

Exhibit C. Example of a Power Purchase Agreement

Contract No. 01PB-_____
_____, 2002

POWER PURCHASE AGREEMENT

**Executed by the
UNITED STATES OF AMERICA,
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
[SELLER]
(_____ Wind Project)**

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Exhibits

Exhibit A	Facility Description and Map
Exhibit B	Form of Notice
Exhibit C	Form of Invoice
Exhibit D	Termination Payment Schedule

This POWER PURCHASE AGREEMENT (this “Agreement”) is executed by and between [SELLER] (“Seller”), and the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (“BPA”). Both Seller and BPA are sometimes referred to herein individually as “Party” and collectively as “Parties.”

WHEREAS, BPA is authorized by Federal law, including the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, the “Northwest Power Act”) and other applicable laws, to acquire sufficient capacity and energy (where “power” may herein refer to either or both terms) from power production facilities, including wind powered production facilities, to meet the electric power requirements placed on BPA by its regional customers.

WHEREAS Seller desires to construct, own, and operate a wind powered electric generating plant to be located _____.

WHEREAS, Seller desires to sell to BPA [all or a portion] of the Energy Output generated by the Facility (as defined below), and BPA desires to buy the same from Seller.

WHEREAS, BPA's obligation hereunder is not, nor shall it be construed to be, a general obligation of the United States, nor is it intended to be or is it secured by the full faith and credit of the United States.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

1. Definitions

The terms listed in this Section shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. The plain meaning of terms not listed in this Section and otherwise used in this Agreement shall apply, unless such unlisted terms have meanings as commonly used in Good Utility Industry Practice, in which case the Good Utility Industry Practice meaning shall apply.

- (a) "Actual Average Annual Output" means the actual amount of average annual Energy Output generated by the Facility during any given 24-month rolling
- (b) "Availability Factor" means the number of hours the Facility was in service and ready during the preceding twelve (12) month period to generate Energy Output in accordance with Good Utility Industry Practice, divided by 8,760 hours.
- (c) "BPA Wind Turbine(s)" mean each and all of those [number, manufacturer, and size] wind turbine generators, or a reasonably acceptable replacement or substitute therefor, which constitute part of the Facility and are dedicated to producing Energy Output for sale to BPA pursuant to this Agreement.
- (d) "Business Day" means each Monday through and including Friday during the term of this Agreement other than nationally recognized holidays.
- (e) "Commercial Operation" means when a particular BPA Wind Turbine in the Facility is ready for regular, daily operation, has been connected to the Grid, and is capable of producing Energy Output in accordance with Good Utility Industry Practice, all as certified in writing by Seller to BPA.
- (f) "Commercial Operation Date" means, with respect to a particular BPA Wind Turbine, the first day on which Commercial Operation occurs.
- (g) "Commission(s)" means any of the state or Federal regulatory agencies having jurisdiction over BPA or Seller including, but not limited to, the Federal Energy Regulatory Commission ("FERC"), or successor agencies.
- (h) "Completion Date" means the date when all of the BPA Wind Turbines have achieved Commercial Operation and the Conditions Precedent in Section 9(a) have been satisfied.
- (i) "Conditions Precedent" has the meaning given in Section 9(a).
- (j) "Contract Year" means any consecutive twelve (12) month period commencing with the Completion Date or its anniversary.

- (k) “Delivery Arrangements Agreement” means an agreement between Power Business Line and the Transmission System Operator that provides for the receipt of Energy Output at the Point of Delivery and for the transmission and delivery of such Energy Output to points beyond the Point of Delivery.
- (l) “Emergency” means a physical condition or situation that, in the judgment of the Transmission System Operator, affects or will affect the ability of the Grid to accept Energy Output from the Facility at the Point of Delivery.
- (m) “Energy Output” means the amount of electrical energy generated by the BPA Wind Turbines and delivered at the Point of Delivery. Energy Output shall be metered in whole kilowatt-hours (kWh) by the Metering Device(s) on the high side of the transformer at the Facility Substation. Energy Output delivered to BPA at the Point of Delivery shall be deemed to be equal to the energy measured by the Metering Device(s) minus energy losses of ____ percent between the Metering Device and the Point of Delivery.
- (n) “Energy Payment Rate” has the meaning ascribed in Section 7.
- (o) “Event of Default” means an event as defined in Section 10 that confers a contractual right upon the non-defaulting Party to terminate the Agreement.
- (p) “Facility” means the _____ Project, which includes all of the following, the purpose of which is to produce and sell electricity: Seller’s equipment, property, wind turbines, step-up transformer(s), circuit breakers, necessary electric lines to connect to the Point of Delivery, protective and associated equipment, improvements, and other tangible and intangible assets, property and access rights and contract rights reasonably necessary for the construction, operation, and maintenance of the electric wind generating facility to be located at the site specified in Section 4 that produces Energy Output being sold under this Agreement.
- (q) “Facility Substation” means the facilities located at the point of intersection of the Facility Transmission Line and BPA’s _____ transmission line.
- (r) “Facility Transmission Line” means the transmission line connecting the Wind Turbines to the Point of Delivery.
- (s) “First Delivery Date” means the first date on which the Interconnection Facilities are energized and capable of accepting delivery of Energy Output at the Point of Delivery.
- (t) “GDPIPD” means the implicit price deflator for the gross domestic product as computed and published by the U.S. Department of Commerce. The figures to be used in this adjustment shall be those presented in the “Gross Domestic Product: First Quarter ‘Final’ Press Release” typically released in June of each calendar year by the United States Department of Commerce, Bureau of Economic Analysis. No subsequent revisions released by the United States Department of Commerce to those figures will be considered to affect or adjust the Energy Payment Rate for that particular Contract Year.

- (u) “Good Utility Industry Practice(s)” 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 the electric utility industry) that, at a particular time, in the exercise of reasonable 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 law, regulation, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Good Utility Industry Practice(s) include, but are not limited to, taking reasonable steps to ensure that:
- (1) equipment, materials, resources, and supplies are available to meet the Facility’s needs;
 - (2) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Facility;
 - (3) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
 - (4) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - (5) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations 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; and
 - (6) the equipment will function properly under both normal and reasonably expected Emergency conditions at the Facility.
- (v) “Grid” means the electrical transmission system that is beyond the Point of Delivery and controlled by the Transmission System Operator.
- (w) “Inflation Adjustment Factor” shall mean a fraction, the numerator of which is the GDPIPD for the first (1st) quarter of the current calendar year and the denominator of which is the GDPIDP for the first (1st) quarter of the preceding year.
- (x) “Interconnection Facilities” means all the land rights, materials, equipment, and facilities installed for the purpose of interconnecting the BPA Wind Turbines to BPA’s _____ transmission line, including, but not limited to, electrical interconnection, switching, metering, relaying, and communication and safety equipment.

- (y) “Interconnection Facilities Agreement” means the Generation Interconnection Agreement between Seller and Transmission System Operator that contains the rights and obligations of the parties with respect to the interconnection of the Facility to BPA’s _____ transmission line and the methods and procedures for the safe operation and maintenance of the Interconnection Facilities.
- (z) “Metering Device(s)” means the electronic kilowatt-hour meter and associated potential transformers and current transformers used to measure the Energy Output from the Facility, as described in Section 5(c)(2) and Exhibit A.
- (aa) “Non-Billing Dispute” means any and all disputes between the Parties other than Billing Disputes.
- (bb) “On-Peak Month” means any calendar months of September through and including February.
- (cc) “Operating Committee” means the committee comprised of one delegate each from BPA and Seller pursuant to Section 9(e) of this Agreement.
- (dd) “Seller’s Computer Monitoring System” means the computer-based monitoring system comprised of computer hardware, software, and private communication system extending to each BPA Wind Turbine, which system gathers, archives and reports turbine operating data.
- (ee) “Party” and/or “Parties” means Seller, BPA, or Seller and BPA.
- (ff) “Point of Delivery” means the electric system point at which Seller makes the Energy Output available to BPA.
- (gg) “Power Business Line” means BPA’s Power Business Line.
- (hh) “Seller’s Interconnection Facilities” means that portion of the Interconnection Facilities that are located outside of the boundary fence of the Facility Substation but with sufficient additional cable attached to reach to the Point of Delivery within the Facility Substation, as described in greater detail in Exhibit A.
- (ii) “Transmission System Operator” means BPA’s Transmission Business Line or any successor that controls and operates the Grid.

2. Term

(a) Effectiveness; Basic Term

This Agreement shall become effective upon the date signed by both Parties (Effective Date) and shall remain in effect for a period of _____ years from the Completion Date, subject to the early termination provisions set forth in Section 11(a) of this Agreement.

(b) **Survival of Terms and Conditions**

Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and adjustments related to the period prior to termination, including repayment of any money due and owing to or by BPA pursuant to this Agreement.

3. Exhibits

The exhibits listed in the Table of Contents are incorporated into this Agreement by reference.

4. Facility Description

(a) **Summary Description**

Seller shall construct, operate, and maintain the Facility. Exhibit A provides a complete description of the Facility, including identification of the BPA Wind Turbines and other equipment and components that comprise the Facility.

(b) **Site**

The Facility shall be located at the area generally described as:

Facility Name: _____ Wind Project

Location: Sections ____, Township ____, Range ____, of the ____ Principal Meridian, _____, with a portion of Seller's Interconnection Facilities also located _____.

County/State: _____.

A scaled map that identifies the location of the Facility, the BPA Wind Turbines, the Interconnection Facilities, and significant ancillary facilities, including the facilities located at Point of Delivery, is included in Exhibit A.

(c) **General Design and Construction of the Facility**

Seller shall construct the Facility in a workmanlike, professional manner according to Good Utility Industry Practice(s). The Facility shall be:

- (1) capable of supplying Energy Output in compliance with the requirements of the Interconnection Facilities Agreement;
- (2) capable of operating at power levels as specified in the Interconnection Facilities Agreement; and
- (3) equipped with protective devices and generator control systems designed and operating in accordance with the Interconnection Facilities Agreement and Good Utility Industry Practice(s).

5. Interconnection Facilities and Metering

(a) Interconnection Facilities Agreement

Seller shall negotiate in good faith and enter into an Interconnection Facilities Agreement that is reasonably acceptable to Power Business Line for the purposes and in accordance with the schedules set forth in this Section 5(a). Power Business Line shall diligently cooperate with Seller in these negotiations.

- (1) The Interconnection Facilities Agreement shall address and describe (i) the switching, metering, relaying, communications and safety equipment that will constitute the Interconnection Facilities, (ii) the processes, procedures for, and timing of the procurement, construction, testing and placement into operation of the Interconnection Facilities and their connection to the Point of Delivery, (iii) the billing and payment schedules for the construction, operation and maintenance of the Interconnection Facilities, (iv) the operating procedures and requirements of the Interconnection Facilities, including the requirements for the BPA Wind Turbines to be capable of immediate disconnection from the Point of Delivery in accordance with Good Utility Industry Practice(s) or in the event of Emergency, and (v) the terms, conditions and other requirements relating to the construction, operation and maintenance of the Interconnection Facilities. As between BPA and Seller, all expenses associated with the procurement, construction, installation and operation of the Interconnection Facilities shall be paid by Seller in accordance with the Interconnection Facilities Agreement.
- (2) It is an objective of this Agreement that the First Delivery Date occur no later than _____, provided that such date shall be extended day-for-day by any Force Majeure or any delay caused by Power Business Line. Seller shall give Power Business Line fifteen (15) calendar days written notice prior to the First Delivery Date. If the Completion Date occurs more than thirty (30) days after the First Delivery Date, irrespective of the occurrence of any Force Majeure and otherwise not due to the negligence or fault of BPA, then Seller shall reimburse BPA for payments made for transmission services for the period commencing on the day following the thirtieth (30th) day after the First Delivery Date and continuing until the Completion Date; provided that Power Business Line shall act in a commercially reasonable manner to minimize costs related to such transmission services.

(b) Delivery Arrangements Agreement

Power Business Line shall enter into one or more agreements with the Transmission System Operator and/or with others that provide for the receipt of the Energy Output at the Point of Delivery and for the transmission and delivery of such Energy Output to points beyond the Point

of Delivery (such agreements shall constitute the “Delivery Arrangements Agreement”). Power Business Line shall be solely responsible for negotiating, and maintaining during the term of this Agreement, the Delivery Arrangements Agreement. Seller shall diligently cooperate with Power Business Line in these negotiations.

(c) **Other Provisions Related to Interconnection**

(1) **Access to Facility**

During the term of this Agreement, appropriate representatives of BPA shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility, including the control room and the Interconnection Facilities, to read and maintain meters and to perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the construction, operation or maintenance of the Facility.

(2) **Metering Devices**

(i) All Metering Devices used to measure the Energy Output under this Agreement shall be subject to approval by BPA, owned by Seller, and installed in accordance with the Interconnection Facilities Agreement. Seller shall, at Seller’s expense, install communication equipment that allows BPA to read the Metering Devices from a remote location (such as BPA headquarters) at any time. Metering Devices shall be maintained directly by Seller or by agents or subcontractors directly under the Seller’s control or by the Transmission System Operator. All Metering Devices used to measure the Energy Output under this Agreement shall be sealed and the seal may be broken only when such Metering Devices are to be inspected, and tested and/or adjusted. The number, type, and location of such Metering Devices shall be specified in the Interconnection Facilities Agreement.

(ii) All Metering Devices shall be maintained, calibrated, and tested in conformance with the policies of the Transmission System Operator and the terms of the Interconnection Facilities Agreement. Seller shall arrange to test the Metering Devices at least once per calendar year. BPA, at its own expense, may require that Seller initiate testing and inspection of the Metering Devices. Seller shall permit a representative of BPA to witness and verify such inspections and tests, provided, however, that BPA shall comply with all of the Seller’s safety standards. Seller shall provide BPA with copies

of any periodic or special inspection or testing reports relating to the Metering Devices.

- (iii) BPA may elect to install and maintain, at its own expense, Metering Devices and data gathering and communication equipment used to monitor, record, or transmit data relating to the Energy Output from the BPA Wind Turbines. Seller shall arrange for a location within the Facility Substation control house accessible to Seller and BPA, for such data gathering and communication equipment that may be installed.
- (iv) Seller shall notify BPA within 48 hours of Seller receiving actual notice of any inaccuracy or defect in a Metering Device. Seller shall cause the Metering Devices to be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error at the expense of Seller or the Party owning the defective or inaccurate device.

(3) Adjustment for Inaccurate Meters

If a Metering Device fails to register or is found upon testing to be inaccurate by more than a quarter of one percent (0.25%), an adjustment shall be made correcting all measurements by the inaccurate or defective Metering Device, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (i) In the event that the Metering Device is found to be defective or inaccurate and an adjustment factor for the Metering Device cannot be reliably calculated, the Parties shall use the measurements from BPA-owned meters if they have been installed, fully operational and calibrated pursuant to Section 5(c)(2). If BPA-owned meters have not been installed or, if installed, are not fully operational or calibrated, the Parties shall use production data from Seller's Computer Monitoring System to determine the amount of such inaccuracy.
- (ii) In the event that Seller's Computer Monitoring System is found to be inaccurate by more than two percent (2.0%), the Parties shall estimate the amount of the necessary adjustment using the site meteorological information for the period of the inaccuracy based upon deliveries of Energy Output from the BPA Wind Turbines during periods of similar operating conditions when the Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.
- (iii) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (1) the last one-half of the period from the last

previous test of the Metering Device to the test that found the Metering Device to be defective or inaccurate, or (2) the 180-day period immediately preceding the test that found the Metering Device to be defective or inaccurate.

- (iv) To the extent that the adjustment period overlaps with a period of deliveries for which payment has already been made to Seller by BPA, BPA shall use the corrected measurements as determined in accordance with this Section to recalculate the amount due for the period of the inaccuracy and shall subtract the previous payments by BPA for such period from such recalculated amount. If the difference is a positive number, the difference shall be paid by BPA to Seller; if the difference is a negative number, that difference shall be paid by Seller to BPA, or at BPA's discretion such difference may take the form of an offset to payments due Seller by BPA. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless BPA elects payment via an offset.

(4) **Reliability Standards**

Seller shall operate the BPA Wind Turbines in a manner that complies with the operating requirements set forth in the Interconnection Facilities Agreement.

6. Obligation to Sell and Purchase Energy Output

(a) **Conditional Obligation to Purchase**

Seller shall achieve the Completion Date by no later than _____, or such later date permitted due to Force Majeure or any delay caused by Power Business Line. In any event, irrespective of Force Majeure, Seller shall achieve the Completion Date no later than _____. Breach of this Section 6(a) shall constitute an Event of Default as provided under Section 10(a)(1) and BPA may pursue remedies available to it including those available pursuant to Section 10(c).

(b) **Sale and Purchase**

BPA shall purchase any or all Energy Output generated by the BPA Wind Turbines and delivered to the Point of Delivery prior to the Completion Date. Beginning on the Completion Date, and throughout the term of this Agreement, Seller shall supply from the Facility and sell to BPA, and BPA shall receive and purchase, the entire Energy Output of the BPA Wind Turbines in accordance with the terms of this Agreement. Seller shall deliver the Energy Output to, and make such Energy Output available to BPA at, the Point of Delivery. Neither Party shall curtail or interrupt

delivery, acceptance, sale and/or purchase of Energy Output for economic reasons.

(c) **Point of Delivery**

The Point of Delivery shall be at _____.

(d) **Exception**

BPA shall not be obligated to purchase Energy Output that cannot be delivered due to disruptions, breakdowns, electrical system failures and/or mechanical failures, maintenance or repair, including, for reasons of Force Majeure, to the Facility Substation and/or the Grid; provided that such inability to deliver is not due, in whole or in part, to BPA's negligence or its breach of, or default under, this Agreement or the Delivery Arrangements Agreement. As between BPA and Seller, Seller shall not be entitled to recover lost revenues for events covered in this Section 6(d) from BPA (other than as referred to in the proviso in the previous sentence).

(e) **Exclusions**

The Parties acknowledge that the BPA Wind Turbines have the potential to produce substantial carbon dioxide credits and other environmental air quality credits and related emissions reduction credits or benefits (economic and otherwise) related to the generation of energy after Commercial Operation. The Parties agree that any and all such credits or benefits shall be the property of BPA. In furtherance of the foregoing, Seller hereby transfers to BPA all right, title and interest Seller has or will have in, to, and under such credits or benefits. Seller agrees to provide such further evidence of the right, title and interest of BPA in such credits or benefits, and such information with respect to such credits or benefits, as BPA shall reasonably request.

7. Payment for Energy Output

(a) **Price for Energy Output Prior to the Completion Date**

Prior to the Completion Date, BPA agrees to purchase from Seller any Energy Output produced by Seller at a rate of _____ per kilowatt-hour. For the period following the 30-day period specified in Section 5(a)(2) until the Completion Date, Seller shall be responsible for payment of all fixed charges required under the Delivery Arrangements Agreement for the use of the Grid, except as such delay is caused by BPA's negligence or its breach of, or default under, this Agreement or the Delivery Arrangements Agreement.

(b) **Price for Energy Output after the Completion Date**

After the Completion Date, the Energy Payment Rate for Energy Output is as follows:

- (1) [To be negotiated]

8. Billing and Payment

(a) Billing Statement and Invoices

The monthly billing period shall be the calendar month. No later than fifteen (15) calendar days after the end of each calendar month, Seller shall prepare, and provide to BPA, a statement showing Energy Output and an invoice for any amounts due from BPA to Seller under the terms of this Agreement, for the previous calendar month billing period. The statement and invoice shall be sent to the address specified in Section 12(a). The form of the invoice shall as shown in Exhibit C.

(b) Metered Billing Data

All billing data based on metered deliveries to BPA shall be collected by the Metering Device(s) in accordance with Section 5(c)(2).

(c) Payment Dates; Late Payments

Payments due Seller or BPA, as the case may be, shall be due and payable by electronic funds transfer, or by wire transfer, as designated by the owed Party, on or before the thirtieth (30th) calendar day following owing Party's receipt of owed Party's proper billing invoice. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next invoice. Such late payment charge shall be calculated based on an annual interest rate consistent with the Prompt Payment Act (31 U.S.C. §§ 3901-3909) and effective in the month in which the invoice is rendered.

(d) Billing Disputes

- (1) Either BPA or Seller may contest invoiced amounts if a reasonable basis exists therefor (a "Billing Dispute"). The contesting Party's representative shall notify in writing the representative of the other Party of a Billing Dispute within thirty (30) calendar days from the receipt of a disputed invoice rendered under Section 8 of this Agreement.
- (2) Uncontested portions of invoiced amounts shall be paid on or before the due date or shall be subject to the late payment interest charges set forth above.

9. Operations and Maintenance

(a) Conditions Precedent to Facility Completion Date

Seller shall advise BPA in writing when Seller believes that all of the Conditions Precedent have been or will shortly be completed. In so doing, Seller shall provide evidence reasonably requested by BPA of the satisfaction or occurrence of all Conditions Precedent. BPA shall use its best efforts to respond in writing within two (2) Business Days (but in any event shall respond within six (6) Business Days) of Seller's written notification either confirming to Seller that all of the Conditions Precedent have been satisfied

or have occurred or stating with specificity those Conditions Precedent that BPA believes, in good faith, have not been satisfied or have not occurred. BPA's confirmation shall not be unreasonably withheld or delayed, and BPA's failure to respond within six (6) Business Days of Seller's written notification shall be deemed to constitute BPA's written confirmation to Seller of the satisfaction or occurrence of all Conditions Precedent. The occurrence of each of the following shall be "Conditions Precedent" to the Completion Date:

- (1) Seller has certified to BPA in writing that all of the BPA Wind Turbines in the Facility have achieved Commercial Operation and the Commercial Operation Date of each Wind Turbine.
- (2) the Facility is in compliance with the Interconnection Facilities Agreement;
- (3) certificates of insurance coverages or insurance policies required by Section 16 have been obtained and submitted to BPA;
- (4) all construction and testing of the Interconnection Facilities have been completed in accordance with the standards of the Interconnection Facilities Agreement and Good Utility Industry Practices;
- (5) Seller is in all material respects in compliance with the terms and conditions of this Agreement; and
- (6) Seller has provided BPA with copies of all material land leases and major permits needed to construct and operate the Facility, provided that Seller may delete or remove confidential commercial terms contained therein.

(b) **Facility Operation and Reliability Standards**

Seller shall maintain the Facility in a manner that complies with the rules for safety and reliability set forth in the Interconnection Facilities Agreement and Good Utility Industry Practice. Seller shall comply with all applicable local, state, and Federal laws, regulations, and ordinances, including, but not limited to, all applicable Federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the term of this Agreement. Seller shall staff, control, and operate the Facility consistent at all times with the Operating Procedures referenced below in this Section.

- (1) Seller shall provide a maintenance schedule for the Facility for the first year of operation at least thirty (30) days prior to the Completion Date. Thereafter, Seller shall submit to BPA annual maintenance schedules no later than October 1 of each year that cover the twelve (12) month period starting January 1 and ending December 31 and a long-term maintenance schedule that will encompass the immediately ensuing four (4) maintenance years. BPA shall provide written notice of any reasonable objections to the proposed annual maintenance

schedule within ten (10) Business Days of receipt thereof, and failure to so object shall be deemed approval of the annual maintenance schedule. Seller shall furnish BPA with reasonable advance notice of any change in the annual maintenance schedule. Reasonable advance notice of any change in the annual maintenance schedule involving any shutdown of the entire Facility is as follows:

<u>Scheduled Outage Expected Duration</u>	<u>Advance Notice to BPA</u>
(1) Less than 2 days	at least 24 hours
(2) 2 to 5 days	at least 7 days
(3) Major overhauls (over 5 days)	at least 90 days

- (2) Seller shall not schedule any planned maintenance outages for the entire Facility during any weekday of an On-Peak Month without the prior written approval of BPA not to be unreasonably withheld, delayed or conditioned.

(c) **Operations Record**

Seller shall maintain an operations log, which shall include information on the Actual Average Annual Output of the BPA Wind Turbines, planned and unplanned maintenance outages, circuit breaker trip operations requiring a manual reset, partial deratings of equipment, and any other significant event related to the operation of the BPA Wind Turbines. The operations record shall be available for inspection by BPA upon reasonable advance request, and Seller shall make the data available on a real-time basis by remote access to BPA, if BPA acquires the necessary equipment and software license to process the data by remote access.

(d) **Monthly Reports**

Seller shall provide to BPA a monthly report, by no later than thirty (30) days after the end of each calendar month, with such information and in such form as BPA shall reasonably request, by electronic mail and in hard copy, regarding the operations of the BPA Wind Turbines. Each monthly report shall include: all reporting information maintained in the operations record; data on the wind during the month, a comparison of the available wind energy compared to the actual wind energy generated during the month, and hourly output of the BPA Wind Turbines. The monthly report shall also include an estimate of monthly output for the calendar year and such other information related to the operation of the BPA Wind Turbines that BPA reasonably requests.

(e) **Operating Committee and Operating Procedures**

- (1) BPA and Seller shall each appoint one delegate and one alternate delegate to act on matters relating to the operation of the BPA Wind Turbines under this Agreement. Such delegates shall constitute the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement.
- (2) The Operating Committee shall, acting reasonably, develop mutually agreeable written operating procedures (“Operating Procedures”) in draft form no later than thirty (30) days prior to the expected Completion Date. Operating Procedures shall include, but not be limited to: method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; operating and maintenance scheduling and reporting; operations log; and such other matters as may be mutually agreed upon by the Parties. The agreed upon Operating Procedures shall be provided and distributed within ninety (90) days following the Completion Date.

10. Default and Termination

(a) **Events of Default of Seller**

- (1) The occurrence of any of the following shall constitute an immediate Event of Default without the opportunity to cure:
 - (i) Seller dissolution or liquidation;
 - (ii) Seller assignment of this Agreement or any of its rights under it for the benefit of creditors;
 - (iii) Seller abandonment of construction and/or operation of the Facility; and
 - (iv) Seller filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise.
- (2) The occurrence of any of the following shall constitute an Event of Default of Seller unless Seller shall have cured the same within ninety (90) days after receipt by Seller of written notice thereof from BPA:
 - (i) Seller’s failure to meet the Completion Date as set forth in Section 6(a) (subject to the extensions of time available to Seller under Section 6(a));
 - (ii) Seller’s assignment of this Agreement or any of Seller’s rights under this Agreement or the sale or transfer of voting control

of Seller or Seller's sale or other transfer of any material portion of its interest in the Facility without obtaining BPA's prior written consent pursuant to Section 18;

- (iii) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any other affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within ninety (90) days of the date of such filing;
 - (iv) After the Completion Date, Seller tampering with or adjustment of the Metering Devices for the BPA Wind Turbines in ways not expressly permitted by Sections 5(c)(2) and 5(c)(3);
 - (v) After the Completion Date, the sale by Seller to a third party, or diversion by Seller for any use, of the Energy Output committed to BPA by Seller absent BPA's prior written consent to such diversion or use;
 - (vi) After the Completion Date, Seller's failure to maintain in effect any material agreements required to deliver the Energy Output to the Point of Delivery;
 - (vii) Commencing on the first (1st) anniversary of the Completion Date, Seller's failure to use commercially reasonable efforts to obtain, for the BPA Wind Turbines, an average Availability Factor greater than seventy-five percent (75%) in the immediately preceding twelve (12) consecutive months; provided that such failure is not the result of Force Majeure;
 - (viii) Seller's failure to acquire or maintain permits needed to construct and operate the Facility;
 - (ix) Seller's failure to acquire or maintain land rights needed to access, construct, and operate the Facility; or
 - (x) Seller's failure to comply with any other material obligation under this Agreement.
- (3) Seller's failure to make any payment when required under this Agreement shall constitute an Event of Default of Seller unless (1) Seller shall have cured the same within thirty (30) days after receipt by Seller of written notice thereof from BPA or (2) Seller has filed in good faith a Billing Dispute with respect to such unpaid amounts and complied with Section 8(d).

(b) **Events of Default of BPA**

- (1) The following shall constitute Events of Default of BPA upon their occurrence and no cure period shall be applicable:

- (i) BPA's dissolution or liquidation, provided that division of BPA into multiple entities shall not constitute dissolution or liquidation; or
 - (ii) BPA's general assignment of this Agreement or any of its rights hereunder for the benefit of creditors.
- (2) The following shall constitute Events of Default of BPA upon their occurrence unless cured within ninety (90) days after the receipt by BPA of written notice thereof from Seller:
- (i) BPA fails to purchase the entire Energy Output of the BPA Wind Turbines in accordance with Section 6(b);
 - (ii) BPA defaults on its obligations under the Delivery Arrangements Agreement, and such default renders Seller unable to deliver the Energy Output at the Point of Delivery or affects Seller's right to be paid under this Agreement for delivery at the Point of Delivery for its Energy Output;
 - (iii) BPA's assignment of this Agreement or any of BPA's rights under this Agreement without obtaining Seller's prior written consent pursuant to Section 18; or
 - (iv) BPA's failure to comply with any other material obligation under this Agreement after receipt of notice thereof.
- (3) BPA's failure to make any payment when required under this Agreement shall constitute an Event of Default unless (1) BPA shall have cured the same within thirty (30) days after receipt by BPA of written notice thereof or (2) BPA has filed in good faith a Billing Dispute with respect to such unpaid amounts and complied with Section 8(d).

(c) **Termination for Cause**

In addition to any other right or remedy available at law or in equity or pursuant to this Agreement, including the right to seek damages for breach of this Agreement, the non-defaulting Party may, upon written notice to the other Party, terminate this Agreement if any one or more of the Events of Default described in this Section occur and are not cured within the time periods set forth herein. In the event of a termination by BPA due to an Event of Default under Section 10(a)(2)(i), neither Party shall have any further liability or obligation to the other Party with respect to this Agreement, except Seller shall, after receipt of a detailed, written itemization and description, reimburse BPA for reasonable payments made by BPA pursuant to the Delivery Arrangements Agreement. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this Agreement. All remedies in this Agreement shall survive termination or cancellation of this Agreement and are cumulative.

(d) **No Consequential Damages**

In no event shall either Party be liable for the other Party's alleged lost profits or other consequential damages; provided, however, that any amounts which are expressly provided herein to be payable shall not be construed as lost profits or consequential damages.

11. Termination for Convenience

(a) **Termination by BPA for Convenience**

BPA may provide notice of its intent to terminate this Agreement for convenience either during the period between the execution of this Agreement and the date that Seller provides written notice to BPA, in the form of Exhibit B, that the Facility is ready for construction (the "Initial Period"), or after the Facility has achieved Commercial Operation (the "Operation Period").

- (1) During the Initial Period, BPA must provide its notice of intent to terminate this Agreement for convenience at least thirty (30) days prior to the actual date of termination.
- (2) During the Operation Period, BPA shall provide its notice of intent to terminate this Agreement for convenience at least ninety (90) days prior to the actual date of termination.
- (3) If a termination occurs under this Section 11(a), then BPA shall pay to Seller in the case of termination under clause (1) or (2), above, [an amount to be negotiated].

(b) **Termination Under Section 11(a)**

Termination of this Agreement pursuant to Section 11(a) shall relieve the Parties of all further obligations under this Agreement upon full and complete payment by BPA of all amounts due and owing pursuant to this Section 11 and Exhibit D.

12. Contract Administration and Notices

(a) **Notices**

All notices, demands or other communications required from or given by a Party pursuant to this Agreement shall be provided to the other Party in accordance with the requirements set forth in this section. All notices, demands or other communications required hereunder shall be given or made in writing and shall be delivered personally, sent by facsimile (fax), sent by a courier service, or mailed by registered or certified mail, postage prepaid to the parties at the following addresses, or at such other address as may be designated by notice given pursuant hereto:

If to Seller: [Address]
 Attn: _____
 Phone: _____
 Fax: _____

If to BPA: Bonneville Power Administration
 905 N.E. 11th Street (97232)
 P.O. Box 3621
 Portland, OR 97208-3621
 Attn: Wind Project Manager – PGC-6
 Contract Generating Resources
 Phone: 503-230-4386
 Fax: 503-230-4973

Notices given by hand, telegraphically transmitted, or sent by telecopy shall be deemed given the day so given, transmitted or sent. Notices mailed or sent by a courier service as provided herein shall be deemed given on the third Business Day following the date so mailed or on the date of actual receipt, whichever is earlier.

(b) **Representative for Notice**

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Operating Committee, or a different person. Either Party may, by written notice to the other, pursuant to Section 12(a) above, change the representative or the address to which such notices and communications are to be sent.

(c) **Authority of Representatives**

The Parties' representatives designated in Section 12(b) above shall have authority to act for their respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. However, they shall not have the authority to amend or modify any provision of this Agreement.

(d) **Operating Records**

Seller and BPA shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required by state or Federal regulatory authorities.

(e) **Billing and Payment Records**

To facilitate payment and verification, Seller and BPA shall keep all books and records necessary for billing and payments in accordance with the provisions of Section 7 and grant the other Party reasonable access to those records.

(f) **Examination of Records**

Seller and BPA may examine the billing and operating records and data kept by the other relating to transactions under, and administration of, this Agreement at any time during the period the records are required to be maintained, upon request and during normal business hours.

13. Dispute Resolution

- (a) The Parties shall make a good faith effort to negotiate a resolution of disputes before initiating litigation. During a contract dispute or contract issue between the Parties arising out of this Agreement, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable. Seller reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this Section 13.
- (b) Final actions subject to section 9(e) of the Northwest Power Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. Seller reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this Section 13. For purposes of this Section 13, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this Section 13, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this Section 13.
- (c) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through Section 13(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (d) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; provided, however, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for

Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 Business Days, the Parties shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than \$1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.

- (e) Except for arbitration awards, which declare the rights and duties of the Parties under this Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.
- (f) Each Party shall be responsible for its own costs of arbitration, including legal fees. The arbitrators may apportion all other costs of arbitration between the Parties in such manner as they deem reasonable taking into account the circumstances of the case, the conduct of the Parties during the proceeding, and the result of the arbitration.

14. Force Majeure

(a) Definition of Force Majeure

The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, wind speeds in excess of safe working limits, or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; fire; explosion; severe cold or hot weather or snow or other extreme or severe weather conditions; blockage, insurrection, strike, slow down, or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and requirements, actions or failures to act by Transmission System Operator, but only if such requirements, actions or failures to act prevent or delay performance; the adoption or change in any rule or regulation or judicial decision lawfully imposed by Federal, state, or local government bodies; inability, despite due diligence, to obtain required licenses, permits, or approvals for the construction and operation of the Facility under the terms of this Agreement; and the mechanical or equipment breakdown of the Grid to the extent not caused by the party claiming the Force Majeure. The term "Force Majeure" does not include any full or partial curtailment in the electric output of the Facility that is caused by or arises from the act or acts of any third party, including, without limitation, any vendor, materialman, customer, or

supplier of Seller, unless such act or acts is or are itself or themselves excused by reason of Force Majeure. The term "Force Majeure" does not include any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown of the Facility, or fires, explosions, or other mishap or events or conditions attributable to normal wear and tear or flaws related to the Facility, unless caused by a Force Majeure event specifically listed in the first sentence of this Section 14(a).

(b) **Applicability of Force Majeure**

Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement due to conditions or events of Force Majeure (except that any and all obligations to pay money shall not be delayed or excused by conditions or events of Force Majeure), provided that:

- (1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- (4) the non-performing Party shall provide written notice of its ability to resume performance of its obligations under this Agreement.

(c) **Limitations on Effect of Force Majeure**

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated term. In the event of any delay or failure of performance caused by conditions or events of Force Majeure, which would otherwise constitute an Event of Default pursuant to Section 10, the cure provisions of Section 10 shall not apply and such delay or failure of performance, if not previously cured, shall be extended day-for-day by the event of Force Majeure; provided that such delay or failure shall become an Event of Default one (1) year from the date of notice provided for in Section 10. The other Party may, at any time following the end of such one-year period, terminate this Agreement upon written notice to the affected Party, without further obligation by the terminating Party except as to costs and unpaid balances incurred prior to the effective date of such termination. The other Party may, but shall not be obligated to, extend such one year period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

(d) **Delays Attributable to BPA**

Seller shall be excused from delays in meeting performance deadlines under this Agreement, on a day-for-day basis, for any delays attributable to BPA, including, without limitation, delays in BPA obtaining any required permits, consents, or approvals and agreements, including, without limitation, the Delivery Arrangements Agreement, from governmental authorities or third parties required for BPA to perform its obligations under this Agreement. Seller shall provide BPA with timely written notice that a delay allegedly attributable to BPA has occurred or is expected to occur. The notice shall specify the length of any extension to a performance deadline to which Seller feels entitled.

15. Representations and Warranties

(a) **Seller's Representations and Warranties**

Seller hereby represents and warrants that as of the date hereof:

- (1) Seller is an [which state] corporation, duly organized, validly existing and in good standing under the laws of the State of _____, and is qualified to perform its obligations under this Agreement in [state where facility is located] and in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.
- (2) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary corporate action, and do not and will not:
 - (i) require any consent or approval of Seller's members other than that which has been obtained and is in full force and effect;
 - (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any charter documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
 - (iii) result in a breach or constitute a default under Seller's charter documents, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

- (iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligation under this Agreement.
 - (3) This Agreement is a valid and binding obligation of Seller.
 - (4) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.
 - (5) To its best knowledge, all approvals, authorizations, consents, or other action required by any governmental authority to authorize Seller's execution, delivery, and performance under this Agreement have been duly obtained and are in full force and effect.
- (b) **BPA's Representations and Warranties**

BPA hereby represents and warrants the following:

- (1) BPA is authorized by Federal law, including the Northwest Power Act and other applicable laws, to dispose of electric power generated at various Federal hydroelectric projects in the Pacific Northwest or acquired from other resources, including wind energy facilities.
- (2) The execution and performance of BPA's obligations under this Agreement has been duly authorized by all necessary agency action, and does not and will not:
 - (i) require any further agency consent or approval;
 - (ii) to the knowledge of BPA, violate any provision of Federal law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to BPA, or conflict with or constitute a breach or default under any contract or agreement of any kind to which BPA is a party, the violation, conflict, or breach or default of which could have a material adverse effect on the ability of BPA to perform its obligations under this Agreement.
- (3) This Agreement is a valid and binding obligation of BPA.

16. Insurance and Indemnity

(a) Evidence of Insurance

- (1) During the construction of the Facility, Seller shall, at Seller's expense, maintain or cause to be maintained property damage

insurance covering all wind-electric generation facilities at the Facility on an “all-risk” basis, for the full replacement value of such facilities.

- (2) Commencing on the Completion Date, Seller shall, at Seller’s expense, maintain or cause to be maintained appropriate property and casualty loss insurance for the value of the Facility, and other appropriate insurance for the Facility in accordance with prudent wind industry practice, including as follows:
 - (i) Commercial General Liability covering bodily injury and property damage, boiler and machinery, products/completed operations, contractual and personal injury liability, with limits not less than \$5,000,000 combined single limit per occurrence;
 - (ii) All-risk property insurance including earthquake, tornado, and flood, subject to appropriate sublimits, covering physical loss or damage to all real and personal property located at the Facility.
- (3) The insurance shall acknowledge BPA, its officers, agents, employees, and successors in interest as additional insureds.
- (4) The insurance shall not affect Seller’s liability under the indemnity provisions of this Agreement and shall not be terminated, expire nor be materially altered except on thirty (30) days prior written notice to BPA and with BPA’s written concurrence. Such concurrence shall not be unreasonably withheld.
- (5) As evidence that policies do in fact provide the required coverages and limits of insurance and are in full force and effect, Seller, and/or its contractor or representative, shall, at least fourteen (14) days prior to the Completion Date, furnish to BPA certificates of insurance.

(b) **Limitation on Liability**

Neither BPA nor Seller (“First Party”) shall be liable, whether in warranty, tort or strict liability, to the other Party (“Second Party”) for any injury or death to any person, or for any loss or damage to any property, caused by or arising out of any electric disturbance of the First Party’s electric system, whether or not such electric disturbance resulted from the First Party’s negligent act or omission. Each Second Party shall release the First Party from, and shall indemnify and hold harmless the First Party from, any such liability. As used in this Section, (1) the term “Party” means, in addition to such Party itself, its agents, directors, officers, contractors and employees; (2) the term “damage” means all damage, including consequential damage; and (3) the term “persons” means any person, including those not connected with either Party to this Agreement.

17. Regulatory Jurisdiction and Compliance

(a) Governmental Jurisdiction and Regulatory Compliance

Each party shall at all times comply with all applicable laws, ordinances, rules, and regulations applicable to it. As applicable, each party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

(b) Provision of Support

Seller shall make available, upon BPA's reasonable request, any personnel of Seller and any records relating to the Facility to the extent that BPA requires the same in order to fulfill any regulatory reporting requirements, or to assist BPA in litigation, including, but not limited to, proceedings before utility regulatory commissions. BPA shall make available, upon Seller's reasonable request, any personnel of BPA and any records relating to the Facility to the extent that Seller requires the same in order to fulfill any regulatory reporting requirements, or to assist Seller in litigation, including, but not limited to, proceedings before utility regulatory commissions.

18. Assignment and Other Transfer Restrictions

(a) No Assignment Without Consent

This Agreement shall be binding upon and inure to the benefit of, or may be performed by, the successors and assigns of the Parties. No Party may assign or otherwise transfer its rights or obligations under this Agreement unless it has obtained the prior written consent of the other Party. Seller may assign and/or delegate, or transfer or permit the transfer of all or any portion of its interests in the Facility or this Agreement, to any person or entity after obtaining the prior written consent of BPA, which shall not be unreasonably withheld, delayed or conditioned; provided that such other person or entity assumes, or is otherwise bound to perform, all of Seller's obligations under this Agreement. No assignment, delegation, pledge, or transfer shall relieve or release Seller to any extent of any of its pre-transfer obligations under this Agreement. No assignment, pledge, or other transfer of this Agreement by any Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless consent to the release, which shall not be unreasonably withheld, delayed or conditioned, is given in writing by the other Party.

19. Confidential Information

(a) Availability

The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Facility (collectively, "Information") which they consider confidential and proprietary.

Notwithstanding the confidential and proprietary nature of such Information, BPA and Seller (each, the “Disclosing Party”) may make this Information available to the other (each, a “Receiving Party”) subject to the provisions of this section.

(b) **Designation**

At the time of furnishing or making available for inspection such confidential or proprietary Information, the Disclosing Party shall expressly designate by label, stamp, or oral communication (to be confirmed in writing) the Information which it considers to be confidential and/or proprietary.

(c) **Obligations**

The Receiving Party’s obligations with respect to the use or disclosure of such Information thereafter will be as set forth in this section.

(d) **Conditions and Restrictions**

Upon receiving or learning of Information designated as confidential and/or proprietary by the Disclosing Party, the Receiving Party shall:

- (1) treat such Information as confidential and use reasonable care not to divulge such Information to any third party except as required by law, subject to the restrictions set forth below;
- (2) restrict access to such Information to employees (and others who agree to be bound by this Agreement) whose access is reasonably necessary in developing the Facility and for the purposes of this Agreement;
- (3) use such Information solely for the purpose of developing the Facility and for the purposes of this Agreement; and
- (4) upon the termination of this Agreement, destroy or return any such Information in written or other tangible form and any copies thereof, if asked to do so in writing by the Disclosing Party.

(e) **Exceptions**

The restrictions in this section do not apply to:

- (1) the contents of this Agreement, which becomes a public document upon execution;
- (2) information which is, or becomes, publicly known or available otherwise than through the action of the Receiving Party in violation of this Agreement;
- (3) information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or is independently developed by the Receiving Party; provided that the person or persons developing same have not had access to such Information; or
- (4) information which is, in the reasonable written opinion of counsel to the Receiving Party, required to be disclosed pursuant to applicable

law or regulation (including any Freedom of Information Act request); provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to permit the Disclosing Party opportunity to obtain a protective order or otherwise seek to prevent or limit the scope or otherwise impose conditions upon such disclosure.

(f) **Term of Obligations**

The obligations of the Parties under this section shall remain in full force and effect for two (2) years following the termination of this Agreement.

20. Miscellaneous

(a) **Waiver**

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

(b) **Taxes**

Seller shall be responsible for any and all present or future Federal, state, municipal, or other lawful taxes applicable by reason of the ownership and operation of the Facility and the sale of energy under this Agreement and all ad valorem taxes relating to the Facility and the Interconnection Facilities.

(c) **Disclaimer of Third Party Beneficiary Rights**

In executing this Agreement, BPA does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement.

(d) **Relationship of the Parties**

This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all Federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of BPA for any purpose; nor shall Seller represent to any person that he or she is or shall become a BPA employee.

(e) **Survival of Obligations**

Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, including, without limitation, warranties, remedies, or indemnities.

(f) **Severability**

In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect, provided that the remaining valid and enforceable provisions materially retain the essence of the parties' original bargain.

(g) **Interpretation**

Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement including Exhibits; (d) the terms "Section" or "Exhibit" refer to the specified Section or Exhibit of this Agreement; and (e) any reference to the entirety or any part of this Agreement shall refer to any amendment, supplement or replacement of the same. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(h) **Complete Agreement; Amendments**

The terms and provisions contained in this Agreement and referenced documents constitute the entire Agreement between BPA and Seller and shall supersede all previous communications, representations, or agreements, either verbal or written, between BPA and Seller with respect to the sale of electric capacity and energy from the Facility. This Agreement may be amended, changed, modified, or altered; provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

(i) **Binding Effect**

This Agreement, as it may be amended from time to time pursuant to this Section, shall be binding upon and inure to the benefit of the Parties' respective successors-in-interest, legal representatives, and assigns.

(j) **Headings**

Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

(k) **Counterparts**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

(l) **Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without reference to choice of law doctrine), except to the extent the Parties' rights and obligations are required to be governed by United States Federal law, then such rights and obligations shall be governed by United States Federal law.

(m) **Equal Employment Opportunity Compliance Certification**

Seller acknowledges that BPA is subject to various Federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. Only to the extent that such Federal laws, executive orders and regulations are applicable to Seller as a vendor to BPA due to the sale of Energy Output under the terms of this Agreement and are required by law to be incorporated herein, such Federal laws, executive orders and regulations, including, but not limited to, 41 C.F.R. § 60-1.4(a)(1-7), are incorporated by reference into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

[SELLER]

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: _____

By: _____

[Title]

Gregory K. Delwiche
Vice President, Generation Supply

EXHIBIT A

Facility Description and Map

The Facility is known as the _____ Wind Project and is located _____.

The Facility consists of [number, manufacturer, and model] wind turbines. Each wind turbine is connected to the next by a ___-kV underground collector system. Wind turbines are grouped in “strings” of _ to ___ turbines, each spaced approximately ___ feet from the next.

[Further describe the Facility]

[Describe Interconnection Facilities]

The following site map indicates the location and layout of the BPA Wind Turbines. The following diagram shows the location of Metering Devices and other equipment installed at the Facility Substation.

[PLACEHOLDER PAGE FOR MAP]

[PLACEHOLDER PAGE FOR SUBSTATION DIAGRAM]

EXHIBIT B
Form of Notice

EXHIBIT C
Form of Invoice

EXHIBIT D
Termination Payment Schedule