achieved (whether by Owner's affirmative acceptance or deemed acceptance or by a determination made pursuant to the dispute resolution procedures of this Agreement). For the purposes of this Agreement, the date of achievement of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion or Final Completion, as the case may be, shall be the date on which Contractor delivers to Owner, respectively, the Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Contractor disputes any rejection by Owner of a certificate submitted in accordance with this **Section 6.7**, Contractor shall proceed with further Work as directed by Owner under protest, reserving the right to submit a claim under **Section 9.6** for the additional Work required by Owner.

#### 6.8 Completion Guarantees.

6.8.1 Guaranteed Access Road Completion Date. Contractor guarantees that it shall achieve Access Road Completion on or before the Guaranteed Access Road Completion Date.

6.8.2 Guaranteed Mechanical Completion Date. Contractor guarantees that it shall achieve WTG Mechanical Completion for each WTG on or before the Guaranteed Mechanical Completion Date applicable to the WTG Shipment to which such WTG belongs.

6.8.3 Mechanical Completion Delay Liquidated Damages.

a. Obligation to Pay. Owner and Contractor acknowledge and agree that in the event of any failure to achieve, as required by **Section 6.8.2**, WTG Mechanical Completion on or before the applicable Guaranteed Mechanical Completion Date, such failure will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor fails to achieve WTG Mechanical Completion for a WTG associated with each WTG Shipment on or before the applicable Guaranteed Mechanical Completion Date corresponding to that WTG Shipment, it shall pay to Owner, as liquidated and agreed damages and not as a penalty, an amount for each such WTG equal to the following: \$1,000/day (the “**Mechanical Completion Delay Liquidated Damages**”).

b. Reasonable Amount; Exclusive Remedy. It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this **Article VI** as Mechanical Completion Delay Liquidated Damages for failure to achieve the Guaranteed Mechanical Completion Dates are reasonable, considering the damages that Owner would sustain in any of such events, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained as a result of delay in achieving WTG Mechanical Completion for such WTG. Subject to Owner’s rights pursuant to **Sections 6.8 and 13.1**, payment of Mechanical Completion Delay Liquidated Damages is the exclusive remedy for delays in achieving WTG Mechanical Completion. Contractor hereby waives any rights or defenses that it may have under law that any liquidated damage payable hereunder is a penalty or otherwise void under law.

c. Accrual; Payment. Contractor’s obligation to pay Mechanical Completion Delay Liquidated Damages when and as provided in this Section is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by (i) any default by Owner in the performance or observance of any of its obligations hereunder, or any offset rights of Contractor pursuant to **Section 17.19**, provided in either case that Owner has paid all undisputed amounts due at such time to Contractor hereunder, (ii) the assignment by Owner of this Agreement to any Person, or (iii) any other circumstances, happening, condition or event. Contractor shall pay such liquidated damages without deduction, set-off, reduction or counterclaim. Contractor shall continue to make such payments of Mechanical Completion Delay Liquidated Damages until achievement of WTG Mechanical Completion of such WTG. In no event shall the payment of Mechanical Completion Delay Liquidated Damages excuse Contractor from performance of any of its other obligations hereunder, including the obligation to cause WTG Mechanical Completion to occur with respect to each WTG.

d. Termination for Failure to Achieve Project Mechanical Completion within Sixty Days of Guaranteed Mechanical Completion Date. If and in the event Contractor fails to achieve Project Mechanical Completion within sixty (60) days of the last Guaranteed Mechanical Completion Date, then (i) Contractor shall be considered in default, and may, at Owner's sole and exclusive discretion, be terminated in accordance with **Section 13.1(g)** of this Agreement, and (ii) Contractor shall continue to pay the Mechanical Completion Delay Liquidated Damages described in this **Section 6.8** through any such termination of Contractor or until the exhaustion of the aggregate maximum amount of Mechanical Completion Delay Liquidated Damages payable by Contractor hereunder, whichever occurs first.

6.8.4 Access Roads Delay. If Contractor fails to achieve Access Road Completion on or before the Guaranteed Access Road Completion Date, Contractor shall be required to pay Owner all amounts that Owner pays the Turbine Vendor under the terms of the Wind Turbine Supply Contract resulting from such delay, and Contractor shall also be responsible for all costs and expenses of Owner or Contractor as a result of the failure to achieve Access Roads Completion on or before the Guaranteed Access Road Completion Date.

6.8.5 Offset Rights; Security for Obligations. Owner shall have the right to offset any amounts owing to Owner under this Article against Progress Payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.

## **ARTICLE WARRANTIES**

## **VII**

### 7.1 Warranty Provisions.

7.1.1 Warranty. Contractor warrants and guarantees to Owner during the Warranty Period that: (i) the Contractor Facilities and the Work shall be free from improper workmanship and Defects, new, unused and undamaged when installed, in compliance with Applicable Law, the Applicable Permits, the Applicable Standards, and the requirements of this Agreement, suitable for Owner's use as a wind-powered electrical generation facility (subject to normal wear and tear and maintenance and operation requirements and obsolescence that may result from advance in technology or other changes in needs or uses) under the climatic and normal operating conditions described in **Exhibit N**, and otherwise in compliance with the standards of performance set forth in **Article II**; (ii) the design, engineering, construction and procurement services related to the Contractor Facilities and the assembly, installation and erection of the WTGs and all aspects of the Work shall be performed with Contractor's best skill and judgment, in a good and workmanlike manner, conform to and be designed, engineered and constructed in accordance with the Design Documents, Scope of Work, Technical Specifications, all Applicable Laws, Applicable Standards and Applicable Permits and other terms of this Agreement, conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in wind power projects similar to the Project, and contain the Equipment, supplies and materials described in the Scope of Work; (iii) the completed Work shall perform as explicitly described or implied in this Agreement, except that the Contractor shall not be responsible for any failure of the completed Work to

perform its intended functions as a complete, integrated wind-powered electric generating facility which is caused by the failure of the Owner-Furnished Equipment; and (iv) none of the Work, the Contractor Facilities, the Equipment, the Design Documents, Technical Specifications, final plans and the design, engineering and other services rendered by Contractor hereunder, nor the use or ownership thereof by Owner in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks ((i), (ii), (iii) and (iv), collectively, the “**Warranty**”).

7.1.2 Warranty Period; Extensions Thereof. The Warranty shall commence on the Project Mechanical Completion Date and shall continue until and expire on the second (2nd) anniversary of the Project Mechanical Completion Date (such applicable period, the “**Warranty Period**”); provided, however, if: (a) Owner fails to observe any Defect during the Warranty Period; and (b) such Defect would not have been revealed during the Warranty Period, despite Owner’s operation of the Project in accordance with commercially reasonable practices, then the Warranty Period (and the corresponding rights and obligations identified in this **Article VII**) shall be extended to effect repair of such Defect, provided Owner delivers Contractor written notice of such Defect within twelve (12) months from the end of the Warranty Period. Provided further that if ten percent (10%) or more of any type of component of the Project requires repair or replacement within the Warranty Period, then the warranty for that type of component shall be automatically extended for all such components of that type for an additional two (2) years from the date of the failure that caused the percentage of failures to reach ten percent (10%).

7.1.3 Correction of Deficiencies. If during the Warranty Period the Work is found to contain Defects, or Contractor is otherwise in breach of any of the warranties set forth in this **Section 7.1** and Contractor receives written notice thereof during the Warranty Period or promptly after the end of the Warranty Period (or the later period as provided in **Section 7.1.2**), Contractor shall at its sole cost and expense (including the cost of labor and equipment), promptly correct, repair, replace such Defect or otherwise cure such breach as promptly as practicable upon being given written notice directing Contractor to correct such Work or remedy such breaches of Warranties with materials of new and good quality, or re-perform all such defective components of the Infrastructure Facilities or the Work (“**Warranty Service**”). Owner shall provide Contractor with reasonable access (with an object of minimizing revenue and operational disruption) to the Project in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Project. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including, without limitation, necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Owner’s reasonable satisfaction that there is not a risk of the reoccurrence of such problem. Contractor’s obligations under this Section shall not be impaired or otherwise

adversely affected by any actual or possible legal obligation or duty of any Subcontractor to Contractor or Owner concerning any Defect or breach of warranty.

7.1.4 Conformance of Warranty Service to Specifications. Contractor warrants in favor of Owner that all materials incorporated into the Work as part of repairs to and replacements of Work by Contractor or any Subcontractor, and repairs to and replacements of Work pursuant to the warranties set forth in this **Section 7.1** shall conform to the requirements of this Agreement and all applicable warranties for the foregoing and shall be free from Defects. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty complies with the requirements of the warranties set forth in this **Section 7.1**. The warranty period for the Warranty Services shall continue until and expire on the later of (i) the end of the Warranty Period or (ii) one year from the completion of such Warranty Service.

7.1.5 Warranty Service at Contractor's Cost; Survival. Contractor shall perform all Warranty Service at its own cost and expense. The provisions of this Section apply to Work performed by Subcontractors as well as Work performed directly by Contractor. Contractor's obligation to correct, repair, replace or re-perform defective Work pursuant to this **Article VII** shall survive the termination of this Agreement to the extent of Work performed by Contractor or any of its Subcontractors or paid for by Owner. Contractor shall not be excused from performing such Warranty Service after the end of the Warranty Period, if it receives notice of the Defect during the Warranty Period or as otherwise provided in this **Article VII**.

7.1.6 Risk of Loss or Damage. Whenever Warranty Service is required pursuant to this **Article VII**, Contractor shall bear the risk of physical loss or damage to the Project as a result of Contractor's activities performing Warranty Service, to the extent not covered by Owner's builder's risk insurance as required to be provided by Owner pursuant to **Section 12.2**, and in the event of any reimbursement by Owner's builder's risk insurance for such damage, Contractor shall be responsible for associated deductibles or retention. If any Work must be removed from the Project Site, transportation charges associated with any repair shall be borne by Contractor.

7.1.7 "Immediate Need" Corrective Actions. Where Owner determines that an "immediate need" exists, Owner may undertake corrective action, but Contractor reserves its right to investigate and determine the eligibility of such warranty claims. For the purposes of this **Section 7.1.7**, "immediate need" shall mean a situation where Owner reasonably believes that an imminent threat of harm to persons or property or a situation exists that could materially adversely impact the operation of the Project or the transmission system of the Utility. If the Owner has independently taken corrective action in the case of an "immediate need" pursuant to this **Section 7.1.7**, then Owner shall issue to Contractor: (i) a failure report, which shall contain technical and logistical information in sufficient detail to enable Contractor to evaluate (a) the Owner's representation of an "immediate need" and (b) the appropriateness of the Owner's corrective action, which shall be provided by Owner to Contractor within a reasonable period of time after the occurrence of such immediate need event; and (ii) copies of invoices received or prepared for costs and expenses claimed by Owner for reimbursement by Contractor (but only if such Owner work is due to a Defect in the Work or breach of the Warranty and not in relation to any defect or fault in the Utility's transmission system). Work performed by Owner in relation

to a warranty claim under this **Section 7.1.7** shall be billed on a “time and materials” basis (as further defined below) and such invoices shall be paid by Contractor within thirty (30) days (subject to review and approval by Contractor). For the purposes of this **Section 7.1.7**, “time and materials” shall mean: (a) with respect to “time,” the product of one hundred ten percent (110%) of the normal hourly wage (including fringe benefits, insurance and taxes) Owner pays with respect to its particular employee (not including overhead) multiplied times the number of hours each employee performed the particular work; and (b) with respect to “materials,” one hundred ten percent (110%) of the actual purchase price paid by Owner or an Affiliate to a third party for the materials incorporated or consumed in connection with the work; and (c) with respect to work performed by a subcontractor (other than an entity which is an Affiliate of Owner, work done by any such entity being deemed work done by Owner through its own employees for purposes of this **Section 7.1.7**), one hundred ten percent (110%) of the actual amount paid by Owner to the subcontractor for such work.

7.2 Delay. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified in writing of such noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than the date made available by Owner in such notice for performing the Warranty Service, which date shall be at least ten (10) Business Days after such notice. If, after notification of a Defect, Contractor shall delay past such date in commencing or continuing, or shall delay unnecessarily in completing, Warranty Service with respect to such Defect, then Owner may correct such Defect so that the defective component complies with the requirements of this Agreement, and Contractor shall be liable for all direct costs, charges and expenses reasonably incurred by Owner in connection with such repair or replacement and shall forthwith pay to Owner an amount equal to such costs, charges and expenses upon receipt of invoices with supporting documentation certified by Owner. Nothing in this **Section 7.2** shall in any way limit or relieve Contractor of its obligations under this Agreement.

7.3 Subcontractor Warranties.

7.3.1 Contractor shall, for the protection of Contractor and Owner, obtain from the Subcontractors such guarantees and warranties with respect to Work performed as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in **Section 7.1** and shall be made available and assignable to Owner to the full extent of the terms thereof upon the expiration of the Warranty Period. Owner shall be an express third-party beneficiary of all such guarantees and warranties. To the extent available, Owner shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Scope Change Order issued in accordance with the provisions of **Article IX**. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall deliver to Owner copies of all relevant contracts providing for such guarantees and warranties.

7.3.2 Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall assign to Owner all warranties received by it from Subcontractors or otherwise obtained under **Section 7.3.1**. Such assignment of warranties to Owner must also allow Owner



to further assign such warranties. However, in the event that Owner makes any warranty claim against Contractor with respect to services supplied in whole or in part by any Subcontractor, and Contractor fulfills its obligations with respect to such claim by Owner, Contractor shall be entitled to enforce for its own benefit any warranty given by such Subcontractor with respect to such services.

7.4 NO IMPLIED WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, FOR PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT. The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth in this Agreement.

7.5 End of Warranty Period. During the thirty-day period prior to the scheduled end of the Warranty Period, Contractor and Owner shall jointly conduct an inspection and test of the Work to determine if any additional warranty items are required to be repaired or replaced pursuant to the Warranty in order to develop a list of such items; provided, however, that such actions by Owner shall not constitute a waiver of Owner's rights with respect to latent Defects not discovered at such time.

7.6 Limitations. The provisions of this **Article VII** shall survive expiration or termination of this Agreement.

7.7 Proprietary Rights. Without limiting any of the provisions of this Agreement, if Owner or Contractor is prevented from completing the Work or any part thereof, or from the use, operation or enjoyment of the Work or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from Contractor's performance (or that of its Subcontractors) under this Agreement, including, without limitation, the Work, the Design Documents, the Technical Specifications or other items and services provided by Contractor or any Subcontractor hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its Affiliates or assigns, as applicable, the right to use such materials, Design Documents or Technical Specifications in connection with the operation and maintenance of the Project, without obligation or liability; or (b) replace such materials, Design Documents or Technical Specifications, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of the Contract Documents.

**ARTICLE**

**VIII**

**FORCE MAJEURE; OWNER-CAUSED DELAY; AND WIND DAYS**

8.1 Performance Excused. So long as the conditions set forth in this **Section 8.1** are satisfied, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations (other than payment obligations) under or pursuant to this Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

(a) the Party claiming a Force Majeure Event shall give the other Party notice describing the particulars of the cause and nature of the occurrence, with written notice given promptly after discovery and in no event more than five (5) Business Days after the affected Party becomes aware of such occurrence and as soon as reasonably practicable, but in any case within ten (10) Business Days after such initial notification, the Party claiming a Force Majeure Event shall give the other Party sufficient proof of the occurrence of such Force Majeure Event and written notice estimating the Force Majeure Event's expected duration and probable impact on the performance of such Party's obligations hereunder, and such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

(b) the performance of the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, provided the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the effects of the Force Majeure Event;

(c) any liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;

(d) the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

(e) the affected Party shall use all commercially reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance;

(f) when the affected Party is able to resume performance of the affected obligations under this Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Agreement; and

(g) in the event Contractor desires to claim a Force Majeure Event, it must submit a request for a Scope Change pursuant to **Section 9.6**, and Contractor shall be entitled to a Scope Change Order permitting a suspension of performance or extension of time (including an extension of the Critical Milestone Dates to the extent achievement thereof is affected) in accordance with **Section 9.6**.

8.1.1 A Party's failure to comply with the provisions of this **Section 8.1** shall constitute a waiver of any claim of a Force Majeure Event.

8.2 Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under **Section 8.1** shall be upon the Party claiming such Force Majeure Event.

8.3 Owner-Caused Delay. In the event Contractor desires to claim an Owner-Caused Delay, Contractor shall within five (5) Business Days after it becomes aware of the Owner-Caused Delay, give Owner written notice describing the details of the Owner-Caused Delay, the anticipated length of such delay and any other effect on Contractor's performance of its obligations hereunder. Within ten (10) days after initial notification, Contractor shall (i) provide to Owner demonstrable proof of the occurrence and duration of such Owner-Caused Delay and, if requested by Owner, such proof shall be provided, and in any event verified, by an independent third party reasonably acceptable to Owner and Contractor at the sole cost and expense of the Owner (in the event that the independent third party verifies Contractor's assertions) or the Contractor (in all other cases). So long as the conditions set forth in this **Section 8.3** are satisfied, Contractor shall not be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Critical Milestone on or before the Critical Milestone Date therefor to the extent that such failure has been caused by one or more Owner-Caused Delays, provided that: (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner-Caused Delay; (ii) Contractor provides timely notice of the Owner-Caused Delay, and (iii) Contractor provides all assistance reasonably requested by Owner for the elimination or mitigation of the Owner-Caused Delay; provided, however, any out-of-pocket costs incurred by the Contractor in connection with rendering such assistance shall be reimbursed by Owner. In the event Contractor desires to claim an Owner-Caused Delay, it must submit a request for Scope Changes pursuant to **Section 9.6** and Contractor shall be entitled to suspension of performance or extension of time (including an extension of any of the Critical Milestone Dates) together with demonstrated, justified and reasonable additional costs, including but not limited to, idle equipment costs, incurred by reason of such delay to the extent of the impact of the Owner-Caused Delay pursuant to a Scope Change Order in accordance with **Article IX**. Failure to comply with the terms of this **Section 8.3** shall constitute a waiver of any claims for an Owner-Caused Delay. The Parties acknowledge that Owner may direct a suspension of the Work pursuant to **Section 13.6** in order to minimize the cost to Owner of an Owner-Caused Delay.

8.4 Wind Days. The Parties acknowledge and agree that adherence to the Project Schedule may be impacted by Wind Days (and the delays resulting therefrom) during the period beginning on the commencement of the start of erection of Wind Turbine Generators and continuing through the WTG Mechanical Completion Date (the "WTG Construction Period"). If the number of Wind Days occurring during the WTG Construction Period exceeds eight (8) days at the Project Site during the WTG Construction Period (counting for purposes of this paragraph only Wind Days which affect the progress of Contractor at the Job Site), and as a sole result of such Wind Day, Contractor is required to extend the period that Contractor is leasing a large crane, thereupon, such occurrence shall be treated as a Force Majeure Event and Contractor shall

be entitled to a Scope Change for the amount of delay to the Guaranteed Mechanical Completion Date, which is caused by the excess Wind Days in respect thereof in accordance with **Article IX**.

## **ARTICLE SCOPE CHANGES**

**IX**

9.1 Scope Changes at Owner's Request. Owner may, from time to time, without invalidating this Agreement, order or approve scope changes in all or a portion of the Work within the general scope of the Work, scope changes in the Project Schedule, and, pursuant to **Section 9.6** or in connection with deleting turbine sites from the Project and the Scope of Work, reductions in the Contract Price (collectively, "**Scope Changes**") by notification in writing to Contractor substantially in the form set forth as **Exhibit Q**. Contractor shall reasonably review and consider such requested Scope Change and shall make a written response thereto within ten (10) days after receiving such request. If Contractor believes that giving effect to any Scope Change requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in **Article VII** or require a modification of any other provisions of this Agreement, its response to the Scope Change request shall set forth such changes (including any amendments to this Agreement) that Contractor deems necessary as a result of the requested Scope Change and its justification therefor. If Contractor accepts the Scope Changes requested by Owner (together with any amendments to this Agreement specified therein) or if the Parties agree upon a modification of such requested Scope Changes, the Parties shall set forth the agreed upon Scope Change in the Work and agreed upon amendments to this Agreement, if any, in a written change order signed by all Parties (a "**Scope Change Order**"). Each Scope Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Scope Change Order, Contractor shall proceed with such Work upon Owner's written direction, and the dispute shall be resolved in accordance with the terms hereof.

9.2 No Unapproved Scope Changes. Contractor shall not perform any Scope Changes, nor shall Contractor undertake any change to the work until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Scope Change prior to such approval. If Owner does not approve the proposed adjustments or if Contractor or Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Contractor cancel the Scope Change. Upon receiving from Owner such written approval or such written authorization to perform, Contractor shall diligently perform the Scope Change in accordance with and subject to all of the terms of this Agreement. In the absence of written Scope Change Order, Contractor shall make any such changes to the Work at Contractor's sole risk and expense, and Contractor shall not be entitled to any payment hereunder for undertaking such change to the Work. Contractor shall not suspend, in whole or in part, performance of this Agreement during any good faith dispute over any Scope Change Order unless directed to do so by Owner, and if directed to proceed with a Scope Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Scope Change or disputed item) do so. Any technical or engineering dispute between Owner and Contractor with respect to any Scope Change Order shall be resolved in accordance with **Article XV**.

9.3 Presumption Against Scope Changes. It is the intent of Owner and Contractor that the Scope of Work attached hereto as **Exhibit A** includes all items necessary for the proper execution and completion of the Work. As more particularly described in **Section 2.3**, work not described in the Scope of Work attached hereto as **Exhibit A** shall not require a Scope Change Order if such work is consistent with and reasonably inferable from the Scope of Work, so that an engineering, procurement and construction contractor of Contractor's experience and expertise should have anticipated that the work would have been required.

9.4 Contractor Requested Scope Changes. Contractor shall obtain Owner's prior written approval of any Contractor initiated changes for convenience.

9.5 Scope Changes Due to Concealed Conditions. Owner may have previously conducted a geotechnical investigation at locations at or near the Project Site in connection with the project that has been constructed or that are in the process of being constructed, the results of which are disclosed in **Exhibit N**, (each a "**Geotechnical Investigation**"). If Contractor: (i) encounters any concealed subsurface conditions which a reasonable experienced contractor would not have taken into account at the Job Site and which vary materially from the conditions shown in this Agreement and as disclosed in **Exhibit N**; and (ii) any such condition causes a material increase or decrease in the Contract Price or time required for performance of Work or otherwise materially affects any provision of this Agreement, Contractor shall use reasonable diligence to verify the extent of the effect of such condition on the performance of the Work or the Contract Price, and shall notify Owner thereof no later than two (2) Business Days after verifying such condition, and Owner may either (x) issue a Scope Change Order to address such condition or (y) terminate this Agreement pursuant to **Section 13.3**.

9.6 Scope Changes Caused by a Force Majeure Event or Owner-Caused Delay.

9.6.1 Owner may at any time, by written notice to Contractor, propose Scope Changes in the Work or the Critical Milestones due to a Force Majeure Event or Owner-Caused Delay. If there is a material impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Date as a result of such Force Majeure Event or Owner-Caused Delay, then the Contractor shall be entitled to a Scope Change Order equitably adjusting the Contract Price (but only as a result of an Owner-Caused Delay) and any affected Critical Milestone Dates, but only to the extent that such Owner-Caused Delay increased the cost to perform the Work or such Force Majeure Event or Owner-Caused Delay adversely affect the completion of the applicable Critical Milestone by the Critical Milestone Date therefor; provided, further, that for the avoidance of doubt, Contractor shall not be entitled to an adjustment to the Contract Price with respect to a Force Majeure Event. The Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Scope Change Order to address the effects of such events or delays on the Contract Price and Critical Milestone Dates.

9.6.2 Contractor may at any time, by written notice to Owner, propose Scope Changes in the Work or the Critical Milestones: (i) due to a Force Majeure Event claimed by Contractor, provided that such Force Majeure Event has an impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the

applicable Critical Milestone Dates; further provided that Contractor complies with requirements provided in **Article VIII**; and further provided that no adjustment to the Contract Price shall be permitted for a Force Majeure Event claimed by Contractor; (ii) due to an Owner-Caused Delay, provided that such Owner-Caused Delay has a demonstrable cost increase to Contractor and/or schedule impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Dates and further provided that Contractor complies with the requirements set forth in **Article VIII**; (iii) due to certain unforeseeable subsurface conditions to the extent provided in **Section 9.5**; (iv) due to a modification of an Owner Permit or requirements regarding Owner Permits which are different from those set forth in the Owner Permits included as a part of **Exhibit H**, provided that such modification to an Owner Permit or additional requirement has a demonstrable cost increase to Contractor and/or schedule impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Dates; or (v) due to the presence or release of Pre-Existing Hazardous Material, provided that such presence or release is not caused by Contractor or its Subcontractors' negligent or intentional acts and that such presence or release has a demonstrable cost increase to Contractor and/or schedule impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Dates. Unless the foregoing conditions are met, Contractor may not request a Scope Change in the Work or Critical Milestones due to a Force Majeure Event, unforeseeable subsurface conditions or Owner-Caused Delay. If the foregoing conditions are met, then Contractor shall receive a Scope Change Order equitably adjusting the Contract Price (where eligible) and any affected Critical Milestone Dates, but only to the extent that such Force Majeure Events (with respect to schedule only and not with respect to a change in Contract Price), Owner-Caused Delay, or unforeseeable subsurface conditions increase the cost to perform the Work or adversely affect the completion of the applicable Critical Milestone by the Critical Milestone Date therefor; provided, however, Contractor shall not be entitled to an adjustment to the Contract Price with respect to an Owner-Caused Delay unless and to the extent that the Owner-Caused Delay continues for more than one (1) day. The Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Scope Change Order to address the effects of such events or delays on the Contract Price and Project Schedule. Any extension permitted under this Section shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's efforts to mitigate the same.

9.7 Minor Changes. Owner shall have the direct authority to issue clarifications and order minor changes in the Work, effected by written order, which do not involve any impact to the Contractor's cost or the Project Schedule, provided that such clarifications and changes are consistent with the intent of this Agreement. Such clarifications and changes shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly and Contractor shall receive no additional compensation therefor.

9.8 Changes to Contract Price. A Scope Change Order initiated by either Party may have the effect of either increasing or decreasing the Contract Price. Any Contractor response to a Scope Change Order under **Section 9.1** and any Contractor request for Scope Changes under **Section 9.4** or **Section 9.6**, shall be accompanied by a proposed all inclusive final lump sum cost (separating materials and labor) to Owner; provided however, Owner may elect, in its sole

discretion, to pay Contractor its direct time and materials plus ten percent (10%) in respect of such Scope Change. Absent such an election, in the event that the Parties are unable to reach an agreement on an all inclusive final lump sum cost to Owner or a not-to-exceed cost estimate as a result of a requested Scope Change, then Contractor agrees to perform the requested Scope Change at a price equal to the Owner's proposed lump sum amount and to resolve (in accordance with the dispute resolution procedures set forth in **Article XV**) the issue of any excess of the Contractor's proposed lump sum cost over that of the Owner. In addition, in the event that Owner and Contractor are unable to reach agreement on a Scope Change Order for a Scope Change requested by either Owner or Contractor, at the direction of Owner (and only at the direction of Owner), Owner's proposed Scope Changes shall become effective as a Scope Change Order and Contractor shall continue to perform the Work in accordance with such Scope Change Order and the proposed Scope Changes shall be performed by Contractor at its sole cost and expense pending resolution of the dispute pursuant to **Article XV**. For any Scope Change Order finalized on a cost-plus basis, Contractor shall maintain all records, invoices and other data verifying its costs for a period of two (2) years subsequent to the date of the Scope Change Order.

## **ARTICLE INDEMNIFICATION**

**X**

### 10.1 Indemnities.

10.1.1 Contractor's General Indemnity. Contractor shall defend, indemnify and hold harmless Owner and each of its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (each, an "**Owner-Indemnified Party**") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any Owner-Indemnified Party as a result of any and all of the following:

- (a) any bodily injury, death or damage to property (including bodily injury, death or property claims by or on behalf of any employee of an Owner-Indemnified Party) arising out of or in connection with the Work that are caused wholly, or in part, by any act or omission (including negligent acts or omissions) of the Owner or an Owner-Indemnified Party, or any act or omission of Contractor, any Affiliate thereof, or any Subcontractor, including the employees, representatives, and agents thereof (except that the foregoing indemnification provisions shall not cover the sole negligence of the Owner or an Owner-Indemnified Party);
- (b) any claims resulting in bodily or property damage arising out of defective and/or nonconforming Work relating to or arising out of the performance of the Work;
- (c) claims by any Governmental Authority for any Taxes payable by Contractor;
- (d) any pollution or contamination caused by Contractor, its Subcontractors, including, without limitation, any pollution or contamination resulting from Hazardous Materials brought onto the Project Site or generated (excluding that generated from Pre-Existing Hazardous Materials) by Contractor, any of its Subcontractors;

(e) except to the extent caused by the failure of Owner to pay any undisputed amounts due pursuant to this Agreement, any Lien, on the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing labor or materials in connection with the Work;

(f) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from (i) Contractor's performance (or that of its Affiliates, Subcontractors) under this Agreement, including, without limitation, the Work, Equipment (but not including the WTGs or other Owner-Furnished Equipment), Design Documents, final plans or other items and services provided by Contractor or any Subcontractor hereunder, (ii) the design, use or ownership of the Design Documents and final plans, or (iii) the design, construction, use, operation or ownership of the Work or any portion thereof. Without limiting the provisions of **Section 7.1**, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to Owner;

(g) any vitiation of any insurance policy procured under **Article XII** as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor in violation of the requirements set forth in such policy;

(h) any failure of the Work, including Contractor Facilities, as designed, constructed and completed by Contractor, to comply with, or be capable of operating in compliance with, Applicable Laws or the conditions or provisions of Applicable Permits;

(i) any failure of Contractor to comply with Applicable Laws or the conditions or provisions of Applicable Permits; and

(j) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors.

10.1.2 Owner's Indemnity. Owner shall defend, indemnify and hold harmless Contractor and its directors, officers, agents, employees, successors and assigns (the "**Contractor Indemnified Parties**") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred or asserted by any such Person as a result of injury or death of any Person, including employees of Owner or loss or damage to property, in each case resulting from the sole negligence of Owner or an Owner-Indemnified Party.

## 10.2 Indemnification Procedure.

10.2.1 Notice of Proceedings. Within fourteen (14) days (or such earlier time as might be required to avoid prejudicing the indemnifying Party's position) after receipt of notice of



commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, the Person claiming to be indemnified under the terms of this **Article X** (the “**Indemnified Person**”) shall give the Party from which indemnification is sought (the “**Indemnifying Party**”) written notice thereof, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this **Article X**.

10.2.2 Conduct of Proceedings. Each Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys’ fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person, and such Indemnifying Party shall conduct with due diligence and in good faith the defense of any claim against such party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party’s right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (a) the employment of counsel by such Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such claim or (b) the Indemnifying Party shall not have employed counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person shall have reasonably concluded and specifically notified the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party. In each of such cases the Indemnifying Party shall not have the right to control the defense or settlement of such claim, and the reasonable fees and expenses of counsel engaged by the Indemnified Person shall be at the expense of the Indemnifying Party.

10.3 Survival of Indemnities. The indemnities set forth in this **Article X** shall survive the termination or expiration of this Agreement.

## **ARTICLE**

**XI**

### **LIMITATION OF LIABILITY**

11.1 Limitation of Certain Contractor Liabilities. Contractor’s liability to Owner under this Agreement for Mechanical Completion Delay Liquidated Damages in the aggregate shall be limited to an amount equal to twenty percent (20%) of the Contract Price. Contractor’s liability

for all damages (including Mechanical Completion Delay Liquidated Damages) under this Agreement shall be limited to a maximum aggregate amount equal to one hundred percent (100%) of the Contract Price, provided however, such limitation of liability shall not apply to: (i) Contractor's indemnification obligations under **Section 10.1.1**; (ii) costs incurred by Contractor in achieving Project Mechanical Completion; (iii) any loss or damage arising out of or connected with Contractor's gross negligence, fraud, willful misconduct or illegal or unlawful acts; and (iv) damages for which insurance proceeds are received from insurance required to be provided pursuant to this Agreement, it being the Parties' specific intent that the limitation of liability shall not relieve the insurers' obligations for such insured risks.

11.2 Consequential Damages. Subject to the next sentence, neither Owner nor Contractor nor any of either of their successors or assigns, or the respective shareholders, partners, assigns, directors, officers, agents or employees or representatives of either of them, shall be liable to the other for consequential, special, exemplary, indirect or incidental losses or damages, including loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit, and Owner and Contractor each hereby releases the other and each of such Persons from any such liability. The foregoing exclusion shall not (i) preclude recovery, where applicable, of Mechanical Completion Delay Liquidated Damages or damages payable for delays in completing the access roads as provided in **Section 6.8.4**, (ii) be construed to limit recovery of amounts owed by Owner or Contractor to third parties (i.e., Persons which are not Affiliates of the Owner or Contractor respectively) that may be recoverable from the other Party under any indemnity in **Article X** or (iii) limit liability arising from the gross negligence or willful misconduct of a Party.

11.3 Releases Valid in All Events. The waivers, limitations and disclaimers of liability, indemnities, releases from liability and limitations on liability or damages expressed in this Agreement shall survive cancellation or expiration of this Agreement, and shall apply (unless otherwise expressly indicated under this Agreement) irrespective of whether a Party or any Affiliate thereof, or any partner, shareholder, officer, director or employee of a Party or an Affiliate thereof, asserts a theory of liability in contract, equity or tort, even in the event of fault, misrepresentation (including negligent misrepresentation), negligence (including sole negligence), foreseeable damages, strict liability, breach of warranty or any other theory of liability, of the party indemnified, released or whose liabilities are limited, and, to the extent permitted by Applicable Law, shall extend to the partners, principals, directors, officers and employees, agents and Affiliates of such party, and their partners, principals, directors, officers and employees.

11.4 Owner Limitation of Liability. In no event shall the aggregate damages payable by Owner hereunder exceed the Contract Price (as the same may increase from time to time in accordance with the terms of this Agreement), provided such limitation of liability shall not apply to Owner's indemnification obligations under **Section 10.1.2**. Contractor's sole recourse for any damages or liabilities due to Contractor by Owner pursuant to this Agreement shall be limited to the assets of Owner (which include the Project). Neither Party shall have recourse individually or collectively to the assets of the members or the Affiliates of the other Party or their respective officers, directors, employees or agents of the other Party, its members or their Affiliates.

**ARTICLE  
INSURANCE**

**XII**

12.1 Contractor's Insurance. Contractor, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect all insurance coverages specified in **Exhibit M** to be provided by Contractor and shall otherwise comply with the other provisions set forth in **Exhibit M**.

12.2 Owner's Insurance. Owner, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect all insurance coverages specified in **Exhibit M** to be provided by Owner and shall otherwise comply with the other provisions set forth in **Exhibit M**.

**ARTICLE  
DEFAULT, TERMINATION AND SUSPENSION**

**XIII**

13.1 Contractor Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Contractor hereunder ("Contractor Event of Default"):

(a) any of the following occurs: (i) Contractor consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than sixty (60) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than sixty (60) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing;

(b) Contractor fails, for any reason, (i) to pay when due Mechanical Completion Delay Liquidated Damages as required herein or (ii) to make any other payment or payments required to be made to Owner under this Agreement within ten (10) Business Days after receipt of written notice from Owner of Contractor's failure to make such other payment or payments (except, in the case of payments other than Mechanical Completion Delay Liquidated Damages, to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

- (c) any of the following occurs: (i) Contractor fails to supply skilled workers or suitable materials or equipment sufficient to meet the Critical Milestone Dates and to prosecute the Work in accordance with this Agreement; (ii) Contractor fails to make prompt payments when due to Subcontractors for labor, materials or equipment; (iii) Contractor suspends performance of a material portion of the Work (other than as permitted under **Article VIII, Section 13.2.1, Section 13.6**, or pursuant to a Scope Change Order); or (iv) Contractor disregards any provision of any Applicable Law, and if in each of sub-clauses (i) through (iv) of this Section, such condition remains unremedied for thirty (30) days following written notice thereof by Owner (or for such longer period, not to exceed ninety (90) days, during which time Contractor diligently pursues the cure of such material breach, if such material breach is capable of being cured);
- (d) Contractor disregards the instructions of Owner delivered in accordance with this Agreement and does not commence to cure its noncompliance therewith within thirty (30) days after written notice from Owner;
- (e) Contractor is in breach in any other agreement between Contractor (or one of its Affiliates) and Owner (or one of its Affiliates) and pursuant to the terms of such agreement Owner (or the Owner Affiliate) has the right to terminate such agreement;
- (f) any breach by Contractor of any representation or warranty contained in **Article XVI** which Contractor fails to cure within thirty (30) days following written notice from Owner;
- (g) Contractor fails to show adequate progress of the Work toward completion of a Milestone by the Milestone Date therefor, or fails to achieve a Milestone by the Milestone Date therefor, and such failure continues for thirty (30) days after notice from Owner, provided that, if Contractor has delivered and is diligently and continuously implementing a recovery plan in accordance with **Section 2.6.3**, such failure shall not constitute a Contractor Event of Default unless it remains uncured after sixty (60) days from the date of the original written notice of such failure from Owner;; or Contractor fails to achieve Project Mechanical Completion within sixty (60) days of the last Guarantee Mechanical Completion Date.
- (h) the dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations (including any potential indemnification obligations) under this Agreement;
- (i) the transfer by Contractor of (x) all or a substantial portion of the rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (y) all or a substantial portion of the assets or obligations of Contractor, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of Contractor or the transferee, as applicable, to perform its obligations under this Agreement;

(j) any failure by Contractor to maintain the insurance coverages required of it in accordance with **Article XII**, unless such failure is cured within five (5) Business Day of the earlier of written notice from Owner or from the date Contractor becomes aware of such failure;

(k) any abandonment of the Work by Contractor, where “abandonment” for the purposes of this Section shall mean that Contractor has substantially reduced personnel at the Site or removed required equipment from the Site such that, in the opinion of an experienced construction manager, Contractor would not be capable of completing the Critical Milestones in accordance with the Project Schedule as adjusted; or

(l) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under this Agreement (other than those breaches specified in this **Section 13.1 (a) through (k)** above) and (i) such breach is not cured by Contractor within fifteen (15) days after written notice thereof from Owner, or (ii) if such breach is not capable of being cured within such fifteen (15) day period, Contractor (A) fails to commence to cure such breach within such fifteen (15) day period, (B) fails to thereafter diligently proceed to cure such breach or (C) fails to cure such breach within sixty (60) days after notice thereof from Owner.

13.1.1. Termination for Cause. Upon the occurrence and during the continuation of any Contractor Event of Default hereunder, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (an “**Owner Termination for Cause**”). An Owner Termination for Cause shall be effective upon delivery of Owner’s notice with respect thereto. In the event of a termination by Owner under this Section, Owner shall have the right, subject to paying any amounts thereafter due in connection with any leased Contractor Equipment, to take possession of and use all of the Contractor Equipment located at the Job Site on the date of such termination for the purpose of completing the Work and may employ any other Person to complete the Work by whatever method that Owner may deem necessary. In addition, Owner may make such expenditures as in Owner’s reasonable judgment will accomplish the timely completion of the Work in accordance with the terms hereof. Owner shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement contractors, determine the total cost to Owner for completing the Work in accordance with the Technical Specifications and the other requirements of this Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In contracting with such replacement contractors, Owner shall, to the extent practicable, cause the Work to be completed in accordance with this Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the Contract Price is less than the sum of (i) all costs and expenses incurred by Owner (either itself or by engaging one or more substitute contractors) to complete (or cure deficiencies in) the Work, including, without limitation, additional reasonable overhead and legal, engineering and other professional expenses, (ii) all other reasonable costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of this Agreement and the termination of this Agreement as a result thereof, (iii) all amounts previously paid to Contractor pursuant to this Agreement, and (iv) any liquidated damages due and payable hereunder, Contractor shall pay to Owner on demand the amount of such difference. Any amount owed by Owner to Contractor for the level of completion of the Work shall be

retained by Owner until after completion of the Work and applied by Owner to pay any amounts and damages owed by Contractor pursuant to this **Section 13.1** or otherwise. Any excess of the amount retained over the amount due under this **Section 13.1.1** shall be remitted to Contractor within sixty (60) days after the Project is finally completed.

13.2 Owner Default. The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder (“**Owner Event of Default**”):

(a) any of the following occurs: (i) Owner consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Owner files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Owner’s assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than sixty (60) days; or (iv) Owner is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than sixty (60) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing; or

(b) Owner fails to make payment of any amount when due (other than amounts disputed in good faith) as required to be made by Owner to Contractor, which failure continues for thirty (30) days after written notice from Contractor of such non-payment.

13.2.1 Upon the occurrence and during the continuation of any Owner Event of Default under **Section 13.2(b)**, Contractor shall have the right to suspend its performance hereunder (and such suspension will entitle Contractor to a Scope Change to the extent permitted by **Article IX**). Upon the occurrence and during the continuation of any Owner Event of Default hereunder, Contractor shall have the right to terminate this Agreement by written notice to Owner (the latter, a “**Contractor Termination for Cause**”). A Contractor Termination for Cause shall be effective upon delivery of Contractor’s notice with respect thereto. In the event of a termination by Contractor of this agreement, Owner shall pay Contractor the Termination Payment within thirty (30) days of such notice of termination.

13.3 Termination Without Cause. Owner may for its convenience terminate this Agreement after giving written notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment under **Section 4.9**. As a condition to any termination by Owner pursuant to this **Section 13.3** (a “**Termination Without Cause**”), Owner must provide written notice to Contractor of the Termination Without Cause at least three (3) Business Days prior to the effective date of such termination. If, at the date of termination under this **Section 13.3**,

Contractor has properly performed services or purchased, prepared or fabricated off the Project Site any materials or equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or equipment or that portion of Infrastructures Facilities prepared or fabricated by Contractor delivered to the Project Site or to such other place as Owner shall reasonably direct.

13.4 Termination Due to Force Majeure. If: (i) Owner wholly suspends the Work on the Project for one hundred and eighty (180) consecutive days due to the occurrence of a Force Majeure Event suffered by Owner; or (ii) Contractor is entirely prevented from performing the Work for a period of one hundred and eighty (180) consecutive days as a result of the occurrence of a Force Majeure Event, then either Party may terminate this Agreement at no cost (except as provided in the following sentence) or penalty, other than the payment of all accrued payment obligations due and payable through such date, upon not less than thirty (30) days' prior written notice to the other Party; provided, however, that nothing in this **Section 13.4** shall relieve or excuse either Party from its obligations under **Article VIII** in respect of the occurrence of a Force Majeure Event. Upon a termination pursuant to this Section, Owner shall pay Contractor as full compensation for its services hereunder the Termination Payment pursuant to **Section 4.9**.

#### 13.5 Actions Required Following Termination.

13.5.1 Discontinuation of Work. Upon termination of this Agreement, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in **Section 4.9**, **Section 13.2.1** or **Article X**, if applicable and to perform any obligations which survive this Agreement), Contractor immediately shall discontinue the Work and remove from the Job Site its personnel, all Contractor Equipment (subject to Owner's rights to use Contractor Equipment under **Section 13.1.1**), waste, rubbish and Hazardous Materials brought onto the Job Site by Contractor or its Subcontractors or for which Contractor is otherwise responsible, as Owner may request, and Owner shall be entitled to take exclusive possession of Job Site and any and all Equipment (including without limitation materials delivered or en route to the Project Site). Contractor immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Site, stored off-site, or in transit.

13.5.2 Cancellation and Transfer of Subcontracts and Other Rights. If requested by Owner upon termination of this Agreement, Contractor will make every reasonable effort to cancel existing contracts with Subcontractors upon terms satisfactory to Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor. In the event of a termination due to a Contractor Event of Default, Contractor shall also, upon request by Owner, irrevocably assign and deliver to Owner any and all Subcontracts, purchase orders, bonds, warranties and options made by Contractor in performance of the Work (but in no event shall Owner be liable for any action or default of Contractor occurring prior to such delivery and assignment). In the event of any termination of this Agreement, Contractor shall (i) provide to Owner without additional charge an irrevocable non-exclusive right to use patented, copyrighted, licensed or proprietary materials of Contractor, Subcontractors or any other Person in connection

with the Work for the Project, and (ii) deliver to Owner originals of all Contract Documents, originals of all Design Documents, to the extent available, final plans in process (except that Contractor may keep for its records copies, and, an original set, of this Agreement executed by Owner), all other materials relating to the Work, and all papers and documents relating to Applicable Permits, orders placed, bills and invoices, Lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner. Except as provided herein, no action taken by Owner or Contractor after the termination of this Agreement shall prejudice any other rights or remedies of Owner or Contractor provided by Applicable Laws, this Agreement or otherwise upon such termination. In addition, Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Job Site, and Contractor shall take such other action as required hereunder upon such termination of this Agreement.

13.5.3 Surviving Obligations. Termination or expiration of this Agreement (a) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in **Section 17.1**, (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Owner or Contractor of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work completed and paid for or other services hereunder already performed and paid for or of obligations assumed by Contractor prior to the date of termination. This **Article XIII** shall survive the termination or expiration of this Agreement.

13.6 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (i) immediately discontinue the Work on the date and to the extent specified in the notice; (ii) place no further orders or subcontracts for Equipment, services or facilities with respect to suspended Work, other than to the extent required in the notice; (iii) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (iv) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (v) take any other reasonable steps to minimize costs and expenses associated with such suspension. As full compensation for any suspension under this Section, Contractor will be reimbursed by Owner pursuant to a Scope Change submitted and agreed to as provided in **Article IX**.

**ARTICLE**  
**TITLE AND RISK OF LOSS**

**XIV**

14.1 Title to Infrastructure Facilities and the Work. Contractor warrants and guarantees that



legal title to and ownership of the Work (including, without limitation, all Equipment) shall pass to Owner, free and clear of any and all Liens, upon payment to Contractor of the portion of the Contract Price then actually due to Contractor in connection with the Request For Payment as provided in this Agreement; provided that for all Equipment, title shall pass to Owner upon such payment only if title has previously been transferred to Contractor, otherwise, title shall pass to Owner at such time as Contractor has acquired title to the Equipment. Notwithstanding anything to the contrary, legal title to the Work shall pass to the Owner not later than delivery of the Equipment to the Project Site. Notwithstanding anything to the contrary, the costs of unloading and transporting to the Job Site are included in the Contract Price.

14.2 Title to Design Documents. Except as otherwise provided in **Article XIII**, title to Design Documents, drawings, specifications and like materials (including the Job Books contents) which are owned by Contractor shall be transferred to Owner upon the earlier of: (i) delivery of such material to the Owner and (ii) Project Mechanical Completion, except Contractor may retain copies of such documents for its records. In addition, Contractor grants to Owner an irrevocable, non-exclusive, royalty-free license to use and reproduce such drawings, specifications and other design documentation to which Contractor does not have title but has the right to grant sub-licenses solely for the purpose of completing construction of, operating and maintaining, rebuilding and expanding the Project. Contractor shall bear no liability for the use of such documentation for the purpose of expansion of the Project. Owner shall have the right to assign the benefit of such license to any lender in connection with granting a security interest in the Project, to a purchaser or Utility in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this **Section 14.2**. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Project. Any costs to register such licenses in the United States shall be paid by Owner.

14.3 Risk of Loss. Notwithstanding passage of title as provided in **Section 14.1**, from the date hereof until the Project Mechanical Completion Date, Contractor hereby assumes the risk of loss for the Project and the Work, including: (a) any Equipment whether on or off the Job Site, (b) all other Work completed on or off the Job Site and (c) all Work in progress. All Equipment not yet incorporated into the Project shall be stored in secured areas. Contractor shall bear the responsibility of preserving, safeguarding, and maintaining such Equipment and any other completed Work and Work in progress (including spare parts provided by Owner). If any loss, damage, theft or destruction occurs to the Work, on or off the Job Site, for which Contractor has so assumed the risk of loss, Contractor shall, at its cost, promptly repair or replace the property affected thereby, but shall be entitled to reimbursement under Owner's builder's risk insurance required to be provided by Owner in accordance with **Section 12.2** to the extent coverage is provided, so long as Contractor assumes any deductibles or retention amounts in connection with insurance reimbursement. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Project Mechanical Completion Date. Subject to the foregoing, from and after the date of the transfer of risk of loss (a) Owner shall assume all risk of physical loss or damage thereto, and all responsibility for compliance by the Project with applicable safety and environmental laws, and all other Applicable Laws and (b) Owner shall,

and does hereby, release Contractor for loss or damage to the Project which may thereafter occur; provided, however, Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Warranty Services, or from negligent acts or omissions, and/or failure to comply with the requirements of this Agreement of Contractor or any Subcontractor or their respective agents or employees or any Person for whose acts they are responsible. Notwithstanding the foregoing, if Contractor is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, Contractor shall bear the risk of loss and damage with respect to such Work until Contractor's obligation to perform the additional Work is satisfied. Nothing in this **Section 14.3** shall be deemed to make Contractor responsible for loss or damage caused by the sole negligent acts of Owner or Owner's Subcontractors or Persons under contract with any of them or for whom they are responsible.

## **ARTICLE DISPUTE RESOLUTION**

**XV**

15.1 Senior Representatives Discussion. Any dispute between the Parties relating to the prosecution of the Work, including without limitation, the scheduling thereof, the achievement of Critical Milestones, timing of the achievement of the Critical Milestones, and the entitlement of Contractor for payment in accordance with the Milestone Payments, shall be referred to on-site project managers for prompt resolution. Any such dispute between the Parties that cannot be resolved by on-site project managers within five (5) Business Days and any other dispute arising out of or relating to this Agreement, including without limitation, disputes concerning the breach, termination or invalidity hereof (collectively, "**Disputes**"), shall be reviewed by senior representatives of each of the Parties designated by such Party, for resolution on an informal basis as promptly as practicable. If such consultations do not result in a resolution of the Dispute within twenty (20) Business Days after notice of a Dispute is delivered by either Party, then either Party may pursue all of its remedies available pursuant to this Agreement. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to such Dispute.

### 15.2 Litigation.

15.2.1 If a Dispute cannot be resolved pursuant to **Section 15.1**, and in the event of litigation arising hereunder, the Parties agree that the exclusive venue for such litigation shall be the courts of the State of Oregon, located in Multnomah County, except as otherwise provided in **Section 15.2.5**. The Parties irrevocably waive any objection which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in *personam* jurisdiction.

15.2.2 IN ANY LITIGATION ARISING FROM OR RELATED TO THIS AGREEMENT, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND

INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OWNER AND CONTRACTOR TO ENTER INTO THIS AGREEMENT. EACH PARTY AGREES THAT FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAW.

15.2.3 Interest calculated in accordance with **Section 4.10** shall be due and payable to the prevailing Party from the date the amount in dispute was first due until the date of payment.

15.2.4 The rights and obligations of the Parties under this **Article XV** shall not be impaired, reduced or otherwise affected as a result of the assignment or transfer by either Party of any or all of its rights and/or obligations under this Agreement as permitted hereunder.

15.2.5 Notwithstanding **Sections 15.2.1 and 15.2.2.** to the contrary, this **Section 15.2.5** shall apply in the event of a dispute that involves the Turbine Vendor (whether a Party is sued by the Turbine Vendor or sues the Turbine Vendor). The Parties hereto agree that all such actions or proceedings shall be tried and litigated exclusively in the United States District Court for the Southern District of New York, and if jurisdiction does not lie in that court, then the Supreme Court for the State of New York in New York County. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties and involving the Turbine Vendor in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the United States District Court for the Southern District of New York, and, if jurisdiction does not lie in that court, then the Supreme Court for the State of New York in New York County, shall have a *personam* jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement and involving the Turbine Vendor. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph, by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices, as set forth in this Agreement. In the event an action is pending in Oregon in accordance with **Section 15.2.1** and a Party desires to sue the Turbine Vendor or is sued by the Turbine Vendor on claims for which the other Party may be liable under this Agreement, then in such event the Parties hereby agree to consent to any motion to stay the action in Oregon and the suit involving the other Party and the Turbine Vendor shall be brought in New York upon the motion for stay being granted by the Oregon court. In any action or proceeding under this **Section 15.2.5**, the governing law shall be the law as specified in the Wind Turbine Supply Contract.

15.3 Continued Performance. During the continuation of any Dispute, so long as the dispute resolution procedures set forth in this **Article XV** are continuing, subject to each Party's right, if

any, to suspend its performance pursuant to **Articles IX and XIII**, the Parties shall continue to perform their respective obligations under this Agreement including continuation of Work under the Project Schedule and prompt and timely payment of all amounts due hereunder until a final non-appealable resolution is reached.

15.4 Tolling Statute of Limitations. All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this **Article XV** are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this **Article XV**, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this **Article XV**.

15.5 Audit Rights. In the event of a claim by Owner under this Agreement involving an amount greater than ten thousand dollars (\$10,000), Contractor shall grant audit rights to Owner with respect to all relevant documentation pertaining to such claim.

15.6 Costs. The substantially prevailing Party in any action or proceeding shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action or proceeding, including reasonable attorneys' fees and costs at the trial court and all appellate levels.

15.7 Specific Performance. Notwithstanding anything to the contrary contained in this **Article XV**, if, due to a material breach or threatened material breach or default or threatened default, a Party is suffering irreparable harm for which monetary damages are inadequate, such Party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief.

## **ARTICLE XVI**

### **REPRESENTATIONS AND WARRANTIES**

16.1 Contractor Representations. Contractor represents and warrants that:

16.1.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_, and is duly authorized and qualified to do business in the State of \_\_\_\_\_, and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

16.1.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or permits or judgments entered by any Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal, administrative or arbitration proceedings or actions, controversies, investigations, actions or other proceedings, now pending or (to the best knowledge of Contractor) threatened against Contractor which, if adversely determined, could reasonably be expected to have an effect on the

ability of Contractor to perform under this Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.

16.1.3 Licenses. It is (or will be prior to performing any Work on the Project Site) the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by this Agreement, other than Applicable Permits which will be obtained in accordance with the terms of the this Agreement.

16.1.4 No Breach. None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Contractor, or any Applicable Law or regulation, order, writ, injunction, award, judgment or decree of any court, or any agreement, contract, indenture or other instrument to which Contractor is a party or by which it or its assets is bound or to which it or its assets is subject, or constitute a default under any such agreement or instrument.

16.1.5 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Contractor of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

16.1.6 Investigation. It has: (i) by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including without limitation to construct the Contractor Facilities and to unload, erect and install the WTGs and (ii) ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions and Applicable Laws (including labor) which might affect its performance of the Work or the cost thereof and has performed such testing or examined the results of such testing as would normally be conducted by a contractor considering entering into an agreement such as this Agreement.

16.1.7 Operating Manuals. The Operating Manuals delivered hereunder will contain all of the materials provided by relevant Subcontractors and fairly present all manufacturers' procedures, specifications and requirements.

16.1.8 Review of Agreement. It has examined this Agreement, including all Exhibits attached hereto, thoroughly and become familiar with all its terms and provisions.

16.1.9 Review of Additional Documents. It has reviewed all other documents and information necessary and available to it in order to ascertain the nature, location and scope of the Work, the

character and accessibility of the Project Site, the existence of obstacles to construction of the Project and performance of the Work, the availability of facilities and utilities, and the location and character of existing or adjacent work or structures.

16.1.10 Intellectual Property. It owns or has the right to use and license or sublicense all patents, trademarks, service marks, trade names, copyrights, licenses, franchises, permits and intellectual property rights necessary to perform the Work without conflict with the rights of others, and to transfer the same to Owner as required by this Agreement.

16.1.11 Solvency. It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement. There have been no material adverse changes to the financial condition of the Contractor since [\_\_\_\_\_, 2007].

16.1.12 Studies and Reports. Owner or Owner's representatives may provide or may have provided Contractor with copies of certain studies, reports or other information (including oral statements) and it represents and acknowledges that except as provided below (A) all such documents or information have been or will be provided as background information and as an accommodation to Contractor, (B) Owner makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed and (C) Contractor is not relying on Owner for any other information, data, inferences, conclusions, or other information with respect to the Project Site. Notwithstanding the foregoing, Contractor is entitled to rely upon the completeness and accuracy of the following provided or to be provided by Owner:

- (i) Owner Permits and requirements of Owner Permits;
- (ii) Owner design requirements, specifications and other information regarding Owner-Furnished Equipment to the extent set forth in **Exhibits F and G**;
- (iii) switching procedures, as set forth in **Exhibit L**; and
- (iv) Real Property Rights as set forth in **Exhibit K**.

16.1.13 Certifications. All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement.

16.1.14 Site Access. The access rights granted herein to, or obtained by, Contractor to the Project Site are adequate for the performance of the Work and operation of the Project.

16.2 Owner Representations. Owner represents and warrants that:

16.2.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the State of Oregon, and is duly authorized and qualified to do business in the State of Oregon and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

16.2.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of Owner) threatened against Owner which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Owner to perform its obligations under this Agreement.

16.2.3 Licenses. It is (or will be prior to performing any Work on the Project Site) the holder of all governmental consents, licenses, permissions and other authorizations and permits required to operate and conduct its business now and as contemplated by this Agreement, other than Applicable Permits which will be obtained in accordance with the terms of this Agreement.

16.2.4 No Breach. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof, conflicts with or will result in a breach of, or require any consent under, the charter or by-laws of Owner, or any Applicable Law or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

16.2.5 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

16.3 Survival of Representations and Warranties. The representations and warranties of Contractor herein shall survive execution and termination of this Agreement.

## ARTICLE MISCELLANEOUS PROVISIONS

XVII

### 17.1 Confidentiality and Publicity.

17.1.1. Confidential Information and Permitted Disclosures. Except as set forth in this **Section 17.1**, Owner and Contractor shall hold in confidence the contents of this Agreement and any information provided pursuant to this Agreement and any other information supplied by either Party to the other that is marked or otherwise indicated to be confidential (collectively, "**Confidential Information**"). Each Party shall inform its Affiliates, Subcontractors, suppliers, vendors and employees of its obligations under this **Section 17.1** and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, Owner and Contractor may disclose the following categories of information or any combination thereof:

- (i) Confidential Information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;
- (ii) Confidential Information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;
- (iii) Confidential Information received by such Party from a third party having no obligation of confidentiality with respect thereto;
- (iv) Confidential Information at any time developed independently by such Party providing it is not developed from otherwise Confidential Information;
- (v) Confidential Information disclosed pursuant to and in conformity with Applicable Law or a judicial order or regulatory proceeding or in connection with any legal proceedings described in **Article XV**, provided that the Party required to disclose such information shall give prior notice to the other of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;
- (vi) Confidential Information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries; and
- (vii) Confidential Information disclosed to Affiliates, Subcontractors, employees directors, officers, agents, advisors or representatives of each party as necessary; provided that such Persons are informed of the confidential nature of the Confidential Information, and the Party disclosing such information shall be liable to the other for any disclosure by such Person in violation of the terms of this Section.

#### 17.1.2 Additional Owner Permitted Disclosures.

17.1.2.1 Owner may disclose Confidential Information to financial institutions or other investors expressing interest in providing debt or equity financing or refinancing or other credit or financial support to Owner, and the agent or trustee of any of them or to any Person that is a potential or actual successor in interest or a purchaser of Owner's assets to which this Agreement relates; provided, however, that such disclosures shall be subject to the agreement of such Persons to keep such information confidential pursuant to the terms of this **Section 17.1**.

17.1.2.2 Notwithstanding the preceding **Section 17.1.1** and **Section 17.1.2.1**, the Parties acknowledge that Owner is subject to numerous regulatory proceedings and that Confidential Information may be disclosed if required by any Governmental Authority or court or otherwise by law; provided, however, that such Confidential Information is submitted under applicable provisions for confidential treatment. If Owner intends to disclose Confidential Information



under the provisions of this **Section 17.1.2.2** and Owner is unable to obtain confidential treatment for such information, Owner shall notify Contractor of the same in writing prior to such disclosure.

17.1.3 Intentionally Omitted.

17.1.4 Consent. Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably withheld.

17.1.5 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including, but not limited to injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section, without proof of any actual or special damages.

17.1.6 Application of Additional Confidentiality Provisions. In addition, Contractor acknowledges and agrees that it is subject to the confidentiality provisions set forth in the Wind Turbine Supply Contract.

17.1.7 Ownership of Confidential Information. All right and title to, and interest in, Owner's Confidential Information shall remain with Owner. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. Contractor shall deliver the Confidential Information, including all copies thereof, to Owner upon request, subject to Contractor's right to retain copies for its records.

17.1.8 Public Announcements. Contractor shall not issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby, without the prior consent, which shall not be unreasonably withheld or delayed, of Owner, unless required by Applicable Law or order of a court of competent jurisdiction, provided, however, that Contractor shall have the right without obtaining such consent to include public information concerning the Project in Contractor's marketing materials following the initial public announcement by Owner. In the event of a breach of this **Section 17.1.8**, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, Owner may, in its sole discretion, issue public announcements that Owner shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the Contractor.

17.2 Control of Software and Other Proprietary Material. Owner recognizes that proprietary software provided by Contractor to Owner as part of the Work carries with it certain restrictions on use and copying of software and that such software shall not be duplicated and provided to a third party without the express prior written authorization of Contractor (except as otherwise provided in this **Section 17.2**). Owner acknowledges that under the terms of this Agreement it is being provided and shall have access to certain intellectual property rights owned, used or licensed by Contractor, including software, trade secrets, patents, and other proprietary information relating to the specification, design, construction, installation, operation or

maintenance and repair of the Work, as well as training processes, and the contents of service and maintenance manuals and test and inspection procedures (collectively, “**Intellectual Property Rights**”). Owner and Contractor agree that the Agreement provides Owner and its representatives with an irrevocable, permanent, transferable, nonexclusive, royalty-free license to use the Intellectual Property Rights (a) in connection with the Project and (b) in connection with the operation, maintenance, repair, modification or alteration of any other power generating facility to be owned, operated, constructed or developed by Owner or any Affiliate of Owner; provided that, Contractor makes no representation or warranty with respect to the Intellectual Property Rights to the extent that such Intellectual Property Rights is used in any facility other than the Project and; provided, further, that Contractor makes no representation that the Intellectual Property Rights are suitable for reuse by Owner or others on extensions of the Project or on any other project and provided, further, that any such reuse will be at Owner’s sole risk and without liability or legal exposure to Contractor. Owner agrees (i) not to use any such Intellectual Property Rights for any purpose other than as set forth in this **Section 17.2**, and (ii) not to disclose any such Intellectual Property Rights which Contractor expressly notifies Owner in writing are confidential except (a) to the extent such information is generally available to the public other than as a result of a disclosure by Owner, (b) in connection with the permitted uses of such Intellectual Property on a need-to-know basis, (c) upon the written consent of Contractor, or (d) as otherwise expressly permitted by this Agreement; provided, that such Intellectual Property Rights shall not be used to manufacture wind turbine generators or auxiliary equipment other than the WTGs in accordance with the terms of the escrow agreement between Owner and Turbine Vendor. To the extent any of the licensors or other owners of the Intellectual Property Rights may reasonably require, Owner shall execute such confidentiality and nondisclosure agreement or agreements as such licensors or owners may reasonably require.

17.3 Notice. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received when actually received by the Party to whom it is sent, at the address and/or facsimile numbers of such party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with the Section):

If to Owner:

PacifiCorp Energy  
1407 West North Temple  
Salt Lake City, Utah 84116  
Attention: [ \_\_\_\_\_ ]  
Facsimile: (801) 220-4615  
Telephone: (801) 220-4209  
Email: [ \_\_\_\_\_ ]

With a copy to:

PacifiCorp Energy  
1407 West North Temple

Salt Lake City, Utah 84116  
Attention: [ \_\_\_\_\_ ]  
Facsimile: (801) 220-4615  
Telephone: (801) 220-4213  
Email: [ \_\_\_\_\_ ]

If to Contractor:

17.4 No Rights in Third Parties. Except with respect to the rights of indemnitees under **Article X** (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

17.5 Conflicting Provisions. In the event of any inconsistencies between this Agreement and the other Contract Documents, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (a) Amendments, addenda or other modifications to this Agreement (including Scope Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;
- (b) **Articles I through XVII** of this Agreement;
- (c) The Exhibits hereto; and
- (d) Design Documents produced and delivered pursuant hereto (in respect of which, precedence shall be given to Design Documents of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Where an irreconcilable conflict exists among Applicable Laws, this Agreement, the drawings included in the Design Documents, and the specifications in the Design Documents, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict. Notwithstanding the foregoing provisions of this **Section 17.5**, if a conflict exists within or between parts of this Agreement, or between this Agreement and Applicable Laws, or among Applicable Laws themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under this Agreement or under Applicable Laws or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an “irreconcilable conflict.” Where a conflict exists among codes and standards applicable to the Infrastructure

Facilities or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

17.6 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

17.7 Amendments. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties.

17.8 Governing Law. Except as provided in **Section 15.2.5**, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD CALL FOR THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION).

17.9 Right of Waiver. No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

17.10 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

17.11 Assignment. This Agreement or any right or obligation contained herein may be assigned by Owner to any of its Affiliates that has a direct or indirect interest in the Project. This Agreement may be otherwise assigned by the Parties only upon the prior written consent of the other Party, not to be unreasonably withheld or delayed. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; any other assignment shall be void and without force or effect. With respect to any lender or other Person providing debt financing for the Project (a "**Lender**"), Contractor agrees

to (i) the collateral assignment of this Agreement to the Lender or any designee of Lender, (ii) the performance prior to collateral assignment of Owner's obligations under this Agreement, (iii) provide concurrent notice to Lender of any notice of default by Owner under this Agreement, (iv) provide as requested documentation, information, access and other assistance requested from time to time by Lender or its representatives, and (v) enter into a customary direct agreement with Lender if so requested.

17.12 Successors and Assigns. Subject to **Section 17.11**, this Agreement shall be binding upon the Parties, their successors and permitted assigns.

17.13 No Partnership Created. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Contractor and Owner.

17.14 Survival. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including **Articles VII and X**, shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of Contractor contained herein or in any other Contract Document shall survive the execution and delivery hereof and thereof.

17.15 Effectiveness. This Agreement shall be effective on, and binding upon each of the Parties, on the Effective Date.

17.16 Expenses and Further Assurances. Each Party shall pay its own costs and expenses in relation to the negotiation, preparation execution and carrying into effect this Agreement. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.

17.17 Financial Assurances. If Owner determines that Contractor's financial condition has deteriorated so as to create a risk of loss to Owner, then Owner may inform Contractor in writing of such insecurity, and as Owner shall direct in its reasonable discretion, Contractor shall immediately: (a) provide written assurance within five (5) days that the Contractor is capable of performing and completing the Work and its obligations under this Agreement; (b) increase the forms and/or amounts of security; (c) require direct payment or co-payment to Subcontractors; (d) adjust the amount of Work to be performed by Contractor with corresponding adjustments in the Contract Price; and/or (e) to assign to Owner any agreement or purchase order with a Subcontractor, provided that Contractor shall remain responsible for its obligations under such agreement or purchase order.

17.18 Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument.

17.19 Offset. Notwithstanding any other provision hereof, any and all amounts owing or to be paid by Owner or Contractor to the other hereunder or otherwise, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time. Further, for the

avoidance of doubt, with respect to any provision of this Agreement that allows Owner to offset, set-off or draw against a bond any amount then owed to Contractor, Owner shall have the express right to include in the amount offset, set-off or drawn under a bond all of the reasonable costs and expenses it incurs in connection with enforcing such provision (including attorneys' and other consultants' fees).

17.20 Time of the Essence. Time is of the essence in the performance of the Work by Contractor hereunder.

17.21 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

17.22 Equal Employment Opportunity. Contractor represents and warrants that the Work will be performed in compliance with all Applicable Laws, including all applicable executive, judicial and administrative orders. Upon Owner's reasonable request(s), Contractor will (and/or will cause its Subcontractors to) provide such information as may be required by Owner in order to respond to any Governmental Authority with respect to matters involving compliance with the Applicable Laws described above in this paragraph.

17.23 Contractor Performance Security.

17.23.1 Parent Guaranty. Concurrently with execution of this Agreement, Contractor shall cause [\_\_\_\_\_] ("**Guarantor**") to guaranty all of the Contractor's obligations under this Agreement in a form acceptable to Owner in its sole discretion.

17.23.2 Letter of Credit. Concurrently with execution of this Agreement, Contractor shall cause to be issued a letter of credit in a form acceptable to Owner in its sole discretion from a bank acceptable to Owner in its sole discretion in the amount of [\_\_\_\_\_].

17.24 Federal Security Registry. Contractor warrants that Contractor, its employees and Subcontractors are not on Federal Government's list of suspected terrorists or suspected terrorist organizations.

17.25 Criminal Background Check. If requested by the Owner, the Contractor shall conduct, at Contractor's cost and expense, criminal background checks for the current and past counties of residence on all employees, agents, or Subcontractors and the employees, agents or representatives of Subcontractors, that have electronic or physical access to Work or Owner's facilities. At a minimum, a social security number verification and seven-year criminal background check, including felony or misdemeanor convictions involving: (a) violence to persons/property; (b) theft/fraud; (c) drug/alcohol; or (d) traffic/other are required. Employment history, education verification, and professional certifications may also be required by the Owner. All background checks will be conducted in accordance with federal, state, provincial, and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. Contractor shall not allow persons who have not met the Owner's criteria to perform Work, unless Contractor has received written consent from the Owner. Contractor shall supply a certification that meets Owner's criteria for each Contractor employee, agent or representative

and for employees, agents or representatives of any Subcontractor employed by Contractor. Contractor shall ensure that employees, agents, or Subcontractors and the employees of Subcontractors sign an appropriate authorization form prior to criminal background checks being conducted, acknowledging the background check is being conducted and authorizing the information obtained to be provided to Owner. It is understood and agreed that Owner may review Contractor's policies, background checks and related documentation upon request, subject to applicable federal, state and/or local statutes or regulations. Owner may also request that Contractor provide an ongoing and updated list of persons that have been denied access to Owner's facilities.

17.26 Drivers Licenses. Contractor shall ensure DOT compliance, including but not limited to valid drivers license, equipment inspections, hours of service and all appropriate documentation.

17.27 Business Ethics. Contractor, its employees, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the conduct of Work for the Owner.

**[Signature Page Follows.]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

Owner:

PACIFICORP, an Oregon corporation

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

Its: \_\_\_\_\_

Contractor:

\_\_\_\_\_,  
a \_\_\_\_\_ corporation

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

Its: \_\_\_\_\_