



Namibia IPP and Investment Market Framework Technical Assistance

Annex X Model PPA for Medium Scale IPPs



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October 2006

[_____, _____]
WIND ENERGY FACILITY

POWER PURCHASE AGREEMENT

between

[_____]

as Purchaser

and

[_____]

as Seller

dated as of

_____ -> _____

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POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is made this ____ day of _____, 200_, by and between [_____] a [_____] ("Purchaser") and [_____] a _____ limited liability company ("Seller"). Purchaser and Seller are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Purchaser is a [_____] that provides electricity to [_____] in the State of [_____];

WHEREAS, Seller intends to develop a wind generation facility of approximately [___] MW aggregate nameplate capacity on a site or sites located in [_____, _____]; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase and receive, all of the nameplate capacity, electric energy and environmental credits from the Wind Project (as defined hereinafter), on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 *Definitions.*

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement shall have the meanings specified in this Article 1; (ii) the singular shall include the plural and vice versa; (iii) references to "articles," "sections," "schedules," "annexes," "appendices" or exhibits" (if any) shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (v) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; and (viii) the masculine shall include the feminine and neuter and vice versa. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be

construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

"Affiliate" shall mean, with respect to any Person, (i) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person; (ii) any Person that beneficially owns or holds ten percent (10%) or more of any class of voting securities of such designated Person or ten percent (10%) or more of the equity interest in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds ten percent (10%) or more of the equity interest. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

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

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Applicable Law" shall mean, with respect to any Person or the Wind Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person or the Wind Project (as the case may be).

"Business Day" shall mean every day other than a Saturday or Sunday or any other day on which banks in the State of [_____] are permitted or required to remain closed.

"Commercial Operation Date" shall mean the date following the Partial Commercial Operation Date, as designated by Seller in a written notice to Purchaser, *provided* that such date shall not occur prior to the date on which Turbines with an aggregate nameplate

capacity of at least [_____] (____) MW are put into commercial operation in compliance with this Agreement.

“Confidential Information” shall have the meaning set forth in Section 8.1.

“Contract Rate” shall have the meaning set forth in Section 2.2.

“Contract Year” shall mean the period from and including January 1 through December 31, inclusive, of any given calendar year. The first Contract Year shall commence on the first January 1 occurring after the Commercial Operation Date. The last Contract Year shall end on the date of termination of this Agreement.

“Credits” means any credits, credit certificates, rights, powers, privileges or similar items such as those for greenhouse gas reduction, green certificates or the generation of green power or renewable energy, or for satisfying renewable portfolio standards or similar renewable energy mandates, or offsets of emissions of greenhouse gases, in each case created by any governmental agency and/or independent certification board or group generally recognized in the electric power generation industry, and generated by or associated with the Wind Project, but specifically excluding (i) any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Wind Project, and (ii) cash payments or outright grants of money relating in any way to the Wind Project.

“Day” or “day” shall mean a period of twenty-four (24) consecutive hours beginning at 00:00 hours [_____] Time] on any calendar day and ending at 24:00 hours [_____] Time] on the same calendar day.

“Delivery Point” shall mean the point, more specifically described in Exhibit C, where Seller’s Interconnection Facilities connect to the Transmission Provider’s Interconnection Facilities.

“Disclosing Party” shall have the meaning set forth in Section 8.1.

“Dispute” shall have the meaning set forth in Section 8.15.

“Energy” shall mean electric energy generated by the Wind Project and available for delivery to the Delivery Point, which shall exclude the electric energy consumed by the Wind Project and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

“Event of Default” shall have the meaning set forth in Section 3.4.

“Excess Energy” shall have the meaning set forth in Section 2.3.

“EWG” shall mean an “exempt wholesale generator” as defined in the Public Utilities Holding Company Act of 1935, as amended, and the regulations promulgated thereunder.

“Force Majeure Event” shall mean any event which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such event, despite the exercise of reasonable diligence, cannot be prevented, avoided or overcome by such Party, (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof, and (iv) such event is not the direct or indirect result of a Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement or to comply with Applicable Law. A Force Majeure Event may include, but is not limited to, any of the following: (a) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Wind Project; (d) explosion, accident or epidemic; (e) governmental action or inaction; (f) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; (g) the unavailability of labor, fuel, power or raw materials, the breakdown of the Wind Project or other plant breakdown or equipment failure, and any event affecting the ability of any supplier (including under any engineering, procurement or construction agreement for the Wind Project) to the Wind Project to fulfill its obligations to Seller and the Wind Project so long as, in each case, the cause thereof otherwise would qualify as a Force Majeure Event; (h) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine; (i) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials; and (j) air crash, shipwreck, train wrecks or other failures or delays of transportation; *provided, however,* that the lack of money, changes in market conditions, the inability of Purchaser to obtain transmission service and the unavailability or interruption of transmission service shall not constitute a Force Majeure Event.

“Interconnection Agreement” shall mean the mutually agreed interconnection agreement between the Transmission Provider and Seller pursuant to which Seller’s Interconnection Facilities and the Transmission Provider’s Interconnection Facilities will be constructed and operated and maintained.

“kW” shall mean a kilowatt of capacity.

“Late Payment Rate” shall have the meaning set forth in Section 2.8(c).

“Lender” or “Lenders” shall mean any and all Persons or successors in interest thereof lending money or extending credit as follows: (i) for the construction, interim or permanent financing of the Wind Project; (ii) for working capital or other ordinary business requirements of the Wind Project (including the maintenance, repair, replacement or improvement of the Wind Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Wind Project; (iv) for any capital improvement or replacement related to the Wind Project; or (v) for the purchase of the Wind Project and the related rights from Seller.

[**“MAPP”** shall mean the Mid-continent Area Power Pool, its successors or assigns, or any similar entity that in the future may replace MAPP with respect to all or a substantial part of its current responsibilities.]

[**“Maximum Debt to Capitalization Ratio”** shall have the meaning set forth in Section 3.6.]

“Meter” shall mean an instrument and associated equipment meeting applicable electric industry standards used to measure and record the quantity and the required delivery characteristics of Energy and back-up power delivered hereunder.

“Moody’s” shall mean Moody’s Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“MW” shall mean a megawatt of capacity.

“MWh” shall mean a megawatt hour of Energy.

“Network Upgrades” shall mean additions, modifications and upgrades to the Transmission Provider’s Transmission System, or any other electric delivery system beyond the Delivery Point to which Transmission Provider’s Transmission System is directly or indirectly interconnected, to accommodate the interconnection of the Wind Project to the Transmission Provider’s Transmission System.

“Non-PTC Turbine” shall have the meaning set forth in Section 2.2(c).

“Operating Procedures” shall have the meaning set forth in Section 2.13.

“Partial Commercial Operation Date” shall mean the Day following the date on which the Seller’s Interconnection Facilities are installed and tested, and one (1) or more of the Turbines are able to produce and deliver Energy to the Delivery Point.

“Parties” shall have the meaning set forth in the first paragraph of this Agreement.

“Party” shall have the meaning set forth in the first paragraph of this Agreement.

“Person” shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

“Prime Rate” shall mean the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

“Project Capacity” shall mean _____ kW of nameplate capacity from the Wind Project.

“Project Transmission Credits” shall have the meaning set forth in Section 2.14(a).

“Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for Wind facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition.

“PTC Date” shall have the meaning set forth in Section 2.2(b).

“Purchaser” shall have the meaning set forth in the first paragraph of this Agreement.

“Purchased Energy” shall have the meaning set forth in Section 2.1(a).

“Receiving Party” shall have the meaning set forth in Section 8.1.

“S&P” shall mean Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“Seller” shall have the meaning set forth in the first paragraph of this Agreement.

“Seller’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities required to connect the Wind Project with the Transmission Provider’s Transmission System up to, and on Seller’s side of, the Delivery Point.

“Site” shall mean the real property located in [_____, _____] on which the Wind Project is to be located.

“System Emergency” shall mean a condition on the Transmission Provider’s Transmission System, at the Wind Project, or on transmission facilities used to deliver the Energy from the Wind Project to the Delivery Point, which condition is likely to result in imminent significant disruption of service to the Transmission Provider’s Transmission System customers or is imminently likely to endanger life or property.

“Term” shall have the meaning set forth in Section 3.1.

“Total Capacity” shall mean: (i) prior to the Commercial Operation Date, at the time of any determination thereof, the aggregate nameplate capacity of all Turbines that have been installed and are in commercial operation at the Wind Project prior to the Commercial Operation Date, as set forth in a written notice(s) from Seller to Purchaser, with the first such notice being delivered on or prior to the date that Seller delivers to Purchaser its initial invoice for Purchased Energy pursuant to Section 2.8 and (ii) on and after the Commercial Operation Date, at the time of any determination thereof, the aggregate nameplate capacity of all Turbines that have been installed and are in commercial operation at the Wind Project, in each case expressed in kW.

“Transfer Taxes” shall have the meaning set forth in Section 2.2(e).

“Transmission Credit” shall mean any transmission credit, transmission right, fixed right or similar benefit provided by any open access transmission tariff or any Applicable Law to Seller as compensation for the costs of Network Upgrades.

“Transmission Credit Purchase Notice” has the meaning specified in Section 2.14(a).

“Transmission Credit Sale Closing Date” has the meaning specified in Section 2.14(a).

“Transmission Provider” shall mean [_____] or any successor to the Transmission Provider’s Transmission System.

“Transmission Provider’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities required to connect the Transmission Provider’s Transmission System with the Wind Project up to, and on the Transmission Provider’s side of, the Delivery Point.

“Transmission Provider’s Transmission System” shall mean the facilities for the transmission of Energy from the Delivery Point to Purchaser’s electric delivery system.

“Turbine” shall mean a single wind turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Wind Project.

“Wind Project” shall mean Seller’s proposed electrical plant and equipment used to generate electricity utilizing renewable wind power located at the Site, including Seller’s

Interconnection Facilities and any and all additions, replacements or modifications. The Wind Project is more particularly described in Exhibit B.

ARTICLE 2 SALE AND PURCHASE OF ENERGY

2.1 *Purchase and Sale.*

In accordance with the terms and conditions hereof, commencing on the Partial Commercial Operation Date and continuing through the remainder of the Term, Seller shall sell and deliver to Purchaser at the Delivery Point and Purchaser shall purchase and accept from Seller at the Delivery Point all of the Energy delivered to the Delivery Point during each hour ("Purchased Energy").

2.2 *Contract Rate.*

(a) Purchaser shall pay Seller for each MWh of Purchased Energy (i) during the period from and including the Partial Commercial Operation Date to the Commercial Operation Date, at the applicable rate set forth in Exhibit A; and (ii) during the period from and including the Commercial Date through the remainder of the Term, at the applicable rate set forth in Exhibit A (as applicable during the respective periods, the "Contract Rate").

(b) Notwithstanding the foregoing, the Parties acknowledge that it is their intention that the Commercial Operation Date occur not later than December 31, 2003 (unless there is an extension of the date by which electric generation projects must be placed in service in order to be eligible to receive production tax credits under Internal Revenue Code Section 45, in which case the intended Commercial Operation Date shall be the date of extension for such production tax credits) (the "PTC Date") and the Parties hereby agree to cooperate and use their reasonable efforts to cause the Commercial Operation Date to occur on or before the PTC Date.

(c) In the event that less than one hundred percent (100%) of the Turbines planned to be installed as part of the Wind Project are placed in service and eligible to receive production tax credits under Internal Revenue Code Section 45 by the PTC Date, any Energy produced by Turbines that are placed in service after the PTC Date (each a "Non-PTC Turbine") shall not be delivered or sold pursuant to this Agreement and the capacity, energy and Credits of any Non-PTC Turbines shall not be considered as part of the Total Capacity, Energy or Credits sold to Purchaser hereunder. In such event, Seller shall offer to sell to Purchaser all of the Energy and Credits from any Non-PTC Turbines at a price equal to (i) the Contract Rate plus (ii) an amount equal to the value of the production tax credit on the date immediately preceding the PTC Date on an After-Tax Basis. Purchaser may, in its sole discretion, accept or reject such offer to purchase Energy and Credits from Non-PTC Turbines. If Purchaser accepts such offer, the Parties shall negotiate in good faith the terms and conditions of an agreement for the purchase of such Energy and Credits from Non-PTC Turbines. If Purchaser has not accepted such offer within thirty (30) Days of the date of Seller's offer, Purchaser shall be deemed to have irrevocably waived its purchase right and Seller may offer to sell Energy and Credits from the

Non-PTC Turbines to any Person, without any further obligation to Purchaser. Seller shall have the right to use the Transmission Provider's Interconnection Facilities for the sale of Energy from Non-PTC Turbines in accordance with the applicable transmission tariff and the Interconnection Agreement. Seller may, but shall not be obligated to, install and operate any Non-PTC Turbines at the Wind Project.

(d) Other than the right and obligation to buy Purchased Energy from Seller in accordance with the provisions of this Agreement, this Agreement shall not be interpreted to create any rights in the Wind Project in favor of Purchaser, and Purchaser hereby disclaims, any right, title or interest in any part of the Wind Project.

(e) In addition to the amounts otherwise payable by Purchaser in accordance with this Section 2.2, Purchaser shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all sales, use excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Purchased Energy and/or Credits (regardless of whether such Transfer Taxes are imposed on Purchaser or Seller), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes.

2.3 Excess Energy.

Seller shall have no obligation to make available or deliver to Purchaser any Energy (i) that Purchaser is not obligated to accept under this Agreement, (ii) that Purchaser does not accept under this Agreement for any reason, including (without limitation) the exercise by Purchaser of its suspension rights pursuant to Section 3.4(b)(ii), or (iii) that Seller is not obligated to deliver to Purchaser under this Agreement (collectively, "Excess Energy") and there shall be no penalty or other consequence to Seller for failing to deliver Excess Energy to Purchaser. Purchaser acknowledges that Seller has the right to sell any Excess Energy to any Person other than Purchaser at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Purchaser shall not take or attempt to take any Excess Energy unless Seller has agreed to sell, and Purchaser has agreed to purchase, any such Excess Energy. Subject to Section 2.4(a), Purchaser shall have no claim, right or interest in such Excess Energy or in any amount that Seller realizes from a sale of such Excess Energy.

2.4 Purchaser's Failure to Accept Delivery of Energy.

(a) In the event that Purchaser fails to accept delivery of all of the Energy tendered at the Delivery Point by Seller as provided herein for any reason other than due to a Force Majeure Event that prevents such acceptance pursuant to Section 8.5 or the proper exercise by Purchaser of its suspension rights pursuant to Section 3.4(b)(ii), then Purchaser shall pay to Seller as liquidated damages an amount equal to the positive difference, if any, between (i) (x) the amount that would have been payable by Purchaser to Seller hereunder if such tendered Energy had been accepted by Purchaser plus (y) the amount of any payment or penalty that is due from Seller to any third party as a result of Purchaser's failure to accept such tendered Energy and (ii) the net

amount, if any, that Seller, using commercially reasonable efforts under the circumstances, actually realizes through remarketing of such Energy to Persons other than Purchaser, provided that in the event Seller is unable to remarket such Energy, then the net amount described in clause (ii) shall be \$0 and the damages owed by Purchaser shall also include the then current amount of the production tax credit (on a per MWh basis) on an After-Tax Basis for each MWh of such Energy that Seller was unable to remarket. The damages provided in this Section 2.4(a) shall be the sole and exclusive remedy of Seller for any failure of Purchaser to accept delivery of Energy that it is required to accept hereunder.

(b) Seller shall include in a monthly invoice delivered to Purchaser pursuant to Section 2.8 the amounts owed by Purchaser pursuant to Section 2.4(a) and a description, in reasonable detail, of the calculation of damages resulting from Purchaser's failure to accept delivery of Energy.

2.5 Seller's Failure to Deliver Energy.

(a) Subject to Sections 2.2(c) and 2.3, in the event that Seller fails to deliver to Purchaser the full amount of the Energy actually delivered to the Delivery Point for any reason other than a Force Majeure Event that prevents delivery to Purchaser pursuant to Section 8.5 or the proper exercise by Seller of its suspension rights pursuant to Section 3.4(b)(ii), then Seller shall pay to Purchaser as liquidated damages an amount equal to the positive difference, if any, between (i) the amount, if any, that Purchaser actually pays (at commercially reasonable prices) for replacement electric energy and (ii) the amount that would have been payable by Purchaser to Seller hereunder if such Purchased Energy had been delivered by Seller. The damages provided in this Section 2.5(a) shall be the sole and exclusive remedy of Purchaser for any failure of Seller to deliver Energy to Purchaser.

(b) In no event shall Seller be liable to Purchaser for the failure to deliver Energy to the Delivery Point due to any reason other than the gross negligence or willful misconduct of Seller.

(c) No later than the tenth (10th) Day of the month following any month in which Seller owes liquidated damages to Purchaser pursuant to Section 2.5(a), Purchaser shall deliver to Seller an invoice showing the amounts owed by Seller and a description, in reasonable detail, of the calculation of damages resulting from Seller's failure to deliver Purchased Energy. Seller shall credit Purchaser, in an amount equal to any undisputed amounts set forth in the invoice received from Purchaser, against the amounts owed by Purchaser to Seller, *provided* that if the amount of such credit is greater than the amount payable by Purchaser for such month, the excess portion of such credit shall be applied by Seller to reduce the amount payable by Purchaser hereunder in subsequent month(s).

2.6 Offsets, Allowances and Credits.

(a) Purchaser shall be entitled to all Credits resulting from the generation of Purchased Energy that is actually purchased by Purchaser pursuant to this Agreement. Purchaser

shall not be entitled to any Credits resulting from the generation of Energy that Purchaser, for any reason, does not accept and purchase under this Agreement.

(b) Seller shall be entitled to all (i) federal and state production tax credits, investment tax credits and any other tax credits which are or will be generated by the Wind Project, (ii) any cash payments or outright grants of money relating in any way to the Wind Project or Credits, and (iii) any Credits that the Purchaser is not entitled to pursuant to the provisions of Section 2.6(a). Purchaser acknowledges that Seller has the right to sell any Credits to which it is entitled pursuant to this Section 2.6(b) to any Person other than Purchaser at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Purchaser shall have no claim, right or interest in such Credits or in any amount that Seller realized from the sale of such Credits.

2.7 Back-up Power.

If Purchaser or any of its Affiliates provides retail electric service in the service territory in which the Wind Project is located, then if requested by Seller, Purchaser or such Affiliate shall provide back-up power and supplementary power to the Wind Project (including Seller's Interconnection Facilities) as requested by Seller during construction and operation of the Wind Project at the rates and on the terms set forth in the applicable tariff(s) on a non-discriminatory basis with other commercial customers.

2.8 Billing and Payment.

Billing and payment for Purchased Energy sold to and purchased by Purchaser under this Agreement and any other amounts due and payable hereunder shall be as follows:

(a) Commencing on the Partial Commercial Operations Date and continuing throughout the remainder of the Term, Seller shall calculate the amount of Purchased Energy from recordings produced by the Meter(s) for the Wind Project at or near the last Day of each calendar month and on the last Day of the final Contract Year. No later than the tenth (10th) Day of each calendar month: (i) Seller shall deliver to Purchaser an invoice showing the amount of Purchased Energy delivered to Purchaser by Seller during the preceding calendar month (or in the case of the final Contract Year, the last calendar month or portion thereof of the Term), Seller's computation of the amount due Seller in respect thereof and any other amounts owed by one Party to the other Party pursuant to this Agreement. Not less than ten (10) Days after receipt of each invoice (unless such Day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day), Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, irrespective of any unresolved dispute with respect to the amount set forth as due in the invoice.

(b) Within ninety (90) Days after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error therein and the Parties shall meet, by telephone conference call or otherwise within ten (10) Days of the other Party's receipt of such notice, for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve

the dispute within thirty (30) Days after such initial meeting, then either Party may proceed to seek any remedy that may be available to such Party at law or in equity.

(c) Except as otherwise provided in this Agreement, all payments hereunder shall be made without set-off or deduction. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law ("Late Payment Rate"). If, as a result of a dispute settled in favor of Purchaser, a refund is owed to Purchaser, then the amount of the overpayment shall bear interest from the date on which such payment was made by Purchaser through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(d) Statements or invoices shall be sent to Purchaser by mail or facsimile to the address or facsimile number designated in Section 8.4. Purchaser may change the address or facsimile number by providing written notice to Seller.

2.9 Title and Risk of Loss.

Title to and risk of loss with respect to Purchased Energy delivered to Purchaser by Seller in accordance with this Agreement shall pass from Seller to Purchaser when the same is delivered by Seller for the benefit of Purchaser at the Delivery Point. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to Purchased Energy passes, Purchaser shall be deemed in exclusive control of such Purchased Energy and shall be responsible for any damage or injury caused thereby.

2.10 Transmission.

(a) Seller shall be responsible for presenting to and receiving [MAPP's] approval of the Wind Project interconnection requirements and transmission facilities so that Seller can perform its Energy deliveries hereunder in accordance with applicable [MAPP] requirements.

Purchaser shall be responsible for arranging for all transmission services required to effectuate Purchaser's purchase of Purchased Energy, including, without limitation, obtaining firm transmission service, in an amount of capacity equal to the Project Capacity, and shall be responsible for the payment of any charges related to such transmission services hereunder, including, without limitation, charges for transmission or wheeling services, ancillary services, imbalance, control area services, congestion charges, transaction charges and line losses. The Parties acknowledge that the Contract Rate does not include charges for such transmission services, all of which shall be paid by Purchaser.

[(b) In the event that the Transmission Provider or any other properly authorized Person exercising control over the Transmission Provider's Interconnection Facilities or the Transmission Provider's Transmission System takes any action or orders Seller or Purchaser to take any action that affects Purchaser's ability to take delivery of Energy hereunder, Purchaser shall use its best efforts (at its own cost and expense) to mitigate the adverse effects of such

action(s) on Purchaser's ability to perform its obligations hereunder, including, without limitation, redispatching its generation resources, other than the Wind Project.]

2.11 Scheduling.

Purchaser shall be responsible for the scheduling of all Purchased Energy during the Term, including, without limitation, arranging any Open Access Same Time Information Systems (OASIS), tagging, transmission scheduling or similar protocols with the Transmission Provider or any other Persons. Purchaser shall be responsible for the payment of all charges associated with such scheduling activities, including, without limitation, any imbalance charges.

2.12 Sales for Resale.

All Purchased Energy delivered to Purchaser hereunder shall be sales for resale, with Purchaser reselling such Purchased Energy [for use in satisfying its native load requirements]. Purchaser shall provide Seller with any documentation reasonably requested by Seller to evidence that the deliveries of Purchased Energy hereunder are sales for resale.

2.13 Operating Procedures.

Seller and Purchaser will endeavor to develop written operating procedures ("Operating Procedures") before the Commercial Operation Date, which Operating Procedures shall only be effective if made by mutual written agreement of Seller and Purchaser. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of day-to-day communications; (2) key personnel lists for Seller and Purchaser; and (3) reporting of scheduled maintenance, maintenance outages and forced outages of the Wind Project. [As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between Seller, Purchaser and third parties that purchase Energy from the Wind Project, the Operating Procedures shall also provide that Purchaser and such third-party purchasers shall form an operating committee (the "Operating Committee") to address various administrative, commercial and technical issues which may arise in connection with the Wind Project. Purchaser and such third-party purchasers will each appoint one (1) member to serve on the Operating Committee. Such Operating Committee members shall exercise their rights by majority vote, with each member having a percentage of the total number of Operating Committee votes equal to the proportion of the Total Capacity which Purchaser or such third-party purchaser is allocated.]

2.14 Transmission Credits.

(a) In the event that Seller receives Transmission Credits for Network Upgrades undertaken in connection with the Wind Project ("Project Transmission Credits"), Purchaser agrees to purchase from Seller all or any portion of such Project Transmission Credits on a dollar-for-dollar basis and under the terms and conditions set forth in this Section 2.14. [Purchaser shall be required to purchase Project Transmission Credits from Seller to the extent

Purchaser is able to use such Project Transmission Credits to offset its own cost for transmission service or to sell such Project Transmission Credits to any third party. In determining Purchaser's ability to use Project Transmission Credits, priority shall be given to such Project Transmission Credits over (i) Purchaser's right to directly pay the cost for transmission service and (ii) any transmission service credits or similar benefits otherwise available to Purchaser. Purchaser shall promptly provide Seller with written notice of any opportunity that Purchaser has to use Project Transmission Credits to offset its own cost for transmission service or to sell Project Transmission Credits to any third party. In response to such notification from Purchaser or in the event that Seller becomes aware of an opportunity for Purchaser to use Project Transmission Credits, Seller shall deliver written notice (the "Transmission Credit Purchase Notice") specifying the amount of Project Transmission Credits to be purchased and the date on which the sale is to occur, provided that such sale date shall be no later than thirty (30) Days after the date of the Transmission Credit Purchase Notice (each such sale date being a "Transmission Credit Sale Closing Date") and any other matters related thereto as Seller shall deem relevant or as Purchaser may reasonably request from time to time.

(b) On each Transmission Credit Sale Closing Date (i) Seller shall deliver to Purchaser valid legal rights to the Project Transmission Credits being sold, which rights shall be free and clear of any liens, claims or other impairments of title, pursuant to documentation reasonably acceptable to Seller and Purchaser, and (ii) Purchaser shall deliver to Seller the full purchase price for the Project Transmission Credits being sold by wire transfer of immediately available funds to the account designated by Seller. The Parties shall reasonably cooperate with each other in order to provide any certificates, documents or other items reasonably required to consummate the sale of Project Transmission Credits pursuant to this Section 2.14.

ARTICLE 3 TERM, TERMINATION AND DEFAULTS

3.1 *Term.*

The "Term" of this Agreement shall commence on the date hereof and continue until the date that is [twenty (20)] years following the Commercial Operation Date, unless sooner terminated in accordance with the terms hereof. The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal.

3.2 *Regulatory Approvals.*

(a) Seller shall apply for EWG status not later than the later of (i) ninety (90) Days following the date of execution of this Agreement by both Parties or (ii) sixty (60) Days following the date Seller commences construction of the Wind Project.

(b) Purchaser shall apply for and shall diligently pursue designation of the Wind Project as a network resource in an amount of capacity equal to the Project Capacity.

(c) Purchaser shall apply for and shall diligently pursue a reservation of network transmission service that secures a firm delivery path for the Purchased Energy from the Delivery Point to and over the Transmission Provider's Transmission System, in an amount of capacity equal to the Project Capacity, with such application being submitted not later than ten (10) Days following the date of execution of this Agreement by both Parties.

(d) Following execution of this Agreement by both Parties, Purchaser shall promptly seek to obtain all licenses, permits and approvals necessary to perform its obligations hereunder.

3.3 *Early Termination.*

(a) This Agreement may be terminated prior to the expiration of the Term as follows:

(i) By Seller if an Interconnection Agreement in form and substance satisfactory to Seller, in its sole discretion, is not executed on or before the date which is one hundred eighty (180) Days after the date of this Agreement or if in Seller's sole discretion, Purchaser has not within one hundred eighty (180) Days after the date of this Agreement at its sole cost and expense secured adequate transmission access and firm transmission service in accordance with the requirements of this Agreement and as required for Purchaser to accept all Energy from the Wind Project to be delivered to Purchaser at the Delivery Point in accordance with this Agreement, *provided* that in each case Seller shall give Purchaser written notice of such termination within fifteen (15) Days after such date;

(ii) By Seller in the event that Seller has not obtained the necessary fee, leasehold or other title to or interest in the Site and all zoning approvals, environmental approvals, permits, land owner easement agreements, licenses and other governmental approvals necessary to construct and operate the Wind Project in the manner contemplated by this Agreement and which are final and no longer subject to appeal or legal challenge, on or before [_____, ____], *provided* that Seller gives Purchaser written notice of such termination within fifteen (15) Days after such date;

(iii) By Seller at any time up to the Commercial Operation Date in the event that Seller is unable to procure and have delivered to the Site all of the equipment and materials required to construct and operate the Wind Project, including, but not limited to, the wind turbine generators and all ancillary and supporting equipment and installations and all control and monitoring systems, in each case on a timely basis consistent with the milestones and delivery times specified by Seller in order to be able to complete construction and commence operation of the Wind Project in accordance with the requirements of this Agreement, on commercially reasonable terms and at a total installed cost consistent with Seller's budgeted costs on an economically feasible basis with a return on its total investment in the Wind Project satisfactory to Seller in its sole discretion;

(iv) By Seller in the event that Seller determines in good faith that it will be unable to achieve the Commercial Operation Date by the PTC Date; or

(v) By Seller if all approvals of its management and board of directors (or equivalent governing body) required for the execution, delivery and performance of this Agreement have not been granted on or before [_____, ____]; *provided* that Seller provide Purchaser written notice of such termination within fifteen (15) Days after such date.

(b) Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this Section 3.3, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination, *provided* that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or any indemnity obligations under Article 6 or the provisions of Section 8.1, which provisions shall survive any termination of this Agreement.

3.4 *Defaults and Remedies.*

(a) Each of the following shall constitute an "Event of Default" hereunder:

(i) A failure by a Party to pay any amount due hereunder, where such failure is not cured within ten (10) Days of the date due; or

(ii) Either Party has (a) commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) failed, or admitted in writing its inability generally, to pay its debts as such debts become due, (c) made a general assignment for the benefit of creditors, (d) been adjudicated bankruptcy or has filed a petition or an answer seeking an arrangement with creditors, (e) taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (f) become subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive Days, (g) filed a voluntary petition in bankruptcy, (h) failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) Days of the filing thereof, or (i) become subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301; or

(iii) Any other default that has a material adverse effect on the non-defaulting Party if such default has not been cured by the defaulting Party within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default and its impact on the non-defaulting Party; *provided, however,* that, in the case of any such default that is not reasonably capable of being cured within the 30-Day cure period, the defaulting Party shall have additional time as

necessary to cure the default if it commences to cure the default within such 30-Day cure period and it diligently and continuously pursues such cure.

(b) Subject to the provisions of Section 3.4(d), upon the occurrence of an Event of Default by a Party, the non-defaulting Party shall have the following rights:

(i) Subject to the provisions of Section 3.4(c), to terminate this Agreement by providing at least sixty (60) Days prior written notice to the other Party of its intent to exercise its termination rights, unless such Event of Default is cured prior to the date of termination;

(ii) To suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the defaulting Party of its intent to exercise its suspension rights; and

(iii) To pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise.

(c) Notwithstanding the foregoing, (i) Purchaser may not terminate this Agreement on account of a default by Seller pursuant to Section 3.4(a)(iii) unless such default results in the delivery by Seller of Purchased Energy and Credits that Seller is obligated to deliver to Purchaser hereunder to a Person other than Purchaser, and (ii) Purchaser shall not exercise its remedies hereunder unless and until all of the requirements of Section 3.4(d) have been satisfied with respect to any Lenders.

(d) Notwithstanding the foregoing provisions of this Section 3.4, in the case of an Event of Default by Seller, Purchaser shall provide the Lenders (if any) with notice of such Event of Default and the Lenders shall have the right (but not the obligation) for ninety (90) Days after receipt of such notice either to cure the Event of Default on behalf of Seller, or, upon payment to Purchaser of amounts due from Seller but not paid by Seller, to assume, or cause its designee or a lessee or purchaser of the Wind Project to assume, all of the rights and obligations of Seller under this Agreement arising after the date of such assumption as more fully described in Section 8.3.

3.5 *Specific Performance and Injunctive Relief.*

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including, but not limited to, reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

3.6 *Financial Support Obligations of Purchaser.*

Investor Owned Utilities

Throughout the term of this Agreement, Purchaser shall maintain a debt to capitalization ratio as determined pursuant to GAAP of not more than sixty percent (60%) (the "Maximum Debt to Capitalization Ratio"), which shall be confirmed by a written certificate of a duly authorized officer of Purchaser delivered to Seller (i) on or before the forty-fifth (45th) Day following the end of each of Purchaser's fiscal quarters and (ii) on or before the ninetieth (90th) Day following the end of each of Purchaser's fiscal years and (iii) within thirty (30) Days following Seller's request in the event of the public disclosure of any event that has or is reasonably likely to have a material adverse effect on the current or future financial condition of Purchaser (including, without limitation, any downgrade or negative action with respect to any rating of Purchaser or its obligations). If at any time during the term of this Agreement Purchaser's debt to capitalization ratio as determined pursuant to GAAP is more than the Maximum Debt to Capitalization Ratio, then Purchaser shall within thirty (30) Days of such event provide Seller with either (a) a guaranty, in form and substance reasonably acceptable to Seller and the Lenders, of Purchaser's obligations hereunder by a Person with a rating on its senior unsecured long-term debt of A- or higher by S&P and A3 or higher by Moody's (without a "credit watch", "negative outlook" or other rating decline alert by either S&P or Moody's) or (b) a letter of credit naming Seller as the beneficiary, in form and substance reasonably acceptable to Seller and the Lenders and from a financial institution with a rating on its senior unsecured long-term debt of A- or higher by S&P and A3 or higher by Moody's (without a "credit watch", "negative outlook" or other rating decline alert by either S&P or Moody's) in the amount of twelve (12) months of payments for Purchased Energy payable by Purchaser hereunder, as reasonably estimated by Seller.

Municipal Utilities

(a) To the extent permitted by Applicable Laws, Purchaser shall appropriate in its annual budget, by amendment if necessary, any amount required to be paid by it to Seller under this Agreement when due hereunder and Purchaser shall fix, charge and collect or cause to be fixed, charged and collected such rates or service charge revenues which, together with other available funds, shall at all times provide sufficient moneys for the satisfaction of Purchaser's payment obligations to Seller under this Agreement. Notwithstanding the foregoing, Purchaser agrees to increase rates or service charges upon all recipients of electric service from Purchaser, in either case for the payment of all amounts due hereunder (if sufficient moneys therefor are not otherwise available) without limitation as to the rate or amount as permitted under Applicable Laws. Purchaser shall confirm such actions and the availability of sufficient moneys to satisfy its payment obligations hereunder by a written certificate, which shall include a copy of Purchaser's annual budget and any amendment thereto, of a duly authorized representative of Purchaser delivered to Seller no later than thirty (30) Days following the end of each fiscal year.

(b) Purchaser hereby covenants and agrees that its payment obligations under this Agreement shall be pari passu with all other unsecured payment obligations of Purchaser.

Municipalities

(a) To the extent permitted by Applicable Laws, Purchaser shall appropriate in its annual budget, by amendment if necessary, any amount required to be paid by it to Seller under this Agreement when due hereunder and the Purchaser shall fix, charge and collect or cause to be fixed, charged and collected such tax or service charge revenues which, together with other available funds, shall at all times provide sufficient moneys for the satisfaction of Purchaser's payment obligations to Seller under this Agreement. Notwithstanding the foregoing, Purchaser agrees to levy and collect ad valorem taxes upon all the taxable property within the ad valorem taxing jurisdiction of Purchaser or service charges upon all recipients of electric service from Purchaser, in either case as necessary for the full and prompt payment when due of all amounts payable by Purchaser hereunder (if sufficient moneys therefor are not otherwise available) without limitation as to the rate or amount as permitted under Applicable Laws. Purchaser shall confirm such actions and the availability of sufficient moneys to satisfy its payment obligations hereunder by a written certificate, which shall include a copy of Purchaser's annual budget and any amendment thereto, of a duly authorized representative of Purchaser delivered to Seller no later than thirty (30) Days following the end of each fiscal year.

(b) Purchaser hereby covenants and agrees that its payment obligations under this Agreement shall be pari passu with all other unsecured payment obligations of Purchaser.

Cooperatives

Throughout the term of this Agreement, Purchaser covenants to maintain effective rates for the sale of power and energy to its member cooperatives and their customers sufficient to generate revenues to meet its appropriate debt service coverage ratios (including, without limitation, any rural electric cooperative debt) plus all of its electric power purchases so that Purchaser will have available, together with other available funds, sufficient moneys for the satisfaction of Purchaser's payment obligations to Seller under this Agreement. Purchaser shall confirm by written certificate delivered to Seller no later than thirty (30) Days after the end of each of Purchaser's fiscal years that its rates will produce sufficient available moneys to satisfy its payment obligations under this Agreement. Purchaser shall have an ongoing duty to inform Seller of (a) any material change to its rates or the revenues resulting therefrom, including any material loss of customers (including retail customers of any of Purchaser's member distribution cooperatives), to the extent the change reasonably could be considered capable of effecting Purchaser's ability to meet its payment obligations to Seller under this Agreement and (b) any failure by Purchaser to comply with any covenant or financial ratio under any of its external debt agreements (including, without limitation, in any rural electric cooperative debt agreements). If Seller has reasonable grounds to believe that Purchaser's creditworthiness or performance under this Agreement has become unsatisfactory, Seller shall provide Purchaser with written notice requesting either (x) a letter of credit naming Seller as the beneficiary in form and substance reasonably acceptable to Seller and the Lenders and from a financial institution with a rating on its senior unsecured long-term debt of A- or higher by S&P or A3 or higher by Moody's (without a "credit watch", "negative outlook" or other rating decline alert by either S&P or Moody's) in

the amount of twelve (12) months of payments for Purchased Energy payable by Purchaser hereunder, as reasonably estimated by Seller or (y) other security in form and substance reasonably acceptable to Seller and the Lenders. Purchaser shall within thirty (30) Days of receipt of such notice from Seller provide Seller with the requested security.

ARTICLE 4 METERING AND MEASUREMENT

4.1 *Metering Equipment.*

(a) Purchaser shall, or shall cause the Transmission Provider to:

(i) Provide, install and maintain, at no cost to Seller, appropriate Meters and associated measuring and recording equipment necessary to permit an accurate determination of the quantities of the hourly Purchased Energy delivered under this Agreement and make available to Seller, at no cost to Seller, all of the data from such Meters and equipment; and

(ii) Exercise reasonable care in the maintenance and operation of any such Meters and equipment so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of the hourly Purchased Energy delivered under this Agreement. Purchaser's Meters shall be located on Purchaser's side of the Delivery Point or on Seller's side of the Delivery Point (with an adjustment for losses). Except as provided in Section 4.2, Purchaser's Meters shall be used for quantity measurements under this Agreement.

(b) Seller shall be responsible for the installation costs of telemetry equipment sufficient to transmit instantaneous and hourly data to the proper control areas.

(c) Seller may install and maintain check Meters and all associated measuring equipment necessary to permit verification of the Purchased Energy delivered under this Agreement.

4.2 *Measurements.*

(a) Readings of Purchaser's Meters shall be conclusive as to the amount of Purchased Energy delivered to Purchaser hereunder; *provided, however*, that in the event any of Purchaser's Meters is out of service or is determined, pursuant to Section 4.3, to be registering inaccurately, measurement of Purchased Energy delivered hereunder shall be determined by:

(i) Seller's check Meter, if installed and registering accurately; or

(ii) In the absence of an installed and accurately registering check Meter belonging to Seller, by the computer monitoring system for each Turbine that is part of the Wind Project, using a mathematical calculation determined in advance by Seller and

agreed to by Purchaser to adjust the output thereof to account for electrical losses in delivering Energy to the Delivery Point; or

(iii) In the absence of an installed and accurately registering check Meter belonging to Seller and if the computer monitoring system described in clause (ii) above is unavailable or unreliable, by making a mathematical calculation if upon a calibration test of Purchaser's Meter a percentage error is ascertainable; or

(iv) In the absence of an installed and accurately registering check Meter belonging to Seller, the computer monitoring system described in clause (ii) above, and an ascertainable percentage of error as described in clause (iii) above, then, by estimating by reference to quantities measured during periods of similar conditions when Purchaser's Meter was registering accurately.

(b) If no reliable information exists as to the period over which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last date on which such Meter was tested and found to be accurate, but not to exceed six (6) months prior to the testing date.

4.3 Testing and Correction.

(a) The accuracy of each of Purchaser's Meters shall be tested and verified by Purchaser and the accuracy of any of Seller's check Meters, if installed, shall be tested and verified by Seller at least once every two (2) years. Each Party hereby grants the other Party the right of access to such Party's Meters (with reasonable prior notice and at reasonable times) in order to test and verify the accuracy of such Party's Meters' measurements and recordings. Such inspections and verifications shall be at the requesting Party's sole expense.

(b) Seller shall bear the cost of the testing of any of Seller's check Meters, if installed.

(c) Purchaser shall bear the cost of the testing of Purchaser's Meters.

(d) Each Meter shall be accurate within a one percent (1%) variance.

(e) If either Party disputes a Meter's accuracy or condition:

(i) The Party disputing the Meter's accuracy shall notify the other Party in writing;

(ii) The Party receiving such notice shall, within fifteen (15) Days after receiving such notice, advise the other Party in writing as to its position concerning the Meter's accuracy and reasons for taking such position;

(iii) If the Parties are unable to resolve their disagreement through reasonable negotiations, then either Party may submit such dispute to an unaffiliated third-party certified meter testing company mutually acceptable to the Parties to test the Meter.

Should the Meter be found to be registering within the permitted one percent (1%) variance, the disputing Party shall bear the cost of inspection; otherwise, the cost shall be borne by Purchaser;

(iv) Any repair or replacement shall be made at the expense of the Party that owns the Meter as soon as practicable, based on the third-party testing company's report. If, upon testing, any Meter is found to be accurate or to be in error by not more than the permitted one percent (1%) variance, previous recordings of such Meter shall be considered accurate in computing deliveries hereunder, but if in error, such Meter shall be promptly adjusted to record correctly;

(v) If, upon testing, any Meter shall be found to be in error by an amount exceeding the permitted one percent (1%) variance, then such Meter shall be promptly adjusted to record properly and any previous recordings by such Meter shall be adjusted in accordance with Section 4.2; and

(vi) If, upon testing, any of the Meters used to determine the amount of Purchased Energy is found to be in error by more than the permitted one percent (1%) variance, the payments for Purchased Energy made since the previous test of such Meter shall be adjusted to reflect the corrected measurements determined pursuant to Section 4.2. If the difference of the payments actually made by Purchaser minus the adjusted payment is a positive number, Seller shall credit the difference to Purchaser on the next invoice issued by Seller. If the difference is a negative number, Purchaser shall pay the difference to Seller. In either case, the Party paying or crediting such difference shall also pay or credit, as applicable, interest at the Prime Rate from the last date on which such Meter was tested and found to be accurate (but not to exceed six (6) months prior to the testing date) to the date that such Meter is adjusted to record properly and such payment or credit (including such interest) shall be made within thirty (30) Days of receipt of a corrected billing statement.

4.4 *Maintenance and Records.*

Purchaser shall provide Seller on a monthly basis reports indicating Seller's daily delivery of Purchased Energy. Seller shall have the right to be present whenever Purchaser reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts any of Purchaser's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Delivery Point. Purchaser shall give at least forty-eight (48) hours' notice to Seller in advance of taking any such actions. The records from the measuring equipment shall remain the property of Purchaser, but, upon request, Purchaser shall submit to Seller its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Purchaser agrees to retain such records for a period of two (2) years.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 *Seller's Representations and Warranties.*

Seller represents and warrants as follows:

(i) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and authorized to conduct business in [_____];

(ii) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval (except for those approvals set forth in Sections 3.2 and 7.1 and approval by its board of directors (or equivalent governing body)) that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Seller or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(iv) With the exception of the actions set forth in Sections 3.2, 5.3 and 7.1 and approval by its board of directors (or equivalent governing body), Seller has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(v) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Seller, or to its knowledge threatened against Seller;

(vi) To the Seller's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect Seller's ability to perform its obligations under this Agreement; and

(vii) This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

5.2 *Purchaser's Representations and Warranties.*

(a) Purchaser represents and warrants as follows:

(i) Purchaser is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] [and authorized to conduct business in _____];

(ii) Purchaser has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) Purchaser has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Purchaser with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval (except for those approvals set forth in Sections 3.2 and 7.3) that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Purchaser or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Purchaser is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) With the exception of the actions set forth in Sections 3.2 and 7.3, Purchaser has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Purchaser, or to its knowledge threatened against Purchaser;

(vii) To the Purchaser's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect Purchaser's ability to perform its obligations under this Agreement;

(viii) This Agreement is a legal, valid and binding obligation of Purchaser enforceable in accordance with its terms, except as limited by laws of general

applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity; and

(ix) [Purchaser is entitled by virtue of its organizational documents and the laws and agreements that regulate it to unilaterally revise the rates it charges for electric capacity and energy furnished to its member cooperatives sufficient to satisfy its covenants under Section 3.6, and Purchaser is not aware of any proposed change in such organizational documents, laws or agreements that would vary its ability to so revise its rates.¹]

5.3 Seller's Covenants

Seller covenants that (i) from the Partial Commercial Operation Date through the expiration or termination of this Agreement, the Wind Project shall be operated and maintained in accordance with this Agreement and Applicable Laws, and (ii) it shall use reasonable efforts to cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable [_____] statutes and regulations affecting job safety, *provided* that Seller's failure to comply with the requirements of this Section 5.3 shall not provide Purchaser with the right to terminate this Agreement. Seller covenants not to support, and to cooperate with Purchaser in opposing, any action of any regulatory body having jurisdiction thereover that could result in the modification or vitiation of any of the terms or conditions hereof or have any other material adverse effect on this Agreement.

5.4 Purchaser's Covenants.

(a) Purchaser covenants that: (i) from the date hereof through the expiration or termination of this Agreement, Purchaser shall comply with this Agreement and Applicable Laws, and (ii) Purchaser will, at Seller's expense, reasonably cooperate with Seller in opposing, and will not support any action of any regulatory body having jurisdiction thereover that could result in the modification or vitiation of any of the terms or conditions hereof or have any other material adverse effect on Seller, the Wind Project or this Agreement.

[(b) Purchaser covenants that (i) upon execution of this Agreement, it will deliver to Seller an executed legal opinion from its general counsel substantially in the form of attached Exhibit D; and (ii) on or before _____, _____, it will deliver to Seller the resolutions executed by its board of directors approving Purchaser's execution, delivery and performance of this Agreement, accompanied by a Secretary's certificate certifying such resolutions.]

¹ As drafted representation is appropriate for a purchaser that is an electric cooperative.

ARTICLE 6 INDEMNIFICATION AND INSURANCE

6.1 *General Indemnity.*

Subject to the provisions of Sections 2.4 and 2.5 (with respect to damages for certain activities) and Section 8.8(waiver of certain damages), each Party hereby protects, defends, indemnifies and holds harmless, on an After-Tax Basis, the other Party, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from property damage, bodily injuries or death suffered by any Person (including, without limitation, employees of Purchaser) related to, arising from, or connected to the performance by the indemnifying party of its obligations hereunder, or Energy, back-up power or other products to be delivered hereunder. The indemnification provisions of this Section 6.1 shall apply notwithstanding the active or passive negligence of the indemnitee, but the indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that an act or omission of the indemnitee may have contributed to the loss, injury or property damage. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its sole negligence or its gross negligence, fraud or willful misconduct. The indemnitor, upon the other Party's request, shall defend any suit asserting a claim covered by this indemnity and shall pay all costs (subject to the proportionality standard set forth above in the event of the indemnitee's contributory negligence), including reasonable legal fees, that may be incurred by the other Party in enforcing this indemnity, *provided* that the indemnitor shall be entitled, at its option, to assume and control the defense and any settlement of such suit. Each indemnity set forth in this Article 6 is a continuing obligation, separate and independent of the other obligations of each Party and survives the expiration or termination hereof. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

6.2 *Patent Indemnity.*

Subject to the provisions of Section 8.8, each Party hereto protects, defends, indemnifies and holds harmless, on an After-Tax Basis, the other Party, its directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorneys' fees) arising from the infringement by the indemnifying Party of any patent relating to the Wind Project, the Seller's Interconnection Facilities, the Transmission Provider's Interconnection Facilities or the Transmission Provider's Transmission System.

6.3 *Insurance.*

(a) Each Party, at its own cost and expense, shall maintain and keep in full force and effect from the date hereof through the later of the date of expiration or termination hereof, the following insurance coverage:

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limit of one million dollars (\$1,000,000) for disease and injury to employees; and

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with minimum combined single limit liability of five million dollars (\$5,000,000).

(b) Any insurance required by this Section 6.3 to be maintained by either Party may be maintained in the form of self-insurance. All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof. All insurance coverage, other than self-insurance, required by this Agreement if not self-insurance shall be issued by an insurer with an A.M. Best's rating of not less than "A-" or such other insurer as is reasonably acceptable to both Parties.

(c) Each Party shall require its insurer(s) to notify the other Party of any material change in, or cancellation of, the insurance required by this Section 6.3 at least thirty (30) Days prior to the effective date of such change or cancellation. Within fifteen (15) Days after the date hereof, each Party shall provide to the other Party and thereafter maintain with the other Party a current certificate of insurance or evidence of self-insurance verifying the existence of the insurance coverage required by this Agreement.

ARTICLE 7 GOVERNMENT APPROVALS

7.1 *Government Approvals - Seller's Obligation.*

Except with respect to governmental approvals, licenses and permits that may be required to allow Purchaser to perform its obligations hereunder or as otherwise specified hereunder (all of which shall be obtained and maintained by Purchaser at its sole cost), Seller shall secure and maintain, at no cost to Purchaser, all governmental approvals, permits (including environmental permits), licenses, easements, rights-of-way, releases and other approvals necessary for the construction, engineering, operation and maintenance of the Wind Project and the performance by Seller of its obligations hereunder.

7.2 *Assistance.*

At Seller's request, Purchaser shall use reasonable efforts to assist Seller in obtaining and retaining such permits, licenses, releases and other approvals as are necessary for the design, construction, engineering, operation and maintenance of the Wind Project and the performance by Seller of its obligations hereunder and to provide access to all easements and rights of way necessary for the Wind Project or the performance by Seller of its obligations hereunder. Seller agrees to use reasonable efforts to assist Purchaser in obtaining and retaining such permits, licenses, releases and other approvals as are necessary for the performance by Purchaser of its

obligations hereunder. Each Party shall reimburse the other Party for out-of-pocket costs reasonably incurred by such other Party in rendering assistance under this Section 7.2.

7.3 *Government Approvals – Purchaser’s Obligation.*

Purchaser shall secure and maintain, at no cost to Seller, all government approvals, permits, licenses, easements, rights of way, releases and other approvals necessary for the performance by Purchaser of its obligations hereunder.

ARTICLE 8 MISCELLANEOUS

8.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Wind Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the “Confidential Information”). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the “Disclosing Party”) may make such Confidential Information available to the other (each, a “Receiving Party”) subject to the provisions of this Section 8.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Wind Project and for the purposes of this Agreement who shall be bound by the terms of this Section 8.1;

(iii) Use such Confidential Information solely for the purpose of developing the Wind Project and for purposes of this Agreement; and

(iv) Upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this Section 8.1 do not apply to:

(i) Release of this Agreement to any governmental authority required for obtaining any approval or making any filing pursuant to Sections 3.2, 7.1 or 7.3, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, *provided* that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Freedom of Information Act request); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Lenders and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them.

(e) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 8.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Wind Project or as are necessary in order to fulfill such Party's obligations under this Agreement.

(f) The obligations of the Parties under this Section 8.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

8.2 Successors and Assigns; Assignment.

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned.

(b) Notwithstanding the foregoing, no consent shall be required for:

(i) Any assignment or transfer of this Agreement by Seller or Purchaser to an Affiliate of Seller or Purchaser;

(ii) Any assignment or transfer of this Agreement by Seller or Purchaser to a Person succeeding to all or substantially all of the assets of such Party, *provided* that such Person's creditworthiness is equal to or better than that of such Party, as reasonably determined by the non-assigning or non-transferring Party;

(iii) Any assignment of this Agreement by Seller to any Lenders as collateral security for obligations under the financing documents entered into with such Lenders; or

(iv) Any assignment by the Lenders to a third party after the Lenders have exercised their foreclosure rights with respect to this Agreement or the Wind Project.

(c) Purchaser acknowledges that upon an event of default under any financing documents relating to the Wind Project, any of the Lenders may (but shall not be obligated to) assume, or cause its designee or a new lessee or purchaser of the Wind Project to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement.

(d) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to Purchaser arising or accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Purchaser shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement; *provided, however*, that if any such Person assumes this Agreement as provided herein, Purchaser acknowledges and agrees that such Persons shall not be personally liable for the performance of such obligations hereunder except to the extent of the total interest of the Lenders in the Wind Project. Notwithstanding any such assumption by any of the Lenders or a designee thereof, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Purchaser arising or accruing hereunder prior to such assumption.

(e) The provisions of this Section 8.2 are for the benefit of the Lenders as well as the Parties hereto, and shall be enforceable by the Lenders as express third-party beneficiaries hereof. Purchaser hereby agrees that none of the Lenders, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Purchaser with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this Section 8.2.

8.3 *Financing Liens.*

(a) Seller, without approval of Purchaser, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Wind Project and the Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

(d) If Seller encumbers its interest under this Agreement as permitted by this Section 8.3, the following provisions shall apply:

(i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the Lenders;

(ii) The Lenders or their designees shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller and such act performed by the Lenders or their designees shall be as effective to prevent or cure an Event of Default as if done by Seller;

(iii) Purchaser shall upon request by Seller execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of Events of Default hereunder by Seller and documents of consent to such assignment to the encumbrance and any assignment to such Lenders; and

(iv) Upon the receipt of a written request from Seller or any Lender, Purchaser shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Wind Project or any part thereof and will enter into reasonable agreements with such Lender, which agreements will grant certain rights to the Lenders as more fully developed and described in such documents, including (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Lender, which consent is not to be unreasonably withheld or delayed, (b) Lenders shall be given notice of, and the opportunity to cure as provided in Section 3.4(d), any breach or default of this Agreement by Seller, (c) that if the Lender forecloses, take a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, then (i) Purchaser shall, at Lender's request, continue to perform all of its obligations hereunder, and Lender or its nominee may perform in the place of Seller, and may assign this Agreement to another Person in place of Seller, (ii)

Lender shall have no liability under this Agreement except during the period of such Lender's ownership or operation of the Wind Project and (iii) that Purchaser shall accept performance in accordance with this Agreement by Lender or its nominee, and (d) that Purchaser shall make representations and warranties to Lender as Lender may reasonably request with regard to (1) Purchaser's existence, (2) Purchaser's authority to execute, deliver and perform this Agreement, (3) the binding nature of the document evidencing Purchaser's consent to assignment to Lender and this Agreement on Purchaser and (4) receipt of regulatory approvals by Purchaser with respect to its execution and performance under this Agreement.

8.4 Notices.

Each notice, request, demand, statement or routine communication required or permitted under this Agreement, or any notice or communication that either Party may desire to deliver to the other, shall be in writing and shall be considered delivered when received by the other Party by certified U.S. mail or reputable overnight courier addressed to the other Party at its address indicated below or at such other address as either Party may designate for itself in a written notice to the other Party in accordance with this Section 8.4.

If to Seller: [_____]
 c/o FPL Energy
 700 Universe Boulevard
 Juno Beach, FL 33408
 Attn: Business Manager
 Telephone: (561) 691-7171
 Facsimile: (561) 691-7177

If to Purchaser: _____

 Attn: _____
 Telephone: () ____-____
 Facsimile: () ____-____

8.5 Force Majeure.

The performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event. The Party experiencing the delay or hindrance shall use reasonable efforts to notify the other Party in writing of the occurrence of such Force Majeure Event and the anticipated period of delay within ten (10) Days after the commencement of the Force Majeure Event, *provided* that the failure of the Party experiencing the delay or hindrance to notify the other Party within such ten (10) Day period shall not preclude such Party from claiming a Force Majeure Event hereunder. Each Party suffering a Force Majeure Event shall

take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure Event suffered by either of them and to resume performance hereunder as soon as practicable under the circumstances.

8.6 Amendments.

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

8.7 Waivers.

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

8.8 Waiver of Certain Damages.

Notwithstanding any other provision of this Agreement (except to the extent indemnification payments are made pursuant to Section 6.1 as a result of an indemnified entity's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders or members, [including, without limitation, cooperative members]²) as a result of actions included in the protection afforded by the indemnification set forth in Section 6.1 and except with respect to the liquidated damages provided for in Sections 2.4 and 2.5), neither Purchaser nor Seller (nor any of their Affiliates, contractors, consultants, officers, directors, shareholders, members or employees) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise. Notwithstanding the foregoing, the Parties acknowledge and agree that if this Agreement is terminated due to an Event of Default by either Party, the actual or direct damages incurred by the non-defaulting Party shall include (i) in the case of a termination by Seller due to an Event of Default by Purchaser, the net present value of the difference, if positive, between (x) the amount that Purchaser would have been required to pay to Seller pursuant to this Agreement for delivery of all Purchased Energy that would have been delivered by Seller hereunder during the remainder of the Term (absent termination of this Agreement and based on an assumption as to the amount thereof calculated using reasonable projections based on historical performance) and (y) the net amount, if any, payable to Seller by a third party pursuant to any replacement power purchase agreement that Seller using commercially reasonable efforts under the circumstances enters into for the replacement of such Purchased Energy, plus, as and to the extent Seller is unable to remarket all of such Energy, then the net amount described in clause (y) shall be \$0 and the damages owed by Purchaser shall also include the then current amount of the production tax credit (on a per MWh basis) on an After-

² Provision regarding member cooperatives is appropriate for a purchaser that is an electric cooperative.

Tax Basis for each MWh of such Energy that Seller was unable to remarket, (ii) in the case of a termination by Purchaser due to an Event of Default by Seller, the net present value of the difference, if positive, between (x) the amount that Purchaser is obligated to pay to a third party pursuant to any replacement power purchase agreement that Purchaser enters into for Purchased Energy that would have been delivered by Seller hereunder during the remainder of the Term (absent termination of this Agreement and based on an assumption as to the amount thereof calculated using reasonable projections based on historical performance) and (y) the amount that Purchaser would have been required to pay to Seller pursuant to this Agreement for such Purchased Energy and (iii) any make-whole or other damages payable by Seller to its Lenders as a result of a termination of this Agreement due to an Event of Default by Purchaser. The damages provided in this Section 8.8 shall be the sole and exclusive remedy of a Party as a result of the termination of this Agreement due to an Event of Default by the other Party.

8.9 *Survival.*

Notwithstanding any provisions herein to the contrary, the obligations set forth in Sections 8.1 and 8.8, the indemnity obligations set forth in Article 6, and the limitations on liabilities set forth herein shall survive (in full force) the expiration or termination of this Agreement.

8.10 *Severability.*

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

8.11 *Standard of Review.*

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a Person or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

8.12 *Governing Law.*

This Agreement shall be interpreted and enforced in accordance with the laws of the State of [] without regard its conflicts of laws provisions.

8.13 *Consent to Jurisdiction.*

Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the United States of America for the [_____] District of [_____] having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby:

- (i) Accepts the non-exclusive jurisdiction of the aforesaid courts;
- (ii) Irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;
- (iii) Irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum;
- (iv) Agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address(es) set forth in Section 8.4, or at such other address of which the other Parties hereto shall have been notified; and
- (v) Agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or limit the right to bring any suit, action or proceeding in any other jurisdiction.

8.14 *Waiver of Trial by Jury.*

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

8.15 *Disputes*

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either party, then such Dispute shall be referred to the senior management of the

Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then either Party may pursue all of its remedies available hereunder. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner. In the event a dispute hereunder is resolved pursuant to arbitration or judicial proceedings, the Party, whose petition does not prevail in such proceedings, shall reimburse all of the other Party's third party costs (including reasonable attorney's fees) incurred to prosecute or defend (as the case may be) such proceedings.

8.16 *No Third-Party Beneficiaries.*

Except as set forth in Article 6 and in Sections 8.2, 8.3 and 8.8, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

8.17 *No Agency.*

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

8.18 *Cooperation.*

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

8.19 *Further Assurances.*

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 8.19.

8.20 *Captions; Construction.*

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

8.21 *Entire Agreement.*

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

8.22 *Counterparts.*

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

[Seller]

[Purchaser]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
CONTRACT RATE

PERIOD	CONTRACT RATE (\$/MWh)
From and including the Partial Commercial Operation Date through the remainder of the Term	[\$_____]

EXHIBIT B

DESCRIPTION OF WIND PROJECT

Seller intends to build, own and operate a Wind Project with a nameplate capacity rating of approximately [___] MW. The Wind Project will be located in [_____]. The Wind Project will generate electrical power that will be sold wholesale.

As presently planned, the Wind Project will consist of:

- Approximately [_____ (___)] wind turbine generators "Turbines" on tubular steel towers. Each individual Turbine would have a nameplate capacity rating of 660 kW.
- A network of several miles of low profile, gravel field roads providing access to the Turbines.
- Electrical transformation equipment located at the Wind Project.
- An underground and aboveground electric cable collection system to carry electricity to the substation.
- An underground and aboveground fiber-optic data collection system.
- [___] permanent meteorological ("MET") towers.
- A temporary construction lay down area.
- Maintenance/field office(s).

Nothing in this Agreement or Exhibit B is intended to either (i) limit the right of Seller to make any changes to the Wind Project it determines to undertake, or (ii) grant any rights to Purchaser regarding the description, nature or components of the Wind Project.

EXHIBIT C

DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM

[TO BE INSERTED BY SELLER]

EXHIBIT D
PURCHASER'S LEGAL OPINION

[TO BE INSERTED]