



**COMMENTS OF IBERDROLA RENEWABLES, INC. ON  
THE ILLINOIS POWER AGENCY’S DRAFT 2011 PROCUREMENT PLAN**

Pursuant to Section 16-111.5(d)(2) of the Public Utilities Act (PUA), 220 ILCS 16-111.5(d)(2), Iberdrola Renewables, Inc. (IBR) hereby files its comments on the draft 2011 Power Procurement Plan (Draft Plan) posted by the Illinois Power Agency (IPA) on August 16, 2010. IBR’s comments center around the renewable energy resources set forth in the Draft Plan.

In the Draft Plan, the IPA proposes that Ameren and ComEd (collectively, the “Utilities”) will meet renewable energy resource portfolio requirements for 2011 only through the acquisition of one year renewable energy credits (RECs). The IPA states as its rationale:

The acquisition of RECs for this period meets the requirements of the IPA Act and are preferable to the direct acquisition of energy from qualifying renewable resources at this time.

Draft Plan at 36, 52.

Aside from making reference to the statutory budget caps for meeting RPS goals, the Draft Plan offers no explanation or analysis as to why REC only renewable energy resources is being proposed. This is particularly puzzling in light of the IPA’s reversal of its initial plan to organize short term RECs acquisition in the 2010 Procurement. Inexplicably, the Draft Plan for the acquisition of one year RECs is the identical approach which the IPA initially proposed in its 2010 draft Plan and subsequently modified, citing legal and policy prescriptions in support of long term contracting for the procurement of bundled energy and RECs. In the 2010

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Procurement, the IPA determined that the acquisition of long term renewable bundled energy products is an important means of acquiring renewable resources for the Utilities and adoption of long term contracting for the procurement of renewable resources was approved by the Illinois Commerce Commission (Commission).

IBR believes that in order to fulfill the goals of the PUA and the Illinois RPS provisions of the Illinois Power Agency Act (IPA Act), 20 ILCS 385511-75(c), the IPA must conduct a much broader renewable energy resource procurement in 2011, just as it did in 2010. IBR believes that an appropriate renewable energy procurement for Plan Year 2011 should include three components: (1) one year RECs; (2) medium term RECs; and (3) energy obtained by utilizing long term contracts. IBR believes that the IPA's reasoning in the 2010 Plan to adopt a portfolio approach to renewable energy acquisition is a wise and practical one. IBR simply recommends that the renewable portfolio basket be broadened to include a fuller range of products to give ratepayers the optimal pricing benefits. In addition, to a portion of the renewable procurement consisting of one year RECs and long term contracts, the IPA should also implement a procurement for medium term, three to five year, RECs. The resulting mix of renewable products would provide a balanced portfolio of resources which should capture a broader range of price efficiencies.

One year REC only as the sole procurement event was determined to be inappropriate and rejected in the 2010 draft Plan and it should be rejected as the only means of acquiring

renewable energy in the 2011 Plan. The IPA, as well as commentors, set forth detailed and compelling legal and policy reasons why long term renewable procurement is an essential additional resource for acquiring renewable energy for the Utilities. There is another compelling reason why the acquisition of long term renewable in the 2011 Plan is important. Energy prices, including wind energy prices, have fallen to levels that may not go much lower. The ability to lock in these lower prices for renewable power for the longer term could result in considerable savings to ratepayers in the future. In the all too unlikely event that energy prices will rise over time, the IPA's acquisition of long term contracts during this period could appear prescient in the future. All of the reasons why long term contracting for renewable resources was necessary and appropriate in the 2010 Plan are equally valid for the 2011 Plan. Moreover, the 2010 long term renewable procurement process has been fraught with delay, compressed and unreasonable time frames, a shocking lack of transparency and little opportunity for the development of a standard contract which will actually meet procurement objectives.

The long term renewable energy and REC procurement process was not even commenced until a month ago, nearly eight months following Commission approval of the Plan. In addition, the 2011 Plan workshops were scheduled in the same time frame as the 2010 Plan workshops, leaving participants little opportunity to devote sufficient time and resources to managing the pancake stacked processes. The 2010 Procurement standard contracts have been the subject of substantial and divergent points of view which remain unresolved. Although workshops were held, purportedly to consider revisions to the proposed standard contract, those sessions were

structured in such a way that no meaningful dialogue took place and there was no opportunity provided to make any significant input into structuring the specifics of the contracts. IBR believes that the 2010 Plan standard contracts which were issued on September 7, 2010, do not reflect standard industry practices and provisions and will not broadly serve the interests of long term renewable development as required by law. 220 ILCS 5/16-111.5(e)(2).

Aside from the cogent reasons urged by the IPA in the 2010 Plan itself, *see* pp. 4-65 *infra*, IBR believes that the shortcomings of the 2010 long term renewable procurement process, as well as unresolved issues pertaining to the 2010 standard contracts require that the IPA include long term renewable contracting in the 2011 Plan. This should also entail adoption of a schedule of meaningful workshops and reasonable time frames for the development of ideas in furtherance of development of a useful standard PPA contract. This will permit a more deliberative and fair process for the adoption of a more suitable, commercially reasonable contract and lay the ground work for meaningful procurement of long term renewable for Illinois utilities into the future.

To underscore why the inclusion of short term REC only procurement is misguided in the Draft Plan, it is useful to review in some detail what occurred in the 2010 Plan. Following the initial recommendation in the 2010 draft Plan to acquire short term RECs, various parties filed comments pointing out that one year REC only renewable energy acquisition was inappropriate. Among the reasons cited were:

1. The approach is short-sighted because it suggests that the only role that renewable energy plays in Illinois utility procurement is to satisfy RPS requirements and that RECs bundled with energy have no value.
2. Such an approach ignores the value of renewable energy, with its lack of fuel variability, as a price hedge.
3. The approach fails to recognize the benefits of bundled renewable energy procurement in promoting the development of renewable energy resources in Illinois.
4. The approach fails to recognize the value of renewable resources to protect consumers against carbon risk.
5. The approach could result in higher prices for renewable energy than would be the case under long term contracts.
6. The approach does not foster and may discourage the development of renewable energy resources by not providing opportunities to finance project development.
7. By failing to provide a reliable revenue stream, renewable projects for Illinois consumers must be financed at a higher rate, resulting in higher renewable energy prices for Illinois ratepayers.
8. The approach fails to promote the economic development to Illinois which would occur if long term contracts for renewable resources were a part of the procurement effort.

Subsequent to the submission of comments reflecting these concerns, the IPA revised the 2010 Plan to include the procurement of long term renewable energy resources. In the 2010 Plan filed with the Commission on September 30, 2009, the IPA added a new section to the 2010 Draft Plan for a long term portfolio which stated as to both Ameren and ComEd:

The IPA recommends issuing solicitations for longer term power purchase agreements (PPAs) with renewable energy providers. Long Term PPAs can serve as a hedge against potential cap and trade legislation that would serve as an additional tax on fossil fuel costs. Further, grants, loans and credit enhancement available currently from U.S. Department of Energy, Department of Commerce

and Economic Opportunity and the Illinois Finance Authority will result in lower cost renewable energy projects that are developed now through the end of 2012 due to the public grants and financing. 2010 Plan at 34, 51.

Subsequently, in response comments criticizing the long term renewable procurement proposal, the IPA took great pains and offered detailed legal and policy rationale to support its decision to include long term renewable energy in the procurement for the Utilities. The IPA cited numerous statutory provisions that support the proposition that renewable procurement is lawful in Illinois and noted that such procurement has become “standard” and “increasingly common”. *See generally*, “The Illinois Power Agency’s to Objections to Its Initial Power Procurement Plan”, filed on October 26, 2010 in the 2010 Docket, and at p.3. The IPA made it clear that the acquisition of long term renewables is neither barred by the limits in Section 1-75(c)(2) of the IPA Act, 20 ILCS 3855/1-75(c)(2), *Id.* at p. 35, nor limited to only satisfying RPS requirements. *Id.* at pp.5-6.

Following its vigorous and sound explication of the propriety of including long term renewable resources in the Utilities’ procurement, the IPA concluded:

In summary, the Illinois Power Agency reiterates the following fundamental arguments in support of its Power Procurement Plan:

- Long term renewable contracts are properly included in the proposed mix and selection of “standard wholesale products”, as those products are not limited to the examples given in Section 16-111.5(b), and are also consistent with the legislative findings of the Rate Relief Law of 1997.
- The Commission need not, and should not, rule on the details of the terms and conditions for the long term renewable contracts since the Plan allows for the IPA, in consultation with the Procurement Administrator, the

Procurement Monitor, ICC Staff, and interested parties, subject to approval by the Utilities, to develop such terms and conditions pursuant to the process included in Section 16-111.5(e) of the Public Utilities Act.

- Long term power procurement can be conducted outside of the RPS requirements set forth in Section 1-75(c) of the IPA Act.

In the face of additional comments requesting more detail about the long term renewable contracts in the 2010 Docket, on November 9, 2009, the IPA filed “Supplemental Recommendations for the Procurement Plan” (Plan Supplement). In the Plan Supplement, the IPA announced that it was introducing an Appendix K to the 2010 Plan which was intended to offer additional details of the contract and facilitate implementation of long term procurement of renewable energy in the 2010 Plan.

The Commission approved the 2010 Plan, as supplemented by Appendix K, on December 28, 2009 in the 2010 Docket. Final Order at p. 115. It is unclear how Appendix K was formulated and whether there was consultation with developers, bankers and other non-utility parties because some of the Appendix K principles are not in conformity with the requirement under the PUA that procurement contract provisions reflect generally accepted industry practices and standard credit terms. 220 ILCS 5/16-111.5(e) Appendix K was adopted by the IPA with no explanation as to its origin or the basis for some of its more specific requirements, such as the type of contract to be utilized (*i.e.*, ISDA or EEI). A major concern of IBR was that Appendix K did not appear to have included input from the wind development sector and that some of the requirements might severely limit the type of resources that could be bid. IBR was particularly concerned that certain termination and other provisions highly favorable to the Utilities would

render the standard contract problematic. Nevertheless, the Commission's directive that the procurement event process and workshops would address important concerns, offered the prospect that the procurement process might ultimately yield a long term renewable contract that was even-handed and reasonable.

Unfortunately, the reality of the 2011 long term renewable procurement process was deeply flawed. First, Appendix K was developed with no regard for the practicalities and realities of renewable development. Indeed, Appendix K sets forth requirements for a long term renewable contract that are not prescribed by statute and that are not at all reflective of long term energy contracting principles. As such, Appendix K seems to be the result of a collaboration of parties that have little understanding of the realities of renewable power purchasing and contracting.

Second, the Commission's directive that workshops be conducted held out the prospect that the Appendix K flaws could be improved and that a broadly supported standard contract could be developed with the open and active participation of all stakeholders. Instead, three hurried and tightly scripted sessions were held on short notice over a three day period and participants were allowed to file written comments on a draft contract that was made public a few days before comments were due. Even aside from the Appendix K considerations, the proposed contract had been drafted with little consideration for commercial realities and no reflection of input from the renewables development sector.

The “workshops” amounted to sessions attended by many developers and other interested parties, where IPA Administrators received numerous verbal comments from participants. Little feedback or genuine exchange occurred, aside from the Administrators repeating canned responses which often seemed to be largely concerned with addressing utility concerns, to the exclusion of all others.

Furthermore, the IPA and its Administrators refused to make public the comments submitted by the parties and refused to offer any detail as to how they arrived at any decision to revise the proposed contracts. Such a shocking lack of transparency left the impression that the process was never intended for the purpose of sincerely considering the input of the participants. Rather, the “workshops” were being conducted to offer the perception of compliance with the Commission’s directive for workshops. The process involved little meaningful exchange and participants, including IBR, with questions or recommendations about the proposed standard contract or the process were largely ignored. The process bore little resemblance to a workshop or other forum designed to elicit ideas or improve upon the proposed contract. Rather, it appeared as though the intent was to present a “take it or leave it” document that would not realistically promote renewable energy development or attract any broad-based participation in the 2010 renewables procurement.<sup>1</sup>

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<sup>1</sup> IBR’s comments on the proposed standard contract offers a great deal of detail as to why the document was inappropriate and how it could be suitably revised.

Inclusion of a long term renewable contract procurement in lieu of the short term REC only approach in the Draft Plan would provide an opportunity to adopt a more deliberative, inclusive and transparent standard contract development process. IBR requests that the IPA not only include long term renewable procurement in the 2011 Plan, but that it also expressly adopts a contract framework that is reflective of long term power purchase agreements for the physical delivery of power and not short term derivative trading.

As earlier noted, IBR also recommends that the IPA agree to conduct workshops in a specified time frame over a reasonable period of time to allow parties to engage in public deliberations in which the IPA will receive and respond to the ideas of all stakeholders and develop a commercially reasonable standard contract that balances risks and contains provisions pertaining to credit and financeability that takes into account utilities, developers and ratepayer interests alike. Only by adopting reasonable and commercially acceptable risk allocation provisions in a standard contract will Illinois ratepayers realize of the lowest possible prices for renewable energy.

The IPA should agree to issue a draft standard contract following the receipt of input from all industry sectors, including the banking section. The IPA should adopt a review and comment process in which it incorporates the public posting of all comments and issuance of a final contract upon fair and due consideration of the comments. The bid process should incorporate sufficient time for bidders to obtain the corporate approvals and financial support

that necessarily accompanies the purchase and sale of long term renewable power. IBR is attaching a proposed schedule which sets forth these processes as Attachment A.

Adoption of the foregoing described procedure for obtaining long term renewable resources in the 2011 Plan would considerably diminish the perceptions of unfairness and misguided process that attended the 2010 long term energy procurement.<sup>2</sup>

To comply with the requirement that specific revisions be included in its comments on the Draft Plan, IBR proposes that the following language be substituted for the last 2 paragraphs on p. 36 of the Draft Plan:

The IPA recommends issuing solicitations for longer term power purchase agreements (“PPAs”) and medium term REC only contracts with renewable energy providers. Long Term PPAs can serve as a hedge against potential cap and trade legislation that would serve as an additional tax on fossil fuel costs. Further, grants, loans and credit enhancement available currently from U.S. Department of Energy, Department of Commerce and Economic Opportunity and the Illinois Finance Authority will result in lower cost renewable energy projects that are developed now through the end of 2012 due to the public grants and financing. Finally, energy prices are at relatively low levels at this time. This circumstance presents the opportunity to lock in these relatively lower prices for the longer term, which should result in lower prices to consumers for renewable energy.

Additionally, the inclusion of medium term REC only products adds additional diversity to the basket of renewable energy resources. This additional product will result in a more representative overall price scheme for the renewable energy

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<sup>2</sup> The PUA, 220 ILCS 5/111.5(c), provides for public comments and recommendations for changes on each year’s procurement. The Commission issued a Public Notice of Informal Hearing to receive such comments and recommendation for the 2010 Plan on May 28, 2010. Commentators reserved comment on the 2010 long term renewables procurement since it had not even commenced as of the date comments were due (June 22 and July 12). IBR intends to reiterate its proposal in the instant comments for conducting a better long term procurement at the appropriate time in year-end comments on the long term renewables procurement.

portfolio and ensure that ratepayers benefit from a fuller range of price opportunities in pursuit of the lowest renewable energy prices over time.

Given these factors, the IPA believes it is prudent to solicit proposals from renewable energy providers to capitalize on available funding and relatively lower energy prices and secure renewable energy under longer term PPAs and medium term REC only contracts if deemed cost effective. As neither the cost liabilities nor the availability of other hedging options associated with cap and trade are unknown, the IPA seeks to limit their use in the Ameren portfolio to 600,000 MWH per annum starting as early as the 2012-2013 planning year. The use of a MWH goal for these contracts is due to the variable output nature of some renewable assets that may be selected through the solicitation process (i.e. hydro, wind, and solar).

The IPA will conduct a collaborative process, including the holding of multiple workshops, to consider input from all stakeholders as to what constitutes generally accepted industry terms and conditions, as well as standard credit provisions for a standardized long term contract and medium term REC only contract. The IPA will use this input to formulate and post the comments on a proposed standardized contract prior to finalization.

The IPA recommends that bids be evaluated through a process similar to that used to evaluate bids in the short term portfolio: standard terms and conditions regarding performance guarantees and penalties are agreed to by bidders prior to solicitation, bidders must pre-qualify to be allowed into the bidder pool, application of a cost methodology that considers and ranks proposals on the basis of output, capacity value, financing costs, transmission and capital costs, fixed cost vs. escalators offers, return on equity and other normalizing factors.

Additionally, the following language should be substituted for the last paragraph on p. 52 and the first paragraph on p. 53 of the Draft Plan:

The IPA recommends issuing solicitations for longer term power purchase agreements (“PPAs”) and medium term REC only contracts with renewable energy providers. Long Term PPAs can serve as a hedge against potential cap and trade legislation that would serve as an additional tax on fossil fuel costs. Further, grants, loans and credit enhancement available currently from U.S. Department of Energy, Department of Commerce and Economic Opportunity and the Illinois Finance Authority will result in lower cost renewable energy projects

that are developed now through the end of 2012 due to the public grants and financing. Finally, energy prices are at relatively low levels at this time. This circumstance presents the opportunity to lock in these relatively lower prices for the longer term, which should result in lower prices to consumers for renewable energy.

Additionally, the inclusion of medium term REC only products adds additional diversity to the basket of renewable energy resources. This additional product will result in a more representative overall price scheme for the renewable energy portfolio and ensure that ratepayers benefit from a fuller range of price opportunities in pursuit of the lowest renewable energy prices over time.

Given these factors, the IPA believes it is prudent to solicit proposals from renewable energy providers to capitalize on available funding and relatively lower energy prices and secure renewable energy under longer term PPAs and medium term REC only contracts if deemed cost effective. As neither the cost liabilities nor the availability of other hedging options associated with cap and trade are unknown, the IPA seeks to limit their use in the ComEd portfolio to 1,400,000 MWH per annum starting as early as the 2012-2013 planning year. The use of a MWH goal for these contracts is due to the variable output nature of some renewable assets that may be selected through the solicitation process (i.e. hydro, wind, and solar).

The IPA will conduct a collaborative process, including the holding of multiple workshops, to consider input from all stakeholders as to what constitutes generally accepted industry terms and conditions, as well as standard credit provisions for a standardized long term contract and medium term REC only contract. The IPA will use this input to formulate and post the comments on a proposed standardized contract prior to finalization.

The substituted language will restore the acquisition of long term renewable resources as a component in the Utilities' energy procurement and broaden the renewable procurement basket to include medium term RECs.

As was earlier discussed, the introduction and formulation of Appendix K was extremely problematic in the 2010 Plan. Throughout the "workshop" process, the IPA's response to

various concerns was that it was bound by Appendix K and the IPA would not even entertain discussion on matters purported to be covered by Appendix K. In the future, no such arbitrary documents or principles should be allowed to impede the fair exchange of ideas for the development of a standard contract that incorporates generally accepted industry standards. The IPA is lawfully required to formulate a standard contract that reflects generally accepted terms and conditions, as well as standard credit provisions. The development of these specific contract terms and conditions is particularly well suited for a workshop process. A document, such as Appendix K, which arbitrarily constrains the development of an appropriate long term renewable contract, should not be interjected into the process for any reason. In order to provide the IPA with guidance and a concrete example of a commercially reasonable long term power purchase contract, however, IBR is attaching a specimen Power Purchase Agreement that incorporates terms and conditions that are generally acceptable to buyers and sellers of wind power in the energy marketplace. IBR would hope that IPA would use the specimen contract to familiarize itself with the standard terms and provisions employed by buyers and sellers of long term wind energy in the Illinois market and elsewhere.

Finally, IBR would urge the IPA to implement the maximum degree of transparency into the 2011 Plan and associated proceedings. There is simply no reason for the comment process or any other aspect of the procurement process that does not involve benchmarking or bid comparison to be conducted in camera or developed by select participants. To the extent a party's comments or other information is commercially sensitive, the party could so indicate and

such information could be redacted to exclude what is commercially sensitive and any other information could be open to public review.

Respectfully submitted,

IBERDROLA RENEWABLES, INC.

//s// Emmitt C. House

By: Its Attorney  
Emmitt C. House

Date: September 15, 2010

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**ATTACHMENT A**

<b>DATES</b>	<b>COMED AND AMEREN LONG TERM RENEWABLE PROCUREMENT</b>
	<b>WORKSHOP AND COMMENT PROCESS</b>
11-Jan-11	Workshop 1 - Discuss process of workshops, working groups, and comments
13-Jan-11	Workshop 2 - Discuss contract provisions
18-Jan-11	Workshop 3 - Discuss Credit Criteria and conduct Working Groups
4-Feb-11	Proposed Contract issued for comment
18-Feb-11	COMMENTS DUE ON PROPOSED LONG-TERM RENEWABLE PPA
21-Feb-11	Posting of Comments on proposed PPA
27-Feb-11	Workshop 4 - Finalize and discuss proposed revisions to the proposed PPA
4-Mar-11	Final Standard PPA Issued
<b>PROCUREMENT PROCESS</b>	
15-Mar-11	BIDDER INFORMATION CALL
<b>BIDDING PROCESS</b>	
2-May-11	Pre-Qualification Application Deadline
9-May-11	Bidders Notified of Pre-Qualification Results
16-May-11	Bidder Registration and Pre-Bid Deadline
24-May-11	Bidder Practice Session
27-May-11	BID DATE (DUE DATE FOR BIDS)
<b>POST BID PROCESS</b>	
7-Jun-11	Procurement Administrators submits confidential report to the ICC
10-Jun-11	ICC Rules on Procurement Administrators' Recommendations and Winning Bidders Notified
14-Jun-11	CONTRACT EXECUTED and WINNING BIDDERS NOTIFIED
TBA	Service Commences

**ATTACHMENT B**

**THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL A POWER PURCHASE AGREEMENT HAS BEEN EXECUTED BETWEEN THE PARTIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.**

POWER PURCHASE AGREEMENT

between  
[IRI PROJECT COMPANY],  
as Seller,  
and

[ \_\_\_\_\_ ],  
as Buyer

Dated as of [ \_\_\_\_\_ ], 20\_\_]

\_\_\_\_\_ *Wind Project*

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Attachments and Annexes

Attachment 1	Contract Price
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Annex B	Credit Annex
Annex C	Notice
[Annex D	Example Calculation of PTC Compensation Amount]
Annex E	Form of Environmental Attestation and Bill of Sale

**POWER PURCHASE AGREEMENT**

This POWER PURCHASE AGREEMENT (“*Agreement*”) is entered into effective as of [\_\_\_\_\_] 200[ ] (the “*Effective Date*”), between [IRI Project Company], a [\_\_\_\_\_] (“*Seller*”), and [\_\_\_\_\_] (“*Buyer*”). Seller and Buyer are sometimes referred to in this Agreement individually as a “*Party*” and collectively as the “*Parties*.”

**RECITALS**

WHEREAS, Seller intends to develop, design, construct, own and operate a wind turbine electrical generation facility on a site located in [\_\_\_\_\_] County, [insert state], with an expected total Nameplate Capacity of approximately [ ] MW, and which is further defined below as the “*Project*.”

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms set forth in this Agreement, all Metered Output from the Project and Other Project Attributes related to the generation of such Metered Output.

**AGREEMENT**

NOW, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the sufficiency and adequacy of which are acknowledged, the Parties agree to the following:

**ARTICLE I  
DEFINITIONS AND INTERPRETATION**

1.1 Definitions. As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

“*Affiliate*” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“*After-Tax Basis*” means, with respect to any payment received or deemed to have been received by any Party, the amount of such payment (the “*Base Payment*”) supplemented by a further payment (the “*Additional Payment*”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“*Agreement*” has the meaning set forth in the Preamble.

“*Ancillary Services*” means those services other than Metered Output, Environmental Attributes and Capacity Attributes that are defined as Ancillary Services in the Open Access Transmission Tariff of MISO as of the Effective Date.

**“Applicable Law”** means all national, state, provincial, local or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives and requirements of all regulatory and other Governmental Authorities.

**“Applicable Program”** means the Renewable Energy Portfolio Standards, in effect as of the Effective Date, as set forth at, and including but not limited to [insert site] and promulgated pursuant to [insert site], that require all retail electricity suppliers in [insert state] to provide a minimum percentage of electricity from certain renewable energy generating resources.

**“Average Deemed Generated Energy”** means the Monthly average of the Deemed Generated Energy for each Month during the previous five (5) Contract Years or of all previous Contract Years, to the extent that five (5) Contract Years have not yet elapsed, notwithstanding the amount of any Metered Output that was actually produced in such period.

**“Business Day”** means any Day except a Saturday, a Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. EPT and close at 5:00 p.m. EPT. Notwithstanding the foregoing, for scheduling purposes only, the term “Business Day” shall have the meaning given to that term from time to time by NERC on its website (<http://www.nerc.com>).

**“Buyer”** has the meaning set forth in the Preamble.

**“Buyer’s Cost to Cover”** means the positive difference, if any, between (a) reasonable costs incurred by Buyer to purchase electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services necessary to replace such Metered Output or Other Project Attributes (including any additional reasonable transaction costs, including those related to transmission and scheduling, directly associated with such purchase), stated in \$/MWh as determined by reference to the LMP Price; minus (b) the Contract Price, stated in \$/MWh, multiplied by the quantity in MWh of Metered Output and Other Project Attributes replaced for the applicable period; *provided* that if the difference between clause (a) minus clause (b) is zero or negative, then Buyer’s Cost to Cover shall be Zero Dollars (\$0).

**“Buyer’s CP Node”** has the meaning set forth in Section [ ].

**“Buyer’s MW Share”** means the ratio, calculated to the hundredths of a MW (*i.e.*, rounded to two decimal places), of (i) [ ] MW, to (ii) the Project Installed Capacity. [ **“CAMD”** means the Clean Air Markets Division of the Environmental Protection Agency, or any successor agency that is given jurisdiction over a program involving transferability of Environmental Attributes.

**“Capacity Attributes”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Project is located.

**“Claiming Party”** has the meaning set forth in Section 10.2.

**“Commercial Model”** shall have the meaning set forth in the Tariff.

**“Commercial Node”** shall have the meaning set forth in the Tariff.

**“Commercial Operation”** means that (a) a number of Turbines with Project Installed Capacity of at least seventy-five percent (75%) of the Expected Project Installed Capacity have been Completed, (b) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of the Metered Output to the Metered Output Delivery Point and (c) Seller is capable of making available Metered Output from the Project to the Metered Output Delivery Point.

**“Commercial Operation Date”** means, with respect to the Project, the first Day following receipt by Buyer of notice from Seller that the Project has achieved Commercial Operation.

**“Completion”** means, with respect to the Project, that Turbines and all other portions of the Project necessary to put such Turbine into Commercial Operation within twenty percent (20%) of its fully rated capacity, have been constructed, commissioned and tested (in accordance with the Turbine manufacturer’s requirements), and such Turbine and other necessary portions of the Project are fully operational and capable of delivering Metered Output to the Metered Output Delivery Point through the Interconnection Facilities, all in accordance with Good Utility Practice. “Complete” and “Completed” shall have a corollary meaning.

**“Confidential Information”** has the meaning set forth in Section 16.1.

**“Contract Price”** has the meaning set forth in Section 3.5.

**“Contract Year”** means each consecutive twelve (12) Month period during the Term, commencing on the Commercial Operation Date.

**“CPT”** means Central Prevailing Time, meaning prevailing Standard Time or Daylight Saving Time in the Central Time Zone.

**“Credit Requirements”** has the meaning set forth in Annex [B].

**“Credit Support”** has the meaning set forth in Annex [B].

**“Day”** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours EPT on any calendar day and ending at 24:00 hours EPT on the same calendar day.

**“Deemed Generated Energy”** means (a) (i) if the Project is generating, the actual hourly output of the Project as measured by the Meters, or (ii) if the Project generation is reduced or the Project is not generating, the quantity of electrical energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Project and made available at the Metered Output Delivery Point during a relevant measurement period, multiplied by Buyer’s MW Share, and shall be determined by taking into account (1) during such period, the actual ten-(10-) minute (or more frequent) wind speeds (interpolated over time intervals, if necessary) measured by the Permanent Meteorological Tower immediately before the commencement of the period in question, or, if such monitoring equipment is unavailable during a relevant interval,

then using other available data or interpolated data determined using Good Utility Practices and (2) the power curve provided by the Turbine manufacturer (adjusted by historical data for the Project compiled by Seller), as applied to the wind speeds referred to in clause (1), as adjusted for line losses to the Metered Output Delivery Point using historical data compiled by Seller.

“**Defaulting Party**” means the Party with respect to which an Event of Default under Article VIII has occurred.

“**Disclosing Party**” has the meaning set forth in Section 16.1.

“**Early Termination Date**” has the meaning set forth in Section 8.4.

“**Effective Date**” has the meaning set forth in the Preamble.

“**Environmental Attributes**” means any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Project commencing on the Commercial Operation Date and continuing during the Term, or otherwise attributable to the generation, purchase, sale or use of Metered Output from or by the Project during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the CAMD, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Renewable Energy Certificate Reporting Rights to such Environmental Attributes. One (1) MWh of electrical energy from the Project corresponds to one (1) MWh of Environmental Attributes.

Notwithstanding any other provision hereof, Environmental Attributes do not include (a) the PTCs or any state or federal production tax credits, (b) any investment tax credits and any other tax credits associated with the Project, (c) any state, federal or private cash payments or grants relating in any way to the Project, the output thereof or PTCs, (d) state, federal or private grants or other benefits related to the Project, the output thereof or PTCs, or (e) Metered Output.

“**EPT**” means Eastern Prevailing Time, meaning prevailing Standard Time or Daylight Saving Time in the Eastern Time Zone.

“**Excessive/Deficient Energy Deployment Charges**” has the meaning set forth in the Tariff.

“**Event of Default**” means any event of default set forth in Section 8.1.

“**Expected Commercial Operation Date**” means [\_\_\_\_\_], unless extended pursuant to Section 1(a) of Annex A or as a result of a Force Majeure Event, in which case the Expected Commercial Operation Date shall be the date so extended.

“**Expected Project Installed Capacity**” means the expected maximum instantaneous generation (nameplate) capacity of the Project, which is, as of the Effective Date, [\_\_\_\_\_] MW.

**“Federal Power Act”** means the Federal Power Act, as amended, 16 U.S.C. § 791a, *et seq.*

**“FERC”** means the Federal Energy Regulatory Commission or any successor government agency.

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Project or any outage on the Transmission System that prevents Seller from making power available at the Metered Output Delivery Point and that is not the result of a Force Majeure Event. For purposes of this Agreement, a Forced Facility Outage shall include a Generation Forced Outage, a Planned Transmission Outage, or an unplanned Transmission Outage, each as defined in the Midwest ISO Tariff.

**“Future Environmental Attributes”** has the meaning set forth in Section 3.9.

**“GAAP”** means generally accepted accounting principles in the United States of America, or the corresponding accounting rules applicable to municipal and governmental entities in the United States of America.

**“Good Utility Practice”** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.

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

**“Governmental Charges”** means any Taxes, charges or costs that are assessed or levied by any Governmental Authority (other than charges imposed by MISO or any other Transmission Provider) or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Metered Output or Other Project Attributes contemplated by this Agreement, either directly or indirectly.

**“Grants In Lieu Of ITC”** means any grant or cash payment under Section 1603 of Public Law 111-5 (2009) for which the Project (or any part or component thereof) is eligible.

**“Indemnified Party”** has the meaning set forth in Section 12.1(a).

**“Indemnifying Party”** has the meaning set forth in Section 12.1(a).

**“Institutional Investor”** means, collectively, any Person or Persons who acquire a direct or indirect interest in Seller as a part of a transaction to ensure that the Project is owned at least in part by a Person able to use the ITCs, Grants In Lieu Of ITCs, PTCs and Tax depreciation benefits associated with holding an ownership interest in the Project (including any subsequent transferees of any such Person or Persons).

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Project will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Term.

**“Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission System in order to meet the terms and conditions of this Agreement.

**“Interest Rate”** means a per annum rate of interest equal to the lesser of (a) the prime lending rate published from time to time by the Federal Reserve Bank H.15 (519) Statistical Release website on such Day (or if not published on such Day, on the most recently preceding Day published) plus two hundred (200) basis points or (b) the maximum rate permitted by Applicable Law.

**“ITCs”** means the investment Tax credit under Section 46 of the Internal Revenue Code for which the Project (or any part or component thereof) is eligible and any correlative state Tax credit determined by reference to the cost of or investment in the Project (or any part or component thereof).

**“ITC Recapture Amount”** means the amount Seller is required to refund to the Internal Revenue Service due to Seller’s ineligibility for Grants in Lieu of ITCs after such time as Seller or its Affiliate or Institutional Investor has claimed Grants in Lieu of ITCs.

**“LGIA”** means the Large Generator Interconnection Agreement entered into by Seller, the Transmission Owner and the Transmission Provider pursuant to which the Project will be interconnected with the Transmission System.

**“LMP Price”** means the real time locational marginal price, as calculated and reported by MISO on its website, at the Metered Output Delivery Point for the period in question.

**“Loss Factor”** means [ ].

**“Losses”** has the meaning set forth in Section 12.1(a).

**“Market Participant”** has the meaning set forth in the Tariff.

**“Market Value”** has the meaning set forth in Section 8.5(b).

**“Meter Data Management Agent”** has the meaning set forth in the Tariff.

“**Metered Output**” means a portion of the instantaneous energy output, intermittent and variable within the hour, made available from the Project at the Metered Output Delivery Point, as measured by the Meters installed at the Metering Point, which such portion shall be calculated as the total electrical energy output of the Project, as measured by the Meters installed at the Metering Point, multiplied by Buyer’s MW Share, multiplied by (c) one minus the Loss Factor.

“**Metered Output Delivery Point**” means [Point of Interconnection as set forth in the LGIA.]

“**Metering Point**” means the [revenue meter at the high side of the step-up transformer inside the Project’s collector substation.]

“**Meter(s)**” has the meaning set forth in Section 5.1.

“**MISO**” means the Midwest Independent Transmission System Operator, or any successor organization.

“**Month**” means a calendar month commencing at 00:00 CPT on the first Day of such month and ending at 24:00 CPT on the last Day of such month.

“**Monthly Invoice**” has the meaning set forth in Section 6.1.

“**M-RETS**” means the Midwest Renewable Energy Tracking System, or any successor system used to track the transfer of Environmental Attributes in the region.

“**M-RETS Certificate**” has the meaning set forth in the M-RETS Operating Rules.

“**M-RETS Operating Rules**” means the rules that describe the operations of M-RETS, as may be amended, and as currently available at [www.mrets.net](http://www.mrets.net).

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity**” means the designed maximum electrical output, expressed in MW, of a Turbine.

“**NERC**” means the North American Electric Reliability Corporation, and any successor entity.

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

“**Other Project Attributes**” means, collectively, Environmental Attributes, Capacity Attributes and Ancillary Services.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

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

“**Potential Event of Default**” means an event which, with notice or passage of time or both, would constitute an Event of Default.

“**Project**” means the [\_\_\_\_\_] wind turbine electrical generation facility, located in [], and composed of [\_\_\_\_\_] [\_\_\_\_\_] MW Turbines, and the related substation and collector line that will produce the Metered Output and Other Project Attributes made available to Buyer under this Agreement.

“**Project Information**” has the meaning set forth in Section 16.1(f).

“**Project Installed Capacity**” means the aggregate Nameplate Capacity of all Completed Turbines (at the time of measurement of “Project Installed Capacity”), expressed in MW.

“**Project Lender**” means any Person providing direct or indirect debt financing, refinancing or extending credit (including any financing lease) to Seller or Seller’s Affiliates.

“**Project Maintenance**” means Seller’s planned partial or complete reduction of the Project’s generating capability for routine maintenance purposes.

[“**PTCs**” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Project is eligible.]

[“**PTC Compensation Amount**” means an amount equal to the PTCs, calculated on an After-Tax Basis, to which Seller would have been entitled with respect to Metered Output that (a) Buyer failed to take for its own account or for the account of others or (b) Buyer was unable to take due to a downstream reduction in Transmission Capacity. An example illustrating the calculation of the PTC Compensation Amount under certain stated assumptions is set forth in Annex [D].]

“**Real Time Resource Sufficiency Guarantee**” has the meaning set forth in the Tariff.

“**Recapture Period**” means the five-year period beginning on the date one day after the portion of the Project to which any ITC may be claimed or for which any Grants in Lieu of ITC was or will be paid is placed-in-service.

“**Receiving Party**” has the meaning set forth in Section 16.1.

“**Regulatory Event**” has the meaning set forth in Section 18.9.

“**Renewable Energy Certificate**” or “**REC**” means the certificate that evidences the ownership of Environmental Attributes.

“**Renewable Energy Certificate Reporting Rights**” means the right of a purchaser of renewable energy to report ownership of accumulated Renewable Energy Certificates in compliance with Applicable Law and include without limitation rights under Section 1605(b) of

the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program (including, if applicable, pursuant to the M-RETs).

**“Replacement Power”** means (a) electrical energy and/or (b) Environmental Attributes, Capacity Attributes or Ancillary Services.

**“Representative”** has the meaning set forth in Section 14.1(a).

**“RTU”** means the remote terminal unit interfacing with the SCADA for the Project.

**“Seller”** has the meaning set forth in the Preamble.

**“Seller’s Cost to Cover”** means the positive difference, if any, between (a) the Contract Price effective for the applicable period, stated in \$/MWh, multiplied by the Deemed Generated Energy, plus the PTC Compensation Amount with respect to such Deemed Generated Energy and (b) the net proceeds, including with respect to any PTCs, stated in \$/MWh, realized by Seller from (i) the sale, if any, as valued by [index] to a third Person of electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services not taken or purchased by Buyer as required under this Agreement, less (ii) any additional reasonable transaction costs, including those related to transmission and scheduling, directly associated with such sale, if any; *provided* that if the difference between clause (a) minus clause (b) is zero or negative, then Seller’s Cost to Cover shall be Zero Dollars (\$0).

**“System Emergency”** means an Emergency System Condition as defined by the Tariff.

**“Tariff”** means the Transmission Provider’s Open Access Transmission, Energy and Operating Reserve Markets Tariff, Fourth Revised Volume No. 1, or its successor tariff.

**“Tax”** or **“Taxes”** means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including but not limited to ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, payroll, unemployment, and any and all related items of withholding, deficiency, penalty, addition to tax, interest or assessment.

**“Technical Dispute”** means any dispute that (i) involves an amount in dispute of not more than [\$ ], (ii) requires for its resolution primarily the application of engineering principles or other specialized technical knowledge, (iii) is designated as a Technical Dispute in this Agreement or (iv) involves a determination of issues primarily addressing the following: Project operations (including scheduling, operation, maintenance, outages, curtailment, metering and interconnection), Completion of Turbines, attainment of Commercial Operation, and any determination of Deemed Generated Energy.

**“Technical Dispute Arbitrator”** means Garrad Hassan America; *provided* that if Garrad Hassan America does not agree to, or is unavailable to, serve as the Technical Dispute Arbitrator and, within fifteen (15) Business Days after the service of notice of a Technical Dispute the Parties are unable to mutually agree to the designation of an independent Technical Dispute Arbitrator, then upon the application of either Party, the Technical Dispute Arbitrator shall be

appointed by the American Arbitration Association (“AAA”) from separate lists of up to five (5) proposed technical or engineering arbitrators with wind power expertise (or such expertise as may be relevant to the nature of the Technical Dispute) submitted to the AAA (along with the professional resume of each such Person) by each Party; *provided* that upon completion of such appointment, the Technical Dispute Arbitration shall proceed as outlined in Section 14.1(b) and shall not be otherwise governed by the AAA rules.

“***Term***” has the meaning set forth in Section 2.1 of this Agreement.

“***Termination Payment***” has the meaning set forth in Section 8.5(a).

“***Test Energy***” means any and all Metered Output generated by the Project before the Commercial Operation Date, and any Environmental Attributes or Other Project Attributes attributed to such Metered Output.

“***Transmission Capacity***” means the maximum power that may be transferred across a transmission corridor while maintaining reliability in the region.

“***Transmission Event***” has the meaning set forth in Section 4.5(b).

“***Transmission Owner***” means [ ].

“***Transmission Provider***” means MISO or any successor organization or other entity that operates the Transmission System, or to the extent applicable, the owner of the Transmission System.

“***Transmission Services***” has the meaning set forth in Section 4.5(b).

“***Transmission System***” means the transmission facilities operated by the Transmission Provider, now or hereafter in existence, which provide energy transmission service downstream from the Metered Output Delivery Point.

“***Turbine***” means a single wind turbine generating system included as part of the Project (including its tower, pad transformer, and controller system).

“***Wind Integration Charges***” has the meaning set forth in Section 4.5(c).

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa, and the masculine, feminine and neuter genders include all genders;

(c) a reference to a Section, paragraph, clause, Party, Attachment or Annex is a reference to that Section, paragraph, clause of, or that Party, Attachment or Annex to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any Attachment or Annex except as provided in subsection (h);

(d) a reference to a document or agreement, including this Agreement, shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(e) a reference to a Person includes that Person's successors and permitted assigns;

(f) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(g) references to any statute, code or statutory provision are to be construed as a reference to the same as it existed when this Agreement is executed, and includes references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(h) in the event of a conflict, a mathematical formula describing a concept or defining a term shall prevail over words describing a concept or defining a term;

(i) references to any amount of money shall mean a reference to the amount in U.S. Dollars;

(j) the expression "and/or" when used as a conjunction shall connote "any or all of";

(k) words, phrases or expressions not otherwise defined that (i) have a generally accepted meaning in Good Utility Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Good Utility Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## **ARTICLE II TERM AND TERMINATION**

2.1 Term. This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement and subject to the provisions of Section 8.11, shall remain in full force and effect until midnight CPT on the fifteenth (15th) anniversary of the Commercial Operation Date (the "**Term**").

2.2 Conditions Precedent. The obligation of Seller under this Agreement to make available Metered Output and Other Project Attributes and the obligation of Buyer to take such

Metered Output and Other Project Attributes shall be subject to the satisfaction by Seller, in its sole discretion, of each of the following conditions precedent:

(a) Seller obtaining the rights to the site for the Project, and any Interconnection Facilities, including any transmission facilities, necessary or desirable for the construction, operation and maintenance of the Project, on terms and conditions acceptable to Seller in its sole discretion;

(b) Seller entering into a turbine supply agreement on or before [\_\_\_\_\_, 200\_\_], for the Turbines and the construction contract(s) necessary for the construction of the Project, all on terms and conditions satisfactory to Seller in its sole discretion;

(c) Seller entering into the Interconnection Agreement on terms and conditions satisfactory to Seller in its sole discretion;

(d) Seller obtaining all material permits, consents, licenses, approvals or authorizations from any Governmental Authority, on terms and conditions reasonably acceptable to Seller in its sole discretion, required to own, construct, operate or maintain the Project or sell the Metered Output [and Other Project Attributes]; and

(e) Seller obtaining all approvals and authorizations required by the Transmission Provider [necessary or desirable in order to permit the Project to make available and sell Metered Output [or Other Project Attributes]];

### 2.3 Buyer's Conditions Precedent.

[to be discussed]

2.4 Failure to Satisfy Conditions Precedent. Either Party shall have the right, in its sole discretion, to terminate this Agreement before the expiration of the Term, upon thirty (30) Days' notice of termination, in the following circumstances:

(a) Seller's failure to satisfy or waive the conditions precedent set forth in Section 2.2 on or before [\_\_\_\_\_, 20[ \_]; or

(b) Buyer's failure to satisfy or waive the conditions precedent set forth in Section 2.3, on or before [\_\_\_\_\_, 20[ \_].

*provided* that if no notice of termination is delivered by either Party on or before [\_\_\_\_\_, 20[ \_], all conditions precedent for both Parties shall be deemed satisfied.

2.5 Third-Party Injunction. Seller shall have the right, in its sole discretion, to terminate this Agreement before the expiration of the Term, upon thirty (30) Day's notice of termination if a third party (i) obtains an injunction, order or other legal or equitable decree adversely affecting the Project or (ii) files for or otherwise threatens in writing to seek an injunction, order or other legal or equitable decree adversely affecting the Project, and Seller determines that such injunction or threatened injunction may prevent all or part of the Project from achieving or maintaining Commercial Operation, such termination to be in Seller's sole discretion and applicable to all or any portion of the Project that Seller reasonably anticipates

will be adversely affected by the actual or threatened injunction, order or other legal or equitable decree.

2.6 Seller's Obligation to Construct and Operate Project. Seller's obligations regarding Project construction are set forth in Annex A.

2.7 MISO Generation Registration.

(a) Seller shall register the Project in the MISO energy market as an Intermittent Resource, as defined by MISO, for the purposes of delivering Metered Output in the MISO. Seller may, at its sole discretion, change the registration status of the Project as may be provided for in the Tariff.

(b) Prior to [ ], Buyer shall register a Commercial Node reflecting Buyer's Metered Output with MISO and shall be designated as the Market Participant for such Commercial Node ("**Buyer's CP Node**").

(c) Seller shall register with MISO as the Meter Data Management Agent for the Buyer's CP Node.

### **ARTICLE III PURCHASE AND SALE**

3.1 Metered Output. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to the Metered Output that Seller makes available at the Metered Output Delivery Point in accordance with Article IV.

3.2 Environmental Attributes. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to all Environmental Attributes, if any, attributable to the Metered Output.

3.3 Capacity Attributes. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, any right, title and interest in and to all Capacity Attributes, if any, available with respect to the Project.

3.4 Ancillary Services. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to Ancillary Services, if any, available with respect to the Project.

3.5 Contract Price. Buyer shall pay Seller for the Metered Output made available at the Metered Output Delivery Point; the Environmental Attributes, if any, attributable to Metered Output made available at the Metered Output Delivery Point; the Capacity Attributes, if any, available with respect to the Project; and the Ancillary Services, if any, available with respect to the Project, at the payment rate as set forth on Attachment 1 (the “**Contract Price**”).

3.6 Retention of Certain Rights and Privileges. Notwithstanding any other provision of this Agreement, Seller reserves and retains all rights and privileges to Metered Output and Other Project Attributes to the extent necessary for Seller to meet any obligations imposed on or required of Seller to operate the Project or generate electricity for sale to Buyer under the terms of this Agreement.

3.7 Seller’s Obligations. Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation to make Metered Output or Other Project Attributes available to Buyer for any period (a) in which Buyer fails to take Metered Output from Seller, (b) in which Seller’s obligation to make Metered Output available is excused pursuant to Section 4.3, (c) in which Seller’s obligation to make Metered Output available is suspended pursuant to Section 8.3, or (d) in which either Party’s obligations are suspended due to a Force Majeure Event.

3.8 Future Environmental Attributes.

(a) The Parties acknowledge and agree that additional Environmental Attributes may be recognized by a Governmental Authority after the Effective Date (“**Future Environmental Attributes**”). Buyer shall bear any additional costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes in accordance with the following: (i) if such activities are undertaken solely to make sales of such credits and allowances from the Project to Buyer, then Buyer shall bear one hundred percent (100%) of the costs; and (ii) if such activities are undertaken to make sales of such credits and allowances from the Project to Buyer and other Persons, then Buyer shall bear such costs on a pro rata basis. Seller shall deliver a good faith estimate of such additional costs to Buyer before incurring such costs.

(b) Seller will propose in a commercially reasonable manner to Buyer additional terms and conditions, agreements and documentation necessary to effectuate the sale and purchase of such Future Environmental Attributes prior to any such sale or purchase, including terms, conditions and agreement with respect to (i) appropriate sale, purchase, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided* that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement. Buyer will have thirty (30) days to accept such terms and conditions, or to provide written notice to Seller regarding which terms and conditions Buyer does not accept and a statement as to why such terms and conditions are not commercially reasonable. Any dispute regarding such terms and conditions will be resolved according to the provisions of Section 14.1.

**ARTICLE IV**  
**TITLE; RISK OF LOSS; AND DELIVERY**

4.1 Title and Risk of Loss.

(a) Metered Output and Other Project Attributes. Title to and risk of loss related to the Metered Output and Other Project Attributes shall pass and transfer from Seller to Buyer at the Metered Output Delivery Point.

(b) Liens and Encumbrances. Seller warrants that it will deliver to Buyer the Metered Output and Other Project Attributes free and clear of all liens, security interests, claims and encumbrances or any other interest by any Person arising before (i) with respect to the Metered Output, delivery to the Metered Output Delivery Point or (ii) with respect to any Other Project Attributes, the transfer of such Other Project Attributes pursuant to Section 4.2.

4.2 Delivery.

(a) Delivery and Scheduling of Metered Output.

(i) Delivery. Seller shall make available and Buyer shall take Metered Output at the Metered Output Delivery Point on an as-generated, instantaneous basis. Buyer acknowledges and agrees that variations in output will occur from time to time, including within-the-hour variations, in the ordinary course of operation of the Project. Metered Output shall be deemed made available to Buyer for invoicing purposes in the Month in which Metered Output is made available at the Metered Output Delivery Point.

(b) Coordination with MISO. Pursuant to Section 2.7(b), Buyer shall be designated as the Market Participant with respect to the MISO Commercial Node reflecting Buyer's Metered Output. Seller shall coordinate with and provide information to Buyer to the extent necessary for Buyer to submit schedules to the Transmission Provider for Buyer's Metered Output in accordance with the Tariff. During periods of Buyer's unexcused failure to take under Section 4.7, and Buyer Event of Default prior to the Early Termination Date under Article VIII, Seller may sell Metered Output into the MISO Market at Buyer's CP Node and Buyer hereby provides permission to Seller to communicate with MISO and to undertake such sales during the afore-designated periods. In the event of a Buyer Event of Default and upon receiving notice from Seller, Buyer shall take all actions as may be required to cease to be the Market Participant with respect to Buyer's Metered Output no later than the Early Termination Date.

(c) Delivery of Environmental Attributes. For each Month during the Term, all Environmental Attributes associated with Metered Output made available by Seller during such Month shall be documented and equivalent M-RETS Certificates shall be created in accordance with the M-RETS Operating Rules. Seller and Buyer shall take all action necessary to ensure the proper creation, issuance and delivery of the Environmental Attributes from Seller to Buyer. In the event that Environmental Attributes are not fully accounted for by M-RETS, Buyer and Seller shall take all necessary action to ensure the proper recognition of such

Environmental Attributes and delivery to Buyer. Buyer shall bear the costs associated with such transfer. Due to the delay in the creation of M-RETS Certificates relative to the timing of invoice payments under Article VI, Buyer shall pay for such Environmental Attributes and the associated M-RETS Certificates in accordance with Article VI before the M-RETS Certificates for such Month are formally transferred to Buyer in accordance with the M-RETS Operating Rules and this Section 4.2. Notwithstanding this delay, Buyer shall have all right and title to the Environmental Attributes and the associated M-RETS Certificates in accordance with Section 4.1(a).

(d) Delivery of Environmental Attributes Through Attestation. In the event that M-RETS is discontinued or the Parties by mutual agreement conclude that M-RETS should no longer be used, then the Environmental Attributes shall be delivered by Seller to Buyer in an Environmental Attribute Attestation and Bill of Sale form, attached hereto as Annex E or other legal form to be agreed to between the Parties, or in a manner that complies with the requirements of the then-existing successor to M-RETS and with applicable state and federal law. If and to the extent that a correction is made for metering error in accordance with Article V, Seller shall notify Buyer directly and shall undertake such other commercially reasonable measures as are necessary to reconcile the number of RECs awarded to Buyer with the corrected Metered Output.

(e) Delivery of Capacity Attributes. At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall cooperate with Buyer with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer. Buyer shall bear the costs associated with preparing and executing any such documents and instruments. Capacity Attributes shall be deemed made available to Buyer for invoicing purposes in the Month in which such Capacity Attributes are transferred pursuant to this Section 4.2(d).

(f) Delivery of Ancillary Services. At Buyer's request, the Parties shall execute such documents and instruments reasonably required to effect recognition and transfer of the Ancillary Services, if any, to Buyer. Buyer shall bear the costs associated with preparing and executing any such documents and instruments. Ancillary Services shall be deemed made available to Buyer for invoicing purposes in the Month in which such Ancillary Services are transferred pursuant to this Section 4.2(e).

4.3 Reductions in Delivery. Seller shall operate and maintain the Project in accordance with Good Utility Practice and Applicable Law; *provided* that Seller's obligation to make available the Metered Output or Other Project Attributes to Buyer pursuant to this Agreement is on an as-generated, instantaneous basis and is contingent on, among other things, the availability of each Turbine and the presence of wind to generate energy therefrom, and Seller's failure to make the Metered Output or Other Project Attributes available to Buyer (other than amounts sold by Seller to a third party in violation of this Agreement) shall not give Buyer the right to any damages. For the avoidance of doubt, and in no way limiting the foregoing:

(a) Project Maintenance. Seller shall have the right to reduce deliveries of Metered Output and Other Project Attributes during any period of Project Maintenance. Seller shall provide Buyer with reasonable notice of Project Maintenance, and shall provide Buyer with

notice on at least a Day-ahead basis of any Project Maintenance that will affect more than twenty-five percent (25%) of the number of Turbines of the Project at the same time.

(b) Forced Facility Outage. Seller shall have the right to reduce deliveries of Metered Output and Other Project Attributes during any Forced Facility Outage. Seller shall provide Buyer with notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergency and Other Interconnection Events. Seller shall have the right to reduce deliveries of Metered Output and Other Project Attributes during any period of System Emergency or upon notice by the Transmission Provider pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) Buyer Directed Reductions. [Buyer directed curtailment and payment of Seller's Cost to Cover to be discussed] *provided that*, Buyer shall not be relieved of its obligation to receive or pay for any Metered Output generated by the Project and delivered to Buyer during the periods described in Sections 4.3(a) through (d), including during a period of expected reduced output even if such reduction in output does not occur.

4.4 Reductions in Buyer's Obligation to Take or Pay. The obligation of Buyer to receive or pay for the Metered Output and Other Project Attributes shall be excused only (a) during periods of Force Majeure or (b) in accordance with Section 8.2(b).

#### 4.5 Transmission.

(a) Seller's Obligation. Except with respect to Wind Integration Charges as expressly set out in Section 4.5(c), Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to make available Metered Output from the Project to the Metered Output Delivery Point.

(b) Buyer's Obligation. Buyer shall pay all costs required to take Metered Output at the Metered Output Delivery Point and deliver such energy to points beyond. Buyer shall be designated as the Market Participant for Buyer's Metered Output and as such shall be responsible for all MISO Market Participant charges, costs, expenses and settlements associated with Buyer's Metered Output or the Buyer's CP Node as in existence on the Effective Date or as may be changed, consolidated or otherwise required in the future, to integrate wind energy from the Project into the Transmission System and to transmit such energy from the Metered Output Delivery Point, including Wind Integration Charges and all charges, costs and expenses associated with a negative LMP Price ("**Transmission Services**"). Buyer shall bear all risk and costs associated with such Transmission Services including risk of transmission outage or curtailment or any other failure of electric transmission service at and from the Delivery Point ("**Transmission Event**").

(c) Wind Integration Charges. Buyer shall be responsible for any current or future charges imposed by the Transmission Provider (1) to integrate wind generation into the regional electric power grid or deviation penalties to compensate for the variability or forecast differentials associated with wind generation within an hour or other such period of time less than the scheduling timeframe, including any Real Time-Resource Sufficiency Guarantee, Excessive/Deficient Energy Deployment Charges, or transmission costs allocated to the Market Participant (including the access rate associated with Multi-Value Project Rate (MAR) charges),

or other similar charges as may be assessed to intermittent resources (“*Wind Integration Charge*”). Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be responsible for Wind Integration Charges related to the Metered Output, whether assessed initially to Buyer or Seller in whatever form so assessed. To the extent that such charge(s) is assessed to Seller, Seller shall invoice Buyer for Buyer’s MW Share in the Month after the Month in which the charge was incurred by Seller.

4.6 Additional Costs and Change in Law. The Contract Price shall not be subject to adjustment on account of any tariff, regulatory change, or any other charges.

4.7 Payments Due to Seller for Buyer’s Unexcused Failure to Take. If Buyer fails to take Metered Output and such failure to take is not excused by Seller’s default or a Force Majeure Event, or Seller is not able to make available Metered Output or Other Project Attributes due to Buyer’s breach of this Agreement, then Buyer shall pay to Seller, Seller’s Cost to Cover. During such period that Buyer so fails to take Metered Output or is in breach of this Agreement, Seller shall not be required to make available and shall not make available, any Other Project Attributes corresponding to such Metered Output.

4.8 Buyer’s Obligations During Transmission Events. Buyer’s obligation to pay for Buyer’s Metered Output shall not be excused due to a Transmission Event. Buyer shall pay to Seller, Seller’s Cost to Cover during any such Transmission Event. During a Transmission Event, Seller shall not be required to make available and shall not make available, any Other Project Attributes corresponding to such Metered Output.

## **ARTICLE V METERING, MEASUREMENT AND TESTING**

5.1 Metering. The transfer of Metered Output, and Other Project Attributes from Seller to Buyer shall be measured by metering equipment at the Metering Point (the “*Meter(s)*”). Seller shall notify Buyer whether revenue grade Meters will integrate the Energy over ten minute, fifteen minute, thirty minute or sixty minute intervals. Such Meter or Meters shall be registered with the Transmission Provider and Seller (or Seller’s Meter Data and Management Agent) shall provide Buyer electronic access to the data from the revenue metering at the Metering Point, for purposes of reading the metering. The revenue grade Meters must be capable of being read remotely by Buyer. All Meters shall be kept under seal, such seals to be broken only when the Meters are to be tested, adjusted, modified, or relocated. In the event that Seller or Seller’s Meter Data and Management Agent breaks a seal, Seller shall notify Buyer as soon as practicable. The Meter shall be operated, maintained and calibrated in accordance with the Interconnection Agreement and the Tariff.

5.2 Measurements. The Meter Data Management Agent’s readings of the Meters shall be conclusive as to the amount of electrical energy generated by the Project; *provided, however,* that Seller shall test and calibrate Meters or cause Meters to be tested and calibrated by comparison with accurate standards in accordance with industry practices. Sellers shall also make or cause to be made special Meter tests at any time at Buyer’s request. The costs of all tests shall be borne by the Sellers; *provided, however,* that if any special Meter test made at Buyer’s request shall disclose that the Meters are recording accurately, Buyer shall reimburse the

Sellers for the cost of such test. Meters registering not more than one percent above or below normal shall be deemed to be accurate. The readings for any Meter which shall have been disclosed by test to be inaccurate shall be corrected from the beginning of the monthly billing period immediately preceding the billing period during which the tests are made in accordance with the percentage of inaccuracy found by such test; *provided, however*, that no correction shall be made for a longer period unless Sellers and Buyer mutually agree thereto. Should any Meter fail to register, the electric power and energy delivered during such period of failure shall for billing purposes be estimated by Sellers and Buyer from the best information available. Sellers shall notify Buyer or cause Buyer to be notified in advance of the time of any Meter testing so that Buyer's Representative may be present at such Meter testing.

## **ARTICLE VI BILLING AND PAYMENT**

6.1 Monthly Billing. Seller shall provide Buyer with an invoice no later than the tenth (10th) Day of each Month for the amount due Seller for Metered Output and Other Project Attributes that Seller made available and taken by Buyer under this Agreement during the previous Month (each, a "**Monthly Invoice**"). If the Commercial Operation Date occurs on a Day other than the first Day of any Month, Seller shall include any amounts due for the portion of such Month, plus the immediately following Month, in the initial Monthly Invoice sent to Buyer. Seller shall transmit each Monthly Invoice by fax, first class mail or as otherwise mutually agreed by the Parties in writing. Each Monthly Invoice shall include sufficient detail to allow Buyer to verify such Monthly Invoice. If Seller does not correctly reflect on the Monthly Invoice the amount Buyer owes, or does not provide a Monthly Invoice in a Month in which Buyer owes amounts to Seller, Seller shall have the right to submit a Monthly Invoice to Buyer on any date for such amounts for payment in accordance with the provisions of this Section 6.1, or shall have the right to include such amounts on the Monthly Invoice for the following Month.

6.2 Billing for PTC Compensation Amounts. For any Monthly Invoice with respect to a Month in which Buyer owes Seller a PTC Compensation Amount, if such PTC Compensation Amount cannot be calculated with certainty because the annual inflationary increase to the PTCs for the calendar year in which such Month occurs has not been published by the Internal Revenue Service, then, (a) for purposes of rendering such Monthly Invoice, Seller shall reference the PTCs in effect as of the immediately preceding December 31, and (b) following the publication by the Internal Revenue Service of the annual inflationary increase to the PTCs for the calendar year in question, Seller shall calculate the actual PTC Compensation Amount for such Month based on such published inflationary increase and shall render a corrected Monthly Invoice to Buyer for the difference (if any) between the amount invoiced pursuant to clause (a) above and the actual amount owing as calculated pursuant to clause (b). Buyer shall pay the amount (if any) shown as owing in such corrected Monthly Invoice on or before the tenth (10th) Business Day following the receipt of such corrected Monthly Invoice. In the event that Seller owes any amount to Buyer following such correction, Seller shall deduct such amount from the following Month's Monthly Invoice in accordance with Section 6.4.

6.3 Payments. Buyer shall pay the amount specified in each Monthly Invoice by wire transfer of immediately available funds by the later of the twentieth (20th) Day of the Month or the tenth (10th) Day after receipt of such invoice. If the due date does not fall on a Business

Day, then the payment shall be due on the next following Business Day. Buyer shall pay Seller in accordance with written wire transfer instructions provided to Buyer by Seller from time to time; *provided* however that any changes to such wire transfer instructions shall not be effective until two (2) Business Days after the date of receipt of notice from Seller. The Parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be conclusive evidence of receipt.

#### 6.4 Records; Auditing.

(a) Maintenance of Records. Each Party shall maintain complete and accurate records as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least two (2) years after the date the Monthly Invoice was received by Buyer, or (ii) if there is a dispute relating to a Monthly Invoice, the date that is two (2) years after the date on which such dispute is resolved.

(b) Audit Rights. Each Party, upon thirty (30) Days' written notice to the other Party, at its sole expense, has the right to have its duly authorized Representatives examine the records of the other Party during regular business hours to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. Each Party shall have one (1) year after the date on which a Monthly Invoice is received to audit that Monthly Invoice. Audit rights under this Agreement shall be subject to a Receiving Party's obligations of confidentiality with respect to third parties. Each Party shall use commercially reasonable efforts to address or comply with such confidentiality obligations to enable each Party to exercise its audit rights under this Agreement, including the redaction of certain information to the extent that such redaction will not affect the Receiving Party's audit rights.

6.5 Billing Disputes. In the event of a billing dispute, the disputing Party shall note the disputed amount but shall pay the entire amount on or before the due date; *provided* however that such payment shall not be deemed to waive the disputing Party's right to dispute such amount in the future. All billing disputes shall be resolved in accordance with Article XIII. Upon resolution of the billing dispute, the Party owing any amounts shall pay the amount owed within five (5) Business Days of the date of such resolution, plus interest calculated on the amount owed at the Interest Rate. If a potential billing error is discovered after any Monthly Invoice or other invoice has been paid, either Party shall notify the other Party of the billing dispute as soon as reasonably possible, but in any event within one (1) year following the receipt of such Monthly Invoice or other invoice. Any Monthly Invoice or other invoice that has not been disputed within such one (1) year period shall be conclusive, final and no longer subject to adjustment. If either Party overpays any Monthly Invoice or other invoice through inadvertent errors or as a result of a dispute, the overpayment shall be returned by the owing Party upon determination of the correct amount. If Seller underbills Buyer, Seller shall have the right to adjust the error by adding the underbilled amount to a subsequent invoice and such amount shall become due and owing within the time allowed by Section 6.1.

6.6 Interest on Unpaid Amounts. If a Party fails to pay the full amount due on or before the close of business on the due date, the owing Party shall pay interest on the unpaid amount at the Interest Rate, which shall be added to the next Monthly Invoice. If a due date occurs on a Day that is not a Business Day, interest shall begin to accrue on the next succeeding Business Day.

## **ARTICLE VII CREDIT; FINANCING**

7.1 Credit. The credit and security rights and obligations of the Parties are set forth in Annex [B], which is specifically incorporated into this Agreement.

7.2 Financing Liens.

(a) Assignment as Security to Project Lender. Seller, without Buyer's approval, shall have the right to grant a security interest in its rights and obligations under this Agreement to any Project Lender as security for any loan made to or for the benefit of Seller. Promptly after granting such security interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Project Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the Project Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

(b) If Seller encumbers its interest under this Agreement as permitted by this Section 7.2, the following provisions shall apply:

(i) Project Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Section 8.10, and such act performed by Project Lender shall be as effective to prevent or cure a default as if done by Seller.

(ii) Upon the receipt of a written request from Seller or any Project Lender, Buyer shall, and shall use commercially reasonable efforts to cause any Buyer Lender to, execute or arrange for the delivery of such certificates, consents, opinions and other documents as may be reasonably necessary for Seller to consummate any financing or refinancing and shall enter into reasonable agreements with such Project Lender that provide that Buyer and Project Lender recognize the rights of such Project Lender upon foreclosure of Project Lender's security interest and such other provisions as may be reasonably requested by any such Project Lender; *provided* however that any such agreement shall not constitute a modification hereof unless Buyer otherwise agrees in its sole discretion.

(iii) Buyer agrees that no Project Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on Seller's part or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any Project Lender has assumed Seller's obligations under this Agreement pursuant to this Section 7.2; *provided* that Buyer shall nevertheless be entitled to exercise all of

its rights hereunder in the event that Seller or Project Lender fails to perform Seller's obligations under this Agreement.

## **ARTICLE VIII EVENTS OF DEFAULT; REMEDIES**

8.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" if such event is not cured within the applicable cure period:

(a) A Party files a petition for voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or either Party voluntarily taking advantage of any such law or act by answer or otherwise. Such event shall constitute an "Event of Default" upon its occurrence and no cure period shall be applicable.

(b) A Party fails to make any payment when due under this Agreement (net of outstanding damages and any other rights of offset that such Party may have pursuant to this Agreement), where such failure is not cured within ten (10) Days of written notice to the Party.

(c) A Party assigns this Agreement or any of its rights hereunder (except as may be permitted under Section 7.2 for Seller or Section 18.1 for Seller or Buyer), unless cured within ten (10) Days of written notice to the Party.

(d) A Party fails to comply with the credit provisions in Annex B and such failure is not cured within thirty (30) Days of written notice of occurrence of the Material Credit Event.

(e) A Party fails to comply with any other obligation under this Agreement that would result in a material adverse impact on the other Party, other than for the failure of such Party to comply with an obligation under this Agreement for which a specific remedy has been agreed, and such failure is not cured within thirty (30) Days of written notice to the Party.

(f) Any representation or warranty made by such Party in this Agreement proves to have been false when made and such representation or warranty is not cured within thirty (30) Days of written notice to the Party.

(g) With respect to either Party, the filing of a case in bankruptcy or any proceeding under any other insolvency law is filed against the Party as debtor that could materially impact the Party's ability to perform its obligations hereunder unless such case is dismissed or stayed within sixty (60) Days after the date of filing of such proceeding.

### 8.2 Remedies for an Event of Default.

(a) Subject to Article IX, Seller shall have the right, but not the obligation, to do the following:

(i) Upon the occurrence and notice to Buyer of Buyer's Event of Default or Potential Event of Default:

(1) suspend performance of its obligations under this Agreement;

(2) sell to a third Person, free and clear of any claims by Buyer, all Metered Output and Other Project Attributes for such period during which Seller suspends performance hereunder; and/or

(3) receive direct damages that Seller incurred from Buyer in connection with such Event of Default (including during any applicable cure period, whether or not Seller elected to suspend performance during such cure period). Subject to Article IX, the Parties agree that the damages recoverable on account of an Event of Default include Seller's Cost to Cover.

(ii) Upon the occurrence and notice to Buyer of Buyer's Event of Default, Seller may also call on and draw down upon the Credit Support that Buyer provided to satisfy any and all payments due and amounts otherwise owing under this Agreement.

(b) Subject to Article IX, Buyer shall have the right, but not the obligation, to do the following:

(i) Upon the occurrence and notice to Seller of Seller's Event of Default or Potential Event of Default:

(1) suspend performance of its obligations under this Agreement (except for the payment of amounts due and owing before the occurrence of the Event of Default of Seller); and/or

(2) receive direct damages that Buyer incurred from Seller in connection with such Event of Default (including during any applicable cure period, whether or not Buyer elected to suspend performance during such cure period). Subject to Article IX, the Parties agree that the damages recoverable on account of an Event of Default include Buyer's Cost to Cover.

(ii) Upon the occurrence and notice to Seller of Seller's Event of Default, Buyer may also call on and draw down upon the Credit Support that Seller to satisfy any and all payments due and amounts otherwise owing under this Agreement.

(c) Seller and Buyer agree that punitive damages and remedies for fraud are not available under this Agreement.

8.3 Failure to Cure. If an Event of Default occurs, the Non-Defaulting Party shall have the right to terminate this Agreement upon delivering a notice of termination as provided in Section 8.4; *provided* that the Non-Defaulting Party shall not be entitled to terminate this Agreement in the case of an Event of Default under Section 8.1(c), (e), (f) or (g) and such Event of Default is not reasonably capable of being cured within the applicable cure period, if the Defaulting Party (a) has commenced to cure the default within such applicable cure period, (b) is diligently pursuing such cure, (c) is capable of curing the Event of Default within a reasonable time after the expiration of such cure period, and (d) such Event of Default is in fact cured within such reasonable period of time.

8.4 Termination for an Event of Default. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Section 8.1, the Non-Defaulting Party shall have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in Section 8.2(a) or (b), respectively, to (a) designate by notice to the Defaulting Party a Day, no earlier than the Day such notice becomes effective and no later than twenty (20) Days after the Day such notice becomes effective, on which this Agreement shall terminate (the “*Early Termination Date*”); (b) recover a Termination Payment in connection with such termination; and (c) subject to the express limitations set forth in Section 8.8, Article IX, and any express limitations set forth in this Agreement, pursue any other right or remedy available under this Agreement or Applicable Law. For the avoidance of doubt, the Non-Defaulting Party shall not receive its Cost to Cover for any period beginning on and following the Early Termination Date.

8.5 Termination Payment.

(a) If this Agreement terminates due to an Event of Default, the Non-Defaulting Party shall calculate an amount (the “*Termination Payment*”) equal to the aggregate of (i) the Market Value (as defined below) of this Agreement to the Non-Defaulting Party, plus (ii) any costs incurred by the Non-Defaulting Party as a result of terminating this Agreement due to the Defaulting Party’s default, plus (iii) any unpaid amounts owing under this Agreement from the Defaulting Party to the Non-Defaulting Party that arose before the Early Termination Date, plus (iv) for a Buyer Event of Default during the Recapture Period, the ITC Recapture Amount, if any, minus (v) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to the Defaulting Party, minus (vi) any amounts that the Non-Defaulting Party is able to recover pursuant to mitigation under Section 8.9. If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party.

(b) “*Market Value*” means:

(i) where Seller is the Non-Defaulting Party, the product of:

(A) the excess, if any, of (1) the Monthly average of the Aggregate Contract Price for the number of Months remaining in the Term, minus (2) the Monthly average of the fair market price of electrical energy and Environmental Attributes (of the type sold under this Agreement), Capacity Attributes (of the type sold under this Agreement), and Ancillary Services, whether sold separately or bundled as a package, plus the PTC Compensation Amount associated with such electrical energy, for the number of Months remaining in the Term, determined in a commercially reasonable manner by the Non-Defaulting Party, taking into account, among other valuations, a reasonable number of quotations from leading dealers in energy contracts, settlement prices on established, actively traded power exchanges and other bona fide third-party offers, and other relevant market information, and

(B) the Average Deemed Generated Energy for the number of Months remaining in the Term.

(ii) where Buyer is the Non-Defaulting Party, the product of:

(A) the excess, if any, of (1) the Monthly average of the fair market price of electrical energy and Environmental Attributes (of the type sold under this Agreement), Capacity Attributes (of the type sold under this Agreement), and Ancillary Services, whether sold separately or bundled as a package, for the number of Months remaining in the Term, determined in a commercially reasonable manner by the Non-Defaulting

Party, taking into account, among other valuations, a reasonable number of quotations from leading dealers in energy contracts, settlement prices on established, actively traded power exchanges and other bona fide third-party offers, and other relevant market information, minus (2) the Aggregate Contract Price for the number of Months remaining in the Term, and

(B) the Average Deemed Generated Energy for the number of Months remaining in the Term.

(iii) For purposes of this Section 8.5,

(A) If any Aggregate Contract Price cannot be reasonably calculated for the entire period of the number of Months remaining in the Term, the Aggregate Contract Price for the Month immediately preceding the Month in which the Early Termination Date occurs shall be used for purposes of calculating Market Value; and

(B) If the market price cannot be reasonably calculated in clause (i)(A)(2) or clause (ii)(A)(1) above for the entire period of the number of Months remaining in the Term, the market prices that are determined by the Non-Defaulting Party shall be averaged, and such market price shall be used for purposes of calculating Market Value.

**8.6 Notice of Termination Payment.** As soon as practicable after designating of an Early Termination Date, the Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment amount, if any, payable by the Defaulting Party to the Non-Defaulting Party. The Defaulting Party shall have the right to dispute the termination or the Termination Payment by notice to the Non-Defaulting Party within ten (10) Business Days, such dispute being referred to dispute resolution pursuant to Article XIV. The notice shall include a written statement setting forth in reasonable detail the calculation of such amount, together with reasonable supporting documentation. If such statement shows a Termination Payment due by the Defaulting Party, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within thirty (30) Days after receipt of such notice. If the Defaulting Party disputes the correctness of the notice or statement from the Non-Defaulting Party, the provisions of Article XIV shall apply. The Parties' obligations under this Agreement shall remain in effect after termination for purposes of complying with all of the provisions of this Section 8.6. If the Defaulting Party has not received notice by the date that is thirty (30) Days following the last Day of any applicable cure period, the Non-Defaulting Party is deemed to have waived the Event of Default and no further damages shall accrue with respect to such Event of Default.

**8.7 Other Remedies.** This Agreement's termination shall not relieve either Party of any unfulfilled obligation or undischarged liability of such Party as of the Early Termination Date, including any damages that either Party incurred as a result of any breach of or Event of Default under this Agreement before the Early Termination Date; *provided* that the Termination Payment shall be the Parties' sole and exclusive remedy under this Agreement for termination. The Non-Defaulting Party shall have the right to exercise any of the rights and remedies with respect to Credit Support, including any ancillary rights and remedies under Applicable Law then in effect, upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting a Defaulting Party. The Non-Defaulting Party shall apply the Credit Support proceeds realized upon the exercise of any such rights or remedies to reduce the Defaulting Party's obligations under this Agreement, subject to the Non-Defaulting Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**8.8 Duty/Right to Mitigate.**

(a) Each Party agrees that it has a duty to mitigate damages, and that it shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or nonperformance of this Agreement, including take such mitigation into account pursuant to Section 8.5(a)(vi); *provided* that in no event shall the mitigating Party be required to pay any amounts to the nonperforming Party in connection with such mitigation. The Parties shall exercise commercially reasonable efforts when purchasing or selling, as the case may be, electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services in order to mitigate damages pursuant to this Section 8.8.

(b) Seller shall be entitled to reduce the amount of monetary damages payable by Seller pursuant to Sections 8.2 and 8.5 as and to the extent Seller provides Buyer with Replacement Power (which shall include Environmental Attributes, Capacity Attributes and Ancillary Services to replace the Other Project Attributes that would have been available if the obligation to provide Metered Output under the terms of this Agreement had been met) in substitution for any monetary damages that would otherwise have been due.

(c) If the Non-Defaulting Party elects to terminate this Agreement following an Event of Default, the Non-Defaulting Party shall make commercially reasonable efforts to enter into long-term agreement(s) for the purchase or sale, as the case may be, of electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services, on terms and conditions reasonably similar to the terms and conditions of this Agreement and consistent with the Non-Defaulting Party's customary business practices (including with respect to satisfaction of counterparty credit); *provided* that such duty to mitigate (i) shall not be a condition to collecting the Termination Payment, and (ii) shall terminate on the Early Termination Date.

8.9 Remedies Cumulative. Subject to the express limitations set forth in Section 8.7 and Article IX, each Party's right or remedy provided in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided in this Agreement, and a Party's exercise, or the beginning of the exercise, of any one or more of the rights or remedies provided shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies; *provided* that no Party is entitled to double recovery of any payment or remedy due.

8.10 Cure Rights of Project Lender and Institutional Investor. Buyer shall notify any Project Lender or Institutional Investor of any Event of Default described in Section 8.1, and Buyer shall accept a cure performed by any Project Lender or Institutional Investor and shall negotiate in good faith with any Project Lender or Institutional Investor as to the cure period(s) that will be allowed for any Project Lender or Institutional Investor to cure any Seller Event of Default. Buyer shall accept a cure performed by any Project Lender or Institutional Investor so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Project Lender or Institutional Investor. Notwithstanding any such action by any Project Lender or Institutional Investor, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

8.11 Effect of Termination of This Agreement. The provisions of this Agreement shall remain in effect only to the extent (a) necessary to provide for final billings and adjustments related to the period before termination with respect to Metered Output and associated Other Project Attributes made available before the termination date and (b) that payment of any money

is due and owing to any Party pursuant to this Agreement; *provided* however that such termination shall not affect or excuse the performance of any Party under any provision of this Agreement that by its terms survives any such termination.

8.12 Right to Sell or Purchase After Termination. If either Party terminates this Agreement, Seller shall have the right to sell, free and clear of any claim by Buyer, any electrical energy or Other Project Attributes to any third Person, and (z) Buyer shall have the right to purchase, free and clear of any claim by Seller, any electrical energy, Environmental Attributes, Capacity Attributes or Ancillary Services from any third Person.

## **ARTICLE IX LIMITATIONS**

### 9.1 Waiver and Exclusion of Other Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO THE PARTIES' OVERALL LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT (FRAUD OR OTHERWISE) OR CONTRACT, EXCEPT TO THE EXTENT CONTEMPLATED BY ANY REMEDY OR MEASURE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE VALUE OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS), IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 4.8 AND 8.5 [AND AS PROVIDED IN ANNEX A], THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IN THIS AGREEMENT IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR RELATED CAUSES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED IN THIS AGREEMENT ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

**ARTICLE X**  
**FORCE MAJEURE EVENT**

10.1 Definition.

(a) “*Force Majeure Event*” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance.

(b) Without limiting the generality of the foregoing, and so long as the following events satisfy the conditions outlined in Section 10.1(a), Force Majeure Events may include: acts of God; actions of the elements such as heavy rains, floods, earthquakes, hurricanes, tornadoes, lightning, ice storms, landslides, mudslides, high winds of sufficient strength or duration to materially damage the Project or significantly impair its operation for a period of time longer than normally encountered by wind energy facilities under comparable circumstances; subsurface or other site conditions (including without limitation environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); long-term material changes in renewable energy flows across the Project caused by climatic change; explosion; fire; epidemic; sabotage; terrorism; transportation delays; unavailability of materials; full or partial reduction in the electric output of the Project caused by defective equipment or equipment failure due to equipment design defects or serial defect, equipment manufacturing defects or any other cause other than Seller’s failure to comply with Good Utility Practice; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strike or other labor difficulty caused or suffered by a Party or any third Person beyond the reasonable control of such Party or its Affiliates (even if such difficulties could be resolved by conceding to the demands of a labor group); directives from the Transmission Provider causing Seller to divert Metered Output due to System Emergency; System Emergencies affecting the Project; or any restraint or restriction imposed by Applicable Law or any directive from a Governmental Authority, which by exercise of due diligence and in compliance with Applicable Law a Party could not reasonably have been expected to avoid and to the extent that, by exercise of due diligence and in compliance with Applicable Law, has been unable to overcome (so long as the affected Party has not applied for or assisted such act by a Governmental Authority).

(c) Events described in Sections 10.1(a) and (b) that affect the Transmission Provider or another third Person shall also be considered “Force Majeure Events”; *provided* that a Transmission Event or Dispatch Down Event shall not be considered a Force Majeure Event and shall be the responsibility of Buyer consistent with Sections 4.8 and 4.9.

(d) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Metered Output or Other Project Attributes at a lower price, or Seller’s ability to sell Metered Output or Other Project Attributes at a higher price, than the Contract Price), or (ii) a Party’s inability to

make payment when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above.

10.2 Force Majeure Occurrence and Notice. To the extent that any Party is prevented by a Force Majeure Event from carrying out, in whole or in part, its obligations under this Agreement or from complying with, in whole or in part, conditions under this Agreement, such Party (the “*Claiming Party*”) shall give notice and details of the Force Majeure Event to the other Party as soon as practicable, unless otherwise specified by the terms of this Agreement. In addition, any completion milestones or deadlines or time periods by which performance is due, including but not limited to the achievement of Commercial Operation, shall be extended for a period of time equal to the time period of such suspension. The Claiming Party shall use commercially reasonable efforts to remedy the Force Majeure Event with all reasonable dispatch. The suspension of performance and compliance with such conditions due to the Force Majeure Event shall be of no longer duration and no greater scope than is required by the Force Majeure Event; *provided* however that a Force Majeure Event affecting Seller that only partially prevents the performance of its obligation or compliance with conditions under this Agreement may relieve Seller completely or partially, at Seller’s election, of performing such obligations or complying with such conditions. The Claiming Party shall promptly notify the non-Claiming Party when it is able to resume performance of its obligations and compliance with such conditions under this Agreement, if it is able to do so. Until the non-Claiming Party is so notified, it shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by a Force Majeure Event. No Party shall be relieved by operation of this Article X of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure Event. If the Force Majeure Event reduces but does not prevent Seller from making available Metered Output and Other Project Attributes, then Seller shall suspend deliveries of Metered Output and Other Project Attributes on a pro rata basis (among all purchasers of output of the Project) relative to the extent by which the Force Majeure Event reduces the Metered Output, and Other Project Attributes that the Project would otherwise produce but for the Force Majeure Event. If deliveries of Metered Output or Other Project Attributes are prevented in whole or in part by a Force Majeure Event, the deliveries in question shall not be made up and the Term shall not be extended to permit any makeup or offset of the lost deliveries.

10.3 Force Majeure Termination.

(a) Either Party shall have the right to terminate this Agreement, without liability to the other Party, by giving written notice of such termination to the other Party, if a single Force Majeure Event occurs and prevents a Party from making available, on the part of Seller, or taking, on the part of Buyer, all of the Metered Output or Other Project Attributes, or its other material obligations or conditions under this Agreement for a period of at least twelve (12) consecutive Months; *provided* that if the Claiming Party is the Party electing to terminate this Agreement, the Claiming Party shall only be entitled to terminate this Agreement under this Section 10.3 if it has met its obligations under Section 10.2. Such termination shall be effective as of the first Day of the first Month after the expiration of such twelve- (12-) Month period, or, if the expiration of such twelve- (12-) Month period occurs on or after the twenty-fifth (25th) Day of the Month, the termination shall be effective as of the first Day of the second Month after the expiration of such twelve- (12-) Month period.

(b) Notwithstanding the provisions of Section 10.3(a), if the Force Majeure Event (i) is one that has materially and adversely affected the production and sale of Metered Output and Other Project Attributes as contemplated by this Agreement and (ii) is such that the suspension can be corrected through repair or restoration work to the Project or other actions by Seller, Seller shall have the right to furnish to Buyer as soon as practicable after such Force Majeure event, but in no event later than eighteen (18) consecutive Months after the occurrence of such Force Majeure Event, the plans and, if applicable, the construction contract, for the restoration or repair of the Project, together with evidence reasonably satisfactory to Buyer of the total cost of restoration or repair of the Project and of Seller's ability to finance such total cost. Buyer shall have the reasonable opportunity to review and comment on such plans and financing; *provided* that Seller shall have the right to redact or withhold commercially sensitive information from any relevant plans or financing documents. Buyer shall not have the right to terminate this Agreement during any suspension so long as Seller is using Good Utility Practice to complete such repair work, restoration or such other actions.

10.4 Obligations. A Party claiming and giving proper notice of a Force Majeure Event shall be excused from the performance of its obligations and complying with the conditions of this Agreement to the extent and during the period that the Force Majeure Event prevents performance by that Party, but no Party shall be relieved by operation of this Article X of any liability for breach of any obligations that were to be performed or that accrued before the Force Majeure Event. For the avoidance of doubt, in the event of a Force Majeure Event with respect to Buyer, Seller shall have the right to sell all or a portion of the Metered Output or Other Project Attributes to any Person. When Buyer resumes its ability to perform under this Agreement, Seller shall continue to be excused for failure to make available Metered Output and Other Project Attributes to Buyer to the extent resulting from Seller's obligations under third-party contracts that Seller entered into as permitted under this Section 10.4, until such third-party contracts are required to be terminated in accordance with the following: (i) if the estimated duration of the Force Majeure Event, as stated in the notice provided by Buyer pursuant to Section 10.2 (as may be updated from time to time), is less than one hundred eighty (180) Days, Seller shall use commercially reasonable efforts, but shall not be required, to terminate such sales before the end of the period stated in the notice (as updated from time to time) if the actual period of such Force Majeure Event ends before such date, and (ii) in the event that the estimated duration of such Force Majeure Event, as stated in the original notice that Buyer provided pursuant to Section 10.2, is greater than one hundred eighty (180) Days, Seller shall terminate such sales no later than the date that is thirty (30) Days after Buyer delivers notice to Seller that the period of such Force Majeure Event has ended; *provided* however that Seller shall use commercially reasonable efforts, but shall not be required, to terminate such sales on such lesser notice as Buyer may provide; *provided* further that notwithstanding anything to the contrary in this Agreement, Seller shall not be required to terminate such sales before the date that Buyer estimated as the date of the end of the period of the Force Majeure Event in its original notice specifying the estimate of the period of such Force Majeure Event.

## **ARTICLE XI REPRESENTATIONS AND WARRANTIES**

11.1 Seller's Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a [\_\_\_\_\_], duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_], and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. Seller's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on Seller's part and does not and will not require the consent of any trustee or holder of any indebtedness or other of Seller's obligations or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated in this Agreement, and Seller's fulfillment of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Seller, Seller's formation documents or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) Seller has duly executed and delivered this Agreement. This Agreement is a legal, valid and binding obligation enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION, WARRANTY, OR COVENANT EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OF ANY ENVIRONMENTAL ATTRIBUTES OR CAPACITY ATTRIBUTES OR ANY LAW GOVERNING THE EXISTENCE OF ANY ENVIRONMENTAL ATTRIBUTES OR CAPACITY ATTRIBUTES UNDER THIS AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE.

(f) OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, SELLER MAKES NO WARRANTIES AND GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

11.2 Buyer's Representations and Warranties. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a [\_\_\_\_\_], duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_], and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. Buyer's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on Buyer's part and does not and will not require the consent of any trustee or holder of any indebtedness or other of Buyer's obligations or any other party to any other agreement with Buyer.

(c) [Other than those approvals set forth in Annex [\_\_],] no authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Buyer in connection with the execution, delivery and performance of this Agreement except those that Buyer anticipates will be timely obtained in the ordinary course of performance of this Agreement.

(d) Buyer's execution and delivery of this Agreement, consummation of the transactions contemplated in this Agreement, and fulfillment of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect applicable to Buyer, Buyer's formation documents or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(e) Buyer has been duly executed and delivered this Agreement. This Agreement is a legal, valid and binding obligation enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(f) Buyer has the financial resources and capability to satisfy its obligations under this Agreement.

11.3 General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Applicable Law.

## **ARTICLE XII INDEMNITY**

### 12.1 Indemnification.

(a) Subject to the provisions of Article IX, Seller and Buyer (each, an “**Indemnifying Party**”) shall defend, save harmless and indemnify the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities and expenses, including reasonable attorneys’ fees, for personal injury, death or damage to real property and tangible personal property of or to the Indemnified Party or any third party (collectively, “**Losses**”) to the extent arising out of, resulting from or caused by the Indemnifying Party’s negligence or willful misconduct, or that of its Affiliates, directors, officers, employees or agents; *provided* that the waiver of consequential damages set forth in the third paragraph of Section 9.1 shall not apply with respect to claims made by third parties.

(b) Notwithstanding anything to the contrary in this Section 12.1, neither Party shall be entitled to be indemnified hereunder for its Losses to the extent caused by its own negligence or willful misconduct.

12.2 Notice of Claims; Procedure. Each Party shall, with reasonable promptness after obtaining knowledge thereof, provide the other Party against whom a claim for indemnification is to be made under this Article XII with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. A potential Indemnifying Party shall have thirty (30) Days after its receipt of the claim notice to notify the potential Indemnified Party in writing whether or not the potential Indemnifying Party agrees that the claim is subject to this Article XII and, if so, whether the Indemnifying Party elects to undertake, conduct and control, through counsel of its choosing and at its sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, the Indemnifying Party notifies the Indemnified Party that it elects to undertake the settlement or defense of the claim, the Indemnified Party shall cooperate with the Indemnifying Party, without limitation, by making all relevant information and the testimony of employees and agents material to the defense of the claim available to the Indemnifying Party. The Indemnifying Party shall reimburse the Indemnified Party for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as the Indemnifying Party is contesting the claim in good faith and with diligence, the Indemnified Party shall not pay or settle the claim. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any claim at any time without the consent of the Indemnifying Party; *provided* that in such event it waives any right to indemnification by the Indemnifying Party. If the potential Indemnifying Party does not provide a responsive notice within the thirty- (30-) Day period set forth in this Section 12.2, the

Indemnified Party shall have the right to contest, settle or compromise the claim at its exclusive discretion, and the Indemnifying Party will waive any claim, defense or argument that the Indemnified Party's settlement or defense of such claim is in any respect inadequate or unreasonable.

12.3 Survival; Limitations. The indemnity obligations and Parties' rights set forth in this Article XII shall survive this Agreement's the termination for two (2) years after the termination becomes effective.

### **ARTICLE XIII INSURANCE**

13.1 Insurance Proceeds. In the event that a Party is obligated to indemnify the other Party under Article XII, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's Loss net of any insurance proceeds the Indemnified Party received following the Indemnified Party's reasonable effort to obtain such insurance proceeds.

### **ARTICLE XIV DISPUTE RESOLUTION**

#### 14.1 Dispute Resolution.

(a) Seller or Buyer shall each appoint a representative to coordinate implementation of this Agreement with the other Party (each a "**Representative**" and collectively the "**Representatives**"). If any dispute arises with respect to any Party's performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), certain of Buyer's and Seller's senior officers or executives shall meet, either in person or by telephone, within ten (10) Business Days after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such senior officers or executives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), and such dispute is not a Technical Dispute, either Party shall have the right to refer the dispute to a court pursuant to Section 14.1(c), which shall be the Parties' sole legally binding forum available for resolving a dispute, other than Technical Disputes. The deadlines under this subsection may be extended upon reasonable prior notice by the Party unable to reasonably comply with a deadline; *provided* that neither Party shall be entitled to unduly delay meetings required by this subsection and upon such delay the other Party shall have the right to pursue its rights under Section 14.1(b) or (c) as applicable.

(b) Any Technical Dispute not resolved through the process specified in Section 14.1(a) shall be referred by the disputing Party to arbitration and resolved in accordance with the arbitration procedures set forth in this Section 14.1(b). If the Parties disagree with respect to whether a dispute is a Technical Dispute, such dispute shall be submitted to the Technical Dispute Arbitrator for resolution, whose decision shall be made on an expedited basis

(as the Technical Dispute Arbitrator may determine) prior to resolving the underlying Technical Dispute, and which decision shall be final and binding on the Parties (and their Affiliates) except in the case of manifest error. Either Party shall have the right to seek judicial review of such decision, solely on grounds of manifest error, as provided in this Agreement for judicial review of disputes, and resolution of the underlying dispute by the Technical Dispute Arbitrator shall be stayed until final determination of such issue by a court of general jurisdiction, excluding any appeals. Submissions to the Technical Dispute Arbitrator shall be in the form of written statements of position by one or both of the Parties, and any such submission shall be provided to the other Party, with each Party having an opportunity to respond to the initial written statements of the other Party. All initial submissions by a Party shall be made within ten (10) Business Days of the date of referral of the dispute to the Technical Dispute Arbitrator, and all disputed items shall be determined by the Technical Dispute Arbitrator within fifteen (15) Business Days of referral. Regardless of whether a dispute is a Technical Dispute, the Technical Dispute Arbitrator shall have no authority, in connection with the resolution thereof, to render a decision that would cause a change in the Contract Price, the Term or the method for calculating damages, including any Termination Payment hereunder, or otherwise vary the terms of the Agreement and disputes involving such relief shall not be Technical Disputes regardless of whether they would otherwise fall within the definition of Technical Disputes. The decision of the Technical Dispute Arbitrator shall be consistent with the limitations provisions set forth in Article IX, shall be binding on each of the Parties (and their Affiliates) and may be enforced by either Party as permitted under Section 14.1(c). The Parties shall each bear their own costs with respect to the arbitration of any Technical Dispute, regardless of the outcome. The process for resolving Technical Disputes provided for in this Section 14.1(b) shall be the sole and exclusive means for resolving all Technical Disputes not resolved through negotiation between the Parties, and no Party shall have the right to seek judicial resolution of a Technical Dispute except as provided in this Section 14.1(b).

(c) All disputes other than Technical Disputes shall be adjudicated in a state or federal court of competent jurisdiction in the State of [ ]. Each Party irrevocably submits to the jurisdiction and venue of any [ ] state or federal court in any dispute arising out of or relating to this Agreement, and irrevocably agrees that all claims in respect of such dispute may be heard and determined in such [ ] or federal court. Each Party irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such proceeding. The Parties further agree, to the extent permitted by law, that any final and unappealable judgment against any of them in any proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

**(d) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.**

(e) Each Party certifies that it has been induced to enter into this Agreement or instrument by, among other things, the mutual waivers and certifications set forth above in this Article XIV.

(f) While any dispute is pending, the Parties shall continue to perform their obligations under this Agreement notwithstanding such dispute.

## **ARTICLE XV TAXES; GOVERNMENTAL CHARGES**

15.1 Allocation of Governmental Charges. Except as provided in Section 15.2, Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Metered Output and Other Project Attributes that are imposed on the making available of Metered Output and Other Project Attributes arising before the Metered Output Delivery Point or before the transfer of the Other Project Attributes pursuant to Sections 4.2(b), (c) and (d). Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 15.1) on or with respect to the taking and purchase by Buyer of Metered Output and Other Project Attributes to Buyer that are imposed at and from the taking of Metered Output and Other Project Attributes by Buyer at the Metered Output Delivery Point or at and after the transfer of the Other Project Attributes pursuant to Sections 4.2(b), (c) and (d). If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with their intent to minimize Governmental Charges. Nothing in this Agreement shall obligate or cause a Party to pay or be liable to pay any Tax or Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Metered Output and Other Project Attributes hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend and hold Seller harmless from any liability with respect to Governmental Charges to which Buyer claims it is exempt.

15.2 New Charges. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Metered Output and Other Project Attributes, which are imposed on Seller after the Effective Date of the Agreement.

15.3 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the Parties' intent to minimize all Governmental Charges, so long as no Party is materially adversely affected by such efforts.

## **ARTICLE XVI CONFIDENTIALITY**

Upon a Party (the "**Receiving Party**") receiving or learning of Confidential Information from or of the other Party (the "**Disclosing Party**"), the Receiving Party shall:

(a) keep such Confidential Information in strictest confidence and shall not disclose any such Confidential Information to any other Person, except as may be provided in this Agreement;

(b) restrict access to such Confidential Information to employees (and others who agree to be bound by this Agreement) who have a need to know such Confidential Information for the purposes of developing and financing the Project and for the purposes of this Agreement and who have been notified that such information is Confidential Information, including Persons who agree to be bound by this Agreement who may provide debt or equity financing to Seller;

(c) use such Confidential Information solely for the purpose of developing and financing the Project and for the purposes of this Agreement; and

(d) upon this Agreement's termination and at the request of the Disclosing Party, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(e) "**Confidential Information**" shall include (i) any and all information prepared or delivered to a Party by the other Party or its Representatives (including information or data received by the other Party from a third party and as to which the other Party has confidentiality obligations) in relation to this Agreement, and (ii) information that is known to a Party, or should be known to a reasonable person given the facts and circumstances of the disclosure, as being treated as confidential or proprietary by the other Party.

(f) Seller has and will develop information regarding the operation and maintenance and technical support know-how and processes applicable to each specific Turbine, as well as information regarding the Project's generation output, transmission-interconnection and nontechnical aspects such as the permits and land access agreements (collectively, "**Project Information**"), and any such Project Information provided to Buyer shall be deemed to be "Confidential Information." For purposes of the definition of "Project Information," general descriptive information about the Project such as its total Nameplate Capacity, the name of the Turbine manufacturer and the model name of the Turbines, the Project's location and geographical description shall not be considered Confidential Information.

(g) The terms of this Agreement, including any Attachments or Annexes, shall also be considered Confidential Information, except that Seller shall have the right to disclose the terms of this Agreement to any potential Project Lender, Institutional Investor, or potential purchaser of Seller.

(h) Notwithstanding anything to the contrary set forth in this Article XVI, the following information shall not be considered Confidential Information:

(i) information that at the time of disclosure or acquisition was publicly available or later became publicly available other than by breach of this Agreement or a confidentiality obligation owed to the Disclosing Party; or

(ii) information that at the time of disclosure or acquisition was already known to the Receiving Party, except to the extent such information was disclosed to the Receiving Party pursuant to an agreement or understanding of confidentiality.

(i) Except as otherwise expressly provided in this Agreement, neither Party shall, unless authorized in writing by the other Party to do so:

(i) distribute or disclose to any Person, firm, entity or corporation (other than those otherwise authorized pursuant to this Article XVI) any of the Confidential Information, or any related facts; or  
(ii) permit any third Person to have access to such Confidential Information.

16.2 Disclosure to Affiliates and Representatives. Notwithstanding the foregoing, each Party shall have the right to disclose Confidential Information to such Party's Affiliates and any of such Party's or such Party's Affiliates' employees, officers, board members, consultants and attorneys and other Persons involved in assisting such Party or such Party's Affiliates in connection with this Agreement; *provided* that such Representatives are informed of the requirements of this Article XVI and agree to be bound in writing by the provisions of this Agreement. A Receiving Party shall be responsible for ensuring that all Persons to whom it discloses Confidential Information under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized Person pursuant to this Agreement's requirements.

16.2 Disclosure Pursuant to Applicable Law. Notwithstanding anything to the contrary in this Article XVI, in the event a Receiving Party is requested pursuant to Applicable Law to disclose Confidential Information, such Receiving Party shall, to the extent permitted by Applicable Law, give the Disclosing Party prompt notice of such request so that the Disclosing Party shall have the right to seek an appropriate protective order. If, in the absence of a protective order, the Receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is finally required (after, if advance notice to the Disclosing Party is permitted by Applicable Law, exhausting any appeal requested by the Disclosing Party at the Disclosing Party's expense), the Receiving Party shall have the right to disclose such Confidential Information.

16.3 Disclosure to Lenders and Institutional Investors. Notwithstanding anything to the contrary in this Article XVI, Confidential Information may be disclosed (a) by Seller to any potential Project Lender or potential Institutional Investor; (b) by Buyer to any Buyer Lender; or (c) by either Party to any other entity expressing an interest in providing equity or debt financing or refinancing and/or Credit Support to such Party (and to any agent of or consultant to such entity), and the agent or trustee of any of the foregoing so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article XVI to the same extent as if it were a Party.

16.4 Injunctive Relief. Each of the Parties acknowledges and agrees that the other Party would be irreparably harmed if any Confidential Information of the Disclosing Party were to be disclosed to third Persons, or if any use were to be made of such Confidential Information other than that permitted under this Agreement, and further agrees that the Disclosing Party shall have the right to seek injunctive relief upon any violation or threatened violation of the terms of this Article XVI, in addition to all other rights and remedies available at law or in equity, without having to post a bond or other security.

16.5 Survival of Confidentiality Provisions. The terms and conditions set forth in this Agreement, including any Attachments or Annexes, shall be deemed to be Confidential Information subject to the confidentiality provisions of this Article XVI. The Parties' obligations under this Article XVI shall remain in full force and effect for two (2) years following the termination of this Agreement.

16.6 Public Announcements. Neither Party shall have the right to issue or make any public announcement, press release or statement regarding this Agreement unless the Parties jointly issue such public announcement, press release or statement or, before the release of the public announcement, press release or statement, such Party furnishes the other Party with a copy

of such announcement, press release or statement, and obtains the other Party's approval, such approval not to be unreasonably withheld, conditioned or delayed; *provided* that notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with Applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party.

## **ARTICLE XVII NOTICES AND COUNTERPARTS**

17.1 Notices. Except as may be otherwise expressly provided in this Agreement, all notices, requests, statements and other communications to be given under this Agreement shall be made to the addresses and Persons specified in Annex [C] hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, express courier, facsimile or electronic mail (so long as a copy of such electronic mail notice is provided by hand delivery or express courier). Except as may otherwise be specified in this Agreement, all notices, requests, statements and other communications shall be deemed to have been duly given on (a) the date of delivery if delivered by hand or by express courier, (b) the time stamp upon delivery if sent by electronic mail, (c) the date of receipt of a time-stamped, legible copy thereof if sent by facsimile, or (d) the earlier of the dates set forth in clauses (a), (b) and (c) if delivery is made by more than one of such means. Either Party shall have the right to change its respective notice information upon giving the other Party at least ten (10) Days' prior notice thereof.

17.2 Counterparts. This Agreement may be executed in counterparts, including in facsimile and electronic formats (including portable document format (.pdf)), each of which is an original and all of which constitute one and the same instrument.

## **ARTICLE XVIII MISCELLANEOUS**

### 18.1 Assignment.

(a) Restriction of Assignments. Except as otherwise provided below, neither Party may assign this Agreement (including the benefits of any Credit Support) without the other Party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld. The nonassigning Party shall have the right to withhold its consent if the other Party proposes to assign its rights or delegate its duties under this Agreement to any Person that does not meet the Credit Requirements. Any assignment in violation of this provision shall be void.

(b) Seller's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied in this Agreement to the contrary, Seller shall have the right to, without the Buyer's prior written consent, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Seller; (ii) to a Seller Affiliate; (iii) in connection with a merger of Seller with another Person or any other transaction resulting in a direct or indirect change of control of Seller; or (iv) in connection with the grant of a security interest to a Project Lender

pursuant to Section 7.2; *provided* that such purchaser, Affiliate or Person surviving such merger, as applicable, (x) agrees in writing to be bound by the terms of this Agreement, (y) meets or exceeds the credit rating of Seller's Guarantor as of the Effective Date (or is supported by Credit Support) and (z) in the case of assignment to an Affiliate under clause (ii) above, the obligations of Affiliate are supported by Credit Support.

(c) Buyer's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied in this Agreement to the contrary, Buyer shall have the right to, without Seller's prior written consent, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Buyer; (ii) to a Buyer Affiliate; or (iii) in connection with a merger of Buyer with another Person or any other transaction resulting in a change of control of Buyer; *provided* that such purchaser, Affiliate or Person surviving such merger, as applicable, (x) agrees in writing to be bound by the terms of this Agreement, (y) meets or exceeds the Credit Requirements (or is supported by Credit Support) or (z) in the case of assignment to an Affiliate under (ii) above, the obligations of Affiliate are supported by Credit Support.

(d) Assumption by Assignee; No Release from Liabilities. Any permitted assignee or transferee of a Party's interest in this Agreement shall assume such Party's existing and future obligations to be performed under this Agreement. Unless the Parties otherwise agree, upon any permitted assignment of this Agreement to an assignee that satisfies the applicable Credit Requirements and such assignee's written assumption of this Agreement, the assigning Party shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption; *provided* however that in all other cases, the assigning Party shall continue to be bound by this Agreement unless the Parties otherwise agree.

18.2 Cooperation with Institutional Investor. If any Person proposes to make an investment in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller and, as a result of such investment such Person would become an Institutional Investor, upon receipt of a written request from Seller or any such Person, Buyer shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate the investment by such Person in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates.

18.3 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of [\_\_\_\_], without regard to its principles of conflicts of law.

18.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the Project and supersedes all prior discussions and agreements between the Parties with respect to the Project. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed in this Agreement.

18.5 Drafting and Interpretation. This Agreement shall be considered for all purposes as prepared through the Parties' joint efforts and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

18.6 Amendment of Tariffs. Each Party agrees that if it seeks to amend any applicable wholesale power sales tariff during the Term of this Agreement, such amendment shall not in any way affect this Agreement or any remaining transactions under this Agreement without the other Parties' prior written consent. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

18.7 Amendment. No amendment, modification or change to this Agreement shall be enforceable unless set forth in writing and executed by both Parties.

18.8 Non-Waiver. No waiver by any Party of any one or more defaults by the other Parties in performing any provision of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by any Party in exercising any right, power, privilege or remedy hereunder shall operate as a waiver thereof.

18.9 Severability. Any provision of this Agreement declared or rendered invalid, unlawful or unenforceable by any applicable Governmental Authority or deemed unlawful because of a change in Applicable Law (individually or collectively, such events referred to as "**Regulatory Event**") shall not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided* further that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties.

18.10 Survival. All indemnity rights, audit rights and confidentiality obligations shall survive this Agreement's termination (with respect to indemnity rights, to the extent provided in Section 12.3 and with respect to confidentiality, to the extent provided in Article XVI, and with respect to audit rights for the period ending two (2) years following termination of this Agreement).

18.11 Forward Contract. The Parties agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. § 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or another provision of 11 U.S.C. § 101-1532.

18.12 No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third Person or entitle any third Person to any claim, cause of action, remedy or right of any kind, it being the Parties' intent that this Agreement shall not be construed as a third-party beneficiary contract.

18.13 Relationships of Parties. The Parties shall not be deemed to be in a partner or joint venture relationship by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of any other Party. Neither Seller nor Buyer shall have any

authority to bind the other to any agreement. This Agreement is intended to secure and provide for each Party's services as an independent contractor.

18.14 Attachments and Annexes. Any and all Attachments and Annexes referred to in this Agreement are, by such reference, incorporated into and made a part of this Agreement for all purposes.

18.15 Attorneys' Fees. If a Party commences a legal proceeding against the other Party because of an alleged breach of such Party's obligations under this Agreement, each Party shall bear its own expenses, including reasonable attorneys' fees, incurred in connection with the legal proceeding and any appeal thereof.

18.16 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

18.17 Non-Recourse Obligations. Notwithstanding any other provision of this Agreement, no Person (nor any officer, employee, executive, director, agent or authorized representative of any such Person) other than Seller and Buyer and, to the limited extent explicitly set forth in any Credit Support documentation, the Person obligated to provide such Credit Support, shall be liable for any payments due or for the performance of any obligation.

18.18 Rates and Terms Binding.

(a) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term of the transaction described herein. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to section 205 or 206 of the Federal Power Act. Neither Party shall seek, nor shall support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of sections 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act.

(b) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party, a non-Party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "**Mobile-Sierra Doctrine**"), or otherwise the most stringent standard of review permissible under Applicable Law to preserve the intent of the Parties pursuant to this Section 18.18 to uphold the sanctity of contracts without modification.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Power Purchase Agreement to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**BUYER:**  
**[BUYER]**

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

**SELLER:**  
**[IRI PROJECT COMPANY]**

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

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

**ATTACHMENT 1  
CONTRACT PRICE**

ANNEX A  
TERMS OF PROJECT CONSTRUCTION

**SECTION 1. PROJECT ACHIEVEMENT OF COMMERCIAL OPERATION.**

- (a) Extension of Expected Commercial Operation Date. Seller shall have the right to extend the Expected Commercial Operation Date upon notice to Buyer; *provided* that such date shall not be later than [\_\_\_\_\_].
- (b) Notice of Commercial Operation. Seller shall notify Buyer not less than five (5) Business Days in advance of the anticipated date of Commercial Operation and shall confirm to Buyer in writing when Commercial Operation has been achieved. Nothing in this Agreement shall limit Seller's right or ability to declare Commercial Operation before the Expected Commercial Operation Date if all requirements of Commercial Operation are satisfied before the Expected Commercial Operation Date.
- (c) Construction After Expected Commercial Operation Date. If Commercial Operation has not been achieved by the Expected Commercial Operation Date, Seller shall have the right, but not the obligation, to continue construction of the Project and attempt to achieve Commercial Operation for up to [\_\_\_\_\_] (\_\_) Days after the Expected Commercial Operation Date. If the Project does not achieve Commercial Operation before the end of such period, Seller shall have the right to nevertheless declare Commercial Operation based on the number of Turbines Completed as of the last Day of such period and Seller shall be deemed to have achieved Commercial Operation hereunder.
- (d) Declaration of Commercial Operation as of the PTC or ITC Deadline. If Commercial Operation has not been achieved by the PTC or ITC Deadline, Seller shall have the right, but not the obligation, to declare Commercial Operation, as of the date of the PTC or ITC Deadline, based on the number of Turbines Completed as of the PTC or ITC Deadline and Seller shall be deemed to have satisfied its obligations to achieve Commercial Operation hereunder.
- (e) Further Construction After Commercial Operation. If Commercial Operation is achieved based on less than one hundred percent (100%) of the Expected Project Installed Capacity, then Seller shall have the right, at its sole option, to continue construction of the Project in order to Complete any Turbines necessary to increase the Project Installed Capacity of the Project up to the Expected Project Installed Capacity.
- (f) Notice of Additional Completed Turbines. If Seller continues construction of the Project after the Commercial Operation Date or the Expected Commercial Operation Date as provided in Sections 1(c) and (d) of this Annex A, Seller shall provide Buyer with five (5) Business Days' notice in advance of the anticipated date of bringing any Completed Turbines on-line as part of the Project.

**SECTION 2. DELAY DAMAGES.** In the event that Commercial Operation has not been achieved [within \_\_\_\_\_ (\_\_\_\_)] Days after] **OR** [by] the Expected Commercial Operation

Date, Delay Damages shall be payable to Buyer by Seller for each Day thereafter and continuing until the earlier of (a) the date on which Commercial Operation is achieved or declared by Seller; or (b) the Day on which Seller would owe Buyer a cumulative amount of Delay Damages of [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)]. On or before the tenth (10th) Day of each Month, Buyer shall invoice Seller for Delay Damages, if any, accrued during the prior Month. Buyer shall not be entitled to any Delay Damages to the extent the delay in achieving Commercial Operation was caused by (1) Buyer or any of its agents, contractors, vendors or employees; (2) a Force Majeure Event; or (3) delays attributable to delay or defects in the construction of the Interconnection Facilities, including any transmission facilities, in which event, in each case, the Expected Commercial Operation Date shall be extended by a number of Days equal to the period of such delay. Buyer shall not be entitled to recover Delay Damages caused by events co-extensive of, and not additive to, other events giving rise to Delay Damages.

### **SECTION 3. TERMINATION.**

- (a) Buyer's Right to Terminate. If the Project has not achieved Commercial Operation on or before [\_\_\_\_\_], Buyer shall have the right to terminate this Agreement upon ten (10) Days' prior notice to Seller. Neither Party shall have any liability to the other Party with respect to such termination (except to the extent that Delay Damages under Section 2 of this Annex A are due but not paid as of the date of such termination).
  
- (b) Seller's Right to Terminate.
  - (1) If the Project has not achieved Commercial Operation by the Expected Commercial Operation Date, Seller shall have the right to terminate this Agreement at any time on or after the Expected Commercial Operation Date (regardless of whether or not Seller elected to continue to construct the Project). In the event Seller so terminates the Agreement, Seller shall be liable to Buyer on such date for the entire amount of Delay Damages that would otherwise accrue (or have accrued) by such date. Subject to the foregoing sentence, neither Party shall have any liability to the other Party with respect to such termination.
  
  - (2) If Commercial Operation has not been achieved by the PTC Deadline or ITC Deadline, Seller shall have the right to terminate this Agreement at any time on or after the PTC Deadline or ITC Deadline. Neither Party shall have any liability to the other Party with respect to such termination.
    - (A) For purposes of this Annex A, (x) "***PTC Benefits Period***" shall mean (i) the ten- (10-) year period during which PTCs can be claimed for energy with respect to the Current PTCs or (ii) the period that Equivalent PTC Benefits (if applicable) can be claimed, and (y) "***PTC Deadline***" shall mean December 31, 2012; "***ITC Deadline***" shall mean [ ], provided however that in the event that (i) the then current deadline to claim PTCs or ITCs (the "***Current Benefits***") is extended by the U.S. federal government or

(ii) in lieu of extending the deadline, legislation to receive equivalent or better benefits due to the installation of wind Turbines is enacted so that Seller would receive equivalent or better benefits (the “*Equivalent Benefits*”) than Seller would receive for the Current Benefits for the Benefits Period, both as measured in the sole discretion of Seller, the PTC Deadline or ITC Deadline shall be the date of the extended deadline for the Current PTCs or ITCs or the date of the deadline to claim Equivalent Benefits.

**SECTION 4. SOLE AND EXCLUSIVE REMEDIES.** Buyer’s sole remedy and Seller’s sole liability for the failure of (a) Seller to construct the Project; (b) the Project to achieve Commercial Operation by the Expected Commercial Operation Date; (c) the Project to achieve Commercial Operation at any specific Project Installed Capacity or the Expected Project Installed Capacity by the applicable dates set forth in this Annex A; or (d) the Project to achieve or Seller to declare Commercial Operation at all at any level of Project Installed Capacity, shall be the payment by Seller of Delay Damages, as specified in Section 2 of this Annex A, and Buyer’s right to terminate, as specified in Section 3(a) of this Annex A.

ANNEX B  
CREDIT ANNEX

**SECTION 1. DEFINITIONS.**

Capitalized terms used in this Annex B and not defined in this Annex B shall have the meaning assigned in Article I of the Agreement.

**“Backup Guarantor”** means (a) Iberdrola, S.A., a Spanish sociedad anónima; or (b) an entity, approved in advance by Buyer in Buyer’s commercially reasonable discretion, in each case that provides a replacement guarantee and support agreement or similar agreement obligating it to honor the payment obligations of Seller’s Guarantor; *provided* however such Backup Guarantor shall be deemed to be automatically approved if it (1) is a successor parent company of Iberdrola, S.A. or a direct or indirect majority-owned subsidiary of Iberdrola, S.A., in each case organized under the Laws of the Kingdom of Spain; and (2) satisfies the Ratings Limit.

**“Buyer’s Guarantor”** means \_\_\_\_\_, or any Qualified Guarantor providing a Guarantee on behalf of Buyer, or any successor guarantor of any of them, or successor-in-interest designated by Buyer that satisfies the Ratings Limit.

**“Cash”** means (i) cash in United States Dollars and (ii) non-callable obligations of or guaranteed by the United States of America.

**“Cash Escrow Agreement”** means a cash escrow agreement providing for the holding, investment and disbursement of Cash in substantially the form attached as Exhibit 3 to this Annex B.

**“Credit Requirements”** means, with respect to any Person, that such Person (a) satisfies the Ratings Limit, or (b) has provided the applicable Credit Support or caused the applicable Credit Support to be provided.

**“Credit Support”** means:

- (a) if Seller is providing credit support to Buyer:
  - (1) a Letter of Credit, in an amount of \_\_\_\_Dollars (\$\_\_\_\_), as security for Seller’s payment obligations under this Agreement; or
  - (2) Cash in the amount of \_\_\_\_Dollars (\$\_\_\_\_), which shall be delivered to a Custodian to be held pursuant to a Cash Escrow Agreement as security for Seller’s payment obligations under this Agreement; or
  - (3) a Guarantee from Seller’s Guarantor in an amount capped at \_\_\_\_Dollars (\$\_\_\_\_), which shall guarantee Seller’s payment obligations under this Agreement; or
  - (4) proceeds of a Letter of Credit drawing by Buyer pursuant to Section 4(d) of this Annex B; or

- (5) a combination of any of the above that provides total security in the amount of \_\_\_\_Dollars (\$\_\_\_\_\_).
- (b) if Buyer is providing credit support to Seller:
- (1) a Letter of Credit, in an amount of \_\_\_\_Dollars (\$\_\_\_\_\_), as security for Buyer's payment obligations under this Agreement; or
  - (2) Cash in the amount of \_\_\_\_Dollars (\$\_\_\_\_\_), which shall be delivered to a Custodian to be held pursuant to a Cash Escrow Agreement as security for Buyer's payment obligations under this Agreement; or
  - (3) a Guarantee from Buyer's Guarantor in an amount capped at \_\_\_\_Dollars (\$\_\_\_\_\_), which shall guarantee Buyer's payment obligations under this Agreement; or
  - (4) proceeds of a Letter of Credit drawing by Seller pursuant to Section 4(d) of this Annex B; or
  - (5) a combination of any of the above that provides total security in the amount of \_\_\_\_Dollars (\$\_\_\_\_\_).

**“Credit Support Party”** means Seller, if Seller is providing Credit Support to Buyer, and means Buyer, if Buyer is providing Credit Support to Seller.

**“Custodian”** means a Qualified Bank selected by the Credit Support Party.

**“GAAP”** means generally accepted accounting principles in the United States of America, or the corresponding accounting rules applicable to municipal and governmental entities in the United States of America.

**“Guarantee”** means a guarantee in substantially the form attached as Exhibit 1 to this Annex B.

**“Guaranteed Party”** means the Party in whose favor Credit Support is provided.

**“International Financial Reporting Standards”** means the accounting standards and interpretations adopted by the International Accounting Standards Board.

**“Letter of Credit”** means a standby letter of credit in substantially the form attached as Exhibit 2 to this Annex B, naming the Guaranteed Party as the beneficiary.

**“Material Credit Event”** shall mean any event that results in a Party's failure to meet the Credit Requirements applicable to it.

**“Moody's”** means Moody's Investor Services, Inc. and any successor entity.

**“Qualified Bank”** means a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating on its senior unsecured debt of(a)(1) “A3” or higher from

Moody's or (2) "A-" or higher from S&P, or (b) if rated by both Moody's and S&P, both (a)(1) and (a)(2).

**"Qualified Guarantor"** shall mean a Person who satisfies the Ratings Limit.

**"Ratings Limit"** means, with respect to any Person, such Person has a long-term credit rating (corporate or long-term senior unsecured debt) of (a)(1) "Baa3" or higher by Moody's or (2) "BBB-" or higher by S&P, or (b) if rated by both Moody's and S&P, both (a)(1) and (a)(2).

**"Seller's Guarantor"** means Iberdrola Renewables Holdings, Inc., or any Qualified Guarantor providing a Guarantee on behalf of Seller, or any successor guarantor of any of them, or successor-in-interest designated by Seller that satisfies the Ratings Limit.

**"S&P"** means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and any successor entity.

## **SECTION 2. SELLER'S CREDIT SUPPORT.**

- (a) **Seller's Credit Support.** The Parties acknowledge and agree that as of the Effective Date, Seller does not satisfy the Ratings Limit. Seller therefore agrees to provide Credit Support or cause Credit Support to be provided to Buyer on or before [     ]. If at any time after the Effective Date, and for so long as Seller satisfies the Ratings Limit, Seller shall not be obligated to provide Credit Support or cause Credit Support to be provided, and Buyer shall release any Credit Support that was provided by Seller.
- (b) **Notice of Material Credit Event.** Seller shall notify Buyer in writing of the occurrence of any event that, with notice or the passage of time or both, would constitute a Material Credit Event with respect to Seller, which notice shall be given by Seller within five (5) Business Days of the occurrence of such event. If at any time there shall occur a Material Credit Event with respect to Seller, and such Material Credit Event is not cured within thirty (30) Days' notice of such event, then an Event of Default shall be deemed to have occurred pursuant to Section 8.1(d) of this Agreement.
- (c) **No Obligation to Replenish.** Neither Seller nor Seller's Guarantor shall have any obligation to replenish Credit Support that may be provided by Seller hereunder.

## **SECTION 3. BUYER'S CREDIT SUPPORT.**

- (a) **Buyer's Credit Support.** The Parties acknowledge and agree that as of the Effective Date, Buyer satisfies the Ratings Limit. If at any time after the Effective Date Buyer fails to meet the Ratings Limit, then for so long as Buyer fails to meet the Ratings Limit, Buyer shall provide Credit Support or cause Credit Support to be provided to Seller.
- (b) **Notice of Material Credit Event.** Buyer shall notify Seller in writing of the occurrence of any event that, with notice or the passage of time or both, would

constitute a Material Credit Event with respect to Buyer, which notice shall be given by Buyer within five (5) Business Days of the occurrence of such event. If at any time there shall occur a Material Credit Event with respect to Buyer, and such Material Credit Event is not cured within thirty (30) Days' notice of such event, then an Event of Default shall be deemed to have occurred pursuant to Section 8.1(d) of this Agreement.

- (c) No Obligation to Replenish. Neither Buyer nor Buyer's Guarantor shall have any obligation to replenish Credit Support that may be provided by Buyer hereunder.

**SECTION 4. LETTER OF CREDIT AS CREDIT SUPPORT.** If Credit Support consists of a Letter of Credit, such Letter of Credit shall:

- (a) be issued by a Qualified Bank;
- (b) if the Letter of Credit is issued by a foreign bank with a U.S. branch, permit the Guaranteed Party to present for payment to the U.S. branch;
- (c) permit the Guaranteed Party to draw up to the then current "Available Amount" as defined in the Letter of Credit for the purpose of paying any and all amounts owing to the Guaranteed Party under this Agreement following the occurrence and during the continuation of an Event of Default; and
- (d) permit the Guaranteed Party to draw the entire "Available Amount" thereunder to hold as cash collateral pursuant to Section 5(c) hereof for any and all amounts owing to the Guaranteed Party under this Agreement if (i) the Letter of Credit will expire in fewer than thirty (30) Days and (ii) the Credit Support Party has not provided the Guaranteed Party with alternative Credit Support.

The Credit Support Party shall cooperate with the Guaranteed Party, at the Guaranteed Party's cost and expense, in causing the Letter of Credit to be amended, amended and restated, or replaced in the event the Guaranteed Party's interests under this Agreement are transferred to a Permitted Assignee or a successor-in-interest.

**SECTION 5. SUBSTITUTION, RETURN AND HANDLING OF CREDIT SUPPORT.**

- (a) Election to Change Form of Credit Support. A Credit Support Party shall have the right to, at any time and from time to time, replace any or all of the Credit Support provided by it (the "***Outstanding Credit Support***") with one or more alternative forms of Credit Support, whereupon the Guaranteed Party shall cooperate with the Credit Support Party in obtaining the concurrent release, termination or return (as many as may be applicable) of the Outstanding Credit Support in favor of or held by the Guaranteed Party.
- (b) Return of Original Credit Support Documents. Without limitation to the generality of the foregoing, the Guaranteed Party shall return to the Credit Support Party all original Letter of Credit and Guarantee Credit Support documents, and all amendment, extension and other related documents, within twenty (20) days of the termination, cancellation or replacement thereof.

- (c) Handling of Cash Collateral. If any cash collateral is expected to be or is received by a Guaranteed Party pursuant to this Agreement, whether following a Letter of Credit drawing pursuant to Section 4(d) hereof or otherwise, the Parties shall cooperate to cause such cash collateral to be delivered as soon as practicable to a Custodian to be held pursuant to a Cash Escrow Agreement. Any cash collateral that is received and held by a Guaranteed Party pending delivery to a Custodian shall be segregated by the Guaranteed Party from its other property and held exclusively in accounts with Qualified Banks, invested in triple “A” rated money market funds or investments of the type described in Schedule II to the Cash Escrow Agreement attached as Exhibit 3 to this Annex B, or a combination of the foregoing.

## **SECTION 6. FINANCIAL STATEMENTS.**

(a) Buyer’s Financial Statements.

- (1) If demanded by Seller, promptly following such demand, Buyer shall provide Seller with copies of its most recent financial statements (i) within one hundred thirty (130) Days of its fiscal year end for each year during the Term, and (ii) within ninety (90) Days after the end of each of Buyer’s first three fiscal quarters of each fiscal year. Buyer shall have the right to deliver unaudited financials in satisfaction of this requirement, as long as audited financials are produced in the ordinary course and promptly delivered as soon as they are available. In addition, Buyer shall promptly provide to Seller financial statements and other financial information reasonably requested by Seller for purposes of this Agreement and this Credit Annex.
- (2) If Buyer does not make available such information as required to be made available under this Section 6(a) within ten (10) Days after a request by Seller, Seller shall have the right to send a written notice demanding that such information be made available in accordance with this Section 6(a). If the requested information is not provided in accordance with this Agreement within thirty (30) Days after receipt of such written notice, or if Buyer is not otherwise able to show that a Material Credit Event with respect to Buyer has not occurred, Seller shall be entitled to assume that a Material Credit Event with respect to Buyer has occurred.
- (3) All such financial information made available under this Section 6(a), if not publicly available, shall be treated as Confidential Information subject to Article XVI of this Agreement.

(b) Seller’s Financial Statements.

- (1) If demanded by Buyer, promptly following such demand, Seller’s Guarantor shall deliver (which delivery may be effected through posting on an Internet page identified by notice to Buyer) in no event later than (i)

one hundred thirty (130) Days after the end of each fiscal year of Seller's Guarantor, a copy of such Guarantor's audited consolidated financial statements for such fiscal year, and (ii) ninety (90) Days after the end of each of such Guarantor's first three fiscal quarters of each fiscal year, a copy of Seller's Guarantor's unaudited consolidated financial statements for such periods, in each case prepared in accordance with GAAP or International Financial Reporting Standards. For so long as Seller's Guarantor or any Qualified Replacement Guarantor (as defined in the General Terms and Conditions) has a Backup Guarantor, Seller shall be deemed to have satisfied such delivery requirement if unaudited and audited (as applicable) financial statements of the Backup Guarantor are publicly available on the SEC EDGAR information retrieval system or on an Internet page maintained by such entity for those fiscal periods that such entity is required to prepare such statements under Applicable Law and exchange requirements. Should any financial statements required to be delivered pursuant to this paragraph not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Buyer promptly upon their completion. During any period in which Seller qualifies as a Qualified Replacement Guarantor, the financial reporting obligations described above shall be for the financial statements of Seller. During any period in which Seller is providing a Cash Escrow Agreement or a Letter of Credit as Credit Support, the financial reporting obligations described above shall be for financial statements of Seller's ultimate parent company (as notified to Buyer from time to time), and Seller shall be deemed to have satisfied such delivery requirement if unaudited and audited (as applicable) financial statements of such company are publicly available on the SEC EDGAR information retrieval system or on an Internet page maintained by such company for those fiscal periods that such entity is required to prepare such statements under Applicable Law and exchange requirements.

- (2) If Seller's Guarantor does not make available information as required to be made available under this Section 6(b) within ten (10) Days after a request by Buyer, Buyer shall have the right to send a written notice demanding that such information be made available in accordance with this Section 6(b). If the requested information is not provided in accordance with this Agreement within thirty (30) Days after receipt of such written notice, or if Seller's Guarantor or Seller is not otherwise able to show that a Material Credit Event with respect to Seller's Guarantor has not occurred, Buyer shall be entitled to assume that a Material Credit Event with respect to Seller's Guarantor has occurred.
- (3) All such financial information made available under this Section 6(b), if not publicly available, shall be treated as Confidential Information subject to Article XVI of this Agreement.

**SECTION 7. CREDIT SUPPORT NOT A LIMIT.** Notwithstanding any other provision of this Credit Annex, but subject to Article IX of this Agreement, Credit Support contemplated by this Credit Annex: (x) constitutes security for, but is not a limitation of, either Party's obligations under this Credit Annex and this Agreement, and (y) shall not be the Non-Defaulting Party's exclusive remedy against the Defaulting Party for the Defaulting Party's failure to perform in accordance with this Credit Annex and this Agreement.

**FORM OF POWER PURCHASE AGREEMENT GUARANTEE**

THIS POWER PURCHASE AGREEMENT GUARANTEE, dated as of \_\_\_\_\_, 20\_\_ (this "Guarantee"), is issued by [Iberdrola Renewables Holdings, Inc., a Delaware corporation] [\_\_\_\_\_, a \_\_\_\_\_ corporation] ("Guarantor") in favor of [\_\_\_\_\_, a \_\_\_\_\_ corporation] ("Guaranteed Party"). [Iberdrola Renewables, Inc., an Oregon corporation] [\_\_\_\_\_, a \_\_\_\_\_ corporation] ("Obligor") is a wholly owned subsidiary of Guarantor.

RECITALS

- A. Obligor and Guaranteed Party have entered into a Power Purchase Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
- B. This Guarantee is delivered to Guaranteed Party by Guarantor pursuant to the Agreement. All terms defined in the Agreement and not otherwise defined in this Guarantee have the meanings given to them in the Agreement.

AGREEMENT

1. Guarantee.

A. Guarantee of Obligations Under the Agreement. For value received, Guarantor absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the payment when due of all payment obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Agreement (the "Obligations"). This Guarantee is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

B. Maximum Guaranteed Amount. Notwithstanding anything to the contrary, Guarantor's aggregate obligation to Guaranteed Party hereunder is limited to \_\_\_\_ U.S. Dollars (\$\_\_\_\_) (the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guarantee, including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis), including costs and expenses incurred by Guaranteed Party in enforcing this Guarantee, and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Agreement. EXCEPT TO THE EXTENT AUTHORIZED IN THE AGREEMENT, IF AT ALL, GUARANTOR SHALL NOT BE SUBJECT TO ANY CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO DAMAGES FOR LOSS OF PROFITS, OR FOR ANY EXEMPLARY, PUNITIVE, TORT, EQUITABLE OR OTHER SIMILAR DAMAGES.

2. Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due. If Obligor fails to pay any Obligation when due, the Guarantor will pay that Obligation directly to Guaranteed Party within twenty (20) days after written notice to Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Certain Defenses. Guarantor waives: (a) notice of acceptance of this Guarantee and of the Obligations and any action taken with regard thereto; (b) presentment, demand for payment, protest, notice of dishonor or non-payment, suit, or the taking of any other action by Guaranteed Party against Obligor, Guarantor or others; (c) any right to require Guaranteed Party to proceed against Obligor or any other person, or to require Guaranteed Party first to exhaust any remedies against Obligor or any other person, before proceeding against Guarantor hereunder; and (d) any defense based upon (i) an election of remedies by Guaranteed Party; (ii) a change in the financial condition, corporate existence, structure or ownership of the Guarantor or Obligor; (iii) the institution by or against Obligor or any other person or entity of any bankruptcy, winding-up, liquidation, dissolution, insolvency, reorganization or other similar proceeding affecting Obligor or its assets or any resulting

release, stay or discharge of any Obligations; (iv) any lack or limitation of power, incapacity or disability on the part of Obligor or of its directors, partners or agents or any other irregularity, defect or informality on the part of Obligor in the authorization of the Obligations; and (v) any duty of Guaranteed Party to disclose to Guarantor any facts concerning Obligor, the Agreement or the Project, or any other circumstances that might increase the risk to Guarantor under this Guarantee, whether now known or hereafter learned by Guaranteed Party, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances. [INSERT IF A CALIFORNIA PROJECT OR ANY CALIFORNIA PARTIES: Guarantor waives the benefits of California Civil Code sections 2809, 2810, 2819, 2845, 2847, 2848, 2849, 2850, 2899 and 3433.]

Without limitation to the foregoing, Guaranteed Party shall have the right to at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) renew, compromise, extend, accelerate or otherwise change, substitute or supersede the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations, or impair, exhaust, exchange, enforce, waive or release any such security; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations; or (d) compromise or subordinate the Obligations, including any security therefor, or grant any forbearances or waivers, on one or more occasions, for any length of time, or accept settlements with respect to Obligor's performance of any of the Obligations.

Except as expressly set forth in this Section 3, Guarantor shall be entitled to assert any and all rights, setoffs, counterclaims and other defenses that Obligor may have to payment or performance of any of the Obligations and also shall be entitled to assert any and all rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed Party.

4. Term. This Guarantee shall continue in full force and effect until the earlier to occur of (a) the substitution of an alternative form of Credit Support by Obligor pursuant to Annex B of the Agreement, (b) the satisfaction of all Obligations of Obligor under the Agreement, or (c) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the Maximum Guaranteed Amount, together with any other amounts required to be paid by Guarantor pursuant to Section 6 hereof. Guarantor further agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Guaranteed Party shall return this original executed document to Guarantor within twenty (20) days of termination of this Guarantee.

5. Subrogation. Until all Obligations are indefeasibly paid in full, but subject to Section 6 hereof, Guarantor waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guarantee and any collateral held therefor, and Guarantor subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guarantee. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.

7. Assignment. Guarantor shall not be permitted to assign its rights or delegate its obligations under this Guarantee in whole or part without written consent of Guaranteed Party, *provided* however that Guarantor shall have the right to assign its rights and delegate its obligations under this Guarantee without the consent of Guaranteed Party if (a) such assignment and delegation is pursuant to the assignment and delegation of all of Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a Person that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, *provided* such Person satisfies the Ratings Limit or (b) such assignment and delegation is made to an entity within the [ ] [Iberdrola S.A.] group of companies that satisfies the Ratings Limit. Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption, and Guaranteed Party shall return the original of this executed document to Guarantor within twenty (20) days of delegation and assumption of this Guarantee to Guarantor, and Guaranteed Party agrees to execute such

documentation as Guarantor may reasonably request to evidence the termination of the same. Guaranteed Party shall not be permitted to assign its rights hereunder except in connection with a permitted assignment of its rights and obligations under the Agreement.

8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guarantee at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guarantee shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

9. Entire Agreement. This Guarantee and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guarantee of the Obligations of Obligor by Guarantor. All prior or contemporaneous agreements or undertakings made, which are not set forth in this Guarantee, are superseded.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received; (b) if mailed by certified mail (postage prepaid and return receipt requested), five (5) days after deposit in the U.S. mails; (c) if given by facsimile, when transmitted with confirmed transmission; or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section 10):

If to Guarantor:

[Iberdrola Renewables Holdings, Inc.  
1125 NW Couch, Suite 700  
Portland, Oregon 97209

Attn: Treasurer]

If to Guaranteed Party:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

11. Counterparts. This Guarantee may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

12. Governing Law; Jurisdiction. This Guarantee shall be governed by and construed in accordance with the laws of the State of New York without giving effect to principles of conflicts of law (other than section 5-1401 of the General Obligations Law of the State of New York). Guarantor and Guaranteed Party agree to the non-exclusive jurisdiction of any federal district court located in Multnomah County, Oregon over any disputes relating to this Guarantee.

13. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed, acknowledged and delivered such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guarantee.

14. Limitation on Liability. Except as specifically provided in this Guarantee, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

15. Effectiveness. This Guarantee shall be effective as of the date set forth in the first paragraph hereof upon its execution by both Guarantor and Guaranteed Party.

IN WITNESS WHEREOF, Guarantor and Guaranteed Party have executed and delivered this Guarantee.

**[Iberdrola Renewables Holdings, Inc.,  
a Delaware corporation]**

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

Acknowledged and agreed:

[GUARANTEED PARTY]

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

**FORM OF LETTER OF CREDIT**

**IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT**

Reference Number: \_\_\_\_\_ Date: \_\_\_\_\_

AMOUNT: USD \_\_\_\_\_

EXPIRY: \_\_\_\_\_

BENEFICIARY:

APPLICANT:

[NAME OF GUARANTEED PARTY]

[NAME OF CREDIT SUPPORT PARTY]

[ADDRESS OF GUARANTEED PARTY]

[ADDRESS OF CREDIT SUPPORT PARTY]

Ladies and Gentlemen:

We establish our Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_ (this "Letter of Credit") in your favor in the amount of XXX AND XX/100 Dollars (\$ \_\_\_\_\_) (the "Available Amount"), effective immediately and expiring at 5:00 p.m. Eastern Prevailing Time on the Expiration Date (as defined below).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on \_\_\_\_\_ or, if such Day is not a Business Day (as defined below), on the next preceding Business Day (the "Expiration Date"); *provided* however that this Letter of Credit shall automatically be extended for additional one- (1-) year terms unless we provide written notice to you, by certified mail, return receipt requested or overnight delivery, at least sixty (60) days prior to the then current Expiration Date. For the purposes hereof, "Business Day" shall mean any Day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions in this Letter of Credit, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on [BANK] (the "Bank") of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the

case of a drawing pursuant to paragraph 1.A or 1.B thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at \_\_\_\_\_ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received; *provided* however that the original documents referenced in paragraphs 1 and 2 above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the next Business Day.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that this Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations, and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to in this Letter of Credit, except only the attachment referred to in this Letter of Credit; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

\_\_\_\_\_  
(Name)

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

**ATTACHMENT A**

**DRAWING CERTIFICATE**

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. \_\_\_\_\_

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: \_\_\_\_\_

The undersigned executive officer or director of [NAME OF GUARANTEED PARTY] (the "Beneficiary") certifies under penalty of perjury to [ISSUING BANK NAME] (the "Bank") and [NAME OF CREDIT SUPPORT PARTY] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_ (the Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_) under that certain Power Purchase Agreement between Applicant and Beneficiary dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Agreement") for the following reason(s) [check applicable provision]:

[ ]A. Such amount is presently due and owing to Beneficiary on account of a continuing "Event of Default" (as defined in the Agreement) with respect to the Applicant, and the true calculation of the such amount is set forth in detail in the attached Statement of Damages.

[ ]B. An "Early Termination Date" (as defined in the Agreement) has occurred or been designated as a result of an "Event of Default" (as defined in the Agreement) with respect to the Applicant for which there exist equal or greater unsatisfied payment obligations, and the true calculation of such payment obligations is set forth in detail in the attached Statement of Damages.

[ ]C. (i) The Bank has provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof, (ii) the Letter of Credit will expire in fewer than thirty (30) days from the date hereof, (iii) the Applicant is

required to but has not provided the Beneficiary alternative Credit Support (as defined in the Agreement), and (iv) the Applicant will hold the proceeds of the Letter of Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of \_\_\_\_\_ U.S. DOLLARS AND \_\_\_\_/100ths (U.S.\$ \_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise provided, capitalized terms that are used and not defined shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Beneficiary: [GUARANTEED PARTY]

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

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

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

Copy to:

[NAME OF CREDIT SUPPORT PARTY]

[ADDRESS OF CREDIT SUPPORT PARTY]

**STATEMENT OF DAMAGES**

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that \_\_\_\_\_ (\$\_\_\_\_\_) (or a greater amount) is presently due and owing to Beneficiary on account of [a continuing “Event of Default”] [an “Early Termination Date”] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Article VIII of the Agreement.

[INSERT DETAILED CALCULATION OF DAMAGES]

## FORM OF CASH ESCROW AGREEMENT

### MASTER ESCROW AGREEMENT

Pursuant to this Master Escrow Agreement (this “*Agreement*”) dated [\_\_\_\_\_], the Depositors identified below (the “*Depositors*”) hereby establish an escrow account (the “*Account*”) with \_\_\_\_\_ (the “*Agent*”) (the Depositors and Agent hereafter are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*”), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the “*Assets*”) will be deposited in the Account (or any Subaccount described herein established by the Parties with respect to the Account) upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by each of the Depositors, as their escrow agent, to hold, deal with and dispose of the Assets as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein, subject to and in accordance with the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedule I or II attached hereto.

1. Agent’s Duties. Agent’s duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other Persons, even though reference thereto may be made herein; *provided* however this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other Person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, or its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent’s discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Assets or this Agreement, without determination by the Agent of such court’s jurisdiction in the matter. If any Assets are at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order,

judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree that it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to any of the Depositors or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from Depositors in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Assets at any time deposited in the Account or Subaccount. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to any of the Assets if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account or Subaccount, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Assets deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Assets in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Assets in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in Schedule II. The shares of the funds are not deposits or obligations of, or guaranteed by any,

bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Assets shall [become part of the Assets] [be disbursed pursuant to Schedule II]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from Depositors, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Assets; shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder; and shall afford each Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between or among any of the Depositors and/or any third parties, relating to or arising in connection with the Account, the Assets or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Assets then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by all Depositors and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices that Agent is required or desires to give hereunder to any of the Depositors shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Depositor (or to such other address as said Depositor may have theretofore substituted therefor by written notification to Agent), by United States certified or registered mail, postage prepaid; by reputable overnight courier service; or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Depositor to whom it was mailed on the third (3rd) Business Day after the time it is deposited in the United States mail by Agent, properly addressed and with postage prepaid, whether or not such Depositor thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday or holiday, such time shall be extended to the next Business Day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule III attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Depositors, and reimbursed for its reasonable costs and expenses incurred. Unless otherwise provided, the Depositors each will pay one-half of all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Depositors, Agent may sell such portion of the Assets held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled, or if Agent renders any service not provided for in this Agreement, or if the Depositors request a substantial modification of this Agreement's terms, or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorneys' fees (including reasonably allocated costs of in-house counsel) and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs and expenses are paid. The Depositors jointly and severally promise to pay these sums upon demand. The Depositors and their respective successors and assigns agree jointly and severally to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Assets for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Depositors. Within thirty (30) days after receiving the aforesaid notice, the Depositors agree to appoint a successor escrow agent to which Agent may transfer the Assets then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty- (30-) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorneys' fees that Agent incurs in connection with such a proceeding shall be paid by the Depositors.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [\_\_\_\_\_], as provided in Schedule II, at which time the Assets then held in the Account, less Agent's unpaid fees, costs and expenses, shall be distributed in the following manner:

[\_\_\_\_\_]

14. Governing Law. This Agreement shall be construed, enforced and administered in accordance with the laws of the State of [\_\_\_\_\_].

15. Automatic Succession. Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. Disclosure. The Parties hereby agree not to use the name of [*insert name of Agent*] to imply an association with the transaction other than that of a legal escrow agent.

17. Brokerage Confirmations. The Parties acknowledge that, to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the Parties waive receipt of such confirmations, to the extent permitted by law. The Agent shall furnish a statement of securities transactions on its regular monthly reports.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Assets at any time deposited to the Account in accordance with the foregoing Agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II and III, which are incorporated by reference.

DEPOSITOR: \_\_\_\_\_ DEPOSITOR: \_\_\_\_\_

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

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

\_\_\_\_\_  
(Address) (Address)

\_\_\_\_\_  
(City, State and Zip Code) (City, State and Zip Code)

\_\_\_\_\_  
(Telephone) (Telephone)

\_\_\_\_\_  
(Facsimile Number) (Facsimile Number)

Tax I.D. \_\_\_\_\_ Tax I.D. \_\_\_\_\_

\_\_\_\_\_  
as Agent

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

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

Notices to Agent shall be sent to:

[Name]

[Address]

[City, State, Zip]

With Fax Copy to:

[Name]

[Facsimile Number]

**ANNEX [C]**

**NOTICE**

## ANNEX [D]

### EXAMPLE CALCULATION OF PTC COMPENSATION AMOUNT

#### Calculation of PTC Loss Amount:

Assuming that (i) Buyer owes damages that include the PTC Compensation Amount on 100 MWh for a certain period, and (ii) the PTC rate applicable to such period is [0.019/kWh (\$19.00/MWh)], the amount that Seller would otherwise have received for PTCs associated with those 100 MWh for such period would be calculated as follows:

MWh Hours	100
<u>PTC Rate</u>	x \$[19.00]
<b>PTC Loss</b>	<b>\$[1,900]</b>

#### Calculation of After-Tax Basis of PTC Loss Amount:

##### *Calculation of Total Tax Rate:*

If the [*insert state*] statutory state income tax rate for such period is [9.99]%, after taking into account the benefit of the deduction of state taxes paid at that rate for federal income tax purposes, such rate is effectively [6.49]%. The total effective tax rate for such period would then be calculated as follows:

[ <i>insert state</i> ] Tax Rate (net of federal income tax benefit)	[6.49]%
<u>Federal Income Tax Rate</u>	+ [35.00]%
<b>Total Tax Rate*</b>	<b>[41.49]%</b>

\* Note that this does not include any applicable city, local, county or other regional [*insert state*] state taxes, in order to simplify this example.

##### *Calculation of Gross-Up:*

Based on a [41.49]% total tax rate, the After-Tax Basis for such PTC loss is equal to \$[3,248] [(1,900/(1-.4149))]. The PTC Compensation Amount for such period is thus [**\$3,248**].

ANNEX E

# RENEWABLE ATTESTATION FROM WHOLESALE PROVIDER OF ELECTRICITY OR RECS

## I. Wholesale Provider Information

Name of Wholesale Provider:

\_\_\_\_\_

Address of Provider:

\_\_\_\_\_

Contact Person: \_\_\_\_\_ Title:

\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address:

\_\_\_\_\_

## II. Declaration

I, (print name and title) \_\_\_\_\_ declare that the (indicate with "x")<sup>3</sup> \_\_\_\_\_ electricity bundled with renewable attributes / \_\_\_\_\_ renewable attributes only<sup>4</sup> listed below were sold exclusively from: (name of Wholesale Provider)

\_\_\_\_\_ ("Provider") to: (name of REC provider, utility, or electric service provider) \_\_\_\_\_ ("Purchaser").

I further declare that:

- 1) all the renewable attributes (including CO<sub>2</sub> benefits), including any emissions offsets, reductions or claims, represented by the renewable electricity generation listed below were transferred to Purchaser;
- 2) to the best of my knowledge, the renewable attributes were not sold, marketed or otherwise claimed by a third party;

\_\_\_\_\_ <sup>3</sup> Use separate forms to report electricity and REC sales.

<sup>4</sup> If Provider purchased electricity bundled with renewable attributes and has stripped off those attributes to sell in this transaction, and is selling the undifferentiated electricity to a utility or load-serving entity, see section III also.

3) Provider sold the renewable attributes only once;

4) the renewable attributes or the electricity that was generated with the attributes was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Provider, nor, to the best of my knowledge, by any other entity;

5) the electrical energy that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Provider, or, to the best of my knowledge, by any other entity; and

6) the facilities that generated all of the renewable electricity / renewable attributes (as indicated above) sold to Purchaser are listed below by fuel type.

**List the renewable MWhs sold or transferred to Purchaser identified below by quarter of generation as a separate line item.**

Generator Name	Generator ID Number (EIA or QF)	Nameplate Capacity (MW)	Fuel Type (if biomass, be specific; i.e. Landfill Gas)	# MWhs RECs / Elec. Sold	First Date of Generator Operation (mm/yy) <sup>5</sup>	Period of Generation (quarter#/yy or mm/yy)	Selling as Green-e Energy Certified Wholesale? <sup>6</sup> (Yes/No)

**III. Additional Statement required of Provider selling electricity to Purchaser**

I declare that the electricity listed above was delivered into the NERC region(s) or ISO(s) in which the Generator(s) listed above are located.

<sup>5</sup> For facilities that have added new renewable capacity, please indicate the amount and operational date of the new capacity and the existing capacity.

<sup>6</sup> Provider may only indicate 'Yes' if Provider has a contract with Green-e Energy to sell RECs/renewable energy wholesale as Green-e Energy certified, the MWh listed in each row of this table are sold to Purchaser as Green-e Energy certified, and the MWh listed will undergo Green-e Energy Annual Verification.

**IV. Additional Statement required if Provider is selling only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity**

Please write the name of the utility or load-serving entity here:

\_\_\_\_\_

As an authorized agent of Provider, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

**This Attestation form is used by the Center for Resource Solutions to verify the accuracy of claims made by Participant renewable energy providers. The information on this form is held strictly confidential and will not be shared with any other party except in aggregate form.**