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October 24, 2019

Lisa Felice  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Post Office Box 30221  
Lansing, MI 48909

**Re: Case No. U-15805-Q: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for CONSUMERS ENERGY COMPANY to fully comply with Public Acts 286 and 295 of 2008.**

Dear Ms. Felice:

Enclosed for electronic filing is **Consumers Energy Company's Application for *Ex Parte* Approval of the Wind Turbine Purchase Agreement and the Balance of Plant Engineering, Procurement, and Construction Agreement Related to the Gratiot Farms Wind Project** in the above-captioned case. This is a paperless filing and is therefore being filed only in a PDF format. I have enclosed a Proof of Service showing electronic service upon the parties.

Sincerely,

Anne M. Uitvlugt

cc: Parties per Attachment 1 to Proof of Service

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions, )
determinations, and/or approvals necessary for )
CONSUMERS ENERGY COMPANY to )
fully comply with Public Acts 286 and 295 )
of 2008. )

Case No. U-15805-Q

CONSUMERS ENERGY COMPANY'S APPLICATION FOR EX PARTE APPROVAL
OF THE WIND TURBINE PURCHASE AGREEMENT AND THE BALANCE OF
PLANT ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT
RELATED TO THE GRATIOT FARMS WIND PROJECT

Consumers Energy Company ("Consumers Energy" or the "Company"), pursuant to 2008
PA 295 ("Act 295"), MCL 460.1028(4), applies to the Michigan Public Service Commission
("MPSC" or the "Commission") for an ex parte order approving the Wind Turbine Purchase
Agreement ("TPA") and the Balance Of Plant Engineering, Procurement and Construction ("BOP
EPC") Agreement entered into to support the Development Asset Acquisition ("DAA")
Agreement to acquire the Gratiot Farms Wind Project ("Gratiot Farms") assets and construct and
operate Gratiot Farms after the acquisition. The TPA is provided as Attachment 2 to this
Application, and the BOP EPC Agreement is provided as Attachment 1 to this Application. In
support of this Application, the Company states as follows:

1. Consumers Energy is, among other things, engaged as a public utility in the
business of generating, purchasing, distributing, and selling electric energy to approximately
1.8 million retail customers in the state of Michigan. The retail electric system of Consumers
Energy is operated as a single utility system, within which uniform rates are charged.

2. Consumers Energy's retail electric business is subject to the jurisdiction of the
Commission pursuant to various provisions of 1909 PA 106, as amended, MCL 460.551 et seq.;

1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; and Act 295, as amended, MCL 460.1001 *et seq.* Pursuant to these statutory provisions, the Commission has the power and jurisdiction to regulate Consumers Energy's retail electric rates.

3. Act 295 requires Commission approval of contracts entered into for the purposes of the Company meeting Act 295's renewable energy credit standards. MCL 460.1028(4) states:

For an electric provider whose rates are regulated by the commission, the electric provider shall submit a contract entered into for the purposes of subsection (3) to the commission for review and approval. If the commission approves the contract, it shall be considered consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process.

Pursuant to MCL 460.1028, Consumers Energy is requesting approval of the TPA and BOP EPC Agreement related to Gratiot Farms. The Request for Proposal ("RFP") and the evaluation process are hereinafter described, and are supported by the Affidavit of Scott D. Thomas, which is attached to this Application as Attachment 3.

4. On May 1, 2018, Consumers Energy entered into a DAA Agreement with Gratiot Farms Wind Project, LLC to acquire Gratiot Farms, which is being developed by Tradewind Energy, Inc. ("TWE"). TWE is one of the largest and most well-respected utility-scale wind developers in the United States. Under the DAA Agreement, TWE is contractually obligated to complete the development related activities, including procurement of the safe harbor equipment. All project assets will then be transitioned to Consumers Energy to execute the construction process.

5. **Wind Turbine Purchase Agreement:** Prior to entering into the DAA, Consumers Energy established a list of qualified wind turbine generator suppliers. In identifying companies,

the Company looked for possible wind turbine suppliers who could supply wind turbine technology well suited for an International Electrotechnical Commission (“IEC”) 61400 Class III wind regime; could supply compatible safe harbor equipment; matched current wind turbine fleet technology; were well-established based on reputation; and have the infrastructure and support networks required to furnish equipment and services necessary to build and maintain a utility scale wind park project located in Michigan. The Company selected the aforementioned list of attributes in order to deliver an economic wind power plant project.

Of the list of attributes considered, there were three specific areas of consideration. The Company first wanted to select a wind turbine model well suited to an IEC Class III wind regime (or an area that experiences an annual average wind speed at turbine hub height of 7.5 m/s and an extreme 50-year gust of 52.5 m/s or less). This allows the project to have an effective capacity factor for the available wind resource. Another important selection criterion was to only solicit proposals from vendors who could supply compatible Production Tax Credit (“PTC”) safe harbor equipment. Lastly, the Company chose to only solicit proposals from wind turbine vendors who matched the Company’s current fleet and who had infrastructure and support networks necessary to furnish, commission, and maintain utility scale wind parks located in Michigan. The choice to match to the Company’s current fleet standardizes and streamlines the Company’s Operations and Maintenance (“O&M”) and warranty processes. After considering all of these factors, the Company elected to solicit turbine purchase agreement proposals from two vendors for Gratiot Farms.

6. Proposals were received from the two suppliers and evaluated through 2018. Proposals were reviewed for scope, schedule, technology, and contractual terms and conditions. The Company then used a financial model to determine a 31-year levelized cost using purchase

price, selected options, estimated BOP EPC cost, net capacity factor derived from wind resource modeling and the turbine's power curve, and O&M services price for each project. An evaluation table was developed to fairly compare the proposals. The Company proceeded to negotiate the DAA based on the technology of the turbine supplier that through the evaluations gave the lowest Levelized Cost of Energy ("LCOE"). The DAA included the provision of safe harbor turbines of the then-preferred turbine supplier.

7. Subsequent to the negotiation of the DAA Agreement, discussions with the turbine supplier for the provision of the remaining turbines for the project commenced. During these negotiations, the turbine supplier advised that the cost of the turbines would increase due to changing market conditions and the recently-enacted steel import tariffs. The combined effect of the cost increases would have increased the total project purchase price of Gratiot Farms. This caused the Company to renew discussions with the second turbine supplier, General Electric ("GE"). The capital costs provided by GE were in line with previous TPAs executed by the Company and with the TPA cost estimate the Company had originally assumed for the Gratiot Farms TPA. The Company completed a review of GE's financial strength, reputation, market penetration for projects and services, demonstrated product and service experience in the United States, as well as its safety and compliance record. TWE was able to substitute GE safe-harbor turbines for the safe-harbor wind turbines originally provided for in the DAA Agreement. The Company negotiated and entered into the TPA for the balance of plant turbine supply for Gratiot Farms.

8. GE is one of the largest wind turbine manufacturers in the world with over 35,000 wind turbines installed globally. Furthermore, GE has proven its success locally by furnishing multiple wind parks across the state of Michigan. The Company has successfully completed Phase

I and Phase II of Cross Winds Energy Park (“CWEP”) and is in the midst of planning and engineering CWEP Phase III with GE wind turbines. Under the TPA for Gratiot Farms, GE will provide the Company with 53 GE 2.5-127 turbines and deliver the seven GE 2.3-116 safe-harbor turbines obtained under the DAA Agreement. The GE 2.5-127 turbines produce 2.5 MW each, have a 127 m rotor diameter, and stand on 89 m towers.

9. In developing the project, the Company has the full expectation of qualifying for 100% PTC by relying on the 5% Financial Safe Harbor test and placing turbines into service by December 31, 2020. The Company secured an opinion from national tax counsel that concluded that the DAA Developer properly safe-harbored the equipment purchased under that contract and therefore a project constructed using that equipment should qualify for full PTC. Additionally, IRS guidance allows safe-harbored equipment to be transferred to unrelated parties, if transferred along with other project assets so the transfer of the turbines from the developer to the Company should not disturb the safe-harbored status of the equipment. If there are delays and the project is unable to place turbines in service before December 31, 2020, there are contractual provisions designed to protect customers and the Company.

10. **BOP EPC contract:** Consumers Energy initially established a list of possible contractors who were known to be capable of providing full scope balance of plant construction services, including equipment, labor, tools, supervision, materials, engineering, and procurement services for a 150 MW wind farm. Industry reputation, experience, and financial strength sufficient to stand behind their products were important factors in the evaluation. Based on that analysis, four contractors were issued a formal RFP on November 8, 2019 and a revised RFP on April 5, 2019.

11. Proposals were received by May 16, 2019. Consumers Energy received proposals from three potential contractors. The Company evaluated the proposals received in the manner described in its RFP. The bids were first evaluated for completeness and consistency with the proposal content and bid requirements outlined in the RFP. No proposals were rejected because of this step. The Company then sent out a series of clarification questions to which the bidders responded. Bid evaluation tables were developed to ensure all items bid were adjusted as necessary to fairly compare all proposals. After analysis and negotiation of commercial terms with each bidder, Consumers Energy selected the Michigan-based Barton Malow Company as the Gratiot Farms BOP EPC contractor. Barton Malow Company has constructed several utility scale wind farms in Michigan, including the Apple Blossom Wind Farm in Huron County and the first phase of CWEP in Tuscola County.

12. Based on its original financial modeling, the Company projected an LCOE for the Gratiot Farms project of \$46/MWh. This was the LCOE estimated in the Company's request for approval of the DAA Agreement. Based on the Company's updated financial modeling, the Company now projects an LCOE of \$52/MWh for the Gratiot Farms project. There are two primary reasons for this projected increase in LCOE: (i) the increased turbine costs arising from recently-enacted steel import tariffs, which resulted in the change in the wind turbine technology; and(ii) the change in calculating the capacity factor. The TPA negotiations discussed above and the resulting agreement entered into resulted in an increased projected LCOE of \$49/MWh. The cost of the BOP EPC Agreement is consistent with costs previously assumed when calculating the LCOE for Gratiot Farms, and did not impact the projected LCOE. Additionally, during this time, in order to provide an accurate estimation of the project's capacity factor, Consumers Energy engaged a reputable third-party consultant to perform an analysis. Completing a third-party study

is typical practice for the Company's wind development because the capacity factor has a significant role in the economics of a project, and as wind development moves to areas in the state without historic data for comparison, the Company saw particular value in further validating capacity factor estimations. The third-party consultant provided a report indicating a capacity factor almost 2% lower than originally estimated. The Company performed due diligence to understand the nature of the change and to mitigate lifetime project costs including landowner payments and O&M assumptions. The Company believes the analysis provided by the third party is an accurate estimation of the wind resource of the area. Despite the overall capital costs of Gratiot Farms staying consistent throughout the development, the change in the capacity factor increased the projected LCOE of the project to \$52/MWh. While the projected LCOE of the project increased, it is significantly less than the \$57.75/MWh levelized cost for new wind projects included in the Company's Renewable Energy Plan.

11. In using reasonable efforts to keep certain commercially-sensitive information relating to the bids and contracts confidential, Consumers Energy has redacted commercially-sensitive terms and conditions of the attached TPA and BOP EPC Agreement to maintain confidentiality, consistent with past practice of the Commission. Act 295 states that the "commission and a provider shall handle confidential business information under this act in a manner consistent with state law and general rules of the commission." MCL 460.1193(2). The Commission has recognized that power purchase agreements and Renewable Energy Purchase Agreements ("REPAs") contain confidential information. For example, in MPSC Case No. U-11130, the Commission limited disclosure of the confidential portions of a power purchase agreement to the MPSC Staff only in order to "strike a proper balance between the public interest in disclosure and the protection of commercially sensitive information in a competitive

environment.” MPSC Case No. U-11130, October 20, 1997 Order, page 13. The Commission has also approved REPAs submitted by the Company which had a limited number of commercially-sensitive terms redacted. MPSC Case No. U-15805, July 27, 2010 and November 19, 2015 Orders. Similarly, in Case No. U-14626, the Commission approved multiple renewable energy contracts with various contract provisions redacted. MPSC Case No. U-14626, October 18, 2005 Order. The original unredacted contracts are available for inspection by the MPSC Staff at the Company’s offices.

12. Consumers Energy requests that the Commission provide assurance that the full actual costs of Gratiot Farms will be recoverable through the combined application of the transfer price mechanism and, if necessary, the Renewable Energy surcharge. The Company proposes to use the 2017 Transfer Price Schedule for the Gratiot Farms contracts that the Commission approved in its March 29, 2018 Order in MPSC Case No. U-18241. The Company seeks Commission approval of the Transfer Price Schedule for the life of Gratiot Farms. Such approval will minimize the future uncertainty regarding the manner in which these costs will be recovered. The approved Transfer Price Schedule from Case No. U-18241 is attached to this Application as Attachment 4.

Also, pursuant to MCL 460.1047(1):

The recovery shall include, but is not limited to, the electric provider’s authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider’s base rates when the electric provider’s renewable energy plan was approved.

The applicable rate of return on equity and the debt to equity ratio are those approved in Case No. U-15245, which were in effect when the Commission approved the Company’s Initial Renewable Energy Plan in Case No. U-15805.

13. The Commission indicated that it intends to review and approve contracts submitted under Act 295 “on an expedited basis with a target of issuing the order within 30 calendar days from the date of filing of each contract.” MPSC Case No. U-15800, December 4, 2008 Order, page 16. The Company requests review and approval of the TPA and BOP EPC Agreement on this expedited basis.

14. MCL 460.6a(1) states, in part:

A gas utility, electric utility, or steam utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. . . . The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. . . .

The approvals requested in this Application will not result in an alteration or amendment in rates or rate schedules and will not increase the cost of services to the Company’s customers because the TPA and BOP EPC Agreement are consistent with the planned activities, expenses, revenue recovery mechanisms, and surcharges described in Consumers Energy’s Renewable Energy Plan in Case No. U-18231. The approvals sought in this Application therefore “may be authorized and approved without notice or hearing.” MCL 460.6a(3). See also MPSC Case No. U-15806, April 30, 2009 Order, pages 9 through 10; MPSC Case No. U-15805, December 2, 2010 Order, page 5.

WHEREFORE, Consumers Energy Company respectfully requests the Michigan Public Service Commission to issue an ex parte order providing as follows:

A. Approving Consumers Energy’s Application for approval of the Wind Turbine Purchase Agreement and the Balance Of Plant Engineering, Procurement and Construction

Agreement for the Gratiot Farms project pursuant to MCL 460.1028, MCL 460.6j, the Orders issued in Case Nos. U-15800 and U-15805, and other applicable law;

B. Approving the updated Transfer Prices described in this Application with respect to the attached contracts;

C. Providing assurance that the full actual costs of the Gratiot Farms project will be recoverable through the combined application of the Transfer Price mechanism, the renewable energy surcharges, and, subsequent to the end of the Renewable Energy Plan period, an appropriate ratemaking mechanism in accordance with MCL 460.1047(6); and

D. Granting such other and further relief that the Commission finds just and reasonable.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: October 24, 2019

By: \_\_\_\_\_  
Dennis D. Dobbs  
Vice President of Enterprise Project  
Management/Environmental Services  
Consumers Energy Company

By: \_\_\_\_\_  
Anne M. Uitvlugt (P71641)  
Gary A. Gensch, Jr. (P66912)  
Attorneys for Consumers Energy Company  
One Energy Plaza  
Jackson, Michigan 49201  
(517) 788-2112

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)  
regarding the regulatory reviews, revisions, )  
determinations, and/or approvals necessary for )  
CONSUMERS ENERGY COMPANY to )  
fully comply with Public Acts 286 and 295 )  
of 2008. )  
\_\_\_\_\_ )

Case No. U-15805-Q

**VERIFICATION**

STATE OF MICHIGAN )  
 )ss  
COUNTY OF JACKSON )

Dennis D. Dobbs, being first duly sworn, deposes and says that he is the Vice President of Enterprise Project Management/Environmental Services of Consumers Energy Company; that he has executed the foregoing Application for and on behalf of Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.

Dated: October 24 2019

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

Dennis D. Dobbs  
Vice President of Enterprise Project  
Management/Environmental Services  
Consumers Energy Company

# **ATTACHMENT 1**

**CONFIDENTIAL**

**BALANCE OF PLANT  
ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**by and between**

**CONSUMERS ENERGY COMPANY,**

**as Owner**

**and**

**BARTON MALOW COMPANY**

**as Contractor**

**for the**

**GRATIOT FARMS WIND PARK**

**Dated as of August 9, 2019**

# CONFIDENTIAL

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Exhibit DD	[Redacted]
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Exhibit II	[Redacted]

# CONFIDENTIAL

## BALANCE OF PLANT ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This BALANCE OF PLANT ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into as of August 9, 2019 (the "Effective Date"), by and between CONSUMERS ENERGY COMPANY, a Michigan corporation, having its principal offices at One Energy Plaza, Jackson, Michigan 49201 (the "Owner"), and Barton Malow Company, a Michigan Corporation, having its principal offices at 26500 American Drive, Southfield, Michigan 48034 (the "Contractor").

WHEREAS, the Owner is developing a wind-powered electric generation facility to be located in Gratiot County, Michigan.

WHEREAS, the Contractor has represented that it is experienced and qualified in providing design, engineering, technical assistance, procurement, supply, construction management, construction, installation, start-up and testing services, and that it possesses the expertise and resources to complete the Work (as defined herein).

WHEREAS, the Owner wishes to engage the Contractor, and the Contractor wishes to be engaged, to design, engineer, provide technical assistance, procure, supply, manage, construct, install, start-up, and test the Balance of Plant (as defined herein), on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein the Parties hereto, intending to be legally bound hereby, agree as follows:

### ARTICLE 1 DEFINITION OF TERMS AND INTERPRETATION

1.1 Definitions. Whenever used in this Agreement, the following terms shall have the following respective meanings:

- "Agreement" has the meaning set forth in the introductory paragraph hereof and includes all Exhibits and schedules attached hereto.
- "Balance of Plant" or "BOP" means everything to be furnished, supplied, or otherwise in any manner done by the Contractor in the Work, including all permanent equipment and materials and other items incorporated (or to be incorporated) in the Project, except only for the procurement of Owner-Supplied Equipment (but expressly including installation, erection, and everything else to be done by the Contractor in connection with Owner-Supplied Equipment as part of the Work as defined herein).
- "Balance of Plant Performance Tests" means the performance tests with respect to the Balance of Plant described in, and performed in accordance with, Exhibit A.
- "BOP Spare Parts" means spare parts with respect to the Balance of Plant equipment.

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- “BOP Vendor Manual” means each operations manual and data sheets with respect to the Balance of Plant to be provided by the Contractor or a Supplier or Subcontractor, each of which shall be attached as part of Exhibit A and which manuals shall include among other things the general operating characteristics and requirements as well as all operations and maintenance procedures for all components and/or systems included in the Balance of Plant, as typically provided by such Subcontractors and Suppliers in accordance with Good Utility Industry Practices and Prudent Wind Industry Practices. For the avoidance of doubt, the inclusion of the BOP Vendor Manuals shall not relieve the Contractor of any obligation to insure that such BOP Vendor Manuals conform to the requirements of this Agreement, including the Scope of Work.
- “Business Day” means every day other than a Saturday, Sunday or a day on which banking institutions are required or permitted to be closed in the State of Michigan.
- “Certified Michigan Content” means Certified Michigan Equipment and/or Certified Michigan labor, as applicable.
- “Certified Michigan Equipment” means the cost to the Owner under this Agreement of all equipment and materials manufactured or assembled in the State of Michigan as incorporated into the Work.
- “Certified Michigan Labor” means the number of labor hours attributed to the construction at the Project Site performed by residents of the State of Michigan.
- “Change Order” means a written order issued in accordance with the provisions of ARTICLE 5, agreed to and signed by the Owner and the Contractor.
- “Collection System Circuit” means the permanent electrical and communications infrastructure required to transmit energy and SCADA data between each Turbine and the Collection System Substation or to the SCADA control panel as appropriate, in accordance with the Scope of Work and the Turbine Specifications. A Collection System Circuit includes for each Turbine, underground (and/or overhead if expressly specified in this Agreement) collection system cables, splices, grounding transformers, junction boxes, disconnect switches, breakers and other equipment as necessary between the Turbine and the medium voltage bus in the Collection System Substation. For communications infrastructure purposes, each Collection System Circuit shall include fiber optic cable and all other associated equipment necessary to transmit performance and operating data from each Turbine to the SCADA control panel. Each Collection System Circuit, including each Turbine associated therewith, is further described in the Scope of Work.
- “Collection System Circuit Completion” means, for each Collection System Circuit, the satisfaction of all of the requirements set forth in Subsection 6.4(a).
- “Collection System Circuit Completion Certificate” means a certificate from the Contractor to the Owner, substantially in the form of Exhibit Q, issued in accordance with Subsection 6.4(b), that the requirements for Collection System Circuit Completion for a Collection System Circuit have been satisfied.

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- “Collection System Circuit Completion Delay Damages” means the liquidated damages payable pursuant to the terms set forth in Subsection 8.2(c).
- “Collection System Substation” means the substation (including the transformers, breakers, structures, control building, metering, and other power conditioning components), located as shown in Exhibit A-2.
- “Completion Certificate” means a Turbine Foundation Group Completion Certificate, Substation Completion Certificate, Collection System Circuit Completion Certificate, Turbine Mechanical Completion Certificate, , and Substantial Completion Certificate, as applicable.
- “Confidential Information” has the meaning set forth in Section 17.2.
- “Construction Schedule” means the schedule for performing the Work, which shall be consistent with the Project Milestone Schedule, which is to be developed and agreed upon pursuant to the Agreement.
- “Contractor” has the meaning set forth in the first paragraph hereof.
- “Contractor Event of Default” has the meaning set forth in Section 14.1.
- “Contractor Permits” means the Permits that the Contractor is required to secure for the performance of the Work as listed on Exhibit C.
- “Contractor Responsible Roads” means the following:
  - (a) with respect to all matters of deliveries by Turbine Supplier of Turbines or components of Turbines (or any other equipment to be supplied by the Turbine Supplier), Contractor Responsible Roads means public roads and highways within the Project Site as shown on Exhibit A-3, and any private roads or access drives running from the just mentioned public roads and highways to specific Turbine Sites or to an Owner-designated storage location or laydown area within the Project Site; and
  - (b) with respect to all matters necessary for the performance and completion of the Work under this Agreement, Contractor Responsible Roads means all public roads and highways, wherever located, needed for or relevant to deliveries and access to Turbine Sites and any other Work locations, and any private roads or access drives running from the just mentioned public roads and highways to specific Turbine Sites or other Work locations.
- “Contract Price” has the meaning set forth in Section 3.1.
- “Crane Wind Day” is a term sometimes used herein to refer generally to either or both of a “Crane Full Wind Day” or a “Crane Half Wind Day”, each as hereinafter defined in this paragraph. “Crane Full Wind Day” means a day during which high wind speeds (as set forth in the table below) actually and demonstrably prevent the performance by the Contractor of Turbine erection Work utilizing a particular Main Erection Crane, provided

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that the effect thereof has an adverse effect on the critical path of the Contractor's Work; it being further expressly understood that a Crane Full Wind Day may only occur on a day when: (a) at least [REDACTED] of Turbine erection work is scheduled to be performed utilizing a particular Main Erection Crane; (b) sustained wind speeds at the levels defined in the table below or greater, as measured by the anemometer at the top of the crane boom performing the affected activity, are being experienced at the applicable Turbine Site; and (c) such winds actually prevent the Contractor from performing Turbine erection activities at the Turbine Site utilizing the applicable Main Erection Crane for at least an aggregate [REDACTED] within such scheduled [REDACTED] workday. A "Crane Half Wind Day" has the identical definition as set forth in the immediately preceding sentence, except only that, with respect to clause "(c)" of the immediately preceding sentence, such winds actually prevent the Contractor from performing Turbine erection activities at the Turbine Site utilizing the applicable Main Erection Crane for at least an aggregate [REDACTED] within such scheduled [REDACTED]. The foregoing definitions of "Crane Full Wind Day" and "Crane Half Wind Day" are further subject to the conditions that (i) the Contractor has provided to the Owner at [REDACTED] notice of the scheduled work day hours, (ii) the Contractor provides to the Owner a Wind Delay Reporting Form, substantially in the form of Exhibit GG, on the Business Day following the applicable Crane Full Wind Day or Crane Half Wind Day, and [REDACTED]

Notwithstanding the Contractor's submission of a Wind Delay Reporting Form, a Crane Full Wind Day or Crane Half Wind Day will be deemed to have occurred only upon the Owner's review of such Wind Delay Reporting Form and any related data that the Owner deems appropriate, and the Owner has provided written concurrence to the Contractor that a Crane Full Wind Day or Crane Half Wind Day has occurred. [REDACTED]

[REDACTED] For the avoidance of doubt, the following chart is not intended to imply that the described activity may be safely performed in all weather conditions when the applicable wind speeds are less than the below stated speeds, it being understood that the Contractor shall at all times be responsible for the safe performance of the Work.

<u>Activity</u>	<u>Wind Speed (mph)</u>
Installation of Upper Mid Tower Section	[25]
Installation of Top Tower Section or Nacelle	[22]
Installation of Blades	[22]

- "Crane Wind Day Extension" has the meaning set forth in Section 10.2.

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- “Customs Duties” means all import taxes, import duties, custom duties and other similar charges.
- “Delay Liquidated Damages” means, Collection System Circuit Completion Delay Damages, and/or Substantial Completion Delay Damages, and/or Production Tax Credits Damages, as applicable.
- “Deliverables List” means the list of drawings and other documents set forth in Exhibit EE to be delivered by the Contractor to the Owner pursuant to this Agreement.
- “Delivery Completion Date” means, as to each Turbine, the day that all components of a complete Turbine that is capable of Mechanical Completion have been delivered by the Turbine Supplier to the Turbine Site.
- “Demurrage Schedule” means the schedule detailing the unloading requirements with respect to all equipment as included in Exhibit B-1.
- “Dispute” has the meaning set forth in Section 18.1.
- “Dollars” means Dollars of the United States of America.
- “Easements and Special Land Owner Agreements” (or, where applicable, “Easements or Special Land Owner Agreements” or “Easements and/or Special Land Owner Agreements”) mean the easements and other land owner agreements identified in Exhibit A-4.
- “Effective Date” has the meaning set forth in the first paragraph hereof.
- “Energization”, “Energized” or “Energizing” means the electrical energization of the Collection System Substation, Collection System Circuit, Turbine, or other applicable component of the Project, to enable the delivery of energy from the Turbines to the Point of Interconnection, at rated capacity and otherwise in accordance with the intended design of all such facilities.
- “Excess Crane Wind Day” has the meaning set forth in Section 10.2.
- “Final Completion” means the satisfaction of all of the requirements set forth in Section 7.1.
- “Final Completion Date” means the date on which Final Completion occurs.
- “Force Majeure” has the meaning set forth in Section 10.1.
- “Full Notice to Proceed” has the meaning set forth in Section 4.2.
- “Geotechnical Studies” means the geotechnical and soil studies performed for the Project Site and attached hereto as Exhibit A-8.
- “Good Utility Industry Practices” means the practices, methods, and acts (including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of

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the electric utility industry) that, at a particular time, in the exercise of reasonable professional judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Law, ISO Requirements, regulation, codes, industry standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Project, Good Utility Industry Practice(s) include, but are not limited to, taking reasonable steps to ensure that:

- (a) Contractor- or Subcontractor- or Supplier-provided equipment, materials, resources, and supplies are available to meet the Project's needs;
  - (b) Contractor- or Subcontractor- or Supplier-provided equipment will function properly under both normal design conditions and any reasonably foreseeable emergency conditions at the Project Site;
  - (c) appropriate monitoring and testing are performed to ensure Contractor or Subcontractor or Supplier-provided equipment is functioning as designed; and
  - (d) Contractor- or Subcontractor- or Supplier-provided equipment is not commissioned and tested in a negligent manner, or in a manner unsafe to workers, the general public, or in violation of environmental Laws or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits.
- "Governmental Authority" means any federal, state, local, municipal or other governmental, regulatory, administrative, judicial, public or statutory instrumentality, court or governmental tribunal, agency, commission, authority, body or entity having legal jurisdiction over the matter or Person in question.
  - "Grounding Grid" means a grounding grid meeting the requirements set forth in the Scope of Work.
  - "Guaranteed Completion Dates" means the Guaranteed Turbine Foundation Group Completion Dates, the Guaranteed Substation Completion Date, the Guaranteed Collection System Circuit Completion Dates, and the Guaranteed Turbine Mechanical Completion Dates. In addition to all of the foregoing mentioned dates, "Guaranteed Completion Dates" also include the dates and/or ranges of dates required to be complied with by the Contractor as referred to in Subsection 8.1(a).
  - "Guaranteed Collection System Circuit Completion Date" means, for each Collection System Circuit, the date set forth on Exhibit T, as such date may be extended pursuant to the provisions of this Agreement.
  - "Guaranteed Substantial Completion Date" means the date set forth on Exhibit T, as such date may be extended pursuant to the provisions of this Agreement.

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- “Guaranteed Substation Completion Date” means the date identified as such in Exhibit T, as such date may be extended pursuant to the provisions of this Agreement.
- “Guaranteed Turbine Foundation Group Completion Date” means, for each Turbine Foundation Group, the date identified as such in Exhibit T, as such date may be extended pursuant to the provisions of this Agreement.
- “Guaranteed Turbine Mechanical Completion Date” means, for each Turbine, the date set forth on Exhibit T; [REDACTED]  
[REDACTED]  
[REDACTED]
- “Hazardous Materials” means (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any applicable Law; (ii) any petroleum, petroleum products (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), or oil and gas exploration or production waste, polychlorinated biphenyls, asbestos-containing materials, mercury, urea formaldehyde insulation, radioactivity and lead-based paints or any other substance that has been contaminated, polluted or made toxic; and (iii) any other chemical, material, substances, waste, or mixture thereof which is prohibited, limited, or regulated pursuant to, or that could reasonably be expected to give rise to liability under, any applicable Law.
- “Independent Engineer” means an engineering consulting firm designated by the Owner, or any successor engineering consulting firm designated by the Owner.
- “Installation Manual” means each installation manual with respect to the Balance of Plant to be provided by the Contractor or a Supplier or Subcontractor. For the avoidance of doubt, the inclusion of the Installation Manuals shall not relieve the Contractor of any obligation to insure that such Installation Manuals conform to the requirements of this Agreement, including the Scope of Work as attached hereto as of the Effective Date.
- “Interconnection Requirements” means the Interconnection Requirements attached hereto as Exhibit D.
- “ISO” means the Midwest Independent Transmission System Operator.
- “ISO Requirements” means the applicable Operating Guides, Metering Guidelines, ISO Generation Interconnection Procedures, Protocols as well as any other documents adopted by the ISO relating to the interconnection and operation of generators and transmission systems in the ISO as amended from time to time, and any successors thereto.

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- “Job Book” means a manual prepared by the Contractor and approved by the Owner containing all Contractor (and Subcontractor and Supplier) engineering, design, purchasing and other information relating to the Work, including the information described in Exhibit V.
- “Land Owner or Occupant” mean a Person from whom the Owner has obtained an Easement and/or any other Special Land Owner Agreement, and such Person’s successors and assigns, and their family members, licensees, invitees and lessees, if any, who may from time to time occupy or be present on the Project Site.
- “Liquidated Damages Notice” has the meaning set forth in Subsection 8.2(g).
- “Laws” means all laws, treaties, ordinances, statutes, judgments, injunctions, decrees, orders, writs, rules, regulations and interpretations, in effect as of or at any time after the Effective Date, of any Governmental Authority having jurisdiction over the actions of the Contractor, the Project Site, all or any portion of the Project, the performance of the Work, this Agreement and each other document, instrument and agreement delivered or to be delivered hereunder or in connection herewith.
- “LNTP” means a Limited Notice to Proceed issued by the Owner pursuant to Section 4.2.
- “LNTP Date” means the date of the LNTP, if any, issued by the Owner.
- “Main Erection Crane” means a crane used to erect mid Tower sections, top Tower sections, nacelles, hubs and blades.
- “Major Supplier” means any Supplier that will supply any materials, supplies, parts or equipment for or in connection with the Work having an aggregate value in excess of [REDACTED]
- “Milestone” means each Milestone designated as such in the Project Milestone Schedule.
- “Milestone Date” means each date associated with a Milestone as designated in the Project Milestone Schedule.
- “Milestone Payment Schedule” means the milestone payment schedule attached hereto as Exhibit E.
- “MPSC” means the Michigan Public Service Commission.
- “Non-Participating Lands” has the meaning set forth in Exhibit A-4.
- “Notice of Final Completion” means a notice from the Owner to the Contractor issued in accordance with Section 7.1, that the requirements for Final Completion have been satisfied.
- “Notice to Proceed” has the meaning set forth in Section 4.1.
- “Notice to Proceed Date” means the date of the Notice to Proceed.

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- "Other Owner Contractors" means those Persons, other than the Contractor, with whom the Owner contracts to perform any work or services or provide any materials, supplies, parts, and equipment in connection with the Project (including Turbine Supplier), or their subcontractors or suppliers of any tier.
- "Owner" has the meaning set forth in the first paragraph hereof.
- "Owner Permits" means the Permits that the Owner is required to secure relating to the construction, ownership and operation of the Project as listed on Exhibit C.
- "Owner-Supplied Equipment" means the Turbines, and any other materials, parts, supplies and equipment that are to be supplied by the Owner or any Other Owner Contractor, as expressly identified in Exhibit B.
- "Party" or "Parties" means either or both, as the case may be, of the Owner and the Contractor.
- "PCN" has the meaning set forth in Subsection 5.2(c).
- "Permits" means any valid waiver, exemption, variance, franchise, permit, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority applicable to the performance of the Work or the construction, ownership, operation or maintenance of the Project, including the Balance of Plant.
- "Person" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.
- "Point of Interconnection" means, the point where the Radial Line interconnects with International Transmission Company's electric transmission system in the Nelson Road switching station owned by International Transmission Company, as more fully set forth in Exhibit A-1.
- "Production Tax Credits" means the credits provided for in 26 USC §45.
- "Production Tax Credits Damages" means the liquidated damages payable pursuant to the terms set forth in Subsection 8.2(f).
- "Production Tax Credits Qualifying Date" means the date by which construction of a facility using wind to produce electricity must begin commercial operation in order to be considered a "qualified facility" eligible for Production Tax Credits; that date currently being December 31, 2020.
- "Project" means the Owner's nominal 150 MW wind energy electric generation project located in Gratiot County, Michigan, commonly referred to as the **Gratiot Farms Wind Park**,

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the approximate currently contemplated Project Site Boundaries being set forth in Exhibit A-2.

- “Project Milestone Schedule” means the project Milestone schedule attached as Exhibit E.
- “Project Site Boundaries” means the areas marked as such on Exhibit A-2, which shall be subject to revision by the Owner pursuant to Section 4.3.
- “Project Site” means, collectively, the real property in Gratiot County, Michigan, that is more particularly described in the Site Plan attached as Exhibit A-2, which shall be subject to revision by the Owner pursuant to Section 4.3.
- “Prudent Wind Industry Practices” means, with respect to the Contractor, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members in the U.S., including wind generation owners, wind turbine generator suppliers, wind generation project construction contractors, and engineering firms, as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with applicable Laws, reliability, safety and expedition. Prudent Wind Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.
- “Punch List” means the list prepared by the Contractor, and approved by the Owner, in connection with the achievement of Substantial Completion identifying the non-material Work that remains to be completed following Substantial Completion that does not affect the safe and continuous operation of the Project or any part of the Project in accordance with Good Utility Industry Practices and Prudent Wind Industry Practices.
- “Punch List Holdback Amount” means the Final Completion Milestone payment shown on the Milestone Payment Schedule, which amount will not be paid until Final Completion including completion of all Punch List items and delivery of all Record Drawings.
- “QA/QC Program” has the meaning set forth in Subsection 2.17(a).
- “Radial Line” means a 345 kV electric line that runs from the Collection System Substation to a point of interconnection with International Transmission Company's electric transmission system in the Nelson Road switching station owned by International Transmission Company, said electric line being inclusive of the connections to the Collection System Substation and to International Transmission Company's switching station at its starting and ending points.
- “Record Drawings” means final, as-built, drawings that accurately reflect the “actual” physical condition of a system, structure or component as constructed and installed.
- “Retainage” has the meaning set forth in Section 3.6.
- “Route Improvements” means:

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- (a) with respect to Contractor Responsible Roads as defined in clause (a) of the definition of that term: Any and all temporary or permanent physical modifications or improvements to, or construction of, such Contractor Responsible Roads; the acquisition of any necessary permits or approvals for the use of such Contractor Responsible Roads; posting of any necessary bonds for the use, modification, construction or improvement of such Contractor Responsible Roads; and any other necessary measures related to the use, modification, construction or improvement of such Contractor Responsible Roads; that may be necessary or desirable for the making of deliveries by Turbine Supplier of Turbines or components of Turbines (or any other equipment to be supplied by the Turbine Supplier) to specific Turbine Sites or to an Owner-designated storage location or laydown area within the Project Site; and
- (b) with respect to Contractor Responsible Roads as defined in clause (b) of the definition of that term: Any and all temporary or permanent physical modifications or improvements to, or construction of, such Contractor Responsible Roads; the acquisition of any necessary permits or approvals for the use of such Contractor Responsible Roads, posting of any necessary bonds for the use, modification, construction, or improvement of such Contractor Responsible Roads, and any other necessary measures related to the use, modification, construction or improvement of such Contractor Responsible Roads; as may be necessary or desirable for, or relevant to deliveries and access to Turbine Sites and any other Work locations, or otherwise for the performance and completion of the Work under this Agreement.

With respect to any "Route Improvements" under either clause (a) or (b) above consisting of repairs to or maintenance of or other work upon a public road or highway that the applicable county road commission or other Governmental Authority having jurisdiction requires to be done by its own crews, the responsibility for the applicable Route Improvements shall consist of making any necessary payment for such repairs, maintenance, or other work.

The Contractor understands that it shall perform all of its responsibilities under this Agreement associated with Route Improvements in accordance with the terms, conditions, limitations and requirements of any agreement regarding same that may be entered into between the Owner and the County Road Commission and/or any other Governmental Authorities having jurisdiction, as well as with all other requirements of this Agreement.

- "Safety Plan" has the meaning set forth in Subsection 2.16(b).
- "SCADA" means the control and monitoring system, including central computer, remote PC system and ancillary communication terminals and cables installed in individual Wind Turbine Generator controllers, meteorological towers and the Collection System Substation, to be supplied and installed by the provider of the SCADA.
- "Scope of Work" means the specifications and requirements for, and description of, the Balance of Plant and otherwise regarding the Work, as specified in Exhibit A-1 Scope of Work.

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- “Senior Officer” has the meaning set forth in Section 18.1.
- “Site Plan” means the design and layout for the Project set forth on Exhibit A-2, as same may be revised by the Owner pursuant to Section 4.3.
- “Subcontract” means any contract, agreement, purchase order, or other agreement between the Contractor and a Subcontractor (or between any Subcontractor and a lower tier Subcontractor) in respect of any of the Contractor’s obligations hereunder with respect to the Project.
- “Subcontractor” means a Person that has a Subcontract (at any tier) to perform a portion of the Work at the Project Site or in relation to any transportation to the Project Site; provided, however, that the term “Subcontractor” shall not include any Suppliers.
- “Substantial Completion” means the satisfaction of all of the requirements set forth in Subsection 6.7(a).
- “Substantial Completion Certificate” means a certificate from the Contractor to the Owner, substantially in the form of Exhibit Q, issued in accordance with Subsection 6.7(b), that the requirements for Substantial Completion have been satisfied.
- “Substantial Completion Date” means the date on which Substantial Completion occurs, as set forth in Exhibit T.
- “Substation Substantial Completion Delay Damages” means the liquidated damages payable pursuant to the terms set forth in Subsection 8.2(a).
- “Substantial Completion Delay Damages” means the liquidated damages payable pursuant to the terms set forth in Subsection 8.2(a).
- “Substation Completion” means the satisfaction of all of the requirements set forth in Subsection 6.3(a).
- “Substation Completion Certificate” means a certificate from the Contractor to the Owner, substantially in the form of Exhibit N, issued in accordance with Subsection 6.3(b), that the requirements for Substation Completion have been satisfied.
- “Supplier” means any Person supplying materials or equipment to the Contractor or to any Subcontractor for the Work, but who does not perform labor at the Project Site.
- “Tower” means each steel tubular tower on which a Wind Turbine Generator’s nacelle shall be mounted, including all ladders, platforms, internal lighting, safety equipment and all parts, hardware and assemblies necessary for a complete turbine tower.
- “Turbine” means each of sixty (60) wind turbine generators, seven (7) having a nameplate capacity of 2.3 MW and fifty-three having a nameplate capacity of 2.5 MW, manufactured by Turbine Supplier, that are to be installed and erected under this Agreement, each including, among other components, the following: a Tower, a turbine nacelle, a set of three (3) blades, a

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hub, controller, control panels, switchgear, FAA lighting (where applicable), and anemometers, all as more particularly described in the Turbine Specifications.

- “Turbine Foundation” means the foundation for each Turbine.
- “Turbine Foundation Completion” has the meaning set forth in Subsection 6.2(a).
- “Turbine Foundation Group” means a grouping of five (5) or six (6) Turbine Foundations as set forth in Exhibit T.
- “Turbine Foundation Group Completion” means, for each Turbine Foundation Group, the satisfaction of all the requirements set forth in Subsection 6.2(a).
- “Turbine Foundation Group Completion Certificate” means a certificate from the Contractor to the Owner, substantially in the form of Exhibit L, issued in accordance with Subsection 6.2(b), that the requirements for Turbine Foundation Group Completion for a Turbine Foundation Group have been satisfied.
- “Turbine Mechanical Completion” for each Turbine, has the meaning set forth in Subsection 6.5(a).
- “Turbine Mechanical Completion Certificate” means a certificate from the Contractor to the Owner, substantially in the form of Exhibit M, issued in accordance with Subsection 6.5(b), that the requirements for Turbine Mechanical Completion for a Turbine have been satisfied.
- “Turbine Site” means, as to each individual Turbine, the specific location, within the overall Project Site, at which that Turbine is to be installed. A list of the Owner’s presently contemplated Turbine Sites is set forth in Exhibit A-5, which shall be subject to revision by the Owner pursuant to Section 4.3.
- “Turbine Purchase Agreement” means the Turbine Purchase Agreement between the Turbine Supplier and the Owner.
- “Turbine Specifications” means the specifications for each Turbine and equipment other than the Balance of Plant and attached hereto in Exhibit B-1.
- “Turbine Supplier” means General Electric Company, its successors or assigns.
- “Warranty Period” has the meaning set forth in Subsection 11.2(b).
- “Work” has the meaning set forth in Section 2.1.

1.2 Rules of Interpretation. This Agreement shall be interpreted in accordance with the rules of interpretation set forth in this Section 1.2.

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- (a) Sections, Articles and Exhibits. References to Sections, Articles and Exhibits are, unless otherwise indicated, made to Sections of, Articles of, and Exhibits to this Agreement. The Parties acknowledge that the Exhibits to this Agreement form an integral part hereof.
  - (b) Headings. The headings to Sections and Articles of this Agreement are for ease of reference only and shall not limit or restrict the construction or interpretation of this Agreement.
  - (c) Gender. The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa, and references to persons shall include individuals, bodies corporate, unincorporated associations and partnerships.
  - (d) Successors and Assigns. References to Parties in this Agreement shall be deemed to include references to their successors and permitted assigns.
  - (e) Miscellaneous. The words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular article, section or subsection of this Agreement. 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. References to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time. The use of the word "includes" or "including" in this Agreement shall be construed to mean, whether same is expressly stated or not in any particular location, "including, without limitation" or "including but not limited to" and shall not be construed to mean that the examples (if any) given are an exclusive list of the topics covered. Except where "Business Days" are expressly specified, the word "day" shall constitute a calendar day of twenty-four (24) hours measured from midnight to the next midnight.
- 1.3 Conflicting Provisions. The Agreement and Exhibits attached hereto shall be considered complementary. However, in the event of irreconcilable conflict between the Agreement and the Exhibits, the Agreement shall govern and the conflicting provisions shall be interpreted in a manner consistent with the provisions of the Agreement. In the event of a conflict between Exhibits, the requirements imposing the more stringent or higher quality requirements upon the Contractor shall take precedence over the less stringent or lesser quality requirements applicable thereto. Where a conflict exists among codes and standards applicable to the Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern. In the event that a conflict or inconsistency cannot be resolved by the application of the foregoing, the resolution of such conflict or inconsistency shall be made by the Owner and provided to the Contractor in writing.

## ARTICLE 2 CONTRACTOR OBLIGATIONS

- 2.1 Contractor's Performance Obligations. Subject to the conditions precedent set forth in Section 4.1, and the Contractor's receipt of the Owner's Notice to Proceed pursuant to Section 4.1 (and if elected by the Owner, LNTP pursuant to Section 4.2) the Contractor shall perform all design, engineering, technical assistance, procurement, supply, management, construction, installation,

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start-up, commissioning, testing, and other services and activities, as more fully described in Exhibit A or elsewhere in this Agreement (the "Work"). The Work shall include any work which is necessary to satisfy the requirements of this Agreement or that is reasonably implied by this Agreement, or arises from any obligation of the Contractor under this Agreement, even if not explicitly referenced in this Agreement. Without limiting the foregoing, the Work shall include:

- (a) constructing and installing the Balance of Plant and performing the Balance of Plant Performance Tests in conformity with the requirements and specifications set forth in this Agreement;
- (b) inspect or cause to be inspected all materials and equipment to be incorporated in the Work and reject those items determined by the Contractor not to be in compliance with Laws or the requirements of this Agreement;
- (c) supplying all labor, utilities, vehicles, transportation, materials, parts, supplies, equipment, tools and consumables required in connection with the performance of the Work (all materials, supplies, parts, and equipment supplied by the Contractor for incorporation into the Balance of Plant to be new and unused unless expressly otherwise approved by the Owner in writing), excepting ONLY Owner-Supplied Equipment as expressly identified in this Agreement, including all Turbine installation consumables required pursuant to the Turbine Purchase Agreement;
- (d) cooperate with the Owner and Other Owner Contractors to coordinate the Contractor's performance of the Work with the work being performed by the Owner and Other Owner Contractors;
- (e) timely obtaining all Contractor Permits;
- (f) not manufacturing, using, storing or disposing at, or delivering to, the Project Site any Hazardous Materials except to the extent necessary to perform its obligations under this Agreement, any such manufacture, delivery, use, storage and disposal to be performed in compliance with all Laws;
- (g) permitting the Owner, the Independent Engineer and any other persons designed by the Owner access to the Work at all times; and
- (h) provide progress reports and participate in meetings as set forth in Exhibit DD.

The Contractor shall perform the Work in accordance with the Contractor's quality control procedures, the Project Milestone Schedule, the Construction Schedule, in a manner as necessary to avoid all demurrage and other delay charges to the Owner under the Demurrage Schedule, all applicable codes and engineering standards, all applicable Laws and Permits, the Interconnection Requirements, Good Utility Industry Practices, Prudent Wind Industry Practices, the Safety Plan, all specifications and requirements provided by the Turbine Supplier pursuant to the Turbine Purchase Agreement, the Scope of Work and the Turbine Specifications, as applicable, any BOP Vendor Operations Manuals, the requirements, limitations and other conditions of the Easements and Special Land Owner Agreements and the additional restrictions on Contractor land use in Exhibit A-4, the limitations and other conditions of Permits, and otherwise fully in accordance

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with all of the terms and conditions of this Agreement. The Contractor hereby agrees that it shall not make any changes or modifications to the Work without the prior written approval of the Owner. Without limiting the generality of the immediately preceding sentence, the Contractor shall construct and install everything to be constructed and installed under this Agreement only in the locations specified in this Agreement (or in the event that a specific location is not identified herein then in a location specified in writing by the Owner), unless the Owner expressly approves otherwise in writing in advance of construction or installation of the applicable structure or facility.

Notwithstanding anything else to the contrary in this Agreement, no inspection, review, or approval by the Owner or any representative of the Owner (or any action or inaction of the Owner as a result of or in conjunction with such inspection review or approval) of any design, specification, drawing, plan, manual, test, equipment, material, program, method, procedure or Work provided or performed by the Contractor or any Subcontractor or Supplier shall constitute an approval, endorsement, confirmation or acknowledgment by the Owner that the same satisfies the requirements of this Agreement; nor shall any such inspection, review or approval relieve the Contractor of any of its obligations or liabilities under or arising from this Agreement. No waiver or failure by the Owner in whole or in part to exercise any right to inspect, review or approve any design, specification, drawing, plan, manual, test, equipment, material, program, method, procedure or Work shall in any way relieve the Contractor of full liability for the quality, character, and performance of the Work and every part of it, nor shall it prejudice or affect the rights of the Owner set forth in this Agreement.

2.2 Deliverables. The Contractor shall provide the following to the Owner:

- (a) Deliverables List. The Contractor shall provide to the Owner, in accordance with the schedule that is part of the Deliverables List, each drawing and other document listed on the Deliverables List. Each such drawing and other document submitted pursuant to the Deliverables List shall be subject to the reasonable review and approval of the Owner. Within fifteen (15) Business Days (or such other review period as may be expressly provided for elsewhere in this Agreement) of the receipt of any design package with all appropriate drawings and/or calculations reasonably required to conduct a proper evaluation and review, submitted to it for review under this Agreement, the Owner shall notify the Contractor of any comments or questions that it may have thereon. Within ten (10) days of the receipt of the Owner's comments or questions on any drawing or other document, the Contractor shall respond to such comments or questions and re-submit such drawing for the Owner's review in accordance with this Subsection 2.2(a).
- (b) Without limiting the generality of Subsection 2.2(a) above:
  - (i) Manuals and Other Documents. As soon as available to the Contractor but no later than the Substantial Completion Date, the Contractor shall deliver to the Owner six (6) complete hard copies plus a reproducible electronic copy (in a format/media satisfactory to the Owner) of each of the following: (1) the Installation Manual; (2) the BOP Supplier Manuals assembled and compiled in binders, containing all such materials organized by the categories of Collection System and Substation; (3) a list of recommended BOP Spare Parts,

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specifications, and vendor information if not previously delivered; and (4) other documents that the Owner may reasonably request.

- (ii) Wind Turbine Job Books. No later than the date that Turbine Mechanical Completion for each Turbine is achieved, the Contractor shall deliver to the Owner for the Owner's review and approval one (1) preliminary hard copy plus a reproducible electronic copy (in a format/media satisfactory to the Owner) of the Job Book for such Turbine. Upon Final Completion, the Contractor shall submit to the Owner one (1) final hard copy plus a reproducible electronic copy (in a format/media satisfactory to the Owner) of the Job Book for each Turbine in form and substance reasonably satisfactory to the Owner.
- (iii) Other Job Books. No later than the Substantial Completion Date, the Contractor shall deliver to the Owner for the Owner's review and approval one (1) preliminary hard copy plus a reproducible electronic copy (in a format/media satisfactory to the Owner) of the Job Books for all portions of the BOP not included in the Job Books for the Turbines. Upon Final Completion, the Contractor shall submit to the Owner one (1) final hard copy plus a reproducible electronic copy (in a format/media satisfactory to the Owner) of such Job Books in form and substance reasonably satisfactory to the Owner.
- (iv) Record Drawings. No later than thirty (30) days after the Substantial Completion Date, the Contractor shall deliver to the Owner three (3) hard copy sets and one (1) electronic copy of the Record Drawings prepared by the Contractor which accurately and completely represent in detail everything assembled, installed, and constructed pursuant to this Agreement.

- 2.3 Contractor's Key Personnel. Exhibit CC contains a list of the Contractor's key personnel who will be responsible for supervising the performance of the Work, including (among others on that list) the Contractor's project manager who shall act as the single point of contact in all matters relating to this Agreement on behalf of the Contractor and the Contractor's project superintendent. The Contractor shall not replace any of the key personnel listed in Exhibit CC without the prior written approval of the Owner which approval shall not be unreasonably withheld. The Contractor shall replace the project manager and/or other key personnel listed on Exhibit CC upon the Owner's reasonable written request.

The Owner reserves the right to refuse admittance to, or request removal from the Project Site, of any Contractor- (or Subcontractor- or Supplier-) employee for violating Project Site rules, behaving in any disruptive manner, or any other reasonable cause. Such refusal or request shall, unless the Owner approves otherwise be complied with immediately by the Contractor and shall not constitute cause for claiming additional time, compensation or damages. Removal of any employee shall not release the Contractor from any of its obligations under the terms of this Agreement. Any person discharged for cause by the Contractor or any Subcontractor or Supplier may not be re-employed at the Project Site by another Subcontractor or Supplier; nor shall the Contractor or any Subcontractor or Supplier employ at the Project Site an employee of any Other Owner Contractor who has similarly been refused admittance to or removed from the Project Site by the Owner.

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- 2.4 Books and Records, Tax Accounting. The Contractor shall provide to the Owner a breakdown of the Contract Price in accordance with the property retirement unit categories and other systems of accounts and in a records format in accordance with Exhibits U-1 and U-2. Overheads and profit shall not be listed as separate items.
- 2.5 Subcontractors and Suppliers.
- (a) The Owner acknowledges that the Contractor may use and engage Subcontractors and Major Suppliers to perform some or all of its obligations hereunder. Exhibit X hereto sets forth a list of Subcontractors and Major Suppliers pre-approved by the Owner for services or the supply of equipment or materials. No Subcontract or purchase order with any Supplier shall be entered into other than with a Subcontractor or Major Supplier already pre-approved pursuant to Exhibit X hereto without the Owner's prior written approval. The Contractor and the Owner agree that the Owner's approval of Subcontractors or Major Suppliers does not relieve Contractor of any of its obligations, duties or responsibilities hereunder. Upon the request of the Owner, the Contractor shall provide to the Owner background information regarding the experience, financial strength, personnel and other background of any proposed Subcontractor or Major Supplier. The Contractor shall at all times be as fully responsible to the Owner for the actions, omissions, operations and Work of all Subcontractors and Suppliers as the Contractor is for the actions, omissions, operations and Work of the Contractor itself (it being further expressly understood that such full responsibility of the Contractor for the actions, omissions, operations and Work of all Subcontractors and Suppliers shall be comprehensive and shall apply whether or not "Subcontractors" and/or "Suppliers" are in various specific contexts specifically mentioned or referred to elsewhere in this Agreement).
  - (b) Notwithstanding the foregoing, the Owner may require the Contractor to remove any such Subcontractors or Suppliers that fail to comply with the Safety Plan and applicable Laws. Should the Owner become aware that any Subcontractor or Supplier is not in compliance with the Safety Plan and/or any applicable Laws, the Owner shall provide notice to the Contractor of its desire to have such Subcontractor or Supplier removed, which notice shall set forth in reasonable detail the incidents of non-compliance with the Safety Plan or any applicable Laws. The Contractor shall be solely responsible for the performance of the Work and for paying each Subcontractor and Supplier amounts due to such Subcontractor and Supplier and nothing contained herein shall obligate the Owner to pay any Subcontractor or Supplier for any of the Work performed by such Subcontractor or Supplier. No Subcontractor or Supplier is intended to be, nor shall any such Subcontractor or Supplier be deemed to be, a third party beneficiary of this Agreement. The Contractor shall cause all Subcontractors and Suppliers to comply with the standards of performance set forth in this Agreement applicable to the Contractor, including, without limitation, compliance with all Laws, Good Utility Industry Practices and the Safety Plan. The Contractor agrees to cause all Subcontractors, and to the extent they may have any presence on the Project Site, Suppliers, to maintain, and comply with, the Subcontractor and Supplier insurance requirements set forth in Exhibit S.
  - (c) Without in any way detracting from the Contractor's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the

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Work, the Contractor shall obtain from all Subcontractors and Suppliers warranties consistent with warranty periods required by this Agreement with respect to design, materials, workmanship, equipment, tools, supplies, and other items furnished by such Subcontractors and Suppliers. Such warranties shall be for the benefit of and shall be made enforceable by both the Owner and the Contractor.

2.6 Cooperation Regarding Commercial Operation. The Contractor and the Owner recognize that after a Turbine has been placed into commercial operation by the Owner, the Contractor may be continuing with completion of the Work. Following such time as a Turbine has been placed into commercial operation, the Owner's operation shall have priority over the prosecution of the Work and the Contractor shall not interfere with the Owner's operation of the Turbines or the Project as a whole; provided, however, that the Owner shall use reasonable efforts to accommodate the Contractor's completion of the Work.

2.7 Taxes and Customs Duties.

- (a) The Contract Price includes, and the Contractor shall pay, all sales and use (except as expressly otherwise provided in Subsection 2.7(b) below) and any other applicable taxes, whether federal, state, local or otherwise, on materials, parts, supplies, equipment, services, labor, and personal property furnished or used or purchased for use in connection with the Work, and shall also pay all income, gross receipts, ad valorem, privilege, occupational, business, employment-related and any other withholding, excise, Customs Duties, or any other taxes to which the Contractor may be liable or subjected to in the conduct of its business, or which may otherwise be applicable to the Work or anything done or furnished in connection with the Work.
- (b) The Contractor understands that the following materials, parts, supplies and equipment are claimed by the Owner to be exempt from Michigan sales and use tax by reason of the Industrial Processing exemption:
  - (i) materials, parts, supplies and equipment to be furnished and permanently installed in the Project by the Contractor hereunder, except those items to be permanently installed that are listed on Exhibit II to this Agreement, and
  - (ii) materials, parts, supplies and equipment to be furnished and used by the Contractor in the design and construction of all items that are to be so permanently installed (other than those permanently installed items that are listed on Exhibit II). The materials parts supplies and equipment claimed to be exempt under this clause "(ii)" specifically includes all consumables needed for the construction of the permanently installed items, other than the permanently installed items listed on Exhibit II, and all materials to be used for temporary facilities or improvements needed for the construction of the permanently installed items, other than the permanently installed items listed on Exhibit II.

The Contractor certifies to the Owner that the Contractor has not included any amounts in the Contract Price for Michigan sales or use tax on materials, parts, supplies and equipment identified in the preceding clauses "(i)" and "(ii)". In the event that it is ultimately found by Michigan taxing authorities that any of such materials, parts,

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supplies or equipment is not eligible for such Industrial Processing exemption, the Owner will pay the applicable tax directly to the State of Michigan pursuant to the Owner's direct pay permit.

With respect to materials, supplies, parts and equipment that are to be permanently installed in the Project but which are listed on the aforesaid Exhibit II, and with respect to all other materials, supplies, parts and equipment not covered by the above clauses "(i)" and "(ii)", it is expressly understood (without limiting the generality of Subsection 2.7(a) above) that the Contractor shall pay and the Contract Price fully includes all applicable sales and use tax.

2.8 Removal of Hazardous Materials. If the Contractor or any Subcontractor or Supplier (a) brought or caused to be brought Hazardous Materials on the Project Site or (b) improperly released, handled, treated or stored Hazardous Materials on the Project Site, then the Contractor shall be responsible, at its cost and expense, to remove or to remediate all such Hazardous Materials in accordance with all applicable Laws. The Contractor shall not list the Owner as the generator of any Hazardous Materials that the Contractor removes from the Project Site. The Contractor shall notify the Owner of any Hazardous Materials that the Contractor encounters on the Project Site or any release of Hazardous Materials by the Contractor or any Subcontractor or Supplier. To the extent pre-existing Hazardous Materials interferes with the Contractor's Work at the location where the Hazardous Materials are located, the Contractor may stop such Work at such location until such time as the Owner has determined what steps, if any, are required.

2.9 Security for Performance of the Work.

(a) Upon the issuance of the Notice to Proceed, the Contractor shall deliver to the Owner a payment and performance bond in an amount equal [REDACTED], in form and substance reasonably acceptable to the Owner and issued by treasury listed surety company or companies with an AM Best Rating of A-VII or better and that are authorized to do business in the State of Michigan. Said bond shall be written so as to remain in effect [REDACTED]

The cost of the bond(s) is included in the Contract Price.

(b) The Contractor shall cause all Subcontracts and all purchase orders with Suppliers to be assignable to the Owner and shall assign such Subcontracts and purchase orders to the Owner if and when required pursuant to the terms of this Agreement. The Owner is at no time liable for the Contractor's obligations under any Subcontract or purchase order unless and until (and then only to the extent that) the Owner has expressly in writing assumed performance of such obligations including following (and as a consequence of) the Owner's exercise of its rights and remedies hereunder.

2.10 Construction Liens. The Contractor shall pay (or cause to be paid) when due all charges from and amounts otherwise due to all laborers, Subcontractors and Suppliers. The Contractor shall, solely at the Contractor's expense, take prompt steps to discharge any claim, construction lien or other lien (and in any event no later than ten (10) Business Days from the imposition of such claim, construction lien or other lien) filed or asserted in connection with the Work (including any claim, construction lien or lien against the Owner, the Project Site or any part thereof

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(including the Turbine Sites and any other locations where facilities are to be installed or constructed hereunder), the Balance of Plant, the Work or any portion thereof), and the Contractor shall indemnify, defend and hold harmless the Owner from and against any and all such claims, construction liens or other liens. The Contractor shall have the right to contest any such claim, construction lien or other lien provided that the Contractor first fully discharges of record the claim, construction lien or other lien or provides other assurance of payment satisfactory to the Owner in the Owner's sole judgment.

- 2.11 Schedule. Following Contract award and prior to commencement of work, Contractor shall plan, develop and submit for the Owner's review and approval, a detailed Construction Schedule for the performance of the Work. Such Construction Schedule shall be consistent with the Project Milestone Schedule and shall be satisfactory to the Owner. The Contractor shall perform all Work in accordance with the Project Milestone Schedule, the Construction Schedule and Guaranteed Completion Dates.

The Contractor hereby covenants, represents and warrants to the Owner that in undertaking to complete the Work in accordance with the terms of this Agreement, the Contractor has taken into consideration, carefully reviewed and analyzed the location of the Project Site, the Project Milestone Schedule, the Guaranteed Completion Dates, the Contractor's permitting requirements, the conditions at the Project Site set forth in the Geotechnical Studies, the Scope of Work and the Turbine Specifications, the Contractor's own design, manufacturing, engineering, and construction capabilities, the availability of labor, materials and components to perform the Work, and transportation requirements and made reasonable allowances for hindrances and delays incident to such Work and that the Contractor is able to perform the Work for the Contract Price in accordance with the Construction Schedule and the Guaranteed Completion Dates, except as may be delayed due to a Force Majeure event, the Owner or Other Owner Contractors, or (solely in respect to achieving a Guaranteed Turbine Mechanical Completion Date as expressly provided elsewhere in this Agreement) a Crane Wind Day Extension.

- 2.12 Owner's Right to Accelerate the Work. The Owner may, in writing, request the Contractor, as a result of any delays in construction of the Project that are the fault of the Owner or Other Owner Contractors and not attributable to any failure of the Contractor to fulfill its obligations under this Agreement, or are attributable to Force Majeure events or (where provided for in this Agreement) Excess Crane Wind Days, to accelerate the Work so as to wholly or partially recover the original Construction Schedule, and the Contractor shall use all commercially reasonable efforts to so accelerate performance of its Work as so requested by the Owner. The acceleration of Work may require the employment of additional work crews or overtime and equipment as necessary and as available. Any such acceleration requested by the Owner pursuant to this paragraph and compensation to the Contractor for the reasonable additional costs incurred by the Contractor in carrying out such acceleration of the Work shall be authorized by the Owner and set forth in a Change Order issued by the Owner pursuant to ARTICLE 5.

Acceleration of the Work as a result of delays that are not excused by Force Majeure events or (where provided for in this Agreement) Excess Crane Wind Days, and are not the fault of the Owner or Other Owner Contractors, as necessary to recover the original Construction Schedule, including employment of additional work crews or overtime and equipment as necessary, shall be the responsibility of the Contractor at no additional cost or expense to the Owner.

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- 2.13 Damage to Real Property. The Contractor will conduct all of the Contractor's activities within the boundaries of the applicable Turbine Site or other Owner-designated work area and any other limitations and requirements set forth herein (including the requirements of Exhibit A-4) and will be responsible for any trespass or damage to adjacent property resulting from or in connection with such activities. The Contractor acknowledges and agrees to observe reasonable construction practices in performing the Work, including reasonable care and respect for the real property at the Project Site. Without limiting the Contractor's obligations as set forth elsewhere herein, the Contractor agrees that it will be responsible for any and all damages to real property outside the boundaries of the applicable Turbine Site or other Owner-designated work area or outside the areas defined by any other limitations and requirements set forth herein (including the requirements of Exhibit A-4) caused by the Contractor or its Subcontractors in the performance of the Work. The Contractor shall immediately report to the Owner in writing any and all damage to any real or personal property wherever located.
- 2.14 Land Owner or Occupant Relationships. The Contractor understands and acknowledges that the Owner has a long term relationship with the Land Owners or Occupants and that the Contractor's actions or omissions during the construction of the Project have the potential to affect such relationship. Therefore, the Contractor agrees that it will use its best efforts to maintain good relations with the Land Owners or Occupants during any contact with the Land Owners or Occupants and will cooperate with the Owner in coordinating Work activities with Land Owners or Occupants. The Contractor shall not contact Land Owners or Occupants directly, and shall avoid direct dealings with Land Owners or Occupants without the Owner presence, without the Owner's prior approval, and shall promptly report in writing to the Owner any contact with a Land Owner or Occupant initiated by such Land Owner or Occupant. Such report by the Contractor shall detail the substance of communication between the Land Owner or Occupant and the Contractor, including any request or complaint made by the Land Owner or Occupant and the Contractor's response thereto. The Contractor expressly understands that it has no authority to make any agreement with any Land Owner or Occupant on any matter, including but not limited to anything that in anyway constitutes a change in the Work; and that no Land Owner or Occupant has any authority to direct the Contractor to make any changes in the Work.
- 2.15 Emergencies. In the event of any emergency endangering persons or property, the Contractor shall take such action as may be necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including the Contractor's response thereto, to the Owner. Whenever the Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, the Owner may, but shall be under no obligation to, take such action as is reasonably necessary under the circumstances. The taking of such action by the Owner or the Owner's failure to do so shall not limit the Contractor's obligations or liability hereunder. Contractor shall reimburse the Owner for any costs incurred by the Owner in taking such actions in the event of an emergency.
- 2.16 Safety.
- (a) The Contractor shall be responsible for placing high priority on safety and health during performance of the Work. the Contractor shall be responsible for safety related to and during the performance of the Work at the Project Site and shall take reasonable

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measures to ensure that it and all of its Subcontractors (and where applicable Suppliers), provide and maintain a safe working environment and properly protect (i) all persons in proximity of each Turbine Site and any other Work areas, whether such persons are employed in the Work or otherwise, from risk of injury and danger to health, and (ii) all property, including property of the Owner, Land Owners or Occupants, and other third parties, from damage or loss. Before commencing Work, the Contractor shall inspect the Project Site and become familiar with the safety and health conditions there, and shall effectively communicate to all of its employees and Subcontractors all safety, fire and health regulations in force at the Project Site. The Contractor shall also be responsible for first aid and medical service for all the above employees at the Project Site.

- (b) The Contractor shall develop a Project-specific, comprehensive and detailed safety/health/fire protection plan (collectively, the "Safety Plan"). the Contractor shall submit said Safety Plan to the Owner for review not less than thirty (30) days prior to the Contractor's mobilization to the Project Site (unless a longer period is specified elsewhere in this Agreement, in which that longer period specified elsewhere in this Agreement shall apply), and the Contractor shall submit any revisions to said Safety Plan to the Owner for review prior to instituting such revisions; it being expressly understood, however, that any review of, comments upon or approval of said Safety Plan (or any revisions to said Safety Plan) by the Owner, or any failure by the Owner to object to any matter in said Safety Plan (or to any revisions of said Safety Plan), does not relieve the Contractor from the sole and entire responsibility for said Safety Plan (and all revisions thereof), including its completeness, suitability and appropriateness for all purposes, or impose any liability on the Owner in connection therewith.

The Contractor's Safety Plan shall, without limitation, address the requirements set forth in Owner's Safety/Fire Protection Program, the Michigan Occupational Safety and Health Act (Act 154 of the Michigan Public acts of 1974) as amended, in OSHA, and all other applicable Laws/Regulations and Industry Standards (as hereinafter defined). The Contractor's Safety Plan shall also include provisions for every employee of the Contractor to complete the Owner's site orientation program. Further, the Contractor shall incorporate in its Safety Plan a program to maintain a drug and alcohol free work place while performing the Work.

The Contractor shall be fully responsible for actively implementing and at all times enforcing its Safety Plan and for requiring all Subcontractors (and where applicable, Suppliers) to implement and at all times comply with said Safety Plan; and it is acknowledged that the Owner has no obligation for implementing or enforcing the Contractor's Safety Plan.

As part of its Safety Plan, the Contractor shall maintain, at a minimum, one safety and health supervisor at the Project Site at all times during performance of the Work to assure that all activities are performed in accordance therewith.

- (c) Without limiting the generality of any of the preceding provisions of this Section 2.16, the Contractor shall be responsible for insuring that none of its employees or those of any of its Subcontractors (and where applicable, Suppliers) are performing Work while under the influence of drugs or alcohol. The Contractor shall advise its employees and its

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Subcontractors (and where applicable, Suppliers) while they are on the Project Site that they will be subject to the provisions of an Owner-approved substance abuse control policy, which shall include drug and alcohol testing.

- (d) The Contractor must maintain in a safe, sound, good, and efficient condition all construction, equipment, materials, and temporary works and other items used in performing the Work (whether provided by the Contractor or by the Owner) and ensure that they are, at all times, capable of safely performing the functions for which they are intended. The Contractor shall modify its method of work if necessary in order to work safely.
- (e) The Contractor shall require its employees and its Subcontractors' (and where applicable, Suppliers') employees to attend any safety meetings or training, project safety appraisals or safety investigations as may be required by the Owner, provided, that none of same shall in any way relieve the Contractor from any of its obligations for safety and health set forth in this Section 2.16, or any other obligations or liability under this Agreement, or impose any liability on the Owner in connection therewith.
- (f) When any type of heavy equipment is within close proximity to private or public structures (including overhead electrical lines), or components at the Project Site, the Contractor shall be required to provide an equipment "spotter." Such spotter shall be a person dedicated to ensuring that booms, baskets, forks, cables and any other equipment and materials being lifted maintain safe working clearances from, and do not come in contact with, any structures, or components. Use of a spotter is not necessarily limited to situations where equipment is actually in use, and, for example, shall also be used whenever appropriate to assure that clearances from overhead structures are maintained while equipment is in transit at the Project Site (e.g., driving to and from Turbine Sites, laydown areas, or other work areas). In case of doubt as to whether or not a spotter is needed, the Contractor shall resolve such doubt in favor of using a spotter.
- (g) Without imposing any obligation on the Owner to do so or any liability on the Owner for in any way or at any time failing to do so, or relieving the Contractor from any obligations or liabilities, it is understood that the Owner shall have the right to direct the Contractor to cease, or not proceed with, any Work that the Owner considers to be unsafe.
- (h) Contractor agrees to maintain at Contractor's expense a subscription with ISNetworld (www.ISNetworld.com) for the duration of the Contract. Contractor shall also furnish ISNetworld with any information requested by ISNetworld in connection with ISNetworld's evaluation of the Contractor.

It is Contractor's responsibility to maintain an acceptable rating within the ISNetworld's system. If at any time, Contractor's rating falls below what Owner, at its sole discretion, considers an acceptable rating, Contractor shall take appropriate measures to improve such rating. If Contractor is unwilling or unable to achieve such rating, Owner reserves any and all rights and remedies, including but not limited to, termination.

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Owner makes no representation about the quality of services being performed by ISNetworld. Owner's use of ISNetworld in connection with the Project shall not constitute or be construed as Owner assuming responsibility or liability for safety under the Contract or at law, and does not relieve Contractor from full compliance with its legal and contractual obligations. ISNetworld is an independent contractor, and any acts or omissions by ISNetworld shall not be considered an act or omission of Owner. ISNetworld is not an agent of the Owner.

Contractor has and during the performance of this Agreement shall continue to report full, complete and accurate information to ISNetworld concerning Contractor's employees and work progress under this Contract, as required.

### 2.17 Inspection /Right of Access.

- (a) The Contractor shall perform all necessary and appropriate inspections and testing during the course of the Work, in accordance with the quality assurance/quality control program ("QA/QC Program") set forth in Exhibit Z.
- (b) The Contractor shall give the Owner and any Owner-designated representatives reasonable full access to design, manufacturing, production, or testing at Contractor's facilities and facilities of its Subcontractors and Suppliers during all scheduled working hours, as well as at all times on Turbine Sites and other work areas within the Project Site, for the purpose of observing the Work, including access to all official records of quality or relating to quality, inspection and witnessing of shop tests, and expediting design and equipment or material to be included in the Work.
- (c) The Contractor shall allow the Owner and any Owner-designated representative to witness all tests and inspections, both those which are to take place at any facility of the Contractor or its Subcontractors or Suppliers and those which are to take place at Turbine Sites and other work areas within the Project Site. The Contractor shall provide reasonable advance written notice to the Owner of each test/inspection date and location, and shall confirm such information with the Owner prior to the test/inspection. In addition, the Contractor shall provide to the Owner the application test/inspection procedures that will be used as such inspection/test at least sixty (60) days prior to the inspection/test, or in accordance with the Deliverables List to allow the Owner to review and comment. The Contractor shall deliver to the Owner upon request copies of all data resulting from all tests and inspections.
- (d) If any Work has been covered up prior to any observation under Subsection 2.17(b) that has been requested by the Owner, or in any case before any testing or inspection pursuant to Subsection 2.17(c), the Contractor shall, if required by the Owner or by public authorities, uncover same for observation, testing and inspection, and, following the observation, testing or inspection (as well as any correction of deficiencies and appropriate further observation, re-testing or re-inspection as necessary) re-cover the Work, all at the Contractor's expense.

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- (e) The Owner shall have no obligation to in any way supervise the Contractor's Work. Any decision of the Owner at any time either to observe, inspect or witness pursuant to Subsection 2.17(b) and Subsection 2.17(c), or not to observe, inspect or witness pursuant to Subsection 2.17(b) and Subsection 2.17(c), or any failure of the Owner in whole or in part to raise any objection during any observation, inspection or witnessing pursuant to Subsection 2.17(b) and Subsection 2.17(c), shall not constitute the Owner's acceptance of any Work or relieve the Contractor of any of its obligations under this Agreement (including without limitation that same shall not constitute a waiver of any right of the Owner to thereafter disapprove/reject such work or any warranty rights or remedies of the Owner). The Contractor shall be solely responsible for all construction or installation means, methods, techniques, sequences, and procedures in the performance of its Work hereunder.
- (f) Without limiting the generality of Subsection 2.17(e), and without otherwise limiting the scope of the Contractor's responsibilities under this Agreement or any and all other rights or remedies of the Owner, if the Owner at any time during the performance of the Work becomes aware that any part of the Work does not comply with requirements of this Agreement, the Owner may reject it by notification to the Contractor. On being so notified, the Contractor must (despite any previous approval of or payment for the portion of the Work in question by the Owner) re-do or replace the same, at the Contractor's own cost and within such period as the Owner directs, so that the Work is in conformity with this Agreement. Any requirement to so re-do or replace any Work shall not entitle the Contractor to any extension of the Construction Schedule or the Guaranteed Completion Dates.

### ARTICLE 3 CONTRACT PRICE AND PAYMENT TERMS

#### 3.1 Contract Price.

- (a) The price for the performance of all of the Work shall be [REDACTED] (as adjusted pursuant to the provisions of this Agreement, being referred to herein as the "Contract Price").
- (b) This Agreement is a fixed price contract and the Contract Price shall not be modified in the event that (i) the Contractor is required to modify the Work or the Construction Schedule in order to comply with the terms of this Agreement or (ii) the cost to the Contractor to perform its obligations, including the Work, under this Agreement increases for any reason after the Effective Date, except in each instance as specifically set forth in this Agreement.

#### 3.2 Payment of Contract Price. The Contract Price shall be paid as provided in this ARTICLE 3. The Milestone Payment Schedule sets forth the portion of the [REDACTED] by the Owner to the Contractor as certain portions of the Work (i.e., the Milestones identified on such schedule) are completed. Invoicing of completed Milestones will be in accordance with Section 3.5.

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- 3.3 Right to Offset. The Owner shall have the right to offset amounts owed by the Contractor to the Owner, including amounts for Delay Liquidated Damages, against any amounts owed by the Owner to the Contractor under this Agreement.
- 3.4 Payment of Change Orders. Each Change Order shall include any applicable revisions to the Milestone Payment Schedule or an alternative schedule for the payments, if applicable, that may be due by the Owner to the Contractor thereunder (or where applicable, Contract Price reduction to the Owner thereunder). Invoicing for Change Order amounts, whether increases or decreases, shall be in accordance with the Milestone Payment Schedule revisions set forth in the Change Order or alternate schedule for payments as set forth in the Change Order.
- 3.5 Invoicing and Payments. Following the Notice to Proceed Date (or to the extent relevant, LNTP date, if any), the Contractor shall submit a monthly invoice to the Owner by the first Business Day of each calendar month, which invoice shall list the Milestones completed and acknowledged as complete by the Owner during the previous month (which acknowledgement of completion by the Owner shall not however constitute acceptance of the Work, see Section 3.7 below) and the amount of the payment the Contractor is seeking for those completed Milestones based upon the Milestone Payment Schedule. Invoices shall be in a format satisfactory to the Owner. Along with such invoice the Contractor shall submit an Affidavit of Michigan Equipment, Materials, and Labor substantially in the form set forth in Exhibit AA and lien waivers in the form of Exhibit W-1 or Exhibit W-2 as applicable. The Owner shall make payment of all undisputed amounts due the Contractor within [REDACTED] of the receipt of a correct and proper invoice and accompanying affidavits and lien waivers as required by this Agreement. All payments shall be made by wire transfer to an account as may be designated by the Contractor to the Owner in an invoice.

In addition to Retainage, the Owner may withhold payment on the Contractor's invoices: (a) in an amount and to such extent as may be reasonably necessary to protect Owner from loss because of third party claims filed against the Owner and covered by the Contractor's indemnification obligations under this Agreement; (b) in an amount equal to payments previously made to the Contractor which were not yet properly due and payable; (c) in an amount and to such extent as may be reasonably necessary to protect the Owner from defects or deficiencies in the Work not remedied; (d) in an amount and to such extent as may be reasonably necessary to protect the Owner from the unexcused failure of the Contractor to make payments when due to Subcontractors or Suppliers; (e) in an amount and to such extent as may be reasonably necessary to protect the Owner from loss because of the occurrence of a Contractor Event of Default; and (f) any other sums which the Owner is entitled to recover from the Contractor under the terms of this Agreement or pursuant to applicable Law.

The Contractor agrees that it will deliver to the Owner, upon execution of this Agreement, and, as the Owner may deem necessary, upon any subsequent request from the Owner, duly completed copies of United States Internal Revenue Service Forms W-9, W-8BEN or W-8ECI, or any other form or documentation prescribed by applicable Laws, certifying that the Contractor is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes and that it is not subject to United States backup withholding.

- 3.6 Retainage. There shall be withheld as retainage from each payment due and payable to the Contractor hereunder (other than payments due upon and after the Substantial Completion Date)

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\_\_\_\_\_ of the amount of such payment (the "Retainage"). Such amount shall be held by the Owner as security for the performance of the Contractor's obligations hereunder and any interest thereon shall accrue for the account of the Owner and not the Contractor. The Owner may use the Retainage to cure a Contractor Event of Default, for Delay Liquidated Damages (including interest thereon), for payment of undisputed amounts to unpaid Subcontractors and Suppliers, and for payments made to remove liens that violate this Agreement, and any and all other amounts payable to the Owner hereunder. \_\_\_\_\_

\_\_\_\_\_ Except as set forth above, the Owner will hold the aggregate amount of the Retainage until \_\_\_\_\_, at which time the Contractor may invoice the Owner for the amount of such Retainage, in accordance with Section 3.5.

3.7 Payment or Use Not Acceptance. No payment by the Owner pursuant to an invoice from the Contractor or any use of the Work by the Owner shall constitute an acceptance of any of the Work or of any of the parts, materials, equipment or other supplies furnished by the Contractor or its Subcontractors or Suppliers and shall not relieve the Contractor of any of its obligations or liabilities under this Agreement.

3.8 Certified Michigan Content.

(a) The Contractor represents and warrants that (i) the Certified Michigan Equipment for the Project constitutes not less than \_\_\_\_\_ of the total cost of all materials and equipment for the Project supplied by the Contractor or its Subcontractors and Suppliers, and (ii) the Certified Michigan Labor for the Project constitutes not less than \_\_\_\_\_ of all Project Site labor of the Contractor and its Subcontractors. With each monthly invoice, the Contractor shall submit an Affidavit of Michigan Equipment, Materials, and Labor substantially in the form set forth in Exhibit AA detailing the Certified Michigan Equipment and Certified Michigan Labor for the Project for both the preceding month and cumulative through such month.

(b) If the Affidavit of Michigan Equipment, Materials, and Labor submitted by the Contractor with the invoice for the Final Completion Milestone Payment indicates that the Certified Michigan Equipment for the Project or the Certified Michigan Labor for the Project is less than the amount set forth in Subsection 3.8(a), then the Contractor shall pay to the Owner, as liquidated damages and not as a penalty, (i) the amount of \_\_\_\_\_ multiplied by the number of percentage points shortfall between the actual percentage reported for Certified Michigan Labor and the Contractor's above warranted figure of \_\_\_\_\_ and (ii) the amount of \_\_\_\_\_ multiplied by the number of percentage points shortfall between the actual percentage reported for Certified Michigan Equipment and the Contractor's above warranted figure \_\_\_\_\_ said percentage shortfalls and the applicable compensation to be prorated to the nearest \_\_\_\_\_

3.9 Allocation of Cost to the Owners Property Records. The Contractor agrees to assist the Owner in allocation of cost to Owner-defined property record accounts prior to Final Completion.

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## ARTICLE 4 CONDITIONS PRECEDENT; NOTICE TO PROCEED; ETC.

4.1 Conditions Precedent to Contract. The Owner's obligations under this Agreement are subject to fulfillment of the following conditions precedent:

- (a) The Owner must have received written approval(s), from MPSC which pertains to this Agreement and receive the Approval in written that is/are in form and content satisfactory to the MPSC, Owner and all necessary Public Authorities for the Contractor to execute any Work that would pertain to the Project Site as stated in this Agreement;
- (b) The Owner must have entered into a Road Use Agreement(s), on terms and conditions satisfactory to the Owner and from applicable Governmental Authorities in which said Road Use Agreement will be issued in written form for the Contractor to execute any Work that would pertain to the Project Site as stated in this Agreement , and;
- (c) The Owner must have received required height, environmental, and special land use and any other Zoning Permits and Zoning Approvals, variances and permits, from the Zoning Commission or applicable Governmental Authorities, in a form and content satisfactory to the Owner and all necessary Public Authorities, for the Owner's construction, within the Project Site, , variances and permits must be final and not subject to being overturned or modified on appeal or further appeal for the Contractor to execute any Work that would pertain to the Project Site as stated in this Agreement.

If all of the above conditions are not met by, November 1, 2019 (the "Conditions Precedent Deadline"), then, unless (and to the extent that) the Owner in its sole and unfettered discretion waives, in writing, the fulfillment of same, this Agreement shall be null and void and each Party shall be released from all obligations as set forth herein. The Owner may at its option request to extend the Conditions Precedent Deadline one or more times by written notice to the Contractor, and provided Contractor agrees, then in such event the Guaranteed Completion Dates shall be extended by the same period(s) of time as the period(s) by which the Owner extended the Conditions Precedent Deadline beyond November 1 2019, and provided, further, that the latest date to which the Owner may so extend the Conditions Precedent Deadline will be January 1, 2020. Except as may be expressly otherwise provided in this Agreement, the Contractor expressly understands that it is not authorized to commence any Work or incur any costs for the account of the Owner, unless and until the Owner notifies the Contractor in writing ("Notice to Proceed") that the above conditions precedent have been fulfilled (or the Owner, in its sole and unfettered discretion has in writing waived same) and that the Contractor is released to commence Work.

4.2 Limited Notice to Proceed. The Owner may at it option issue an LNTP, which shall direct Contractor to perform one or more portions of the Work prior to the issuance of the Notice to Proceed under Section 4.1. If this Agreement is terminated by the Owner pursuant to Section 4.1, the Contractor shall be entitled to reimbursement for Work properly performed pursuant to the LNTP prior to such termination under Section 4.1, such payment to be in the amount of (or as applicable a proportionate amount of) the applicable payment amount for the Work performed that is identified on the Milestone Payment Schedule. If the Owner issues an LNTP, then the Notice to Proceed issued pursuant to Section 4.1 will be deemed the "Full Notice to Proceed" and

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all references in this Agreement to "Notice to Proceed" will be understood to mean such Full Notice to Proceed.

- 4.3 Project Site Plan. The Owner will have the right to revise the Site Plan, including the Project Site Boundaries, and specific Turbine Site locations, at any time and from time to time upon written notice to the Contractor of such revisions.

### ARTICLE 5 CHANGE ORDERS

- 5.1 Changes in the Work. The Owner may, at any time, without invalidating this Agreement, make changes in, add to or delete from the work to be performed hereunder. No such changes shall be made and no claims of the Contractor for extra work shall be valid except as authorized by written order signed by the Owner.

- 5.2 Change Process.

- (a) If the Contractor intends to assert a claim for any increase in the Contract Price or any extension of the Construction Schedule by reason of the receipt of such a written order from the Owner, the Contractor shall immediately notify the Owner and, within [REDACTED], submit to the Owner a written notice and complete statement of such claim including a detailed computation (showing quantities, man-hours, and costs) of its value. The Contractor shall, in such statement, separate costs into material and installation categories. If requested by the Owner, the Contractor shall follow up such written statement with such further and supporting detail as the Owner may specify. Any claims for adjustment either to the Contract Price or the Construction Schedule not so submitted by the Contractor to the Owner in writing within [REDACTED] shall be deemed to have been waived.
- (b) If the change involved a reduction in the Work, then the Owner may, with its written order under Section 5.1, compute and notify the Contractor of a proportional decrease in the Contract Price or shortening of the Construction Schedule, which computation will be deemed to be agreeable to the Contractor unless the Contractor objects by written notice to the Owner within [REDACTED], which objection shall include a detailed computation of the Contractor's calculation of the appropriate proportional decrease in the Contract Price or shortening of the Construction Schedule.
- (c) The Owner will issue a "Change Order" to reflect the change(s) in the Work and, if applicable, any adjustment in the Contract Price and/or Construction Schedule on account thereof. Provided that the Contractor has timely submitted a claim or objection pursuant to Section 5.2, the adjustment in the Contract Price and/or Construction Schedule will be as mutually agreed upon. If the Parties are unable to agree on a fixed amount change in the Contract Price, and the Owner nonetheless desires the Contractor to proceed with the change, then the price adjustment shall be computed in accordance with the rate schedule set forth in Exhibit K. Any Change Order must be signed by an authorized representative of the Owner.

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When possible, a Change Order as provided above shall be executed prior to the commencement of the applicable changes in the Work. When a need arises to immediately authorize changes in the Work to restore service, to avoid breakdowns, to avoid work stoppages or for the Owner to meet its commitments, the Owner may authorize the performance of such changes by execution of a Project Change Notice ("PCN") in the form attached as Exhibit I. Any work authorized pursuant to such a PCN shall thereafter be evidenced by a Change Order as indicated above.

- (d) The Contractor agrees that all adjustments in the Contract Price, Work, Construction Schedule, or other provisions set forth in each Change Order shall constitute the full, final, and complete compensation to the Contractor for the entire cost and the schedule effects related to (a) the implementation of the stated changes, and (b) the cumulative impact and any effect whatsoever resulting from the stated changes on all prior work and changes in the work to be performed as scheduled, and the Contractor expressly waives any claims for additional compensation, damages or time extensions in connection with the stated changes.
- (e) Additional Work performed under this Agreement may be to support the Owner to correct deficiencies from other contractors and suppliers providing work and services for the Project. The Owner's backcharge procedure will be used to document the Work performed, capture time and ultimately costs to perform this Work for these firms. The Contractor is required to assist the Owner in administration of the backcharges by supplying appropriate timesheets, equipment rental forms, separate invoices and other relevant information.

### ARTICLE 6

#### **TURBINE FOUNDATION GROUP COMPLETION, SUBSTATION COMPLETION, COLLECTION SYSTEM CIRCUIT COMPLETION, TURBINE MECHANICAL COMPLETION, AND SUBSTANTIAL COMPLETION**

- 6.1 Time is of the Essence. The time limits for performance of the Contractor's obligations stated in this Agreement are of the essence.
- 6.2 Turbine Foundation Group Completion.
  - (a) Turbine Foundation Group Completion. Turbine Foundation Group Completion shall occur with respect to each Turbine Foundation Group when all of the following have been satisfied in accordance with the criteria set forth in Exhibit A, as applicable: (i) each of the Turbine Foundations in such Turbine Foundation Group is mechanically completed and installed in accordance with the requirements of this Agreement; (ii) each of the Turbine Foundations in such Turbine Foundation Group is structurally completed and grounded and ready for the installation of the Turbine, and all necessary embedded inserts for the connection to the applicable Collection System Circuit have been properly installed; (iii) the concrete portion of each of the Turbine Foundations in such Turbine Foundation Group has set and cured so as to have achieved the minimum strength necessary to allow assembly, erection and permanent installation of the Turbine thereon; (iv) the grounding grid for each of the Turbine Foundations has been installed;

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[REDACTED]

(vi) backfilling and compaction of the area surrounding each of the Turbine Foundations in such Turbine Foundation Group has been completed; [REDACTED]

[REDACTED]

[REDACTED] and (viii) the Contractor has issued the Turbine Foundation Group Completion Certificate for such Turbine Foundation Group in accordance with Subsection 6.2(b) and the Owner has accepted and countersigned such Turbine Foundation Group Completion Certificate.

The term “Turbine Foundation Completion” where referred to in this Agreement means (unless and except as may be expressly provided otherwise elsewhere in this Agreement) that all of the requirements of the proceeding subparagraph have been fulfilled for an individual Turbine Foundation in a Turbine Foundation Group.

- (b) Notice of Turbine Foundation Group Completion. Following a determination by the Contractor that Turbine Foundation Group Completion has been achieved with respect to a Turbine Foundation Group, the Contractor shall prepare a Turbine Foundation Group Completion Certificate certifying that the Turbine Foundation Group Completion for such Turbine Foundation Group has been achieved. The Turbine Foundation Group Completion Certificate shall include a report containing all information relevant to the achievement of Turbine Foundation Group Completion demonstrating that Turbine Foundation Group Completion for such Turbine Foundation Group has been achieved.

### 6.3 Substation Completion.

- (a) Substation Completion. Substation Completion shall occur when all of the following have been satisfied in accordance with the criteria set forth in Exhibit A, as applicable: (i) all Route Improvements associated with the Collection System Substation have been completed; (ii) the Collection System Substation is mechanically complete in accordance with the requirements of this Agreement, with all relaying, metering, communications and other equipment and systems tested; (iii) Omitted; (iv) the Collection System Substation SCADA infrastructure has been installed and tested; (v) the Collection System Substation has been successfully Energized and tested; (vi) the Collection System Substation is capable of delivering all of the electrical energy generated by the Turbines to the Point of Interconnection; (vii) all construction debris, rubbish and foreign material have been removed from the area of the Collection System Substation; and (viii) the Contractor has issued the Substation Completion Certificate in accordance with Subsection 6.3(b) and the Owner has accepted and countersigned such Substation Completion Certificate.
- (b) Notice of Substation Completion. Following a determination by the Contractor that Substation Completion has been achieved, the Contractor shall prepare a Substation Completion Certificate certifying that the Substation Completion has been achieved. The Substation Completion Certificate shall include a report containing all information

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relevant to the achievement of Substation Completion demonstrating that Substation Completion has been achieved.

### 6.4 Collection System Circuit Completion.

- (a) Collection System Circuit Completion. Collection System Circuit Completion shall be achieved with respect to each Collection System Circuit when all of the following have been satisfied with respect to such Collection System Circuit in accordance with the criteria set forth in this Agreement and Exhibit A, as applicable: (i) all Route Improvements associated with such Collection System Circuit have been completed; (ii) such Collection System Circuit is complete and connected from each Turbine on such Collection System Circuit to the Collection System Substation in accordance with the detailed design drawings identified on the Deliverables List as submitted by the Contractor to and approved by the Owner; (iii) the complete fiber optic network connection from each Turbine on such Collection System Circuit and the permanent meteorological tower compliant with the Turbine Supplier's SCADA requirements have been provided, installed and tested; (iv) fiber optic cable is in place at each Tower base to enable termination by Turbine Supplier; (v) the Collection System Circuit has been successfully Energized and tested; and (vi) the Contractor has issued the Collection System Circuit Completion Certificate in accordance with Subsection 6.4(b), and the Owner has accepted and countersigned the Collection System Circuit Completion Certificate.
- (b) Notice of Collection System Circuit Completion. Following a determination by the Contractor that Collection System Circuit Completion has been achieved for a Collection System Circuit, the Contractor shall prepare a Collection System Circuit Completion Certificate certifying that Collection System Circuit Completion for such Collection System Circuit has been achieved. The Collection System Circuit Completion Certificate shall include a report containing all information relevant to the achievement of Collection System Circuit Completion demonstrating that Collection System Circuit Completion for such Collection System Circuit has been achieved.

### 6.5 Turbine Mechanical Completion.

- (a) Turbine Mechanical Completion. Turbine Mechanical Completion shall be achieved with respect to a Turbine when all of the following have been satisfied in accordance with the criteria set forth in this Agreement and the Turbine Specification: (i) Turbine Foundation Completion for such Turbine has occurred; (ii) the Turbine has been assembled, erected, and installed in accordance with the requirements of this Agreement and the Turbine Specifications; [REDACTED] (iv) the Turbine is ready for Energization and initial operation in a safe manner; (v) the Owner and Turbine Supplier have completed their agreed upon Mechanical Completion inspection and approval procedure pursuant to the terms of the Turbine Purchase Agreement and have confirmed Mechanical Completion to have occurred pursuant to the Turbine Purchase Agreement; (vi) the Contractor has issued a Turbine Mechanical Completion Certificate

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in accordance with Subsection 6.5(b), and the Owner has accepted and countersigned such Turbine Mechanical Completion Certificate.

- (b) Notice of Turbine Mechanical Completion. Following a determination by the Contractor that Turbine Mechanical Completion has been achieved with respect to a Turbine, the Contractor shall prepare a Turbine Mechanical Completion Certificate certifying that the Turbine Mechanical Completion for such Turbine has been achieved. The Turbine Mechanical Completion Certificate shall include a report containing all information relevant to the achievement of Turbine Mechanical Completion demonstrating that Turbine Mechanical Completion for such Turbine has been achieved.

### 6.6 Intentionally Omitted.

### 6.7 Substantial Completion.

- (a) Substantial Completion. Substantial Completion shall be achieved when all of the following have been satisfied in accordance with the criteria set forth in this Agreement and Exhibit A, as applicable: (i) Substation Completion has been achieved; (ii) Collection System Circuit Completion has been achieved for all Collection System Circuits; (iii) Turbine Mechanical Completion has been achieved for all of the Turbines; (iv) the BOP is capable of delivering electric power up to the full rated capacity of the Turbines to the Point of Interconnection; (v) the Contractor has delivered all the documents and drawings required, including but not limited to the Job Books (including Operating Manuals) and all QA/QC documentation, other than the Record Drawings, which shall be submitted pursuant to clause “(iv)” of Subsection 2.2(b); (vi) all non-conforming QA/QC issues have been resolved in accordance with the QA/QC procedures; (vii) the Balance of Plant and the Work have in all respects been properly constructed, installed, adjusted, successfully tested, and is complete, in a mechanically, electrically, and structurally sound manner and in accordance with the criteria set forth in Exhibit A, the specifications set forth in the Interconnection Requirements, the Scope of Work, the Turbine Specifications and any other requirements set forth in this Agreement and can be operated and used safely; (viii) the payment of all Delay Liquidated Damages to the Owner previously invoiced pursuant to Section 8.2; (ix) the Punch List has been agreed to in writing by the Contractor and the Owner; and (x) the Contractor has issued the Substantial Completion Certificate in accordance with Subsection 6.7(b), and the Owner has accepted and countersigned the Substantial Completion Certificate.
- (b) Notice of Substantial Completion. Following a determination by the Contractor that Substantial Completion has been achieved, the Contractor shall deliver a Substantial Completion Certificate to the Owner to notify Owner that the Contractor has determined that Substantial Completion has been achieved, and the date on which it occurred together with a proposed Punch List to be agreed upon in accordance with Section 6.9, as applicable.

### 6.8 Owner Dispute & Acceptance of Completion Certificates. Turbine Foundation Group Completion of a Turbine Foundation Group, Substation Completion, Collection System Circuit Completion of a Collection System Circuit, Turbine Mechanical Completion of a Turbine, and Substantial Completion shall each be deemed to have occurred only when the Owner signs the

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applicable Completion Certificate (and, except as expressly otherwise provided in the last paragraph of this Section 6.8, [REDACTED])

[REDACTED] If the Owner disputes Contractor's determination that all of the applicable Work identified in any Completion Certificate has been completed and/or that Turbine Foundation Group Completion of a Turbine Foundation Group, Substation Completion, Collection System Circuit Completion of a Collection System Circuit, Turbine Mechanical Completion of a Turbine, or Substantial Completion, as applicable, has been achieved, the Owner shall provide a written notice to the Contractor stating the reasons why the Owner believes that the identified Work has not been completed [REDACTED]

[REDACTED] The Contractor shall, at no expense to the Owner, take all actions necessary to correct the deficiencies identified by the Owner and shall re-deliver the Completion Certificate once all such corrective actions are taken. [REDACTED]

[REDACTED] The Contractor shall continue to take corrective actions within the above specified time frame and reapply to the Owner for approval of its Completion Certificate until the Owner is satisfied that the applicable Work covered by the Completion Certificate has been completed and the Owner signs the applicable Completion Certificate.

It is further understood that if and when the Owner accepts and countersigns a particular Completion Certificate pursuant to the immediately preceding paragraph of this Section 6.8, then:

[REDACTED]

[REDACTED]

- 6.9 Punch List. It is understood that upon achievement of Substantial Completion, there may be non-material items of Work remaining to be performed or corrected which do not affect the normal, safe and reliable operation of the Project or any part of the Project. Contractor shall, prior to the Substantial Completion Date, create the Punch List which shall be subject to the Owner's review and written approval. To the extent not completed as part Substantial Completion, the Punch List shall include full restoration of the Project Site with final road and pad configurations, all permanent gates and cattle guards installed, all temporary facilities removed, all disturbed areas re-vegetated, all permanent storm water management facilities complete, and all of the Contractor's (including Subcontractors' and Suppliers') supplies,

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personnel, and Hazardous Materials brought onto the Project Site (and not required for the operations, maintenance and service of the Project) and trash have been removed from the Project Site. All items on the Punch List shall be completed by the Contractor by the Final Completion Date. The Contractor shall not be entitled to the Punch List Holdback Amount until Final Completion (as defined in Article 7) including completion of all Punch List items and delivery of all Record Drawings. The Contractor shall complete the Punch List within [REDACTED] after Substantial Completion. If the Contractor has not completed the Punch List items within [REDACTED] after the Substantial Completion Date, then the Owner shall have the right, at its option, and without limiting the Contractor's obligations, to complete the remaining Punch List items and all costs thereof shall be borne by the Contractor, including without limiting the Contractor's liability therefor, that the Owner may withhold funds to cover such amounts from the Punch List Holdback Amount.

### **ARTICLE 7 FINAL COMPLETION**

- 7.1 Final Completion. Final Completion shall occur when the Contractor demonstrates to the Owner's satisfaction that all of the following have occurred and the Owner has executed and delivered to the Contractor a Notice of Final Completion: (a) Substantial Completion has occurred; (b) all Punch List items have been completed; (c) the Record Drawings, test reports, spare parts and any other documents not yet delivered have been delivered to the Owner; (d) final lien waivers and releases in the form of Exhibit W-2 from the Contractor and all its Subcontractors and Suppliers have been delivered; (e) all Delay Liquidated Damages and any other payments owing to the Owner by the Contractor have been paid in full; and (f) there are no Contractor Events of Default. Final Completion shall be deemed to have occurred only when the Owner executes and delivers to the Contractor the Notice of Final Completion (and only as of the date of the Owner's signing of such Notice of Final Completion) signifying the Owner's agreement that the applicable requirements for the above have occurred.

### **ARTICLE 8 DELAYS, DELAY LIQUIDATED DAMAGES, AND OBLIGATIONS TO MITIGATE DAMAGES**

- 8.1 Guaranteed Completion Dates.
- (a) The Contractor shall perform the Work such that (i) Turbine Foundation Group Completion for each Turbine Foundation Group shall occur not later than the Guaranteed Turbine Foundation Group Completion Date for such Turbine Foundation Group; (ii) Substation Completion shall occur not later than the Guaranteed Substation Completion Date; (iii) Collection System Circuit Completion for each Collection System Circuit shall occur not later than the Guaranteed Collection System Circuit Completion Date for such Collection System Circuit; (iv) Turbine Mechanical Completion for each Turbine shall occur not later than the Guaranteed Turbine Mechanical Completion Date for such Turbine; and Substantial Completion shall occur not later than the Guaranteed Substantial Completion Date, as may be extended pursuant to the provisions of this Agreement. Unless otherwise excused due to Force Majeure events, delays caused by Owner or Other Owner Contractors or in the case of Substantial Completion Date, Turbine Mechanical Completion, a Crane Wind Day Extension, in the event that the

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Contractor does not achieve Turbine Foundation Group Completion for a Turbine Foundation Group by the applicable Guaranteed Turbine Foundation Group Completion Date, Substation Completion by the Guaranteed Substation Completion Date, Collection System Circuit Completion for a Collection System Circuit by the applicable Guaranteed Collection System Circuit Completion Date, or Turbine Mechanical Completion for a Turbine by the applicable Guaranteed Turbine Mechanical Completion Date , the Contractor shall be liable for Delay Liquidated Damages pursuant to Section 8.2.

### 8.2 Delay Liquidated Damages.

- (a) Substantial Completion Delay Damages. For each day that Substantial Completion, in accordance with the criteria set forth in this Agreement, occurs after the Guaranteed Substantial Completion Date, irrespective of the cause, excluding delays excused due to Force Majeure events, and delays caused by Owner or Other Owner Contractors, until Substantial Completion occurs, the Contractor shall be liable for, and shall pay to the Owner, liquidated damages ("Substantial Completion Delay Damages") equal to [REDACTED].

[REDACTED]

- (c) Collection System Circuit Completion Delay Liquidated Damages. For each day that Collection System Circuit Completion of a Collection System Circuit occurs after the Guaranteed Collection System Circuit Completion Date of that Collection System Circuit, irrespective of the cause, excluding delays excused due to Force Majeure events or caused by Owner or Other Owner Contractors, until Collection System Circuit Completion of that Collection System Circuit occurs, the Contractor shall be liable for,

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and shall pay to the Owner, liquidated damages ("Collection System Circuit Completion Delay Damages") equal to [REDACTED]

(d) Intentionally Omitted

(e) Intentionally Omitted

(f) Production Tax Credits Damages. [REDACTED]

then the Contractor shall be liable for, and shall pay to the Owner, liquidated damages ("Loss of PTC Damages") in the amount of [REDACTED] for which the Owner does not qualify for Production Tax Credits. [REDACTED]

[REDACTED] Notwithstanding the above, Contractor shall not be liable to the Owner for Production Tax Credits Damages if Contractor fails to achieve Turbine Mechanical Completion or Production, as set forth in Exhibit A of this Agreement, [REDACTED] as a result of a Force Majeure event or delay caused by Owner or Other Owner Contractors.

(g) Liquidated Damages Notice. The Owner shall provide a written notice to the Contractor (a "Liquidated Damages Notice") of any Delay Liquidated Damages due pursuant to the preceding provisions of this Section 8.2. [REDACTED] following the receipt of any Liquidated Damages Notice, the Contractor shall pay the Delay Liquidated Damages set forth therein.

(h) Application of Each Delay Liquidated Damage Provision. Liquidated damages as provided in each of the preceding subsections of this Section 8.2 shall apply separately and independently of the Liquidated Damages under every other such subsection.

[REDACTED]

8.3 Delay Liquidated Damages Not a Penalty. The Parties acknowledge and agree that because of the unique nature of the Work and the unavailability of a substitute facility, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Owner as a result of the Contractor's failure to achieve Guaranteed Completion Dates. It is understood and agreed by the Parties that (a) the Owner shall be damaged by the failure of the Contractor to meet such obligation, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) any sums which would be payable under this ARTICLE 8

[REDACTED]

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are in the nature of liquidated damages, and not a penalty, and are fair and reasonable under the circumstances and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure. [REDACTED]

[REDACTED]

**ARTICLE 9  
LIMITATION OF LIABILITY**

[REDACTED]

[REDACTED]

**ARTICLE 10  
FORCE MAJEURE**

10.1 Force Majeure. Any obligation of either Party under this Agreement shall be excused to the extent, but only to the extent, that the applicable Party is unable to perform as the result of Force Majeure. Each Party shall use all reasonable efforts to cure, minimize, mitigate or remedy the effects of the Force Majeure. As used in this agreement, "Force Majeure" means any condition, event, or circumstance, including by way of example,

- (i) war (whether declared or undeclared), sabotage, civil strife, acts of terrorism;

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- (ii) earthquake, natural disasters; fire; landslides; flood;
- (iii) hurricanes; tornados, tsunamis; perils of sea; volcanic activity; epidemic;
- (iv) quarantine; blockades;
- (v) seasonal or weather-based road restrictions affecting roads in Michigan, during periods when Turbines or components of Turbines are scheduled to be delivered by Turbine Supplier to Turbine Sites as set forth in exhibit T ;
- (vi) ruling; decree; or injunction of a Governmental Authority;
- (vii) Acts of God; or
- (viii) accidents in shipping or transportation (but solely to the extent such accident would itself be a Force Majeure event if the Person shipping or transporting were a party hereto);

but only if, and to the extent: (1) such condition, event, or circumstance is not within the reasonable control of the Party affected; (2) such condition, event or circumstance, despite the exercise of reasonable diligence, could not be prevented, avoided or removed by such Party; (3) such condition, event, or circumstance has a material adverse effect on the ability of the affected Party to fulfill its obligations under this Agreement; (4) the affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such condition, event, or circumstance on the affected Party's ability to fulfill its obligations under this Agreement and to mitigate the consequences thereof; and (5) such condition, event, or circumstance is not the result of any failure of such Party to perform any of its obligations under this Agreement. Furthermore, in no event shall Force Majeure include the following events, conditions or circumstances:

- (a) oversold market conditions or other similar circumstances;
- (b) shortages of supervisors, labor, or factory/manufacturing capacity except if such shortages are directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of the first full paragraph of this definition;
- (c) late performance as a consequence of any violation of applicable Law or decisions of a Governmental Authority related to the conduct of the Contractor's or any Subcontractor's or Supplier's business, including insolvency or any delay related to the economic, commercial or labor circumstances of the Contractor, any Subcontractor or Supplier or other business conducted by the Contractor or any Subcontractor or Supplier;
- (d) breakdown, loss, or damage to or theft of equipment except where such breakdown, loss, or damage is directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of the first full paragraph of this definition;
- (e) failure of a Party to pay amounts due and owing under this Agreement;

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- (f) increased costs of the Work, general economic or industry conditions
- (g) strikes or labor disturbances;
- (h) a Party's financial inability to perform under this Agreement;
- (i) wind conditions, it being expressly understood that any claims related to wind conditions are addressed in the provisions of Section 10.2 below dealing with "Crane Wind Days"; or
- (j) any other weather conditions except as expressly provided above in this Section 10.1;

"Force Majeure" may include the failure of a Subcontractor or Supplier to furnish labor, services, materials or equipment in accordance with its contractual obligations but solely if to the extent such failure would itself be a Force Majeure as defined hereinabove if such Subcontractor or Supplier furnishing such labor, service, materials or equipment were a party hereto.

If either Party's ability to perform its obligations under this Agreement is affected by a Force Majeure event, such Party (the "Affected Party") shall provide written notice to the other Party within [REDACTED] after it became aware of the occurrence of such event, but in no event later [REDACTED] after the occurrence of such event. Such notice will, to the extent practicable, specify the nature of the occurrence, the reasons why adjustments to this Agreement should be granted, and the projected length of the delay occasioned by reason of such Force Majeure event. Within [REDACTED] after submission of such notice, the Affected Party shall provide a more detailed notice of the impact of the occurrence, and a more detailed estimate of the effect on this Agreement. Such notice will be updated as soon as possible after additional information becomes available to the Affected Party, but in no event less frequently than weekly.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The suspension of or impact on performance due to an event of Force Majeure shall be of no greater scope and no longer duration than is required by such event. For purposes of clarity, no obligations or liability under this Agreement that arose before the occurrence of the Force Majeure event will be excused (except to the extent adversely impacted by the Force Majeure event) as a result of the occurrence of such event of Force Majeure for any period prior to the occurrence of such event of Force Majeure. The Affected Party shall use all reasonable efforts to:

- (a) mitigate the duration of any suspension or delay in, or other impact to the performance of its obligations under this Agreement;

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- (b) continue to perform its obligations hereunder; and
- (c) remedy its inability to perform, as applicable.

[Redacted]

10.2 Crane Wind Days. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

10.3 [Redacted]

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**ARTICLE 11  
WARRANTIES**

- 11.1 Warranty of Title. The Contractor warrants that title to all materials, parts, supplies and equipment furnished in the Work hereunder, and otherwise the Balance of Plant, shall be good; free and clear of all liens, charges, claims and encumbrances of any nature. This warranty of title shall continue without limitation as to time.

If any failure to comply with such warranty of title appears at any time, the Contractor shall be liable and shall have the obligation to defend the title and sale hereby made of said materials, parts, supplies and equipment against all and every person or persons whomsoever and shall indemnify and save the Owner harmless from and against all losses, damages, costs, expenses (including reasonable attorneys' fees), claims and liabilities of every kind and nature arising out of such failure to comply with the warranty.

- 11.2 Warranty.

- (a) Any performance tests required shall be conducted as specified in this Agreement. Should any items fail to perform as guaranteed in this Agreement, the Contractor shall promptly make such changes to the items as are necessary to meet the performance guarantees, and such corrections, including any retesting costs, shall be paid for by the Contractor.
- (b) The Contractor hereby warrants that the Balance of Plant and the Work, including without limitation all of the design, goods, services, materials and equipment supplied by the Contractor and its Subcontractors and Suppliers in the Work and all of the workmanship of fabricating, processing, modifying, assembling, erecting, constructing and/or installing both Contractor- (or Subcontractor- or Supplier-) supplied materials and equipment and Owner-supplied materials and equipment: (i) shall be new and unused (except as required for commissioning and placement into initial operation) and undamaged on the Substantial Completion Date; (ii) shall conform to all of the requirements of this Agreement; and (iii) shall be free from defects in design, materials, construction, installation and workmanship for a [REDACTED]
- (c) Without limiting any other remedy available to the Owner, if any such nonconformance or defect appears during the Warranty Period, the Contractor shall make any and all repairs or replacements necessary to remedy same (including performing all work

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incidental to such corrective work, such as but not limited to all associated removal, transportation, disposal and/or reinstallation of equipment or materials) at its sole expense and within a reasonable time after notification by the Owner. The Contractor shall obtain Owner's written approval of the Contractor's intended schedule for performing such corrective work prior to commencing such work at the Turbine Site or other applicable facility locations; and the Contractor shall perform any such work so as not to disrupt or inconvenience the normal activities of the Owner or others. The Contractor shall notify the Owner upon completion of any corrective work to allow for the Owner to inspect such work. The Contractor's warranty set forth in Subsection 11.2(b) shall also apply to all corrective work performed pursuant to the foregoing provisions of this paragraph, [REDACTED]

[REDACTED]

[REDACTED]

- (d) If the Contractor refuses, neglects, or is otherwise unable to take prompt action to correct any non-conformances or defects as provided in the immediately preceding paragraph, the Owner shall (without limiting any other rights or remedies it may have hereunder or at law or equity) have the right to perform or to hire third parties to perform the corrective work (including all work incidental to such corrective work, such as but not limited to all associated removal, transportation, disposal and/or reinstallation of equipment or materials), and the Contractor shall reimburse the Owner upon demand for all cost and expense of all such work [REDACTED]
- [REDACTED] The Contractor's warranty set forth in Subsection 11.2(b) shall also apply to all corrective work performed by the Owner itself or a third party hired by the Owner pursuant to the foregoing provisions of this paragraph, [REDACTED]
- [REDACTED]
- (e) In the event that any corrective work invalidates warranties of Subcontractors or an Other Owner Contractor, the Contractor shall obtain new warranties satisfactory to the Owner at the Contractor's expense.
- (f) In addition to the Contractor's own preceding warranties, the Contractor shall obtain from its Subcontractors warranties satisfactory to the Owner regarding the portion of the Work performed and/or supplied by them. Such warranties shall be for the benefit of the Owner and the Contractor, and shall be enforceable by the Owner, the Contractor, or both, at the option of the Owner.

**ARTICLE 12**  
**TITLE AND RISK OF LOSS**

- 12.1 Passage of Title. Title to all Contractor- (or- Subcontractor- or Supplier-) supplied materials, parts, supplies and equipment that are to be incorporated into and to become a part of the structures, buildings, fixtures, facilities and/or other improvements that are to be erected,

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constructed and/or installed within the Project Site in the performance of the Work shall pass to the Owner at the earlier to occur of:

- (a) the date such materials, parts, supplies and equipment have been physically incorporated into said structures, buildings, fixtures, facilities and/or other improvements; or
- (b) the date payment for such materials, parts, supplies and equipment is made by the Owner to the Contractor (i.e., the Owner has paid a Contractor invoice that covers the Work associated with such materials, parts, supplies and equipment);

but in any event not later than the date of Final Completion. Said transfer of title shall in no way limit or otherwise affect any of the Owner's rights and remedies as set forth elsewhere in Contract or at law or equity. Notwithstanding the transfer of title, the Contractor's responsibility for loss or damage to such equipment and materials shall be determined in accordance with Section 12.2 hereof.

Any Contractor- (or Subcontractor- or Supplier-) supplied materials, parts, supplies and equipment that has not yet been actually incorporated into the Work for which title has so passed to the Owner but which remains in the care and custody of the Contractor or any of its Subcontractors or Suppliers shall be clearly identified as being the property of the Owner and shall be segregated from the Contractor's other work or inventory.

Upon Final Completion, any of the materials, parts, supplies and equipment on the Project Site which remains unused and has neither been:

- (a) incorporated into the structures, buildings, fixtures, facilities and/or other improvements erected, constructed and/or installed within the Project Site in the performance of the Work; or
- (b) paid for by the Owner;

shall remain the property of the Contractor. The Contractor must, unless otherwise agreed in writing, remove any such materials, parts, supplies and equipment from the Project Site, not later than Final Completion. Notwithstanding the foregoing, if the materials, parts, supplies and equipment in question are materials, parts, supplies and equipment that this Agreement specifically requires the Contractor to provide to the Owner, including a situation where such materials, parts, supplies and equipment is part of particular quantity that this Agreement provides that the Contractor must supply, any of such equipment or material which remains unused upon Final Completion will become and remain the property of the Owner.

### 12.2 Risk of Loss.

- (a) The Contractor shall retain the risk of loss to the BOP and all materials, parts, supplies and equipment incorporated or intended to be incorporated into the BOP (including, in addition to all Contractor-, Subcontractor- or Supplier- supplied materials, parts, supplies and equipment, all Owner-Supplied Equipment, the risk of loss to which Owner-Supplied Equipment shall pass to the Contractor effective upon delivery thereof to the

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Contractor), and also specifically including any materials, parts, supplies and equipment in transit or in storage either within or off the Project Site, [REDACTED]

[REDACTED]

Without limiting the generality of any of the foregoing, the Contractor shall be fully responsible for any loss or damage to the BOP or to materials, parts, supplies and equipment incorporated or intended to be incorporated into the BOP (including Owner-Supplied Equipment in addition to Contractor-, Subcontractor- or Supplier- supplied materials, parts, supplies and equipment) due to theft, pilferage, rust, weathering, and the elements.

In the event of any loss, theft or damage for which the Contractor is responsible under this Subsection 12.2(a), the Contractor shall forthwith re-do, repair or replace the applicable Work and/or the materials, parts, supplies and equipment so damaged or destroyed, at its own expense and to the satisfaction of the Owner.

(b)

[REDACTED]

### ARTICLE 13 INSURANCE

- 13.1 Insurance. The Contractor shall provide and maintain the insurance (and the Contractor shall cause its Subcontractors and Suppliers to provide and maintain the Subcontractor and Supplier insurance) specified in Exhibit S in accordance with the terms and provisions thereof.

### ARTICLE 14 DEFAULT AND TERMINATION; SUSPENSION

- 14.1 Defaults. The occurrence of any one or more of the following events shall constitute an event of default by the Contractor hereunder (a "Contractor Event of Default"):
- (a) the Contractor fails to procure, maintain or provide acceptable evidence of any insurance required to be procured and maintained by the Contractor or fails to perform any other obligation under Exhibit S;
  - (b) the Contractor fails for any reason to make prompt payments required to be made by the Contractor to any Subcontractor or Supplier of amounts not reasonably in dispute, which failure results in or gives rise to, or could result in or give rise to, a lien or claim against the Owner or the Project, or the impairment of the Contractor to perform its obligations

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under this Agreement, and such failure continues for thirty (30) days after receipt of written notice of such non-payment;

- (c) the Contractor fails to pay, or cause to be paid, to the Owner any required payment which is not in dispute, and such failure continues for thirty (30) days after receipt of written notice of such failure;
- (d) the Contractor fails to achieve Turbine Foundation Group Completion of any Turbine Foundation Group within sixty (60) days after the Guaranteed Turbine Foundation Group Completion Date for such Turbine Foundation Group;
- (e) the Contractor fails to achieve Substation Completion within sixty (60) days after the Guaranteed Substation Completion Date;
- (f) the Contractor fails to achieve Collection System Circuit Completion of any Collection System Circuit within sixty (60) days after the Guaranteed Collection System Circuit Completion Date for such Collection System Circuit;
- (g) the Contractor fails to achieve Turbine Mechanical Completion of any Turbine within sixty (60) days after the Guaranteed Turbine Mechanical Completion Date for such Turbine;
- (h) Intentionally Omitted
- (i) any representation or warranty of the Contractor shall prove to be false or misleading and causes a material adverse effect on either the Owner's or the Contractor's ability to perform its obligations under this Agreement;
- (j) the Contractor makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due or shall commence or file a voluntary case or petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future federal, state or other bankruptcy or insolvency statute or law, or shall seek, consent to or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of the Contractor or of all or any substantial part of its properties;
- (k) any action, case or proceeding shall be commenced against the Contractor seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any insolvency laws or (ii) the appointment, without the consent or acquiescence of the Contractor, of any trustee, receiver or liquidator of the Contractor or of all or substantially all of its properties, which proceeding or appointment shall continue unstayed for a period of sixty (60) days;
- (l) the Contractor abandons the Work;
- (m) the Contractor fails to deliver the payment and performance bond required by Section 2.9 within five (5) days after the required date of delivery thereof, or fails to deliver a

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replacement payment and performance bond, similar in form and substance to the existing payment and performance bond, five (5) days after (i) the payment and performance bond delivered on the Effective Date no longer continues to be in effect or (ii) notification from the Owner that the issuer of such payment and performance bond no longer meets the requirements set forth in Section 2.9; or

- (n) the Contractor is in any other respect in material breach of its obligations under this Agreement and such breach continues for thirty (30) days after receipt of written notice from the Owner.

14.2 Owner's Option to Cure an Event of Default. Upon any Contractor Event of Default, then the Owner in addition to any other remedies available under this Agreement, at law or in equity, shall have the right, but not the obligation, to cure such defaults and shall be entitled to recover from the Contractor the direct, documented cost of curing such defaults, where such costs and any amounts previously paid to the Contractor are in excess of the Contract Price.

14.3 Event of Default Remedies.

- (a) Termination. Upon the occurrence of a Contractor Event of Default, the Owner, without prejudice to any remedy provided herein or otherwise available at law or in equity, may, by written notice to the Contractor, terminate this Agreement. The termination of this Agreement shall be without prejudice to any other rights or remedies which the Owner may have against the Contractor, and no termination of this Agreement shall constitute a waiver, release or estoppel by the Owner of any right, action or cause of action it may have against the Contractor.

In the event of a termination by the Owner pursuant to this Subsection 14.3(a), the Owner shall not be required to make any further payment to the Contractor unless and until all claims between the Parties are settled or resolved. If the Owner elects to complete the Work, then upon such completion Owner shall determine the completion cost. If the completion cost exceeds the difference between (i) the Contract Price less (ii) the sum of (a) the Retainage, plus (b) all amounts withheld by the Owner pursuant to this Agreement, plus (c) all amounts previously paid to the Contractor, plus (d) an amount equal to all Delay Liquidated Damages to which the Owner would have been entitled pursuant to Section 8.2 upon the completion of the Work, notwithstanding that someone other than the Contractor completed the Work, then the Contractor shall pay to the Owner the amount of such excess within ten (10) Days following receipt of the Owner's demand for such payment. Upon such termination the Owner shall have the right to take an assignment of all subcontracts and purchase orders entered into by the Contractor in connection with the Work. If requested by the Owner, the Contractor shall, at the Contractor's cost and expense, remove such materials, equipment, tools and instruments used and any debris or waste materials generated by the Contractor in the performance of the Work as the Owner may direct. If any termination by the Owner pursuant to Subsection 14.3(a) is ultimately determined to have been wrongful, then such termination shall be deemed a termination for convenience pursuant to Section 14.4, and the Contractor's sole remedy shall be the receipt of the amounts set forth in Subsection 14.4(b).

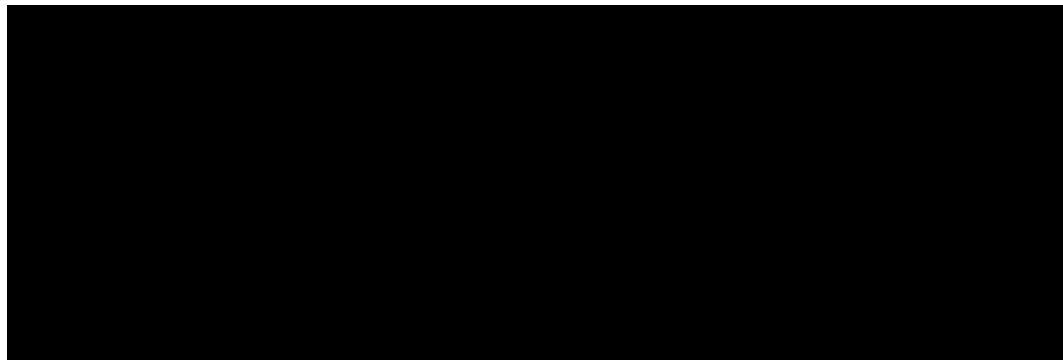
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- (b) Owner's Remedies. Upon the occurrence or happening of a Contractor Event of Default, the Owner, in addition to all other rights and remedies provided in other provisions of this Agreement, may (i) retake possession of the Project Site; (ii) with or without terminating this Agreement, take possession of all construction materials and finish the Work by whatever means, manner or methods the Owner may deem expedient; (iii) with or without terminating this Agreement, assume the rights and obligations of the Contractor, and require performance by Subcontractors and Suppliers, under any or all Subcontracts and purchase orders covering the unperformed parts of the Work, whether pursuant to assignment of or pursuant to the third party beneficiary rights of the Owner under such Subcontracts and purchase orders; and/or (iv) exercise, enforce, pursue and realize on any and all other rights and remedies (including recovery of damages, whether for the Owner's costs of completion of the Work or otherwise) available to the Owner under applicable Law and/or under this Agreement and all other agreements, documents and instruments executed in connection with this Agreement. In the event the Owner, upon the happening or occurrence of a Contractor Event of Default, elects to take possession of the site and all construction materials and finish the Work, the Owner, at its election, may assume the rights, powers, remedies, duties, responsibilities and obligations of the Contractor under all of its subcontracts and purchase orders covering the unperformed portions of the Work and continue the performance of the parties under any and all such assumed subcontracts and purchase orders as a means, manner or method of finishing the unperformed portion of the Work. and/or under applicable Laws.

14.4 Termination for Convenience by the Owner. The Owner may, in its sole discretion, terminate, in whole or in part, this Agreement and the Work at any time. The Owner shall exercise such right of termination by giving reasonable written notice of termination to the Contractor. In such event:

- (a) If requested by the Owner, the Contractor shall withdraw from the Project Site, shall assign to the Owner, to the extent assignable, such of the Contractor's Subcontracts with Subcontractors and purchase orders with Suppliers entered into in connection with the Work as the Owner may request, shall transfer to the Owner, to the extent transferable, any Contractor Permits obtained for the Work, and shall remove such materials, equipment, tools and instruments used and any debris or waste materials generated by the Contractor in the performance of the Work as the Owner may direct, and the Contractor shall deliver to the Owner all designs, drawings, and other Project documents that may be in the Contractor's possession.

(b)



[REDACTED]

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[REDACTED]

- (c) The Contractor shall execute all documents and take all other reasonable steps requested by the Owner or its assignee which may be required or reasonably necessary to vest in the Owner or its assignee all rights, set offs, benefits and titles necessary to such assumption by the Owner or its assignee of such obligations.

14.5 Suspension. Notwithstanding any other provisions of this Agreement, the Owner may at any time, suspend, or extend the time for, the Contractor's performance of all or any part of the Work, upon written notice of no less than two (2) Business Days of such suspension or extension, which notice will include the Owner's then anticipated duration of such suspension of the Work. Thereafter, the Contractor shall resume performance as directed by the Owner within a reasonable time period after the Owner's notice of resumption of performance.

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 15  
INDEMNIFICATION**

15.1 General Indemnification.

- (a) General. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and its parent company, other affiliates, and their respective officers, owners, members, agents, managers, employees, successors and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, costs (including reasonable attorneys' fees) and expenses of any nature for:
- (i) sickness, disease, death or personal injury to any person, including employees of the Contractor, employees of any Subcontractor or Supplier, employees of the Owner, Land Owners or Occupants, or any other person;
  - (ii) damage to any property, including property of the Contractor, property of any Subcontractor or Supplier, property of the Owner (including, subject to the provisions of Subsection 12.2(b), the Project), property of Land Owners or Occupants, or property of any other Person,

resulting from, arising out of, or relating to the performance of the Work or otherwise from any act, omission or operation of the Contractor, its Subcontractors, Suppliers or their respective employees or agents.

- (b) Contractor Hazardous Material. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and its parent company, other

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affiliates, and their respective officers, directors, employees, agents, affiliates, and representatives, from and against any and all third party claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, costs, expenses, damages or penalties, including, without limitation, court costs and reasonable attorneys' fees, arising out of, or resulting from, or occasioned by or in connection with Hazardous Materials covered by the first sentence of Section 2.8.

- (c) Easements and Special Land Owner Agreements. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and its parent company, other affiliates, and their respective officers, directors, employees, agents, affiliates, and representatives, from and against any and all third party claims, demands, suits, liabilities, causes of action, losses, costs, expenses, damages or penalties, including, without limitation, court costs and reasonable attorneys' fees, arising out of, or resulting from, or occasioned by or in connection with a breach by the Contractor of any obligation under an Easement or Special Land Owner Agreement.
- (d) Without limiting the foregoing, the Contractor shall at the request of the Owner defend at the Contractor's expense any suit or proceeding brought against the Owner for any of the above-named reasons.

- 15.2 Infringement Claims. The Contractor shall indemnify, defend and hold harmless the Owner, and its parent company, other affiliates, and their respective officers, owners, members, agents, managers, employees, successors and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, costs (including reasonable attorneys' fees) and expenses arising from any actual or alleged infringement by the Work, or any part thereof, or any designs or equipment furnished or used by the Contractor or any Subcontractor of Supplier in connection therewith, or the Owner's use of any of the foregoing, infringes any patent, copyright, trade secret, trademark, or other proprietary rights of a third party. Without limiting the foregoing, the Contractor shall at the request of the Owner defend at the Contractor's expense any suit or proceeding brought against the Owner for any of the above-named reasons.

In addition to the above, if the Owner's use of the Work is enjoined, the Contractor shall, at its expense, pursue one or more of the following remedies selected by the Owner (i) substitute functionally equivalent non-infringing products for the infringing item, (ii) modify the infringing item so that it no longer infringes but remains functionally equivalent or (iii) obtain for the Owner the right to continue using such item.

- 15.3 Survival. The provisions of this ARTICLE 15 shall survive completion, expiration or any termination of this Agreement.

### ARTICLE 16 CONTRACTOR REPRESENTATIONS AND WARRANTIES

- 16.1 Representations and Warranties. The Contractor hereby represents and warrants to the Owner, as of (a) the Effective Date, (b) the LNTP Date, if any, and (c) the Notice to Proceed Date, that:

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- (a) Due Incorporation and Good Standing. It is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and is authorized to do business and in good standing in all jurisdictions in which the nature of the business conducted by it makes such authorization necessary and has the requisite power to own and operate its properties, to carry on its business and to execute, deliver and perform its obligations under this Agreement.
- (b) Corporate Authorizations. The execution, delivery and performance by the Contractor of this Agreement (i) have been duly authorized by all requisite corporate action on its part, (ii) will not violate any Laws, (iii) will not cause a breach of, or result in the imposition of any lien upon any of its assets under, any of its organizational documents or any agreement, instrument or other requirement by which it or any of its properties may be bound or affected and (iv) does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of the Contractor or any other party to any other agreement with the Contractor.
- (c) Enforceability. The execution and delivery by the Contractor of this Agreement will cause it to constitute a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and as enforceability thereof may be subject to general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).
- (d) No Actions. There are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any federal, state or municipal agency which, individually or in the aggregate, is reasonably likely to have a material adverse effect on its ability to perform its obligations under this Agreement.
- (e) Government Approvals. No approvals from, and no registration, declaration or filing with, any Governmental Authority is required on the part of the Contractor in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which the Contractor anticipates will be timely obtained in the ordinary course of the performance of this Agreement.
- (f) Qualifications. The Contractor has examined this Agreement thoroughly and has become familiar with and understands its terms and has the experience and qualifications to perform the Work in a manner consistent with all of the requirements of this Agreement.

### ARTICLE 17 INTELLECTUAL PROPERTY RIGHTS

- 17.1 Title to Scope of Work and Deliverable. The Scope of Work and all deliverables to be provided by the Contractor pursuant to this Agreement (collectively, the "Documentation"), shall be considered "works made for hire," as such term is defined under any copyright law, by the Contractor for the Owner. All Documentation shall at all times be and remain the sole property

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of the Owner, who shall retain title, and shall be used by the Contractor only for purposes of the Work and for no other use or purpose without the Owner's express prior written consent. To the extent any Documentation is not considered a "work made for hire" under copyright law, and for purposes of non-copyright Laws, the Contractor agrees to transfer and automatically assign, and hereby does transfer and assign, to the Owner the entire right title and interest for the entire world in and to such Documentation effective as of the date of creation.

- 17.2 Confidential Information. The Contractor will treat all information, materials and data that it receives from the Owner or to which it has access from the Owner by virtue of this Agreement as confidential and proprietary to the Owner and/or to one or more Other Owner Contractors (collectively, "Confidential Information"), unless and until it falls within one of the exceptions set forth below in this Section 17.2. The Contractor may not disclose, publish, release, transfer, nor otherwise make available Confidential Information in any form to, or for the use or benefit of, any Person without the Owner's express prior written consent. Notwithstanding the above, Confidential Information will not be deemed to include information that the Contractor can demonstrate: (a) was developed by the Contractor without use of or access to the Owner's or any Other Owner Contractors' Confidential Information; (b) is or becomes generally publicly known (other than through disclosure by or any other act or omission of the Contractor); (c) was already known by the Contractor without any obligations of confidentiality other than pursuant to the preceding provisions of this Section 17.2. Prior to the completion of the Project, the Contractor shall treat this Agreement and all matters addressed within it as private and confidential to the Owner. The Contractor shall not publish any drawing, photograph, video or film or directly or indirectly disclose any information relating to the Parties' performance obligations or the Project to the press, radio, television or other news media without the prior written consent of the Owner.

## ARTICLE 18 DISPUTE RESOLUTION

- 18.1 Dispute Resolution. An authorized representative of a Party may submit a claim, dispute or other controversy arising out of, or relating to, this Agreement which such authorized representative of the applicable Party does not believe can be otherwise resolved by the Parties' respective authorized representatives (herein collectively referred to as a "Dispute") to a Senior Officer from each Party for resolution by mutual agreement between the Senior Officers. Any written and signed agreed determination by the Senior Officers shall be final and binding upon the Parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within ten (10) Days (or such longer time as the Parties agree) after notice to each Party of the Dispute, either Party may pursue any other available remedy at law or in equity. For purposes of this Agreement, the term "Senior Officer" means the chief executive officer, president or any vice president of a Party.
- 18.2 Continuation of Work. Pending final resolution of any Dispute, the Contractor shall proceed diligently with the performance of its duties and obligations under this Agreement, and the Owner shall continue to make undisputed payments in accordance with such Agreement.
- 18.3 Jurisdiction and Venue. Each of the Parties hereby agrees that any legal proceedings which may arise out of or relate to this Agreement or under any of the other documents entered into in connection therewith shall be brought in the United States District Court for the Eastern District

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of Michigan (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Michigan or Federal Court sitting in Michigan). Accordingly, each of the Parties hereby submits to the jurisdiction of the United States District Court for the Eastern District of Michigan (and if such court does not have jurisdiction over a matter in controversy between the Parties, any state court located in Michigan or Federal Court sitting in Michigan) for purposes of all legal proceedings that may arise out of or relating to this Agreement or under any of the other documents entered into in connection therewith. Each of the Parties hereto (a) irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may have or hereafter have to the personal jurisdiction of such court or the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum, (b) agrees, to the fullest extent permitted by Federal law, not to raise any objection (other than in respect of subject matter jurisdiction) to the removal or transfer to the United States District Court for the Eastern District of Michigan of any such proceeding that is initially brought in any other court, and (c) agrees that it will not file any motion or assert any defense in any such proceeding that is inconsistent with the foregoing waivers and consent. Each of the Parties to this Agreement hereby consents to process being served in any such proceeding by the mailing of a copy thereof by certified mail, postage prepaid, to its address specified in Section 19.1 (as such address may be changed as provided therein). EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION HEREWITH.

**ARTICLE 19  
MISCELLANEOUS**

- 19.1 Notice. All notices which are required or desired to be given hereunder shall be in writing and shall be deemed given: (i) one Business Day after deposit with a nationally recognized overnight courier service marked for overnight delivery and with all fees prepaid, or (ii) two Business Days after deposit in the United States mail if sent registered or certified mail, return receipt requested, with all postage and other charges prepaid, or (iii) upon receipt of a telefax (or, if that is not on a Business Day, then on the immediately following Business Day), or (iv) upon the day of actual receipt (or refusal to accept actual delivery) if given or sent by any other means; and in any of such cases addressed and sent as follows:

If delivered to the Owner:

Consumers Energy Company  
1945 West Parnall Rd  
[REDACTED]  
Jackson, Michigan 49201  
[REDACTED]

If delivered to the Contractor:

[REDACTED]

[REDACTED]

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[REDACTED]

Either Party may change its above-set forth address or fax number for receipt of notices, or the above-set person to whose attention notices to it are to be addressed, by a written notice to the other Party given in accordance with this Section 19.1.

- 19.2 Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Michigan excluding any conflict of laws rules thereof that may cause this Agreement to be governed by or construed in accordance with the law of a different jurisdiction.
- 19.3 Independent Contractor. The Contractor is an independent contractor and nothing in this Agreement shall be construed as constituting any relationship whatsoever, including partners or joint venture parties, other than that of owner and independent contractor, between the Owner and the Contractor, nor shall anything in this Agreement be construed as creating any relationship whatsoever, including employer/employee, between the Owner and any of the Contractor's employees.
- 19.4 No Rights in Third Parties. Unless and except as may be otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person.
- 19.5 Assignment. The Contractor shall not assign or otherwise transfer, in whole or in part, by operation of law or otherwise, this Agreement or any of the Contractor's rights or obligations under this Agreement, without the prior written consent of the Owner. Any assignment not in conformity with this section shall be null and void.
- 19.6 Incorporation by Reference. All Exhibits to this Agreement are incorporated by reference herein and made a part hereof for all purposes.
- 19.7 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
- 19.8 Amendments. This Agreement may be modified or amended only by a written instrument signed by the Parties.
- 19.9 Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the remaining provisions hereof shall remain in full force and effect.
- 19.10 Drafting Ambiguities. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting Party

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shall not be employed in the interpretation of this Agreement, or any amendments or Exhibits hereto.

- 19.11 Waiver of Breach. A delay or failure to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement or any part hereof or the right of either Party thereafter to enforce each and every provisions in accordance with the terms of this Agreement.
- 19.12 Survival. Termination or expiration of this Agreement shall not relieve either Party of any other obligation imposed under this Agreement which by its nature survives or is not fully performed upon termination hereof.
- 19.13 Owner's Right to Audit. For purposes of disputes and for verification of incurred or estimated costs claimed by the Contractor for any Work performed on a time and material basis, any suspended, terminated, delayed or accelerated Work, or for any claim whatsoever for additional costs, or to verify the Certified Michigan Equipment or Certified Michigan Labor, the Owner or its authorized representative shall have the right and free access at any reasonable time during normal business hours to examine, audit and copy all of the Contractor's records and books related to all those costs as reasonably necessary to verify those costs, Certified Michigan Equipment or Certified Michigan Labor. The Contractor shall not destroy or dispose of any of such documents or records, or permit any subcontractor to destroy or dispose of any such documents or records, for a period of ten (10) years after Final Completion. Pending conclusion of those investigations, the Owner shall not be obligated to pay the Contractor any amounts that are in question and under investigation.
- 19.14 Personal Risk Assessment and Cyber Security Access.
- (a) The Contractor shall, at its sole cost, cause to be performed a personnel risk assessment ("Risk Assessment") of every employee or subcontractor of Contractor who will have unescorted physical or electronic access to Owner's facility or system. Contractor shall select one of the following companies to conduct the Risk Assessment and promptly notify Owner as to Contractor's selection: i) Credential Check Corporation; ii) Great Lakes Safety Training Center; or iii) eVerifile. The Risk Assessment shall include, without limitation, identity verification, a seven (7) year criminal background check, and confirmation that the employee or subcontractor is not listed on any sanctions-related list of designated persons maintained by Office of Foreign Assets Control of the U.S. Department of Treasury ("OFAC") or the U.S. Department of State. No employee or subcontractor of Contractor shall be allowed unescorted physical or electronic access to any of Owner's facilities and/or systems before the Risk Assessment of such employee or subcontractor has been completed and meets certain criteria identified by the Owner. Contractor shall, at its sole cost, re-perform a Risk Assessment of any employee or subcontractor of Contractor with unescorted physical or electronic access every seven (7) years or for cause in either Contractor's or Owner's discretion.
- (b) Contractor shall notify Owner either prior to or within eight (8) hours after an employee's or subcontractor's termination, or within twenty-four (24) hours after Contractor or Owner determines that an employee's or subcontractor's access is no longer required.

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(c) The Owner may, at any time during the term of this Contract and by providing no less than 30 calendar day's written notice to Contractor, designate any portion of Owner's facility in-scope pursuant to the North American Electric Reliability Corporation Critical Infrastructure Protection ("NERC CIP") standards. In the event that Owner provides such a notice, the following provisions shall apply:

- i. Contractor shall cause to be performed a Risk Assessment for every employee or subcontractor whose work will require unescorted access to an in-scope area and for whom a Risk Assessment has not been completed already.
- ii. In addition, if any employee's or subcontractor's work will require access for which, under the NERC CIP standards, NERC CIP training is required, Contractor shall require each such employee and subcontractor to complete an Owner-furnished training program that meets the NERC CIP and related training requirements ("Cyber Security Training"). No employee or subcontractor of Contractor shall be granted unescorted physical or electronic access to CIP areas without documentation of the completed Cyber Security Training.
- iii. If Owner grants such access to any employee or subcontractor of Contractor, the Contractor shall notify Owner either prior to or within two (2) hours after such employee's or subcontractor's termination, or within eight (8) hours once Contractor or Owner determines such employee's or subcontractor's access is no longer required.
- iv. Pursuant to NERC CIP standards and Owner's internal requirements, Risk Assessments must be re-performed at least once every seven (7) years, and the Cyber Security Training must be retaken at least once annually (in March).

(d) Contractor shall comply with any and all other applicable NERC CIP standards and requirements that are currently in effect or are hereafter adopted during the term of this Contract. Owner reserves the right to modify from time to time any of its procedures or requirements for Risk Assessments, Cyber Security Training or access to Owner facilities; provided, however, all such modifications shall be communicated to Contractor in writing.

(e) Owner shall pay for any incremental costs of Contractor that are incurred as a result of future changes in NERC CIP standards and/or Owner requirements that are hereafter specified in writing by Owner under subsections (iii) and (iv) hereof. All such costs shall be itemized to Owner's reasonable satisfaction.

19.15 Project Site and Turbine Site Conditions. These conditions are applicable unless otherwise specified in this Agreement.

- (a) The Contractor shall provide temporary construction buildings, temporary lighting from designated load centers, and sanitary and other facilities which conform to the requirements of the Owner and local authorities. The Contractor facilities, storage and parking locations are to be as agreed to by the Owner. The Contractor shall furnish its own office and any other shelters required, drinking water, and necessary construction utilities including hook-ups, not specifically identified as Owner-furnished items as identified in this Agreement.

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- (b) During performance of the Work, the Contractor shall limit its operations and its personnel to the areas in which it is performing the Work on each Turbine Site and other Owner-designated work locations, and shall ensure that its personnel and Subcontractors enter and leave each Turbine Site and other Owner-designated work locations using the route designated by the Owner.
- (c) Any employee, agent, or representative of the Contractor and its Subcontractors shall be subject to vehicle, tool box, and lunch box inspections by the Owner upon entering and leaving the Project Site. The Contractor and its Subcontractors are to comply with the Owner's "brassing" requirements.
- (d) The Contractor shall not permit visitors, cameras or picture taking on any Turbine Site or other Owner-designated work location without the prior written approval of the Owner.
- (e) The Contractor shall comply with requirements set by the Owner regarding the design and use of identification badges. It shall be the Contractor's responsibility to become fully acquainted with these regulations prior to commencing the Work. The Contractor shall at all times abide by and enforce job working rules including any Turbine Site or other Owner-designated work location security system as established by the Owner.
- (f) The Contractor assumes the responsibility to make certain that the Work properly ties in and is compatible with the work of the Owner and Other Owner Contractors on the Owner's overall Project. The Contractor shall immediately report to the Owner any incompatibility of the Work with the other work of the Owner or any Other Owner Contractor on the Owner's overall Project, and shall not proceed further with the affected portion of the Work until directed to do so by the Owner. All costs resulting from the Contractor proceeding with the affected portion of the Work in the absence of direction from the Owner will be to the Contractor's account.
- (g) The Contractor shall make all necessary provisions to prevent any damage or undue wear to roads, railroads, land, structures, power and communications lines, pipelines or other items, or interferences with their operation or maintenance, all in a manner satisfactory to the owners thereof, and all costs incidental thereto shall be to the account of the Contractor. Subject to the provisions of Subsection 12.2(b), the Contractor shall repair or replace any Owner- or third party-property it damages. Claims of damage arising out of this Subsection 19.15(g) may, at the Owner's discretion, be settled and paid for by the Owner and backcharged to the Contractor. The Owner assumes no responsibility for the condition or maintenance of any road or structure that may be used by the Contractor in performing the Work, or in transferring the Contractor's employees to and from any Turbine Site or other location of the Work. No payment will be made to the Contractor by the Owner for any work performed in constructing, improving, repairing, or maintaining any road or structure for use in the performance of Work. The Contractor shall ensure that all roads within and adjacent to any Turbine Site are kept open and free and clear of debris. Should the Contractor's operations require that a road be obstructed, the Contractor shall notify the Owner at least 24 hours prior to the planned obstruction and shall obtain the Owner's concurrence to proceed with the

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obstruction. The Contractor shall provide, erect, and maintain, at its own expense, effective barricades and warning and/or detour signs at both ends of such obstruction.

- (h) The services of qualified technical representative(s) shall be provided by the Contractor for the Contractor's equipment, if so required, during the unpacking, assembly, installation, start-up, and initial operation of such equipment. The technical representative(s) shall have good language and writing skills (in English) and provide engineering and technical guidance, advice, and counsel based upon current engineering, manufacturing, installation and operating practices for the equipment.
- 19.16 Ethics and Compliance. The Contractor shall comply with the provisions of Exhibit W-5 - CMS Energy Corporation Third-Party Ethics and Compliance Guidelines (2017) which is a part of this Agreement. Alternatively, if the Contractor has an existing documented compliance program that includes compliance standards acceptable to the Owner, the Contractor may request approval of its existing compliance program, and if approved, the Contractor's compliance with its existing compliance program will meet the requirement of this Section 19.16. The Contractor and all its employees and Subcontractors shall abide by the provisions of Exhibit W-5, or its internal compliance program (as applicable).
- 19.17 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.
- 19.18 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature or any image of the signed Agreement transmitted by electronic mail (such as an unalterable pdf image file).

[Signatures on Next Page]

[Redacted]

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

Owner:

Contractor:

**CONSUMERS ENERGY COMPANY**

[Redacted Signature]

\_\_\_\_\_

[Redacted Signature]

[Redacted Signature]

\_\_\_\_\_

[illegible]

\_\_\_\_\_

[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

\_\_\_\_\_

Age Group	Gender	Percentage
18-29	Male	71%
18-29	Female	75%
30-49	Male	68%
30-49	Female	72%
50-59	Male	65%
50-59	Female	69%
60+	Male	58%
60+	Female	62%

[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	
[REDACTED]		[REDACTED]					

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	

\_\_\_\_\_

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ALL EXHIBITS  
REDACTED**

# **ATTACHMENT 2**



**GRATIOT FARMS WIND PROJECT  
TURBINE PURCHASE AGREEMENT**

**Between**

**CONSUMERS ENERGY COMPANY, as Buyer,**

**and**

**GENERAL ELECTRIC COMPANY, as Turbine Supplier**

## **TURBINE PURCHASE AGREEMENT**

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[Redacted]

Exhibit R	[Redacted]
Exhibit S	[Redacted]
Exhibit T	[Redacted]
	[Redacted]
	[Redacted]
	[Redacted]
	[Redacted]
	[Redacted]
Exhibit U	[Redacted]
Exhibit W	[Redacted]

[REDACTED]

**TURBINE PURCHASE AGREEMENT**

This Turbine Purchase Agreement (the “**Agreement**”) is entered into as of the 5<sup>th</sup> day of April 2019 (the “**Effective Date**”) by and between CONSUMERS ENERGY COMPANY, a Michigan corporation, whose address is One Energy Plaza, Jackson, Michigan 49201 (“**Buyer**”), and **GENERAL ELECTRIC COMPANY**, a New York corporation, whose address is 1 River Road, Schenectady, New York 12345 (“**Turbine Supplier**”).

WHEREAS, Turbine Supplier is engaged in the business of manufacturing, delivering, providing Pre-Mechanical Completion Field Assistance for, Pre-Commissioning and Commissioning Turbines and associated Equipment (as such terms are hereinafter defined); and

WHEREAS, Turbine Supplier desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Turbine Supplier, Turbines and associated Equipment (as hereinafter defined), intended to be installed and performed at the Project (as hereinafter defined), all as more fully hereinafter set forth and all on and subject to the terms and conditions hereinafter set forth; and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth, the Parties hereto, intending to be legally bound, do hereby agree as follows.

## ARTICLE I AGREEMENT

**1.1 Definitions.** Where the following terms appear in this Agreement with initial capitalization, they shall have the meaning set forth below (it being understood that such following definitions shall extend, as and where applicable, both to plural and singular usages of such terms and to other grammatical forms of such terms):

**“Acceptable Credit Bank”** means a U.S. based bank, or a bank with a major U.S. based branch, acceptable to Buyer, the long term senior debt obligations of which are rated “A” or better by S&P or “A2” or better by Moody’s (or an equivalent rating from an equivalent rating agency as may be approved in writing by Buyer).

**“Acceptable Subcontractor”** has the meaning set forth in **Section 3.5.1**.

**“Affected Party”** has the meaning set forth in **Section 13.2**.

**“Affiliate”** means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, another specified Person.

**“Agreement”** means this Turbine Purchase Agreement, including all Exhibits (and other attachments, if any) hereto (each of which Exhibits and other attachments, if any, is hereby incorporated herein and made a part hereof by reference), as may be amended from time to time in accordance with the provisions hereof.

**“Agreement Price”** means the total amount in USD payable by Buyer to Turbine Supplier for the Turbines and all other Equipment supplied, and otherwise for all of the Work and all other obligations of Turbine Supplier performed, under this Agreement, as set forth in **Exhibit B**, as it may be subsequently adjusted by amendment or Change Order pursuant to the terms of this Agreement.

**“Applicable Law”** means any applicable statute, law (including common law), rule, treaty, regulation, code, ordinance, permit, approval, injunction, judgment, decree, writ, order, or the like, the requirements and conditions of Permits, and interpretations of any of the foregoing by a Governmental Authority; as any of the foregoing may be amended, modified, codified or reenacted, in whole or in part, and in effect from time to time.

**“Blade”** means each of three vanes that capture wind energy and are connected to the Hub.

**“Blade Set”** means a complete set of three (3) Blades for a Turbine.

**“BOP”** means “Balance of Plant”, being, more specifically, all structures, equipment, improvements and other components of the Project other than the Turbines, [REDACTED] and other Equipment to be supplied by Turbine Supplier hereunder.

[REDACTED]

**“BOP EPC Contract”** means the Balance of Plant Engineering, Procurement, and Construction Agreement for the Project between Buyer and BOP EPC Contractor.

**“BOP EPC Contractor”** means a third-party entity contracted (or to be contracted) by Buyer to erect and install the [REDACTED] Turbines and other Equipment supplied by Turbine Supplier hereunder, and otherwise to provide engineering, procurement, and construction services necessary to complete all or substantially all of the BOP.

**“Business Day”** means Days other than Saturdays, Sundays and holidays observed either by the United States Federal government, the State of Michigan, or Buyer.

**“Buyer”** has the meaning set forth in the first paragraph of this Agreement.

**“Buyer’s Owner’s Engineer”** means the engineer designated by Buyer from time to time to perform technical oversight services. Buyer’s Owner’s Engineer is currently designated to be Westwood Professional Services, Inc.

[REDACTED]

**“Buyer Retained Option”** has the meaning set forth in Exhibit B-1.

**“Change Order”** has the meaning set forth in **Section 3.18**.

**“Claims”** means causes of demands, actions, suits or other legal proceedings (whether in any court or before any administrative agency).

[REDACTED]

**“Commercial Energy Market”** means the market for electric energy and capacity managed by Midwest Independent Transmission System Operator, Inc., or such other entity as Buyer may hereafter specify in writing.

**“Commissioning”** means all work of Turbine Supplier in association with achieving Turbine Completion of each Turbine [REDACTED] including but not limited to checking rotation and phasing of all electrical components, verifying operation of protective devices and simulating protective trips, and all other tasks between the time of Mechanical Completion and Turbine Completion.

**“Consumables/Wear Parts”** means those items that are installed, added to or otherwise used or consumed in the normal process of performing operation and maintenance of Turbines and [REDACTED]

[REDACTED], or that wear out and are replaced in the normal course of Turbine or [REDACTED] operation and maintenance.

“**Corrective Action**” has the meaning set forth in **Section 10.3**.

“**Critical Time Sensitive Information Deliverable**” has the meaning set forth in **Section 8.1.1**.

[REDACTED] has the meaning set forth in Section 2.1.2

“**Day**” means a calendar day, including Saturdays, Sundays and legal holidays.

“**Defect**” has the meaning set forth in **Section 10.3**.

[REDACTED]

“**Delivery Point**” means: (i) for all components of each Turbine [REDACTED] the applicable Turbine Site designated in writing by Buyer for such Turbine [REDACTED] (ii) for each other piece of Equipment, a location in or in the vicinity of the Project Site to be designated in writing by Buyer. “**Delivery Point**” may, alternatively, be a storage location under the circumstances provided in **Section 3.11.4**.

“**Designated Turbines**” has the meaning set forth in **Section 9.1**.

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

“**Down Tower Assembly**” means the platform, structures and equipment, located inside the base (i.e., bottom) section of a Tower.

“**Effective Date**” means the date of this Agreement, as set forth in the first paragraph of this Agreement.

“**Engineering Documentation**” means drawings, specifications, calculations, and associated requirements to be furnished by Turbine Supplier to Buyer as part of the Work.

“**Equipment**” means the Turbines, the SCADA system, the optionally purchased Initial Consumables/Wear Parts and Initial Spare Parts if any, and all components of or appurtenances to any of the foregoing, and any and all other materials and equipment, that are to be sold and delivered by Turbine Supplier [REDACTED] to Buyer pursuant to this Agreement.

[REDACTED]

“**Final Completion**” will be deemed to have occurred when all of the following have occurred:

(i) Turbine Completion has been achieved for all of the Turbines and [REDACTED]

“**Final Completion Certificate**” means the certificate in the form of **Exhibit E-14** delivered to Buyer by Turbine Supplier evidencing the achievement of Final Completion.

“**Final Notice to Proceed**” has the meaning set forth in **Section 2.1**.

“**Force Majeure**” has the meaning set forth in **Article XIII**.

“**Governmental Authority**” means any federal, state, regional, county, city, village, township, parish or local government body, agency, authority, branch department, arbitrator, court or any subdivision, instrumentality or agency thereof, whether domestic or foreign, having, or claiming, a regulatory interest in, or jurisdiction over, the Work (or any portion thereof), the Turbines and [REDACTED] or any component thereof of any other item of Equipment to be supplied hereunder, the Project Site, this Agreement, or one or more of the Parties.

“**Guaranteed Delivery Dates**” means:

- (a) as to Turbine Supplier's submittal to Buyer of each Critical Time Sensitive Information Deliverable, the latest date by which Turbine Supplier is to make delivery thereof to Buyer as set forth in **Section 8.1.1**; and
- (b) as to each Turbine [REDACTED] the latest date by which Turbine Supplier is to achieve the Delivery Completion Date as set forth in the Project Schedule and further referred to in **Section 8.1.2**.

“**Guaranteed Turbine Completion Date**” means, for each Turbine, ten (10) Days following the date of Mechanical Completion of such Turbine [REDACTED]

“**Hazardous Substance**” means: (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any Applicable Law; (ii) any petroleum, petroleum products (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquified natural gas or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), or oil and gas exploration or production waste, polychlorinated biphenyls, asbestos-containing materials, mercury, urea formaldehyde insulation, radioactivity and lead-based paints or any other substance that has been contaminated, polluted or made toxic; and

(iii) any other chemical, material, substances, waste, or mixture thereof which is prohibited, limited, or regulated pursuant to, or that could reasonably be expected to give rise to liability under, any Applicable Law.

**"Hub"** means the structure/equipment to which the Blade Set is attached and which is itself attached to the main turbine shaft, and which includes the blade pitch systems.

**"Information"** means all Engineering Documentation, all Operating and Maintenance Manuals, and any other drawings; calculations; documents; manuals; software; source code; training materials; and other guidelines and procedures; and other data, and information supplied by Turbine Supplier, whether directly itself or indirectly through Subcontractors, whether paper or electronic media, in performance of the Work under this Agreement in connection with supply, installation, construction, providing Pre-Mechanical Completion Field Assistance for, Pre-Commissioning, Commissioning, operation, maintenance, repair, modification, or use of the Turbines.

**"Initial Consumables/Wear Parts"** has the meaning set forth in **Section 3.15.1**.

**"Initial Spare Parts"** has the meaning set forth in **Section 3.15.1**.

**"Insolvency Event"** means, with respect to a Person: (i) the Person's (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Person seeking (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the person, either such proceeding remains undismissed for a period of thirty (30) Days or any of the actions sought in such proceeding occur; or (iii) the Person's taking any action to authorize any of the actions set forth above in this definition.

**"Intellectual Property"** means all patents, patent applications, copyrights, trademarks, service marks, and other intellectual property rights and interests.

**"Key Personnel"** has the meaning set forth in **Section 3.3**.

**"Liabilities"** means judgments, liabilities, losses, expenses, damages, injuries, fines, penalties, court costs, reasonable attorney's fees and costs (whether incurred as the result of a third-party claim or a claim to enforce any indemnity obligation of Turbine Supplier), and pre- and post-judgment interest.

**"Lien Indemnities"** has the meaning set forth in **Section 5.4**.

**"Liens"** has the meaning set forth in **Section 5.4**.

[REDACTED]

**"Major Component"** shall mean a Tower, a Blade Set, a Nacelle, generator (with respect to Turbines [REDACTED] shipped separately from other components of the Nacelle), a Down Tower Assembly, or a Hub.

**"Major Default"** has the meaning set forth in **Section 6.2**.

**"Mechanical Completion"** shall mean, with respect to each Turbine [REDACTED] (i) the Turbine [REDACTED] has been installed in accordance with applicable sections of **Exhibit A**; (ii) backfeed power and grid connection and SCADA connection for such Turbine [REDACTED] has been provided, (iii) the Turbine or [REDACTED] is ready for initial operation in a safe manner, and (iv) Buyer has delivered to Turbine Supplier a Mechanical Completion Certificate pursuant to **Section 7.1**. Mechanical Completion shall have been accomplished on the date when the requirements of (i) through (iv) above have been satisfied in full regardless of the date that the Mechanical Completion Certificate is confirmed by Turbine Supplier. It is expressly understood that the fact that Buyer issues the Mechanical Completion Certificate to Turbine Supplier is not intended to in any way relieve Turbine Supplier from responsibility for any of its obligations under this Agreement that are necessary for, incident to or connected with the achievement of Mechanical Completion or to constitute an assumption by Buyer of any such responsibilities.

**"Mechanical Completion Certificate"** means the certificate in the form of **Exhibit E-11** delivered to Turbine Supplier by Buyer evidencing the achievement of Mechanical Completion of a Turbine [REDACTED]

**"Michigan Sales Taxes"** means State of Michigan sales or use taxes required to be paid (and for which no exemption is available) on the Turbines, Turbine components and/or other items of Equipment sold and delivered by Turbine Supplier to Buyer hereunder.

**"Milestone"** shall have the meaning set forth in **Section 5.1.2**.

**"Milestone Payment Schedule"** shall have the meaning set forth in **Section 5.1.2**.

**"Moody's"** means Moody's Investor Services, Inc. or its successor.

**"Nacelle"** means the structure that contains (and includes) the main components of the wind turbine generator, such components being (without limitation) the gearbox, generator (which with respect to Turbines [REDACTED] will be Delivered separately from the other components of the Nacelle), power converter and yaw controls, and associated control and ancillary equipment.

**"Operating and Maintenance Manuals"** means operating and maintenance instructions, processes and procedures for the Turbines, [REDACTED] and other Equipment which are to be furnished to Buyer by Turbine Supplier pursuant to the provisions and meeting the requirements of this Agreement.

**"Party"** or **"Parties"** means either or both of Buyer and Turbine Supplier.

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**“Permit”** means any waiver, exemption, variance, franchise, permit, authorization, approval, identification number, inspection, certification, license, clearance or similar order, filing, registration, application of, from or to any Governmental Authority; including, without limiting in any way the generality of any of the foregoing, any height, environmental, and special land use or any other zoning approvals, variances and permits.

**“Power Curve Percentage Guarantee”** has the meaning set forth in **Section 9.1**.

**“Pre-Commissioning”** means the service of Turbine Supplier using Buyer-provided portable generators to perform commissioning procedures as more fully defined in **Exhibits A and A-TS-27.1**, inspections, calibration, and verification of fluid levels, without utility back-feed power yet being available.

**"Pre-Mechanical Completion Field Assistance"** means all Work of Turbine Supplier, other than Pre-Commissioning, at the Project Site up to the time of achieving Mechanical Completion of each Turbine [REDACTED] including but not limited to inspections, technical assistance, expert guidance and direction, and validation of generator level and alignment.

**“Prime Rate”** means the per annum (365 or 366 Days, as appropriate) prime rate published from time-to-time in the “Money Rates” table of *The Wall Street Journal*, **provided, however**, if more than one such prime rate is published, the average shall be used for purposes of this Agreement unless a specific bank rate is agreed to in writing by the Parties.

**"Product Improvement/Upgrade"** has the meaning set forth in **Section 10.8**.

**“Project”** means Buyer’s nominal 150 MW wind energy electric generation project to be located in the Project Site, commonly referred to as the Gratiot Farms Wind Project.

**“Project Change Notice”** (or **"PCN"**) has the meaning set forth in **Section 3.18**.

“**Project Requirements**” means, with respect to Turbines, [REDACTED] as applicable, any other item of Equipment, the Work, or any component or portion of any of the above: (i) all Applicable Law; (ii) Codes and Standards; (iii) **Exhibit A** and all other provisions

[REDACTED]

of this Agreement; (iv) the requirements of insurers providing insurance pursuant to **Article XV** (Insurance); (vi) the Operating and Maintenance Manuals; and (vii) in the absence of (or as to any matters not covered by) the preceding items (i) through (v) Prudent Wind Industry Practices.

“**Project Site**” means the overall area (which includes all of the Turbine Sites), in Gratiot County, Michigan, within which the Project will be located, the currently contemplated boundaries of which are described in **Exhibit M**.

“**Project Schedule**” means the schedule attached hereto as **Exhibit C**.

“**Prudent Wind Industry Practices**” shall mean those practices, methods, equipment specifications, and standards of performance, as the same may change from time to time, as are commonly used by a significant portion of the wind turbine electric-generating industry within the United States at the time, or that could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. “Prudent Wind Industry Practice” does not necessarily mean a practice that would achieve an optimal solution or minimal solution, or any method, equipment specification, or standard in all cases, but is instead intended to encompass a reasonable range of acceptable practices, methods, equipment specifications, and standards.

“**Punch List**” means a list prepared by Buyer [REDACTED] of any items of minor corrective Work, that do not in any way affect the full, proper, safe and secure operation, functionality, use and maintenance of any of the Turbines [REDACTED] or any of their components or other items of Equipment, that remain to be done to the Turbines [REDACTED] or any of their components or other items of Equipment in order to fully comply with all requirements of this Agreement.

“**Ready to Ship**” shall mean, with respect to any Turbine component or other item of Equipment, that such Turbine component or other item of Equipment is completely manufactured and assembled (except to the extent further assembly thereof on the Project Site is contemplated by **Exhibit A** hereto) and is ready for loading and transportation from Turbine Supplier’s or a Subcontractor’s (as applicable) manufacturing facility to the Project Site and with respect [REDACTED]

“**Records**” has the meaning set forth in **Section 17.15**.

“**Retainage**” has the meaning set forth in **Section 5.3.1**.

“**Retainage Amount**” has the meaning set forth in **Section 5.3.1**.

“**Route Improvements**” means any and all temporary or permanent physical modifications or improvements to roads or highways, the acquisition of any necessary permits or approvals for the use of roads or highways, posting of any necessary bonds for the use, modification, or improvement of roads or highways, and any other necessary measures related to the use, modification, or improvement of roads or highways, that may be necessary or desirable for the

[REDACTED]

delivery of Turbines and other Equipment [REDACTED]

“**SCADA**” means the control and monitoring system, including central computer, remote PC system and ancillary communication terminals and cables installed in and among individual Turbine [REDACTED] and meteorological towers, as well a central control location, as more fully described in **Exhibit A**.

“**S&P**” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“**Senior Officer**” has the meaning set forth in **Section 16.1**.

[REDACTED] has the meaning set forth in **Section 9.2**.

[REDACTED] means the tests to determine whether the [REDACTED] has been achieved, all as set forth in **Section 9.2** and **Exhibit F-2**.

“**Spare Parts**” mean appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature (but expressly excluding Consumables/Wear Parts) which are intended to be installed in or attached to Turbines [REDACTED] as replacements for existing such items or held in inventory for potential future use for such purposes.

“**Specialized Installation Tools**” has the meaning set forth in **Section 3.19**.

“**Start-up**” means the initial operation, between Mechanical Completion and Turbine Completion, of a Turbine [REDACTED] including energization, validation of proper function of protective devices under operating conditions, setting and adjusting as required, and validate all operating characteristics are operating normally and within typical operating parameters.

[REDACTED]

“**Subcontract**” means any contract, purchase order or other agreement between Turbine Supplier and a Subcontractor or between any Subcontractor and a lower tier Subcontractor.

“**Subcontractor**” means a Person (at any tier) that has a contract, agreement, or other arrangement with Turbine Supplier (or with a higher tier Subcontractor) to perform a portion of the Work, including the supply of any Turbine component or other Equipment or services in connection with the Work; **provided, however** that the term “Subcontractor” shall not include Persons whose contract, agreement, or other arrangement with Turbine Supplier (or applicable higher tier Subcontractor) is entirely for the supply of stock parts and materials and not entered into specifically for the Work; **provided, further**, that Turbine Supplier shall be fully responsible (and nothing in the immediately preceding subclause is intended to relieve Turbine Supplier from any responsibility) for and in connection with any such stock parts and materials.

“**Technical Information Letter**” shall mean a technical information letter specifying all technical issues identified in the findings of any root cause analysis undertaken by Turbine Supplier pursuant to **Section 10.4** or issued by Turbine Supplier as referred to in **Section 10.5**.

all as further described in **Exhibit A**.

“**Turbine Completion**” means, with respect to each Turbine and each [REDACTED], that Turbine Supplier has completed the Commissioning and Start-up activities required by this Agreement, the testing set forth in **Exhibit R** has been successfully passed, and all other inspection requirements as set out in **Exhibit A** or in other applicable provisions of this Agreement have been successfully completed, [REDACTED] and all other qualifications and requirements for issuance of a Turbine Completion Certificate, as set forth in the form of Turbine Completion

Certificate attached as **Exhibit E-12** have been satisfied, and Buyer has accepted and executed in writing the Turbine Completion Certificate pursuant to **Section 7.2**.

“**Turbine Completion Certificate**” means the certificate in the form of **Exhibit E-12** delivered to Buyer by Turbine Supplier evidencing the achievement of Turbine Completion of a Turbine [REDACTED]

“**Turbine Completion Offset Credit**” has the meaning set forth in **Section 8.2**.

“**Turbine Site**” means, as to all Equipment constituting or associated with each individual Turbine [REDACTED] the specific location, within the overall Project Site, at which that Turbine [REDACTED] is to be installed. The preliminary Turbine Sites are identified in **Exhibit M**.

“**Turbine Supplier**” has the meaning set forth in the first paragraph of this Agreement.

“**Turbine Supplier’s Field Personnel**” has the meaning set forth in **Section 3.12**.

“**Turbine Supplier’s Representative**” has the meaning set forth in **Section 3.3**.

“**Turbine Supplier Taxes**” has the meaning set forth in **Section 5.6.1**.

“USD”, “Dollars” or “\$” all mean United States Dollars.

“**Warranties**” has the meaning set forth in **Section 10.1**.

“**Warranty Period**” has the meaning set forth in **Section 10.2**.

“**Work**” means all of the obligations to be performed by Turbine Supplier pursuant to this Agreement, including the supply of Turbines, expediting, inspection, testing, delivery, providing Pre-Mechanical Completion Field Assistance for, Pre-Commissioning, Start-up and Commissioning of the Turbines [REDACTED], all Turbine components thereof and any other Equipment to be supplied hereunder, the furnishing of all Information to be provided hereunder, and the performance of all training, advising and other services specified in this Agreement.

**1.2 Conflicts.** In the event of a conflict between the body of this Agreement and the Exhibits (or other attachments, if any), the body of this Agreement shall govern.

**1.3 Contract Interpretation.** In this Agreement, unless the context otherwise requires:

- (a) reference to any Person includes such Person’s successors and assigns, to the extent that such successors and assigns are permitted by this Agreement;
- (b) reference to any agreement (including this Agreement), document, insurance policy or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

- (c) any accounting term used and not otherwise defined in the Agreement has the meaning assigned to such term in accordance with accounting principles generally accepted and consistently applied in the United States;
- (d) “including” (and “include(s)”) means, whether or not specifically indicated in a particular location: (a) including without limiting the generality of any description preceding such term and (b) with respect to any description following such term, means “including, without limitation” or “including, but not limited to”;
- (e) the words “shall” and “will” have equal force and effect;
- (f) the words “herein,” “hereof,” “hereto” or “hereunder”, or similar terms, refer to this Agreement as a whole and not to any specific section or article;
- (g) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience and shall not limit or restrict the interpretation of this Agreement;
- (h) the Work is intended to be a term that encompasses all of the necessary performance obligations of Turbine Supplier. Any listing of types of work such as “supply,” “provide,” “furnish”, “deliver”, “check” or “align” is not meant to be exclusive or limiting in the context of this Agreement or exclude similar or other services or activities appropriate to that portion of the Work;
- (i) words and abbreviations not defined in this Agreement which have well known technical or design, engineering or construction industry meanings are used in this Agreement in accordance with such recognized meanings;
- (j) it shall be understood that all Engineering Documentation and other Information to be supplied under this Agreement shall be provided in the English language;
- (k) it is understood that the requirements of this Agreement (including its Exhibits) are intended to be cumulative, and the fact that a particular requirement mentioned in one part of this Agreement (or its Exhibits) is not also mentioned in another part of this Agreement (or Exhibits) does not limit the applicability of such requirement; and
- (l) without limiting the generality of any rights of Buyer under this Agreement, it is expressly understood that wherever this Agreement gives Buyer the right (in whatever wording) to review, witness or observe any document, operation, inspection, test, or other activity or matter, Buyer may, to whatever extent Buyer may deem desirable, exercise such rights through consultants and/or other designees, whether or not that is expressly so stated.

## **ARTICLE II GENERAL PROVISIONS**

## 2.1 Conditions Precedent to Contract

2.1.1 Buyer's obligations under this Agreement are subject to the fulfillment of the following conditions precedent:


- (a) Buyer must have received written approval(s), in an order(s) from the MPSC that is/are in form and content satisfactory to Buyer, of this Agreement and of any other engineering, procurement and construction agreement required to be approved by the MPSC related to the Project; which approval(s) must be final and not subject to being overturned or modified on appeal or further appeal;
- (b) Buyer must have entered a generator interconnect and operating agreement(s), on terms and conditions satisfactory to Buyer, with International Transmission Company and/or Midwest Independent Transmission System Operation, Inc. and/or such other entity(ies) as at the time may be applicable regarding interconnection of the Project to the electric transmission grid as will fully allow Buyer to deliver all energy generated by the Project to the Commercial Energy Market; and
- (c) Buyer must have received required height, environmental, and special land use and any other zoning approvals, variances and permits, from applicable Governmental Authorities, in a form and content satisfactory to Buyer, for Buyer's construction, within the Project Site, of the Project in a manner satisfactory to Buyer; which approvals, variances and permits must be final and not subject to being overturned or modified on appeal or further appeal.

Unless the Parties mutually agree in writing to extend such date, if all of the above conditions are not met by [REDACTED] (the "**Conditions Precedent Deadline**"), then, unless (and to the extent that) Buyer in its sole and unfettered discretion waives, in writing, the fulfillment of same, [REDACTED]


Except as may be expressly otherwise provided in this Agreement, Turbine Supplier expressly understands that it is not authorized to commence any Work or incur any costs for the account of Buyer, unless and until Buyer notifies Turbine Supplier in writing ("Final Notice to Proceed") that the above conditions precedent have been fulfilled (or Buyer, in its sole and unfettered discretion has in writing waived same) and that Turbine Supplier is released to commence Work.



## 2.2 Independent Contractor.

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- 2.2.1 Independent Contractor. Turbine Supplier represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to supply the Turbines and other Equipment and otherwise to perform the Work under this Agreement. Turbine Supplier shall act as an independent contractor and not as an agent of Buyer in performing this Agreement, maintaining complete control over its employees, representatives and all Subcontractors. Turbine Supplier shall not perform any act or make any representation to any Person to the effect that Turbine Supplier, or any of its personnel or Subcontractors, is the agent, representative, employee or servant of Buyer.
- 2.2.2 Right to Control. Buyer neither has the right to control, nor has any actual, potential or other control over the methods and means by which Turbine Supplier or any Subcontractors conduct their respective independent business operations.

## 2.3 Title and Risk of Loss.

- 2.3.1 Title. Title to all Turbines and all components thereof, and to any other Equipment furnished by Turbine Supplier hereunder, shall pass to Buyer, and same shall become the property of Buyer, when Turbine Supplier makes such item Ready to Ship, notwithstanding any amount of the Agreement Price retained or withheld by Buyer in accordance with the terms of this Agreement. In order to protect Buyer's interest in the said Turbines and/or Turbine components and other Equipment with respect to which title has passed to Buyer but which remains in the possession of Turbine Supplier, Turbine Supplier shall segregate said Turbines and/or Turbine components and other Equipment and shall take or cause to be taken all steps necessary under Applicable Law to maintain Buyer's title to said Turbines and/or Turbine components and other Equipment and to protect Buyer against claims adverse to the interests of Buyer by other Persons with respect thereto.
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- 2.3.2 Warranty of Title. Turbine Supplier warrants that, upon the passage of title to Turbines and/or Turbine components and other Equipment in accordance with **Section 2.3.1**, Buyer will have good and indefeasible title to such Turbines and/or Turbine components and other Equipment, and such Turbines and/or Turbine components and other Equipment will not be subject to any Lien or other defect in title. In the event of any nonconformity with the foregoing warranty, Turbine Supplier, at its own expense, upon

[REDACTED]

written notice of such failure, shall indemnify Buyer from the consequences of such failure and defend the title to such Turbines and/or Turbine components and other Equipment.

- 2.3.3 Risk of Loss. Notwithstanding the passage of title under **Section 2.3.1**, Turbine Supplier shall be responsible for and shall bear any and all risk of loss or damage to the Turbines and/or Turbine components and other Equipment until delivery to the Delivery Point in accordance with **Section 3.11.1**. Upon such delivery in accordance with **Section 3.11.1**, once the applicable Turbine, Turbine component or other Equipment has, during the proper scheduled time for delivery pursuant to **Section 3.11**, been delivered to the Delivery Point with the delivery vehicle properly located and positioned for unloading by Buyer (or Buyer's BOP EPC Contractor) at the Delivery Point, Turbine Supplier shall cease to bear the risk of loss or damage; **provided however**, that any loss or damage which may occur thereafter (i) during offloading from Turbine Supplier's delivery vehicle as a result of or otherwise by reason of Turbine Supplier's packaging or crating (including any defects or deficiencies therein), or (ii) as a result of or otherwise by reason of failure of Turbine Supplier to perform (or defect or deficiency of Turbine Supplier in performing) its services hereunder, shall be borne by Turbine Supplier. [REDACTED]

- 2.3.4 Order of Precedence. In the event of any conflict between the terms of the Agreement, the provisions of the documents first listed here shall prevail; Article I through XIX, Exhibit B-1, Exhibit C-1, Exhibits A-TS-01 through A-TS-027, Exhibits D through W, Exhibits A-1 through A-9

### ARTICLE III TURBINE SUPPLIER'S RESPONSIBILITIES

- 3.1 **Scope of Work**. Turbine Supplier shall provide the Turbines and other Equipment and otherwise perform the Work in accordance with the provisions of this Agreement, including **Exhibit A**.

Turbine Supplier shall deliver the Turbines, [REDACTED] and other Equipment and otherwise perform the Work on the Project Schedule set forth in **Exhibit C-1**. Wherever this Agreement refers to "**Exhibit C**" or to the "**Project Schedule**", it is understood that such reference shall be deemed to refer to **Exhibit C-1**.

- 3.2 **Project Investigation**. Turbine Supplier represents that it has had the full opportunity to examine [REDACTED] and that it has satisfied itself as to the requirements of this Agreement and all conditions that may affect its performance under this Agreement, including, as applicable, labor conditions and availability, the condition of and, subject to **Section 4.6**, access to roadways outside such county boundaries, matters that may

[REDACTED]

affect shipping and delivery of all components of the Turbines and/or Turbine components and any other applicable Equipment, including the condition of roads and highways and the availability of rail or other forms of transportation and local weather conditions. [REDACTED]

[REDACTED] Turbine Supplier's entry into this Agreement has not been induced either wholly or in part by any promises, representations or statements made by or on behalf of Buyer or its agents or representatives, other than those expressly set forth in this Agreement. [REDACTED]

[REDACTED] Any information provided by Buyer [REDACTED] drawings or otherwise is made without representation or warranty of any nature by Buyer, its accuracy is not guaranteed by Buyer, and it is furnished solely for the convenience of Turbine Supplier.

### 3.3 Key Personnel.

3.3.1 General. **Exhibit I** contains a list of Turbine Supplier's key personnel who will be responsible for supervising the performance of Turbine Supplier's obligations hereunder (the "**Key Personnel**"). Turbine Supplier shall designate in writing from among its Key Personnel an individual, acceptable to Buyer, who shall be Turbine Supplier's project manager and project engineer and who shall be authorized to fully represent and act for Turbine Supplier (such individual, "**Turbine Supplier's Representative**"). All written communications given to Turbine Supplier's Representative by Buyer in accordance with this Agreement shall be binding on Turbine Supplier.

Turbine Supplier shall provide competent and suitable qualified personnel to perform the Work [REDACTED] and supply the Turbines and other Equipment, and shall be solely responsible for all labor and personnel required in connection with the Work [REDACTED] and supply of the Turbines and other Equipment, including supervisory personnel who have the experience and authority to supervise and manage the Work on behalf of Turbine Supplier.

Turbine Supplier shall notify Buyer in writing, in advance, of any changes in Turbine Supplier's Representative or any other of the Key Personnel, and shall in good faith consult with Buyer prior to removing or replacing Turbine Supplier's Representative or any other Key Personnel. Any impacts on the Work associated with the removal or replacement of Turbine Supplier's Representative or any other Key Personnel shall be borne by Turbine Supplier. Turbine Supplier's Representative and all other Key Personnel shall be fluent in English. If, at any time during the performance of the Work, Turbine Supplier's Representative and/or any other of Turbine Supplier's Key Personnel becomes unacceptable to Buyer, then, upon notice from Buyer to such effect, Turbine Supplier and Buyer shall discuss such issue and attempt to resolve the problem. If such

[REDACTED]

attempt to resolve such problem is not successful in the reasonable judgment of Buyer, Turbine Supplier shall replace such individual as soon as possible consistent with a diligent effort to find a suitable replacement and shall in good faith consult with Buyer regarding such replacement.

- 3.3.2 Professional Engineering. Turbine Supplier will provide its standard foundations load document by no later than fifteen (15) days post Full Notice to Proceed or refer to Exhibit C-1.

Turbine Supplier will provide professional engineering stamps on component drawings where required by Applicable Law, including that Turbine Supplier will provide Michigan professional engineer-stamped Project specific Tower design and specifications, mechanical loads analysis (suitability) and foundation loads document to Buyer [REDACTED] with final Turbine Site locations, Turbine Site specific soil profile data and Turbine Site meteorological data.

### 3.4 Compliance.

- 3.4.1 Compliance with Applicable Law. Turbine Supplier warrants that (i) the Turbines, [REDACTED] and other Equipment will be designed, engineered, manufactured, produced, sold, delivered and furnished, and the Work otherwise performed, in strict compliance with all Applicable Law; and (ii) the Turbines and other Equipment, when operated in compliance with the Operating and Maintenance Manuals, will comply with all Applicable Law. Turbine Supplier shall execute and deliver to Buyer any documents as may be required to effect or to evidence such compliance.
- 3.4.2 Indemnification. Turbine Supplier shall indemnify, defend and hold harmless Buyer from and against any and all Claims and any and all Liabilities arising from or based on any actual or asserted violation of **Section 3.4.1**. The indemnification and other provisions of this **Section 3.4.2** shall survive the termination, cancellation or expiration of this Agreement, as well as the final completion of the Work.
- 3.4.3 Export and Import Rules. Turbine Supplier shall comply with all applicable export or import rules and regulations in the delivery of the Turbines, [REDACTED] (provided corresponding Buyer Retained option is purchased) and/or Turbine components and/or other Equipment, and otherwise in the performance of the Work. Wherever any export or import license or other Permit may be needed, Turbine Supplier shall obtain such export or import license or other Permit at its own expense and in a timely manner to avoid delivery delays. Turbine Supplier shall indemnify, defend and hold the Buyer harmless from any Claims and Liabilities caused by Turbine Supplier's failure to timely obtain any necessary export or import license or other Permit, or otherwise to comply with applicable export and import rules and regulations, or otherwise to comply with its export and import obligations under this Agreement. The indemnification and other provisions of this **Section 3.4.3** shall survive the termination, cancellation or expiration of this Agreement, as well as the final completion of the Work.

### 3.5 Subcontractors.

- 3.5.1 Use of Subcontractors. Turbine Supplier may utilize Subcontractors set forth on **Exhibit D** in connection with the Work at the Project Site (each, an “**Acceptable Subcontractor**”). If Turbine Supplier intends to use a Subcontractor not identified as an Acceptable Subcontractor on **Exhibit D** for Work at the Project Site, Turbine Supplier will first obtain Buyer’s written approval.
- 3.5.2 No Contractual Relationship. Neither this Agreement nor any Subcontract shall create any contractual relationship between any Subcontractor and Buyer, nor any payment or other obligation on the part of Buyer to any Subcontractor.
- 3.5.3 Responsibility. Notwithstanding the existence of any Subcontract with any Subcontractor, Turbine Supplier shall be fully responsible to Buyer for the Work [REDACTED] and the Turbines, and any other Equipment to be supplied hereunder, as if no such Subcontract existed.
- 3.5.4 Safety and Health. Turbine Supplier shall be responsible for ensuring that Subcontractors shall abide by the safety and health requirements of Buyer while at the Project Site, as set forth in **Exhibit G**.
- 3.5.5 Quality Control. Turbine Supplier shall ensure that all Subcontractors establish and implement a quality control system in their work and manufacturing processes which assures that all Subcontracted Work, and all Turbines, Turbine components or other Equipment produced in such Work, shall meet the performance standards required of Turbine Supplier under this Agreement.

### 3.6 Quality Standards

- 3.6.1 Quality Control. Turbine Supplier shall ensure that the Turbines and all components thereof, and any other Equipment to be supplied hereunder, comply with Turbine Supplier quality standards, ISO 9001, and standards of quality control required by Codes and Standards and as specified by this Agreement, or, in the absence thereof (or as to any matters not covered thereby), Prudent Wind Industry Practices. Buyer’s quality control representatives shall be afforded reasonable access during working hours to plants of Turbine Supplier and Turbine Supplier agrees to procure a similar right for Buyer for quality control purposes with respect to component suppliers for the purposes of observing manufacturing, assembly, and packaging of the Turbines or components of Turbines, provided this does not unreasonably interfere with the Work. Buyer’s right to witness shall extend through the manufacturing and assembly process, the time of shipment and a reasonable time after arrival at the Delivery Point. Buyer’s representatives as referred to above shall include, if and as may be designated by Buyer, personnel of Buyer, Buyer’s Owner’s Engineer, and such other Persons as Buyer may reasonably designate.
- 3.6.2 Adequate Assurances. If, in Buyer’s opinion, Turbine Supplier’s quality control standards do not comply with the requirements of this **Section 3.6**, Buyer may provide a

[REDACTED]

written notice requesting that Turbine Supplier provide adequate assurances, in writing, that said quality control requirements are being complied with or that corrective measures have been effected. Within five (5) Days from Buyer's notice, Turbine Supplier shall provide such adequate assurances.

- 3.6.3 No Additional Charge to Buyer. Notwithstanding the foregoing, Turbine Supplier shall be solely responsible for the quality control of its operations and those of all Subcontractors, and any activities performed by Buyer will not result in any additional charges to Buyer nor affect any of Turbine Supplier's obligation to perform in accordance with the requirements established by this Agreement.
- 3.6.4 Shipment. Turbine Supplier shall not ship any Turbines, Turbine components or other Equipment that fail either the standards of quality required under this Agreement or as to which Turbine Supplier has failed to exercise the quality control standards applicable under this Agreement.
- 3.6.5 Failure to Inspect, Etc. The making or failure to make an inspection, examination or test of, or payment for, or acceptance of any Turbines, Turbine components or other Equipment by Buyer, or failure by Buyer for any reason to detect or notify Turbine Supplier of any defect, deficiency, or nonconformance, or the establishment by Buyer of a corrective action plan as indicated above (and/or anything done or failed or omitted to be done pursuant to any such corrective action plan) or any failure of Buyer in whole or in part to establish a corrective action plan as indicated above, shall in no way relieve Turbine Supplier from its obligation to conform to all of the requirements of this Agreement and will in no way impair any rights of Buyer to at the time of delivery reject nonconforming Turbines, Turbine components or other Equipment, or to avail itself of any other rights and remedies to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality or the ease of its discovery.

### 3.7 Progress, Meetings and Progress Reports.

- 3.7.1 Schedule. Turbine Supplier shall, [REDACTED] submit to Buyer for Buyer's comment and review a final overall schedule for performance of the Work in accordance with said Part 5 of **Exhibit A** and other schedule requirements in **Exhibits J** and **P** and consistent with **Exhibit C**. Any such review and comment on, or any failure of Buyer in whole or in part to review and comment on, or any approval by Buyer of, any such schedule will not relieve Turbine Supplier of responsibility to comply with all requirements of this Agreement, including meeting all Guaranteed Delivery Dates and all Guaranteed Turbine Completion Dates.
- 3.7.2 Progress and Meetings. Turbine Supplier shall furnish (and cause all Subcontractors to furnish) sufficient labor forces, manufacturing capacity and other resources, and shall work such hours, which may include extra shifts and overtime operations and shall

furnish such other necessities so as to assure the prosecution of the Work in accordance with the Guaranteed Delivery Dates and Guaranteed Turbine Completion Dates. Until Final Completion, Turbine Supplier, upon request by Buyer, shall attend and participate in meetings on such schedule as is set forth in **Exhibit J** and such additional meetings as the Buyer may from time to time request for the purpose of discussing the status of the Work and anticipating and resolving problems. Such meetings may also include other Persons at the invitation of Buyer, such as Buyer's Owner's Engineer and/or other consultants of Buyer. Subcontractors shall be permitted to attend with the prior consent of Buyer.

- 3.7.3 Progress Reports. Turbine Supplier shall prepare and submit to Buyer written progress reports and other reports as set forth in **Exhibit J**, and such other or additional reports as the Buyer may request from time to time. Such reports shall contain the information set forth in **Exhibit J** and such additional information as Buyer may specify. Each such report shall be in a form acceptable to Buyer. Each such report shall be deemed to constitute a certification by Turbine Supplier that the information provided therein is true, correct and complete.
- 3.7.4 Schedule Recovery. If, during the performance of this Agreement, Turbine Supplier determines that in order for it to achieve the Guaranteed Delivery Dates and/or Guaranteed Turbine Completion Dates, it must make any modification to Turbine Supplier's schedule prior to such dates, Turbine Supplier shall immediately submit said modifications to Buyer for review. Similarly, if Buyer at any time determines that Turbine Supplier's ability to meet the Guaranteed Delivery Dates and/or Guaranteed Turbine Completion Dates is in jeopardy, Turbine Supplier shall provide adequate assurances, including, if appropriate, modifications to Turbine Supplier's schedule, of Turbine Supplier's plans to meet the Guaranteed Delivery Dates and Guaranteed Turbine Completion Dates. Turbine Supplier's submittals to Buyer under either of the preceding sentences will include Turbine Supplier's recommendations and reasonable detail as to how the modified schedule will allow Turbine Supplier to achieve the Guaranteed Delivery Dates and Guaranteed Turbine Completion Dates. Turbine Supplier's submittal of these recommendations and their review by Buyer will not relieve Turbine Supplier of its responsibilities and duties under this Agreement. Whether or not Turbine Supplier has notified Buyer as provided above, or Buyer has notified Turbine Supplier as provided above, Turbine Supplier shall in all events take such measures, which may include extra shifts, overtime, and expediting of Subcontractors, at no additional cost to Buyer, as is commercially reasonable for Turbine Supplier to recover from any actual or expected schedule delays and meet the Guaranteed Delivery Dates and Guaranteed Turbine Completion Dates. The failure or partial failure of any such extra efforts shall not relieve Turbine Supplier from any liability for liquidated damages under this Agreement.

### **3.8 Submittal and Review of Information**

- 3.8.1 Review of Information. Turbine Supplier shall furnish all Information as set forth in **Exhibit P** and any other applicable provisions of this Agreement, on the schedule set forth in the Project Schedule. Information submitted by Turbine Supplier to Buyer may be reviewed and commented upon by Buyer, including but not necessarily limited to,

[REDACTED]

review and comment by Buyer in accordance with procedures in **Exhibit P**. Any review and comment on, or any failure of Buyer in whole or in part to review and comment on, or any approval by Buyer of or any failure by Buyer to object to, any of Turbine Supplier's submittals will not relieve Turbine Supplier of responsibility to comply with all requirements of this Agreement or deprive Buyer of any right or remedy for any failure to so comply.

3.8.2 [REDACTED] Without limiting Buyer's rights under **Section 3.6.1**, Buyer will be entitled, but not obligated, [REDACTED] and such additional [REDACTED] as Buyer may from time to time designate in writing. [REDACTED] [REDACTED] will not relieve Turbine Supplier of responsibility to comply with all requirements of this Agreement or deprive Buyer of any right or remedy for any failure to so comply.

**3.9 Training.** Turbine Supplier shall make available an optional program for purchase by Buyer, satisfactory to the Buyer, to fully and adequately instruct and train Buyer's designated personnel in the operation and maintenance of the Turbines, [REDACTED] and other Equipment. The scope and content of such training shall (without limiting the generality of such requirement of full and adequate training) meet the requirements of **Exhibit N**. If Buyer request, Turbine Supplier shall provide its proposed training program to Buyer for Buyer's review and approval and revise the program as necessary in accordance with Buyer's written comments and requirements. If purchased by Buyer, Turbine Supplier shall train Buyer's designated personnel in accordance with the approved training program, and shall provide Buyer with paper and electronic copies of the final versions of all materials used in the training program. Buyer may record all training sessions and utilize copies of provided materials and replay such recordings for retraining or training of other Buyer personnel. The specific schedule for Turbine Supplier's performance of all of such training shall be satisfactory to Buyer, and Turbine Supplier shall in all events perform such training in such timely manner that Buyer's personnel will be fully ready to operate and maintain each Turbine, [REDACTED] (and any other associated Equipment) upon Turbine Completion of that particular Turbine [REDACTED] and to operate and maintain all of the Turbines, [REDACTED] and other Equipment as [REDACTED]

**3.10 Transportation; Shipping.** Turbine Supplier shall arrange for all transportation, storage and transfers of every kind and nature in connection with the delivery of the Turbines [REDACTED] and any other Equipment to be supplied hereunder, and otherwise with the Work, and in connection therewith Turbine Supplier shall develop and prepare a written transportation plan and submit such plan to Buyer for Buyer's review. Subject to the provisions of this Section 3.10, Turbine Supplier shall be responsible for the routing for deliveries of all components of the Turbines, [REDACTED] and other Equipment, including delivery of heavy, large, or oversize loads, to each Delivery Point; provided that, unless mutually agreed to by the Parties in writing, the route to be followed by Turbine Supplier for entering into the project site boundary shall be as specified as on Exhibit M

[REDACTED]

and the route to the individual Delivery Points within said Project Site boundary shall be in accordance with Exhibits A and M.. Turbine Supplier shall give advance notice to Buyer of all deliveries in accordance with **Exhibit A.** [REDACTED]

### 3.11 Delivery.

3.11.1 Delivery to Delivery Point. Turbine Supplier shall make delivery of all Turbine components and other Equipment [REDACTED]

[REDACTED] to the applicable Delivery Point, not off-loaded but positioned for offloading as provided in **Section 2.3.3**. All deliveries by Turbine Supplier shall be by truck, or combination of rail and truck, based on the results of Turbine Supplier's transportation plan prepared in accordance with **Section 3.10**. Turbine Supplier shall remain obligated to complete delivery of all Turbine components and other Equipment constituting or associated with each Turbine [REDACTED]

[REDACTED] to each applicable Delivery Point notwithstanding the passage of title pursuant to **Section 2.3.1**. Turbine Supplier will make reasonable efforts to deliver at approximately the same number of loads per Day. Turbines will be delivered at a weekly rate of three (3) to seven (7) complete Turbines [REDACTED]

[REDACTED] Turbine Supplier will provide Buyer notification at least sixty (60) Days prior to the delivery of any component. The schedule developed by Turbine Supplier pursuant to **Section 3.7.1** shall be consistent with the foregoing requirements, with the specific final scheduling of each delivery being in accordance with **Exhibits A, J, and P.** [REDACTED]

[REDACTED] All deliveries shall be coordinated with the BOP EPC contractor such that deliveries are made on the date scheduled in accordance with said **Exhibits A, J, and P** between the hours of 8:00 am and 3:00 pm. Buyer will designate, by written notice to Turbine Supplier, the order of the Delivery Points to which deliveries are to be made, and Buyer may revise that order at any time and from time to time by written notice to Turbine Supplier.

3.11.2 Unloading. Buyer shall unload the Turbine components and other Equipment constituting or associated with each Turbine [REDACTED]

[REDACTED] after arrival to the Delivery Point; provided that Turbine Supplier's Field Personnel (as provided in **Section 3.12**) shall witness and provide technical supervision of the unloading and laydown of same.

Upon delivery, Turbine Supplier and Buyer will jointly inspect the applicable Turbine components, [REDACTED] or other Equipment following the written procedure agreed upon between the Parties. The Parties shall proceed promptly

following the Effective Date to negotiate and agree in good faith upon such written procedure.

3.11.3 Storage for Turbine Supplier's Convenience. If for whatever reason, Turbine Supplier completes manufacture and is ready to deliver Turbine components or other Equipment ahead of schedule, and Buyer, in its sole discretion determines that it is unable to accommodate early or accelerated delivery, then, without limiting the generality of Turbine Supplier's responsibilities as set forth elsewhere herein, Turbine Supplier shall be responsible for any necessary storage at Turbine Supplier's own risk and expense.

3.11.4 Storage for Reasons Not Attributable to Turbine Supplier. If Turbine Supplier completes manufacture and is ready and able to deliver Turbine components or other Equipment at the time scheduled in accordance with **Section 3.11.1**, and Buyer, not excused by Force Majeure or any nonperformance by Turbine Supplier, is unable to accommodate delivery at the Turbine Site, then Buyer will identify a storage location to which Turbine Supplier will instead make delivery and that storage location will be considered the "Delivery Point" for all purposes. Turbine Supplier shall upon request assist Buyer in identifying suitable storage locations. Delivery to storage shall not relieve Turbine Supplier from its obligations to perform Turbine Completion, [REDACTED] Final Completion, or other obligations under the Agreement.

3.11.5 Shipping Fixtures. All shipping fixtures provided by Turbine Supplier shall be made available by Buyer for pickup by Turbine Supplier at the Delivery Point within fourteen (14) Days of unloading. Once Buyer has given Turbine Supplier notice that shipping fixtures are ready for pickup, Turbine Supplier will promptly provide for pickup and transportation. Buyer will load such shipping fixtures onto Turbine Supplier's transport vehicles at the applicable Delivery Point. If the shipping fixtures are needed by Buyer for a period of time longer than fourteen (14) Days, Buyer shall, at Buyer's option, either purchase such fixtures from Turbine Supplier or pay to Turbine Supplier a rental fee of [REDACTED] per set of fixtures per each additional Day to compensate for extended use of shipping fixtures. Buyer shall not be responsible for any damage to such fixtures resulting from normal wear and tear.

**3.12 On-Site Services of Turbine Supplier's Field Personnel.** The following conditions shall apply to the services of all personnel of Turbine Supplier (or its Subcontractors) performing services at the Project Site ("**Turbine Supplier's Field Personnel**"). Turbine Supplier's Field Personnel may include Turbine Supplier's Representative or other Turbine Supplier employees or Subcontractors providing technical assistance at the Project Site:

3.12.1 Scope of Services. Turbine Supplier's Field Personnel are required to provide technical advice and direction to Buyer during delivery, receipt, unloading, installation, providing of Pre-Mechanical Completion Field Assistance for, Pre-Commissioning, Commissioning, and Start-up of the Turbines [REDACTED] so as to ensure the Turbines [REDACTED] are properly handled and installed in accordance with the requirements of this Agreement.

Until Turbine Completion of all of the Turbines [REDACTED] in a particular circuit (or, if earlier, Buyer's placement into commercial operation for revenue-generating purposes of Turbines [REDACTED] in a particular circuit prior to all of the Turbines [REDACTED] in that circuit having reached Turbine Completion), Buyer shall be responsible for any operation and maintenance of the Turbines, [REDACTED] other Equipment as set forth in **Exhibit A-6**. During the period between Turbine Completion of all of the Turbines [REDACTED] [REDACTED] in a particular circuit (or, if earlier, Buyer's placement into commercial operation for revenue-generating purposes of Turbines and [REDACTED] [REDACTED] in a particular circuit prior to all of the Turbines [REDACTED] in that circuit having reached Turbine Completion) [REDACTED] (i) if Buyer has entered into an agreement with Turbine Supplier or an affiliate of Turbine Supplier for operation and maintenance of the Turbines [REDACTED] [REDACTED] then Turbine Supplier's (or its affiliate's) Field Personnel shall be responsible for operation and maintenance of the Turbines, [REDACTED] [REDACTED] and other Equipment as set forth in **Exhibit A-6**; or (ii) if Buyer has not entered into an agreement with Turbine Supplier or an affiliate of Turbine Supplier for operation and maintenance of the Turbines [REDACTED] [REDACTED] then Turbine Supplier's Field Personnel will coordinate and cooperate with Buyer's (or Buyer's third party-operation and maintenance contractor's) operation and maintenance personnel in the latter's performance of operation and maintenance of the Turbines, [REDACTED] and other Equipment.

Any activities of Turbine Supplier's Field Personnel to remediate defects and deficiencies in the Work shall not count toward or against any provisions of this Agreement specifying a number of hours or other time periods for the services of Turbine Supplier's Field Personnel.

Turbine Supplier recognizes that the Buyer may seek flexibility in Turbine Supplier's work schedule in order to accelerate Turbine Completion [REDACTED]. The Turbine Supplier will seek to accommodate those requests subject to any limitations on maximum work periods or minimum rest periods imposed by Applicable Law and Buyer's safety requirements, it being understood that the Turbine Supplier's personnel will in any event require at least one day of rest in any consecutive seven-day period, and the Buyer shall not request the Turbine Supplier to work longer than one hundred forty (140) hours in any two consecutive calendar weeks or more than fourteen (14) hours in any one Day, even where Applicable Law may permit longer working periods or shorter rest periods. With the Turbine Supplier's written consent, however, the Turbine Supplier's personnel may in some instances work up to seven days a week for a maximum of fourteen (14) Days, but only to the extent permitted by Applicable Law and Buyer's safety requirements and required by the nature of the work. Turbine Supplier's obligations to provide Turbine Supplier's Field Personnel's field services are based upon Turbine Supplier having reasonable access to the Site, six (6) days per week and ten (10) hours per Day.

Except as hereinafter provided, if services of Turbine Supplier's Field Personnel are provided at Buyer's written request under this **Section 3.12.1** in excess of a total [REDACTED]

man-hours, such excess man-hours shall be provided to Buyer at Turbine Supplier's rates as provided for in **Exhibit L**; provided, however, that Turbine Supplier will not be compensated for any excess man-hours performed by Turbine Supplier's Field Personnel to remediate defects or non-conformances in Turbine components [REDACTED] or other Equipment (other than defects or non-conformances that are the responsibility of Buyer under **Section 3.13**), or to remediate any other defects and deficiencies in the Work, or otherwise resulting any failures to perform or delays of Turbine Supplier. Notwithstanding the above, and for the avoidance of any doubt, it is expressly understood that the above man-hour limit does not include or apply to Turbine Supplier's Field Personnel needed for:

- (i) the testing (and any retesting) under **Exhibits R** and **S**; or
- (ii) any other on-Project Site activities that may be required under this Agreement beyond the scope identified in the opening paragraph of this **Section 3.12.1**, including without limitation any Work under the Punch List or Warranties;

and Turbine Supplier shall provide whatever man-hours of Turbine Supplier's Field Personnel are required for the preceding.

#### 3.12.2 Site Requirements.

- (a) Visas, work permits, medical clearances and evacuation for Turbine Supplier's Field Personnel, and Subcontractor personnel at the Project Site (if any), shall be the responsibility of Turbine Supplier at no cost to Buyer.
- (b) Turbine Supplier's Field Personnel and Subcontractors shall abide by the safety and health requirements of Buyer while at the Project Site, as set forth in **Exhibit G** and perform their services per the Project's work day/work week schedule. Turbine Supplier and Turbine Supplier's Field Personnel, and Subcontractor personnel, if any, shall be familiar with and observe Applicable Law and shall not endanger Buyer's and the BOP EPC Contractor's ability to perform their work.
- (c) Turbine Supplier shall provide continuity of the technical services required under this **Section 3.12**. Turbine Supplier shall notify Buyer of Turbine Supplier's Field Personnel leaving the Project Site during the delivery, installation, providing of Pre-Mechanical Completion Field Assistance for, Pre-Commissioning, Commissioning, and Start-up of the Turbines [REDACTED]
- (d) All of Turbine Supplier's Field Personnel, and any Subcontractor personnel at the Project Site, shall be fluent in the English language.
- (e) Turbine Supplier shall at all times maintain good discipline and order with respect to personnel engaged in Work at the Project Site.

- [REDACTED]
- (f) Turbine Supplier shall in good faith consult with Buyer prior to removing or replacing any Turbine Supplier's Field Personnel. The impact associated with the replacement or renewal of any such Turbine Supplier's Field Personnel shall be borne by Turbine Supplier. If, at any time during the performance of the Work, any of Turbine Supplier's Field Personnel becomes unacceptable to Buyer, then, upon notice from Buyer to such effect, Turbine Supplier and Buyer shall discuss such issue and attempt to resolve the problem. If such attempt to resolve such problem is not successful in the reasonable judgment of Buyer, Turbine Supplier shall replace such individual as soon as possible consistent with a diligent effort to find a suitable replacement and shall in good faith consult with Buyer regarding such replacement.
  - (g) Turbine Supplier understands that Buyer shall have the right, at Buyer's sole option, to observe any or all of Turbine Supplier's Work at the Project Site hereunder, whether in regard to providing Pre-Mechanical Completion Field Assistance, Pre-Commissioning, Commissioning, Start-Up or otherwise. Buyer and its designees shall have full access to the Turbines [REDACTED] and other Equipment at the Project Site at all times. Any such observation by Buyer, or any failure of Buyer in whole or in part to so observe, or any approval (or any failure to object to any matter) by Buyer or its designees in the course of any such observation will not relieve Turbine Supplier of responsibility to comply with all requirements of this Agreement or deprive Buyer of any right or remedy for any failure to so comply.

**3.13 Discovery of Defects or Non-Conformities Between Delivery Completion Date and Turbine Completion.** If, at any time after the Delivery Completion Date and prior to Turbine Completion, a problem in a Turbine, Turbine component, [REDACTED] component or other Equipment develops that could potentially delay the achievement of Turbine Completion or give rise to a claim of rejection of the Turbine Completion Certificate or [REDACTED] due to any cause, whether originating from the Turbine Supplier's failure to comply with its obligations, or improper maintenance, misuse, or abuse by Buyer or third parties other than Subcontractors, or other circumstances, and provided that Buyer gives Turbine Supplier written notice of the non-conformance or defect within a reasonable time after discovery of same, [REDACTED] Subsequent to the remedy or fix of the problem, an investigation will be conducted by Buyer with Turbine Supplier to determine the actual origin of the problem and the Party or Parties responsible shall bear the cost of the repairs including the repair, replacement, removal, disassembly of any portion of a Turbine, [REDACTED] or other Equipment (including disassembly as required to gain access to such portion), transportation, reinstallation, reconstruction, retesting and re-inspection as may be necessary to correct the nonconformity or defect or demonstrate that the previously defective portion of a Turbine, [REDACTED] or other Equipment conforms to the requirements of this Agreement. Any repairs or work performed by Turbine Supplier that are determined to be the responsibility of Buyer or third parties other than Subcontractors shall be considered extra work to this Agreement and Turbine Supplier shall be reimbursed in accordance with **Section 3.18.**

**3.14 Labor Disputes.** Whenever Turbine Supplier has knowledge that any actual or potential labor dispute is materially delaying or may threaten to materially delay its performance of the Work, Turbine Supplier shall promptly give written notice thereof, including all relevant information with respect thereto, to Buyer.

**3.15 Consumables/Wear Parts, and Spare Parts.**

**3.15.1 Initial Consumables/Wear Parts and Initial Spare Parts.** All provisions of this Section 3.15.1 are predicated on Buyer purchasing the optional Initial Consumables/Wear Parts and Initial Spare Parts. Turbine Supplier shall, not later than sixty (60) Days prior to the first Turbine Completion, deliver to Buyer Consumables/Wear Parts and Spare Parts List of such types and in such quantities as are identified in **Exhibit Q**. All Consumables/Wear Parts and all Spare Parts supplied hereunder must be equivalent to or better than and interchangeable with the original materials and parts they are intended to replace. Without limiting the foregoing, all such Consumables/Wear Parts and Spare Parts must be of equivalent or improved material, manufacture, performance, and properties as the corresponding original materials or parts. All Consumables/Wear Parts and Spare Parts supplied hereunder must be properly treated and packed for proper and prolonged storage (considering among any other relevant factors Project Site ambient conditions), and Turbine Supplier shall notify Buyer in writing of all necessary storage requirements. All boxes and packing must be labeled, marked and numbered for identification and a detailed packing list shall be provided by Turbine Supplier. Turbine Supplier shall deliver said Consumables/Wear Parts and Spare Parts to Delivery Points specified by Buyer. No later than three hundred sixty-five (365) Days after the Effective Date, Turbine Supplier shall also provide to Buyer information regarding Consumables/Wear Parts and Spare Parts in a manner fully compatible for downloading into the inventory monitoring spreadsheet as set forth in **Exhibit A-4**.

Buyer shall have the option to purchase, at the prices set forth in **Exhibit Q**, additional Consumables/Wear Parts and/or additional Spare Parts of any or all of the types and kinds listed on said **Exhibit Q**, in such quantities as may be specified by Buyer by written notice to Turbine Supplier at any time or times up to Final Completion. Turbine Supplier shall deliver any such additional Consumables/Wear Parts and/or Spare Parts that may be so requested by Buyer within Turbine Supplier's established ordering lead time from the date of any written notice from Buyer to Turbine Supplier electing same. The supply of any such additional Consumables/Wear Parts and/or Spare Parts that Buyer may so elect shall be governed by the same terms, conditions and requirements as are set forth in the immediately preceding paragraph in respect to the base scope supply of Consumables/Wear Parts and Spare Parts.

All Consumables/Wears Parts and Spare Parts that may be provided by Turbine Supplier to Buyer pursuant to the preceding paragraph of this **Section 3.15.1** are herein referred to, respectively, as "**Initial Consumables/Wear Parts**" and "**Initial Spare Parts**".

**3.15.2 Consumables/Wears Parts and Spare Parts Needed for providing Pre-Mechanical Completion Field Assistance, Pre-Commissioning, Start-up and Commissioning.** In

[REDACTED]

addition to (and without taking from) Turbine Supplier's supply of Initial Consumables/Wear Parts and Initial Spare Parts as set forth in Section 3.15.1, [REDACTED]

**3.16 Operating and Maintenance Manuals.** Turbine Supplier shall prepare and provide to Buyer the Operating and Maintenance Manuals. The Operating and Maintenance Manuals shall be clear and complete in setting forth [REDACTED]

[REDACTED] the Turbines and all other Equipment supplied hereunder. The scope and content of the Operating and Maintenance Manuals shall (without in any way limiting the generality of the foregoing requirement of clarity and completeness) meet the requirements of **Exhibit P**. The Operating and Maintenance Manuals shall also meet the formatting and binding requirements, and shall be provided by Turbine Supplier to Buyer in such number of copies, as are further set forth in **Exhibit P**.

Turbine Supplier shall provide its proposed Operating and Maintenance Manuals, in complete form, to Buyer for Buyer's review no later than one hundred eighty (180) Days after the Effective Date.

**3.17 No First of a Kind; Interchangeability of Components.**

3.17.1 No First of a Kind. Without Buyer's prior written consent, the Turbines and other Equipment will not include prototype equipment, meaning any equipment or component thereof that is at that stage in the evolutionary developmental process where the design, functionality, environmental suitability, material composition, scale, reliability, maintainability, and other operational characteristics of the equipment or any component thereof has not been substantiated by at least one of the following: (i) minimum of one (1) full year of successful commercial operation at a location having similar characteristics to the Project Site; or (ii) Type B Design Assessment from an independent third party in accordance with the International Electrotechnical Commission standards; or (ii) [REDACTED]

3.17.2 [REDACTED]

[REDACTED]

3.17.3 [REDACTED]

**3.18 Changes.** Buyer may at any time request, in writing, changes in the Work, including changes in any one or more of the following: (i) additions to the quantities of Turbines and/or other items of Equipment to be supplied under this Agreement (subject to availability); (ii) Project Schedule, which changes may either advance or delay the Project Schedule (subject to availability); (iii) Delivery Point(s); (iv) repairs that are determined to be Buyer's responsibility pursuant to **Section 3.13**; and (v) the Information to be provided by Turbine Supplier. If any such change causes an increase or decrease in the cost of, or timing required to, provide the Turbines and other Equipment, an equitable adjustment may be made in the Agreement Price, or delivery schedule, or both, and this Agreement shall be modified by a written amendment or revision executed by authorized representatives of Buyer and Turbine Supplier ("**Change Order**"). Any request by the Turbine Supplier for adjustment under this **Section 3.18** (whether such adjustment is to Agreement Price, to schedule, or both) must be asserted by Turbine Supplier by written notice to Buyer within five (5) Business Days after the date of Buyer's notification to Turbine Supplier of the change(s) or, if five (5) Business Days is not reasonably adequate, then as promptly thereafter as practicable but in no event later than twenty (20) Days after the date of Buyer's notification to Turbine Supplier of the change(s), unless the Parties mutually agree to extend the time required to assess and determine the resulting impact; and such request for adjustment by Turbine Supplier must be accompanied by supporting documentation reasonably satisfactory to Buyer.

[REDACTED]

When possible, a Change Order as provided above shall be executed prior to the commencement of the applicable changes in the Work. When a need arises to immediately authorize changes in the Work to restore service, to avoid breakdowns, to avoid work stoppages or for Buyer to meet its commitments, Buyer may authorize the performance of such changes by execution of a Project Change Notice ("PCN") in the form attached as **Exhibit E-10**. Any work authorized pursuant to

[REDACTED]

such a PCN shall thereafter be evidenced by a Contract Change Order as indicated above as soon as possible.

If and whenever a change in Work specified by Buyer pursuant to this **Section 3.18** is of such a nature as to be normally included in or incidental to or is a clarification of the Work to be performed under this Agreement, it is expressly understood that there shall be no extra charge or schedule extension for the change.

### **3.19 Special Tools.**

Turbine Supplier shall provide and deliver to Buyer three (3) sets of specialized installation tools (“**Specialized Installation Tools**”) as described in **Exhibit A**, for Buyer’s (and/or the BOP EPC Contractor’s) use in connection with the installation of the Turbines, their components, [REDACTED] and/or other Equipment. [REDACTED]

At Buyer’s option, exercisable by written notice to Turbine Supplier on or before May 1, 2019 and for an additional cost as set forth in **Exhibit B**, Turbine Supplier shall supply a fourth set of Specialized Installation Tools.

Turbine Supplier shall deliver said sets of Specialized Installation Tools to up to three (3) Turbine Sites (or to up to four (4) Turbine Sites if Buyer elects the fourth set of Specialized Installation Tools as mentioned above) (i.e., one set per Turbine Site) as specified by Buyer; all of same to be so delivered at least thirty (30) Days prior to the first delivery of any Turbine components [REDACTED]. Alternatively, at Buyer’s option if and as may be specified by Buyer, Turbine Supplier shall deliver some or all of said sets of Specialized Installation Tools to an alternate location or locations specified by Buyer in or in the vicinity of the Project Site.

Two (2) of the three (3) sets (or two of the four (4) sets if Buyer has elected the fourth set as mentioned above), as selected by Buyer, of Specialized Installation Tools shall be retained by Buyer and shall be considered part of the Equipment sold and delivered by Turbine Supplier to Buyer under this Agreement. The third (and if applicable fourth) set(s), as selected by Buyer, of Specialized Installation Tools shall be considered provided on a loan basis, and Buyer shall, not later than fourteen (14) Days after Final Completion make said third (and if applicable fourth) set(s) of Specialized Installation Tools available for pick-up by Turbine Supplier at a Turbine Site or Sites or other location(s) in or in the vicinity of the Project Site designated by Buyer, in the same condition as received, reasonable or normal wear and tear excepted.

[REDACTED]

Other than the Specialized Installation Tools, it is understood that the Turbines will be of a design that will not require specialized tools, not reasonably and commercially available, for (i) lifting and rigging associated with or required for Buyer's (or Buyer's BOP EPC Contractor's) unloading and installation of the Turbines; or (ii) operation and maintenance of the Turbines [REDACTED] [REDACTED] other Equipment) once installed and in service.

#### ARTICLE IV BUYER'S RIGHTS AND OBLIGATIONS

4.1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.1.3 **Not Applicable.**

4.2 **Schedule Recovery.**

4.2.1 Schedule Recovery. Turbine Supplier shall notify Buyer in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. Slippage in Turbine Supplier's schedule which may impact the achievement of any of the Guaranteed Delivery Dates as set forth in the Project Schedule (and further referred to in **Section 8.1**) will authorize Buyer to demand in writing that Turbine Supplier provide adequate assurances that Turbine Supplier will perform on time. Buyer and/or Buyer's Owner's Engineer shall be afforded reasonable access during working hours to Turbine Supplier's plants, and Turbine Supplier agrees to use commercially reasonable efforts to procure a similar right for Buyer with respect to Turbine Supplier's Subcontractors, to review progress on Turbine Supplier's schedule recovery plan.

4.2.2 Corrective Action. If, in Buyer's opinion, Turbine Supplier's schedule recovery plan or the performance thereof does not comply with the requirements of this **Section 4.2**, Buyer may provide a written notice requesting that Turbine Supplier provide adequate assurances, in writing, demonstrating that said schedule recovery plan has been established and is being complied with or that corrective measures have been effected. Within five (5) Days from Buyer's notice, Turbine Supplier shall provide such adequate assurances.

4.2.3 No Additional Charges. Notwithstanding the foregoing, Turbine Supplier shall be solely responsible for the expediting activities covering its operations and that of all Subcontractors, and any activities performed by Buyer pursuant to its above rights to expedite, or any failure at any time by Buyer to exercise such rights, shall not result in any additional charges to Buyer nor affect or relieve Turbine Supplier of any of Turbine Supplier's obligations to perform in accordance with the requirements established by this Agreement.

4.3 **Buyer's Use of Turbine Supplier's Supplied Design Data.** Turbine Supplier understands that Buyer will rely on Turbine Supplier-provided Engineering Documentation in the design, engineering, construction, and procurement of the BOP.

[REDACTED] Nothing in this **Section 4.3** is intended to authorize Turbine Supplier to make any such changes in Engineering Documentation previously supplied to Buyer, or to excuse any errors or incompleteness in any such Engineering Documentation, or to excuse Turbine Supplier from any other costs, liabilities or other consequences thereof, or to limit any other rights or remedies of Buyer.

- 4.4 Site Data.** Buyer has, prior to the Effective Date, provided to Turbine Supplier preliminary Project Site layout drawings showing each Turbine Site, access drive, and meteorological monitoring towers. Buyer will provide to Turbine Supplier updates of the foregoing as same becomes available, and such other Project Site data that may be needed by Turbine Supplier for the performance of the Work as may be reasonably requested by Turbine Supplier by timely written notice to Buyer.
- 4.5 Support Personnel.** Buyer shall be responsible for substation operation.
- 4.6 Route Improvements Inside Project Site Boundary.** Prior to the applicable scheduled delivery date, Buyer shall provide Route Improvements [REDACTED] (as referred to in **Section 3.10**) as well as an access drive to each Delivery Point from a public road, in accordance with the specifications set forth in **Exhibit A**.
- 4.7 Foundations.** Buyer shall provide the foundation and anchor bolts for each Turbine [REDACTED] in accordance with the Engineering Documentation supplied by Turbine Supplier.
- 4.8 Backfeed Power and Grid Availability.** Buyer shall arrange with the relevant electric utility company to provide continuous electric power to and to accept continuous electric power generation by the Turbines [REDACTED] during Pre-Commissioning, Commissioning and Start-up of the Turbines [REDACTED] as necessary; provided, that Buyer may at its option instead provide temporary power as provided in **Section 7.1**.
- 4.9 Electronic Communication.** Buyer shall provide a dedicated connection to each Turbine and [REDACTED] for the On Site Monitoring (OSM) system as set forth in **Exhibit A**. Buyer shall provide a fiber optic network per the SCADA requirements set forth in **Exhibit A**.

## ARTICLE V COMPENSATION AND SECURITY

### **5.1 Price and Payment.**

- 5.1.1 Agreement Price.** Buyer shall pay Turbine Supplier the Agreement Price as set forth on **Exhibit B**, as full and complete consideration, satisfaction and payment for all Turbines and other Equipment supplied, and otherwise for all Work and other obligations of Turbine Supplier performed, under this Agreement.

Said "**Exhibit B**", as referred to in the immediately preceding paragraph (or where referred to anywhere else in this Agreement) shall mean Exhibit B-1.

- 5.1.2 Invoicing and Payment. Turbine Supplier shall invoice Buyer for the Agreement Price in installments, in accordance with the "**Milestone Payment Schedule**" that is included in **Exhibit B**, upon completion of each "**Milestone**" defined therein and Turbine Supplier's receipt of written acknowledgment of such Milestone completion from Buyer. Buyer shall not be required to acknowledge completion of any Milestone until Buyer is satisfied that all Work constituting or associated with such Milestone has in fact been fully completed and satisfied in accordance with the terms and conditions of this Agreement. However, it is expressly understood that any such acknowledgment of Milestone completion by Buyer shall not constitute an acceptance of any such Work by Buyer or a waiver of any rights or remedies whatsoever of Buyer, nor shall same relieve Turbine Supplier of any obligations whatsoever. Buyer shall, subject to **Section 5.3**, pay each such correct and proper invoice within thirty (30) Days of Buyer's receipt thereof. Notwithstanding the foregoing, Turbine Supplier shall not be entitled (unless Buyer otherwise approves in writing) to invoice Buyer for any Milestone amount even if Turbine Supplier has completed and Buyer has acknowledged completion of such Milestone earlier than the associated date therefor set forth in **Exhibit B**.

Also notwithstanding any of the foregoing, it is understood that Turbine Supplier shall issue to Buyer no more than two (2) invoices per calendar month, which invoices shall as necessary aggregate all Milestones that Turbine Supplier is authorized to invoice pursuant to the preceding paragraph of this **Section 5.1.2** and had not previously invoiced.

In the case of any Change Order Work pursuant to **Section 3.18** that, as provided in the Change Order (or PCN if applicable), is to be paid for outside of the Milestone Payment Schedule, Turbine Supplier shall invoice Buyer for such Change Order Work upon completion thereof and written acknowledgement of such completion by Buyer. Such written acknowledgement of completion shall be deemed subject to the same conditions and limitations as set forth in the preceding paragraph. In the case of any such invoice that covers Work that is to be paid for on the basis of **Exhibit L**, such invoices shall be itemized to Buyer's satisfaction and shall be accompanied by applicable timesheets, receipts, and other documentation as may be required. Buyer shall, subject to **Section 5.3**, pay each such correct and proper invoice within thirty (30) Days of Buyer's receipt thereof.

It is expressly understood that all pricing and payments under this Agreement are in USD.

It is further expressly understood, any of the foregoing provisions of this **Section 5.1.2** or any other provisions of this Agreement to the contrary notwithstanding, that whenever any payment obligation of Buyer under this Agreement falls due on a Day that is not a Business Day, the Day that such payment obligation is due shall be deemed to be the next Business Day thereafter.

- 5.1.3 Lien Waivers. Each invoice submitted by Turbine Supplier pursuant to **Section 5.1.2**, other than the final invoice, must be accompanied by a partial lien waiver and release, in the form set forth in **Exhibit E-3**, executed by Turbine Supplier covering all Work performed prior to the date of such invoice

The final invoice submitted by Turbine Supplier pursuant to **Section 5.1.2** must be accompanied by a full lien waiver and release in the form set forth in **Exhibit E-4**, executed by Turbine Supplier, covering the entire Work under this Agreement, conditioned solely upon receipt of such final payment. The making of final payment by Buyer to Turbine Supplier will constitute a waiver by Turbine Supplier of all claims against Buyer.

## 5.2 Payment Delays by Buyer.

- 5.2.1 Late Payment. If Buyer fails to make payment of an amount properly invoiced by Turbine Supplier and due and payable by Buyer to Turbine Supplier under this Agreement in a case where Buyer has not disputed the payment of such amount Turbine Supplier shall be entitled to interest on such unpaid amount for the period of delay in excess of five (5) Days after the due date. The rate of interest shall be the Prime Rate. It is expressly understood that no such interest shall be payable on any amounts that are disputed by Buyer.

For the avoidance of doubt, no such interest shall be payable in circumstances where Buyer has exercised a right granted in **Section 5.2.2** to withhold payment of any sum otherwise due to Turbine Supplier under this Agreement.

5.2.2

5.3

- 5.4 **Liens**. To the maximum extent permitted by Applicable Law, Turbine Supplier hereby releases, disclaims and waives and will cause all Subcontractors, to release, disclaim, and waive any right under Applicable Law to make, file or pursue any Lien (as hereinafter defined) against the Work, the Turbines or other Equipment, the Project, or all or any part of the Project Site (or any portion of any of the above) for any reason. Turbine Supplier shall notify Buyer of all substantial claims and promptly settle or pay any undisputed claims of any and all Subcontractors. Turbine Supplier shall not suffer to exist and shall promptly discharge and bond over or obtain release for any actual or claimed stop notice, lien (statutory or otherwise), attachment, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, charge, preference, priority or

[REDACTED]

security agreement, Claim, judgment, levy, mechanic's lien, vendor lien, construction lien, security interest or similar interests filed or arising in connection with the Work ("Liens"), including liens of its laborers, Subcontractors, Subcontractor's laborers, and others for whom Turbine Supplier is responsible, and shall indemnify, defend, and hold harmless Buyer, and its Affiliates (the "Lien Indemnitees") from and against all costs, charges and expenses, including attorneys' fees and charges, and pre- and post-judgment interest that any Lien Indemnatee may incur resulting from or arising out of any such Lien.

## 5.5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 5.6 Taxes.

5.6.1 Taxes. Turbine Supplier shall pay all payroll, social security, withholding and other employment-related Taxes for its employees, and all Taxes that may be assessed on its net income, net worth, license, privilege or gross receipts. In addition, Turbine Supplier shall indemnify Buyer against any Claims against Buyer by reason of any failure of any

Subcontractors to pay all payroll, social security, withholding and other employment-related Taxes for their employees, all Taxes that may be assessed on their net income, net worth, license, privilege or gross receipts.

Turbine Supplier shall also pay all Taxes in the nature of sales or use taxes (other than Michigan Sales Tax as specifically defined herein), all Taxes associated with the importation or exportation of Turbines, any components thereof, or any other Equipment, all ad valorem and other property Taxes of any description on Turbines, any components thereof or other Equipment prior to the passage of both title and risk of loss thereto to Buyer hereunder, and all other Taxes arising from this Agreement or the Work (collectively, “**Turbine Supplier Taxes**”). The Agreement Price includes Turbine Supplier Taxes but excludes Michigan Sales Taxes. Buyer will pay, as hereinafter provided, applicable Michigan Sales Taxes for which no exemption is claimed by Buyer as provided in **Section 5.6.3**. Michigan Sales Taxes shall be administered jointly by Turbine Supplier and Buyer in accordance with **Sections 5.6.3 and 5.6.4**.

- 5.6.2 Taxes Related to Employment of Persons. Without limiting the generality of **Section 5.6.1**, Turbine Supplier accepts full and exclusive liability for the payment of any and all Taxes that are measured by wages, salaries, or other remunerations paid to Persons employed by Turbine Supplier, or which arise by virtue of their employment, and which now or hereafter are imposed by any Governmental Authority. Such Taxes include those for unemployment insurance, social security insurance, workers’ compensation, old age retirement benefits and other payroll taxes of any kind.
- 5.6.3 Michigan Sales Taxes. Turbine Supplier shall neither itself pay, nor charge to Buyer, any Michigan Sales Taxes on the Turbines, any components thereof, Delivery of or Work related any other Equipment. Buyer will supply Turbine Supplier with Buyer's direct pay permit, and if any such Michigan Sales Taxes do in fact apply, Buyer will pay the applicable Michigan Sales Taxes directly to the State of Michigan pursuant to Buyer’s direct pay permit.
- 5.6.4 Tax and Accounting Information. Turbine Supplier shall provide assistance as reasonably requested by Buyer or its tax consultant(s), in confirming eligibility and qualification for exemptions from Michigan Sales Taxes (and any other exemptions) to the relevant Governmental Authorities. From time to time during the term of this Agreement and within thirty (30) Days of a request therefor, Turbine Supplier shall provide Buyer with information, including regarding quantities, descriptions, costs, and allocations of property acquired in connection with the Work as reasonably requested by Buyer in connection with the preparation of Buyer’s tax returns, Buyer’s defense of its tax treatment of such items, for the purpose of satisfying regulatory requirements or as otherwise required in connection with calculating, obtaining exemption from, or rebate of, Michigan Sales Tax or other Taxes. Turbine Supplier agrees to participate in any Michigan Sales Taxes exemption or other exemption or rebate programs identified by Buyer, to complete and deliver the applicable documentation to obtain tax-exemption for purchases made by Turbine Supplier, including for Equipment, and to pass any Sales Tax

savings or rebates through to Buyer. For accounting purposes, Turbine Supplier shall provide to Buyer a cost breakdown of the Agreement Price as may be reasonably requested by Buyer. The sum of the items listed in Turbine Supplier's price breakdown shall equal the Agreement Price. Overhead and profit shall not be listed as separate items.

Turbine Supplier agrees that it will deliver to Buyer, upon execution of this Agreement and, as Buyer may deem necessary, upon any subsequent request from Buyer, duly completed copies of United States Internal Revenue Service Form W-9 (see **Exhibit E-8**), W-8BEN or W-8ECI, or any other form or documentation prescribed by Applicable Law, certifying that the Turbine Supplier is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes and that it is not subject to United States backup withholding tax.

**ARTICLE VI  
TERMINATION**

**6.1 Termination for Convenience.**

6.1.1 Termination. Turbine Supplier's performance under this Agreement may, subject to the limitation in **Section 6.1.4** below, be terminated by Buyer for Buyer's convenience in accordance with this **Section 6.1.1** by written notice to Turbine Supplier whenever Buyer shall elect at any time up to the earlier of: (i) the date which falls five (5) months after the date of Buyer's Final Notice to Proceed, or (ii) the date on which the first Major Component becomes Ready to Ship. Upon receipt of any such notice, Turbine Supplier shall: (a) immediately discontinue Work; (b) place no further orders for Turbine components or other items of Equipment; (c) promptly make every reasonable effort to obtain cancellation on reasonable terms of any Subcontracts for which Turbine Supplier will pass on to Buyer any cancellation charges under the provisions of **Section 6.1.2** below); and (d) assist Buyer upon request in the maintenance, protection, pickup and/or other disposition of any Towers, Tower components or materials that will become the property of Buyer under **Section 6.1.3**. Only Buyer may terminate for convenience.

6.1.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 6.2 Termination for Turbine Supplier Default.

6.2.1 Termination. Buyer may terminate the whole or any part of Turbine Supplier's performance under this Agreement for cause in any one of the following circumstances (any of same, a "**Major Default**"):

- (a) Turbine Supplier fails to make delivery of the Turbines, Turbine components, [REDACTED] or other items of Equipment (unless such failure is otherwise excused pursuant to this Agreement), or after attempted mutual resolution by the Parties under **Section 16.1** Turbine Supplier fails or is unable to provide adequate assurances of being able to make delivery or to perform, within the time specified herein or any extension thereof (in any case not rising to the level of delivery failure set forth in clause "(h) or "(i)" below);

[REDACTED]

(b) Turbine Supplier fails to comply with, or after attempted mutual resolution by the Parties under **Section 16.1** Turbine Supplier fails to provide adequate assurance of Turbine Supplier's ability to comply with, the quality standards of this Agreement pursuant to **Sections 3.1** and **3.6**;

(c) Turbine Supplier abandons performance of its obligations of this Agreement;

(d) an Insolvency Event of Turbine Supplier occurs;

(e) [REDACTED]

(f) Turbine Supplier violates Applicable Law with regard to this Agreement which results in an adverse impact to Buyer;

(g) Turbine Supplier assigns or transfers this Agreement (or any right or interest herein) in breach of **Section 17.3.1**;

(h) [REDACTED]

(i) [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- (l) Turbine Supplier fails to provide or at any time fails to maintain insurance as required by **Article XV** and **Exhibit H**; or
  - (m) Turbine Supplier in any other material manner breaches or fails to perform or comply with its obligations under this Agreement and the requirements of this Agreement.

6.2.2 Termination Procedure. In the event that Buyer intends to terminate this Agreement in whole or in part for a Major Default as described in clauses (a), (b), (c) or (k) of **Section 6.2.1**, Buyer shall first provide Turbine Supplier with written notice of the nature of such Major Default and Buyer's intention to terminate for Major Default. Turbine Supplier will commence implementation of reasonable corrective action to cure such Major Default within ten (10) Business Days of such notice, and shall implement a recovery plan acceptable to Buyer and thereafter diligently and continuously pursue actions in accordance with the recovery plan reasonably likely to cure such Major Default within thirty (30) Days of notice thereof; **provided, however**, that if such Major Default cannot be cured within such thirty (30) Day period despite Turbine Supplier's diligent efforts, Turbine Supplier shall have an additional thirty (30) Days to effect such cure so long as supported by an updated recovery plan. In the event Turbine Supplier does not commence implementation of reasonable corrective action, or thereafter diligently and continuously pursue corrective actions to cure such Major Default, and in fact cure such Major Default, within the time periods specified in the preceding sentence, Buyer may terminate this Agreement, in whole or in part, on written notice by Buyer to Turbine Supplier. In the event that Buyer intends to terminate this Agreement in whole or in part for a Major Default as described in clauses (d), (e), (f), (g), (h), (i) or (j) of **Section 6.2.1**, it is expressly understood that no further notice by Buyer to Turbine Supplier shall be required and no cure period allowed (except as Buyer in its sole discretion may allow), and in the event of any such a Major Default Buyer may terminate this Agreement, in whole or in part, upon written notice to Turbine Supplier.

6.2.3 Buyer's Rights. If Buyer terminates this Agreement in whole or in part as provided in this **Section 6.2**, Buyer may, subject to the limitations of liability set forth in **Article XVIII**:

[REDACTED]

Buyers right to terminate for Major Default as provided herein, and all rights of Buyer associated with such termination as set forth in,

[REDACTED]

**Section 6.2.1, Section 6.2.2, and this Section 6.2.3** are exercisable entirely at Buyer's option and, subject to the limitations of liability set forth in **Article XVIII**, do not limit any other obligations or liabilities of Turbine Supplier or any other rights or remedies of Buyer.

6.2.4 **No Default.** If, after termination of this Agreement, in whole or in part, by Buyer under **Section 6.2.2**, it is determined for any reason by proper authority having jurisdiction that Turbine Supplier was not in Major Default under any of the provisions of this **Section 6.2**, or that the Major Default was excusable under any other of the provisions of this Agreement, such termination shall be deemed a termination for convenience by Buyer pursuant to **Section 6.1**, and the rights and obligations of the Parties shall be as set forth in **Section 6.1**, and Turbine Supplier shall not have any Claim against Buyer other than pursuant to the provisions of and as provided in **Section 6.1**.

**6.3 Termination for Buyer Default.** Turbine Supplier may, by written notice to Buyer, terminate this Turbine Supply Agreement for cause for either one of the following event (a "Buyer Default"):

- (a) Buyer fails to pay Turbine Supplier when due a payment that is due and payable by Buyer under this Agreement, which payment is not in dispute, and such failure continues for sixty (60) Days after Buyer's receipt of written notice from Turbine Supplier of such failure; or
- (b) Buyer assigns its payment obligations under this Agreement in breach of **Section 17.3.1**

In the event of a Buyer Default, Buyer's termination obligation to Turbine Supplier will be the same as Buyer's termination for convenience as stated in **Section 6.1**.

## ARTICLE VII MECHANICAL COMPLETION, TURBINE COMPLETION, [REDACTED] AND FINAL COMPLETION

**7.1 Mechanical Completion.** After delivery to the Delivery Point, Buyer and Turbine Supplier shall perform their respective obligations as set forth in **Articles III and IV** such that each Turbine [REDACTED] achieves Mechanical Completion in accordance with the Project Schedule. Buyer will deliver a Mechanical Completion Certificate to Turbine Supplier when Buyer determines that Mechanical Completion of a particular Turbine [REDACTED] has been achieved. Upon receipt of a Mechanical Completion Certificate from Buyer, Turbine Supplier shall either countersign the relevant Mechanical Completion Certificate or notify Buyer of Turbine Supplier's reasonable belief that Mechanical Completion was not achieved (stating in detail Turbine Supplier's reasons for reasonably believing that the applicable Turbine [REDACTED] has not achieved Mechanical Completion) within a reasonable period of time, but not later than seven (7) Days, after Turbine Supplier's receipt of the Mechanical Completion Certificate from Buyer. Should Turbine Supplier fail to countersign or provide reasonable, detailed reasons why it reasonably believes Mechanical Completion was not achieved, within the time limits specified in the immediately preceding sentence, Turbine Supplier shall be deemed to have accepted Mechanical Completion. It is expressly understood that the fact that Buyer issues a

[REDACTED]

Mechanical Completion Certificate to Turbine Supplier is not intended to in any way relieve Turbine Supplier from responsibility for any of its obligations under this Agreement that are necessary for, incident to or connected with the achievement of Mechanical Completion or to constitute an assumption by Buyer of any such responsibilities.

Notwithstanding anything to the contrary in the foregoing, in the event that Mechanical Completion of a Turbine [REDACTED] has or can be achieved except that Buyer does not have back-feed power available, Buyer may require Turbine Supplier to perform Pre-Commissioning by using Buyer-provided temporary generators, so that the issuance and countersigning of the Mechanical Completion Certificate can proceed and not be delayed.

- 7.2 Turbine Completion.** After Mechanical Completion of a Turbine [REDACTED] Turbine Supplier shall Start-up, Commission, inspect and test such Turbine [REDACTED] in accordance with **Exhibit A** and **Exhibit R**; to achieve Turbine Completion in accordance with the schedule set forth in the Project Schedule. Turbine Supplier shall notify Buyer in writing once Turbine Supplier believes that a Turbine [REDACTED] has achieved Turbine Completion and provide to Buyer a Turbine Completion Certificate for that Turbine. Each Turbine Completion Certificate shall be accompanied by supporting documentation as reasonably required by Buyer. Within seven (7) Days of receipt of any Turbine Completion Certificate, together with its required supporting documentation, Buyer shall deliver a notice to Turbine Supplier accepting or rejecting such Turbine Completion Certificate. If Buyer withholds acceptance of any Turbine Completion Certificate, Buyer will identify its reasons for rejection of the Turbine Completion Certificate. Should Buyer fail to either accept Turbine Completion or provide reasonable, detailed reasons for rejecting Turbine Completion, within the time limits specified in the immediately preceding sentence, Buyer shall be deemed to have accepted Turbine Completion. If Buyer so rejects the Turbine Completion Certificate, Turbine Supplier shall take all necessary corrective action and submit a new Turbine Completion Certificate to Buyer for action in accordance with the procedures set forth above in this **Section 7.2**. If Buyer accepts the Turbine Completion Certificate, then for purposes of Guaranteed Turbine Completion Date Liquidated Damages under **Section 8.2** achievement of Turbine Completion will be deemed to have occurred as of the date that Turbine Supplier executed and delivered the Turbine Completion Certificate to Buyer, but for purposes of any invoice associated with Turbine Completion, such Turbine Completion will be deemed to have occurred on the date of Buyer's acceptance. If Buyer rejects the Turbine Completion Certificate, then the time between the date that Turbine Supplier executed and delivered the Turbine Completion Certificate to Buyer and Buyer's written notice of rejection of such Turbine Completion Certificate shall not be included in the calculation of Guaranteed Turbine Completion Date Liquidated Damages under **Section 8.2**.

**7.3**

[REDACTED]

- [REDACTED]
- 7.4 **Final Completion.** [REDACTED] Turbine Supplier shall perform all Punch List activities and other activities that it is required to perform in accordance with all provisions of this Agreement in order to achieve Final Completion.

When Turbine Supplier believes that Final Completion has been achieved, Turbine Supplier shall deliver to Buyer the Final Completion Certificate. Such Final Completion Certificate shall be accompanied by supporting documentation as reasonably required by Buyer. Within fourteen (14) Days of receipt of such Final Completion Certificate, together with its required supporting documentation, Buyer shall deliver a notice to Turbine Supplier accepting or rejecting such Final Completion Certificate. If Buyer withholds acceptance of such Final Completion Certificate, Buyer will identify its reasons for rejection of the Final Completion Certificate. Should Buyer fail to either accept Final Completion or provide reasonable, detailed reasons for rejecting Final Completion, within the time limits specified in the immediately preceding sentence, Buyer shall be deemed to have accepted Final Completion. If Buyer so rejects the Final Completion Certificate, Turbine Supplier shall take all necessary corrective action and submit a new Final Completion Certificate to Buyer for action in accordance with the procedures set forth above in this Section 7.4.

## ARTICLE VIII LIQUIDATED DAMAGES FOR DELAY

- 8.1 **Guaranteed Delivery Dates.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.1.2 Delivery of Turbines. The Project Schedule also contains the Guaranteed Delivery Dates for the delivery of Turbines, [REDACTED] and other Equipment to Buyer at the applicable Delivery Point in accordance with **Section 3.11**. Turbine Supplier shall complete the delivery of all components of each Turbine, [REDACTED] along with any other associated Equipment, in the condition required by and otherwise in full compliance with all requirements of this Agreement, and also along with such Engineering Documentation and other Information, if any, not already covered by **Section 8.1.1** above -- i.e., Turbine Supplier shall achieve the Delivery Completion Date for the applicable Turbine on [REDACTED] -- on or before the applicable Guaranteed Delivery Date specified in the Project Schedule. If Turbine Supplier fails to achieve the Delivery Completion Date for any Turbine [REDACTED] by the applicable Guaranteed Delivery Date set forth in the Project Schedule, Turbine Supplier shall be liable for liquidated damages for each Day from the Guaranteed Delivery Date for such Turbine [REDACTED] until the actual delivery date. The Parties agree that damages for Turbine Supplier's failure to achieve Delivery Completion Date on or before the applicable Guaranteed Delivery Dates are impracticable or impossible to predict or calculate, and accordingly Turbine Supplier shall pay Buyer, as liquidated damages for such failure, and not as a penalty, [REDACTED] for each Day of delay in the delivery of the Turbine or [REDACTED] up to and including the first thirty (30) Days beyond the Guaranteed Delivery Date, [REDACTED] for each of the thirty first (31st) through and including the sixtieth (60th) Day of delay in the delivery of the Turbine [REDACTED] beyond the Guaranteed Delivery Date, [REDACTED] for each of the sixty first (61st) and subsequent Days of delay in the delivery of the Turbine [REDACTED] beyond the Guaranteed Delivery Date. Without limiting the generality of the foregoing, if Turbine Supplier has achieved Delivery Completion Date for a Turbine or [REDACTED] except that any component of such Turbine [REDACTED] is i) defective, ii) damaged [REDACTED] or iii) otherwise not in conformance with the requirements of this Agreement (excluding minor defects or damage that, as determined in the joint inspection referred to in **Section 3.11.2** can be, and is, promptly repaired by Turbine Supplier, at its expense, at the Delivery Point without rendering the component unsuitable for installation or delaying or impeding the work of Buyer or Buyer's BOP EPC Contractor on the schedule and sequence established by Buyer or Buyer's EPC Contractor), it is understood that the Delivery Completion Date will be deemed not to have occurred and Turbine Supplier shall pay liquidated damages as provided for in this **Section 8.1.2** until the defect, damage or non-conformance is corrected.

Liquidated damages as provided in this **Section 8.1.2** shall apply separately and independently of every other liquidated damages contemplated in this **Article VIII**. The payment by Turbine Supplier to Buyer of liquidated damages under this **Section 8.1.2** is Buyer's sole and exclusive remedy for Turbine Supplier's delay in the delivery of

Turbines and [REDACTED]  
[REDACTED] This shall not limit Buyer's other rights under this Agreement for any other nonperformance or default (whether or not concurrent with or consequent to late or non-delivery), including Buyer's right to terminate this Agreement for a Major Default as described in **Section 6.2** if there and when there is a Major Default as described in **Section 6.2** and exercise the remedies set forth in **Section 6.2**.

**8.2 Guaranteed Turbine Completion Dates.** The Project Schedule also contains the Guaranteed Turbine Completion Dates by which Turbine Supplier is to achieve Turbine Completion of the Turbines [REDACTED]. The Parties agree that it would be difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages that Buyer would incur should Turbine Completion of any Turbine [REDACTED] not be achieved on or before the applicable Guaranteed Turbine Completion Date set forth in the Project Schedule. Accordingly, the Parties hereby agree that if any Turbine [REDACTED] does not achieve Turbine Completion on or before the applicable Guaranteed Turbine Completion Date, then Turbine Supplier shall pay to Buyer for each such late Turbine [REDACTED] as liquidated damages for such failure, and not as a penalty, [REDACTED] for each Day or portion thereof after the Guaranteed Turbine Completion Date until such Turbine Supplier achieves Turbine Completion.

Provided, however, that to the extent Turbine Supplier is liable to Buyer for Turbine Completion delay liquidated damages under this **Section 8.2** for Turbine(s) [REDACTED] connected to a particular circuit of Buyer's collection system, Turbine Supplier shall be entitled to earn a credit toward those Turbine Completion delay liquidated damages by achieving Turbine Completion of another Turbine [REDACTED] connected to that same collection system circuit earlier than seven (7) Days following Mechanical Completion of that other Turbine [REDACTED].

[REDACTED] For every Day that Turbine Supplier achieves Mechanical Completion of a Turbine connected to a particular circuit in less than seven (7) Days following Mechanical Completion of that Turbine [REDACTED]

[REDACTED] Turbine Supplier will earn a credit in an amount equal to the [REDACTED] (a "**Turbine Completion Offset Credit**"), which will then be offset against the aggregate Turbine Completion delay liquidated damages (if any) owed by Turbine Supplier under this **Section 8.2** in respect to other Turbine(s) or [REDACTED] on that same circuit. For the avoidance of doubt, Turbine Completion Offset Credits may only be used to offset Turbine Completion delay liquidated damages owed by Turbine Supplier to Buyer under this **Section 8.2** in respect to other Turbine(s) [REDACTED] connected to that same circuit and cannot in any circumstances be redeemed as a monetary payment from Buyer to Turbine Supplier or applied as an offset credit against any other liquidated damages owed by Turbine Supplier or against any other obligation of Turbine Supplier whatsoever.

Liquidated damages as provided in this **Section 8.2** shall apply separately and independently of every other liquidated damages contemplated in this **Article VIII**. The payment by Turbine Supplier to Buyer of liquidated damages under this **Section 8.2** is Buyer's sole and exclusive

remedy for Turbine Supplier's delay in achieving Turbine Completion of a Turbine or a [REDACTED] on or after the applicable Guaranteed Turbine Completion Date. This shall not limit Buyer's other rights under this Agreement for any other nonperformance or default (whether or not concurrent with or consequent to late or non-delivery), including Buyer's right to terminate this Agreement for a Major Default as described in **Section 6.2** if there and when there is a Major Default as described in Section 6.2 and exercise the remedies set forth in **Section 6.2**.

8.3



8.4 **Limitation on Liquidated Damages for Delays.** Notwithstanding anything to the contrary herein, Turbine Supplier's maximum aggregate liability for the payment of liquidated damages under this **Article VIII** shall not exceed [REDACTED] of the Agreement Price.

## ARTICLE IX PERFORMANCE GUARANTEES AND PERFORMANCE GUARANTEE TESTS AND PERFORMANCE GUARANTEE LIQUIDATED DAMAGES

### 9.1 **Power Curve Percentage Guarantee and Power Curve Percentage Test.**

9.1.1 Power Curve Percentage Guarantee: Turbine Supplier hereby guarantees that during the Power Curve Percentage Tests, the Turbines will achieve [REDACTED] of the energy yield computed on the basis of the calculated power curve included in **Exhibit A** (the "**Power Curve Percentage Guarantee**")

9.1.2 Power Curve Percentage Test: To demonstrate that the Power Curve Percentage Guarantee has been fulfilled, Buyer shall designate a number of Turbines in accordance with IEC Testing Standards (the "**Designated Turbines**") to be tested by an independent engineer at Buyer's expense ("**Power Curve Percentage Test**"). The Power Curve Percentage Test shall be conducted in accordance with **Exhibit F-1** and shall be performed at the same time as the Sound Emissions Test. Buyer shall give Turbine Supplier at least ten (10) Days prior written notice of such test (which may be the same notice as Buyer's notice to Turbine Supplier of the Sound Emissions Test). If, when first so tested, the average performance of all Designated Turbines fails to meet the Power Curve Percentage Guarantee, then: (i) during the thirty (30) Day period immediately following such test (or such longer time as may be agreed to in writing by Buyer), Turbine Supplier shall make all repairs, adjustments, or other corrections needed to resolve defects or deficiencies that did or may have led to the test failure; and (ii) no later than the end of such thirty (30) Day period (or of such longer time as may have been

[REDACTED]

agreed to by Buyer under the immediately preceding clause "(i)" for Turbine Supply to complete its repairs, adjustments, or other corrections), Turbine Supplier shall arrange for re-test, by the independent engineer referred to above, of the Designated Turbines at the Turbine Supplier's expense. If the Designated Turbines also fail the second test, the Turbine Supplier shall proceed with necessary additional repairs, adjustments, or other corrections, and a further re-test by said independent engineer not more than thirty (30) Days after the second test, all at the Turbine Supplier's own expense and otherwise on the same conditions as set forth in the immediately preceding sentence. If the Designated Turbines fail to pass this third test, Turbine Supplier shall pay to Buyer as liquidated damages, and not as a penalty, an amount equal to [REDACTED] prorated for any partial percentage point of shortage, in the Power Curve Percentage Test as compared to the Power Curve Percentage Guarantee. It is expressly understood that the per-Turbine liquidated damages payment pursuant to the immediately preceding sentence shall be for all Turbines supplied under this Agreement and not only for the Designated Turbines. It is also expressly understood that in the event of any retest of the Power Curve Percentage Test performed pursuant to this **Section 9.1**, any prior Sound Emissions Test pursuant to **Section 9.2** shall be deemed to have failed, regardless of the actual results of such prior Sound Emissions Test, and the Sound Emissions Test must be re-performed at the same time as the retest of the Power Curve Percentage Test as if such prior Sound Emissions Test had failed under **Section 9.2** regardless in fact of whether in fact it failed.

## 9.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.3

[REDACTED]

9.4 **Limitation on Performance Guarantee Liquidated Damages.** Notwithstanding anything to the contrary herein, Turbine Supplier's maximum aggregate liability for the payment of liquidated damages under this Article IX shall not exceed [REDACTED] of the Agreement Price.

9.5 **Limitation on Combination of Liquidated Damages Under Article VIII and Liquidated Damages Under this Article IX.** Notwithstanding anything to the contrary herein, it is further understood that Turbine Supplier's maximum combined liability for the payment of liquidated damages under Article VIII and liquidated damages this Article IX shall not exceed [REDACTED] of the Agreement Price.

9.6

[REDACTED]

ARTICLE X  
WARRANTIES

10.1

[REDACTED]

[REDACTED]

10.2    **Warranty Period.** The “Warranty Period” means:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

10.5

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

**10.6 Exclusions.** Turbine Supplier's Warranty obligations shall in no event extend to damage to Turbines, [REDACTED] components, or other items of Equipment if and to the extent that such damage, not caused by a Defect, is caused by:

- (a) weather conditions at the Project Site which (as measured by the monitoring equipment that relates to the applicable Turbine or [REDACTED] exceed the maximum parameters for the applicable International Electrotechnical Commission wind class as set forth in clause "a." of Subsection A. ("Turbine Design Basis Wind Loads") of Section 3.5 ("ENVIRONMENTAL DESIGN CRITERIA") of **Exhibit A**; provided, however, that Turbine Supplier has reviewed the Project Site data set forth in **Exhibits A and A-7** and has determined that the Turbines [REDACTED] are suitable for the Project Site on the basis of such data;
- (b) alterations or repairs carried out by persons not authorized by Turbine Supplier other than as otherwise allowed by the provisions of **Section 10.3** of this Agreement; provided, that all alterations or repairs performed pursuant to any operation, maintenance or other service agreement between Buyer and Turbine Supplier or an affiliate of Turbine Supplier shall conclusively be deemed carried out by persons authorized by Turbine Supplier;
- (c) Buyer's failure to operate and maintain the Turbines [REDACTED] in accordance with the Operating and Maintenance Manuals provided by Turbine Supplier to Buyer under and in accordance with this Agreement [REDACTED] in accordance with the applicable operating and maintenance manuals. ; provided, however, that nothing in this **Section 10.6** shall relieve Turbine Supplier from its obligations to meet and comply with the Technical Specification or any other obligations under this Agreement; and provided further that any operation or maintenance performed for Buyer by Turbine Supplier or an affiliate of Turbine Supplier under any operation, maintenance or other service agreement shall not cause this Warranty exclusion to apply regardless of whether such operation or maintenance was or was not in accordance with the Operating and Maintenance Manuals.

**10.7 NO OTHER WARRANTIES. THE PARTIES AGREE THAT THE WARRANTIES SET FORTH IN THIS ARTICLE X OR ELSEWHERE IN THIS AGREEMENT ARE THE SOLE WARRANTIES MADE BY TURBINE SUPPLIER WITH RESPECT TO THE TURBINES, [REDACTED] AND OTHER EQUIPMENT SUPPLIED HEREUNDER, AND ALL OTHER WARRANTIES AS TO THE TURBINES, [REDACTED] [REDACTED] AND OTHER EQUIPMENT SUPPLIED HEREUNDER, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**

**ARTICLE XI  
GENERAL INDEMNITY**

- 11.1 General Indemnity.** Turbine Supplier shall assume all responsibility for, and shall indemnify and save Buyer, Buyer's Owner's Engineer, and their respective officers, agents and employees, harmless [REDACTED]

[REDACTED]

[REDACTED]

Notwithstanding the foregoing, Turbine Supplier shall not be required to indemnify Buyer, its officers, agents or employees against liability for damages arising out of injury to persons or theft or loss of or damage to property to the extent caused by or resulting from the negligence of Buyer. Also notwithstanding the foregoing, the Turbine Supplier shall not be required to indemnify Buyer's Owner's Engineer, its officers, agents or employees against liability for damages arising out of injury to persons or theft or loss of or damage to property to the extent caused by or resulting from the negligence of Buyer's Owner's Engineer its officers, agents or employees.

Without limiting the foregoing, Turbine Supplier shall at the request of Buyer defend at Turbine Supplier's expense any Claim brought against Buyer for any of the above-named reasons, and shall at the request of Buyer's Owner's Engineer defend at Turbine Supplier's expense any Claim brought against Buyer's Owner's Engineer for any of the above-named reasons.

The indemnification and other provisions of this **Section 11.1** shall survive the termination, cancellation or expiration of this Agreement, as well as the final completion of the Work.

**ARTICLE XII  
HAZARDOUS SUBSTANCES**

**12.1 Compliance.**

- 12.1.1 Compliance.** In the performance of this Agreement, Turbine Supplier shall comply with all Applicable Law, including those relating to environmental law, Hazardous Substances and occupational health and safety.

12.1.2 Material Safety Data Sheets. See Contract Addendum - Contractor Requirements-Hazardous Chemicals, which is attached hereto as **Exhibit E-6** and hereby incorporated herein.

**12.2 Encountering Hazardous Substances.** If, in the course of performance of the Work on the Project Site, Turbine Supplier or any Subcontractor either spills, leaks or releases (including threatened releases) Hazardous Substances, Turbine Supplier shall immediately suspend the Work in the area affected and immediately report the condition to Buyer orally followed by a written notice. To the extent such condition involves (i) a Hazardous Substance introduced to the Project Site by Turbine Supplier, any Subcontractors or any Person for whom Turbine Supplier or any Subcontractor may be responsible or (ii) a Hazardous Substance contained in or packed with Turbine components or other Equipment provided by Turbine Supplier or any Subcontractor, then any investigation, response, removal, cleanup or other remedial action required by Applicable Law or any Governmental Authority will be promptly performed by Turbine Supplier or the applicable Subcontractor in accordance with Applicable Law and otherwise in a manner satisfactory to Buyer, and any costs and expenses incurred by Turbine Supplier and/or any Subcontractor shall be at Turbine Supplier's sole cost and expense. Turbine Supplier shall not generate, dispose, bring, transport or store (and shall prohibit Subcontractors from generating, disposing, bringing, transporting or storing) Hazardous Substances to or on the Project Site, and shall not utilize (and shall prohibit Subcontractors from utilizing) in the manufacture of the Turbines, Turbine components, or other Equipment any (or anything containing or any equipment containing) asbestos, polychlorinated biphenyls, benzene, lead, mercury, or urea formaldehyde; **provided, however,** Turbine Supplier (and Subcontractors) may use and store in quantities reasonably necessary to perform the Work the following, but only in accordance with Applicable Law and subject to compliance with **Section 12.1** and **Section 12.3**: gasoline, diesel fuel, lube oil(s), greases, sealant(s), combustible gases, solvent(s), adhesives, and all other materials, which are used or consumed in or during construction and/or testing of the Turbines. Any other Hazardous Substances brought to or stored on or at the Project Site shall require specific prior written authorization from Buyer. Turbine Supplier shall maintain on the Project Site, at all times, complete records and inventories of materials described in this **Section 12.2** that are being used by it or any Subcontractors, or any Persons for whose actions it or any Subcontractor is responsible on the Project Site. Turbine Supplier shall be responsible for the management, prompt removal, cleanup and off-site disposal of Hazardous Substances (i) brought to or generated at the Project Site by Turbine Supplier, any Subcontractor or any Person for whose actions Turbine Supplier or any Subcontractor is responsible or (ii) contained in or packed with Equipment provided by Turbine Supplier or any Subcontractor. Turbine Supplier shall have ownership of and title to Hazardous Substances and contaminated media encountered or created for which it is responsible and shall have sole responsibility in responding to such conditions including complying with reporting obligations and clean-up standards, providing for access restrictions and warnings, manifesting and any other obligations under Applicable Law. Buyer shall reasonably assist with disposal of Hazardous Substances.

**12.3 Labeling.** Turbine Supplier and all Subcontractors shall label Hazardous Substances brought to or generated at the Project Site by Turbine Supplier, any Subcontractor or any Person for whose actions Turbine Supplier or any Subcontractor is responsible and train all Persons within their direction and control in the safe usage and handling of such substances and materials, including any training that is required by Applicable Law.

12.4

### ARTICLE XIII FORCE MAJEURE

- 13.1 Excused Performance.** Any obligation of either Party under this Agreement shall be excused to the extent, but only to the extent, that the applicable Party is unable to perform as the result of Force Majeure. Each Party shall use all reasonable efforts to cure, minimize, mitigate or remedy the effects of the Force Majeure. Notwithstanding that an event of Force Majeure may exist, the provisions of this **Section 13.1** shall not excuse the payment of money due and owing by either Party. As used in this agreement, “**Force Majeure**” means any condition, event, or circumstance, including by way of example, war, sabotage, civil strife, earthquake, quarantine, acts of God, "extreme" weather (as defined hereinbelow), and acts of terrorism, but only if, and to the extent: (i) such condition, event, or circumstance is not within the reasonable control of the Party affected; (ii) such condition, event or circumstance, despite the exercise of reasonable diligence, could not be prevented, avoided or removed by such Party; (iii) such condition, event, or circumstance has a material adverse effect on the ability of the affected Party to fulfill its obligations under this Agreement; (iv) the affected Party has taken all reasonable precautions, due care and reasonable alternative measures (including, if and where relevant, designating alternative routes and/or Turbine Sites for deliveries) in order to avoid the effect of such condition, event, or circumstance on the affected Party’s ability to fulfill its obligations under this Agreement and to mitigate the consequences thereof; and (v) such condition, event, or circumstance is not the result of any failure of such Party to perform any of its obligations under this Agreement

Furthermore, in no event shall Force Majeure include the following events, conditions or circumstances:

- (a) late delivery of a Turbine component, [REDACTED] or other item of Equipment required for the Work whether caused by congestion at a Subcontractor’s plant or elsewhere, oversold market conditions, inefficiencies, transportation delays or other similar circumstances, except if such late delivery is directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of the first full paragraph of this **Section 13.1**;
- (b) shortages of supervisors, labor, or factory/manufacturing capacity;
- (c) late performance as a consequence of any violation of Applicable Law or decisions of a Governmental Authority related to the conduct of Turbine Supplier’s or any Subcontractor’s business, including insolvency or any delay related to the economic, commercial or labor circumstances of Turbine Supplier, any Subcontractor or other business conducted by Turbine Supplier or any Subcontractor;

- (d) breakdown, loss, or damage to or theft of equipment except where such breakdown, loss, or damage is directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of the first full paragraph of this **Section 13.1**;
- (e) failure of a Party to pay amounts due and owing under this Agreement;
- (f) increased costs of the Work, general economic or industry conditions;
- (g) strikes or labor disturbances specifically directed at Turbine Supplier or any of its Subcontractors; or
- (h) weather conditions other than the following "extreme" weather conditions:
  - hurricanes, tornados, tsunamis, floods;
  - during periods scheduled for crane use, wind speeds in excess of 10 meters per second (or as reasonably determined by the crane operator to be unsafe) or lightning, hail, ice or ice storms making crane use unsafe;
  - wind speeds greater than 15 meters per second during periods scheduled for performing Work in a Nacelle or Hub;
  - extreme weather conditions at the Project Site which exceed the maximum parameters for the applicable International Electrotechnical Commission wind class as set forth in clause "a." of Subsection A. ("Turbine Design Basis Wind Loads") of Section 3.5 ("ENVIRONMENTAL DESIGN CRITERIA") of **Exhibit A**.

**13.2 Notification Obligation.** If either Party's ability to perform its obligations under this Agreement is affected by an event of Force Majeure, such Party (the "**Affected Party**") shall provide written notice to the other Party within three (3) Business Days after it became aware of the occurrence of such Force Majeure event, but in no event later than thirty (30) Days after the occurrence of such Force Majeure event. Such notice will, to the extent practicable, specify the nature of the occurrence, the reasons why adjustments to this Agreement should be granted, and the projected length of the delay occasioned by reason of such Force Majeure event. Within ten (10) Days after submission of such notice, the Affected Party shall provide a more detailed notice of the impact of the occurrence, its recovery plan and a more detailed estimate of the effect on this Agreement. Such notice will be updated as soon as possible after additional information becomes available to the Affected Party, but in no event less frequently than weekly. If Turbine Supplier fails to provide written notice of an event of Force Majeure within the time specified in this **Section 13.2**, Turbine Supplier's entitlement to adjustments to the Guaranteed Delivery Dates shall be reduced to the extent Buyer has suffered any material adverse impact as a result of Turbine Supplier's delay in providing such notice. Under no circumstances shall Turbine Supplier be entitled to any additional compensation or damages of any kind or character as a result of the occurrence of an event of Force Majeure.

**13.3 Scope of Suspension; Duty to Mitigate.** The suspension of or impact on performance due to an event of Force Majeure shall be of no greater scope and no longer duration than is required by such event. For purposes of clarity, no obligations or liability under this Agreement that arose

[REDACTED]

before the occurrence of the Force Majeure event will be excused (except to the extent adversely impacted by the Force Majeure event) as a result of the occurrence of such event of Force Majeure for any period prior to the occurrence of such event of Force Majeure. The Affected Party shall use all reasonable efforts to:

- (a) mitigate the duration of any suspension or delay in, or other impact to the performance of its obligations under this Agreement;
- (b) to continue to perform its obligations hereunder; and
- (c) to remedy its inability to perform, as applicable.

**13.4 Turbine Supplier's Remedy.** Provided that Turbine Supplier has strictly complied with the requirements of **Sections 13.2 and 13.3**, if an event of Force Majeure occurs, the affected Guaranteed Delivery Dates and Guaranteed Turbine Completion Dates shall be adjusted by the period of time, if any, that Turbine Supplier is actually and demonstrably delayed in the performance of its critical path activities as a result of the impact of the event of Force Majeure.

[REDACTED]

[REDACTED]

#### ARTICLE XIV INTELLECTUAL PROPERTY

**14.1 License for Information.** Turbine Supplier hereby grants to Buyer an irrevocable, permanent, sub-licensable, nonexclusive, transferable and assignable, royalty-free, paid-up license to copy, perform, display and otherwise use the Information, including all Intellectual Property contained therein, for purposes of and to allow Buyer (and its transferees or assignees) to own use, operate, maintain, repair, train personnel for, modify, improve, and alter the Turbines and [REDACTED] any other the Equipment, and any component or replacement thereof. Without limiting the foregoing, Buyer shall have the right to retain, copy, execute, and use copies of the Information, including all Intellectual Property contained therein, for the foregoing purposes.

**14.2 Indemnity Against Intellectual Property Infringement.** Turbine Supplier warrants that all Intellectual Property rights that may exist in or in respect to the Turbines, [REDACTED] and all components thereof, all other Equipment and all components thereof, the Information or any part thereof, or otherwise in any manner connected with the Work, are now (or will at their creation be) vested in Turbine Supplier such that Buyer and its transferees and assignees will be able to own, use, operate, maintain, repair, train personnel for, modify, improve and alter the Turbines [REDACTED] and all components thereof, and all other

Equipment supplied hereunder, and to use and exercise the license for the Information granted under **Section 14.1**, free from any Claims that same violates or infringes any Intellectual Property rights or interests; and Turbine Supplier shall defend, indemnify, and hold harmless Buyer against all Liabilities arising from any such Claim of violation or infringement of Intellectual Property rights or interests. Buyer will notify Turbine Supplier of any such Claim of violation or infringement of Intellectual Property rights or interests of which Buyer has notice, and will reasonably cooperate with Turbine Supplier (with all costs of such cooperation to be borne by Turbine Supplier), in the defense of such Claim.

If, as a result of or in connection with any such Claim of violation or infringement of any Intellectual Property rights or interests, Buyer's (or its transferee's or assignee's) use of the Turbines, [REDACTED] or any component thereof, or any other Equipment or any part thereof, or the Information or any part thereof, is enjoined, Turbine Supplier shall remove such violation or infringement at Turbine Supplier's expense by (i) procuring for Buyer (and its transferees or assignees) the right to continue fully using all of the violating or infringing (or allegedly violating or infringing) element(s), or (ii) replacing or modifying the allegedly violating or infringing element(s) in a manner to be non-violating/non-infringing while continuing to fully comply with all requirements of this Agreement (including without limitations all Performance Guarantees and all Warranties).

The indemnification and other provisions of this **Section 14.2** shall survive the termination, cancellation or expiration of this Agreement, as well as the final completion of the Work.

## **ARTICLE XV INSURANCE**

- 15.1 Insurance.** Turbine Supplier shall provide and maintain the insurance specified in **Exhibit H** in accordance with the terms and provisions thereof; and with respect to the insurance coverages provided in (a), (b), (c) of **Exhibit H**, Turbine Supplier shall require all Subcontractors to provide and maintain insurance in accordance with the terms and provisions of **Exhibit H**.

## **ARTICLE XVI RESOLUTION OF DISPUTES**

- 16.1 Resolution.** An authorized representative of a Party may submit a claim, dispute or other controversy arising out of, or relating to, this Agreement which such authorized representative of the applicable Party does not believe can be otherwise resolved by the Parties' respective authorized representatives (hereinafter collectively referred to as a "**Dispute**") to a Senior Officer from each Party for resolution by mutual agreement between the Senior Officers. Any agreed determination by the Senior Officers shall be final and binding upon the Parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within ten (10) Days (or such longer time as the Parties agree) after notice to each Party of the Dispute, either Party may pursue any other available remedy at law or in equity. For purposes of this Agreement, the term "**Senior Officer**" means the chief executive officer, president or any senior vice president of a Party.

**16.2 Continuation of Work.** Pending final resolution of any Dispute, Turbine Supplier shall proceed diligently with the performance of its duties and obligations under this Agreement, and Buyer shall continue to make undisputed payments in accordance with such Agreement.

**16.3 Jurisdiction and Venue.** Each of the Parties hereby agrees that any legal proceedings which may arise out of or relate to this Agreement or under any of the other documents entered into in connection therewith shall be brought in the United States District Court for the Eastern District of Michigan (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Michigan or Federal Court sitting in Michigan). Accordingly, each of the Parties hereby submits to the jurisdiction of the United States District Court for the Eastern District of Michigan (and if such court does not have jurisdiction over a matter in controversy between the Parties, any state court located in Michigan or Federal Court sitting in Michigan) for purposes of all legal proceedings that may arise out of or relating to this Agreement or under any of the other documents entered into in connection therewith. Each of the Parties hereto (a) irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may have or hereafter have to the personal jurisdiction of such court or the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum, (b) agrees, to the fullest extent permitted by Federal law, not to raise any objection (other than in respect of subject matter jurisdiction) to the removal or transfer to the United States District Court for the Eastern District of Michigan of any such proceeding that is initially brought in any other court, and (c) agrees that it will not file any motion or assert any defense in any such proceeding that is inconsistent with the foregoing waivers and consent. Each of the Parties to this Agreement hereby consents to process being served in any such proceeding by the mailing of a copy thereof by certified mail, postage prepaid, to its address specified in **Section 17.14** (as such address may be changed as provided therein). EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION HEREWITH.

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Governing Law.** This Agreement is governed by, and construed in accordance with, the laws of the State of Michigan, excluding any conflict of laws rules thereof that may cause this Agreement to be governed by or construed in accordance with the law of a different jurisdiction.

**17.2 Entire Agreement.** This Agreement represents the entire agreement between Buyer and Turbine Supplier with respect to the subject matter hereof, and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, between the Parties or their representatives with respect to or in any manner connected with such subject matter. Without limiting the generality of the foregoing, nothing contained in any proposal, bid or forms submitted to Buyer by Turbine Supplier, or any correspondence, discussions, order acknowledgements or other documents associated therewith, shall be deemed part of this Agreement unless and except as may be expressly incorporated herein. This Agreement may be

amended, modified, superseded or supplemented only by a written instrument signed by Buyer and Turbine Supplier.

### **17.3 Assignment.**

17.3.1 Right to Assign. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned in whole or in part by either Party prior to Final Completion without the express written consent of the other Party, and any such assignment without such written consent shall be null and void. No assignment by either Party (even if consented to by the other Party) shall release that Party from its obligations hereunder unless the other Party expressly agrees to such a release.

17.3.2 Successors and Assigns. Subject to the foregoing, all of the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective permitted successors and permitted assigns.

### **17.4 Representations of Buyer and Turbine Supplier.**

17.4.1 Turbine Supplier's Representations. Turbine Supplier hereby represents and warrants the following to Buyer, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination, cancellation or expiration of this Agreement, and the final completion of the Work:

- (a) it is a corporation duly organized, validly existing and in good standing under the laws of New York; and
- (b) this Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding agreement of Turbine Supplier, enforceable against Turbine Supplier in accordance with its terms.

17.4.2 Buyer's Representations. Buyer hereby represents and warrants the following to Turbine Supplier, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination, cancellation or expiration of this Agreement, and the final completion of the Work:

- (a) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan; and
- (b) this Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms.

(c)



**17.5 Non-Waiver.** Any:

- (a) failure or delay by Buyer to: (i) insist upon strict performance of any of the terms and conditions hereof, (ii) exercise any rights or remedies provided herein or by law or equity, (iii) properly notify Turbine Supplier in the event of any breach, or
- (b) acceptance of or payment for any Turbines, Turbine components of other Equipment hereunder by Buyer, or
- (c) review of, commenting on or approval of (or failure to review, comment on or approve) any Engineering Documentation or other Information by Buyer,

shall not release Turbine Supplier from any warranties or other obligations under this Agreement and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof or a waiver of any of its rights or remedies as to any such Turbines, Turbine [REDACTED] [REDACTED] other Equipment, or Engineering Documentation or other Information regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any termination of this Agreement by Buyer operate as a waiver of any of the terms hereof. Whenever any requirement that a Turbine Supplier-furnished Engineering Document or other item of Information be submitted for or subject to "Authorization to Proceed", "Approval", "Acceptance", "Review", "Comment", or any combinations of such words or words of like import or effect, Buyer in no way represents to Turbine Supplier or any Subcontractor that any review or comments provided by Buyer, or any authorization to proceed given by Buyer, means that a complete check was performed by Buyer, and it is expressly understood that any authorization to proceed, approval, acceptance or the like given at any time by Buyer does not constitute acceptance or approval of design details, calculations, analyses, tests, or construction methods or materials developed or selected by Turbine Supplier, does not constitute a waiver of any right of Buyer and shall not relieve Turbine Supplier from full compliance with requirements of this Agreement.

**17.6 Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement. The Parties shall negotiate an equitable adjustment in any portions or provisions of this Agreement that are determined to be invalid or unenforceable to as closely as possible effect the underlying original purposes and intention thereof while avoiding the cause of the invalidity or unenforceability.

**17.7 Third Party Beneficiaries.** Unless and except to the extent that may be otherwise specifically identified herein, the provisions of this Agreement are intended for the sole benefit of Buyer and Turbine Supplier, and there are no third party beneficiaries.

**17.8 Rights Cumulative.** Except as otherwise expressly provided for or limited in this Agreement, (a) all rights and remedies available to Turbine Supplier and/or Buyer as set forth in this Agreement are cumulative with, and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law and/or in equity and (b) any specific right or remedy conferred upon or reserved to Turbine Supplier and/or Buyer in any provision of this Agreement will not

[REDACTED]

preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

- 17.9 Survival.** All provisions of this Agreement that either expressly by their terms survive or, by their nature survive or are not fully completed and satisfied after the termination or completion of this Agreement, shall remain in effect and shall survive termination or completion (including Final Completion) of this Agreement.
- 17.10 Joint Effort.** This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of 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 her
- 17.11 Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument. This Agreement (including any counterpart signature page) may be executed by facsimile signature or any image of the signed Agreement transmitted by electronic mail (such as an unalterable pdf image file) and such facsimile signature or image shall be deemed an original.
- 17.12 Publicity.** Turbine Supplier shall not make any press release or other external announcement or public communication concerning this Agreement or the Work hereunder without Buyer's prior written approval.
- 17.13 Notices.** All notices which are required or desired to be given hereunder shall be in writing and shall be deemed given: (i) one Business Day after deposit with a nationally recognized overnight courier service marked for overnight delivery and with all fees prepaid, or (ii) two Business Days after deposit in the United States mail if sent registered or certified mail, return receipt requested, with all postage and other charges prepaid, or (iii) upon receipt of a telefax (or, if that is not on a Business Day, then on the immediately following Business Day), or (iv) upon the Day of actual receipt (or refusal to accept actual delivery) if given or sent by any other means; and in any of such cases addressed and sent as follows:

If to Buyer:

Consumers Energy Company  
1945 W. Parnall Road, [REDACTED]  
Jackson, Michigan 49201  
[REDACTED]

If to Turbine Supplier:

General Electric Company  
1 River Road, [REDACTED]  
Schenectady, New York 12345  
[REDACTED]

[REDACTED]

[REDACTED]

Either Party may change its above-set forth address or fax number for receipt of notices, or the above-set person to whose attention notices to it are to be addressed, by a written notice to the other Party given in accordance with this **Section 17.13**.

**17.14 Audit.** Turbine Supplier shall maintain:

- (a) complete and accurate financial books and records as to any portion of the Work that, per a Change Order executed pursuant to **Section 3.18**, is to be performed on a time and material basis at the rates set forth in **Exhibit L**, or which for any other reason is mutually agreed upon to be paid for by the Owner other than at the fixed, all-inclusive Agreement Price now set forth in this Agreement;
- (b) complete and accurate books and records relating to Turbine Supplier's obligations with respect to Hazardous Substances, and
- (c) complete and accurate books and records relating to testing, quality control and inspection of Turbines, Turbine components or other Equipment, and relating to Performance Guarantee Tests

(all the foregoing hereinafter referred to as "**Records**") for a minimum of five (5) years after the conclusion of the Warranty Period or the expiration of any period for which Buyer is required to retain records by any Governmental Authority, whichever is later. All such Records must be open to inspection, audit and reproduction by Buyer or its authorized representatives during normal working hours throughout the aforesaid period, and if, at the end of the aforesaid period, Turbine Supplier proposes to dispose of any such Records, Turbine Supplier shall first offer same to Buyer.

**17.15 Confidentiality.** All information, whether oral, written or otherwise, which Buyer provides to Turbine Supplier in the performance of or otherwise in connection with this Agreement and which Buyer designates, in writing or orally, as confidential to Buyer (and/or to other contractors or vendors of Buyer), shall be held in strict confidence by Turbine Supplier, shall be used by Turbine Supplier solely for purposes of performing this Agreement, and shall not be disclosed by Turbine Supplier to any third party without Buyer's prior written consent. All information, whether oral, written or otherwise, which Turbine Supplier provides to Buyer in the performance of or otherwise in connection with this Agreement and which Turbine Supplier designates, in writing or orally, as confidential to Turbine Supplier (and/or to other contractors or vendors of Turbine Supplier), shall be held in strict confidence by Buyer, shall be used by Buyer solely for purposes of performing this Agreement or operating and/or maintaining the Turbines and [REDACTED] and shall not be disclosed by Buyer to any third party without Turbine Supplier's prior written consent, not to be unreasonably denied. The provisions of this **Section 17.15** shall survive the termination, cancellation or expiration of this Agreement, as well as the final completion of the Work.

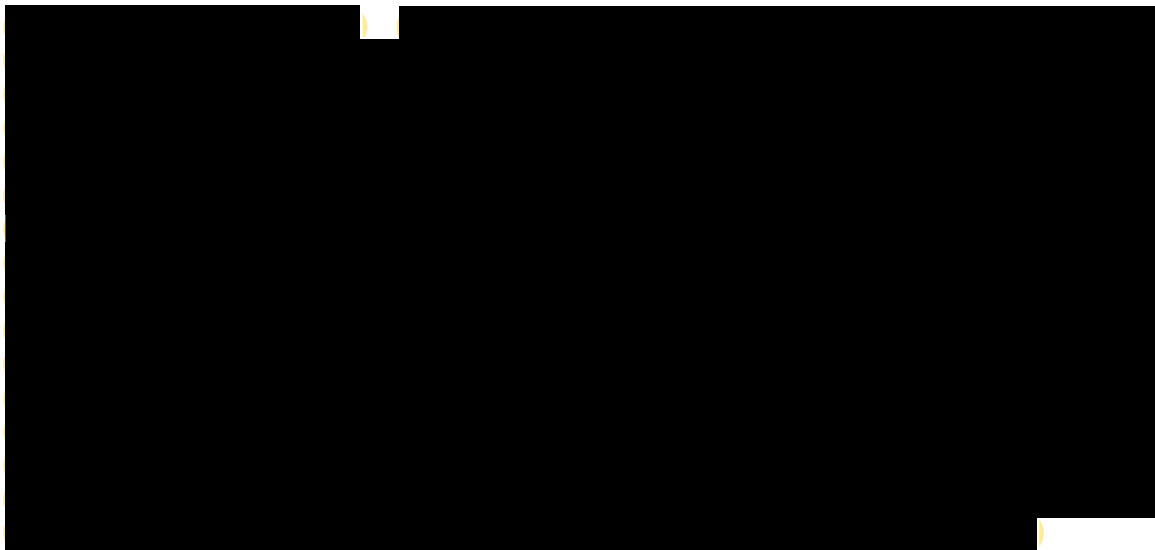
**17.16 Not Applicable.**

- 17.17 Export Control.** Buyer hereby agrees that it shall not, other than allowed by Applicable Law may permit, make any disposition by way of export of U.S. origin goods and technical data (including computer software) supplied by the Turbine Supplier hereunder; provided that Turbine Supplier shall expressly identify to Buyer in writing all items that are subject to this Section. The obligations of the Parties to comply with all applicable export control laws and regulations shall survive any termination, or discharge of any other contract obligations.

## **ARTICLE XVIII LIMITATIONS OF LIABILITY**

- 18.1 No Consequential Damages.** Except to the extent liquidated damages as expressly set forth in this Agreement, neither of the Parties will in any event be liable to the other for any loss of actual or anticipated profits or revenue, loss of shop space, loss of use, loss of opportunity, loss of goodwill, gratuitous advice as to matters outside the scope of this Agreement, cost of capital, loss of power or production, or for any consequential, special, incidental, punitive, exemplary, or indirect damages of any kind or nature whatsoever, sustained by the other Party or any of such other Party's Affiliates, whether arising out of breach of contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

**18.2**



The limitations and exclusions in this section shall apply regardless whether a claim is based in contract, including warranty or indemnity, tort, including negligence or strict liability, statute or any other extra contractual liability.

## **ARTICLE XIX PERSONNEL RISK ASSESSMENT FOR UNESCORTED PHYSICAL ACCESS OR CYBER ACCESS**

- 19.1 Personnel Risk Assessment and Cyber Security Access.**

- (a) Turbine Supplier shall perform (and document to Buyer in form reasonably satisfactory to Buyer that it has performed) a personnel risk assessment in respect of any employee or contractor of Turbine Supplier or of any Subcontractor who will be physically present at the Project Site or who will have any kind of remote access to the Gratiot Farms WindProject SCADA system or other control system(s) in the performance of the Work, which personnel risk assessment will include identification verification, seven (7) year criminal background check, confirmation that the employee or contractor is not listed on a terrorist watch list and any other measure requested by Buyer (a “Background Check”).
- (b) Buyer may by written notice to Turbine Supplier designate any portion of the Gratiot Farms Wind Project as a critical cyber asset of Buyer (any such portion a “Critical Cyber Asset”). In such event, Turbine Supplier shall, with Turbine Supplier’s costs thereof to be handled under a Change Order pursuant to the provisions of **Section 3.18** of this Agreement, provide (and document to Buyer in form reasonably satisfactory to Buyer that it has provided) annual training that meets required criteria identified by Buyer to Turbine Supplier as being needed to meet North American Electric Reliability Corporation (“NERC”) critical infrastructure protection and related training requirements (“Cyber Security Training”) to any employee or contractor of Turbine Supplier or of any Subcontractor who will have unescorted physical access or any kind of remote access to a Critical Cyber Asset. No employee or contractor of Turbine Supplier or of any Subcontractor shall be granted unescorted physical access or remote access to a Critical Cyber Asset without the prior written consent of Buyer.
- (c) In addition to the requirements of **Subsections 19.1(a)** and **(b)** above, Turbine Supplier shall be responsible for complying with any other existing, revised, or new applicable NERC standards and requirements that may be hereafter specified in writing by Buyer. Incremental costs of Turbine Supplier of so complying with applicable NERC standards and requirements that may be hereafter specified in writing by Buyer shall be handled under a Change Order pursuant to the provisions of **Section 3.18** of this Agreement.



[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**CONSUMERS ENERGY COMPANY**

By: [Redacted]  
Name: [Redacted]  
Title: [Redacted]

**GENERAL ELECTRIC COMPANY**

By: [Redacted]  
Name: [Redacted]  
Title: [Redacted]

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EXHIBIT W

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Journal compilation © 2006 Blackwell Publishing Ltd

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Group	Yes (%)	No (%)
All respondents	78	22
Those who have used the technology	85	15
Those who have not used the technology	65	35

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# **ATTACHMENT 3**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)  
regarding the regulatory reviews, revisions, )  
determinations, and/or approvals necessary for )  
CONSUMERS ENERGY COMPANY to )  
fully comply with Public Acts 286 and 295 )  
of 2008. )  
\_\_\_\_\_ )

Case No. U-15805-Q

**AFFIDAVIT OF SCOTT D. THOMAS**

Scott D. Thomas, being first duly sworn, deposes and says as follows:

1. My title is Executive Director of Enterprise Project Development for Consumers Energy Company ("Consumers Energy" or the "Company").

2. I graduated from the University of Michigan with a Bachelor of Science, Mechanical Engineering degree and a Master of Business Administration degree. I am a professional engineer licensed in the state of Michigan. I have been employed by CMS Energy Corporation and its affiliates for over 40 years in various areas including engineering, project management, power generation operations, corporate finance, and business development. As of July 1, 2017, I assumed the position of Executive Director of Enterprise Project Development. In this role I am responsible for the maturation and development of select major projects. My team is responsible for, including but not limited to, successful acquisition and completion of the following development-related activities: Site Selection Process (Technology Studies, Access to Transmission, Stakeholder Engagement); Easement Agreement Process (land acquisition); Development Studies Process (Site Plan, Environmental, Interconnection, Noise, Shadow Flicker); Local, State, and Federal Permit Process (Special Land Use Permit, Michigan Public Service Commission ("MPSC" or the "Commission") Approval, Federal Aviation Administration matters); and Long Lead Time Procurement Process (Turbine Contract, Balance

Of Plant Engineering, Procurement and Construction (“BOP EPC”), and Main Power Transformer) in order to transition a complete project execution package to our Enterprise Project Management organization.

3. I have read the Company’s October 24, 2019 Application in this matter and I am familiar with the contents thereof. The facts contained therein are true, to the best of my knowledge and belief.

4. As Executive Director of the Enterprise Project Development group, I support the development and modification of wind, solar, and co-generation projects. This includes supporting the development of the Gratiot Farms Wind Project (“Gratiot Farms”), an up to 150 MW wind-powered electric generating facility located in Gratiot County, Michigan. Included in the order in Case No. U-18231 approving the Company’s Renewable Energy Plan (“RE Plan”), the Commission approved the Development Asset Acquisition (“DAA”) contract for Gratiot Farms. Since the aforementioned approval, the Company has executed a BOP EPC Agreement and a Turbine Purchase Agreement (“TPA”) for Gratiot Farms. The BOP EPC Agreement and TPA filed herein were negotiated under my direction. The Request for Proposal (“RFP”), contract selection, and negotiation process for each contract is hereinafter described.

#### **Balance of Plant Engineering, Procurement, and Construction Contract**

5. Consumers Energy conducted an RFP and a bid evaluation process for the BOP EPC for Gratiot Farms. Prior to entering into the BOP EPC Agreement, Consumers Energy established a list of qualified contractors who were known to be capable of providing full scope balance of plant construction services, including equipment, labor, tools, supervision, materials, engineering, and procurement services for Gratiot Farms. Industry reputation, experience, and financial strength sufficient to stand behind their services were important factors in the

evaluation. Based on that analysis, four contractors were issued a formal RFP on November 8, 2018 and a revised RFP on April 5, 2019.

6. Consumers Energy received proposals from three of the four potential BOP EPC contractors on May 16, 2019. Consistent with the competitive bid process utilized on previous renewable energy projects, the Company first evaluated the proposals for completeness and consistency with the proposal content and bid requirements as described in its RFP. No proposals were rejected as a result of this step of the bid evaluation. Next, the Company sent out a series of clarification questions to which the bidders responded. The clarification questions were intended to ensure all scope had been included in each respondent's bid submission. Bid evaluation tables were completed to fairly evaluate and compare each proposal. The tables evaluated each proposal's price, commercial terms, schedule, and adherence to technical specifications.

7. After the preliminary analysis, Consumers Energy selected two bidders for short-list consideration on June 26 and 28, 2019, respectively. The Company met with each of the short-list bidders and negotiated commercial terms with each bidder. After analysis, Consumers Energy selected the Michigan-based Barton Malow Company as the Gratiot Farms BOP EPC contractor and entered into the contract with Barton Malow Company.

8. Barton Malow Company has constructed several utility scale wind farms in Michigan, most recently the 29-turbine Apple Blossom Wind Farm in Huron County. In addition, Barton Malow Company was the BOP EPC Contractor for the first phase of Cross Winds® Energy Park ("CWEP"), a 62-turbine wind farm owned by Consumers Energy.

9. The cost of the BOP EPC Agreement is consistent with costs previously assumed when calculating the Levelized Cost of Energy (“LCOE”) for Gratiot Farms. The BOP EPC Agreement is included as Attachment 1 to the Application.

### **Turbine Purchase Agreement**

10. Initially, the Company established a list of qualified wind turbine generator suppliers by identifying companies who:

- a. supplied wind turbine technology well suited for an International Electrotechnical Commission (“IEC”) 61400 Class III wind regime;
- b. could supply equipment compatible with safe harbor equipment;
- c. matched current wind turbine fleet technology;
- d. were well-established based on reputation; and
- e. have the infrastructure and support networks required to furnish equipment and services necessary to build and maintain a utility-scale wind park project located in Michigan.

The Company selected the aforementioned list of attributes in order to deliver an economically viable utility-scale wind power plant project. One of the first selection criterion in developing an economically viable wind project was to select wind turbine technology best suited to operate in an IEC Class III wind regime (or an area that experiences an annual average wind speed at turbine hub height of 7.5 meters per second (“m/s”) and an extreme 50-year gust of 52.5 m/s or less). This allows the project to have an effective Net Capacity Factor (“NCF”) for the available wind resource. Another important selection criterion was to only solicit proposals from vendors for the balance of plant turbine supply that would be compatible with available Production Tax Credit (“PTC”) safe harbor equipment. Safe harbor equipment is equipment that meets the

requirements of a series of Internal Revenue Service (“IRS”) notices,<sup>1</sup> thereby qualifying a particular project for full PTC. Lastly, the Company chose to only solicit proposals from wind turbine vendors who matched the Company’s current fleet and who had infrastructure and support networks necessary to furnish, commission, and maintain utility-scale wind parks located in Michigan. The choice to match the Company’s current fleet standardizes and streamlines the Company’s Operations and Maintenance (“O&M”) and warranty processes. After considering all of these factors, the Company elected to solicit turbine purchase agreement proposals from two vendors for Gratiot Farms.

11. Proposals were received from the two suppliers and evaluated through 2018. Proposals were reviewed for scope, schedule, technology, and contractual terms and conditions. Neither proposal was rejected as a result of this step.

12. The Company originally elected to move forward with a supplier who the original developer (Tradewind Energy Inc. (“TWE”)) contracted with to provide certain safe-harbored equipment in its DAA Agreement. The Company proceeded to negotiate a TPA with the supplier. During the course of these negotiations, the turbine supplier advised that the cost of the turbines would increase due to changing market conditions and recently-enacted steel import tariffs. The combined effect of the cost increases would have increased the total project purchase price of Gratiot Farms. This caused the Company to renew discussions with the second turbine supplier, General Electric (“GE”), in late 2018.

13. The Company used a financial model to determine which turbine technology provided a more economic project. A 31-year LCOE using total project purchase price, including selected wind turbine technology options, BOP EPC costs, NCF derived from wind

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<sup>1</sup> See IRS Notice 2013-29, IRS Notice 2013-60, IRS Notice 2014-46, IRS Notice 2015-25, IRS Notice 2016-31, IRS Notice 2017-4, and IRS Notice 2018-59.

resource modeling, the applicable turbine's power curve, and O&M costs for each project. While technology from one supplier would produce more MWh in a year, the cost of the technology increased the total project purchase price. The second option would result in switching turbine technology and maintaining the previously-assumed total project purchase price, but would decrease the total MWh produced by the plant, resulting in a lower NCF and thereby decreasing the future value of the PTC. Through the evaluation process, the Company recognized that both options would cause an increase in the projected LCOE of the project that had been filed in June 2018. After evaluating the alternatives, the Company elected to pursue the option that provided a lower LCOE of \$49/MWh and pursued further negotiations with GE.

14. The Company continued to complete the engineering necessary to construct Gratiot Farms. In order to provide an accurate estimation of the project's NCF, Consumers Energy engaged a reputable third-party consultant to perform the analysis. Completing a third-party study is typical practice for the Company's wind development because NCF has a significant role in the economics of a project. A lower NCF not only indicates lower yearly MWh production, but also indicates lower PTC credit in the future. Given the importance of an accurate NCF, the Company also elects to utilize a more conservative confidence interval than industry standard. Most wind industry participants use a P50 confidence interval, which means that over the life of the plant the actual yearly capacity factor is expected to be less than the P50 NCF 50% of the time. The Company elects to use a P75 confidence interval because this factor more closely aligns with the performance of the Company's existing wind farms. A P75 confidence interval has a higher degree of certainty; the actual yearly capacity factor is expected to be less than the P75 NCF only 25% of the time. Given the higher degree of certainty, the NCF used by the Company is more conservative (i.e. lower) than that generally used by the industry.

As the Company's wind development moves to areas in the state without historic data for comparison, the Company saw particular value in further validating NCF estimations. The third-party consultant provided a report indicating a capacity factor almost 2% lower than it originally estimated. The Company performed due diligence to understand the nature of the change and to mitigate lifetime project costs including landowner payments and O&M assumptions. The Company believes the analysis provided by the third party is an accurate estimation of the wind resource of the area. Utilization of a more conservative NCF with a higher degree of confidence is a prudent approach to accurately calculate the LCOE of Gratiot Farms. Despite the overall capital costs of Gratiot Farms staying consistent throughout the development, the change in the NCF further increased the LCOE of the project to \$52/MWh.

15. The capital costs provided by GE were in line with previous TPAs executed by the Company and with the TPA cost estimate the Company had originally assumed for the Gratiot Farms TPA. The Company completed a review of GE's financial strength, reputation, market penetration for projects and services, demonstrated product and service experience in the United States, as well as its safety and compliance record. TWE, which was the developer of Gratiot Farms, was able to substitute GE safe-harbor turbines for the safe-harbor wind turbines originally provided for in the DAA Agreement. The compatible safe harbor equipment utilized for Gratiot Farms will be seven GE 2.3-116 turbines which will stand on 80-meter towers. The Company negotiated and entered into the TPA with GE provided as Attachment 2 to the Application for the balance of plant turbine supply for Gratiot Farms. In September 2019, the Company also executed an amendment to the DAA Agreement finalizing Gratiot Farms' turbine technology as GE turbines.

16. GE is one of the largest wind turbine manufacturers in the world with over 35,000 wind turbines installed globally. Furthermore, GE has proven its success locally by furnishing multiple wind parks across the state of Michigan. The Company has successfully completed Phase I and Phase II of CWEP and is in the midst of constructing CWEP Phase III and has contracted to construct Crescent Wind with GE wind turbines. Under the appended TPA for Gratiot Farms, GE will provide the Company with the balance of plant turbine supply, which is 53 GE 2.5-127 turbines and deliver and commission the seven GE 2.3-116 safe-harbor turbines obtained under the DAA Agreement. The GE 2.5-127 turbines produce 2.5 MW each, have a 127-meter rotor diameter, and stand on 89-meter towers.

17. The Company has developed Gratiot Farms with full expectation to qualify for 100% PTC by relying on the 5% Financial Safe Harbor test and placing turbines into service by December 31, 2020. The Company secured an opinion from national tax counsel that concluded that the DAA Developer properly safe-harbored the equipment purchased under that contract and therefore a project constructed using that equipment should qualify for full PTC. Additionally, IRS guidance allows safe-harbored equipment to be transferred to unrelated parties, if transferred along with other project assets so the transfer of the turbines from the developer to the Company should not disturb the safe-harbored status of the equipment. If there are delays and the project is unable to place turbines in service before December 31, 2020, the BOP EPC and the TPA have contractual provisions designed to protect customers and the Company.

18. Based on its financial modeling performed in June 2018, the Company projected an LCOE for the Gratiot Farms project of approximately \$46/MWh. This projected LCOE was included as part of the Company's request for approval of the DAA Agreement with the Commission. Based on the Company's updated financial modeling with current turbine

technology and NCF, the Company now projects an LCOE of approximately \$52/MWh for the Gratiot Farms project. As previously discussed, the primary reasons for the projected increase in LCOE is due to (i) the increased turbine costs arising from recently-enacted steel import tariffs, which resulted in the change in wind turbine technology, and (ii) a conservative NCF. While selecting either turbine technology would have resulted in increasing the LCOE for Gratiot Farms, the Company selected the turbine technology that was more economic and that maintained the total project purchase price. The expected LCOE at Gratiot Farms continues to be less than the projected \$57.75/MWh LCOE for new proxy wind projects approved in the Company's RE Plan. An LCOE of approximately \$52/MWh is consistent with other recent wind projects in the state of Michigan.

19. The BOP EPC Agreement and TPA are consistent with Consumers Energy's RE Plan and should be approved.

If sworn as a witness, I would testify as set forth above.

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Scott D. Thomas, P.E.

Subscribed and sworn to before me this 24<sup>th</sup> day of October, 2019.

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Melissa K. Harris, Notary Public  
State of Michigan, County of Jackson  
My Commission Expires: 06/11/20  
Acting in the County of Jackson

# **ATTACHMENT 4**

# Levelized Cost Calculation of a Combined Cycle Natural Gas Plant

Case No. U-18241

Exhibit S-1 (JJH-1)

Date: January 2018

Page 1 of 3

	NGCC	notes
Capacity MW	400	MW
Loading Factor	71.00%	% of time the unit would be dispatched if available
Equivalent Avail.	87.00%	% of time the unit would be available for dispatch.
Capacity Factor	61.77%	(Loading Factor)(Equivalent Availability)
Heat Rate Btu/kWh	6719	BTU/kWh
Fuel Cost \$/MMBtu	\$5.99	\$ per Million BTU
Total Cost MM no AFUDC	\$478.651	MM
AFUDC	\$65.45	MM
Total Cost MM	\$544.100	MM
Fixed Charge Rate	12.38%	% used to calculate fixed cost recovery component
Fixed O&M \$/kW	\$14.62	\$/kW
Annual Lev. Fixed Cost MM	\$67.36	MM
Total Annual Lev. Fixed Cost MM	\$73.21	MM
Fixed Cost \$/kWh	0.0338	\$/kWh
Fuel Cost \$/kWh	0.0402	\$/kWh
Var. O&M \$/kWh	0.0031	\$/kWh
Total Var. Cost	0.0433	\$/kWh
<b>Total Cost \$/kWh</b>	<b>0.07715</b>	\$/kWh

Overnight Cost (MM) 451.8681661

AFUDC		Total Overnight Cost (MM) in 2016 \$	Inflation Rate	Cumulative	Finance Rate
Year	GCC	\$451.868	2%		6.56%
1	5%	23	23.05	23.05	1.51
2	30%	136	141.04	164.08	10.76
3	35%	158	167.83	331.92	21.77
4	30%	136	146.73	478.65	31.40
	1	452	478.651		65.45

Variable cost price escalation:  
Variable portion of levelized cost is multiplied by Nat Gas price forecast index, with 2021 as a base year (i.e.

FIXED				\$33.82		VARIABLE				\$43.33		
	Producer Price Index-- Intermediate Materials	Producer Price Index-- Industrial Commodities	Producer Price Index-- Machinery & Equipment	Producer Price Index-- Metals & Metal Products		Producer Price Index-- Utility Natural	Employment Cost Index-- Total Private Compensation		Weighted Average (Utility Nat Gas 70% ; Employment Cost 30%)		2016 Transfer Price Schedule	2017 Transfer Price Schedule
2017	-	-	-	-	31.7440	-	-	43.2021	2017	\$74.62	\$74.95	
2018	-	-	-	-	32.1522	-	-	42.0273	2018	\$77.96	\$74.18	
2019	-	-	-	-	32.7267	-	-	41.2420	2019	\$80.64	\$73.97	
2020	-	-	-	-	33.2927	-	-	42.7450	2020	\$82.95	\$76.04	
2021	-	-	-	-	33.8232	-	-	43.3206	2021	\$85.75	\$77.15	
2022	-	-	-	-	34.3888	-	-	45.1907	2022	\$88.75	\$79.58	
2023	-	-	-	-	34.9710	-	-	47.6368	2023	\$89.94	\$82.61	
2024	-	-	-	-	35.5557	-	-	49.6631	2024	\$91.63	\$85.22	
2025	-	-	-	-	36.1335	-	-	50.8882	2025	\$93.48	\$87.02	
2026	-	-	-	-	36.7137	-	-	51.7486	2026	\$94.56	\$88.46	
2027	-	-	-	-	37.3909	-	-	53.3272	2027	\$96.55	\$90.72	
2028	-	-	-	-	38.1122	-	-	54.6620	2028	\$98.16	\$92.77	
2029	-	-	-	-	38.7923	-	-	56.0848	2029	\$99.88	\$94.88	

**Source: EIA Annual Energy Outlook 2017**<https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2017&region=0->

Period (Used for Levelized Calculation)		Henry Hub Using 2017 Annual Energy Outlook (2016 Dollars)	Henry Hub Using 2017 Annual Energy Outlook (2017 Dollars)
2017		<b>3.06</b>	3.1212
2018		<b>3.55</b>	3.621
2019		<b>4.22</b>	4.3044
2020		<b>4.9</b>	4.998
2021	1	<b>4.88</b>	4.9776
2022	2	<b>4.83</b>	4.9266
2023	3	<b>4.97</b>	5.0694
2024	4	<b>5.23</b>	5.3346
2025	5	<b>5.45</b>	5.559
2026	6	<b>5.74</b>	5.8548
2027	7	<b>6.01</b>	6.1302
2028	8	<b>6.29</b>	6.4158
2029	9	<b>6.56</b>	6.6912
2030	10	<b>6.76</b>	6.8952
2031	11	<b>7.05</b>	7.191
2032	12	<b>7.2</b>	7.344
2033	13	<b>7.23</b>	7.3746
2034	14	<b>7.33</b>	7.4766
2035	15	<b>7.6</b>	7.752
<b>Discount Rate</b>		<b>8.98%</b>	
<b>Net Present Value Fuel</b>		<b>\$47.36</b>	<b>\$48.31</b>
<b>Levelized Fuel Price</b>		<b>\$5.87</b>	<b>\$5.99</b>

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions, )
determinations, and/or approvals necessary for )
CONSUMERS ENERGY COMPANY to )
fully comply with Public Acts 286 and 295 )
of 2008. )

Case No. U-15805-Q

PROOF OF SERVICE

STATE OF MICHIGAN )
) SS
COUNTY OF JACKSON )

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on October 24, 2019 she served an electronic copy of Consumers Energy Company's Application for Ex Parte Approval of the Wind Turbine Purchase Agreement and the Balance of Plant Engineering, Procurement, and Construction Agreement Related to the Gratiot Farms Wind Project upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

Melissa K. Harris

Subscribed and sworn to before me this 24th day of October, 2019.

Jennifer Joy Yocum, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 12/17/24
Acting in the County of Jackson

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