

**EXH. JPH-23C
DOCKETS UE-240004/UG-240005
2024 PSE GENERAL RATE CASE
WITNESS: JAMES P. HOGAN**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-240004
Docket UG-240005**

**TWENTY- SECOND EXHIBIT (CONFIDENTIAL)
TO THE PREFILED DIRECT TESTIMONY OF**

JAMES P. HOGAN

ON BEHALF OF PUGET SOUND ENERGY

REDACTED VERSION

FEBRUARY 15, 2024

BALANCE OF PLANT AGREEMENT

by and between

Puget Sound Energy, Inc.

as Owner

and

Wanzek Construction, Inc.

as Contractor

dated as of

January 26, 2024

for the

Beaver Creek Wind Power Project

in

Stillwater County, Montana

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BALANCE OF PLANT AGREEMENT

THIS BALANCE OF PLANT AGREEMENT (this “Agreement”), dated as of **January 26, 2024** (the “Effective Date”), by and between Puget Sound Energy, Inc., a corporation organized and existing under the laws of Washington (“Owner”), and Wanzek Construction, Inc., a corporation organized and existing under the laws of North Dakota (“Contractor”).

RECITALS:

A. Owner is developing a wind-powered, electric generation facility with a maximum, nameplate capacity of up to 248 MW (defined as the Project herein), all to be located in Stillwater County, Montana.

B. In connection with the Project, Owner desires to obtain and Contractor desires to provide through itself or through Subcontractors, the Work (as defined herein), including, among other things, engineering (except engineering of Owner Furnished Equipment), procurement (except for procurement of Owner Furnished Equipment), installation, construction and related services for the Infrastructure Facilities and the Installation of the Wind Turbine Generators and related equipment, all for the Contract Price (as hereinafter defined).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS

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

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word “controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“Agreement” has the meaning set forth in the preamble hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof and includes all Exhibits and attachments hereto.

“Applicable Laws” means any act, statute, law, regulation, Permit (including Applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or

administration of, any of the foregoing by any Government Authority with jurisdiction over Contractor, the Project, the Project Site, the performance of the Work or other services to be performed under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

“Applicable Permits” means any and all Permits from or required by any Government Authority that are necessary for the performance of the Work or the completion of the Project.

“Applicable Standards” means those sound and prudent acts, practices, methods, specifications, codes and/or standards of assembly, erection, installation, construction, performance, safety and workmanship prudently and generally engaged in or observed by the majority of the construction contractors for wind powered electric generating facilities in the United States of technology, complexity and size similar to that of the Project that, in the exercise of reasonable judgment, would have been expected to accomplish the Work in a manner consistent with Applicable Laws, Applicable Permits, reliability, safety, environmental protection, local conditions, and economy. Notwithstanding the foregoing, the Work or any portion thereof shall meet the specifications set forth in Exhibits A and B, and any portion of Exhibit C that apply to activities comprising the Work.

“As-Built Drawings” means Final Drawings for the Work, as revised to reflect the changes in the Work during construction, and shall include as-built drawings (including in reasonable detail the physical placement and location of all improvements, including the Wind Turbine Generators and related equipment, roads, electric transmission, distribution and collection lines (both above and below ground), communication lines (both above and below ground), the Substation, the O&M Building, electric one-lines, electric schematics and connection diagrams).

“Builder’s Risk Policy” has the meaning set forth in Section 12.3.

“Business Day” means every day other than a Saturday, Sunday or other day on which commercial banks where the Project is located are authorized or required by law to remain closed.

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

“Change in Law” means any enactment or change by a Government Authority after the Effective Date, of or to any Applicable Law (federal, state or local) applicable to Work at the Project Site, or with respect to any PWA Guidance or Domestic Content Guidance, which new or changed Applicable Law or PWA Guidance or Domestic Content Guidance affects Contractor’s costs of or schedule for performing the Work, provided that the following shall not be a Change in Law: the enactment of or change in any federal, state, or local laws (a) regarding federal, state, or local taxes or levies, assessed on the basis of Contractor’s income, profits, revenues or gross receipts, or other similar charges for which Contractor is responsible under this Agreement, and (b) a change in taxes, levies, or withholding that vary compensation, benefits or amounts to be paid to, on behalf of or on account of Contractor’s or Subcontractor’s employees.

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

“Change Order Request” has the meaning set forth in Section 9.4.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collection System” means, with respect to a WTG, the permanent electrical and communications infrastructure required to transmit electrical energy and SCADA data between each WTG and the Substation or to the SCADA control panel as applicable, all as further described in Exhibits A and B. For electrical infrastructure purposes, a “Collection System” includes the padmount transformer and/or the medium voltage switchgear as the case may be, underground and/or overhead collection system cables, grounding transformers, lightning and surge protection devices, junction boxes, disconnect switches, breakers and other equipment as necessary between each such WTG and the riser lug termination in the Substation. For communications infrastructure purposes, each “Collection System” includes fiber optic cable (compliant with the minimum SCADA requirements set forth in Exhibit C-7) and all other data cables and associated equipment necessary to transmit performance and operating data from each such WTG to the SCADA control panel.

“Collection System Circuit Completion” has the meaning set forth in Section 6.3.1.

“Collection System Circuit Completion Certificate” means a certificate in the form of Exhibit V-3.

“Commissioning” means the start-up and commissioning activities on the WTGs as will be conducted by Turbine Vendor. “Commissioned” means that such activities have been completed.

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

“Consequential Damages” has the meaning set forth in Section 17.2.

“Consumables” has the meaning set forth in Section 2.4.7.

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

“Contractor” has the meaning set forth in the preamble hereto and includes its legal successors and permitted assignees.

“Contractor Deliverables” means all Design Documents, Drawings, As-Built Drawings, Job Books, Operating Manuals and other documents and similar information prepared or modified by Contractor or any of its Subcontractors and delivered or required to be delivered hereunder.

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

“Contractor Event of Default” has the meaning set forth in Section 13.1.1.

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

“Contractor Permits” means those Permits required to be obtained by Contractor, as set

forth in Exhibit H.

“Contractor’s Project Manager” means the person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for design, construction, procurement, testing and start-up of the Work, as well as all matters relating to the administration of the provisions of the Agreement, and who will be primarily located at the Project Site on a daily basis.

“Contractor’s Taxes” has the meaning set forth in Section 4.2.1.

“Contractor Termination for Cause” has the meaning set forth in Section 13.2.

“Crane Subcontractor” means the Subcontractor that Contractor retains to provide and operate erection cranes in connection with the Work at the Project Site.

“Crane Work Activity” means the unloading, erecting or Installation of the WTGs at the Project Site, utilizing one (1) or more erection cranes. “Crane Work Activities” has a correlative meaning.

“Day” or “day” means a period of twenty-four (24) consecutive hours from 12:00 midnight (Project Site time), and shall include Saturdays, Sundays and all holidays.

“Defect” means, any condition, characteristic or item of the Work (except for engineering and design services) that (a) does not conform to the terms or requirements of the Agreement (including the Applicable Standards), (b) is not of uniform good quality, free from defects or deficiencies in manufacture or workmanship, or (c) would adversely affect (i) the performance of the Project under anticipated operating conditions, (ii) the continuous safe operation of the Project, or (iii) the structural integrity of the Project.

“Delay Liquidated Damages” means, collectively, Substation and T-Line Completion Delay Liquidated Damages, WTG Delay Liquidated Damages and Project Substantial Completion Delay Liquidated Damages.

“Delivery Point” has the meaning set forth in Section 2.3.1(a).

“Design Documents” has the meaning set forth in Section 2.2.3.

“Design Life” means the period of time during which an item is expected by its designers to work within its specified parameters and current technology. This is a theoretical engineering calculation based upon the data and assumptions utilized in those engineering calculations as depicted in the Drawings. Design Life is not a guarantee, nor is it tantamount to a manufacturer’s representation of product life. The Design Life is not intended to extend the Warranty Period.

“Design Standard of Care” means, all engineering and design services shall be provided with that degree of skill and care ordinarily exercised by similarly situated EPC contractors performing projects of similar size, scope, and complexity in the same location and contemporaneous in time to this Project.

“Direct Costs” has the meaning set forth in Section 9.5.3.3.

“Dispute” has the meaning set forth in Section 15.1.

“Domestic Content Bonus Credit” has the meaning set forth in Section 2.1.3.

“Domestic Content Certificate” has the meaning set forth in Section 2.1.3(a).

“Domestic Content Damages” has the meaning set forth in Section 2.1.3(c).

“Domestic Content Guidance” has the meaning set forth in Section 2.1.3.

“Domestic Content Requirements” means the requirements of the Contractor described in Section 2.1.3.

“Domestic Steel/Iron Components” has the meaning set forth in Section 2.1.3.

“Down Payment” has the meaning set forth in Section 4.1(c).

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

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items required to complete the Infrastructure Facilities, as described in Exhibits A and B, but excluding (a) the Wind Turbine Generators and any items related thereto as are specifically described in Exhibit C (“Owner Furnished Equipment”), and (b) Contractor’s Equipment. The Parties acknowledge that Contractor will provide, install and incorporate the Equipment into the Infrastructure Facilities as described in this Agreement.

“Final Completion” has the meaning set forth in Section 6.9.1.

“Final Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit V-7.

“Final Completion Date” means the date on which Final Completion occurs as per Section 6.9.2.

“Final Completion Payment” shall have the meaning set forth in Section 4.1(a).

“Final Drawings” means the Final Drawing and final Technical Specifications, as revised to reflect the changes during construction, and will include as built drawings, piping and instrumentation diagrams, underground structure drawings (including buried piping, all utilities, and critical hidden items), electric one lines, electric schematics and connection diagrams.

“Final Punch List” has the meaning set forth in Section 6.8.1(e).

“Force Majeure Event” has the meaning set forth in Section 8.1.

“Force Majeure Notice” has the meaning set forth in Section 8.1.4.

“Foundation Completion” has the meaning set forth in Section 6.2.1.

“Foundation Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit V-2.

“Geotechnical Survey” means that certain geotechnical report attached as Exhibit M.

“Government Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Grid” means the interconnected high voltage transmission facilities that are a part of the transmission system of NorthWestern Energy.

“Gross Negligence” means a failure to perform a duty with such want of care and regard for the consequences as to justify a presumption of willfulness or wantonness.

“Half-Day Period” has the meaning set forth in Section 8.5.1(a).

“Hazardous Material” means any and all chemicals, constituents, contaminants, pollutants, materials, and wastes and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic or otherwise hazardous substances or mixtures (whether solids, liquids, gases), or any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under Applicable Laws, including those laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport, or other use of such substances.

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

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

“Independent Engineer” means the Person appointed by Owner to ensure that the Work is

completed in accordance with the Agreement.

“Infrastructure Facilities” means the Transmission Line, the Substation, all Collection Systems, the O&M Building, crane hardstandings, WTG foundations, meteorological towers, roads and other works and permanent fixtures and auxiliaries thereto, as more fully described in Exhibit B.

“Initial FM Notice” has the meaning set forth in Section 8.1.4.

“Install” means, with respect to Contractor’s Work on the WTGs or a portion or component thereof, the work required to assemble and erect (other than work to be performed by Turbine Vendor as described in Exhibit C-1) and install the same upon the foundations, and to align and adjust the same, all in accordance with the Scope of Work and with the requirements of Exhibit C-20, and includes the provision of all Equipment, Labor and other services required in connection therewith. “Installed” and “Installation” shall have correlative meanings.

“Intellectual Property Rights” has the meaning set forth in Section 2.11.

“Job Book” means all engineering, design, purchasing and other information relating to the Infrastructure Facilities, including: (a) a drawing index; (b) a reference index; (c) copies of Contractor’s and Subcontractors’ Permits; (d) un-priced copies of all Major Subcontracts and purchase orders issued under the same; (e) Subcontractor information for equipment purchased (as received from Subcontractors) including instruction and maintenance manuals from Subcontractors; (f) one copy of the As-Built Drawings and documentation; (g) training manuals; (h) the Operating Manuals; (i) electrical one-line diagrams for the Infrastructure Facilities; (j) concrete testing and inspection reports, (k) earthwork density and inspection reports, (l) electrical testing and inspection reports, (m) mill certifications for rebar, embeds and anchor bolts, (n) a cable and raceway schedule for the Infrastructure Facilities; (o) connection report/loop diagrams for the Infrastructure Facilities; and (p) a final list and summary of the work performed by all Subcontractors.

“Key Milestones” means, Road Construction Completion, Foundation Completion, Collection System Circuit Completion, Substation and Transmission Line Completion, WTG Mechanical Completion for each WTG and Project Substantial Completion and Final Completion.

“Labor” means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers (including those provided by Subcontractors).

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

“Limited Notice to Proceed” has the meaning set forth in Section 2.1.2.

“Major Subcontract” means any agreement or purchase order with a first tier Subcontractor for performance of any part of the Work that has an aggregate value in excess of [REDACTED]

“Major Subcontractor” means, any Subcontractor with whom Contractor will enter (or has

entered) into a Major Subcontract.

“Measurement Times” has the meaning set forth in Section 8.5.1(a).

“Monthly Progress Report” means a monthly written report that includes the required information described in Exhibit O.

“O&M Building” means the building for operations and maintenance equipment, supplies, monitoring systems, personnel and other related items as described in the Scope of Work.

“O&M Personnel” means Owner’s Project personnel and the Owner’s O&M contractor’s Project personnel as will be made available by Owner as described in Section 5.4.

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

“Operational Policy” has the meaning set forth in Section 12.3.

“Other Owner Contractors” means those Persons, other than Contractor, with whom Owner contracts or subcontracts to perform work in connection with the Project, including Turbine Vendor.

“Owner” has the meaning set forth in the preamble hereto.

“Owner-Caused Delay” means a delay in Contractor’s performance of the Work and/or an increase in Contractor’s costs that has been demonstrably caused by the failure of Owner, Other Owner Contractors (other than Turbine Vendor) or Utility to perform any covenant of Owner under this Agreement (other than by exercise of rights under this Agreement, including the exercise by Owner of the right to have defective or nonconforming Work corrected or re-executed) or by the acts or omissions of Owner, Other Owner Contractors (other than Turbine Vendor) or Utility.

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

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

“Owner Permits” means those Permits required to be obtained by Owner, as set forth on Exhibit H.

“Owner’s Project Manager” means the individual appointed by Owner to act on its behalf in connection with this Agreement.

“Owner’s Taxes” has the meaning set forth in Section 4.2.2(b).

“Parent Guarantee” has the meaning set forth in Section 2.12.

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

“Party Representative” has the meaning set forth in Section 15.1.

“Permit” means any waiver, exemption, variance, certificate, franchise, permit, approval, exemption, authorization, clearance, license, authorizations consents, or similar order of or from, or filing or registration with, or notice to, any Government Authority having jurisdiction over the Work or Project Site.

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

“Personnel” means, with respect to a Party or entity, such Party’s or entity’s employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third party independent contractors with whom such Party or entity has contracted, and its agents’, personnel’s, representatives’, invitees’, subcontractors’, vendors’ or third party independent contractors’ respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent contractors.

“Point of Interconnection” means the dead end structure with the slack spans hanging at the NorthWestern Energy “Chafin Wind Switchyard”. NorthWestern Energy will make the final terminations inside the “Chafin Wind Switchyard”.

“Pre-Existing Hazardous Material” means any Hazardous Material (a) that existed on or in the Project Site prior to the date when Contractor or any of its Subcontractors or other representatives is present thereon following the Effective Date or (b) brought to the Project Site by Owner, any Other Owner Contractor or any third party other than Contractor or its Personnel after the Effective Date.

“Preliminary Work” has the meaning set forth in Section 2.1.2.

“Preliminary Work Payments” has the meaning set forth in Section 2.1.2.

“Prevailing Wage and Apprenticeship Requirements” means the requirements under Code Sections 45(b)(7)(A) and Sections 48(a)(10)(A) and (11), (including such requirements as they are expressly incorporated into Code Sections 48E(d)(3) and (4), and Sections 45Y(g)(9) and (10)) and any PWA Guidance.

“Project” means the integrated wind-powered, electric generation project, comprising Eighty-Eight (88) Wind Turbine Generators, with an aggregate maximum nominal capacity of 248 megawatts, and including all related Infrastructure Facilities, all of which are to be located on the Project Site, and all other structures, facilities, appliances, lines, conductors, instruments, equipment, apparatus, components, roads and other property comprising or relating thereto, as described generally in Scope of Work and Exhibits B-1 and C-1.

“Project Schedule” means the schedule of dates and milestones (including Key Milestones) for timely completion of the Work as set forth in Exhibit E-1, with specific start and end dates for each activity comprising (or relating to) the Work.

“Project Site” means all those parcels of land subject to the Real Property Rights in favor of Owner on which the Wind Turbine Generators and the Infrastructure Facilities related thereto will be located, as more particularly described in Exhibit G-1.

“Project Substantial Completion” has the meaning set forth in Section 6.7.1.

“Project Substantial Completion Date” means the date on which the Project achieves Project Substantial Completion, per Section 6.7.2.

“Project Substantial Completion Delay Liquidated Damages” has the meaning set forth in Section 6.11.4.1.

“Project Substantial Completion Key Milestone Date” means March 27, 2025.

“Prudent Professional” means a prudent engineer or prudent general contractor in the United States of America who has at least five (5) years of experience in managing projects involving activities substantially the same as the Crane Work Activities.

“PWA Damages” has the meaning set forth in Section 2.5.2(d).

“PWA Guidance” means IRS Notice 2022-61, 2022-52 I.R.B 560 (Nov. 30, 2022), as may be modified or supplemented, proposed regulations under REG-100908-23, RIN 1545-BQ54 (Aug. 30, 2023), as may be finalized, and any other final or proposed regulations or additional guidance on the requirements in connection with the Prevailing Wage and Apprenticeship Requirements.

“Qualified Apprentice” means an individual who is employed by the Contractor or by any Subcontractor and who is participating in a Registered Apprenticeship Program.

“Quality Assurance and Quality Control Procedures” or “QAQC Procedures” means the quality assurance and quality assurance and control procedures as set forth in Exhibit J.

“Quarterly Apprenticeship Certificate” shall have the meaning set forth in Section 2.5.2(c).

“Quarterly Prevailing Wage Certificate” shall have the meaning set forth in Section 2.5.2(c)

“Real Property Requirements” means the applicable covenants, agreements, restrictions, limitations, or requirements of the Real Property Rights imposed upon Owner or its assignees, contractors, licensees, or invitees regarding the use and possession of the Project Site, the construction, operation, and maintenance of the Project on the Project Site, and any other activities on or over the Project Site, all of which covenants, agreements, restrictions, limitations and requirements are attached hereto as Exhibit G-2.

“Real Property Rights” means all rights in or to real property (such as leasehold or other rights to use or access the Project Site), leases, agreements, Permits, easements, including licenses, private rights-of-way, and utility and railroad crossing rights required to be obtained or maintained by Owner in connection with construction of the Project on the Project Site, transmission of

electricity to the Grid, performance of the Work, or operation of the Project, a complete description of which Real Property Rights is set forth in Exhibit G-1.

“Registered Apprenticeship Program” has the meaning given to such term in Section 3131(e)(3)(B) of the Code and any PWA Guidance.

“Reliance Material” means documents or information supplied by Owner to Contractor identified in Exhibit P and Contractor shall be entitled to rely upon such documents or information in Contractor’s performance of the Work and which Owner represents to Contractor that Contractor will not be held liable and will be entitled to a Change order adjusting the Project Schedule and/or Contract Price for any issue, delay or damage arising from errors, defects, discrepancies, omissions or changes of these documents or information.

“Request for Payment” means the written requests from Contractor to Owner for payment, as described in Exhibit D-3.

“Road Construction Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit V-1.

“Safety Plan” has the meaning set forth in Section 2.4.14(a).

“Schedule of Values” means that payment schedule set forth in Exhibit D-1.

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

“Spare Parts” has the meaning set forth in Section 2.4.10.

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

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

“Supporting Domestic Content Certificate” has the meaning set forth in Section 2.1.3(a).

“Substation” means the substation to be located on the Project Site near Jones Hill Road, and includes all necessary step-up transformers, protection equipment, metering and associated control buildings and other infrastructure associated therewith, as more fully described in Exhibits A, B-7, B-9 and B-11.

“Substation and Transmission Line Completion” has the meaning set forth in Section 6.4.1.

“Substation and Transmission Line Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit V-4.

“Substation and T-Line Completion Delay Liquidated Damages” has the meaning set forth

in Section 6.11.2.1.

“Substation and T-Line Key Milestone Date” means March 20, 2025.

“Supporting Materials” has the meaning set forth in Section 2.1.3(b).

“Termination for Cause” has the meaning set forth in Section 13.1.2.

“Termination Payment” has the meaning set forth in Section 13.5.1.

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

“Total Periods” has the meaning set forth in Section 9.5.1(d).

“Tower” means each tower component of a Wind Turbine Generator, as further described in Exhibit C-20, as will be provided by Turbine Vendor.

“Tower Foundation Specifications” means the specifications (including bolt configurations, conduit placement, grounding requirements and Tower load specifications) for the foundations upon which the Towers shall be mounted, all as set forth in the Technical Specifications in Exhibits C-9.

“Transmission Line” means, collectively, the transmission line[s] as Contractor will engineer, design, procure, construct and install, as further described in the Scope of Work, that will connect the Substation to the Point of Interconnection.

“Turbine Assembly Drawings” means the master set of drawings (including electrical drawings) that sets forth the information required to perform the Installation of the WTGs, as set forth in Exhibit C-20.

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

“Turbine Supply Agreement” means that certain Contract for the Sale of Power Generation Equipment and Related Services by and between Owner and Turbine Vendor, dated as **December 1, 2023**. The Parties acknowledge that those portions of the Turbine Supply Agreement with which Contractor is to comply, or of which it is to be aware, are set forth in the multiple Exhibits that comprise Exhibit C.

“Turbine Vendor” means General Electric Company a corporation organized and existing under the laws of the State of New York.

“Turbine-Vendor-Caused Delay” means a delay in Contractor’s or a Subcontractor’s performance of the Work and/or an increase in Contractor’s or a Subcontractor’s costs that has been demonstrably caused by (a) the failure of Turbine Vendor or its Personnel to perform its obligations in accordance with the Turbine Supply Agreement, (b) the failure of Turbine Vendor or its Personnel to provide the Wind Turbine Generators in accordance with the schedule set forth

in Exhibit E-2, (c) the failure of Turbine Vendor to commission a WTG within the time period described in Section 5.5.2, (d) the failure of Wind Turbine Generators to function in accordance with the specifications as set forth in Exhibit C, or (e) the acts or omissions of Turbine Vendor or its Personnel.

“Unforeseen Subsurface Condition” has the meaning set forth in Section 2.4.1(b).

“Utility” means NorthWestern Energy or an affiliate thereof.

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

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

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

“Weather Delay” means, as with respect to a Half-Day Period as described in Section 8.5.1, that the following applicable criteria have been met:

(a) Crane Work Activity is scheduled to be performed during such Half-Day Period; and

(b) either:

(i) as described in Section 8.5.1(a), (A) the Wind Speed Data indicates that the actual wind speed at the applicable Measurement Time exceeds the maximum wind speed for such Crane Work Activity as provided in the table below, and (B) using the available Wind Forecast Information, a Prudent Professional would, exercising reasonable judgment, determine that wind speeds at the Project Site during the Half-Day Period immediately following such Measurement Time will continue to exceed the maximum wind speed for such Crane Work Activity:

Crane Work Activity	Maximum Wind Speed
Unloading	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
Rotor Assembly	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
Installation of Tower Base Ring	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
Base & Mid Section Erection or Installation	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
Top & Nacelle Erection or Installation	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
Rotor Erection or Installation	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
Generator Alignment	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner
WTG Mechanical Completion	*As set forth in the engineered lift plans developed by Contractor and reviewed by Owner

or

(ii) in the reasonable judgment of the Contractor and Crane Subcontractor, which such judgment must in both cases be based upon the standard of a Prudent Professional, either:

(A) wind conditions at the Project Site during such Half-Day Period otherwise exceed the levels required for safe performance of the scheduled Crane Work Activity, or

(B) due to fog conditions at the Project Site, visibility during such Half-Day Period is less than three hundred (300) feet, thereby creating an

unsafe condition for the operation of the crane(s) required for such Crane Work Activity; or

(C) due to the accumulation of ice on the applicable crane(s) or applicable WTGs relating to such Crane Work Activity at the Project Site, operation of the crane(s) required for such Crane Work Activity during such Half-Day Period would create an unsafe condition; and

(c) as a result of the condition described in subclause (b)(i) above or the conditions described in clauses (b)(ii)(A), (B) or (C) above, the subject Crane Work Activity is not performed; and

(d) other Crane Work Activities not actually, demonstrably and materially affected by such wind, fog or ice cannot reasonably be performed during such Half-Day Period, in lieu of the Crane Work Activity that is actually, demonstrably and materially affected by the subject wind, fog or ice, provided, that Contractor shall not be obligated to perform other Crane Work Activity if performance of such other Crane Work Activity would not be commercially reasonable (i.e., the performance of the other Crane Work Activity would require excessive crane movement or unreasonable amounts of disassembly and assembly); and provided, further, that if no other Crane Work Activity can be performed during such Half-Day Period as a result of Contractor-caused delays (i.e., Work delayed behind the Project Schedule due to causes within Contractor's control) to prerequisite Work, this criterion (d) will be deemed not to have been met for purposes hereof.

“Wind Forecast Information” means the projected potential wind speeds for the Project Site, as indicated in the Wind Forecast Report, for the five (5) hour period immediately following the Measurement Time.

“Wind Forecast Report” means a wind forecast report produced by Praedictix.

“Wind Speed Data” means wind speeds at the Project Site, as measured by a calibrated anemometer, mounted at the tip of the crane boom, with no obstructions interrupting the performance of the anemometer, provided: (a) the anemometer is mounted in a manner consistent with industry custom and practice; (b) the anemometer is certified by the anemometer manufacturer to insure the instrument will record data at an accuracy of plus or minus [REDACTED] or plus or minus [REDACTED] meters per second, whichever is greater; (c) the wind will be sampled at one (1) second intervals and the program logic for the data logger will record wind speeds in ten (10) minute bins; and (d) the anemometer will utilize a data logger that will be downloaded daily for those periods with respect to which Contractor intends to make a Weather Delay claim and stored in the form of CSV or similar files.

“Wind Turbine Generator” or “WTG” means one of the Eighty-Eight (88) General Electric model GE 2.8-127-89 wind turbine generators, including the following components with respect to each: a Tower, a Turbine Nacelle, three (3) turbine blades, controller, control panels, wind vanes and anemometers, and such other items, control systems, equipment, machinery, materials and supplies, and special tools, related thereto, all of which will be supplied by Turbine Vendor, and all as more particularly described in Exhibit C.

“Work” has the meaning set forth in Section 2.1.1 and includes Contractor Deliverables, the Infrastructure Facilities, the Equipment, the Substation, the foundations of the WTGs and as more particularly described in Exhibit A.

“WTG” means Wind Turbine Generator, as defined above.

“WTG Delay Liquidated Damages” has the meaning set forth in Section 6.11.3.1.

“WTG Installation Completion” has the meaning set forth in Section 6.6.1.

“WTG Mechanical Completion” has the meaning set forth in Section 6.6.

“WTG Mechanical Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit V-5.

“WTG Mechanical Completion Key Milestone Date” means December 20, 2024.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) unless otherwise specified, references to “Articles,” “Sections,” or “Exhibits” (if any) shall be to Articles, Sections, or Exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; (b) all references to a Person shall include a reference to such Person’s successors and permitted assigns; (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (d) the use of the word “including” or “include” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, with advice of legal counsel; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.3 Order of Precedence. In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

(a) Amendments, addenda or other modifications to the Agreement (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;

(b) This Agreement (excepting Exhibits hereto);

(c) Exhibit A and Exhibit B;

(d) Exhibit C through Exhibit Y; and

(e) Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured

dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Notwithstanding the foregoing provisions of this Section, if a conflict exists within a part of the Agreement as listed in a lettered subclause above, or between or among the Agreement and Applicable Laws, the Real Property Requirements, then the more stringent or higher quality requirements shall control. Where a conflict exists among codes and standards applicable to the Infrastructure Facilities or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

ARTICLE II

RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES

2.1 Work to be Performed; LNTP.

2.1.1 Work. Except as otherwise expressly set forth in Article V or elsewhere in this Agreement as being the responsibility of Owner or Turbine Vendor, Contractor shall perform or cause to be performed all necessary work and services required in connection with (a) the design, engineering, procurement, construction, assembly, installation, start-up, and testing of the Infrastructure Facilities, (b) the Installation of the Wind Turbine Generators, (c) the provision, management and supervision of all Labor, transportation, administration and other services as required in connection with any of the foregoing, and (d) the inspection and furnishing of all materials, equipment, machinery, tools, temporary structures, temporary utilities as required in connection with the foregoing (the "Work") including such work as is further described in this Article II and the Scope of Work. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed the Work in accordance with the terms and conditions of this Agreement. Contractor represents that it has ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions including Applicable Laws, and the availability of Labor which might affect its performance of the Work or the cost thereof and that, based upon the same, but subject to Section 9.5.1 and Contractor's rights under specific provisions of this Agreement, commits that it can complete the Work for the Contract Price in accordance with the Project Schedule.

2.1.2 Limited Notice to Proceed. Owner and Contractor have entered into certain Limited Notices to Proceed, dated October 30, 2023, December 4, 2023, and December 13, 2023, respectively (the "LNTPs"). Pursuant to the LNTPs, among other things, Contractor agreed to perform, and did perform, certain preliminary work activities (the "Preliminary Work"), and Owner paid (or will pay) Contractor for all or a portion of such performance (the "Preliminary Work Payments"). Upon the execution and delivery of this Agreement, all of the Preliminary Work shall constitute part of the Work, and is hereby made subject to the terms and conditions of this Agreement without regard to any contrary terms and conditions in the LNTPs, and all of the Preliminary Work Payments shall constitute part of the Contract Price; *provided*, that for the avoidance of doubt, Contractor shall continue to perform any Preliminary Work that was not completed prior to the Effective Date of this Agreement and Owner shall in any event continue to

make all required payments for such Preliminary Work. Subject to the foregoing, and further pursuant to Article 3 of the LNTPs, the LNTPs are hereby superseded by the Agreement and is made null and void.

2.1.3 Domestic Content. The Owner intends that the Project be eligible for the domestic content bonus credit under Section 45(b)(9) or 48(a)(12) of the Internal Revenue Code (the “Domestic Content Bonus Credit”). Contractor shall ensure that: (i) (A) all steel or iron rebar in each turbine foundation (e.g., spread footing), and (B) all anchor bolts, in each case are produced in the United States (the “Domestic Steel/Iron Components”). The Parties acknowledge and agree that the forgoing requirements are intended to comply with the requirements under Code Sections 45(b)(9) and 48(a)(12) and Notice 2023-38 and shall be interpreted consistently therewith. The Parties shall negotiate in good faith to amend this Agreement or issue a Change Order to ensure compliance with any forthcoming guidance from the Department of the Treasury or Internal Revenue Service on the Domestic Content Bonus Credit (“Domestic Content Guidance”).

(a) Contractor shall, (i) within sixty (60) days after Delivery of the last of the Domestic Steel/Iron Components under this Agreement, deliver to Owner an executed certificate substantially in the form of Exhibit V-8 (Form of Domestic Content Certificate) (the “Domestic Content Certificate”) providing factual representations in support of the Contractor’s satisfaction of the requirements in Section 2.1.3 and (ii) on a rolling basis deliver to Owner any domestic content certificate issued to Contractor by any Subcontractor in support of the same (a “Subcontractor Domestic Content Certificate”).

(b) Within thirty (30) days after delivery of the Domestic Content Certificate, or any Subcontractor Domestic Content Certificate, or at such later time as may be requested by Owner (but no later than seven (7) years after Final Completion), Contractor shall provide (or cause to be provided) documentation within its control substantiating the Domestic Content Certificate or Subcontractor Domestic Content Certificate, as applicable (the “Supporting Materials”) that is reasonably requested by a nationally respected accounting firm retained by Owner (who has entered into a confidentiality agreement with Contractor and any Subcontractor that supplied equipment subject to the Domestic Content Certificate), in connection with Owner’s efforts to qualify for the Domestic Content Bonus Credit.

(c) If at any time prior to completion of construction Contractor or Owner, as applicable, knows or reasonably anticipates that Contractor cannot satisfy its obligation under Section 2.1.3 to ensure all Domestic Steel/Iron Components be produced in the United States, Contractor or Owner, as applicable, shall give the other party written or electronic notice describing such failure within ten (10) Days following the date on which such party knew or reasonably anticipated the same. Contractor shall make reasonable best efforts to cure such failure within a reasonable period of time of such written notice. If Contractor is unable to cure such failure within such period, Owner shall make commercially reasonable efforts to cure such failure, and Contractor shall reimburse Seller for any reasonable and documented direct costs incurred in connection therewith (the “Domestic Content Damages”). Contractor and Owner shall cooperate in good faith in any audit or other tax proceeding involving the Domestic Content Bonus Credit claimed with respect to the Project.



2.2 Infrastructure Facilities.

2.2.1 General. Contractor shall engineer, supply and construct the Infrastructure Facilities and engineer, procure and construct all other components of the Work that are set forth in Exhibit A as part of Contractor's Scope of Work.

2.2.2 Engineering. Contractor shall perform all engineering and design services for completion of the Work in accordance with the Design Standard of Care. All Design Documents requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in the appropriate jurisdictions. The Work performed and Equipment provided by Contractor hereunder shall be designed and engineered to be suitable for Owner's use as a wind-powered electrical generation facility for at least thirty (30) years Design Life under the climatic and operating conditions that are normal for the location of the Project Site and under the design basis conditions described in ; provided, however, that any warranty claims made with respect to the design and engineering of the Work must be made within the Warranty Period. For the avoidance of doubt, the foregoing shall not be deemed to be a thirty (30) year design/engineering warranty, it being the case that the warranties on the Equipment are as set forth in Article VII. Owner acknowledges that Contractor is not a licensed or authorized architect or engineer in the jurisdiction in which the Work is being performed, has not held itself out as being a licensed or authorized architect or engineer, and will furnish all design and engineering services required under the Agreement by way of subcontract or other contract with qualified, licensed and authorized design and engineering professionals to the extent required by Applicable Law. Owner agrees that Owner shall not assert Contractor's lack of registration or licensing as a designer, engineer or architect (i) as a defense to any action or claim by Contractor or (ii) to challenge the enforceability or validity of the Agreement. Notwithstanding the foregoing, Contractor shall remain wholly responsible for the Work as required under this Agreement and shall remain fully responsible for any acts or omissions of its Subcontractors (of any tier) in the performance of the Work or in furtherance of this Agreement.

2.2.3 Design. Contractor shall design the Infrastructure Facilities such that they comply with the Design Standard of Care. Contractor shall prepare and submit all drawings and specifications for the Work in accordance with the Submittal Schedule, Exhibit E-1 (the "Design Documents") for Owner's review and approval (to confirm compliance with the requirements of this Agreement). Owner will respond with comments (and approval (or reasoned disapproval)) within ten (10) Business Days of its receipt thereof; provided, however, that neither such review or approval, nor the absence thereof, shall impose any liability on Owner or relieve Contractor of any of its responsibility for the Work as provided in this Agreement. Based on the technical specifications set forth in Exhibit B, Contractor shall prepare comprehensive drawings and specifications setting forth in detail the requirements for the construction of the Work. As the

drawings and specifications for the Work are issued, they shall be clearly identified as Design Documents.

2.2.4 Interconnection to Grid. As further described in the Scope of Work and Exhibit B-5, Contractor shall be responsible for all interconnection up to the Point of Interconnection. Contractor shall cooperate and coordinate with the Utility in connection with the installation by Utility of the interconnection works between such the Point of Interconnection and the Grid by the Utility; *provided*, that Contractor shall have no responsibility for Utility delays in providing such interconnection. If, prior to a WTG Mechanical Completion Key Milestone Date, the Parties foresee that interconnection to the Grid will be delayed beyond the date scheduled for Substation and Transmission Line Completion in the Project Schedule and, as a result thereof, Owner directs Contractor to obtain temporary generators, then within two (2) weeks after receipt of Owner's directive Contractor shall procure temporary generator(s) sufficient to provide backfeed power for the Commissioning of the subject WTGs (to the extent use of such temporary generator is permitted under the Turbine Supply Agreement), and Owner shall execute a Change Order therefor.

2.2.5 Start-up and Testing of Infrastructure Facilities. Contractor shall perform the start-up and testing of the Infrastructure Facilities, including the calibration and functional testing of all controls and equipment in accordance with Exhibit A. If the Scope of Work requires that any item comprising the Infrastructure Facilities be tested by Contractor, Contractor shall notify Owner prior to the commencement of any such test. Contractor shall coordinate with Owner the scheduling of any test and Owner shall coordinate such test with Turbine Vendor, so as not to interfere, in either case, with either Party's obligations with respect thereto. Owner may witness such tests and will, within five (5) Business Days after receipt of written results of such tests, deliver to Contractor a written notice either (a) accepting such tests as having been passed, or (b) rejecting such tests as having demonstrated that the tested item failed to comply with the performance requirements therefor under this Agreement. Regardless of whether Owner elects to witness such tests, Contractor shall be entitled to move forward with such tests as planned and noticed to Owner. Any rejection shall include a detailed description of the basis for rejection.

2.3 Wind Turbine Generators.

2.3.1 Delivery, Unloading, Shipping Fixtures and Special Tools.

(a) Owner shall cause Turbine Vendor to deliver the WTGs to the Project Site in accordance with the delivery schedule attached as Exhibit E-2. Delivery shall be by truck to the nearest point to the unit site pad that is accessible by standard highway configured vehicles used for transportation of wind turbine components (the "Delivery Point"). Roads constructed to the specifications contained in Exhibit B-3 shall be deemed accessible by such standard highway-configured vehicles. Contractor will cooperate with Turbine Vendor in accessing the pads. As part of the Work, Contractor will be responsible for (i) the unloading, handling and visually inspecting of all Wind Turbine Generators and related equipment provided by Turbine Vendor, and (ii) any required storage of the same through Project Substantial Completion after such delivery. Each such inspection shall be performed in cooperation with Owner and Turbine Vendor and shall without limitation identify the type, make, model and serial number of each WTG item delivered and indicate any missing or visibly damaged components. Contractor shall perform all

such unloading, handling, storage and inspection of the Wind Turbine Generators and related equipment in accordance with the Scope of Work and, in particular, will perform such unloading in accordance with the specification set forth in Exhibit C-1.

(b) Not used.

(c) If Owner wishes for Contractor to accommodate delivery of a WTG prior to its specified date in the delivery schedule, it will notify Contractor of the same, and Contractor shall promptly communicate to Owner the details of all reasonably foreseeable and/or estimated hindrances and additional costs (if any) as may result from such early delivery, including (i) any civil or electrical work that must be completed to permit early delivery to the applicable pad site, (ii) any additional transportation or handling as would result from such early delivery, and (iii) any shortages in human resources available to accept such early delivery. Based upon such information, Owner may elect to direct Contractor to accommodate and accept such early WTG delivery, and Contractor will use commercially reasonable efforts to avoid and reduce any additional resulting Direct Costs. Subject to the foregoing, Owner will be responsible to reimburse Contractor for those Direct Costs via a Change Order. Without limiting the foregoing, the Parties acknowledge that if Contractor's accommodation of such early delivery results in unloading of a WTG at a location on the Project Site other than adjacent to the applicable pad site, then the reasonable additional handling and storage cost incurred by Contractor in moving the subject WTG to the location adjacent to the applicable pad site shall be included as a Direct Cost borne by Owner via such Change Order.

(d) If Contractor is not prepared to accept delivery (or is prepared to accept delivery, but is not prepared to accommodate transportation of the WTG to the applicable pad) of a WTG that is delivered on or after its scheduled delivery date, and is not otherwise excused per the terms of this Agreement, then Contractor will, at its expense, unload and store the same, and will subsequently transport the subject WTG to the applicable pad. From time to time, Owner shall provide Contractor with updates of the actual anticipated dates of delivery of all WTG components.

(e) Contractor shall provide a minimum site access for delivery from 7:00 a.m. to 5:00 p.m. local time on each Business Day. Contractor shall not be obligated to unload more than [REDACTED] WTGs per week with a maximum of [REDACTED] trucks on no more than two turbine pad locations per day. Subject to Article VIII and the aforesaid maximum delivery velocity, if a delivery truck arrives to the applicable Delivery Point before 2:00 p.m. on a scheduled delivery day and is not unloaded during the same day (except to the extent of the occurrence of a Wind Delay, Force Majeure Event, any other event or circumstance for which Contractor is entitled to an increase in cost or change in Key Milestones pursuant to any specific provision in this Agreement, or conditions an Access Road and WTG laydown areas that have been constructed in accordance with the Scope of Work become deemed inaccessible by Turbine Vendor for delivery of the Owner-Supplied Equipment), Owner will be entitled to, and Contractor shall pay to Owner, demurrage charges equal to those charged by Turbine Vendor as set forth in Exhibit X. If not unloaded the same day, then, subject to the aforesaid maximum delivery velocity, Contractor shall unload the truck within twenty-four (24) hours after such truck's arrival. If a delivery truck arrives to the applicable Delivery Point after 2:00 p.m. on a scheduled delivery day and is not unloaded within twenty-four (24) hours after such delivery, Owner will be entitled to, and Contractor shall pay to Owner, demurrage charges equal to those charged by Turbine Vendor pursuant to the Turbine

Supply Agreement. Contractor will also be responsible for any damage to trucks caused by Contractor or its Personnel. Furthermore, except to the extent of the occurrence of a Weather Delay, Force Majeure Event or an Contractor Caused delay, if Turbine Vendor fails to deliver the WTG Delivery Loads at the rates set forth in Exhibit E-2, in addition to other relief for Turbine-Vendor-Caused-Delay, Owner shall reimburse Contractor for any stand-by expenses for labor and equipment incurred by Contractor in accordance with the hourly rates for which are set forth in Exhibit U.

(f) All shipping fixtures provided by Turbine Vendor for Contractor's use at the Project Site must be removed from the WTGs, and made ready for pickup by Turbine Vendor within thirty (30) days after WTG Mechanical Completion. If Contractor fails to make such shipping fixtures available for pickup within this time frame, Contractor will be liable to Owner for [REDACTED] per shipping fixture per day as a rental fee therefor, unless such failure is otherwise excused by a specific provision of this Agreement. If any of the shipping fixtures are damaged or destroyed as a result of misuse by or negligence of Contractor or its Personnel while in Contractor's possession, Owner shall cause Turbine Vendor to repair or replace promptly such damaged or destroyed shipping fixtures at Contractor's expense. If any of the shipping fixtures wear out or break due to normal wear and tear (and not because of misuse by or negligence of Contractor), Owner shall cause Turbine Vendor to replace such fixtures at Owner's expense.

(g) Contractor shall be responsible for assisting with collapsing or the reconfiguration of trailers. Contractor shall be responsible for providing the saddle/dunnage used for any equipment to be stored on the ground.

(h) Owner shall cause Turbine Vendor to lend and deliver to Contractor at the Project Site at no cost to Contractor, special installation tools in accordance with Exhibit C-1. All such special installation tools will be owned by Turbine Vendor. Except as otherwise directed by Owner, Contractor shall (i) promptly after installation of the final WTG, return the special installation tools to Owner in the same condition as received, except for normal wear and tear; (ii) pack and load special installation tools at Contractor's cost; and (iii) ship such tools to locations designated by Owner, at Owner's cost. Upon Turbine Vendor's delivery of such special installation tools, Contractor shall visually inspect such tools to confirm that they are in good condition and working order. Contractor shall use such special installation tools at its own risk and in accordance with the "Installation Manual" (as described in Exhibit C-20) and shall use reasonable care in storing, handling and using such special installation tools. If any of the special installation tools are lost, damaged or destroyed during the period Contractor possesses them pursuant hereto, then Contractor shall arrange for the repair or replacement of such lost, damaged or destroyed tools at Contractor's expense.

(i) If any part of the WTGs cannot be delivered to the Delivery Point in accordance with the delivery schedule attached as Exhibit E-2 due to Contractor's sole cause, and as a result Turbine Vendor ships such WTGs to storage, then (i) Contractor will be responsible for all additional costs incurred by Owner in order to unload such WTGs at the storage site, re-load them at a later time, and any costs for transporting them to the Delivery Point, as well as for all other reasonable and necessary expenses incurred by the Turbine Vendor for which the Turbine Vendor demonstrably charges Owner, such as for preparation for, transportation to and placement

into storage, handling, inventorying, intermittent and final inspections, preservation, storage, remediation, removal charges.

2.3.2 Installation and Integration of Wind Turbine Generators. As part of the Work, Contractor shall provide all services, management, Labor, equipment and materials necessary to Install the Wind Turbine Generators, all in accordance with the Project Schedule and the Installation Manual (as described in Exhibit C-20), including: (a) the assembly of the WTGs, (b) the construction of the Tower foundations, and the Installation of the Towers on the Tower foundations, all in accordance with the Tower Foundation Specifications, (c) the installation of lights (including Federal Aviation Authority lighting equipment), safety cables, platforms and ladders inside of the Towers; (d) the Installation of the Turbine Nacelles and turbine blades upon the Towers as specified in Exhibit C-20 and the other requirements of the Agreement; (e) the installation and testing of the WTG electrical cables, communication cables, and installation of control panels, controllers and all other components of the control system, including computer hardware; (f) the connection of the cables and/or buss conductors from each Turbine Nacelle to the main circuit breaker within the ground controllers and the controllers to the applicable padmount transformer; and (g) following WTG Installation Completion, performing maintenance in accordance with Exhibit C-31; provided, however, in no event shall Contractor be responsible or liable for any failure or defect resulting from insufficient maintenance of the WTGs from the time of delivery until WTG Installation Completion.

2.3.3 Support Personnel. In connection with the Installation and Commissioning of the WTGs, Contractor shall provide qualified people to perform all lock-out-tag-out (LOTO), switching, high voltage, startup and testing activities.

2.4 Further Work Responsibilities and Commitments.

2.4.1 Site Clearance and Preparation.

(a) Topography. Contractor has surveyed the general surface conditions of the Project Site topography and represents that, subject to Unforeseen Subsurface Conditions, the same are sufficient for Contractor to construct the Infrastructure Facilities and perform the Work. Contractor will be responsible for clearance of the Project Site, including the removal of obstructions. Contractor will be responsible for all access and other road construction as described in the Scope of Work. Contractor shall provide for the procurement of or disposal of, as necessary, all soil, gravel and similar materials required for the performance of or otherwise in connection with the Work. Contractor will provide adequate treatment of and protection against water runoff resulting from Contractor's and its Subcontractor's work. Contractor will provide for the collection, treatment and disposal of groundwater resulting from Contractor's and its Subcontractors' work.

(b) Geotechnical Survey; Subsurface Risk. “Unforeseen Subsurface Conditions” shall mean: (i) subsurface or latent physical conditions at the Project Site that are materially different than those indicated in the Geotechnical Survey, the Reliance Material, or that that are materially different from those ordinarily encountered and generally recognized as inherent in work similar to the Work, (ii) previously unknown man-made structures at the Project Site, including archaeological relics or religious sites or monuments, (iii) dinosaur or other fossils of archaeological significance, (iv) any unknown underground caverns, fissures or voids discovered

in connection with locating and building foundations for WTGs, the Substation, or the O&M Building, or (v) any unmarked or incorrectly marked underground utilities or facilities not correctly identified through the local one-call service. If Contractor encounters any condition that Contractor believes is or may be an Unforeseen Subsurface Condition, Contractor will notify Owner of the same promptly, but in any event no later than three (3) Business Days after becoming aware of the condition. Provided that Contractor has delivered such notice within such time period, if the condition at issue is indeed an Unforeseen Subsurface Condition as defined herein, then Contractor will be entitled to a Change Order to the extent so provided in Section 9.5.1(f).

2.4.2 Storage. At all times prior to the date of Project Substantial Completion, Contractor shall provide appropriate storage for the Wind Turbine Generators, Consumables, and all other materials, supplies and other equipment utilized in connection with the Work and all other personal property owned or leased by Contractor or any Subcontractor located at the Project Site. Subject to the provisions of Section 2.4.15, Contractor shall have no liability for damage to WTGs on the Project Site so long as appropriate storage is provided and such damage does not otherwise result from the negligence of Contractor or its Personnel.

2.4.3 Temporary Facilities.

(a) The Contractor shall provide temporary facilities as outlined in Exhibit A.

2.4.4 Drawings and Documents.

(a) Drawing Submittal Schedule. Contractor will submit to Owner (for Owner to confirm compliance with the requirements of this Agreement) those drawings described in Exhibit E-1, in accordance with the schedule set forth in Exhibit E-1. Contractor shall, within ten (10) days after Owner's notification of any comments or queries on any drawing or document so submitted, amend such drawing or document or otherwise respond to Owner's comments or queries, and, if necessary, resubmit, such drawing or document for Owner review (to confirm compliance with the requirements at this Agreement) in accordance with this paragraph. Notwithstanding anything contained herein to the contrary, Owner's review and/or acceptance of the Drawings, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Drawings. Owner shall notify Contractor as soon as practicable after it becomes aware of any errors in such designs; *provided, however*, that failure to so notify Contractor will not constitute a breach of this Agreement by Owner.

(b) Ownership of Drawings. All Final Drawings prepared by or for Contractor in respect of the Infrastructure Facilities shall be the property of Contractor and all drawings, specifications, calculations, memoranda, data, notes and other materials containing information supplied by Owner which shall come into Contractor's possession during its performance hereunder, shall be the property of Owner, and such Owner documents and other materials shall be returned to Owner upon Owner's request and upon the earlier of the Project Substantial Completion Date or termination of this Agreement. Review (or lack thereof) by Owner or its designees of any Project documents provided by Contractor, and the fact that Owner has not discovered any errors reflected in such Project documents, shall not relieve or release Contractor of any of its duties, obligations or liabilities under the terms of this Agreement.

(c) As-Built Drawings. Contractor shall prepare and submit to Owner a complete set of As-Built Drawings in hard copies, electronically, on compact disc, or by other format reasonably required by Owner by the earlier of Final Completion and ninety (90) days after Project Substantial Completion.

2.4.5 Religious and Archaeological Resources. If any archaeological relics or religious sites or monuments, or dinosaur or other fossils of archaeological significance are discovered or identified by Contractor during the performance of Work under the Agreement, Contractor shall leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area and shall comply with any applicable Real Property Requirements. Contractor shall notify Owner of any such discovery as soon as practicable, and Contractor shall carry out Owner's reasonable instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, religious, cultural or similar interest discovered on the Project Site shall, as between Owner and Contractor, be deemed to be the property of Owner. Contractor shall prevent its and its Subcontractors' Labor from removing or damaging any such article or thing.

2.4.6 Reserved.

2.4.7 Equipment, Consumables, Construction Utilities and Related Services. Except to the extent provided by Owner or Turbine Vendor as described in Article V, as part of the Work, Contractor shall procure and supply, at its own expense, all Equipment required to complete the Work, including without limitation all Equipment as necessary for performance and completion of its obligations under this Agreement (whether on or off the Project Site). Contractor shall inspect or cause to be inspected all such Equipment and shall reject those items determined not to be in compliance with the requirements of this Agreement. Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the completion of the Work. All Equipment provided by Contractor shall be new or like new, if repaired on site so long as new when delivered (except as otherwise agreed to in writing by Owner and Contractor), and of suitable grade for their respective purpose. With the exception of those consumable items expressly stated to be provided by Turbine Vendor as described in Exhibit C-1, Contractor shall supply all consumable parts and supplies required for the Work including, but not limited to, cable ties, cable wraps, splices, wire nuts, lubricants, greases and other consumable materials (collectively, the "Consumables").

2.4.8 Obtaining, Maintaining and Identifying Permits. Contractor shall timely obtain and maintain all Contractor Permits. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits. If any Applicable Permit is required for the Project or to perform the Work that is not identified in Exhibit H, Contractor or Owner, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. If such Applicable Permit is of a nature typically obtained by contractors in similar projects in the location of the Project, Contractor shall be obligated to obtain and maintain such Applicable Permit. Otherwise, Owner shall obtain and maintain such Applicable Permit. All Applicable Permits designated as either "To be issued in the name of Owner" or "To be issued in the name of the Owner and Contractor" on Exhibit H shall be issued in the name of Owner or

Owner and Contractor, as so designated, to the best of Contractor's ability unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is to be in the name of Owner or otherwise requires action by Owner, Owner shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate. Owner reserves the right to review any such application of Contractor; *provided, however*, that Owner's exercise of such right shall not under any circumstances be considered an approval of the necessity, effect or contents of such application or related Permit nor shall it be allowed to unreasonably delay the submittal of such application. Contractor shall deliver to Owner true and complete copies of all Permits obtained by Contractor upon its receipt thereof.

2.4.9 Real Property Requirements and Real Property Rights. Contractor shall comply with those Real Property Requirements attached as Exhibits G-1 and G-2. In addition, Contractor shall provide such assistance as may be reasonably requested by Owner in connection with Owner's efforts to observe and maintain the Real Property Requirements, including efforts to obtain any necessary revisions or adjustments thereof. As of the date hereof, subject to Section 2.4.1(b) as regards Unforeseen Subsurface Conditions, Contractor represents and warrants that it has inspected and is fully familiar with the Project Site, including the boundaries thereof (as reflected on Exhibit G-1), and that (a) they are sufficient for Contractor to undertake and complete that portion of the Work to be located thereon as described in such Exhibit G-1 in accordance with the Agreement, the Real Property Requirements and Applicable Laws, and (b) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming a Change. In the performance of the Work, Contractor and its Subcontractors shall at all times remain within the Project Site boundaries or any easement corridors as surveyed and staked, and shall abide by any restrictions in regard to the location of facilities that are part of the Real Property Requirements. Contractor shall indemnify Owner from any claims or expenses arising out of the failure of Contractor or its Subcontractors to comply with the Real Property Requirements. Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking within the Project Site. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall, at Owner's expense, cooperate with Owner in resolving all such problems.

2.4.10 Spare Parts. Set forth in Exhibit F is a list of spare parts that are necessary to operate and maintain the Infrastructure Facilities (the "Spare Parts"). Owner may at any time prior to Project Substantial Completion notify Contractor in writing that Owner wishes to purchase certain Spare Parts, and therein request pricing for the Spare Parts in question and the quantities desired. Contractor will supply the pricing for such identified Spare Parts to Owner as soon as practicable after such request. Owner may thereafter order those of such Spare Parts as Owner desires. Subject to Contractor's entitlement to a Change order in accordance with Section 9.2, Contractor shall thereafter deliver such Spare Parts Delivery Duty Paid (DDP) (Incoterms 2010) to the Project Site, using commercially reasonable efforts to complete such delivery within the mutually agreed time frame after Owner's placement of such order. Title and risk of loss to such Spare Parts will transfer to Owner upon such delivery. After such delivery is completed, Contractor will invoice Owner for the Spare Parts (based upon the quoted pricing), and the undisputed portions of such invoice shall be payable by Owner within thirty (30) days after

Owner's receipt of such invoice. Should a component of the Equipment fail during Commissioning, start-up or testing, Contractor may utilize a Spare Part of that component from Owner's inventory in order to return the Equipment to operating condition. Contractor shall at its cost promptly replace any such Spare Parts so utilized.

2.4.11 Operating Manuals and Job Books.

(a) Operating Manuals for Substation. As a condition precedent to Substation and Transmission Line Completion, Contractor shall submit for Owner's written approval a draft of the Operating Manual for the Substation sufficiently complete to support operation of the Substation. Such approval by Owner shall not be unreasonably withheld or unreasonably delayed. In the event of total or partial rejection or revisions of the draft Operating Manuals by Owner, within ten (10) days after receipt of notice of such revisions or rejection Contractor shall make appropriate changes to the drafts to respond to Owner's revisions or reasons for rejection and shall resubmit such draft to Owner or shall explain why such revisions are not necessary. Such procedure shall be repeated until receipt of Owner's written approval therefor. Upon the earlier of Final Completion and ninety (90) days after Project Substantial Completion, Contractor shall provide a copy of the Operating Manuals to Owner in electronic format.

(b) Collection System Operating Manual. As a condition precedent to Project Substantial Completion, Contractor shall submit for Owner's written approval a draft of the Operating Manual for all of the Collection Systems, which approval shall not be unreasonably withheld or unreasonably delayed. In the event of total or partial rejection or revisions of the draft Operating Manual by Owner, within ten (10) days after receipt of notice of such revisions or rejection Contractor shall make appropriate changes to the draft to respond to Owner's revisions or reasons for rejection and shall resubmit such draft to Owner or shall explain why such revisions are not necessary. Such procedure shall be repeated until receipt of Owner's written approval therefor. Upon the earlier of Final Completion or ninety (90) days after Project Substantial Completion, Contractor shall provide a copy of the Operating Manual to the Owner in electronic format.

(c) Job Books. As a condition to Project Substantial Completion, Contractor shall deliver to Owner two (2) copies of the semi-final draft of the Job Books, either in job book format or in form and format then available as a result of the design and construction process, as appropriate. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Infrastructure Facilities by Persons generally familiar with machinery and equipment similar to that comprising the same. Upon the earlier of Final Completion and ninety (90) days after Project Substantial Completion, Contractor shall provide five (5) electronic copies (on CD Roms) of the final and complete Job Books to Owner. Except with respect to the design and manufacture of the WTGs, where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an electronic copy of such information.

2.4.12 Contractor-Provided Training. Commencing at least two weeks prior to Project Substantial Completion (or such earlier date as may be required to complete the training without delaying the achievement of Substation and Transmission Line Completion beyond the

date therefor as set forth in the Project Schedule), Contractor shall provide, at its own expense, a training program in the operation and maintenance of the Infrastructure Facilities for the O&M Personnel. The training program provided by Contractor shall be as described on Exhibit K and shall (a) include classroom and field training, and (b) include all educational materials necessary for such training, except with regard to the WTGs. Contractor shall make every reasonable effort to use the O&M Personnel during start-up and initial operation of the Infrastructure Facilities; however, neither Owner nor Owner's O&M contractor shall be obligated to supply (i) personnel for the construction of the Project nor (ii) provide during Project start-up and initial operation more O&M Personnel than the number of O&M Personnel Owner and O&M contractor would normally use during normal Project operation as determined by Owner. The cost of the O&M Personnel's salary, travel, lodging, food and other living expenses shall be borne by Owner.

2.4.13 Labor and Personnel.

(a) Engagement of Labor. Contractor shall provide and manage all Labor and personnel required in connection with the performance of the Work and of its obligations hereunder, including: (i) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing; (ii) Contractor's Project Manager; (iii) lead project engineer and field engineers, cost and schedule engineers; and (iv) supervisors for the Work, the majority of whom shall have had experience with wind turbine equipment similar to the Wind Turbine Generators in technology and magnitude (to the extent relevant to the work being performed) and who are competent to perform their assigned duties in a safe and secure manner. Contractor shall use reasonable efforts to cause its Subcontractors to adhere to the same standard with respect to their Labor. Where required by Applicable Law, Contractor shall employ only licensed personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, safety, skill and responsibility customary among such licensed personnel. To the extent required by Applicable Law, all Labor shall have received formal documented training in their area of expertise and certification.

(b) Owner Review of Labor. Contractor shall identify each member of its and its Subcontractor's Labor in accordance with standards and procedures mutually acceptable to the Parties. Upon Owner's request, Contractor shall provide Owner with the resumes of all management and supervisory personnel employed in connection with the Work and Owner may require the replacement of any such personnel, at Contractor's sole expense if, in Owner's reasonable opinion, such person is (i) endangering life or limb on or near the Project Site or flagrantly and repeatedly violates or breaches the Real Property Requirements, thereby adversely affecting Owner's relationship with the land owners, or (ii) incompetent. Rejection of Contractor's personnel by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under the Agreement.

(c) Alcohol and Drugs. Contractor shall not possess, consume, sell, give, or otherwise dispense of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law) at the Project Site, or permit or suffer any such possession, consumption, sale, gift, or dispensing by its Subcontractors, agents or Labor. Subject to requirements of Applicable Law, Contractor shall perform, and cause its Subcontractors

and agents to perform, a drug and alcohol test on each of their respective employees prior to any such employee first entering the Project Site to perform any Work. Subject to requirements of Applicable Law, Contractor shall perform random drug and alcohol testing on Persons employed by its Subcontractors who Contractor or Owner reasonably suspects is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work at the Project Site. Subject to requirements of Applicable Law, Contractor may perform, at its sole discretion, and shall perform, upon request by Owner, drug and alcohol testing on its Subcontractors, agents and Labor for purposes of such Person's hiring, treatment and/or annual physical. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Project Site any Person (whether in the charge of Contractor or any of its Subcontractors) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work, excluding any Person using a prescription drug under supervision and approval from a medical doctor.

(d) Arms and Ammunition. Contractor and its Personnel, shall not possess, give, barter or otherwise dispose of, to any person or persons, any arms or ammunition of any kind at the Project Site, or permit or suffer the same as aforesaid and shall at all times assure that the Project Site is kept free from arms and ammunition. No hunting of any kind by Contractor or its Personnel, or other invitees, shall be permitted on the Project Site.

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

(f) Labor Disputes. Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall advise Owner promptly in writing of any actual or threatened (in writing) labor dispute, of which Contractor has knowledge, that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.4.14 Safety and Emergencies.

(a) Safety. Contractor shall initiate and maintain safety precautions and programs to conform with Applicable Laws, Applicable Permits or other requirements designed to prevent injury to all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Owner, Contractor and its Subcontractors, and other contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath, above, across or near the Project Site) that are at the Project Site that are in any manner affected by the performance of the Work. Such precautions and programs shall include prevention of injury to local flora and fauna. Contractor shall erect and maintain reasonable safeguards for the protection of workers and the

public. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. Contractor shall, and shall cause all of its employees, agents and Subcontractors to, follow the safety plan set forth in Exhibit Q (the “Safety Plan”) and to follow all other reasonable safety measures and procedures implemented by Owner at the Project Site. Contractor shall be responsible for (i) all damage it and its Subcontractors cause to state or city roads and highways, (ii) all damage negligently caused by Contractor or its Subcontractors to private roads or property of third parties and (iii) all injury resulting from a failure of its agents, employees or Subcontractors to abide by the requirements of the Safety Plan set forth in Exhibit Q. Without limiting the foregoing, Contractor will at all times maintain at the Project Site first aid and emergency provisions and personnel trained in first aid.

(b) Emergencies. In the event of any emergency endangering Persons or property during performance of the Work, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss. As soon as practicable, Contractor will report any such incidents to Owner and describe Contractor’s response thereto. Whenever Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, Owner may, but shall be under no obligation to, upon reasonable advance notice to Contractor and a reasonable opportunity to cure, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner’s failure to do so shall not limit Contractor’s obligations or liability hereunder. Provided Contractor fails to timely act, Contractor shall reimburse Owner for any reasonable costs incurred by Owner in taking such actions in the event of an emergency.

2.4.15 Security. Contractor shall take reasonable precautions, consistent with Applicable Standards, to provide for the security and protection of the equipment, machinery and components comprising the Equipment, the Infrastructure Facilities and WTGs (upon delivery to the Project Site) through the date of Project Substantial Completion, and for the other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Final Completion.

2.4.16 Clean-up. Contractor shall at all times keep the Project Site reasonably free from waste materials and rubbish produced by the Work. As part of the Work, Contractor will arrange and pay for disposal of sewage and wastes generated by Contractor or its Personnel as necessary to enable Contractor to perform the Work. Contractor shall maintain the Project Site in a neat and orderly condition throughout the performance of the Work. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of Article XIII, Contractor shall (a) remove all Contractor equipment from the Project Site, (b) tear down and remove all temporary structures on the Project Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed wind-power plant (including the re-grading and/or re-seeding of disturbed areas, which re-seeding may occur after Final Completion if Owner reasonably approves), (c) reclaim, in accordance with the applicable Real Property Requirements, laydown areas, and other construction areas as required by the applicable Real Property Requirements, and (d) remove and dispose of all waste and rubbish generated by Contractor and its Subcontractors from and around the Project Site. Contractor shall provide to Owner all legally required waste disposal manifests, if any, upon request.

2.4.17 Fire Prevention. Contractor shall be responsible for providing reasonable fire prevention and protection at the Project Site consistent with Applicable Standards and shall take all reasonable precautions to minimize the risk of fire at the Project Site. Contractor shall provide instruction to the Labor in fire prevention control. Contractor shall provide reasonably appropriate fire-fighting and fire protection equipment and systems consistent with Applicable Standards at the Project Site in a manner consistent with those as would be provided by a prudent contractor constructing a comparable project in comparable terrain and climate to that of the Project. Notwithstanding the foregoing sentence, this Agreement shall not and does not obligate Contractor's or any of its Subcontractors' employees to fight any fires. In the event of a fire, Contractor's or any of its Subcontractors' employees shall immediately take steps to ensure the safety of themselves and others and shall contact the local fire department to report such fire and to determine the appropriate actions. Contractor shall promptly collect and remove combustible debris and waste material from the Project Site and shall not permit such debris and material to accumulate.

2.4.18 Other Work. As part of the Work (and except as otherwise stated in the Scope of Work, Article V or elsewhere in this Agreement as being the responsibility of Owner or Turbine Vendor), Contractor shall provide any other services or items not specifically described in this Agreement if the providing of such additional work or item is necessary to make the Infrastructure Facilities operable and capable of performing as specified in this Agreement or to complete the Installation of the Wind Turbine Generators.

2.5 Applicable Standards for the Work/Compliance.

2.5.1 Applicable Standards for the Work/Compliance. Contractor shall perform the Work (excluding design and engineering services, which shall be performed in accordance with the Design Standard of Care) in a manner that is (a) in conformance with Applicable Standards and the QAQC Procedures; (b) in compliance with the terms of the Agreement, the Real Property Requirements, and all interconnection requirements attached hereto as Exhibit B-5; (c) approved as to form, use and content by public and private entities authorized to administer or enforce any building or construction code or standard whose approval of the Infrastructure Facilities, or any portion thereof, is necessary for the construction, operation or interconnection of the Infrastructure Facilities (other than the design, testing, Commissioning and operation of the WTGs); (d) compliant with all Applicable Laws and Applicable Permits; and (e) in compliance with the requirements of Sections 2.1.3 and 2.5.2 of this Agreement. In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or Permits contained in this Section 2.5 be interpreted to limit the applicability of all such standards, guidelines, practices, regulations, laws, and Permits to such provision.

2.5.2 Prevailing Wage and Apprenticeship Obligations.

(a) Contractor shall ensure that any tradespersons employed by Contractor, or a Subcontractor that performs any portion of the Work that constitutes construction, repair or alteration (as defined in the PWA Guidance) are paid wages at rates not less than the prevailing rates for work of a similar character in the locality where such construction, repair or alteration is performed, as most recently determined by the Secretary of Labor at the time of the commencement of the relevant Work, (subject to updating pursuant to Prop. Treas. Reg. 1.45-

7(b)(5)), in accordance with subchapter IV of chapter 31 of title 40, United States Code. Contractor shall use commercially reasonable efforts to include union labor options in its bid solicitations for subcontracted portions of the Work, Contractor shall maintain and preserve sufficient records, including books of account or records for work performed by a Contractor or Subcontractor, to establish that such tradespersons were paid wages at rates not less than such prevailing rates, in accordance with the recordkeeping requirements under the PWA Guidance and Code Section 6001 and Treasury regulations section 1.6001-1, et seq.

(b) Contractor shall ensure that: (a) the percentage of the total labor hours of the Work constituting construction, repair or alteration (as defined in the PWA Guidance) of the Project (including any such Work performed by any Subcontractor) that is performed by Qualified Apprentices is at least equal to that percentage set forth in Code Section 45(b)(8)(A)(ii) applicable to the tax year in which the Project begins construction within the meaning of Code Section 45, 45Y, 48, or 48E, as applicable; (b) any such Work described in clause (a) hereof satisfies the apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency; and (c) if any of Contractor, or a Subcontractor employs four (4) or more individuals to perform Work constituting construction, repair or alteration on the Project, such Person employs one (1) or more Qualified Apprentices to perform such Work; provided, however, that Contractor shall be deemed to have satisfied the requirements in clauses (a) through (c) hereof if Contractor provides written documentation demonstrating that, in accordance with the PWA Guidance, (i) Contractor or Subcontractor, as applicable, submitted a written request for Qualified Apprentices from a Registered Apprenticeship Program, (ii) either (I) such request was denied for reasons other than the failure of such Person to comply with the established standards and requirements of such Registered Apprenticeship Program, or (II) such Registered Apprenticeship Program failed to respond to such request within five (5) Business Days after the date on which such Registered Apprenticeship Program received such request, and (iii) Contractor or Subcontractor, as applicable, continued to make an additional request within 120 days after each denial or failure to respond to the previous request. Contractor shall comply with the general recordkeeping requirements under Code Section 6001 and Treas. Reg. § 1.6001-1, including maintaining books of account or records for a Contractor or Subcontractor, as applicable, in sufficient form to establish that the requirements under this Section 2.5.2 have been satisfied.

(c) Contractor shall submit, no less than on a quarterly basis beginning for the quarter in which the Work first commences and ending at the conclusion of the Warranty Period, written documentation demonstrating compliance with Section 2.5 (a) substantially in the forms set forth in Exhibit Y (the “Quarterly Prevailing Wage Certificate”); provided, however, that after Final Completion, no Quarterly Prevailing Wage Certificate shall be required under this Section 2.5.2(c) for any quarter in which no portion of the Work that constitutes construction, repair or alteration (within the meaning of the PWA Guidance) is performed to which Section 2.5.2(a) applies. Contractor shall submit, no less than on a quarterly basis beginning for the quarter in which the Work first commences and ending at Final Completion, written documentation demonstrating compliance with Section 2.5(b) substantially in the forms set forth in and Exhibit Y (the “Quarterly Apprenticeship Certificate”). Owner may provide comments identifying in good faith any errors, omissions, or other concerns related to such documentation and Contractor’s performance of its obligations under Section 2.5 and may direct Contractor to take any commercially reasonable corrective actions.

(d) In the event it is determined that Contractor has not satisfied the Prevailing Wage and Apprenticeship Requirements, and that such failure causes the Project to not qualify for the enhancement of the applicable tax credit related thereto, then Contractor shall make timely payments (i) that are required to be made in accordance with Section 45(b)(7)(B)(i)(I) of the Code (as may be increased by Section 45(b)(7)(B)(iii) of the Code) to the underpaid laborers and mechanics, and (ii) to reimburse Owner for penalties paid to the Secretary of the U.S. Department of the Treasury as required by Section 45(b)(7)(B)(i)(II) of the Code (as may be increased by Section 45(b)(7)(B)(iii) of the Code) and Section 45(b)(8)(D)(i)(II) of the Code (as may be increased by Section 45(b)(8)(D)(iii) of the Code) (collectively, the “PWA Damages”); provided, however, that Contractor’s obligation to pay the PWA Damages will expire on the date that is seven (7) years after the Final Completion Date.

[REDACTED]

For the avoidance of doubt, this Agreement is subject to and Contractor shall comply with the requirements of the terms of Section 2.1.3 and this Section 2.5.2, and such compliance is a material term of this Agreement. Contractor shall not be entitled to any Change Order for increases in cost or schedule adjustments due to its failure to comply with such requirements in existence as of the Effective Date.

2.6 Commencement of Work; Project Schedule; Acceleration.

2.6.1 Access to Project Site; Commencement of Work. Except as provided in the Limited Notice to Proceed, Contractor will not perform any Work until the Effective Date.

2.6.2 Project Schedule; Monthly Progress Reports.

(a) Contractor shall perform the Work in accordance with the Project Schedule.

(b) By the 10th day of each month after the Effective Date (or as otherwise agreed by the Parties), Contractor shall provide Owner with a Monthly Progress Reports. Such Monthly Progress Reports shall be presented electronically in Primavera 6 and shall address all material elements of the Work. If Owner so directs, Contractor shall conduct weekly project meetings at mutually agreeable locations or by telephone between representatives of Owner, Turbine Vendor and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there will be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligations under Section 6.11.

2.6.3 Recovery Planning. If, at any time or from time to time, Contractor fails to achieve a Key Milestone within ten (10) Business Days by the date required therefor in the Project Schedule, which failure is not otherwise excused by a specific provision of this Agreement, then, upon written request of Owner, Contractor shall promptly, but in any event within five (5) Business Days of such date, submit a written recovery plan to complete all necessary Work to the extent

reasonably practicable by the dates for the remaining Key Milestones. Owner shall promptly submit reasonable suggestions to such written recovery plan. To the extent reasonable and feasible, Contractor shall incorporate such suggestions to such recovery plan or shall provide reasonable explanation for why such suggestions were not incorporated, which reasonable explanations may include alternative Work acceleration proposals. Contractor shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by Owner of such recovery plan nor Contractor's prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Contractor of its obligations under the Agreement relating to the failure to timely achieve any Key Milestone by the date required therefor, or (ii) be a basis for a Change Order or any other compensation or an increase in the Contract Price. Neither submittal of such recovery plan nor prosecution of the Work by Contractor in accordance therewith shall be deemed to waive Contractor's right to a Change Order due to any delay cause by a Force Majeure Event, an Owner-Caused Delay or a Turbine-Vendor-Caused-Delay, including for an acceleration of the Work directed by Owner to recover from delays caused by an Owner-Caused Delay, Turbine-Vendor-Caused-Delay, Force Majeure Event, for by any other event for which Contractor is entitled to an increased cost or change in the Key Milestones by a specific provision of this Agreement. Contractor shall not otherwise be entitled to a Change Order or any other compensation or increase in the Contract Price in connection with the implementation of any acceleration under this Section 2.6.3. This Section 2.6.3 shall not be construed to limit any of the rights and remedies of the Parties.

2.7 Hazardous Materials.

2.7.1 Contractor Duties. Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Material. Without limiting the generality of the foregoing: (a) Contractor shall, and shall cause its Subcontractors to, have a release prevention and response plan to contain and clean up and spills or emissions of Hazardous Materials by Contractor or its Personnel (such plan to be made available to Owner upon Owner's request); (b) Contractor shall, and shall cause its Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work; (c) Contractor shall, and shall cause its Subcontractors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Material generated by Contractor if and as required under Applicable Laws; (d) Contractor shall conduct its activities under the Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to any Applicable Law; (e) neither Contractor nor its Subcontractors shall cause the release or disposal of Hazardous Material at the Project Site, bring Hazardous Material to the Project Site, or transport Hazardous Material from the Project Site, except in accordance with Applicable Law; (f) Contractor shall be responsible for the management of and proper disposal of all Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors; (g) Contractor shall cause all such Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors (except for Pre-Existing Hazardous Material), if any, (1) to be transported only by carriers maintaining valid Hazardous Materials, transportation permits (as required) and operating in compliance with such permits and laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping

documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (2) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits (as required) regarding Hazardous Material; (h) Contractor shall submit to Owner a list of all Hazardous Material to be brought onto or generated at the Project Site prior to bringing or generating such Hazardous Material onto or at the Project Site; and (i) Contractor shall keep Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site.

2.7.2 Environmental Releases.

(a) If Contractor or any of its Subcontractors releases any Hazardous Material on, at, or from the Project Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Project Site during the Work, Contractor shall immediately notify Owner in writing. If Contractor's Work is involved in the area where such release occurred, Contractor shall immediately stop any Work affecting the area.

(b) Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up and remediate fully and dispose of, in accordance with Applicable Laws, any contamination caused by (i) any negligent release by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material (the Parties agree that simply discovering any Pre-Existing Hazardous Material or accidentally disturbing previously unknown Pre-Existing Hazardous Material is not a negligent release of such Pre-Existing Hazardous Material, but that Contractor will act reasonably and prudently with respect to same upon discovery), and (ii) any Hazardous Material that was brought onto or generated at the Project Site by Contractor or any of its Subcontractors, whether on or off the Project Site.

(c) If Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Contractor is instructed to resume performance of the Work (after disposal or other decision by Owner regarding treatment of such Hazardous Substance), Contractor will be entitled to a Change Order as set forth in Section 9.5.1(g). Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination.

(d) In addition to Contractor's obligations as set forth above, if Owner desires Contractor to perform all or part of any clean up and/or remediation that may become necessary as a result of the discovery of any such Pre-Existing Hazardous Material as described in Section 2.7.2(c) above, the clean up and remediation of which is not the responsibility of Contractor as set forth in Section 2.7.2(b) above, it shall request a Change Order pursuant to Section 9.2. Further, if so requested by Owner, Contractor shall cooperate with and assist Owner in making the Project Site available for taking necessary remedial steps to clean-up/remediate any such contamination at Owner's expense as determined in accordance with Article IX; *provided, however*, that under no circumstances shall Contractor be required to participate in such clean-up/remediation

of a Pre-Existing Hazardous Material if such release is not the responsibility of Contractor as set forth in Section 2.7.2(b) above.

2.7.3 Recordkeeping. Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Materials used in connection with performance of the Work or at or near the Project Site or at any construction area related to the Project and shall update such file at least monthly and make it available on site in accordance with Applicable Law. Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in performance of the Work or at or near the Project Site or at any construction area related to the Project, which record shall identify quantities, location of storage, use and final disposition of such Hazardous Materials.

2.7.4 Owner's Self-Help Rights. If Contractor fails or refuses to remove from the Project Site (or any areas adjacent thereto or any other areas where Contractor performs the Work) or properly dispose of such Hazardous Materials as required pursuant to this Section 2.7, Owner may, after providing Contractor with reasonable notice and opportunity to cure, at its discretion perform such removal and/or disposal as it may deem to be reasonably necessary or appropriate and charge Contractor with the full cost of performing such work either directly or by offset of such cost from any payment then or thereafter due to Contractor. The taking of any action by Owner in connection with the removal or disposal of such Hazardous Materials shall not relieve Contractor of its obligations under this Agreement and any Applicable Laws or Applicable Permits.

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

2.8.1 Right to Inspect. Owner, the Independent Engineer and their authorized representatives shall have the right to inspect the Work and to maintain personnel at the Project Site for such purpose, subject in all cases to Contractor's Safety Plan. Contractor shall include rights in all Subcontracts to permit Owner, and any of their authorized representatives to audit, inspect, test and observe the Equipment at the facilities of any Subcontractor and the manufacturer of Equipment, and, if permitted, Contractor shall ensure reasonable, adequate and safe access to such facilities for such purposes, subject to any reasonable safety rules or restrictions imposed by such Subcontractor. If any portion of the Work should be covered contrary to the timely request of Owner or contrary to requirements specifically expressed in the Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Contractor shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost of uncovering, replacement and re-covering shall be charged to Contractor. If such other portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs pursuant to an appropriate Change Order in accordance with Article IX. Such inspection of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work in accordance with this Agreement. If Contractor covers any portion of the Work after offering Owner the opportunity to inspect, then if Owner later requests Contractor to uncover such Work then Owner shall pay the costs to uncover unless such Work is found to contain a Defect.

2.8.2 Correction of Defects. Subject to Section 7.1, Contractor shall, at its own cost and expense, correct or replace any Work that contains a Defect or is not otherwise in compliance with the terms and requirements of the Agreement. Contractor will at its own expense remove from the Project Site any equipment that has been replaced. If Contractor fails to commence to perform its obligations under the preceding sentence within a reasonable period of time (but not to exceed ten (10) Business Days after Contractor becomes aware of such Defect or noncompliance) or fails to diligently continue such performance, then Owner may upon notice to Contractor correct such Defect or noncompliance at Contractor's expense (including attorneys' and consultants' fees). Owner's rights hereunder are without prejudice to other remedies Owner may have under this Agreement.

2.8.3 Inspection Not Approval. No inspection made, acceptance of Work, payment of money or approval given by Owner shall relieve Contractor of its obligations for the proper performance of the Work in accordance with this Agreement. Owner may reject any Work with Defects or which is not in accordance with the requirements of the Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise, except to the extent such discovery occurs after expiration of the Warranty Period. No approval given by Owner, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

2.9 Liens. Within ten (10) days after receipt of a written demand from Owner, and to the extent Contractor has been paid as required by this Agreement, Contractor shall at its expense, discharge and cause to be released any Lien on the Work, the Equipment, the Wind Turbine Generators, the Project Site, or any fixtures or personal property of Owner, created by or as a result of any actual or alleged act or omission of Contractor or any Subcontractor or other Person providing Labor or materials within the scope of the Work. If Contractor fails to perform its obligations under the preceding sentence, Owner, after having provided advance written notice to Contractor, may, but shall not be obligated to, pay or discharge such Lien and will be entitled to recover from Contractor the amount thereof together with all resulting expenses incurred by Owner, including by way of set off against any sums owed to Contractor. Owner and/or Contractor, as the case may be, shall notify the other of the filing of any such Lien promptly upon learning of the existence or filing of such Lien. Acceptance by Contractor of the final payment shall constitute a release by Contractor of Owner, its Affiliates, and every officer and agent thereof from all Liens (whether statutory or otherwise and including mechanics' or suppliers' Liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, except in connection with those claims and liability that explicitly survive termination of the Agreement, except claims for which Contractor has delivered a Dispute Notice to Owner. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Agreement.

2.10 Coordination and Cooperation.

(a) Contractor shall coordinate its Work with all other work being performed by Other Owner Contractors on the Project Site. Owner shall cause all Other Owner Contractors and Turbine Vendor to comply with the reasonable coordination requirements imposed by Contractor, which coordination shall be intended to optimize completion of construction of the Project in a timely manner.

(b) Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, financing and Permits for the Project and Turbine Vendor's and Owner's Commissioning and testing of the WTGs. Without limiting the foregoing, with respect to each WTG, at a time corresponding with the time that such WTG is to achieve WTG Mechanical Completion under this Agreement, Contractor will assist Owner in completing and submitting to Turbine Vendor the required certification of "mechanical completion" for such WTG as required under the Turbine Supply Agreement.

(c) Contractor acknowledges that Other Owner Contractors may be performing other work at the Project Site during the execution of Work. Contractor shall cooperate and cause its Subcontractors, to cooperate with Owner and Other Owner Contractors toward assuring that no Person's work unreasonably hinders, increases, or makes more difficult any other Person's work. Contractor shall permit, without charge, reasonable access to and use of the Project Site by Owner and Other Owner Contractors when such access or use is necessary for the performance and completion of their work.

(d) Contractor shall minimize the impacts upon the host community caused by the Work. Such programs shall include: (i) minimizing the impacts of noise and dust at and around the Project Site; and (ii) using local Labor and other resources whenever possible, to the extent such Labor and resources are qualified and cost competitive.

2.11 Intellectual Property Rights. Contractor shall obtain and maintain all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property rights (collectively, the "Intellectual Property Rights") necessary for performance of the Work. Contractor hereby grants to Owner an irrevocable, non-exclusive, perpetual, royalty-free license under all Intellectual Property Rights whether now existing or developed for the Work, now or hereafter owned, licensed to or controlled by Contractor, to use the same to the extent necessary for the completion, operation, maintenance, repair, rebuilding, alteration and expansion of the Work and all subsystems and components thereof. Notwithstanding anything else in the Agreement, Contractor shall not be responsible or liable for any claim arising from infringement or unauthorized use or disclosure of intellectual property found or disclosed in information or documents provided by Owner to Contractor including but not limited to, the Reliance Material.

2.12 Parent Guarantee.

Within three (3) Days following the Effective Date, Contractor will provide an executed guaranty in the form attached hereto as Exhibit L ("Parent Guarantee"). If Contractor fails to timely deliver such guaranty, Owner shall have the right to suspend its payment obligations

under this Agreement until such guaranty is delivered. This shall be in addition to its rights under Section 13.1.1(l).

ARTICLE III

SUBCONTRACTORS

3.1 Subcontractors. Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written subcontracts between Contractor and such Subcontractors. Exhibit I sets forth a list of approved Major Subcontractors. Owner agrees to Contractor's use and engagement of Subcontractors; *provided*, that Contractor may not enter into any Major Subcontract with any Person not listed in Exhibit I or approved by Owner in writing (which approval shall not be unreasonably withheld or delayed). Except as otherwise expressly provided in the Agreement, Contractor shall be solely responsible for engaging, managing, supervising and paying all first-tier Subcontractors and Persons employed by them. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors, be received, inspected and otherwise furnished in accordance with the Agreement, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of its Subcontractors.

3.2 Subcontracts. All contracts with Subcontractors shall be consistent with the terms and provisions of the Agreement. At a minimum, all Subcontracts shall require the Subcontractors to comply with Applicable Laws, and shall provide that Owner has the right of inspection as provided hereunder and require such Subcontractors to be subject to the Labor obligations hereunder as well as the safety and security provisions of the Agreement. All Subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to use reasonable efforts to enter into similar agreements with other Subcontractors. All Subcontracts must be terminable for convenience, and any related termination fees thereunder must be commercially reasonable in light of the value of the services, or materials provided thereunder. No contractual relationship shall exist between Owner and any Subcontractor with respect to the Work. No Subcontractor is intended to be nor shall it be deemed a third party beneficiary of this Agreement. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each first-tier Subcontractor in accordance with the applicable subcontract or purchase order between Contractor and the first-tier Subcontractor.

3.3 Assignment of Subcontracts. Contractor shall ensure that Contractor's rights and obligations under each first-tier Subcontract may be, without requiring the prior consent of the relevant Subcontractor, in whole or in part, assigned and delegated by Contractor to Owner. Without limiting the foregoing, each first-tier Subcontract shall provide, upon notification to the Subcontractor from Owner, that: (a) the Contractor's right to proceed with the Work has been, in whole or in part, indefinitely suspended or terminated; and (b) Owner will thereafter be assuming Contractor's obligations under such Subcontract as with respect to such suspended or terminated Work, then such Subcontractor shall continue to perform its responsibilities under such Subcontract for the benefit of Owner and shall recognize Owner as being vested with all the rights of Contractor under such Subcontract.

3.4 Subcontractor Warranties. Without limiting Contractor's Warranty obligations hereunder, Contractor shall endeavor to procure from all Subcontractors product and service warranties at a minimum equal to the Warranties in Article VII with respect to such materials, equipment and/or services, which shall endure for a minimum period coinciding with the Warranty Period. Contractor will obtain and maintain all such warranties in full force and effect, and Contractor will enforce such warranties itself and/or on behalf of Owner. Effective as of the end of the Warranty Period, Contractor will hereby be deemed to have assigned to Owner its rights under any and all such Subcontractor warranties that continue past the end of the Warranty Period. Contractor will not, and Contractor will ensure that Contractor's Personnel do not, take any action which could release, void, impair or waive any Subcontractor warranties.

ARTICLE IV

CONTRACT PRICE

4.1 Contract Price; Payment. As full consideration to Contractor for the complete performance of the Work and Contractor's other covenants in this Agreement, Owner will, subject to the provisions of this Article IV, pay Contractor [REDACTED] (the "Contract Price"). The Contract Price may be adjusted only pursuant to a Change Order issued in accordance with the provisions of Article IX. Subject to the terms and conditions of this Article IV, the Contract Price shall be paid by Owner to Contractor, in accordance with the following:

(a) The Parties acknowledge that Exhibit D-1 sets forth a Schedule of Values, which establishes a value for each major component of the Work, the aggregation of which equals the Contract Price less the value of the Down Payment. Except for the Final Payment shown in the Schedule of Values ("Final Completion Payment"), no later than the 25th day of each month, Contractor will assign a progress percent complete for the engineering, procurement, and construction progress reasonably expected by month end to owner for review. Owner shall have two Business Days to review each pay application. Contractor's pay application will be submitted on or prior to the 30th day of each month. Subject to Section 4.8, upon successful completion of Project Substantial Completion, Contractor shall submit an invoice for the Final Completion Payment which shall be due upon the earlier of (i) fifteen (15) days after Final Completion or (ii) ninety (90) days after the Project Substantial Completion Date.

(b) Except for the Final Completion Payment, Owner will pay all undisputed amounts of such a Request for Payment within thirty (30) days of its receipt of the same.

(c) Within five (5) days after the Effective date, Owner shall pay to Contractor an amount equal to [REDACTED] of the Contract Price reflected in the Schedule of Values ("Down Payment").

4.2 Taxes.

4.2.1 Contractor Taxes.

(a) Without prejudice to Section 4.2.2(a), Contractor shall administer and pay all sales, use, gross receipts, income, value added, and withholding, taxes, and any and all duties, and any other similar taxes, duties and/or contributions (including penalties and interest

related to such taxes): (i) imposed by any taxing authority upon the sale, purchase, or use of materials, supplies, equipment to be incorporated in the Infrastructure Facilities or provided by Contractor or any Subcontractor in connection with the Work; (ii) imposed by any taxing authority upon the provision of services or labor as provided by Contractor or any Subcontractor in connection with the Work; (iii) otherwise imposed by any taxing authority on or in connection with the Work; (iv) as are applicable to payroll or employment of Contractor's or its Subcontractor's employees (including without limitation payroll or employment compensation tax or social security taxes); and (v) imposed by any taxing authority upon or measured by Contractor's receipts hereunder or by wages earned by employees of Contractor or any Subcontractor ("Contractor's Taxes"). The Contractor's Taxes described in subclauses (ii), (iii), (iv) and (v) above are included in the Contract Price. Contractor shall furnish to the appropriate taxing authorities all required information and reports in connection with all such Contractor's Taxes.

(b) The Parties acknowledge that certain materials, supplies and equipment that will be purchased by Contractor or its Subcontractors and/or provided by Contractor to Owner may be exempt from (or subject to rebate in connection with) certain sales, use or other taxes, including under Montana law. At Owner's direction and subject to Owner's provision to Contractor of necessary information, to claim such exemptions and/or rebates, Contractor will seek such exemptions and rebates as regards its and its Subcontractors' purchase of such materials, supplies and equipment.

(c) At any time and from time to time upon Owner's reasonable request, Contractor will allow Owner and its designees the opportunity to review all purchases by Contractor and its Subcontractors (and will in this regard provide all relevant information regarding the same (including separate break-out pricing for goods and services, if reasonably available)) for the purpose of determining whether such exemptions or rebates apply and have been or should have been granted.

(d) If Owner directs Contractor to seek an exemption or rebate and Contractor fails to seek such exemption or rebate for an item, Owner will be relieved of its obligation under Section 4.2.2(a) to reimburse Contractor for the taxes on such item.

(e) If Contractor seeks exemption or rebate on an item in accordance with the foregoing, but the same is not granted, Owner shall reimburse Contractor for the disallowed amount, and Contractor will assign to Owner its right to seek a refund of, or rebate in connection with, the amount in question and will reasonably cooperate with Owner to seek such refund and/or rebate. If such assignment is not allowed under applicable law, then Contractor will, at Owner's direction and expense, seek such refund and, if received, pay over such refund to Owner, and all costs of seeking a refund or appealing the denial of an exemption, refund or rebate shall be borne by Owner.

(f) Any rebates received by Contractor or its Subcontractors in connection with any Contractor Taxes reimbursed by Owner under Section 4.2.2 from the purchase of any materials, supplies or equipment in connection with the Work shall be immediately paid over to Owner.

(g) Contractor shall promptly provide Owner with notice of any audits, assessments or challenges by any Government Authority with respect to Contractor's Taxes, which are to be reimbursed by Owner. In the event of any such audit, assessment or challenge, Owner shall have the right to receive copies of all correspondence and documents relating thereto, to attend and participate in all meetings with the Government Authority and to participate in and control all mediation, arbitration and litigation related thereto, provided the cost thereof is borne by Owner and Owner indemnifies, defends and holds Contractor harmless with respect thereto.

(h) To the extent Owner is obligated under Applicable Laws to pay any of Contractor's Taxes, Contractor shall: (i) furnish to Owner all information and reports required to be furnished to the appropriate taxing authorities in connection with all such Contractor's Taxes; and (ii) reimburse Owner for the full amount of such Contractor's Taxes paid by Owner that are not otherwise required to be reimbursed by Owner to Contractor under Section 4.2.2. Contractor will have no responsibility for property taxes assessed on the Work or the Project Site.

4.2.2 Owner Taxes.

(a) The Contract Price does not include, and Owner shall reimburse Contractor for sales, use, gross receipts, and any other similar taxes imposed by any taxing authority upon the sale, purchase, or use of materials, supplies, or equipment to be incorporated in the Infrastructure Facilities as are sold by Contractor to Owner as part of the Work. Contractor will invoice Owner for such reimbursement as part of each applicable Request for Payment, and shall include therewith all documentation necessary to evidence Contractor's and Subcontractor's payment of such taxes. For the avoidance of doubt, (A) Owner will not otherwise be responsible to reimburse Contractor for any of Contractor's Taxes, or (B) for any penalties or interest related to non-payment or late payment of any required Contractor's Taxes, unless such non-payment or late payment is due to or caused by the instruction of Owner to Contractor, as provided in Section 4.2.1(b).

(b) Owner shall administer and pay all sales, use, gross receipts, income, value-added and withholding taxes and duties, and any other similar taxes and/or contributions (including penalties and interest related to such taxes), imposed by any taxing authority: (i) that are measured by Owner's sale of electricity from the Project; and (ii) upon services or labor provided by Owner or any Other Owner Contractors in connection with the Project (collectively "Owner's Taxes"). Owner shall furnish to the appropriate taxing authorities all required information and reports in connection with all such Owner's Taxes.

(c) To the extent Contractor is legally obligated to pay any of Owner's Taxes, Owner shall: (i) furnish to Contractor all information and reports required to be furnished to the appropriate taxing authorities in connection with all such Owner's Taxes; and (ii) reimburse Contractor for the full amount of such Owner's Taxes paid by Contractor.

4.3 Conditions of Payment. Contractor's right to receive any payment to be paid to it hereunder is conditioned upon its submitting a Request for Payment to Owner. With each such Request for Payment, Contractor will submit evidence of performance of the Work for which payment is sought, and written waivers and releases in the form of Exhibit T-1, Exhibit T-2, Exhibit T-3 and Exhibit T-4 (as applicable) duly executed by Contractor and all first-tier

Subcontractors with Subcontracts in excess of [REDACTED]
[REDACTED] Within thirty (30) Days after its receipt of a Request for Payment, provided Contractor has satisfied the foregoing conditions, Owner shall pay to Contractor the amount that remains after the deduction from the amount requested in the applicable Request for Payment of the following amounts: (a) any portion thereof that Owner in good faith disputes as not being due and owing, (b) any mutually agreed overpayment made by Owner for any previous period, (c) any undisputed Delay Liquidated Damages payable by Contractor, and (d) any amounts withheld pursuant to Sections 4.4 and 4.6. Contractor may only submit one (1) Request for Payment per calendar month.

4.4 Deductions from Payments. Notwithstanding any other provision to the contrary contained herein, Owner may withhold and shall have no obligation to make payments to Contractor hereunder to such extent as may be reasonably necessary to protect Owner from loss because of (a) Defects in the Work not remedied as required by this Agreement; (b) third-party (excluding Affiliates of Owner or other entities related to Owner, including Other Owner Contractors) claims filed against Owner attributable to Contractor's Work on this Project, (c) liens filed that have not been removed as described in Section 2.9; and (d) damage to Owner or another contractor, including damage to the property of Owner or any of its Affiliates, caused by Contractor to the extent the costs of such damages are not covered by insurance maintained hereunder. Contractor shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of its rights under this Section 4.4. Owner shall release payments withheld pursuant to this Section 4.4 within thirty (30) days from the date when Contractor cures all such events or breaches to the reasonable satisfaction of Owner.

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

4.6 Set off. Upon providing seven (7) Days written notice, Owner may deduct and set off against any part of the balance due to Contractor under this Agreement (a) any undisputed Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder that are not then the subject of dispute resolution under Section 15.2, or (b) any other undisputed amounts that are due from Contractor to Owner under or in connection with this Agreement.

4.7 No Payment if Uncured Default. Notwithstanding any other provision to the contrary contained herein, Owner shall have no obligation to make any payment to Contractor after any applicable cure period has expired and when a Contractor Event of Default has remain uncured.

4.8 Interest. Any sums not timely paid by either Party when due under this Agreement shall accrue interest at Prime Rate plus [REDACTED] from the date due until paid.

ARTICLE V

OWNER RESPONSIBILITIES

In addition to Owner's other duties and responsibilities under and pursuant to this Agreement, Owner shall have the following general obligations and responsibilities:

5.1 Project Site Access. Owner shall provide the Real Property Rights and access to the Project Site to Contractor, Subcontractors and their Personnel as necessary to perform the Work by the dates Owner is required to provide such access pursuant to the Project Schedule.

5.2 Permits. Owner shall, with Contractor's reasonable assistance, timely obtain and maintain, at its own cost and expense, all Owner Permits, copies of which shall be delivered to Contractor upon its request. In addition, subject to Section 2.4.8, Owner shall execute such applications as Contractor may reasonably request in connection with obtaining any of Contractor Permits.

5.3 Backfeed Power and Interconnections. Subject to the provisions of Section 2.2.4, Owner will cause backfeed power to be provided by the Utility from the Grid as required for temporary operation, start-up, Commissioning and testing of the WTGs. Owner shall cause the Utility to provide all necessary interconnections from the Grid to the Point of Interconnection in a timely manner that accords with the Project Schedule.

5.4 O&M Personnel. Owner will cause the O&M Personnel to be available for the training program as described in Section 2.4.12.

5.5 Turbine Vendor Scope of Supply.

5.5.1 Delivery of Wind Turbine Generators. Owner shall cause Turbine Vendor to supply and deliver the Wind Turbine Generators as described in Section 2.3.1.

5.5.2 Commissioning of WTGs. Within fifteen (15) days, after the later of the date on which (i) Owner has notified Contractor that WTG Mechanical Completion of a WTG has occurred per Section 6.6.2 and (ii) backfeed power necessary for Commissioning is obtained, Owner shall cause Turbine Vendor to commence and complete Commissioning of such WTG.

5.5.3 Other Goods/Services. Owner shall cause Turbine Vendor to provide the other goods and services as described in Exhibit C-1.

5.6 No Default; Owner-Caused Delays; Turbine-Vendor-Caused-Delays. Contractor's remedies for Owner's failure to perform its obligations under this Agreement (other than payment obligations), including those as stated in this Article V, are limited to those remedies as stated in Sections 8.2 (*Owner-Caused Delay*), 8.3 (*Turbine-Vendor-Caused-Delay*) and 9.5.1 (*Required Change Orders*). Owner shall not be considered to be, and Contractor will not claim that Owner is, in breach under this Agreement for or in connection with any failure of Owner to perform any such obligations (i.e., non-monetary obligations). Owner shall not be considered to be, and Contractor will not claim that Owner is, in breach under this Agreement for or in connection with any failure of Turbine Vendor to perform its obligations under the Turbine Supply Agreement or

the actions or omissions of the Utility. The Parties acknowledge that if Owner fails to comply with its payment obligations under this Agreement, then Section 13.2 will apply.

ARTICLE VI

STAGES OF COMPLETION OF THE WORK

6.1 Road Construction Completion.

6.1.1 Conditions of Road Construction Completion. “Road Construction Completion” with respect to each access road, shall occur when each of the following conditions has been satisfied:

(a) the Project Site access roads have been constructed or improved and maintained in accordance with the applicable specifications of this Agreement;

(b) the public road improvements, including roadbed upgrades, turning radius installation and approach improvements have been completed in accordance with Exhibit A;

(c) Reserved; and

(d) Owner has confirmed that the conditions set forth hereinabove have occurred, pursuant to Section 6.1.2.

6.1.2 Confirmation of Road Construction Completion. When Contractor believes that it has achieved all of the requirements for Road Construction Completion, Contractor shall provide Owner with a Road Construction Completion Certificate. Within five (5) Business Days of receipt of such Road Construction Completion Certificate, Owner shall notify Contractor in writing whether Contractor has fulfilled the requirements of Road Construction Completion. If Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. If Owner does not provide written notice disputing or accepting Contractor’s determination that Project Substantial Completion has been achieved within five (5) Business Days of the receipt of the Road Construction Completion Certificate, then each subsequent Business Day prior to Owner providing such notice to Contractor will be deemed an Owner-Caused Delay. Contractor shall promptly act to correct such deficiencies so as to achieve Road Construction Completion as soon practicable. Following any such remedial action, Contractor shall deliver to Owner a new Road Construction Completion Certificate and the provisions of this Section 6.1.2 shall apply with respect to such new Road Construction Completion Certificate in the same manner as they applied to the original Road Construction Completion Certificate. For all purposes of this Agreement, the date of achievement of Road Construction Completion shall be the date the Road Construction Completion Certificate ultimately accepted by Owner was submitted. In the event that Owner and Contractor are unable to agree regarding the existence or correction of any deficiencies identified by Owner, Contractor shall proceed with further Work as directed by Owner under protest, reserving the right to submit a claim under Article 15.

6.2 Foundation Completion.

6.2.1 Conditions of Foundation Completion. “Foundation Completion” with respect to a WTG shall occur when each of the following conditions has been satisfied:

(a) the foundation for such WTG is complete and has been installed in accordance with the Scope of Work and Exhibit B and in accordance with the load data requirements set forth in Exhibit C-9;

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

(c) the concrete portion of such foundation has cured so as to have achieved the minimum strength necessary to allow installation of the Tower base section of the WTG thereon;

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

(e) Reserved; and

(f) Owner has confirmed that the conditions set forth hereinabove for such WTG have occurred, pursuant to Section 6.2.2.

6.2.2 Confirmation of Foundation Completion. When Contractor believes that it has achieved all of the requirements for Foundation Completion for a WTG, Contractor shall provide Owner with a Foundation Completion Certificate. Within five (5) Business Days of receipt of such Foundation Completion Certificate, Owner shall notify Contractor in writing whether Contractor has fulfilled the requirements of Foundation Completion with respect to such WTG. If Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Foundation Completion for the applicable WTG as soon practicable. Following any such remedial action, Contractor shall deliver to Owner a new Foundation Completion Certificate and the provisions of this Section 6.2.2 shall apply with respect to such new Foundation Completion Certificate in the same manner as they applied to the original Foundation Completion Certificate. If Owner does not provide written notice disputing or accepting Contractor’s determination that Foundation Completion for the relevant Foundation Set has been achieved within five (5) Business Days of the receipt of the Foundation Completion Certificate, then each subsequent Business Day prior to Owner providing such notice to Contractor will be deemed an Owner-Caused Delay. For all purposes of this Agreement, the date of achievement of Foundation Completion for a particular WTG shall be the date the Foundation Completion Certificate ultimately accepted by Owner was submitted.

6.3 Collection System Circuit Completion.

6.3.1 Conditions of Collection System Circuit Completion. “Collection System Circuit Completion” shall occur, with respect to a circuit, when each of the following conditions has been satisfied:

(a) Contractor has, in accordance with the requirements of this Agreement, completed all Work (including functional testing, and cold commissioning) required to cause the (i) electrical components of the Collection System that connect all WTGs on such circuit to the Substation to be capable (as verified by testing, all reports from which have been provided to Owner) of continuously, reliably and safely (A) delivering to the Substation all electrical energy generated by such WTGs and (B) capable of being energized from the Substation and delivering backfeed power to such WTGs, and (ii) communication components of the Collection System that connect such WTGs to the SCADA control panel to be capable of reliably transmitting performance and operating data thereto, including without limitation functional completion of the Substation control building so that the SCADA system therein is operational in support of Commissioning, operation and testing of such WTGs;

(b) Reserved; and

(c) Owner has confirmed in writing that the conditions set forth hereinabove for such WTG have occurred, pursuant to Section 6.3.2.

6.3.2 Confirmation of Collection System Circuit Completion for WTGs. When Contractor believes that it has satisfied all requirements for Collection System Circuit Completion for a circuit, Contractor shall submit a Collection System Circuit Completion Certificate to Owner. Within five (5) Business Days following the date on which a Collection System Circuit Completion Certificate is received by Owner, Owner (or Owner’s agent) shall review and inspect the circuit described in such certificate and all Work related thereto and shall either (a) countersign and deliver to Contractor the Collection System Circuit Completion Certificate, or (b) if reasonable cause exists for doing so, notify Contractor that Collection System Circuit Completion has not been achieved. Any notice issued pursuant to clause (b) above shall state in detail Owner’s reasons for rejecting any Collection System Circuit. If Collection System Circuit Completion has not been achieved and Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work so as to achieve Collection System Circuit Completion. If Owner does not provide written notice disputing or accepting Contractor’s determination that Collection System Circuit Completion has been achieved within five (5) Business Days of the receipt of the Collection System Circuit Completion Certificate, then each subsequent Business Day or portion thereof prior to Owner providing such notice to Contractor will be deemed an Owner-Caused Delay. Upon completing such actions, Contractor shall issue a new Collection System Circuit Completion Certificate for consideration by Owner. Such procedure shall be repeated as necessary until Collection System Circuit Completion is achieved with respect to such circuit. For all purposes of this Agreement, the date of achievement of Collection System Circuit Completion for a circuit shall be the date the Collection System Circuit Completion Certificate ultimately accepted by Owner was submitted. In the event Owner and Contractor are unable to agree regarding the existence or correction of any deficiencies identified by Owner, Contractor shall proceed with further Work as directed by Owner under protest,

reserving the right to submit a claim under Article 15. Notwithstanding anything to the contrary in this Agreement, Contractor shall not be liable for any Collection System Delay Liquidated Damages during any Owner Collection System Circuit Completion Certificate review period.

6.4 Substation and Transmission Line Completion.

6.4.1 Conditions of Substation and Transmission Line Completion. “Substation and Transmission Line Completion” shall occur when each of the following conditions has been satisfied:

(a) Contractor has in accordance with the requirements of this Agreement completed all Work on the Transmission necessary to connect the Substation to the Point of Interconnection;

(b) Contractor has in accordance with the requirements of this Agreement completed all Work on the Substation in accordance with the requirements of this Agreement (including installation within the Substation of all material and equipment necessary to enable connection from the Substation to the Grid, and completion of all tests and inspections associated with the Substation in accordance with the QAQC Procedures and all Applicable Standards and documented by Contractor), and the Substation is either energized, or capable of being safely energized;

(c) Contractor has provided to Owner, the draft Operating Manual for the Substation as described in Section 2.4.11(a);

(d) Contractor has completed all training required under Section 2.4.12;
and

(e) Owner has confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.4.2.

6.4.2 Confirmation of Substation and Transmission Line Completion. When Contractor believes that it has satisfied all requirements for Substation and Transmission Line Completion, Contractor shall submit a Substation and Transmission Line Completion Certificate to Owner. Within five (5) Business Days following the date on which a Substation and Transmission Line Completion Certificate is received by Owner, Owner (or Owner’s agent) shall review and inspect the Substation and all other Work related thereto and shall either (a) countersign and deliver to Contractor the Substation and Transmission Line Completion Certificate, or (b) if reasonable cause exists for doing so, notify Contractor that Substation and Transmission Line Completion has not been achieved. Any notice issued pursuant to clause (b) above shall state in detail Owner’s reasons for any such rejection. If Owner does not provide written notice disputing or accepting Contractor’s determination that Substation and Transmission Line Completion has been achieved within five (5) Business Days of the receipt of the Substation and Transmission Line Completion Certificate, then each subsequent Business Day or portion thereof prior to Owner providing such notice to Contractor will be deemed an Owner-Caused Delay. If Substation and Transmission Line Completion has not been achieved and Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work so as to achieve Substation and Transmission Line Completion as soon as

practicable. Upon completing such actions, Contractor shall issue a new Substation and Transmission Line Completion Certificate for consideration by Owner. Such procedure shall be repeated as necessary until Substation and Transmission Line Completion is achieved. For all purposes of this Agreement, the date of achievement of Substation and Transmission Line Completion shall be the date the Substation and Transmission Line Completion Certificate ultimately accepted by Owner was submitted. Contractor shall not be liable for any Substation and Transmission Line Completion Delay Damages during any Owner Substation and Transmission Line Completion Certificate review period.

6.5 Reserved.

6.6 WTG Mechanical Completion.

6.6.1 Conditions of WTG Mechanical Completion. “WTG Mechanical Completion” shall occur, with respect to a WTG, when the following conditions have been satisfied:

(a) Foundation Completion with respect to such WTG has been achieved;

(b) WTG Installation Completion of such WTG has been achieved, whereas such WTG has been Installed upon its foundation, and aligned and adjusted, in accordance with Exhibit C-9, the Tower Foundation Specifications, the Turbine Assembly Drawings, and the other requirements of the Agreement, and all materials and Equipment associated with such WTG have been inspected and installed in accordance with the Scope of Work, and the specifications of this Agreement (“WTG Installation Completion”);

(b) Reserved;

(c) Reserved;

(d) Contractor has assisted Owner in completing and submitting to Turbine Vendor the required certification of “mechanical completion” for such WTG as required under the Turbine Supply Agreement, as per Section 2.10(b); and

(e) Owner has confirmed in writing that the conditions set forth hereinabove for such WTG have occurred, pursuant to Section 6.6.2.

6.6.2 Confirmation of WTG Mechanical Completion for WTGs. When Contractor believes that it has satisfied all requirements for WTG Mechanical Completion of a WTG, Contractor shall submit a WTG Mechanical Completion Certificate to Owner. Within five (5) Business Days following the date on which a WTG Mechanical Completion Certificate is received by Owner, Owner (or Owner’s agent) shall review and inspect the WTG described in such certificate and all Work related thereto and shall either (a) countersign and deliver to Contractor the WTG Mechanical Completion Certificate, or (b) if reasonable cause exists for doing so, notify Contractor that WTG Mechanical Completion has not been achieved. Any notice issued pursuant to clause (b) above shall state in detail Owner’s reasons for rejecting any WTG. If Owner does not provide written notice disputing or accepting Contractor’s determination that Mechanical

Completion for the relevant WTG has been achieved within five (5) Business Days of the receipt of the WTG Mechanical Completion Certificate, then each subsequent Business Day prior to Owner providing such notice to Contractor will be deemed an Owner-Caused Delay. If WTG Mechanical Completion has not been achieved and Owner delivers the notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work so as to achieve WTG Mechanical Completion. Upon completing such actions, Contractor shall issue a new WTG Mechanical Completion Certificate for consideration by Owner. Such procedure shall be repeated as necessary until WTG Mechanical Completion is achieved with respect to such WTG. For all purposes of this Agreement, the date of achievement of WTG Mechanical Completion for a WTG shall be the date the WTG Mechanical Completion Certificate ultimately accepted by Owner was submitted.

6.7 Project Substantial Completion.

6.7.1 Conditions of Project Substantial Completion. “Project Substantial Completion” shall be achieved when each of the following conditions has been satisfied:

(a) Road Construction Completion and Foundation Completion with respect to all WTGs have occurred;

(b) all WTGs comprising the Project have achieved WTG Installation Completion and WTG Mechanical Completion and all circuits have achieved Collection System Circuit Completion;

(c) the WTGs comprising the Project have been connected to the Point of Interconnect;

(d) Contractor has installed the permanent meteorological masts and all auxiliary equipment related thereto;

(e) Contractor and Owner have agreed upon the Final Punch List for all Work as described in Section 6.8.1(e);

(f) Contractor has in accordance with the requirements of this Agreement fully completed all Work (including all Work on or comprising all remaining Infrastructure Facilities for the Project), except those items on the agreed upon the Final Punch List;

(g) any Defects found have been corrected or mutually agreed to be included on the Final Punch-List;

(h) Contractor has provided Owner with copies of all Contractor Permits,

(i) Contractor has provided to Owner, the draft Operating Manual for all of the Collection Systems as described in Section 2.4.11(b);

(j) Substation and Transmission Line Completion has occurred;

(k) all Spare Parts requested by Owner under Section 2.4.10 have been ordered by Contractor;

(l) Contractor has paid all undisputed Delay Liquidated Damages (except for Delay Liquidated Damages for Project Substantial Completion) not yet offset against payment owed to Contractor and otherwise due under this Agreement, if any;

(m) Contractor has delivered to Owner copies of all preliminary test reports and electrical schematics related to the Work;

(n) Contractor has delivered draft copies of the Job Books in accordance with Section 2.4.11(c);

(o) Reserved; and

(p) Owner has confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.7.2.

6.7.2 Confirmation of Project Substantial Completion. When Contractor believes it has satisfied all of the requirements for Project Substantial Completion, Contractor shall notify Owner in writing. Within ten (10) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Contractor has fulfilled the requirements of Project Substantial Completion. If Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Project Substantial Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.7.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. The accrual of any Delay Liquidated Damages shall toll as of the date of Owner's receipt of a notice of Project Substantial Completion through to the date on which Owner responds to such notice. If Owner does not provide written notice disputing or accepting Contractor's determination that Project Substantial Completion has been achieved within ten (10) Business Days of the receipt of the Project Substantial Completion Certificate, then each subsequent Business Day prior to Owner providing such notice to Contractor will be deemed an Owner-Caused Delay. Delay Liquidated Damages shall continue to accrue upon Owner's provisions of a rejection of such notice until the Contractor performs the Work to meet the requirements of Project Substantial Completion and Owner certifies that such requirements have been met. For all purposes of this Agreement, the date of achievement of Project Substantial Completion shall be the date the Project Substantial Certificate ultimately accepted by Owner was submitted. In the event that Owner and Contractor are unable to agree regarding the existence or correction of any deficiencies identified by Owner, Contractor shall proceed with further Work as directed by Owner under protest, reserving the right to submit a claim under Article 15. Notwithstanding anything to the contrary in this Agreement, Contractor shall not be liable for Project Substantial Completion Delay Liquidated Damages during any Owner Substantial Completion Certificate review period.

6.8 Punch Lists for Infrastructure Facilities.

6.8.1 Development of Punch Lists.

(a) At all times during the performance of the Work, Contractor shall maintain a list setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of the Agreement. Contractor shall promptly provide a copy of such list to Owner upon request. Contractor shall make such revisions to such list as and when requested by Owner from time to time.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Prior to Contractor's submittal of the initial Project Substantial Completion Certificate, Contractor will prepare and deliver to Owner a written list setting forth all of the items that remain to be performed in order to complete the Work, provided such items of Work on such list shall only be items that are (i) minor in nature, and (ii) not related to the functionality, utility, operation or restoration any Work, and (iii) not related to the compliance of any such Work with any Applicable Laws or Applicable Permits. Such list shall also state the proposed time limits within which Contractor will complete each of such remaining Work items. Upon its receipt of such list, Owner will reasonably review the same and notify Contractor of any proposed revisions thereto. Owner's Project Manager and Contractor's Project Manager will then meet and consult in good faith to agree upon the definitive, final version of such list (including the approved time limits within which Contractor will perform such remaining Work items) (such final list, as agreed to by Owner, the "Final Punch List").

6.8.2 Completion of Punch List Items. Once the Final Punch List hereunder is agreed upon, Contractor will promptly begin the items thereon. Contractor's Work on such Final Punch List shall be performed in a manner that does not unreasonably interfere with the commercial operation of any WTGs comprising the Project. Owner will provide Contractor with reasonable access to the Project Site so that Contractor may perform the Work on the Final Punch List.

6.9 Final Completion.

6.9.1 Conditions of Final Completion. "Final Completion" will be achieved when each of the following conditions has been met:

(a) Project Substantial Completion has occurred;

(b) Contractor has completed performance of all of the Work, including all Final Punch List items, except for those items that Owner and Contractor agree are to be completed by Owner (and Contractor has paid all amounts due Owner in connection therewith);

(c) Contractor has removed from the Project Site all construction debris, rubbish and foreign material relating to the Work and has performed all vegetation restoration and reseeded as described in the Scope of Work;

(d) Contractor has provided to Owner all lien releases as required under Section 4.3 (provided that Contractor's Final Lien Waiver and Release, in substantially the form of Exhibit T-3 attached hereto from Contractor and Subcontractor's Final Lien Waiver and Release in the form of Exhibit T-4 attached hereto from each Major Subcontractor, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);

(e) all As-Built Drawings and documentation accurately reflect the Project as constructed shall have been delivered to, and accepted by, Owner;

(f) all sets of the final Operating Manuals and final Job Books have been delivered to Owner as required under Section 2.4.11; and

(g) Owner has confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.9.2.

6.9.2 Confirmation of Final Completion. When Contractor believes that it has satisfied all of the requirements for Final Completion, Contractor shall notify Owner in writing. Within ten (10) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Contractor has fulfilled the requirements of Final Completion. If Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Final Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.9.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date the on which the relevant completion notice ultimately accepted by Owner was received by Owner.

6.10 Compliance with Completion Phases. Without duplication or limitation of the foregoing or any other provisions of the Agreement, Contractor shall perform the Work so as to satisfy all of the conditions of Road Construction Completion for each road as described in the Scope of Work, Foundation Completion for each WTG foundation, Collection System Circuit Completion for each circuit, Substation and Transmission Line Completion, WTG Installation Completion for each WTG, WTG Mechanical Completion for each WTG, Project Substantial Completion and Final Completion.

6.11 Delay Liquidated Damages.

6.11.1 Without duplication or limitation of the foregoing or any other provisions of the Agreement, Contractor shall perform the Work so that the Work satisfies all of the conditions of WTG Mechanical Completion, Substation and T-Line Completion for the Substation, and Project Substantial Completion.

6.11.2 Substation and T-Line Key Milestone Date. Contractor guarantees that it shall achieve Substation and T-Line Completion on or before the Substation and T-Line Key Milestone Date, as may be extended due to any Change Order, Force Majeure Event, Change in Law, Owner-Caused Delay, or any other event or circumstance for which Contractor entitled to an increase in cost or change in Key Milestones pursuant to any specific provision in this Agreement.

6.11.2.1 Substation and T-Line Completion Delay Liquidated Damages. If Contractor shall fail to achieve Substation and T-Line Completion by the Substation and T-Line Key Milestone Date, it shall pay to Owner, as liquidated and agreed damages and not as a penalty, an amount (the “Substation and T-Line Completion Delay Liquidated Damages”) equal to [REDACTED] of delay beyond the applicable Substation and T-Line Key Milestone Date.

6.11.3 WTG Mechanical Completion Key Milestone Dates. Contractor guarantees that it shall achieve Mechanical Completion for the relevant WTG on or before the relevant WTG Mechanical Completion Key Milestone Date, in each case as may be extended due to any Change Order, Force Majeure Event, Change in Law, Owner-Caused Delay, or any other event or circumstance for which Contractor entitled to an increase in cost or change in Key Milestones pursuant to any specific provision in this Agreement.

6.11.3.1 WTG Mechanical Completion Delay Liquidated Damages. If Contractor shall fail to achieve WTG Mechanical Completion for the relevant WTG on or before the relevant WTG Mechanical Completion Key Milestone Date, it shall pay to Owner, as liquidated and agreed damages and not as a penalty, an amount (collectively, the “WTG Delay Liquidated Damages”) equal to [REDACTED] of delay beyond the applicable WTG Mechanical Completion Key Milestone Date.

6.11.4 Project Substantial Completion Key Milestone Date. Contractor guarantees that it shall achieve Project Substantial Completion on or before the Project Substantial Completion Key Milestone Date, as may be extended due to any Change Order, Force Majeure Event, Change in Law, Owner-Caused Delay, or any other event or circumstance for which Contractor is entitled to an increase in cost or change in Key Milestones pursuant to any specific provision in this Agreement.

6.11.4.1 Project Substantial Completion Delay Liquidated Damages. If applicable, if Contractor shall fail to achieve Project Substantial Completion by the Substantial Completion Key Milestone Date, it shall pay to Owner, as liquidated and agreed damages and not as a penalty, an amount (the “Project Substantial Completion Delay Liquidated Damages”) equal to [REDACTED] of delay beyond the applicable Project Substantial Completion Key Milestone Date.

6.11.5 Payment of Delay Liquidated Damages.

6.11.5.1 Subject to Owner’s rights in Section 4.6, Delay Liquidated Damages not otherwise offset and due under this Section 6.11 that are undisputed shall be due and payable by Contractor upon the date that is thirty (30) days after Contractor’s receipt of Owner’s invoice for such amounts, provided, however, that Contractor shall not be obligated to make payment of Delay Liquidated Damages to Owner until Owner has paid all undisputed amounts due and owing hereunder from Owner to Contractor. Owner shall bill for such amounts on a monthly basis.

6.11.5.2 Exclusive Remedy for Delay. The Delay Liquidated Damages identified in Section 6.11 are Owner's sole and exclusive remedy in the event of any delay caused solely by Contractor in the performance of the Work. Owner and Contractor further agree that these Delay Liquidated Damages are a good faith reasonable pre-estimate of the damages Owner would suffer in the event of such delay in the performance of the Work. If Contractor achieves Project Substantial Completion on or before the Project Substantial Completion Key Milestone Date, then all prior Delay Liquidated Damages shall be waived.

6.11.5.3 Interim Delay Liquidated Damages. In the event Contractor achieves Project Substantial Completion on the Project Substantial Completion Key Milestone Date, as adjusted, then all accrued, paid or due Delay Liquidated Damages will be reimbursed and/or waived.

6.11.5.4 The Parties acknowledge and agree that because of the unique nature of the Work and the unavailability of a substitute facility, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Contractor's failure to meet the relevant Key Milestones for which Delay Liquidated Damages apply. It is understood and agreed by the Parties that (a) Owner shall be damaged by the failure of Contractor to meet such obligation, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) any sums which would be payable under this Article VI are in the nature of liquidated damages, and not a penalty, and are fair and reasonable under the circumstances and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any such failure by Contractor to achieve the relevant Key Milestones by the date provided in the Project Schedule. Once payment of such liquidated damages for a given Key Milestone has been made, Contractor shall be relieved of any further liability in respect thereof.

6.11.6 Limitation of Liability for Delay Liquidated Damages. [REDACTED]

ARTICLE VII

WARRANTIES

7.1 Warranty Provisions.

7.1.1 Warranty. As the "Warranty," Contractor warrants to Owner that: (a) all Equipment (including as provided under this Agreement or the LNTP) shall be new, unused and undamaged when installed, (b) all such Equipment, and all Work (except design, engineering and other professional services that comprise the Work) shall (i) be free from Defects, (ii) conform to all applicable requirements of all Applicable Laws (excluding the Prevailing Wage and Apprenticeship Requirements and the Domestic Content Requirements and the applicable requirements of the Code), Applicable Standards and the Agreement and (iii) not used; (c) the

construction and procurement services comprising the Work will be performed with Contractor's best skill and judgment in a good and workmanlike manner; (d) the Work will conform to, and be constructed in accordance with, all Applicable Laws (excluding Prevailing Wage and Apprenticeship Requirements and the applicable requirements of Code), Applicable Standards, and the other terms and requirements of the Agreement; (e) the WTGs will be Installed in accordance with the requirements of all Applicable Laws, Applicable Standards and the Agreement as specified in the Scope of Work and Exhibit B; and (f) that the design, engineering and other professional services will conform to the Design Standard of Care and the Design Life. Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications to executed by the Contractor, improper or insufficient maintenance, improper use or operation, and normal wear and tear, and Contractor's warranty does not apply to incomplete Work (in the event Owner or Contractor terminates this Agreement). Contractor's warranty does not apply if Owner fails to provide written notice to Contractor of a defect within the Warranty Period. Contractor is not responsible for any damages, liability, repairs, or costs occasioned by, related to or otherwise arising out of the actions or omissions of others, including Owner and Owner's separate contractors.

7.1.2 Warranty Period; Extensions. The Warranty shall commence on the Project Substantial Completion Date and shall continue for a period of two (2) years after Project Substantial Completion Date (the "Warranty Period"); *provided, however*, that if any component of the Work is repaired or replaced pursuant to the Warranty Service, then the Warranty Period with respect to such component shall be continued for a period that is the longer of (a) the remainder of the original Warranty Period, or (b) one (1) year from the date of completion of the repair or replacement or re-performance thereupon, *provided, further*, that if [REDACTED] or five (5) or more of the same type of component of the Work requires repair or replacement within the Warranty Period, then the Warranty Period for that type of component shall be automatically extended for all such components of that type for an additional one (1) year from the later of (i) the date of expiration of the Warranty Period or (ii) the date of the completion of Warranty Service to correct the failure that caused the percentage of failures to [REDACTED]. In no event shall the Warranty Period exceed thirty-six (36) months. At expiration of the Warranty Period, any unexpired warranties relating to the Work shall be assigned to Owner (and Contractor will promptly execute such documents as may be necessary to cause such assignment to occur) and Contractor shall be released from any further warranty obligations hereunder except those which accrued prior to expiration of the Warranty Period.

7.1.3 Warranty Service. If the Work or Equipment or Spare Part is in breach of any Warranty set forth in this Section 7.1, Contractor shall cure such breach as promptly as practicable upon receiving written notice thereof ("Warranty Service"). Owner shall provide Contractor with reasonable access to the Project in order to perform its obligation under this Article VII and the Parties shall schedule such work as necessary so as to minimize disruptions to the operation of the Project. Owner shall have the right to operate and otherwise use the Equipment (unless the use or continued operations further exacerbate the Defect or surrounding Equipment) until such time as Owner deems prudent to suspend such operation or use in order to accommodate Contractor's Warranty Services. If Equipment has been placed in service, Contractor shall perform such Warranty Service as soon as Owner deems it prudent to remove the same from service for any Warranty Service by Contractor; provided that the Warranty Period will continue until Contractor has completed such Warranty Service. Neither payment by Owner, nor any other

provision of this Agreement, nor partial or entire use or possession of the Work by Owner shall relieve Contractor of liability with respect to the Warranty contained in this Article VII. Contractor shall bear all costs and expenses directly associated with correcting any Defect or breach of the Warranty Services, including all costs of Labor and equipment (excluding cranes) and of any necessary mobilization, demobilization, disassembly, removal, replacement, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, and reassembly of structures, electrical work, machinery, Equipment, or any other obstruction as necessary to give access to the non-conforming item for correction, and for the removal, repair and/or replacement of any damage to other work or property that arises from the breach of Warranty. Upon completion of Warranty Service, all Equipment shall be returned or restored to its proper condition (subject to normal wear and tear), including but not limited to fit alignment, adjustment, operability and finish. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the "root cause" unless Contractor can demonstrate to Owner's reasonable satisfaction that there is no material risk of the reoccurrence of such problem. Contractor's obligations under this Section 7.1 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any vendor or Subcontractor to Contractor or Owner. No correction or cure shall be considered complete until Owner has reviewed and accepted such remedial work. So long as Contractor has been notified of a breach of Warranty prior to the end of the Warranty Period, the obligation of Contractor to provide Warranty Service to correct such noncompliance, Defect or breach of Warranty shall survive the expiration of the Warranty Period.

7.1.4 Conformance of Warranty Service to Warranty. Contractor warrants that all materials incorporated into the Work as part of repairs to and replacements of the Work by Contractor or any Subcontractor, and repairs to and replacements of the Work pursuant to the Warranty Service shall conform to the requirements of this Agreement and the Warranty. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty Service complies with the requirements of the Warranty.

7.2 Delay. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified of the noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than three (3) Business Days after such notice. If, after notification of a Defect or breach of Warranty, Contractor delays past such date in commencing, or shall delay unnecessarily in performing or completing, Warranty Service with respect to such Defect or breach of Warranty, then Owner may correct such Defect or breach of Warranty so that the Work complies with the requirements of this Agreement after giving Contractor seven (7) Business Days written notice, and Contractor shall be liable for all reasonable and necessary direct costs and expenses incurred by Owner in connection with the same and shall pay the same to Owner upon receipt of invoices with supporting documentation certified by Owner. Such correction of a breach of Warranty condition shall be deemed to be Warranty Service performed by Contractor and the Warranty Period for such corrected Work shall be extended in accordance with Section 7.1.2. No correction of a Defect or breach of Warranty pursuant to this Section 7.2 shall void the Warranty.

7.3 Subcontractor Warranties. Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. Upon such an assignment to Owner, Contractor shall be relieved of further liability with respect to the parts which are the subject of the assigned warranty and Contractor shall provide reasonable assistance to Owner in connection with the enforcement of any Subcontractor warranty.

7.4 Proprietary Rights. Without limiting any of the provisions of the Agreement, if Owner or Contractor is prevented from completing the Work (or any part thereof) in accordance with the Agreement or from the use, operation, repair, maintenance, alteration, expansion (other than related to the foundations for expansion of the Project), rebuilding or enjoyment of the Work (or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Contractor's performance (or that of its Subcontractors) under the Agreement or any Intellectual Property Right or Contractor Deliverable transferred or licensed to Owner hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverable in connection with the completion, repair, operation, maintenance, alteration, rebuilding or expansion (other than related to the foundations for expansion of the Project) of the Work without obligation or liability; or (b) replace such materials, Equipment, or Contractor Deliverable, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of the Agreement.

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

7.6 Survival of Warranties. The provisions of this Article VII shall survive the expiration or termination of this Agreement.

7.7 Limitations. The Warranty does not extend to damage or defect caused by Force Majeure or failure to use and maintain the Work in compliance with operating manuals and instructions.

ARTICLE VIII

FORCE MAJEURE; OWNER-CAUSED DELAYS; TURBINE-VENDOR-CAUSED DELAYS; CHANGES IN LAW; CHANGES IN STANDARDS; WEATHER DELAYS

8.1 Force Majeure.

8.1.1 “Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,
- (b) is beyond the reasonable control of the Party claiming the Force Majeure Event,
- (c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and
- (d) either (i) as with respect to Owner as the impacted Party, has an impact which will actually, demonstrably and adversely affect Owner’s ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Contractor as the impacted Party, has an impact which will actually, demonstrably and adversely affect Contractor’s ability to achieve a Key Milestone by the scheduled completion date for such Key Milestone as set forth in the Project Schedule, or will otherwise actually, demonstrably and adversely affect Contractor’s costs or performance of its obligations in accordance with the terms of this Agreement.

8.1.2 Provided they meet all of the criteria described above, Force Majeure Events may include but not limited to the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, named storms, lightning, floods, public disorder or civil disturbances, riots, war (declared and undeclared, but excluding impacts from the war in the Ukraine that exist as of the Effective Date) and military invasion, physical damage to the Project caused by third parties who are not subcontractors (of any tier) or representatives, employees or agents of the impacted Party, national, regional and area-wide strikes and other national, regional and area-wide labor disputes (including collective bargaining disputes and lockouts) involving Contractor or Subcontractors except as provided in Section 8.1.3; quarantine, epidemics, or pandemics (including COVID-19 or its variants but excluding impacts that exist as of the Effective Date); a severe inclement weather condition not mentioned above (other than a condition that constitutes, or is addressed by the definition of, a Weather Delay), such as a severe snow storm or ice storm, which prevents or substantially hinders the safe performance of the Work; but only if such severe inclement weather condition exceeds the twenty-five year daily average for such weather condition for the date of occurrence according to the records of the National Oceanic and Atmospheric Administration for the vicinity of the Project Site; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a Government Authority (other than in respect of or in relation to or resulting from Contractor’s non-compliance with Applicable Laws).

8.1.3 Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a “Force Majeure Event”: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control (excluding union Subcontractors in the case of Contractor or non-union Subcontractors if such non-union Subcontractors are targeted or otherwise subject to unionizing activity by the union Subcontractors) of the Party claiming the Force Majeure Event or its Affiliates ; (ii) any labor or manpower shortages, unless such shortage is due to an independent, identifiable Force Majeure

Event; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless the Party claiming the Force Majeure Event can point to an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials, unless such cost of equipment or materials are due to an independent, identifiable Force Majeure Event; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; (vii) Change in Law; (viii) Weather Delays; (ix) any weather conditions which are not defined above as Force Majeure Events; (x) actions of a Government Authority in respect of or in relation to or resulting from Contractor's compliance or non-compliance with Applicable Laws; (xi) any failure by Contractor to obtain and/or maintain any Applicable Permit it is required to obtain and/or maintain hereunder; (xii) any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor or other Personnel of Contractor.

8.1.4 Notice. If a Party believes that an event constituting a Force Majeure Event has occurred that has or will prevent or delay the performance of its obligations under this Contract, then such Party shall give the other Party written or electronic notice within ten (10) Days after the Party became aware of such event (the "Initial FM Notice"). The Initial FM Notice need only be given to the other Party's on-site manager or supervisor (including Owner's Project Manager) in writing or via email. Within ten (10) Days after such Party knew that the event will adversely affect either (a) as with respect to Owner as an affected Party, Owner's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (b) as with respect to Contractor as an affected Party, the achievement of Key Milestones on or prior to the scheduled completion dates for such Key Milestones as set forth in the Project Schedule, or performance of Contractor's obligations in accordance with the terms of the Agreement; the Party claiming a Force Majeure Event shall give the other Party written notice (the "Force Majeure Notice"), which shall, to the extent practicable; (i) specify the length of the delay occasioned by, and additional costs incurred by reason of such Force Majeure Event; (ii) describe the particulars of the cause and nature of the Force Majeure Event; and (iii) provide evidence of the occurrence of such Force Majeure Event. At all times after the Initial FM Notice and the Force Majeure Notice, the affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event.

8.1.5 Non-Performance Not a Breach. So long as the conditions set forth in this Section 8.1.5 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to the Agreement to the extent that such failure has been caused by one or more Force Majeure Events; provided that in such event:

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

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

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

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

8.1.6 Change Order Rights. If Contractor desires a Change Order for a Force Majeure Event, Contractor shall comply with the Initial FM Notice and Force Majeure Notice requirements contained in Section 8.1.1. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(a). If Contractor fails to comply with such notice requirements, then Contractor will be deemed to have waived its right to receive a Change Order for the subject Force Majeure Event to the extent Owner has been prejudiced.

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

8.2 Owner-Caused Delay.

8.2.1 Nature of Owner-Caused Delays. Without limiting the definition of Owner-Caused-Delays, notwithstanding anything in this Agreement to the contrary, in any case where this Agreement states that Owner “shall cause” the Utility or Other Owner Contractors to take or not to take a certain action, the Parties agree that if the Owner fails to meet that obligation, such failure shall exclusively constitute an Owner-Caused Delay and shall not constitute an Owner Event of Default, and Contractor’s sole and exclusive remedies as a result thereof will be as set forth in this Article 8.2 and Sections 9.5.1(c) and 13.8.

8.2.2 Notice. Except as set forth in Section 8.3 (which shall exclusively apply in the case of a Turbine-Vendor-Caused-Delay), if Contractor believes an Owner-Caused Delay has occurred, then Contractor shall give Owner’s Project Manager written or electronic notice describing the alleged Owner-Caused Delay within ten (10) Days following the date on which Contractor became aware of the occurrence of an event Contractor believes is or may be an Owner-Caused Delay. Within ten (10) Days after the date on which Contractor knew that the event that Contractor believes is or may be an Owner-Caused Delay has actually caused a demonstrable delay or increase in cost in Contractor’s performance of the Work, Contractor shall give Owner written notice describing the details of the Owner-Caused Delay and any effects on Contractor’s performance of its obligations under this Agreement.

8.2.3 Change Order Rights. If Contractor desires a Change Order for an Owner-Caused Delay, Contractor shall comply with the notice requirements contained in Section 8.2.2. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(c). If Contractor fails to comply with such notification requirements, Contractor will be deemed to have waived its right to receive a Change Order for the subject Owner-Caused Delay, to the extent Owner has been prejudiced.

8.3 Turbine-Vendor-Caused-Delay

8.3.1 Nature of Turbine-Vendor-Caused-Delays. Without limiting the definition of Turbine-Vendor-Caused-Delays, notwithstanding anything in this Agreement to the contrary, in any case where this Agreement states that Owner “shall cause” Turbine Vendor to take or not to take a certain action, the Parties agree that if the Owner fails to meet that obligation, such failure shall exclusively constitute a Turbine-Vendor-Caused-Delay and shall not constitute an Owner Event of Default, and Contractor’s sole and exclusive remedies as a result thereof will be as set forth in this Article 8.3 and Sections 9.5.1(e) and 13.8.

8.3.2 Notice. If Contractor believes an event constituting a Turbine-Vendor-Caused-Delay has occurred, Contractor shall give Owner’s Project Manager written or electronic notice describing the alleged Turbine-Vendor-Caused-Delay within ten (10) Days following the date on which Contractor became aware of the occurrence of such event. Within ten (10) Days after the date on Contractor knew that the event that Contractor believes is or may be a Turbine-Vendor-Caused-Delay has actually caused a demonstrable delay or increase in cost in Contractor’s performance of the Work, Contractor shall give Owner written notice describing the details of Turbine-Vendor-Caused-Delay and any effects on Contractor’s performance of its obligations under this Agreement.

8.3.3 Change Order Rights. If Contractor desires to a Change Order for a Turbine-Vendor-Caused-Delay, Contractor shall comply with the notice requirements contained in Section 8.3.2. If Contractor does so, it shall be entitled to a Change Order to the extent so provided in Section 9.5.1(e). If Contractor fails to comply with such notice requirements, Contractor will be deemed to have waived its right to receive a Change Order as a result of the subject Turbine-Vendor-Caused Delay, to the extent Owner has been prejudiced.

8.3.4 Projected Turbine Vendor Delays. If Owner is informed by written notice from Turbine Vendor as to any projected delays in meeting any of the requirements in the Turbine Supply Agreement, Owner shall within three (3) Business Days forward such notice to Contractor, and Contractor shall take reasonable measures to mitigate or avoid additional costs or time which would otherwise result from such projected delays. The foregoing is not intended to contradict Contractor’s right to receive a Change Order under Section 9.5.1(e).

8.4 Changes in Law; Changes in Standards.

8.4.1 Notice. If Contractor believes a Change in Law has occurred, Contractor shall give Owner’s Project Manager written or electronic notice describing the Change in Law within ten (10) Days following the date on which Contractor knew of same. Within ten (10) Days after the date on which Contractor knew that such Change in Law has actually caused a demonstrable delay or increase in cost in Contractor’s performance of the Work, Contractor shall give Owner written notice describing the details of the Change in Law and any effects on Contractor’s performance of its obligations under this Agreement.

8.4.2 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.4 are satisfied, Contractor shall not be responsible or liable for or deemed in breach of the Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Key Milestone to the extent that such failure has been caused by one or more Changes in Law or Changes in Standard; provided that: (a) such suspension of

performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Change in Law; (b) Contractor provides timely notice of the Change in Law, and (c) Contractor provides all assistance reasonably requested by Owner, at Owner's cost, for the elimination or mitigation of the Change in Law.

8.4.3 Change Order Rights. If Contractor desires a Change Order for a Change in Law, Contractor shall comply with the notice requirements contained in Section 8.4.1. If Contractor does so, then Contractor shall be entitled to a Change Order to the extent so provided in Section 9.5.1(h). If Contractor fails to comply with such notice requirements, Contractor shall be deemed to have waived its right to receive a Change Order for the subject Change in Law, to the extent Owner has been prejudiced.

8.5 Weather Delay.

8.5.1 (a) The occurrence of a Weather Delay will be determined in increments of Half-Day Periods. A "Half-Day Period" means either (i) a period commencing at 7:00 AM Mountain Time and ending at 11:59 AM Mountain Time, or (ii) a period commencing at 12:00 PM Mountain Time and ending at 4:59 PM Mountain Time, or in the event an evening shift is planned and regularly scheduled, (iii) a period commencing at 5:00 PM Mountain Time and ending at 9:59 PM Mountain Time, or (iv) a period commencing at 10:00 PM Mountain Time and ending at 2:59 AM Mountain Time the following morning. The 7:00 AM Mountain Time, 12:00 PM Mountain Time, 5:00 PM Mountain Time, and 10:00 PM Mountain Time commencement times for a Half-Day Period are each considered to be "Measurement Times"; provided that the Parties may, from time to time, mutually agree upon alternative Measurement Times. At any Measurement Time, Contractor may examine the Wind Speed Data and the Wind Forecast Information, as regards a Project Site condition involving high wind speeds, or examine the Project Site conditions as regards (A) fog and visibility or (B) ice accumulation, and determine whether it believes a Weather Delay condition exists.

(b) If Contractor believes that a Weather Delay condition exists, Contractor will (without additional charge to Owner) use reasonable efforts to avoid and mitigate any delays to the Work due to such condition, including by re-sequencing activities (which re-sequencing may, in Contractor's commercially reasonable discretion, include night shifts) as is reasonably practical.

(c) Without limiting the foregoing, if a pattern of wind speeds at the Project Site that is in excess of the applicable maximum wind speed as set forth in clause (b)(i) of the definition of "Weather Delay" develops during certain periods of a day, Contractor shall adjust the scheduling of Crane Work Activity accordingly, exercising the judgment of a Prudent Professional. Failure to adjust Crane Work Activity scheduling in such manner shall negate Weather Delay claims for periods during which Crane Work Activity scheduling would have been changed or adapted by a Prudent Professional.

8.5.2 If Contractor desires to claim a Weather Delay, Contractor will give Owner's Project Manager verbal notice at the time of the decision to suspend Crane Work Activity as a result thereof, and Contractor shall thereafter include a report of such Weather Delay as part

of the Monthly Progress Report for the month in which such Weather Delay occurs. Such report shall include, applicable:

(a) the date(s) of the occurrence of the Weather Delay condition and, as with respect to a Weather Delay involving high winds, shall include the Wind Speed Data and Wind Forecast Information upon which such claim is based;

(b) to the extent that the Weather Delay was, per clause (b)(ii)(A) of the definition of Weather Delay, based upon the reasonable judgment of the Contractor and the Crane Subcontractor (which such judgment, as per such definition, must in both cases be based upon the standard of a Prudent Professional) that wind conditions at the Project Site exceeded the levels required for safe performance of the scheduled Crane Work Activity, a written statement from the Contractor and the Crane Subcontractor describing such wind conditions and explaining in reasonable detail how they resulted in unsafe conditions for the performance of the scheduled Crane Work Activity); and

(c) to the extent that the Weather Delay was, per clause (b)(ii)(B) or (C) of the definition of Weather Delay, based upon a condition of fog or ice, documentation of such conditions in substance reasonably acceptable to Owner.

If Contractor fails to provide such notices and evidence with respect to an alleged Weather Delay as part of the Monthly Progress Report for the month in which such Weather Delay allegedly occurred, or fails to comply with Section 8.5.1(b), Contractor shall not be entitled to schedule or cost relief or other rights under this Contract as with respect to such alleged Weather Delay conditions (as these rights will thereby be considered to have been waived).

8.6 No Effect on Obligation to Pay Delay Liquidated Damages. Adjustments to the Project Schedule (including the Key Milestones) may occur as a result of any of the events described in this Article VIII (*Force Majeure; Owner-Caused Delays; Turbine-Vendor-Caused Delays; Changes in Law; Changes in Standards; Weather Delays*) or any other event or circumstance for which Contractor is entitled to an increase in cost or change in Key Milestones pursuant to any specific provision in this Agreement. Although dates for performance may be adjusted as a result of such events, the obligation to pay Delay Liquidated Damages on the adjusted Key Milestones shall not be affected by any such adjustment of dates.

ARTICLE IX

CHANGES

9.1 Changes. Except to the extent provided in this Article IX, there shall be no change to the Work, the Contract Price or the Project Schedule unless provided in a written instrument signed by Owner and Contractor (a "Change Order") stating their mutual agreement upon all of the following: (a) a change in the Work, if any; (b) the amount of the adjustment in the Contract Price, if any; and/or (c) the extent of the adjustment in the Project Schedule, if any (any of the foregoing, a "Change").

9.2 Changes at Owner's Request. Owner may, from time to time order or approve by notification in writing to Contractor (a) Changes in all or a portion of the Work (including Changes deleting or adding turbine sites from or to the Project and thus reducing or increasing the Contract Price and shortening or lengthening the Project Schedule), and/or (b) acceleration of the Work to recover from delays caused by an Owner-Caused Delay, a Turbine-Vendor-Caused-Delay, a Weather Delay, a Force Majeure Event or suspension of the Work by Owner in accordance with Section 13.7. Contractor shall reasonably review and consider any request from Owner for such a Change and shall within seven (7) Business Days after receiving such request respond to Owner as follows. If Contractor believes that giving effect to any Change so requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Article VII or require a modification of any other provisions of the Agreement, its response to the Change request shall set forth such changes (including any amendments to the Agreement) that Contractor deems necessary as a result of the requested Change and its justification therefor. If and to the extent Contractor accepts the Changes requested by Owner (together with any amendments to the Agreement specified therein) it shall state that in its response. If and when the Parties agree upon Changes, the Parties shall set forth the agreed upon Changes and agreed upon amendments to the Agreement, if any, in a Change Order. Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Change Order, Contractor shall at Owner's direction proceed with any Change to the Work, and Contractor shall be paid for such Work in accordance with Contractor's Rate Schedule set forth in Exhibit U, except that Contractor's costs for materials and Subcontractors shall be paid at cost [REDACTED]. Upon execution of a Change Order or such direction from Owner, Contractor shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement.

9.3 No Unapproved Changes; No Suspension. Contractor shall not perform any Changes to the Work until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Change prior to such approval. Contractor shall not suspend, in whole or in part, performance of this Agreement during any Dispute over any Change Order unless directed to do so by Owner, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Change or disputed item) do so.

9.4 Changes Initiated by Contractor. Promptly after Contractor becomes aware of any circumstances that Contractor has reason to believe may necessitate a Change, Contractor will issue to Owner a "Change Order Request." All Change Order Requests shall include documentation sufficient to enable Owner to determine: (a) the factors necessitating the possibility of a Change; (b) the impact which the Change is likely to have on the Contract Price; (c) the impact which the Change is likely to have on the timely achievement of the activities set forth in the Project Schedule (including the Key Milestones); and (d) such other information which Owner may request in connection with such Change. Owner may, but except as provided in Section 9.5 below, shall not be obligated to, issue a Change Order pursuant to a Change Order Request.

9.5 Required Change Orders.

9.5.1 Contractor Right to Change Orders. Provided that Contractor has used all reasonable efforts to avoid and mitigate any potential delays to the Project Schedule and/or increased Direct Costs resulting from such events, Contractor will, to the extent described in Sections 9.5.2 and 9.5.3, be entitled to receive Change Orders as and for the events described in this Section 9.5.1 or as otherwise set forth in this Agreement.

(a) Change Order Due to Force Majeure Event. Subject to Section 9.5.1 and Section 8.1, if and to the extent that a Force Majeure Event causes Contractor to suffer a delay in its performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Section 9.5.1 and Section 8.1, in the event one or more Force Majeure Event cause delays in the Work, Owner will, via Change Order, increase the Contract Price. Without prejudice to Contractor's right to insurance proceeds under any Builder's Risk or Operational Policy, such Change Orders shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from any Force Majeure events, and Contractor will not be entitled to any additional payment, damages and/or costs or other compensation in connection with any such delays. Contractor and Owner agree that if insurance proceeds are received in connection with any Force Majeure event costs, such proceeds will be taken into account in any Change Order.

(b) Change Order Due to Owner Suspension. If Owner suspends the Work pursuant to the provisions of Section 13.7, then: (A) Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2; and (B) increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any increased costs and delays resulting from such suspension of Work by Owner, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays.

(c) Change Order Due to Owner-Caused Delay. Subject to Section 9.5.1 and Section 8.2, (i) if and to the extent that an Owner-Caused Delay causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Owner-Caused Delay increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Except as set forth in Section 13.8, such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Owner-Caused Delay, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(d) Change Order Due to Weather Delays. Subject to Section 9.5.1 and Section 8.5, (i) if a Weather Delay has occurred with respect to a Half-Day Period, and the aggregate total of Half-Day Periods of delay suffered by Contractor in the performance of the Work as a result of Weather Delays has exceeded a total of [REDACTED] Half-Day Periods (the "Total Periods"), Owner will issue a Change Order extending the Project Schedule by one half of one Day (i.e., for each Half-Day Period that is beyond the Total Periods), and (ii) if a Weather Delay causes Contractor to suffer a Half-Day Period of delay as per Section 8.5, and the aggregate total of Half-Day Periods of delay suffered by Contractor in the performance of the Work as a result of Weather Delays has exceeded the Total Periods, then Owner will, via a Change Order, increase the Contract

Price by (A) a flat amount in accordance with Exhibit U per such Half-Day Period (i.e., the Half-Day Period that is beyond the Total Periods), if the top/main crane was not utilized during such Half-Day Period as a result of such Weather Delay, and (B) a flat amount in accordance with Exhibit U per such Half-Day Period (i.e., the Half-Day Period that is beyond the Total Periods), if the mid/base crane was not utilized during such Half-Day Period as a result of such Weather Delay. The Change Order(s) described herein shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from excessive wind speeds (including wind gusts), fog or ice accumulation, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(e) Change Order Due to Turbine-Vendor-Caused-Delay. Subject to Section 9.5.1 and Section 8.3, (i) if and to the extent that a Turbine-Vendor-Caused-Delay causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2 and (ii) if and to the extent that such Turbine-Vendor-Caused-Delay increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Except as set forth in Section 13.8 such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from a Turbine-Vendor-Caused-Delay, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(f) Change Order Due to Unforeseen Subsurface Condition. Subject to Section 9.5.1 and Section 2.4.1(b), (i) if and to the extent that an Unforeseen Subsurface Condition causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Unforeseen Subsurface Condition increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Unforeseen Subsurface Condition, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(g) Change Order Due to Pre-Existing Hazardous Materials. Subject to Section 9.5.1, if and to the extent that Contractor discovers any Pre-Existing Hazardous Material, and, as required under Section 2.7, Contractor stops performance of the Work in that area, then, once such Work is re-commenced, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Section 9.5.1, if and to the extent that such cessation of Work increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from any such cessation of the Work, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(h) Change Order Due to Change in Law. Subject to Section 9.5.1 and Section 8.4, (i) if and to the extent that a Change in Law causes Contractor to suffer a delay in its performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that a Change in Law increases

Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from any such Change in Law, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

9.5.2 Changes Involving Schedule Extensions. To the extent that Contractor reasonably demonstrates that an event necessitating a Change as described in Section 9.5.1 will delay Contractor in performing the Work despite Contractor's use of reasonable efforts to mitigate and avoid any such delay, Owner shall cause a Change Order to be issued to extend the dates in the Project Schedule on an equitable basis as determined by the facts and circumstances surrounding such event and the effect on timing of the Work, including the time of year, the stage of the Work and the duration of the event, to enable Contractor to remedy the effect on Contractor's ability to perform the Work including achievement of the applicable Key Milestone(s) demonstrated by Contractor as being required solely as a result of the event as described in Section 9.5.1 necessitating the Change. Contractor's demonstration of the impact on the progress of the Work must be made on a basis that analyzes the actual impacts of the given event on the then-current schedule for completion of the Work, utilizing Primavera Project Planner for Windows, and providing Owner with an electronic copy of a "Detailed Float Analysis" that shows the then-current progress of the Work and the projected impact the relevant Change will have upon the same. An activity will be designated as "critical path" when the scheduled float for that activity drops below zero (0) days. In no event will Contractor be entitled to an extension of time under this Section 9.5.2 to the proportionate extent that the performance of the Work for which the extension is sought would have been suspended, delayed or interrupted by the concurrent fault, actions or omissions of Contractor.

9.5.3 Changes to the Contract Price.

9.5.3.1 Except as set forth in 9.5.3.2 with respect to any Change Order required to be issued to increase the Contract Price as a result of an event described in Section 9.5.1, unless the Parties agree otherwise in writing, such Change Order will, on a retrospective basis, increase the Contract Price by an amount equal to the Direct Costs incurred by Contractor solely in connection with such event, plus a mark-up of [REDACTED].

9.5.3.2 In no event will Contractor be entitled to coverage of Direct Costs hereunder to the proportionate extent that such costs would have occurred notwithstanding such event, due to the concurrent fault, actions or omissions of Contractor or its Subcontractors.

9.5.3.3 For purposes hereof, "Direct Costs" shall mean only the actual costs that are incurred by Contractor as a result of the event giving rise to the Change Order for the following items: (a) compensation for Labor utilized and in the direct employ of Contractor at the Facility Site, at the rates as set forth in Exhibit U; (b) cost of materials and permanent equipment; (c) payments properly made by Contractor to Subcontractors; (d) rental charges of necessary machinery and equipment (but excluding hand tools) used at the Project Site; (e) Permit fees; (f) compensation of engineers or other design

professionals employed directly by Contractor; (g) reasonable costs of mobilization and/or demobilization; (h) other reasonable and necessary cost incurred in and to the extent approved in advance in writing by Owner, which approval shall not be unreasonably withheld, and (i) insurance. Notwithstanding the foregoing, “Direct Costs” shall not include (i) salaries or other compensation (including costs of contributions, assessments, fringe benefits or taxes based on salaries or compensation) of Contractor’s Personnel at Contractor’s principal office and branch offices (except as provided in the previous sentence); (ii) expenses of Contractor’s principal and branch offices; (iii) Contractor’s profit, overhead or general expenses of any kind; (iv) any replacement, repair or other costs or liabilities arising from any loss of or damage to any equipment, tools or other property owned or used by Contractor or its Subcontractors; (v) costs to correct or re-perform any components of such Work as a result of the acts or omissions of Contractor or its Personnel; (vi) any fines or penalties assessed against Contractor or its Personnel in connection with such Work that were assessed due to the fault of Contractor or its Personnel; or (vii) any costs or expenses other than those specifically set forth above as “Direct Costs.”

9.5.3.4 As with respect to any Change Order that increases or decreases the Contract Price, the payment schedule for the increased or decreased amount shall be set forth in the Change Order, as agreed to by the Parties.

9.5.4 Taxes. The Parties acknowledge that the provisions of Section 4.2 will apply to any additional Work covered by any Change Order.

9.5.5 Offsets. If Owner so requests, Contractor will in good faith work with Owner to enable a reduction in any required schedule extension hereunder via a Change Order directing and paying for achievable acceleration.

ARTICLE X

INDEMNIFICATION

10.1 Indemnities.

10.1.1 Contractor’s General Indemnity. Contractor shall defend, indemnify and hold harmless, Owner, and each of their Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (each of the foregoing, an “Owner Indemnified Party”) from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney’s fees, incurred by or asserted against any Owner Indemnified Party, other than to the extent caused by or arising from the negligence, fraud, willful misconduct or intentional acts or omissions of such indemnified party, to the extent attributable to Contractor or any Affiliate of Contractor or of its Subcontractors, and as a result of any and all of the following:

(a) any third party (excluding Affiliates of Owner or other related entities of Owner, including Other Owner Contractors) bodily injury, death or damage to property to the extent caused by the negligence or willful misconduct, of Contractor or its Affiliate, any Subcontractor, or anyone employed by any of them, or anyone for whose acts such Person is liable;

provided, however that with regard to any damage to the Project, to the extent that Owner is compensated for such damage from its Builder's Risk Policy or Operational Policy, as applicable, Contractor's indemnification liability hereunder to Owner for such damages shall only apply to cover the deductible amount thereon;

(b) Reserved;

(c) claims by any Government Authority for any Contractor's Taxes;

(d) any pollution or contamination that may originate from sources in Contractor's or its Subcontractors' possession, use and control to the extent caused by the negligence of Contractor, any of its Subcontractors or anyone employed by any of them, or anyone for whose acts such Person is liable (including as a result of the negligent release of Pre-Existing Hazardous Materials, the negligent exacerbation of Pre-Existing Hazardous Materials or negligent rendering of removal or remediation of Pre-Existing Hazardous Material more costly), including from Hazardous Material, industrial hazards, bilge and garbage;

(e) any Lien on the Work, Equipment, the Project, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) to the extent Owner has paid all amounts due pursuant to the Agreement, created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor or other Person providing Labor or materials in connection with the Work;

(f) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Contractor's performance (or that of its Affiliates, Subcontractors) under the Agreement, (ii) the design, construction, use, operation or ownership of the Work (including the Equipment, Contractor Deliverables or any portion of any of them), or (iii) Owner's use of any license granted hereunder; provided, however that Contractor's defense and indemnity obligations under this section do not apply to the extent any claim arises from (a) Contractor's compliance with designs or specifications provided by Owner; (b) Contractor's incorporation into the Work of any materials, equipment, or components provided by or on behalf of Owner (including Owner Furnished Equipment); (c) modifications to the Work made by anyone other than Contractor; or (d) the combination of the Work with any equipment or materials not supplied or specified by Contractor. Without limiting the provisions of Section 7.4, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall, in addition to its indemnification obligations hereunder, promptly use commercially reasonable efforts to have such injunction removed at no cost to Owner. Contractor shall timely notify Owner in writing of any claims which Contractor may receive alleging infringement of patents or other proprietary rights that may affect Contractor's performance of the Work;

(g) any cancellation or invalidation of any insurance policy or part thereof procured under Article XII as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor (but only to the extent Contractor knows the requirements and they are attached hereto);

(h) any failure of Contractor to comply with, or failure of the Work to comply with, Applicable Laws (excluding the Prevailing Wage and Apprenticeship Requirements and Domestic Content Requirements and the applicable requirements of the Code), the conditions or provisions of Applicable Permits, Applicable Standards, any applicable Real Property Requirements; or

(i) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors, except to the extent caused by the negligent acts or omissions of Owner, Turbine Vendor or Other Owner Contractors.

10.1.2 Owner's Indemnity. Owner shall defend, indemnify and hold harmless, Contractor and its subsidiaries and Affiliates and each of their directors, officers, agents, employees, successors and assigns (each a "Contractor Indemnified Party") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any Contractor Indemnified Party, other than to the extent caused by or arising from the negligence, fraud, willful misconduct or intentional acts or omissions of such indemnified party, to the extent attributable to Owner, its Affiliates, Other Owner Contractors, Turbine Vendor, or anyone employed by any of them or anyone for whose act such party is liable, and as a result of any and all of the following:

(a) any as a result of the injury or death of any Person, to the extent caused by the negligence of Owner, its Affiliates, Other Owner Contractor's, Turbine Vendor, or anyone employed by any of them or anyone for whose acts such Person is liable;

(b) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right licensed or granted to Owner hereunder;

(c) as a result of any loss of or damage to property, but only to the extent caused by the negligence of Owner, its Affiliates, Other Owner Contractors, Turbine Vendor, or anyone employed by any of them or anyone for whose acts such Person is liable;

(d) any cancellation or invalidation of any insurance policy or part thereof procured by Owner as a result of Owner's failure to comply with any of the requirements set forth in such policy or any other act by Owner;

(e) any failure of Owner to comply with Applicable Laws;

(f) any claims with respect to employer's liability or worker's compensation filed by any employee of Owner, its Affiliates, Other Owner Contractors, or Turbine Vendor, except to the extent caused by the negligent acts or omissions of Contractors or its Affiliates;

(g) any claims by any Government Authority for any Owner Taxes or for any claims arising from following Owner's direction to seek exemptions or rebates for certain taxes as described in Section 4.2.1(b); or

(h) as a result of any pollution, contamination, encounter, or release of a Pre-Existing Hazardous Material, except to the extent Contractor has an indemnification obligation with respect thereto pursuant to Section 10.1.1(d).

10.2 Indemnification Procedure.

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

10.2.2 Conduct of Proceedings. Each Party and each other indemnitee shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys’ fees and expert witness fees) shall be subject to the said indemnity; *provided* that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person, and such Indemnifying Party shall conduct with due diligence and in good faith the defense of any claim against such party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Person shall cooperate with the Indemnifying Party in such defense. Subject to the foregoing, the Indemnifying Party shall have charge and direction of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party’s right to control the defense or settlement thereof, the Indemnified Person may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (a) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Person in the conduct of the defense of such claim or (b) the Indemnifying Party did not employ counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person reasonably concludes and specifically notifies the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party. In each of such cases the Indemnifying Party shall not have the right to control the defense or settlement of such claim and the reasonable fees and expenses of counsel engaged by the Indemnified Person shall be at the expense of the Indemnifying Party. The amount of any indemnity payment made under Section 10.1 shall be reduced by the amount of all insurance proceeds received by the Indemnified Person in respect of the event giving rise to the right of indemnity under Section 10.1.

10.3 Contributory Negligence. If the joint or concurrent fault or negligence of the Parties gives rise to damages for which the Parties are entitled to indemnification under this Article,

then such damages shall be allocated between the Parties in proportion to their respective degrees of fault or negligence contributing to such damages.

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

ARTICLE XI

RESERVED

ARTICLE XII

INSURANCE

12.1 Contractor's Insurance. Prior to the date on which Contractor or its Personnel is first present on the Project Site, Contractor shall procure, and shall cause its Major Subcontractors performing Work at the Project Site to procure, and thereafter shall maintain the following insurance until (a) Substantial Completion as to Major Subcontractors and (b) the expiration of the Warranty Period as to Contractor's Warranty obligations hereunder. All such insurance shall be with insurance carriers that maintain a A.M. Best's Key Rating Guide rating of at least "A-", or such carriers that are otherwise reasonably acceptable to Owner, and are eligible to do business in the United States. Notwithstanding any provision herein to the contrary, the coverage limitations for the Subcontractor performing the work to install the Transmission Line shall be the same as the coverage limitations required of Contractor hereunder, Contractor will use commercially reasonable efforts to obtain coverage limits from its other Major Subcontractors commensurate with the scope of work of such Major Subcontractor on the Project.

12.1.1 Worker's Compensation. Contractor shall provide and maintain worker's compensation insurance as required by Applicable Laws where the Work is performed and employer's liability insurance with a limit of liability of [REDACTED] for each accident. Contractor shall cause its Major Subcontractors performing Work at the Project Site to obtain and maintain such worker's compensation insurance and employer's liability insurance with a limit of liability of [REDACTED] for each accident.

12.1.2 Commercial General Liability. Contractor shall provide and maintain commercial general liability insurance with [REDACTED] per occurrence limit for bodily injury and/or property damage for each occurrence, including coverage for premises and construction operations; independent contractors; products and completed operations; explosion, collapse and underground hazards; broad form contractual liability; personal injury; non-owned watercraft, if applicable; thirty party over action; additional insured status endorsement; action over coverage, and non-owned aircraft, if applicable.

12.1.3 Automobile Liability. Contractor shall provide and maintain, and shall cause its Major Subcontractors to provide and maintain, business auto liability insurance covering owned, non-owned and hired automobiles in the amount of [REDACTED] combined single limit for bodily injury and property damage for each accident.

12.1.4 Excess Liability. Contractor shall provide and maintain excess liability insurance in excess of the required employer's liability, commercial general liability, and business auto liability, each to a limit of [REDACTED] per occurrence limit for bodily injury and property damage. Contractor shall use commercially reasonable efforts to cause its Major Subcontractors performing Work at the Project Site to obtain and maintain excess liability insurance with limits commensurate with the scope of work of such Major Subcontractor on the Project.

12.1.5 Pollution Liability. Contractors shall provide and maintain pollution liability insurance covering pollutants that may be uncovered during the performance of the Work or introduced to the Project Site by Contractor's or Subcontractors' equipment used in the performance of the Work, and providing for a combined single limit of [REDACTED] per occurrence and in the aggregate for personal injury, death or property damage.

12.1.6 All Risk Equipment Insurance. At Contractor's option, Contractor shall provide and maintain, and cause its Major Subcontractors performing Work at the Project Site to obtain and maintain equipment insurance covering all equipment owned by Contractor and such Major Subcontractor, as applicable, and/or provided for use at the Job Site by Contractor or such Major Subcontractor, as applicable in reasonable amounts to insure such equipment against all loss or damage, from whatever cause arising.

12.1.7 Professional Liability Insurance. Contractor shall provide and maintain professional liability insurance on a claims-made basis including contractual liability with limits of [REDACTED] each claim and in the aggregate, including defense costs, for liability arising out of any negligent act, error, mistake or omission arising out of or resulting from Contractor's professional activities (including engineering, procurement, construction, design, commissioning, start-up, testing services, and construction or operation management), such coverage to remain in effect for four (4) years following the expiration of the latest to expire Warranty Period. Contractor shall cause the electrical, civil and foundation engineers of record to obtain and maintain professional liability insurance with a limit of [REDACTED] or such lower limit as Owner may approve or Contractor shall cause its professional liability insurance provider to cover such Subcontractor's engineering work. All other Major Subcontractors providing engineering work shall be required to procure and maintain professional liability insurance with limits commensurate with the scope of services such Major Subcontractor provides on the Project.

12.1.8 Reserved.

12.1.9 Requirements of Contractor's Insurance. Except in the case of workers' compensation insurance, professional liability insurance, property insurance and other statutory insurance where it would be inappropriate, Contractor shall include Owner, any owner of the Project Site and any other Person designated by Owner (including their respective officers, directors and employees) as additional insureds for liabilities assumed by Contractor under the indemnification provisions of this Agreement (without limiting the scope of Contractor's indemnity obligations required by the terms of this Agreement). With the exception of workers' compensation and professional liability insurance, all policies of insurance required to be maintained by Contractor hereunder shall (i) be endorsed to specify that they are primary to and

not excess to or on a contributing basis with any insurance or self-insurance maintained by Owner, Owner's Affiliates, any owner of the Project Site (including their respective officers, directors and employees) or any Subcontractors in respect of losses arising out of or in connection with the Work; (ii) provide a separation of insureds clause; (iii) provide for waivers of subrogation (or the equivalent thereof) in favor of Owner, any owner of the Project Site, and such other Persons (including their respective officers, directors and employees) as may be requested by Owner, from its Subcontractors and their respective agents, officers and employees; (iv) provide that the applicable insurer shall endeavor to provide Owner and any additional insured with thirty (30) days' prior written notice of any non-renewals or cancellations, and that no such cancellation, or non-renewal shall be effective without such notice; (v) provide that Owner shall have the right, but not any obligation, to pay premiums if Contractor shall fail to do so; and (vi) waive any right of the insurers to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of Owner. Within thirty (30) days after any renewal or any notice of termination, cancellation, material change, or expiration or policy of insurance required under this Agreement, Contractor will deliver to Owner a certificate of insurance with respect to any replacement policy.

12.2 Deductibles. Contractor shall be, and shall use commercially reasonable efforts to cause each Subcontractor to be, responsible for the payment of all deductible amounts with respect to the insurance required to be maintained by it under this Article XII except to the extent the claim is caused by an Owner Indemnified Party. Contractor may, at its option, obtain a policy to cover the deductibles under any of Owner's policies in which Contractor is an additional insured, provided, that such policy is endorsed to specify that it is primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by Owner or its Affiliates under Section 12.3 or otherwise, or any Subcontractors.

12.3 Builders Risk Insurance.

(a) Prior to Contractor's mobilization to the Project Site and before any equipment or materials are delivered to the Project Site, until Project Substantial Completion, Owner shall obtain and maintain in force an All Risk Installation and Builder's Risk Insurance policy (the "Builder's Risk Policy") in the form and with coverages described in the Exhibit W hereto. Such policy will be converted to a special form policy or incorporated into Owner's all risk property insurance (the "Operational Policy") upon Project Substantial Completion. The Builder's Risk Policy or the Operational Policy, as applicable, shall be in an amount at least equal to the full replacement loss value of the Project. The Builder's Risk Policy shall include coverage extensions for extra expense/increased cost of construction, expediting expense demolition cost, debris removal, and soft costs. The Builder's Risk Policy shall not include limitations or exclusion specific to the materials, equipment or technology that are part of the Work, and Owner will pay for any losses subject to such limitations or exclusions. Coverage shall include faulty workmanship coverage at least as broad as LEG2. The Builder's Risk Policy shall be the primary coverage against all losses, except as set forth in Section 12.2 above.

(b) Owner will provide a copy of the Builder's Risk Policy and the major terms thereof (including deductibles and policy limits) to Contractor concurrently with delivery of the Notice to Proceed.

(c) The Builder's Risk Policy or the Operational Policy, as applicable, may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines, provided that the per occurrence deductible shall not exceed the amounts which are available to Owner on a commercially reasonable basis, as determined by Owner in its sole discretion. Owner shall be responsible for losses that exceed any policy sublimits. Owner and Contractor hereby waive all rights of recovery against each other for damages caused by fire and/or other perils to the extent covered by the Builder's Risk Policy or the Operational Policy, as applicable.

(d) Owner shall cause the underwriter of the Builder's Risk Policy or the Operational Policy, as applicable, to waive all rights of subrogation against Contractor, Subcontractors, its vendors and their respective insurers for damages.

(e) Contractor shall be responsible for the payment of all deductibles up to [REDACTED] per event for claims under the Builder's Risk Policy or the Operational Policy, as applicable, for damages arising from Contractor's or its Subcontractors' negligence or willful misconduct, and Owner shall be responsible for payment of (i) the deductible in all other circumstances, and (ii) any cost of restoration of the Work that is in excess of proceeds available under the Builder's Risk Policy or the Operational Policy, as applicable; provided, however, that in all events Contractor shall be fully liable for all costs arising from losses due to its willful misconduct.

(f) Contractor shall be additional named insured, and all Subcontractors shall be included as additional insureds under the Builder's Risk Policy, such that Contractor and its Subcontractors may make claims under the subject policies for losses relating to the Infrastructure Facilities. Contractor and its Subcontractors shall be permitted to recover under the Operational Policy during the Warranty Period only for events directly related to Warranty repairs, provided Contractor shall submit all claims to Owner for adjustment and Owner shall diligently proceed with the claims adjustment process for Contractor's account. Owner shall provide Contractor with copies of all documents relating to the claims adjustment and shall permit Contractor to participate in the claims adjustment process.

12.4 Certificates and Cancellations. Both Parties shall, within ten (10) days following the Effective Date, deliver to the other Party certificates of insurance evidencing the coverages specified in this Article XII. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance, or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of this Agreement including, without exception, the indemnity obligations. Failure to comply with the insurance requirements set forth in this Article XII shall in no way waive its obligations or liabilities under this Agreement or the rights of either Party hereunder against the other Party.

12.5 Right to Insure. Should either Party fail to provide or maintain any of the insurance coverage required under this Article XII, the non-defaulting Party shall have the right to provide or maintain such coverage at the defaulting Party's expense, either by direct charge or set-off.

12.6 Self-Insurance or Self-Insured Retentions. Any self-insurance or self-insured retention must be declared by Contractor (and by any Subcontractor with self-insurance or self-insured retention). Any such self-insurance, retention or deductible shall be Contractor's (or such Subcontractor's) sole responsibility.

12.7 Disclosure. Contractor shall use commercially reasonable efforts to disclose all material information within its knowledge on risks covered by insurances to be procured by Owner pursuant to Section 12.3. Contractor shall make reasonable efforts to notify Owner as soon as Contractor becomes aware of any change to such information or further information material to such risks. Contractor shall implement appropriate internal reporting procedures to ensure full disclosure.

12.8 Provision of Information. Contractor shall provide Owner with (a) any information and/or assistance requested by Owner in connection with Owner's obtaining, maintaining or keeping in full force or effect the insurance coverage procured by Owner and (b) assistance and information reasonably required to assist Owner with the collection of any insurance claims and proceeds, including the insurances named or referenced in Section 12.3. Contractor shall cause any information concerning any reduction, change or cancellation of coverage to be obtained and maintained pursuant to this Article XII to be promptly furnished to Owner.

ARTICLE XIII

DEFAULT, TERMINATION AND SUSPENSION

13.1 Contractor Default.

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

(a) any of the following occurs (i) Contractor consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing;

(b) Reserved:

(c) Contractor fails to comply with any material provision of any Applicable Law, Applicable Permit, or applicable Real Property Requirement, the effects of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner, provided, if such failure to comply is not capable of being cured within ten (10) Business Days, Contractor shall not be in default so long as Contractor commences to cure within ten (10) Business Days and thereafter diligently proceeds to cure such breach in a manner reasonable satisfactory to Owner;

(d) either of the following occurs: (i) Contractor fails to make payments when due to Subcontractor for Labor, materials or equipment beyond applicable notice and cure periods, unless such payments are reasonably disputed by Contractor and any Liens relating to such disputed payments are satisfied or bonded off by Contractor; or (ii) Contractor suspends performance of a material portion of the Work resulting in the Work not progressing substantially in accordance with the Project Schedule (other than as permitted under Article VIII or pursuant to a Change Order); and in each instance as described in each of sub-clauses (i) and (ii) of this Section 13.1.1(d), the impacts of such condition remain unremedied for ten (10) Business Days following written notice thereof to Contractor;

(e) any material breach by Contractor of any representation or warranty contained in Article XVI, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(f) Reserved;

(g) Contractor reaches the limitations of Delay Liquidated Damages set forth in Section 6.11.6 before Contractor achieves all of the Key Milestones;

(h) the dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under this Agreement;

(i) the transfer by Contractor of (i) all or a substantial portion of the rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor, except where the transferee is an Affiliate of Contractor that immediately upon such transfer expressly assumes the transferred obligations and such transfer does not materially, adversely affect the ability of Contractor or the transferee, as applicable, to perform its obligations under this Agreement;

(j) any Abandonment of the Work by Contractor, where "Abandonment" for the purposes of this Section 13.1.1 shall mean that Contractor has removed its management and supervisory personnel at the Job Site such that Contractor is no longer capable of managing and supervising the achievement of the Key Milestones in accordance with the Project Schedules;

(k) any failure by Contractor to maintain the insurance coverages required of it in accordance with Article XII, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(l) Contractor fails to provide a Parent Guarantee described in Section 2.12 by the date described therein;

(m) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under the Agreement (other than those breaches specified in this Section 13.1.1 (a) through (l) above) and (i) such breach is not cured by Contractor within thirty (30) days after notice thereof from Owner, or (ii) if such breach is not capable of being cured within such thirty (30) day period, Contractor (A) fails to commence to cure such breach within such thirty (30) day period, or (B) fails to thereafter diligently proceed to cure such breach in a manner reasonably satisfactory to Owner in its sole discretion, or (C) fails to cure such breach within sixty (60) days after notice thereof from Owner.

13.1.2 Termination for Cause.

(a) Upon the occurrence and during the continuation of any Contractor Event of Default hereunder, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (a "Termination for Cause"). In the event of a termination by Owner under this Section, Owner shall have the right to employ any other Person to complete the Work by whatever method that Owner may deem necessary. In addition, Owner may make such expenditures as in Owner's sole but reasonable judgment will accomplish the timely completion of the Work in accordance with the terms hereof.

(b) Owner shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement contractors, determine the total cost to Owner for completing the Work in accordance with the Scope of Work, Exhibit B and the other requirements of this Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In contracting with such replacement contractors, Owner shall, to the extent practicable, cause the Work to be completed in accordance with the Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the Contract Price is less than the sum of (i) all costs and expenses incurred by Owner to engage a substitute contractor to complete (or cure deficiencies in) the Work, including reasonable attorney's fees, engineering and other professional expenses, (ii) all other reasonable and necessary costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of this Agreement and the termination of the of the Agreement as a result thereof, and (iii) all amounts previously paid to Contractor pursuant to this Agreement, Contractor shall pay to Owner the amount of such difference. Any amount owed by Owner to Contractor for the completion of the Work shall be retained by Owner until after completion of the Work and applied by Owner to pay any amounts and damages owed by Contractor pursuant to this Section 13.1.2 or otherwise. Any excess of the amount retained over the amount due under this Section 13.1.2 shall be remitted to Contractor within sixty (60) days after the Project is completed to a level equivalent to Final Completion.

13.1.3 Other Owner Remedies. Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies, (a) seek performance by any guarantor of Contractor's obligations hereunder, (b) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (c) make such payments or perform such obligations as are required to cure such Contractor Event of Default, provided that Owner shall be under no obligation to cure any such Contractor Event of Default, or (d) otherwise seek damages, including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement.

13.2 Owner Default. If (a) Owner's failure to pay to Contractor any required payment that is not in dispute when due, and such failure continues for ten (10) Business Days after written notice of failure has been received by Owner from Contractor, such failure shall constitute an event of default by Owner hereunder; or (b)(i) Owner files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (ii) a substantial part of Owner's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iii) Owner is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing (an "Owner Event of Default"). Upon any Owner Event of Default, Contractor may terminate this Agreement thirty (30) Days after giving written notice thereof to Owner so long as the amount owed by Owner (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such thirty (30)-day period (a "Contractor Termination for Cause"). In the event of a Contractor Termination for Cause, Contractor shall be entitled to recover an amount equal to the Termination Payment. Such termination right and receipt of such Termination Payment shall be Contractor's sole and exclusive remedy as regards the Owner Event of Default. Contractor shall use its reasonable and diligent efforts to mitigate any such costs. Contractor shall continue performance of the Work during any dispute over payment, so long as Owner continues to pay all undisputed amounts. Other than as stated above, and as provided in Section 13.4 Contractor will have no right to terminate this Agreement, and Contractor acknowledges that its sole and exclusive remedies for any failure of Owner to comply with its obligations under this Agreement (other than nonpayment as described above) are limited to receipt of a Change Order as described in Section 9.5.

13.2.1 Upon any Owner Event of Default, Contractor may, at its sole option and without prejudice to any other rights that it has under this Agreement, suspend the Work until Contractor receives all undisputed amounts due hereunder; *provided*, that Contractor shall recommence performance of the Work as soon as reasonably practicable upon Owner's cure of the default and issuance of a Change Order. In such event, the same shall constitute an Owner-Caused

Delay and Contractor shall be entitled to a Change Order equitably adjusting the cost and time of performance.

13.3 Termination Without Cause. Owner may for its convenience terminate this Agreement after giving notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment under Section 13.5. As a condition to any termination by Owner pursuant to this Section 13.3 (a “Termination Without Cause”), Owner must provide written notice to Contractor of the Termination Without Cause at least ten (10) Business Days prior to the effective date of such termination. If, at the date of termination under this Section 13.3, Contractor has performed services in accordance with the Agreement or purchased, prepared or fabricated off the Project Site any materials or Equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or Equipment delivered to the Project Site or to such other place as Owner shall reasonably direct.

13.4 Termination for Prolonged Force Majeure. In the event that a Force Majeure restricts access to the site or prevents performance of the Work for a period in excess of one hundred and eighty (180) cumulative Days, then Owner and Contractor shall have the right to terminate this Agreement for convenience by delivering written notice thereof to the other Party.

13.5 Termination Payment.

13.5.1 Termination Payments Due to Contractor. Upon a termination of this Agreement pursuant to Section 13.2 or Section 13.3 and subject to Owner’s rights under Sections 4.6, Contractor shall be entitled to a payment (the “Termination Payment”), which shall equal the sum of the following, without duplication: (a) that portion of the Contract Price that is applicable to Work performed up to the date of termination that has not previously been paid to Contractor (as determined below); (b) the costs and expenses reasonably incurred by Contractor in withdrawing Contractor’s Equipment and personnel from the Project Site and in otherwise demobilizing plus [REDACTED] of such expenses; and (c) the costs and expenses reasonably incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (including but not limited to demobilization) plus [REDACTED] of such expenses, except to the extent Owner has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Owner, subject to Owner’s assumption of same and, if required, Owner’s adequate assurance to such Subcontractors regarding Owner’s ability to pay. The Termination Payment shall not include any costs incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable, diligent efforts to mitigate the costs associated with termination of this Agreement, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement.

13.5.2 Payment of Termination Payment. Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documentation of any fees or expenses claimed by Contractor pursuant to Section 13.5.1. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within thirty (30) days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such thirty (30) day period; provided, that payments for termination under Section 13.3 shall be due Contractor within thirty (30) days

after receipt of a substantiated invoice and Owner's receipt of any and all Equipment and Work under Sections 13.3 and 13.6. As a condition precedent to receiving any Termination Payment, Contractor shall comply with Section 13.6.1, 13.6.2(a), and 13.6.2(c) in their entirety.

13.5.3 Termination Payment Contractor's Sole Remedy. Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement under Section 13.2 or Section 13.3, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of this Agreement pursuant to Section 13.2 or Section 13.3, and Owner and Contractor agree that the calculation of the Termination Payment is reasonable.

13.6 Actions Required Following Termination.

13.6.1 Discontinuation of Work. Upon termination of this Agreement, Contractor immediately shall discontinue the Work, and remove from the Project Site its personnel, all Contractor's Equipment, waste, rubbish and Hazardous Material brought onto the Project Site by Contractor or its Subcontractors. Contractor immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Site, stored off-site, or in transit.

13.6.2 Cancellation and Transfer of Subcontracts and Other Rights.

(a) If requested by Owner in the event of termination of this Agreement, Contractor will make every reasonable effort to cancel existing contracts with Subcontractors. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor (subject to Section 13.5, in the event of a termination under Section 13.3).

(b) Contractor shall also, upon request by Owner in the event of termination of this Agreement and upon payment made to Contractor as required herein, to the extent assignable, (i) irrevocably assign and deliver to Owner any and all Subcontracts, purchase orders, and warranties made by Contractor in performance of the Work (but in no event shall Owner be liable for any action or default of Contractor occurring prior to such delivery and assignment), (ii) provide to Owner without charge a license to use all rights to patented copyrighted, licensed or proprietary materials of Contractor and Subcontractors in connection with the Work, except as otherwise restricted herein, and (iii) deliver to Owner originals of all Drawings, to the extent available, Contractor Deliverables in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement executed by Owner), all other materials relating to the Work, and all papers and documents relating to Applicable Permits, orders placed, bills and invoices, and Lien releases. To the extent Contractor has been paid as required, all deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner.

(c) Except as provided herein, no action taken by Owner or Contractor after the termination of this Agreement shall prejudice any other rights or remedies of Owner or

Contractor provided by Applicable Laws, the Agreement or otherwise upon such termination. In addition, Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Project Site.

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

13.7 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under the Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (d) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (e) take any other reasonable steps to minimize costs and expenses associated with such suspension. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts. After the conclusion of any suspension hereunder, Contractor will be entitled to a Change Order to the extent described in Section 9.5.1(b). If a suspension of Work continues for more than one (1) year, then Contractor may upon thirty (30) days' notice to Owner terminate this Agreement, which termination shall be deemed a Termination Without Cause.

13.8 Extended Delays Resulting from Owner-Caused Delays and Turbine-Vendor-Caused-Delays. If Owner-Caused Delays and Turbine-Vendor-Caused-Delays separately or together result in a suspension of Work for more than one (1) year, then Contractor may upon thirty (30) days' notice to Owner terminate this Agreement, which termination shall be deemed a Termination Without Cause.

ARTICLE XIV

TITLE AND RISK OF LOSS

14.1 Title to Infrastructure Facilities and the Work. Contractor represents that legal title to and ownership of the Work (including all Equipment) shall pass to Owner, free and clear of any and all Liens upon payment to Contractor of the portion of the Contract Price then actually due to Contractor in connection with the Request For Payment as provided in the Agreement. Notwithstanding anything to the contrary, the costs of unloading and transporting to the Project Site are included in the Contract Price.

14.2 Title to Contractor Deliverables. Contractor grants to Owner an irrevocable, royalty free, non-exclusive license to use and reproduce such Contractor Deliverables, specifications and other design documentation provided by Contractor for the purpose of completing, repairing, operating, maintaining, rebuilding and expanding the Project. Owner shall have the right to assign the benefit of such license to a purchaser in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 14.2. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Project.

14.3 Risk of Loss.

(a) After recovery of all available insurance proceeds under the Builder's Risk Policy, Owner shall bear the risk of loss to the WTGs, except to the extent of damage resulting from the negligent actions or omissions of Contractor or its Personnel, in which case Contractor shall bear such risk to the extent there is no recovery under the Builder's Risk Policy or Operational Policy with respect to such loss, provided that, in such events, Contractor shall be responsible for the deductible and any uninsured amounts under the Builder's Risk Policy.

(b) Notwithstanding passage of title as provided in Section 14.1, from the Effective Date until the Project Substantial Completion Date, Contractor hereby assumes the risk of loss for the Work, including: (i) all Work completed on or off the Project Site and (ii) all Work in progress; provided, however, that Owner's Builder's Risk Policy and/or Operational Policy shall continue to provide coverage and be applicable for covered losses, including as a result of Force Majeure Event, regardless of whether Contractor has assumed risk of loss. If any loss, damage, theft or destruction occurs to the Work or other items, on or off the Project Site, for which Contractor has so assumed the risk of loss hereunder, Contractor shall, at the option of Owner and at Contractor's cost, promptly repair or replace the property affected thereby. In such event Contractor shall have access to all available insurance coverage including Owner's Builder's Risk Policy and Operational Coverage. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor's Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Project Substantial Completion Date, provided, however, Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Contractor's or its Personnel's negligent acts or omissions, and/or failure to comply with the requirements of the Agreement.

ARTICLE XV

DISPUTE RESOLUTION

15.1 Senior Representatives' Discussion. In the event of any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the alleged breach, termination, or invalidity hereof (“Dispute”), within two (2) Business Days following the delivered date of a written request by either Party, (i) each Party shall appoint a representative (individually, a “Party Representative”, together, the “Parties' Representatives”), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives cannot resolve the Dispute within three (3) Business Days after commencement of negotiations, within ten (10) days following any request by either Party at any time thereafter, each Party Representative (a) shall independently prepare a written summary of the Dispute describing the issues and claims, (b) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (c) shall submit a copy of both summaries to a senior officer of the Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute in accordance with this Section 15.1 within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, the Parties may submit their dispute to litigation as set forth in this Article XV.

15.2 Venue. Any legal action or proceeding with respect to this Agreement shall be brought in the United States District Court for the District of Montana or, if such court lacks jurisdiction, in the district court of the State of Montana located in Yellowstone County. Each of the Parties hereby accepts and consents to the jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Parties irrevocably waives any objection which it may now or hereafter have to the laying of venue of any actions or proceedings arising out of or in connection with this Agreement in the aforesaid courts and shall not plead or claim that any such court constitutes an inconvenient forum.

15.3 Continued Performance. This Agreement and the Parties' rights and obligations under it shall remain in full force and effect pending the outcome of any Dispute resolution procedure invoked under this Article XV, except to the extent this Agreement is terminated but subject to the survival of provisions as set forth herein. The Parties shall, therefore, continue to perform their obligations under this Agreement notwithstanding the pendency of any Dispute.

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

15.5 Reserved.

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

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

ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

16.1 **Contractor Representations.** Contractor represents and warrants the following:

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

16.1.2 **No Violation of Law; Litigation.** It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Government Authority which violations, individually or in the aggregate, would affect its performance of any of its obligations under this Agreement. Except as Contractor has disclosed in writing to the Owner prior to the Effective Date, there are no legal, administrative or arbitration proceedings or actions, controversies, investigations, actions or other proceedings, now pending or (to the best knowledge of Contractor) threatened against Contractor which, if adversely determined, could reasonably be expected to effect on the ability of Contractor to perform any of its obligations under this Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.

16.1.3 **Licenses.** It is the holder of all governmental consents, licenses, permissions and other authorizations and Permits required to operate and conduct its business now and as contemplated by this Agreement.

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

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

16.1.6 Experience. It has by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including to construct the Infrastructure Facilities and to erect and install the Wind Turbine Generators and related equipment.

16.1.7 Intellectual Property. It owns or has the right to use all Intellectual Property Rights necessary to perform the Work without conflict with the rights of others.

16.1.8 Solvency. It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

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

16.2 Owner Representations. Owner represents and warrants that:

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

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

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

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

ARTICLE XVII

MISCELLANEOUS PROVISIONS

17.1 Confidentiality and Publicity.

17.1.1 Confidential Information and Permitted Disclosures. Each Party shall hold in confidence (a) any information provided or supplied by the other Party or its Personnel that is marked to be confidential, including such information as may have been provided or supplied prior to the Effective Date, (b) the commercial terms of any leases or other documents related to the Real Property Rights, and (c) the contents of this Agreement, and (d) as with respect to Contractor as the receiving Party, all information received from Owner or that it otherwise comes to know about the Project through its performance of the Work (collectively, "Confidential Information"). Both Parties shall inform their Affiliates, Subcontractors, suppliers and employees of their obligations under this Section 17.1 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information:

(i) information that was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;

(ii) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

(iii) information received by such Party from a third party having no obligation of confidentiality with respect thereto;

(iv) information at any time developed independently by such Party providing it is not developed from otherwise Confidential Information.

17.1.2 Permitted Disclosures. Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

(a) Confidential Information may be disclosed pursuant to and in conformity with Applicable Law or in connection with any legal proceedings described in Article XV, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

(b) Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

(c) Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisors or representatives of such Party as necessary in connection with the Project; provided that such Persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such Person in violation of the terms of this Section;

(d) Owner may disclose a copy of this Agreement to any actual or potential insurers, and

(e) The confidentiality obligations in this Article XVII shall not be construed to limit Contractor's ownership or use of its Intellectual Property Rights.

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

17.1.4 Publicity. Neither Party shall issue any press or publicity release or otherwise publicly release, distribute or disseminate for publication any information concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written consent of the other Party.

17.1.5 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section, without proof of any actual or special damages.

17.1.6 Survival. The Parties' obligations under this Article XVII shall remain in force during the term of this Agreement and for a period of five (5) years after Final Completion.

17.2 Consequential Damages. In no circumstances shall either Party (or the parent companies and Affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) be liable to the other Party (or its parent companies and Affiliates, and their respective members, shareholders, officers, directors, agents and employees) for loss of power, loss of production or use, loss of goodwill, loss of actual or anticipated profits, revenues or product, loss of business or reputation, loss by reason of shutdown or non-operation, increased expense of operation, borrowing or financing, loss of tax credits or other like incentives, claims of Owner's Customer and damage to property or equipment, or increased cost of capital, regardless of whether the foregoing are considered consequential or direct damages, and any consequential, incidental, indirect, special, exemplary or punitive damages (collectively, "Consequential Damages") arising out of this Agreement; and, regardless of whether any such damages are deemed consequential, incidental, indirect, special, exemplary, or punitive, and regardless of whether any claim arises out of breach of contract, guarantee or warranty, tort, (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory. Notwithstanding anything herein to the contrary, the foregoing shall not apply to (a) third party (excluding Affiliates of either Party) claims for which a Party has an indemnification obligations hereunder, (b) damages arising from the Gross Negligence, fraud, willful misconduct (excluding

the intentional disregard of the Prevailing Wage and Apprenticeship Requirements), or illegal or unlawful acts of a Party, and (c) any Delay Liquidated Damages payable by Contractor as required under this Agreement.

17.3 Limitation on Liability.



17.4 Notice. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received (i) when actually received by the Party to whom it is sent, if served personally or if delivered by courier service to the Party to whom notice is to be given or via email at the addresses specified below, (ii) when received by the Party to whom it is sent, if sent in the form of a signed letter on the sending Party's letterhead, transmitted by email in "pdf" or similar format; (iii) when received (with confirmation of receipt) if delivered by facsimile or (iv) if mailed the date specified on the return receipt class registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the address and/or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with the Section):

If to Owner:

Puget Sound Energy
PO Box 97304 SKC-OFC
Bellevue, WA 98009
Attention: Jim Hogan, Director of Major Projects


Baker Botts L.L.P
30 Rockefeller Plaza
New York, NY 10112
Attention: Michael Didriksen


With a copy to:

[REDACTED]

If to Contractor:

Wanzek Construction, Inc.
4850 32nd Ave S
Fargo, ND 58104
Attention: Chad Eken, VP of Construction
[REDACTED]

With a copy to:

[REDACTED]

17.5 Time of the Essence. Time is of the essence in the performance of the Work in accordance with the requirements of this Agreement.

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

17.7 Financing Parties' Requirements. Not applicable.

17.8 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. All the exhibits (Exhibit A through Exhibit Y) attached hereto are incorporated into and made a part of this Agreement. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

17.9 Amendments. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties. For the avoidance of doubt, emails between the Parties shall not be considered a writing for purposes of this Section 17.9.

17.10 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MONTANA WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY ANY OTHER LAW.

17.11 Right of Waiver. No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right

hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

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

17.13 Successors and Assigns; Assignment. Subject to the following, this Agreement shall be binding upon the Parties, their successors and permitted assigns. Except as set forth herein, this Agreement and all of Contractor's rights, duties and obligations under this Agreement are personal in nature and shall not be assigned, delegated or otherwise disposed of by Contractor without the prior written consent of Owner. Owner may assign this Agreement in whole or in part; provided that Contractor is provided written notice as soon as reasonably possible following such assignment and assuming such assignee has a credit rating no lower than the credit rating of Owner's parent as of the date hereof, which credit rating is BB- by Standard & Poor and B1 by Moody's, and provided the assignee has adequate experience and expertise to perform Owner's obligations hereunder. Contractor agrees and acknowledges that any third party receiving such an assignment provided it assumes all obligations hereunder, in writing, shall be entitled to exercise any and all rights of Owner under this Agreement in accordance with the terms hereof (in its own name or in the name of Owner) and Contractor shall comply in all respects with such exercise. Provided the assignee assumes, in a writing reasonably satisfactory to Contractor, all obligations of Owner and any Owner guarantor hereunder and under any guaranty on Owner's behalf, Owner and any guarantor of Owner shall be released upon assignment.

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

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

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

17.17 Status of Contractor; No Partnership; No Agency. Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Agreement. The Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

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

Owner:

Puget Sound Energy, Inc.

By: *Ron Roberts*
Name: Ron Roberts
Title: SVP, Energy Resources

Contractor:

Wanzek Construction, Inc.

By: *Michael Russell*
Name: Michael Russell
Title: Executive Vice President

EXHIBIT E-2

TURBINE DELIVERY SCHEDULE

Guaranteed WTG Component Delivery Dates

Number(s) of Complete Units	Guaranteed Major Component Delivery Dates, Week Ending
1- 6 (6 Units)	May 11, 2024
7-12 (6 Units)	May 18, 2024
13-20 (8 Units)	May 25, 2024
21-22 (2 Units)	June 1, 2024
23-30 (8 Units)	June 8, 2024
31-38 (8 Units)	June 15, 2024
39-40 (2 Units)	June 22, 2024
41-48 (8 Units)	June 29, 2024
49-50 (2 Units)	July 6, 2024
51-58 (8 Units)	July 13, 2024
59-66 (8 Units)	July 20, 2024
67-74 (8 Units)	July 27, 2024
75-82 (8 Units)	August 3, 2024
83-88 (6 Units)	August 10, 2024

EXHIBIT W

BUILDER'S RISK POLICY REQUIREMENTS

1. Required Insurance. Owner shall, at its sole cost and expense (except as provided below and only to the extent such insurance is available to Owner on commercially reasonable terms in the international insurance market), obtain, maintain and keep in full force and effect during the periods specified below, with insurance carriers eligible to do business in the United States, having an A.M. Best rating of at least "A-" or an S&P rating of "A-" or equivalent or as best available, the following insurance.
 - (a) Construction "All Risk" Insurance. From the date of Contractor's mobilization for construction at the Project Site until the Project Substantial Completion Date, Owner shall maintain, at its sole expense, except as otherwise noted herein, Construction "All Risk" Insurance in an amount equal to the sum of the Contract Price *plus* (i) the value of any Owner-supplied items and (ii) the value of any work separately undertaken by the Owner. The basis of indemnity shall be replacement cost subject to customary sublimits.
 - (i) Coverage. Coverage shall be on an "All Risks" basis (with extended maintenance cover only after Project Substantial Completion) and shall include loss or damage caused by:
 - (A) earthquake, tsunami, windstorm, hail, explosion, flood, typhoon, and volcanic eruption;
 - (B) commissioning, including mechanical, start-up and performance testing;
 - (C) fire and allied perils;
 - (D) mechanical breakdown, including coverage for resultant damage due to error in design, defect in materials or faulty workmanship to at least LEG2/96, subject to the conditions referenced elsewhere in this Exhibit W; and
 - (E) removal of debris, demolition, cost of cleanup, expediting expenses, decontamination, increased cost of construction, and extra expense;

Insurance shall contain a 50/50 clause and an offsite storage extension. Except to the extent covered by the Warranty, Owner shall obtain a waiver by the insurer of all subrogation rights against Contractor and its Subcontractors of any tier; provided that such waiver of subrogation obligation shall not operate in the event of a vitiation of the policy by any Contractor Person.

Subject to policy exclusions, sub-limits and conditions in accordance with usual market practice for a project of a similar nature.

If Contractor requests, the Owner shall provide copies of the Construction All Risk Policy so Contractor may evaluate whether there are any gaps in coverage or insufficient limits related to the Construction All Risk.

If a loss is insured under the Construction All Risk Policy, both the Contractor or Owner have the right to prepare and submit to the insurer any claim and proof of loss in accordance with the terms of the Construction All Risk Policy. The party who submitted the claim, shall keep the other party reasonably informed of the status of claims.

(ii) Deductibles. Policy deductible amounts shall be based on a “per occurrence” basis in an amount not exceeding:

(A) [REDACTED] for all defective design cover (LEG 2/96) where available, testing & commissioning, maintenance, mechanical breakdown;

(B) [REDACTED] of loss subject to a minimum of [REDACTED] for earthquake, volcanic eruption and tsunami, flood and named windstorm;

(C) [REDACTED] for all other property losses.

- Contractor shall be solely responsible for payment of any deductibles for claims relating to the Builders or Construction All-Risk Policy from damages arising from Contractor’s or its Subcontractors’ negligence or willful misconduct and such deductible obligation will be capped at [REDACTED] per occurrence.

- Owner shall use its best efforts to procure the foregoing deductibles at commercially reasonable terms.

(iii) Unavailability.

(A) LEG2/96 Coverage. If LEG2/96 coverage is available but not at commercially reasonable terms, Owner will notify Contractor of the incremental cost of LEG2/96 coverage, compared to the broadest coverage available at commercially reasonable terms. Contractor shall have the right to request Owner, and Owner shall in good faith seek to comply with such request to procure LEG2/96 coverage.

(B) Deductibles. If the foregoing deductibles are not available at commercially reasonable terms, Owner will notify Contractor of the deductibles that are available at commercially reasonable terms and the Parties shall either (1) agree to such higher deductible(s) or (2) Owner shall inform

Contractor of the availability of and the incremental cost of the stated deductibles and Contractor shall have the right to request Owner secure such deductibles at Owner's expense.

EXHIBIT X
DEMURRAGE RATES

Demurrage Rates (1-3 calendar days)

- tower section, Machine Head (aka Nacelle), blades [REDACTED] per vehicle
- other components [REDACTED] per vehicle

Demurrage Rates (4 calendar days or more)

- tower section, Machine Head (aka Nacelle), blades [REDACTED] per vehicle
- other components [REDACTED] per vehicle