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**GREAT RIVER ENERGY**

**AND**

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**WIND ENERGY PURCHASE AGREEMENT**

**\_\_\_\_\_, 2004**

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1  
2 **WIND ENERGY PURCHASE AGREEMENT**

3  
4 **BETWEEN**

5  
6 \_\_\_\_\_

7  
8 **AND**

9  
10 **GREAT RIVER ENERGY**  
11

12 **THIS WIND PURCHASE AGREEMENT** (this "**Agreement**") is made as of \_\_\_\_\_, 2004,  
13 and is between \_\_\_\_\_ ("**Seller**"), a \_\_\_\_\_ with its  
14 principal place of business at \_\_\_\_\_, and **GREAT RIVER ENERGY**  
15 ("**GRE**"), a Minnesota corporation. Seller and GRE are hereinafter referred to individually as a  
16 "**Party**" and collectively as the "**Parties.**"

17 **WHEREAS**, Seller desires to develop, design, construct, own and operate a wind turbine electric  
18 generating facility with an expected total net generating capability of not less than \_\_\_\_ MW nor  
19 more than \_\_\_\_ MW, and which is further defined in Section 1.4 hereof as the "**Facility**"; and

20 **WHEREAS**, Seller intends to locate the Facility in \_\_\_\_\_, Minnesota, and to interconnect the  
21 Facility with the Interconnection Provider's System (as defined in Section 1.4 hereof) at the  
22 \_\_\_\_\_ Substation (as defined in Section 1.4 hereof); and

23 **WHEREAS**, Seller desires to sell to GRE the Wind Energy (as defined in Section 1.4 hereof) produced  
24 by the Facility and the Capacity and the Environmental and Renewable Attributes (as such terms  
25 are defined in Section 1.4 hereof) associated with the Facility, and GRE desires to buy the same  
26 from Seller.

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

29 **Article 1. - Definitions and Rules of Interpretation**

30 **1.1 Rules of Construction.** The capitalized terms listed in this Article shall have the meanings set forth  
31 herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the  
32 present or past tense. Other terms used in this Agreement but not listed in this Article shall have  
33 meanings as commonly used in the English language and, where applicable, in Prudent Electric  
34 Utility Practice. Words not otherwise defined herein that have well known and generally accepted  
35 technical or trade meanings are used herein in accordance with such recognized meanings. In  
36 addition, the following rules of interpretation shall apply:

37 (A) The masculine shall include the feminine and neuter.

- 1 (B) References to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of  
2 this Agreement.
- 3 (C) The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and  
4 not to any particular article or section of this Agreement; the word “including” shall mean  
5 “including, without limitation;” and the word “include” shall mean “include, without  
6 limitation.”
- 7 (D) The Exhibits attached hereto are incorporated in and are intended to be a part of this  
8 Agreement.
- 9 (E) This Agreement was negotiated and prepared by both Parties with the advice and  
10 participation of counsel. The Parties have agreed to the wording of this Agreement and none  
11 of the provisions hereof shall be construed against one Party on the ground that such Party is  
12 the author of this Agreement or any part hereof.
- 13 (F) The Parties shall act reasonably and in accordance with the principles of good faith and fair  
14 dealing in the performance of this Agreement. Unless expressly provided otherwise in this  
15 Agreement, (i) where this Agreement requires the consent, approval or similar action by a  
16 Party, such consent, approval or action shall not be unreasonably withheld, conditioned or  
17 delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify  
18 or take similar action with respect to a matter, such determination, requirement, specification  
19 or similar action shall be reasonable.

20 **1.2 Interpretation with Interconnection Agreement.** The Parties recognize that Seller will enter into a  
21 separate Interconnection Agreement with the Interconnection Provider (as such terms are defined in  
22 Section 1.4 hereof).

- 23 (A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate  
24 and free-standing contract and that the terms of this Agreement are not binding upon the  
25 Interconnection Provider.
- 26 (B) Notwithstanding any other provision in this Agreement, nothing in the Interconnection  
27 Agreement shall alter or modify Seller’s or GRE’s rights, duties and obligations under this  
28 Agreement. This Agreement shall not be construed to create any rights between Seller and the  
29 Interconnection Provider.
- 30 (C) To the extent that any terms and conditions of this Agreement conflict with the terms and  
31 conditions of the Interconnection Agreement, as between Seller and GRE, the terms and  
32 conditions of this Agreement shall control.

33 **1.3 Arrangements for Electric Supply to the Facility.** Seller shall enter into separate arrangements for  
34 the supply of electric services to the Facility, including the supply of turbine unit start-up and shut-  
35 down power and energy. Seller is responsible for ensuring that the electric services are available to  
36 commence testing prior to the Commercial Operation Date (as such term is defined in Section 1.4  
37 hereof).

- 38 (A) The Parties acknowledge and agree that the arrangements for the supply of electric services to  
39 the Facility shall be separate and free-standing arrangements and that the terms of this  
40 Agreement are not binding upon the supplier of such electric services.

1 (B) Notwithstanding any other provision in this Agreement, nothing in the arrangements for the  
2 supply of electric services to the Facility shall alter or modify Seller's or GRE's rights, duties  
3 and obligations under this Agreement. This Agreement shall not be construed to create any  
4 rights between Seller and the supplier of such electric services.

5 **1.4 Definitions.** The following terms shall have the meanings set forth herein:

6 "**Abandonment**" means (i) following achievement of Commercial Operation of the Facility, the  
7 relinquishment of all possession and control of the Facility by Seller, other than a  
8 transfer permitted under this Agreement, or (ii) following commencement of  
9 construction of the Facility, complete cessation of the work on the Facility for 30  
10 consecutive Days by Seller and/or Seller's contractors, but not including: any such  
11 relinquishment or cessation that is caused by or attributable to an Event of Default of, or  
12 request by, GRE, or an event of Force Majeure.

13 "**Accreditable Capacity**" means the amount of net generating capability associated with the  
14 Facility for which capacity credit may be obtained under applicable MAPP or MISO  
15 rules, as determined at the Point of Delivery.

16 "**Affiliate**" of any named person or entity means any other person or entity that controls, is under  
17 the control of, or is under common control with, the named entity. The term "control"  
18 (including the terms "controls," "under the control of" and "under common control  
19 with") means the possession, directly or indirectly, of the power to direct or cause the  
20 direction of the management of the policies of a person or entity, whether through  
21 ownership interest, by contract or otherwise. For all purposes of this Agreement, the  
22 Members shall not be considered Affiliates of GRE.

23 "**Business Day**" means any calendar day that is not a Saturday, a Sunday or a NERC recognized  
24 holiday.

25 "**Capacity**" means the installed nameplate capacity of the Facility.

26 "**Close of the Business Day**" means 5:00 PM on a Business Day prevailing time for the location  
27 of the Facility.

28 "**Commercial Operation**" means the period beginning on the Commercial Operation Date and  
29 continuing through the Term and any Extended Term.

30 "**Commercial Operation Date**" means the date that Seller provides notification to GRE, pursuant  
31 to Section 4.7 hereof, confirming that all of the Conditions specified in Section 4.7  
32 hereof have occurred or otherwise been satisfied.

33 "**Commercial Operation Milestone**" means the Construction Milestone for the Commercial  
34 Operation Date. The Commercial Operation Milestone is specified in **EXHIBIT A**, but  
35 the date therefor specified in said **EXHIBIT A** is subject to extension on a day-for-day  
36 basis for each day that Seller is prevented from achieving the Commercial Operation  
37 Date due to an event of Force Majeure.

38 "**Commercial Operation Year**" means any consecutive 12 month period, during the Term or  
39 Extended Term of this Agreement, commencing on a January 1 and ending on the

1 following December 31; provided that the first Commercial Operation Year shall  
2 commence on the Commercial Operation Date and end on the following December 31.

3 **“Conditions”** has the meaning assigned thereto in Section 4.7 hereof.

4 **“Construction Contract”** means the contract or contracts providing for the acquisition,  
5 manufacture, delivery and installation of the generating and step-up transformation  
6 equipment that is to be part of the Facility and the engineering, procurement and  
7 construction of the Facility. The Construction Contract may consist of a single  
8 engineering, procurement and construction contract, in which case such single  
9 engineering, procurement and construction contract shall constitute the **“Construction**  
10 **Contract.”** or it may consist a series of contracts (such as a turbine supply and  
11 installation contract and a balance of plant contract), in which case such series of  
12 contracts shall collectively constitute the **“Construction Contract.”**

13 **“Construction Milestones”** means the dates set forth in **EXHIBIT A** by which Seller agrees to  
14 achieve the corresponding results specified for such dates, including the Commercial  
15 Operation Milestone.

16 **“Control Area”** means the system of electrical generation, distribution and transmission facilities  
17 within which generation is regulated in order to maintain interchange schedules with  
18 other such systems.

19 **“Day”** means a calendar day.

20 **“Delay Damages”** has the meaning assigned thereto in Section 12.4(A) hereof.

21 **“Development Conditions”** means the following:

- 22 (a) the execution and delivery of this Agreement by the Parties;
- 23 (b) the GRE Board of Directors and the requisite number of GRE Members shall have duly  
24 approved in writing the execution and delivery of this Agreement by GRE and GRE shall  
25 have given to Seller notice thereof in writing, which notice shall be accompanied by true  
26 copies of the GRE Board of Directors’ and Members’ approval;
- 27 (c) RUS shall have duly approved in writing the execution and delivery of this Agreement by  
28 GRE and GRE shall have given to Seller notice thereof in writing, which notice shall be  
29 accompanied by a true copy of the RUS approval;
- 30 (d) The Interconnection Agreement shall have been executed and delivered by the Seller, the  
31 Interconnection Provider and any other necessary parties thereto, and Seller shall have  
32 given to GRE notice thereof in writing, which notice shall be accompanied by a true copy  
33 of the Interconnection Agreement;
- 34 (e) Seller shall have obtained all Permits required for the construction, operation and  
35 maintenance of the Facility, including the Certificate of Need, but not including any  
36 Permits that, under applicable law, cannot be obtained prior to the commencement of  
37 construction of the Facility; it being understood and agreed that for purposes of this  
38 subpart (f), the Certificate of Need shall not be deemed to have been obtained until all

1 statutory and regulatory appeal or other review periods have expired and no further  
2 appeals or other proceedings for review are pending, and Seller shall have given to GRE  
3 notice thereof in writing, which notice shall be accompanied by a true copy of such  
4 Permits.

5  
6 **“Early Energy”** means that energy which is produced by the Facility, delivered to GRE at the  
7 Point of Delivery, and purchased by GRE prior to the Commercial Operation pursuant to  
8 Section 4.8 hereof.

9 **“Electric Metering Device(s)”** means all GRE-owned meters, metering equipment and data  
10 processing equipment, and related telecommunications equipment, used to measure,  
11 record or transmit data relating to the Wind Energy output from the Facility. Electric  
12 Metering Devices include the metering current transformers (**“CTs”**) and the metering  
13 potential transformers (**“PTs”**).

14 **“Environmental and Renewable Attributes”** means the aggregate amount of environmental air  
15 quality credits, off-sets or other benefits related to the generation of Wind Energy at the  
16 Facility in a manner which reduces, displaces or off-sets emissions resulting from fuel  
17 combustion at another location pursuant to any federal, state or local legislation or  
18 regulation, and the aggregate amount of credits, offsets or other benefits related to  
19 GRE’s current marketing program, any successor green pricing program or other  
20 environmental or renewable energy credit trading program or any other environmental or  
21 renewable energy benefits or attributes derived from the use, purchase or distribution of  
22 Wind Energy from the generation of energy at the Facility or any renewable requirement  
23 or objective pursuant to any federal, state or local legislation or regulation. In no event  
24 shall **“Environmental and Renewable Attributes”** include any PTCs or any other such  
25 tax benefits.

26 **“Environmental Contamination”** means the introduction or presence of Hazardous Materials at  
27 such levels, quantities or location, or of such form or character, as to constitute a  
28 violation of federal, state or local laws or regulations, or that present a material risk  
29 under federal, state or local laws and regulations that the Site will not be available or  
30 usable for the purposes contemplated by this Agreement.

31 **“Extended Term”** means the **First Extended Term** or **Second Extended Term** defined in  
32 Section 2.2 hereof.

33 **“Event of Default”** has the meaning assigned thereto in Article 12 hereof.

34 **“Facility”** means Seller’s electric generating facility and Seller’s Interconnection Facilities, as  
35 identified and described pursuant to in Article 3 hereof, including all of the following,  
36 the purpose of which is to produce electricity and deliver such electricity to the Point of  
37 Interconnection: Seller’s equipment, buildings, all of the Wind Turbines, generators,  
38 step-up transformers, output breakers, facilities necessary to connect to the Point of  
39 Interconnection, protective and associated equipment, improvements, and other tangible  
40 assets, contract rights, easements, rights of way, surface use agreements and other  
41 interests or rights in real estate reasonably necessary for the construction, operation, and

1 maintenance of the electric generating facility that produces the Wind Energy subject to  
2 this Agreement.

3 “**Facility Debt**” means the obligations of Seller to any lender pursuant to the Financing  
4 Documents, including principal of, premium and interest on indebtedness, fees, expenses  
5 or penalties, amounts due upon acceleration, prepayment or restructuring, swap or  
6 interest rate hedging breakage costs and any claims or interest due with respect to any of  
7 the foregoing.

8 “**Facility Lender**” means, collectively, any lender(s) providing any Facility Debt and any  
9 successor(s) or assigns thereto.

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

11 “**Financing Documents**” means the loan and credit agreements, notes, bonds, indentures, security  
12 agreements, lease financing agreements, mortgages, deeds of trust, interest rate  
13 exchanges, swap agreements and other documents relating to the development, bridge,  
14 construction and/or permanent debt financing for the Facility, including any credit  
15 enhancement, credit support, working capital financing, or refinancing documents, and  
16 any and all amendments, modifications, or supplements to the foregoing that may be  
17 entered into from time to time at the discretion of Seller in connection with  
18 development, construction, ownership, leasing, operation or maintenance of the Facility.

19 “**Force Majeure**” has the meaning assigned thereto in Section 14.1 hereof.

20 “**Forced Outage**” means any condition at the Facility that requires immediate removal of the  
21 Facility, or some part thereof, from service, another outage state, or a reserve shutdown  
22 state. This type of outage results from immediate mechanical/electrical/hydraulic  
23 control system trips and operator-initiated trips in response to Facility conditions and/or  
24 alarms. An Interconnection Service Curtailment is a Forced Outage.

25 “**Governmental Authority**” means any federal, state, local or municipal governmental, quasi-  
26 governmental, regulatory or administrative agency, commission, body or other authority  
27 exercising or entitled to exercise any administrative, executive, judicial, legislative,  
28 policy, regulatory or taxing authority or power; or any court or governmental tribunal.

29 “**GRE’s Load**” means the places of ultimate use of Wind Energy by GRE or the Members.

30 “**GRE System**” means the electric power transmission, substation and distribution facilities  
31 owned or operated by GRE or over which GRE has the right to receive energy from the  
32 Interconnection Provider, directly or through one or more Transmission Providers,  
33 including facilities over which GRE has the right to receive network integration  
34 transmission service or equivalent for delivery of energy to GRE’s Load.

35 “**Hazardous Materials**” means any substance, material, gas, or particulate matter that is  
36 regulated by any local governmental authority, any applicable State, or the United States  
37 of America, as an environmental pollutant or dangerous to public health, public welfare,  
38 or the natural environment including, without limitation, protection of non-human forms  
39 of life, land, water, groundwater, and air, including, but not limited to, any material or  
40 substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous

1 material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or  
2 “restricted hazardous waste” under any provision of local, state, or federal law; (ii)  
3 petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv)  
4 polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous  
5 substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251);  
6 (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and  
7 Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a “hazardous  
8 substance” pursuant to the Comprehensive Environmental Response, Compensation, and  
9 Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a “chemical  
10 substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C.  
11 §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and  
12 Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

13 **“Indemnified Losses,” “Indemnified Party” and “Indemnifying Party”** have the meanings  
14 assigned thereto in Article 17 hereof.

15 **“Interconnection Agreement”** means the separate agreement between Seller and the  
16 Interconnection Provider for interconnection of the Facility to the Interconnection  
17 Provider’s System, as such agreement may be amended from time to time.

18 **“Interconnection Facilities”** means the Interconnection Provider’s Interconnection Facilities and  
19 Seller’s Interconnection Facilities.

20 **“Interconnection Provider”** means the Transmission Provider that owns and operates the  
21 transmission lines and equipment that interconnect with the Facility at the Point of  
22 Interconnection.

23 **“Interconnection Provider’s Interconnection Facilities”** means the facilities necessary to  
24 connect Interconnection Provider’s System to the Point of Interconnection, including  
25 breakers, bus work, bus relays, and associated equipment installed by the  
26 Interconnection Provider for the direct purpose of interconnecting the Facility, along  
27 with any easements, rights of way, surface use agreements and other interests or rights in  
28 real estate reasonably necessary for the construction, operation and maintenance of such  
29 facilities. Arrangements for the installation and operation of the Interconnection  
30 Provider’s Interconnection Facilities shall be governed by the Interconnection  
31 Agreement.

32 **“Interconnection Provider’s System”** means the contiguously interconnected electric  
33 transmission and sub-transmission facilities, including Interconnection Provider’s  
34 Interconnection Facilities, over which the Interconnection Provider has rights (by  
35 ownership or contract) to provide bulk transmission of Wind Energy from the Point of  
36 Interconnection to the GRE System or to one or more Transmission Providers for  
37 delivery to the GRE System.

38 **“Interconnection Service”** means the service provided by the Interconnection Provider enabling  
39 it to receive Wind Energy at the Point of Interconnection pursuant to the terms of the  
40 Interconnection Agreement.

1 “**Interconnection Service Curtailment**” means an exercise of the Interconnection Provider’s  
2 right to reduce the amount of Interconnection Service or disconnect the Interconnection  
3 Facilities pursuant to the terms of the Interconnection Agreement, separate and distinct  
4 from any right of curtailment arising from Transmission Service.

5 “**Issuer**” has the meaning assigned thereto in Article 11 hereof.

6 “**MAPP**” means Mid-Continent Area Power Pool and its successors.

7 “**Member**” means the constituent members of GRE, which, as of the date of execution and  
8 delivery of this Agreement, consist of the electric utilities set forth on **EXHIBIT F**.

9 “**MISO**” means Midwest Independent Transmission System Operator, Inc., and its successors.

10 “**Modified Terms**” has the meaning assigned thereto in Section 2.5 hereof.

11 “**MPUC**” means the Minnesota Public Utility Commission and its successors.

12 “**NERC**” means the North American Electric Reliability Council and its successors.

13 “**On-Peak Month**” means the calendar months of January, July, August, September and  
14 December.

15 “**Operating Committee**” means one representative each from GRE and Seller pursuant to  
16 Section 10.5 hereof.

17 “**Operating Records**” means all agreements associated with the Facility, operating logs,  
18 blueprints for construction, operating manuals, all warranties on equipment, and all  
19 documents, whether in printed or electronic format, that the Seller uses or maintains in  
20 the ordinary course of operating the Facility; but specifically not including: (i) any  
21 studies, analyses or forecasts relating to the Facility that are deemed proprietary by  
22 Seller unless the same are expressly required hereunder (other than by virtue of any  
23 requirement relating to “**Operating Records**”) to be prepared by Seller and provided to  
24 GRE for purposes of this Agreement; and (ii) any agreements associated with the  
25 Facility, blueprints for construction, operating manuals, warranties on equipment or  
26 documents that, under confidentiality agreements with third parties, Seller is required to  
27 keep confidential.

28 “**Permits**” means all state, federal and local authorizations, certificates, permits, licenses and  
29 approvals required by any Governmental Authority for the construction, operation and  
30 maintenance of the Facility.

31 “**Point of Delivery**” means the electric system point at which Seller makes available to GRE and  
32 delivers to GRE the Wind Energy being provided by Seller to GRE under this  
33 Agreement. The Point of Delivery shall be GRE’s Dickinson (MN) 345 kV Substation  
34 (a proxy for GRE Load).

35 “**Point of Interconnection**” means the physical point at which electrical interconnection is made  
36 between the Facility and the Interconnection Provider’s System, said physical point to

1 be \_\_\_\_\_, all as will be depicted on  
2 **EXHIBIT B** when provided by Seller as contemplated by Section 3.1 hereof.

3 **“Prime Rate”** means, for any day, the nominal annual rate of interest reported and published as  
4 the “Prime Rate” by *The Wall Street Journal* as being applicable to such day.

5 **“Prudent Electric Utility Practice”** means the practices, methods, and acts (including the  
6 practices, methods, and acts engaged in or approved by a significant portion of the  
7 electric power industry, GRE and the Interconnection Provider) that, at a particular time,  
8 in the exercise of reasonable judgment in light of the facts known or that should  
9 reasonably have been known at the time a decision was made, would have been expected  
10 to accomplish the desired result in a manner consistent with law, regulation, permits,  
11 codes, standards, equipment manufacturer’s recommendations, reliability, safety,  
12 environmental protection, economy, and expedition. With respect to the Facility,  
13 Prudent Electric Utility Practice includes taking reasonable steps to ensure that:

- 14 (1) equipment, materials, resources, and supplies, including spare parts inventories, are  
15 available to meet the Facility’s needs;
- 16 (2) sufficient operating personnel are available at all times and are adequately  
17 experienced and trained and licensed as necessary to operate the Facility properly,  
18 efficiently, and in coordination with GRE and the Interconnection Provider and are  
19 capable of responding to reasonably foreseeable Interconnection Service  
20 Curtailments, Transmission Service Curtailments, or emergency conditions;
- 21 (3) preventive, routine, and non-routine maintenance and repairs are performed on a  
22 basis that ensures reliable, long-term and safe operation, and are performed by  
23 knowledgeable, trained, and experienced personnel utilizing proper equipment and  
24 tools;
- 25 (4) appropriate monitoring and testing are performed to ensure equipment is functioning  
26 as designed;
- 27 (5) equipment is not operated in a reckless manner, in violation of manufacturer’s  
28 guidelines or in a manner unsafe to workers, the general public, or the interconnected  
29 system or contrary to environmental laws, permits or regulations or without regard to  
30 defined limitations such as, flood conditions, safety inspection requirements,  
31 operating voltage, current, volt-ampere reactive (VAr) loading, frequency, rotational  
32 speed, polarity, synchronization, and/or control system limits; and
- 33 (6) equipment and components meet or exceed the standard of durability that is generally  
34 used for electric generation operations in the region and will function properly over  
35 the full range of ambient temperature and weather conditions reasonably expected to  
36 occur at the Site and under both normal conditions and conditions involving an  
37 Interconnection Service Curtailment, a Transmission Service Curtailment or an  
38 emergency.

39 **“PTCs”** means Production Tax Credits applicable to electricity produced from certain renewable  
40 resources pursuant to 26 U.S.C. § 45, or such substantially equivalent tax credit that  
41 provides Seller with a tax credit based on energy production from any portion of the

1 Facility. For purposes of this definition, “substantially equivalent” means a federal  
2 income tax credit that, at a minimum, produces the same aggregate present value amount  
3 of tax credits (as determined by Seller in a commercially reasonable manner and  
4 expressed in dollars) over the same period of time (based on the reasonably expected  
5 Wind Energy output of the Facility during such period) as is currently provided pursuant  
6 to 26 U.S.C. § 45, but does not mean having an annual inflation adjustment factor equal  
7 to or greater than that currently provided pursuant to 26 U.S.C. § 45.

8 **“Replacement Energy Costs”** means the costs incurred by GRE for the purchase of wind  
9 generated or other renewable electric energy (or combination of electric energy and the  
10 separate purchases of Environmental and Renewable Attributes) that is necessary to  
11 replace that which Seller, in accordance with this Agreement, was required to have  
12 produced at the Facility and delivered to GRE, but failed to so provide (the amount of  
13 which Wind Energy to be calculated based on the wind conditions at the Facility during  
14 the period of Seller’s failure to provide the same to GRE). Replacement Energy Costs  
15 may include the amounts paid or incurred by GRE for replacement wind generated  
16 electric energy, transmission of such energy to the Point of Delivery and directly  
17 associated transaction costs.

18 **“Required Security Level”** means an amount equal to \$\_\_\_\_\_ less the amount of  
19 damages (other than Delay Damages) theretofore paid by Seller to GRE in respect of this  
20 Agreement to the extent such damages were not paid in connection with an event listed  
21 in Section 12.6 hereof.

22 **“Requirements of Law”** means collectively, any law, treaty, franchise, rule, regulation, order,  
23 writ, judgment, injunction, decree, award or determination of any arbitrator or a court or  
24 other Governmental Authority, in each case applicable to the Facility, the  
25 Interconnection Facilities, the Transmission Provider’s System or the GRE System.

26 **“Reported Availability”** has the meaning assigned thereto in Section 5.2 hereof

27 **“RUS”** means the Rural Utilities Service, an agency of the United States of America, and its  
28 successors.

29 **“Scheduled Outage/Derating”** means a planned interruption/reduction of the Facility’s  
30 generation that both (i) has been coordinated in advance with GRE, with a mutually  
31 agreed start date and duration, and (ii) is required for inspection, or preventive or  
32 corrective maintenance.

33 **“Seller’s Back-Up Metering”** has the meaning assigned thereto in Section 5.5(C) hereof.

34 **“Seller’s Interconnection Facilities”** means the equipment between the high side disconnect of  
35 the Wind Turbine the step-up transformers of the Facility and the Point of  
36 Interconnection, including all related relaying protection and physical structures as well  
37 as all transmission facilities required to access the Interconnection Provider’s System at  
38 the Point of Interconnection, along with any easements, rights of way, surface use  
39 agreements and other interests or rights in real estate reasonably necessary for the  
40 construction, operation and maintenance of such facilities, and Seller’s metering, relays,  
41 and load control equipment as provided for in the Interconnection Agreement. This

1 equipment is located within the Facility and will be conceptually depicted in EXHIBIT  
2 B when such exhibit is provided by Seller pursuant to Section 3.1 hereof.

3 “Seller Security Fund” means the security fund required to be established and maintained by  
4 Seller pursuant to and as provided in Section 11.1 hereof.

5 “Site” means the parcel of real property on which the Facility will be constructed and located,  
6 including any easements, rights of way, surface use agreements and other interests or  
7 rights in real estate reasonably necessary for the construction, operation and maintenance  
8 of the Facility. The Site is more specifically described in Section 3.2 hereof.

9 “System Control Center” or “SCC” means GRE’s representative(s) responsible for centralized  
10 dispatch of generating units within the GRE Control Area and control of tie-line power  
11 flows.

12 “Term” means the period beginning on the date of execution and delivery hereof and ending at  
13 midnight on the fifteenth (15<sup>th</sup>) anniversary of the December 31 next following the  
14 Commercial Operation Date.

15 “Transmission Provider” means a Person providing all or part of the Transmission Service used  
16 to deliver Capacity and Wind Energy from the Point of Delivery to GRE’s Load.

17 “Transmission Provider’s System” means the transmission facilities by which a Transmission  
18 Provider transmits Capacity and Wind Energy all or part of the way from the Point of  
19 Delivery to GRE’s Load.

20 “Transmission Service” means network integration transmission service or point-to-point  
21 transmission service or functionally similar services provided pursuant to a Transmission  
22 Provider’s open access transmission tariff and used to deliver Wind Energy from the  
23 Point of Delivery to GRE’s Load.

24 “Transmission Service Curtailment” means a reduction in Transmission Service arising  
25 pursuant to a Transmission Provider’s open access transmission tariff, separate and  
26 distinct from any Interconnection Service Curtailment.

27 “Wind Energy” means the net electric energy generated exclusively by the Facility (which is  
28 electric energy derived from a technology that exclusively relies on a wind energy  
29 source) and delivered to the Point of Delivery as measured by Electric Metering Devices  
30 installed pursuant to Section 5.3 hereof. Wind Energy shall be of a power quality of 60  
31 cycle, three-phase alternating current that is compliant with the Interconnection  
32 Agreement.

33 “Wind Energy Payment Rate” means the rate as defined in Section 8.2 hereof.

34 “Wind Turbines” means those generating devices powered by the wind that are included in the  
35 Facility.

36 **Article 2. – Term and Certain Early Termination Rights**

1 **2.1 The Initial Term.** This Agreement shall become effective as of the date of its execution, subject to  
2 the receipt of the required approvals of the GRE Board of Directors, requisite GRE Members and  
3 RUS, and shall remain in full force and effect until midnight on the last day of the Term; subject,  
4 however, to any early termination or extension provisions set forth herein.

5 **2.2 Options to Extend.** Unless this Agreement has been earlier terminated, not earlier than twelve (12)  
6 months and not later than nine (9) months prior to the last day of the Term, GRE may deliver a  
7 written notice to Seller to extend the term of this Agreement commencing at the end of the Term and  
8 continuing to midnight on the **twentieth (20<sup>th</sup>)** anniversary of the December 31 next following the  
9 Commercial Operation Date (such period, the "**First Extended Term**"). Unless this Agreement has  
10 been earlier terminated, not earlier than twelve (12) months and not later than nine (9) months prior to  
11 the last day of the First Extended Term, GRE may deliver a written notice to Seller to extend the term  
12 of this Agreement commencing at the end of the First Extended Term and continuing to midnight on  
13 the **twenty-fifth (25<sup>th</sup>)** anniversary of the December 31 next following the Commercial Operation Date  
14 (such period, the "**Second Extended Term**").

15 **2.3 Survival of Certain Provisions.** Applicable provisions of this Agreement shall continue in effect  
16 after expiration or termination, including early termination, of this Agreement, to the extent necessary  
17 to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to  
18 termination and, as applicable, to provide for: final billings and adjustments related to the period prior  
19 to termination, repayment of any money due and owing to either Party pursuant to this Agreement,  
20 repayment of principal and interest associated with security funds, and the indemnifications specified  
21 in this Agreement. This Agreement may be terminated early pursuant to Sections 2.5, 2.6, 2.7 and  
22 12.5 hereof.

23 **2.4 Certain Approvals Required.**

24 (A) **GRE's Need for Certain Approvals.** Seller acknowledges that GRE's obligations under  
25 this Agreement shall be of no force and effect unless this Agreement is approved by GRE's  
26 Board of Directors, GRE's Members, and RUS.

27 (B) **Automatic Termination if Certain Approvals Not Obtained.** If, for any reason, all of the  
28 Development Conditions are not fulfilled on or before the three hundred sixtieth (360<sup>th</sup>) Day  
29 following the date of this Agreement, then without notice or any other action by any Party,  
30 this Agreement shall terminate effective as of such date and neither Party shall have any  
31 further obligation or liability to the other Party hereunder.

32 **Article 3. - Facility Description**

33 **3.1 Summary Description.** Seller shall construct, own, operate and maintain the Facility, which shall  
34 consist of Wind Turbines of a manufacture selected by Seller and associated equipment having  
35 Capacity aggregating no less than [REDACTED] MW and no more than [REDACTED] MW, the technology of which  
36 complies with the definition of "eligible energy technology" in Minnesota Statute 216 B. 1691 Subd  
37 1. Upon selection by Seller of the Wind Turbines and the design by Seller of the Facility, Seller shall  
38 provide to GRE a completed **EXHIBIT B** providing a detailed description of the Facility, including  
39 identification of the equipment and components that will make up the Facility. Seller shall make such  
40 selections and complete such design, and provide GRE a completed **EXHIBIT B**, by no later than  
41 \_\_\_\_\_, 200\_\_.

1 **3.2** **Location.** The Facility shall be located on the Site and shall be identified as the [REDACTED] Wind  
2 Energy Facility. The address of the Facility is \_\_\_\_\_. A scaled map that identifies the Site,  
3 the location of the Facility at the Site, the location of the Point of Interconnection and the location of  
4 the important ancillary and interconnection facilities will be included in **EXHIBIT B** when the same  
5 is provided by Seller pursuant to Section 3.1 hereof.

6 **3.3** **General Design of the Facility.** Seller shall construct the Facility according to Prudent Electric  
7 Utility Practice, the Interconnection Agreement, all Permits and all Requirements of Law. During  
8 Commercial Operation, Seller shall operate and maintain the Facility according to Prudent Electric  
9 Utility Practice, the Interconnection Agreement, all Permits and all Requirements of Law applicable  
10 to the Facility. In addition to the requirements of the Interconnection Agreement, the Facility shall at  
11 all times:

- 12 (A) have the required panel space and 125Vdc battery supplied voltage to accommodate GRE's  
13 metering, generator telemetering equipment and communications equipment; and
- 14 (B) use communication circuits from the Facility to GRE's SCC for the purpose of telemetering,  
15 supervisory control/data acquisition and voice communications as required by GRE.

16 **3.4** **Interconnection.**

- 17 (A) Seller shall assume responsibility for and bear all costs of the generator interconnection  
18 process for the Facility, including the costs of any studies.
- 19 (B) Seller shall be solely responsible for and bear all costs of negotiating and performing its  
20 obligations under any Interconnection Agreement, including any terms requiring construction  
21 or installation of Interconnection Facilities and network upgrades and any terms related to  
22 interconnection-related services, power quality, reliability, telecommunications and control,  
23 protection, safety, reporting and liability.
- 24 (C) Seller shall obtain Network Resource Interconnection Service if such service is available  
25 under the Interconnection Provider's transmission tariff.
- 26 (D) Seller shall use commercially reasonable efforts in such negotiation to cause the Facility to be  
27 included, during the Term and any Extended Term, in GRE's Control Area.
- 28 (E) Seller shall use commercially reasonable efforts to cause the Interconnection Agreement to  
29 include such operational provisions as GRE shall reasonably request.

30 **3.5** **Transmission.**

- 31 (A) GRE shall arrange for transmission service for delivering Wind Energy and Capacity from  
32 the Point of Interconnection to the to the Point of Delivery. Seller shall reimburse GRE for  
33 payments made by GRE for such the transmission service, including all reservation charges,  
34 impact studies, ancillary service costs, and losses. Seller shall also reimburse GRE for  
35 reasonable expenses GRE incurs in arranging such transmission service.
- 36 (B) GRE shall be responsible for transmission arrangements and costs necessary for delivering  
37 Wind Energy and Capacity beyond the Point of Delivery to GRE's Load.

- 1 (C) GRE shall use commercially reasonable efforts to obtain network integration transmission  
2 service for delivering Wind Capacity and Energy to GRE's Load. However, if after such  
3 efforts GRE is unable to obtain network integration transmission service, then GRE shall use  
4 commercially reasonable efforts to obtain the firmest transmission service available. GRE  
5 will not pay for curtailed energy associated with non-firm transmission service.
- 6 (D) Nothing in this Agreement shall obligate GRE to construct or pay for the construction of  
7 additional transmission or other facilities or upgrades unless GRE receives full  
8 reimbursement of those costs directly from Seller or through transmission credits from a  
9 Transmission Provider.
- 10 (E) Nothing in this Agreement shall obligate GRE to limit or curtail the operation of any other  
11 generating facility.

#### 12 Article 4. - Commercial Operation

13 **4.1 Commercial Operation.** The Facility shall achieve the Commercial Operation Date, and shall be  
14 fully capable of reliably producing the Wind Energy to be provided under this Agreement and  
15 delivering such Wind Energy to GRE at the Point of Delivery, no later than the Commercial  
16 Operation Milestone (as the Commercial Operation Milestone may be extended due to events of  
17 Force Majeure); provided that in no event, including as a result of Force Majeure, may the  
18 Commercial Operation Date be later than \_\_\_\_\_, 20\_\_.

19 **4.2 Construction Milestones.** To achieve the Commercial Operation Date by the Commercial Operation  
20 Milestone, Seller agrees to meet the Construction Milestones set forth in **EXHIBIT A**; provided that  
21 to the extent Seller is prevented from meeting a Construction Milestone due to an event of Force  
22 Majeure, the time for performance of such Construction Milestone and all Construction Milestones  
23 subsequent thereto shall be extended on a day-for-day basis for each day's duration of such event of  
24 Force Majeure.

25 **4.3 Site Report.** Seller shall conduct a Phase I environmental investigation of the Site and shall provide  
26 GRE, on or before \_\_\_\_\_, 20\_\_, with a copy of the report summarizing such investigation, together  
27 with any data or information generated pursuant to such investigation and a confirmation from Seller  
28 that, based upon such investigation and to the best of Seller's knowledge, no conditions involving  
29 Environmental Contamination exist at or under the Site, and there is no pending summons, directives,  
30 citations, investigations, inquiries or other communications or action pending by or received from any  
31 Governmental Authorities relating to the Site, or any remedial obligation relating to the Site, with  
32 respect to any Environmental Contamination or any other violation of any federal, state or local  
33 environmental law or regulations applicable to the Site.

34 **4.4 Facility Contracts.** Seller shall provide to GRE, within the time frames specified by the  
35 Construction Milestones, copies of the Construction Contract(s) and the Interconnection Agreement.  
36 Upon reasonable notice and request by GRE, Seller shall provide GRE with other Facility  
37 construction contracts and major engineering drawings. Seller shall also provide GRE with  
38 reasonable evidence that it has the capability to finance construction of the Facility. Notwithstanding  
39 the foregoing or anything else express or implied herein to the contrary, any documents or  
40 information that would otherwise be required to be provided by Seller to GRE hereunder shall not be  
41 required to be so provided to the extent the same are required to be kept confidential by Seller

1 pursuant to confidentiality agreements with third parties, and with respect to any such confidential  
2 information or documents Seller may satisfy the requirements of this Section either by: (i) redacting  
3 from the documents provided to GRE pursuant to this Section 4.4 such confidential information; or  
4 (ii) providing GRE with a memorandum of agreement executed by the Seller and the other party to  
5 such agreement, which memorandum shall set forth the basic, non-confidential terms of such contract,  
6 including without limitation the names of the parties thereto, the date of such contract, the services  
7 contracted, a description of any products to be provided (including but not limited to the make and  
8 model of any Wind Turbines). Seller shall provide sufficient information for GRE to be reasonably  
9 assured that Seller has contracted with financially responsible vendors as part of the Facility  
10 construction process.

11 **4.5 Progress Reports.** At monthly intervals beginning on \_\_\_\_\_, 20\_\_ Seller shall submit to GRE  
12 progress reports describing the current status of each Construction Milestone and any Development  
13 Conditions (or any portion thereof) that, to Seller's knowledge, have been fulfilled since the last  
14 progress report.

15 **4.6 GRE's Rights During Construction.** GRE shall have the right to access the Site and monitor the  
16 construction, start-up and testing of the Facility, and Seller shall comply with all reasonable requests  
17 of GRE with respect to these events. Seller shall cooperate in such physical inspections of the Site  
18 and the Facility as may be reasonably requested by GRE during and after completion of construction.  
19 All persons visiting the Site and the Facility on behalf of GRE shall comply with all of Seller's  
20 applicable safety and health rules and requirements. GRE's monitoring, technical review and  
21 inspection of the Facility or any Facility agreements shall not be construed as endorsing the design  
22 thereof nor as any warranty of safety, durability, or reliability of the Facility. GRE acknowledges and  
23 agrees that prior to the commencement of construction of the Facility, any loss, damage or injury that  
24 may be suffered by any person visiting the Site on behalf of GRE, or any loss, damage or injury to  
25 any property of any such person while visiting the Site, will not be covered by any insurance carried  
26 by or for the benefit of Seller, and therefore GRE agrees to hold Seller harmless from, and indemnify  
27 Seller against, any and all liability for any such loss, damage or injury.

28 **4.7 Conditions to Commercial Operation.** Seller will notify GRE when the Facility has achieved the  
29 Commercial Operation Date, which notice shall be accompanied by evidence reasonably acceptable  
30 to GRE of the satisfaction or occurrence of all of the conditions set forth in this Section 4.7  
31 ("**Conditions**") and shall include a declaration by Seller to that effect. The Parties agree that review  
32 and approval of such Conditions may occur on an on-going and incremental basis, pending resolution  
33 of any dispute, as such Conditions are satisfied. The Conditions are:

34 (A) Wind Turbines with a Capacity of at least [REDACTED] MW have been installed and interconnected  
35 to the Interconnection Facilities and Seller has successfully completed all testing of the  
36 Facility that is required by the Financing Documents, the Permits, the Interconnection  
37 Agreement, Seller's operating agreements, the Construction Contract, and manufacturers'  
38 warranties for the commencement of commercial operations at the Facility;

39 (B) an officer of Seller familiar with the Facility has provided a list of the Wind Turbines at the  
40 Facility, showing the make model, serial number and Capacity of each Wind Turbine and has  
41 certified the Capacity of each Wind Turbine and of the entire Facility, which total shall equal  
42 at least [REDACTED] MW and no more than [REDACTED] MW;

- 1 (C) the Facility has (1) achieved initial synchronization with the Interconnection Provider's  
2 System and (2) demonstrated the reliability of its communications systems and  
3 communications with GRE's SCC to the reasonable satisfaction of GRE;
- 4 (D) an independent professional engineer's certification has been obtained by Seller and a copy  
5 thereof delivered to GRE stating that the Facility has been completed in all material respects  
6 (excepting punch list items that do not materially and adversely affect the ability of the  
7 Facility to operate as intended hereunder) in accordance with this Agreement and certifying  
8 as to Seller's compliance with clauses (A) and (C)(1) above and clause (E) below;
- 9 (E) Seller is both obligated under, and in compliance with, the Interconnection Agreement, and  
10 the interconnection of the Facility to the Interconnection Provider's System has been  
11 completed in accordance with the Interconnection Agreement, and Seller has provided GRE  
12 with a true copy of written confirmation of the Interconnection Provider confirming the  
13 availability of interconnection service at Point of Interconnection;
- 14 (F) all arrangements for the supply of required electric services to the Facility, including the  
15 supply of turbine unit start-up and shut-down power and energy, house power and  
16 maintenance power have been completed by Seller separate from this Agreement, are in  
17 effect, and are available for the supply of such electric services to the Facility, and Seller has  
18 provided GRE with a true copy of the executed agreement evidencing such arrangements;
- 19 (G) certificates of insurance evidencing the coverages required by Article 16 hereof have been  
20 obtained and submitted to GRE; and
- 21 (H) Seller has submitted to GRE a certificate of an officer of Seller familiar with the Facility after  
22 due inquiry stating that all Permits to construct and/or operate the Facility in compliance with  
23 applicable law and this Agreement have been obtained and are in full force and effect, and  
24 that Seller is in compliance with the terms and conditions of this Agreement in all material  
25 respects.

26 **4.8** Early Energy. Seller shall coordinate the production and delivery of Early Energy with GRE. GRE  
27 also shall cooperate with Seller to facilitate Seller's testing of the Facility. Subject to Seller  
28 complying with all requirements of GRE's SCC and with all Conditions Precedent under Section 4.7  
29 hereof necessary to achieve the Commercial Operation Date other than those set forth in  
30 Sections 4.7(A) and 4.7(D) hereof, GRE shall accept delivery of all Early Energy delivered to the  
31 Point of Delivery prior to the Commercial Operation Date and GRE shall purchase such delivered  
32 Early Energy at the price set forth in Section 8.3 hereof.

33 **Article 5. Delivery, Availability Reporting, and Metering**

34 **5.1** Delivery Arrangements. Seller shall be responsible for all interconnection, electric losses and costs  
35 required to deliver the Early Energy and Wind Energy from the Facility to GRE at the Point of  
36 Delivery. Subject to the provisions and limitations of Section 3.5 hereof, GRE shall be responsible  
37 for all electric losses, transmission and ancillary service arrangements and costs (including all  
38 imbalance charges and penalties) required to deliver such energy to points beyond the Point of  
39 Delivery.

1 **5.2** **Availability Reporting.** Seller shall be responsible for providing accurate and timely updates on the  
2 current availability of the Facility to GRE's SCC ("**Reported Availability**"). GRE shall have the  
3 right to verify at any time, without prior notice to Seller, Seller's current Reported Availability. In  
4 addition, Seller shall, as early in advance as practical, coordinate with GRE's SCC the timing of any  
5 Scheduled Outage/Derating.

6 **5.3** **Peak Production.** During any Business Day of an On-Peak Month, Seller shall use its commercially  
7 reasonable efforts to (i) maximize the amount of Wind Energy produced by the Facility and made  
8 available to GRE, and (ii) minimize the extent and duration of Forced Outages. Seller shall not  
9 schedule any Scheduled Outage/Derating during the On-Peak Months.

10 **5.4** **Electric Metering Devices.**

11 (A) All Electric Metering Devices used to measure the Wind Energy made available to GRE by  
12 Seller under this Agreement and to monitor and coordinate in real time the operation of the  
13 Facility shall be owned, installed and maintained by GRE. Seller shall reimburse GRE for  
14 the costs of the Electric Metering Devices and associated equipment so installed. If Electric  
15 Metering Devices are not installed at the Point of Interconnection, meters or meter readings  
16 will be adjusted to reflect losses from the Electric Metering Devices to the Point of  
17 Interconnection. All Electric Metering Devices used to provide data for the computation of  
18 payments shall be sealed and only GRE shall break the seal when such Electric Metering  
19 Devices are to be inspected and tested or adjusted in accordance with this Article. GRE shall  
20 specify the number, type and location of such Electric Metering Devices.

21 (B) GRE, at its own expense, shall inspect and test all Electric Metering Devices upon installation  
22 and at least annually thereafter. GRE shall provide Seller with reasonable advance notice of,  
23 and permit a representative of Seller to witness and verify, such inspections and tests,  
24 provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of  
25 GRE and shall comply with all of GRE's safety standards. Upon request by Seller, GRE  
26 shall perform additional inspections or tests of any Electric Metering Device and shall permit  
27 a qualified representative of Seller to inspect or witness the testing of any Electric Metering  
28 Device, provided, however, that Seller shall not unreasonably interfere with or disrupt the  
29 activities of GRE and shall comply with all of GRE's safety standards. The actual expense of  
30 any such requested additional inspection or testing shall be borne by Seller, unless upon such  
31 inspection or testing an Electric Metering Device is found to register inaccurately by more  
32 than the allowable limits established in this Article 5, in which event the expense of the  
33 requested additional inspection or testing shall be borne by GRE. If requested by Seller in  
34 writing, GRE shall provide copies of any inspection or testing reports to Seller.

35 (C) Seller may elect to install and maintain, at its own expense, backup metering devices  
36 ("**Seller's Back-Up Metering**") in addition to those installed and maintained by GRE, which  
37 installation and maintenance shall be performed in a manner acceptable to GRE. Seller, at its  
38 own expense, shall inspect and test Seller's Back-Up Metering upon installation and at least  
39 annually thereafter. Seller shall provide GRE with reasonable advance notice of, and permit a  
40 representative of GRE to witness and verify, such inspections and tests, provided, however,  
41 that GRE shall not unreasonably interfere with or disrupt the activities of Seller and shall  
42 comply with all of Seller's safety standards. Upon request by GRE, Seller shall perform  
43 additional inspections or tests of Seller's Back-Up Metering and shall permit a qualified  
44 representative of GRE to inspect or witness the testing of Seller's Back-Up Metering,

1 provided, however, that GRE shall not unreasonably interfere with or disrupt the activities of  
2 Seller and shall comply with all of Seller's safety standards. The actual expense of any such  
3 requested additional inspection or testing shall be borne by GRE, unless, upon such  
4 inspection or testing, Seller's Back-Up Metering is found to register inaccurately by more  
5 than the allowable limits established in this Article 5, in which event the expense of the  
6 requested additional inspection or testing shall be borne by Seller. If requested by GRE in  
7 writing, Seller shall provide copies of any inspection or testing reports to GRE.

8 (D) If any Electric Metering Devices, or Seller's Back-Up Metering, are found to be defective or  
9 inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable  
10 to a condition of zero error by the Party owning such defective or inaccurate device and at  
11 that Party's expense.

12 (E) Seller shall construct, operate and maintain a meteorological tower at the Site designed to  
13 provide representative wind reports for the Site, and shall provide GRE with weekly reports  
14 of the readings at such tower.

15 **5.5 Adjustment for Inaccurate Meters.** If an Electric Metering Device, or Seller's Back-Up Metering,  
16 fails to register, or if the measurement made by an Electric Metering Device, or Seller's Back-Up  
17 Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall  
18 be made correcting all measurements by the inaccurate or defective Electric Metering Device, or  
19 Seller's Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in  
20 the following manner:

21 (A) In the event that the Electric Metering Device is found to be defective or inaccurate, the  
22 Parties shall use Seller's Back-up Metering, if installed, to adjust the amount of Wind Energy  
23 deemed delivered if Seller's Back-Up Metering has been tested and maintained in accordance  
24 with the provisions of this Article 5. If Seller's Back-up Metering is installed on the low side  
25 of Seller's step-up transformer, the Seller's Back-up metering data shall be adjusted for  
26 losses. In the event that Seller did not install back-up metering, or Seller's Back-up Metering  
27 is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the  
28 amount of the necessary adjustment on the basis of deliveries of Wind Energy from the  
29 Facility during periods of similar operating conditions when the Electric Metering Device  
30 was registering accurately. The adjustment shall be made for the period during which  
31 inaccurate measurements were made.

32 (B) In the event that the Parties cannot agree on the actual period during which the inaccurate  
33 measurements were made, the period during which the measurements are to be adjusted shall  
34 be the shorter of (i) the last one-half of the period from the last previous test of the Electric  
35 Metering Device to the test that found the Electric Metering Device to be defective or  
36 inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that  
37 found the Electric Metering Device to be defective or inaccurate.

38 (C) To the extent that the adjustment period covers a period of deliveries for which payment has  
39 already been made by GRE, GRE shall use the corrected measurements as determined in  
40 accordance with this Article to recompute the amount due for the period of the inaccuracy  
41 and shall subtract the previous payments by GRE for this period from such recomputed  
42 amount. If the difference is a positive number, the difference shall be paid by GRE to Seller;  
43 if the difference is a negative number, that difference shall be paid by Seller to GRE, or at the

1 discretion of GRE, may take the form of an offset to payments due Seller by GRE. Payment  
2 of such difference by the owing Party shall be made not later than thirty (30) Days after the  
3 owing Party receives notice of the amount due, unless GRE elects payment via an offset.

4 **5.6 House Power and Maintenance Power.** This Agreement does not provide for the supply of any  
5 electric service by GRE to Seller or to the Facility.

## 6 **Article 6. - Risk of Loss**

7 **6.1 Risk of Loss.** As between the Parties, Seller shall be deemed to be in control of the Wind Energy up  
8 to and until delivery at the Point of Delivery and GRE shall be deemed to be in control of the Wind  
9 Energy from and after delivery at the Point of Delivery. Title and risk of loss related to the Wind  
10 Energy shall transfer from Seller to GRE at the Point of Delivery.

## 11 **Article 7. – Sale and Purchase**

12 **7.1 Sale and Purchase.** Beginning on the Commercial Operation Date, Seller shall sell to GRE all Wind  
13 Energy generated at the Facility and delivered to the Point of Delivery, together with all associated  
14 Capacity and Environmental and Renewable Attributes. In addition, prior to the Commercial  
15 Operation Date, Seller shall sell to GRE all Early Energy generated at the Facility and delivered to the  
16 Point of Delivery, together with all associated Capacity and Environmental and Renewable Attributes,  
17 consistent with the provisions of Section 4.8 hereof. GRE shall accept and purchase, at the prices set  
18 forth in Article 8 hereof, all such Wind Energy and Early Energy and associated Capacity and  
19 Environmental and Renewable Attributes delivered by Seller to the Point of Delivery as measured by  
20 the Electric Metering Devices and adjusted for losses between the Point of Interconnection and the  
21 Point of Delivery. This loss adjustment is in addition to the loss adjustment provided for in Section  
22 5.5(A) hereof and shall be determined by GRE as specified in the transmission tariff of each  
23 Transmission Provider.

24 **7.2 Delivered Energy.** The energy generated by the Facility that is used by the Facility for house power,  
25 maintenance power, turbine unit start-up and shut-down power and energy (as applicable), line losses  
26 and any energy not received and metered at the Point of Delivery is not Wind Energy or Early  
27 Energy.

## 28 **Article 8. - Payment Calculations**

29 **8.1 Payment.** Commencing on the Commercial Operation Date, GRE shall pay Seller for Wind Energy  
30 delivered by Seller to the Point of Delivery at an energy payment rate (“**Wind Energy Payment**  
31 **Rate**”) as set forth in Section 8.2 hereof. The payment made by GRE to Seller for Wind Energy shall  
32 equal the Wind Energy for the relevant billing period multiplied by the Wind Energy Payment Rate  
33 for that billing period. GRE and Seller agree that the Wind Energy Payment Rate is intended to  
34 compensate Seller for both the Wind Energy delivered to GRE, as well as all associated Capacity and  
35 Environmental and Renewable Attributes, and that Seller is not entitled to a separate price or payment  
36 for the Capacity of the Facility or the Environmental and Renewable Attributes to which GRE is  
37 entitled.

1 **8.2** Wind Energy Payment Rate. During the Term, the Wind Energy Payment Rate for Wind Energy  
2 shall be \$\_\_\_\_\_ MWh. During the First Extended Term, the Wind Energy Payment Rate shall be  
3 \$\_\_\_\_\_/ MWh. During the Second Extended Term, the Wind Energy Payment Rate shall be  
4 \$\_\_\_\_\_/ MWh.

5 **8.3** Early Purchases. Subject to compliance with the provisions of Section 4.8 hereof, Early Energy  
6 shall be purchased by GRE at a payment rate of \$\_\_\_ MWh.

7 **Article 9. - Billing and Payment**

8 **9.1** Billing Invoices. The monthly billing period shall be the calendar month. No later than fifteen (15)  
9 Business Days after the end of each calendar month, Seller shall provide to GRE, by first-class mail,  
10 an invoice for the amount due Seller by GRE under this Agreement in respect of the previous calendar  
11 month billing period, including a calculation showing the amounts owing for all Wind Energy and  
12 Early Energy. Seller's invoice will show all billing parameters, rates and factors, and any other data  
13 reasonably pertinent to the calculation of monthly payments due to Seller.

14 **9.2** Payments. Unless otherwise specified herein, payments due under this Agreement shall be due and  
15 payable by check or by electronic funds transfer, as designated by the owed Party, on or before the  
16 tenth (10<sup>th</sup>) Business Day following receipt of the billing invoice. Remittances received by mail will  
17 be considered to have been paid when due if the postmark indicates the payment was mailed on or  
18 before the tenth (10<sup>th</sup>) Business Day following receipt of the billing invoice. If the amount due is not  
19 paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall  
20 be added to the next billing statement. Such late payment charge shall be calculated based on an  
21 annual interest rate equal to the Prime Rate published on the date of the invoice in *The Wall Street*  
22 *Journal* (or, if *The Wall Street Journal* is not published on that Day, the next succeeding date of  
23 publication) plus two percent (2%). If the due date occurs on a Day that is not a Business Day, the  
24 late payment charge shall begin to accrue on the next succeeding Business Day.

25 **9.3** Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party at least  
26 the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing  
27 dispute, the Parties shall use the procedures set forth in Section 13.9 hereof. When the billing dispute  
28 is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of  
29 such resolution, with late payment interest charges calculated on the amount owed in accordance with  
30 the provisions of Section 9.2 hereof. GRE at any time may offset against any and all amounts that  
31 may be due and owed to Seller under this Agreement, any and all undisputed amounts, including  
32 damages and other payments, that are owed by Seller to GRE pursuant to this Agreement. Undisputed  
33 and non-offset portions of amounts invoiced under this Agreement shall be paid on or before the due  
34 date or shall be subject to the late payment interest charges set forth in Section 9.2 hereof.

35 **Article 10. - Operations and Maintenance**

36 **10.1** Facility Operation. Seller shall staff, control, operate and maintain the Facility consistent at all times  
37 with Prudent Electric Utility Practice and the operating procedures developed pursuant to Section  
38 10.3 hereof. Personnel capable of starting, running, and stopping the Facility shall be continuously  
39 available, either at the Facility or capable of being at the Facility on no more than thirty (30) minutes  
40 notice, and shall be continuously reachable by phone or pager.

1 **10.2 Outage and Performance Reporting.** Seller shall comply with all current GRE, MISO, MAPP and  
2 Transmission Provider generating unit outage reporting requirements, as they may be revised from  
3 time to time, and as they apply to the Facility. When Forced Outages occur, Seller shall notify GRE's  
4 SCC of the existence, nature and expected duration of the Forced Outage as soon as practical, but in  
5 no event later than fifteen (15) minutes after the Forced Outage occurs. Seller shall immediately  
6 inform GRE's SCC of changes in the expected duration of the Forced Outage unless relieved of this  
7 obligation by GRE's SCC for the duration of each Forced Outage. In addition, Seller shall, as early in  
8 advance as practical, coordinate with GRE's SCC the timing of any Scheduled Outage/Derating.

9 **10.3 Operating Committee and Operating Procedures.**

10 (A) GRE and Seller shall each appoint one representative and one alternate representative to act  
11 in matters relating to the Parties' performance obligations under this Agreement and to  
12 develop operating arrangements for the generation, delivery and receipt of Wind Energy and  
13 Early Energy hereunder. Such representatives shall constitute the Operating Committee. The  
14 Parties shall notify each other in writing of such appointments and any changes thereto. The  
15 Operating Committee shall have no authority to modify the terms or conditions of this  
16 Agreement.

17 (B) Prior to the Commercial Operation Date, the Operating Committee shall develop mutually  
18 agreeable written operating procedures which shall include: method of day-to-day  
19 communications; metering, telemetering, telecommunications, and data acquisition  
20 procedures; key personnel list for applicable GRE and Seller operating centers; operations  
21 and maintenance scheduling and reporting; Wind Energy reports; unit operations log; and  
22 such other matters as may be mutually agreed upon by the Parties.

23 **10.4 Access to Facility.** Appropriate representatives of GRE shall at all reasonable times, including  
24 weekends and nights, and with reasonable prior notice, have access to the Facility to read meters and  
25 to perform all inspections, maintenance, service, and operational reviews as may be appropriate to  
26 facilitate the performance of this Agreement. While at the Facility, such representatives shall observe  
27 such reasonable safety precautions as may be required by Seller and shall conduct themselves in a  
28 manner that will not interfere with the operation of the Facility.

29 **10.5 Reliability Standards.** Seller shall operate the Facility in a manner that complies with all applicable  
30 Requirements of Law, national and regional reliability and power quality standards, including  
31 standards set by MISO, MAPP, and the Interconnection Provider. To the extent that Seller fails to  
32 operate the Facility in accordance with such Requirements of Law and standards and such failure  
33 contributes in whole or in part to actions which result in monetary penalties being assessed against  
34 GRE, Seller shall reimburse GRE for Seller's proportionate share of such monetary penalties.

35 **10.6 Environmental Credits.** The Parties acknowledge that future legislation or regulation may create  
36 value in the ownership, use or allocation of Environmental and Renewable Attributes. To the extent  
37 applicable, GRE shall own or be entitled to claim all Environmental and Renewable Attributes to the  
38 extent such credits may exist during the Term or any Extended Term. Seller shall cooperate with  
39 GRE at GRE's sole cost and expense with GRE in the making any required filings with any  
40 Governmental Authority and providing GRE data and other information reasonably requested by  
41 GRE to obtain and assign to GRE any and all Environmental and Renewable Attributes.

1 **10.7 Capacity Accreditation.** GRE has or may in the future have certain planning, operating and  
2 reporting requirements with MAPP and MISO. GRE desires that any capacity provided to GRE in  
3 connection with the Facility be Accreditable Capacity, and without assuming responsibility therefor,  
4 Seller shall cooperate with GRE to that end by:

- 5 (A) performing, at GRE's sole cost and expense, annual tests and calculations in strict compliance  
6 with MAPP or MISO requirements for capacity accreditation; and
- 7 (B) otherwise assisting GRE (e.g., by instructing Facility personnel to cooperate with GRE in the  
8 conduct of such tests) and providing to GRE, upon request, any relevant available data that is  
9 maintained and complied by Seller in the ordinary course of operating the Facility (but not  
10 including any data that Seller deems proprietary); provided that Seller shall not be required to  
11 incur any incremental costs in doing so.

12 GRE is currently, and shall remain throughout the Term and any Extended Term, responsible for  
13 seeking MAPP or MISO accreditation. All MAPP or MISO required testing shall be conducted at  
14 GRE's expense in accordance with MAPP or MISO guidelines, as they change from time to time.

15 **Article 11. – Security for Performance**

- 16 (A) On or before the date that conditions (b), (c) and (d) of the definition of “Development  
17 Conditions” are satisfied, Seller shall establish, fund and maintain the Seller Security Fund  
18 pursuant to the provisions of this Article 11, which shall be available to pay any amount due  
19 GRE pursuant to this Agreement, and to provide GRE security that Seller will construct the  
20 Facility to meet the Construction Milestones. The Seller Security Fund shall also provide  
21 security to GRE to cover damages, including Replacement Energy Costs, should the Facility  
22 fail to achieve the Commercial Operation Date or otherwise not operate in accordance with  
23 this Agreement. Seller shall establish the Seller Security Fund at the Required Security  
24 Level, and shall maintain the Seller Security Fund at the Required Security Level throughout  
25 the remainder of the Term and any Extended Term. If necessary to maintain the same at the  
26 Required Security Level, Seller shall replenish the Seller Security Fund to such the Required  
27 Security Level within fifteen (15) Business Days after any draw on the Seller Security Fund  
28 by GRE.
- 29 (B) In addition to any other remedy available to it, GRE may, before or after termination of this  
30 Agreement, draw from the Seller Security Fund such amounts as are necessary to recover  
31 amounts owing to it pursuant to this Agreement, including any damages due to GRE and any  
32 amounts for which GRE is entitled to indemnification under this Agreement. GRE may, in  
33 its sole discretion, draw all or any part of such amounts due to it from any form of security to  
34 the extent available pursuant to this Article 11, and from all such forms, and in any sequence  
35 as GRE may select. Any failure to draw upon the Seller Security Fund or other security for  
36 any damages or other amounts due to GRE shall not prejudice GRE's rights to recover such  
37 damages or amounts in any other manner.
- 38 (C) The Seller Security Fund shall be maintained at Seller's expense, shall be originated by or  
39 deposited in a financial institution or company (“**Issuer**”) acceptable to GRE, and shall be in  
40 the form of one or more of the following instruments. Seller may change the form of the  
41 Seller Security Fund at any time and from time to time upon reasonable prior notice to GRE,

1 but the Seller Security Fund must at all times be comprised of one or any combination of the  
2 following:

- 3 (1) An irrevocable standby letter of credit or a performance bond, in form and substance  
4 acceptable to GRE, from an Issuer with an unsecured bond rating equivalent to “A-“  
5 or better (if rated by Standard & Poor’s) or “A3” or better (if rated by Moody’s), or  
6 if both are not available, equivalent ratings from alternate rating sources acceptable to  
7 GRE. In addition, if such unsecured bond rating of the Issuer is exactly equivalent to  
8 “A-“ (if rated by Standard & Poor’s) or “A3” (if rated by Moody’s), the Issuer must  
9 not be on credit watch by a rating agency. Security provided in this form shall be  
10 consistent with this Agreement and include a provision for at least thirty (30) Days  
11 advance notice to GRE of any expiration or earlier termination of the security so as to  
12 allow GRE sufficient time to exercise its rights under said security if Seller fails to  
13 extend or replace the security. The form of such security must meet GRE’s  
14 requirements to ensure that claims or draw-downs can be made unilaterally by GRE  
15 in accordance with the terms of this Agreement. Such security must be issued for a  
16 minimum term of three hundred sixty (360) Days. Seller shall cause the renewal or  
17 extension of the security for additional consecutive terms of three hundred sixty  
18 (360) Days or more (or, if shorter, the remainder of the Term of this Agreement) no  
19 later than thirty (30) Days prior to each expiration date of the security. If the security  
20 is not renewed or extended as required herein, GRE shall have the right to draw  
21 immediately upon the security and to place the amounts so drawn, at Seller’s cost  
22 and with Seller’s funds, in an interest bearing escrow account in accordance with  
23 subparagraph (2) below, until and unless Seller provides a substitute form of such  
24 security meeting the requirements of this Article 11. Security in the form of an  
25 irrevocable standby letter of credit shall be governed by the Uniform Customs and  
26 Practice for Documentary Credits (1993 Revision), International Chamber of  
27 Commerce Brochure No. 500.
- 28 (2) United States currency, deposited with Issuer, either: (i) in an account under which  
29 GRE is designated as beneficiary with sole authority to draft from the account or  
30 otherwise access the security; or (ii) held by Issuer as escrow agent with instructions  
31 to pay claims made by GRE pursuant to this Agreement, such instructions to be in a  
32 form satisfactory to GRE. Security provided in this form shall include a requirement  
33 for immediate notice to GRE from Issuer and Seller in the event that the sums held as  
34 security in the account or trust do not at any time meet the Required Security Level  
35 for the Seller Security Fund. Funds held in the account may be deposited in a  
36 money-market fund, short-term treasury obligations, investment-grade commercial  
37 paper and other liquid investment-grade investments with maturities of three months  
38 or less, with all investment income thereon to be taxable to, and to accrue for the  
39 benefit of, Seller. After the Commercial Operation Date is achieved, annual account  
40 sweeps for recovery of interest earned by the Seller Security Fund shall be allowed  
41 by Seller. At such times as the balance in the escrow account exceeds the Required  
42 Security Level, GRE shall remit to Seller on demand any excess in the escrow  
43 account above the Required Security Level.
- 44 (3) A guarantee, in form and substance satisfactory to GRE, from an Issuer with an  
45 unsecured bond rating or corporate rating of “BBB” or better (if rated by Standard &

- 1 Poor's) or "Baa" or better (if rated by Moody's) (or if both are not available,  
2 equivalent ratings from alternate rating sources acceptable to GRE).
- 3 (D) At any time prior to the second (2<sup>nd</sup>) anniversary of the Commercial Operation Date, GRE  
4 may reevaluate from time to time the value of all non-cash security posted by Seller for  
5 possible downgrade or for other negative circumstances. If prior to such date either (i) the  
6 unsecured bond or corporate rating of the Issuer falls below the rating required under the  
7 applicable provision of this Article 11, or (ii) if such unsecured bond or corporate rating of  
8 the Issuer is exactly the equivalent of the lowest rating permitted under the applicable  
9 provision of this Article 11 and the Issuer is placed on credit watch by a rating agency, then,  
10 within thirty (30) Days of such rating action, Seller shall be required to convert the Seller  
11 Security Fund instrument provided by such Issuer to a Seller Security Fund instrument  
12 meeting the criteria set forth in any of clause (C)(1), (2) or (3) above.
- 13 (E) Promptly following the end of the Term or any Extended Term and the completion of all of  
14 Seller's obligations under this Agreement, GRE shall release the Seller Security Fund  
15 (including any accumulated interest, if applicable) to Seller.
- 16 (F) Seller shall reimburse GRE for the incremental direct expenses (including the reasonable fees  
17 and expenses of counsel) incurred by GRE in connection with the preparation, negotiation,  
18 execution and/or release of any security instruments, and other related documents, used by  
19 Seller to establish and maintain the Seller Security Fund pursuant to Seller's obligations  
20 under this Article 11.

## 21 **Article 12. - Default and Remedies**

### 22 **12.1 Events of Default of Seller.**

- 23 (A) Any of the following shall constitute an Event of Default of Seller upon its occurrence and no  
24 cure period shall be applicable:
- 25 (1) Seller's dissolution or liquidation;
- 26 (2) Seller's assignment of this Agreement or any of its rights hereunder for the benefit of  
27 creditors (except as permitted in accordance with Article 19 hereof);
- 28 (3) Seller's filing of a petition in bankruptcy or insolvency or for reorganization or  
29 arrangement under the bankruptcy laws of the United States or under any insolvency  
30 act of any state, or Seller voluntarily taking advantage of any such law or act by  
31 answer or otherwise;
- 32 (4) The sale by Seller to a third party, or diversion by Seller for any use, of Wind Energy  
33 committed to GRE by Seller;
- 34 (5) Seller's fraud, waste, tampering with GRE-owned facilities, or other material  
35 intentional misrepresentation or misconduct in connection with this Agreement  
36 and/or the operation of the Facility; or

- 1 (6) Seller's assignment of this Agreement, or any direct or indirect change of control of  
2 Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Facility,  
3 except as permitted in accordance with Article 19 hereof.
- 4 (B) Any of the following shall constitute an Event of Default of Seller if Seller has failed to cure  
5 such default within thirty (30) Days after the date of written notice from GRE to Seller and  
6 the Facility Lender as provided for in Section 13.1 hereof:
- 7 (1) Seller's failure to comply with the requirements of Article 11 hereof;
- 8 (2) Seller's Abandonment of construction or operation of the Facility;
- 9 (3) Seller's failure to make any payment required under this Agreement;
- 10 (4) Seller's failure to maintain in effect any agreements required to deliver the Wind  
11 Energy to the Point of Delivery pursuant to Section 5.1 hereof, including the  
12 Interconnection Agreement; provided that if any such agreement is the subject of a  
13 good faith dispute between Seller and the counterparty, no Event of Default shall  
14 exist in respect of such agreement so long as Seller continues to diligently pursue  
15 resolution of such dispute and for a period of thirty (30) days after final resolution  
16 thereof; or
- 17 (5) Seller's failure to comply with any other obligation under this Agreement (i.e., any  
18 obligation that is not otherwise an Event of Default under a specific provision of this  
19 Section 12.1) that would result in a material adverse impact on GRE.
- 20 (C) Seller's failure to meet the Commercial Operation Milestone shall constitute an Event of  
21 Default of Seller if Seller has failed to cure such default within forty-five (45) Days after the  
22 date of written notice from GRE to Seller and the Facility Lender as provided for in Section  
23 13.1 hereof; provided, however, that Seller shall have an additional forty-five (45) Day period  
24 to achieve the Commercial Operation Date if, on or before the expiration of the initial forty-  
25 five (45) Day period, an independent engineer, mutually agreed to by the Parties, retained by  
26 GRE and paid for by Seller, provides a written opinion to GRE stating that Seller's plan for  
27 achieving the Commercial Operation Date is reasonably achievable within such additional  
28 forty-five (45) Day cure period. This provision would allow for a total cure period of ninety  
29 (90) Days if all conditions of this paragraph are met. Subject to the limitation on damages set  
30 forth in Section 12.6 hereof, Delay Damages under Section 12.4(A) hereof shall continue  
31 accruing until the occurrence of one of the following events: (i) the Commercial Operation  
32 Date is achieved, or (ii) this Agreement is terminated.
- 33 (D) Any of the following shall constitute an Event of Default of Seller:
- 34 (1) Any representation or warranty made by Seller in this Agreement shall prove to have  
35 been false or misleading in any material respect when made or ceases to remain true  
36 during the Term or any extended Term if such cessation would reasonably be  
37 expected to result in a material adverse impact on GRE, if Seller has failed to cure  
38 such default within sixty (60) Days after the date of written notice from GRE to  
39 Seller and the Facility Lender as provided for in Section 13.1 hereof; or

- 1 (2) The filing of a case in bankruptcy or any proceeding under any other insolvency law  
2 against Seller as debtor or its parent or any other Affiliate that could materially  
3 impact Seller's ability to perform its obligations hereunder, if Seller has failed to  
4 have such proceeding dismissed or stayed within ninety (90) Days after the date of  
5 such filing.

6 **12.2 Facility Lender's Right to Cure Default of Seller.** Seller shall provide GRE with a notice  
7 identifying the Facility Lender and providing appropriate contact information for the Facility Lender.  
8 Following receipt of such notice, GRE shall provide notice of any event described in Section 12.1  
9 hereof to the Facility Lender, and GRE will accept a cure performed by the Facility Lender, so long as  
10 the cure is accomplished within the applicable cure period set forth in Section 12.1 hereof.

11 **12.3 Events of Default of GRE.**

12 (A) Any of the following shall constitute an Event of Default of Seller upon its occurrence and no  
13 cure period shall be applicable:

- 14 (1) GRE's dissolution or liquidation, provided that division of GRE into multiple entities  
15 shall not constitute dissolution or liquidation;
- 16 (2) GRE's assignment of this Agreement or any of its rights hereunder for the benefit of  
17 creditors;
- 18 (3) GRE's filing of a petition in bankruptcy or insolvency or for reorganization or  
19 arrangement under the bankruptcy laws of the United States or under any insolvency  
20 act of any State, or GRE voluntarily taking advantage of any such law or act by  
21 answer or otherwise;

22 (B) Any of the following shall constitute an Event of Default of GRE if GRE has failed to cure  
23 such default within thirty (30) Days after the date of written notice from Seller to GRE as  
24 provided for in Section 13.1 hereof:

- 25 (1) GRE's failure to comply with any other obligation under this Agreement that would  
26 result in a material adverse impact on Seller; or
- 27 (2) GRE's failure to make any payment due hereunder (net of outstanding damages and  
28 any other rights of offset that GRE may have pursuant to this Agreement).

29 (C) Any of the following shall constitute an Event of Default of GRE:

- 30 (1) The filing of a case in bankruptcy or any proceeding under any other insolvency law  
31 against GRE that could materially impact GRE's ability to perform its obligations  
32 hereunder, if GRE has failed to have such proceeding dismissed or stayed within  
33 ninety (90) Days after the filing thereof; or
- 34 (2) Any representation or warranty made by GRE in this Agreement shall prove to have  
35 been false or misleading in any material respect when made or ceases to remain true  
36 during the Term if such cessation would reasonably be expected to result in a  
37 material adverse impact on Seller, if GRE has failed to cure such default within sixty

1 (60) Days after the date of written notice from Seller to GRE as provided for in  
2 Section 13.1 hereof.

3 **12.4 Damages Prior to Termination.** Upon the occurrence of an event described in Section 12.1 or 12.3  
4 hereof, and subject in each case to the limitation on damages set forth in Section 12.6 hereof, the non-  
5 defaulting Party shall have the right to collect damages accruing prior to the termination of this  
6 Agreement from the defaulting Party as set forth below, and the payment of any such damages  
7 accruing prior to the cure of a default shall constitute a part of the cure.

8 (A) Delay Damages.

9 (1) If Seller fails to meet any Construction Milestone set forth in **EXHIBIT A**, subject to  
10 extension for Force Majeure or delay attributable to GRE under Section 14.4 hereof,  
11 Seller shall pay damages to GRE on account of such delay ("**Delay Damages**") in  
12 the amounts specified below:

<u>Delay</u>	<u>Delay Damages</u>
Failure to meet any Construction Milestone set forth in <b>EXHIBIT A</b> , except for Commercial Operation Milestone	\$5 per Day per MW of designed nameplate capacity of the Facility.
Failure to meet the Commercial Operation Milestone set forth in <b>EXHIBIT A</b>	\$1,000 per Day per MW of designed nameplate capacity of the Facility less the nameplate capacity of Wind Turbines that are installed, interconnected, operating, and capable of producing Early Energy or Wind Energy for delivery to GRE as required herein.

13  
14 (2) Notwithstanding the foregoing or anything else expressed or implied herein to the  
15 contrary, for purposes of determining Seller's liability for Delay Damages resulting  
16 from the failure to meet the Commercial Operation Milestone, the Commercial  
17 Operation Milestone shall not be deemed to have been met until Wind Turbines with  
18 a Capacity of at least [redacted] MW have been installed at the Facility and interconnected  
19 with the Interconnection Facilities, notwithstanding the fact that all other Conditions  
20 to achievement of the Commercial Operation Date as set forth in Section 4.7 hereof  
21 have been fulfilled.

22 (3) All Delay Damages shall begin to accrue on the Day after the applicable missed  
23 Construction Milestone (whether or not such missed Construction Milestone then  
24 constitutes an event of Default) and shall continue to accrue until the result specified  
25 for such Construction Milestone is achieved. Delay Damages shall be payable in lieu  
26 of actual damages accrued for the period during which Delay Damages are assessed.  
27 All Delay Damages shall be cumulative.

1 (4) Notwithstanding the foregoing, if Seller meets the Commercial Operation Milestone,  
2 all Delay Damages paid by Seller to GRE based upon a failure to meet one or more  
3 earlier Construction Milestones, less any expense amounts incurred by GRE pursuant  
4 to Section 12.7 hereof, shall be refunded to Seller, without interest, with payments  
5 due Seller for the first monthly billing period following the Commercial Operation  
6 Date. The Parties acknowledge that the Delay Damages are difficult or impossible to  
7 determine, that otherwise obtaining an adequate remedy is inconvenient, and that the  
8 foregoing liquidated damages constitute a reasonable approximation of the harm or  
9 loss, and not a penalty.

10 (B) **Actual Damages.** For all events described in Section 12.1 or 12.3 (other than Seller's failure  
11 to meet a Construction Milestone, for which GRE shall be entitled to collect Delay Damages  
12 pursuant to Section 12.4(A) hereof), the non-defaulting Party shall be entitled to receive from  
13 the defaulting Party all of the damages incurred by the non-defaulting Party in connection  
14 with such event; provided, that if an Event of Default has occurred and has continued uncured  
15 for a period of three hundred sixty-five (365) Days, the non-defaulting Party shall be required  
16 to either waive its right to collect further damages on account of such Event of Default or  
17 elect to terminate this Agreement as provided for in Section 12.5 hereof. If Seller is the  
18 defaulting Party, the Parties agree that the damages recoverable by GRE hereunder on  
19 account of an Event of Default of Seller shall include Replacement Energy Costs, but subject  
20 in all events to the limitation on damages set forth in Section 12.6 hereof.

21 **12.5 Termination.** Upon the occurrence of any Event of Default that has not been cured within the  
22 applicable cure period (if any), the non-defaulting Party shall have the right to declare a date, which  
23 shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this Agreement  
24 shall terminate. Neither Party shall have the right to terminate this Agreement except as provided for  
25 upon the occurrence of an Event of Default as described above or as otherwise may be explicitly  
26 provided for in this Agreement. Upon the termination of this Agreement under this Section 12.5, the  
27 non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the limitation on  
28 damages set forth in Section 12.6 hereof, all of the damages incurred by the non-defaulting Party in  
29 connection with such termination including:

30 (A) if Seller is the defaulting Party, the present value of the positive difference (if any) between  
31 the Replacement Energy Costs for the then remaining Term and any Extended Term then in  
32 place and the amount that GRE would have paid hereunder during the then remaining Term  
33 and any Extended Term then in place for Wind Energy (and associated Capacity and  
34 Environmental and Renewable Attributes) at the Wind Energy Payment Rate (as determined  
35 in a commercially reasonable manner by GRE, but subject to the limitation on damages set  
36 forth in Section 12.6 hereof); and

37 (B) if GRE is the defaulting Party, the present value of the positive difference (if any) between  
38 the amount that GRE would have paid hereunder during the then remaining Term and any  
39 Extended Term then in place for Wind Energy (and associated Capacity and Environmental  
40 and Renewable Attributes) at the Wind Energy Payment Rate and the market price for such  
41 Wind Energy (and associated Capacity and Environmental and Renewable Attributes) during  
42 the then remaining Term and any Extended Term then in place (as determined in a  
43 commercially reasonable manner by Seller, but subject to the limitation on damages set forth  
44 in Section 12.6 hereof).

For purposes of calculating the amounts owing pursuant to Section 12.5(A) or (B) above:

- (1) if at the time of the occurrence of the Event of Default that resulted in the termination of this Agreement, there exists at least three (3) full years of historical Facility operating data, then the amount of Wind Energy (and associated Capacity and Environmental and Renewable Attributes) that would have been delivered hereunder during the remainder of the Term in the absence of such termination shall be determined by extrapolating from all such historical data that is available, using the power curve data available for the Wind Turbines, and adjusted for Forced Outages and Scheduled Outage/Deratings; and
- (2) if at the time of the occurrence of the Event of Default that resulted in the termination of this Agreement, there does not exist at least three (3) years of historical Facility operating data, then the amount of Wind Energy (and associated Capacity and Environmental and Renewable Attributes) that would have been delivered hereunder during the remainder of the Term in the absence of such termination shall be determined in a commercially reasonable manner based on a meteorological estimate of the wind conditions likely to attain at the Site, using the power curve data available for the Wind Turbines, and adjusted for Forced Outages and Scheduled Outage/Deratings.

**12.6 Limitation on Damages.** Except as otherwise provided in this Section 12.6, (i) Seller's aggregate financial liability to GRE for Delay Damages, pursuant to Section 12.4(A) hereof, shall not exceed \$ \_\_\_\_\_; (ii) Seller's aggregate financial liability to GRE for any and all other damages under this Agreement shall not exceed \$ \_\_\_\_\_; and (ii) GRE's aggregate financial liability to Seller for any and all damages under this Agreement shall not exceed \$ \_\_\_\_\_.

The limitations on damages set forth in this paragraph shall not apply to damages arising out of any of the following events:

- (A) the commission by a Party or its agents, employees or contractors of fraud, waste, tampering with the other Party's owned facilities, or other material intentional misrepresentation or misconduct in connection with this Agreement and/or the operation of the Facility;
- (B) the sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy committed to GRE under this Agreement;
- (C) Seller's failure to apply any insurance proceeds to reconstruction of the Facility following a casualty unless such insurance proceeds are insufficient to cover the costs of such reconstruction and such reconstruction would not be commercially reasonable;
- (D) any claim for indemnification under Article 17 hereof; and/or
- (E) any Environmental Contamination on, under or above the Site caused by Seller.

**12.7 Operation by GRE Following Event of Default of Seller.**

- (A) Prior to any termination of this Agreement due to an Event of Default of Seller, GRE shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this

1 Agreement) during the period provided for herein. Seller shall not grant any person, other  
2 than the Facility Lender, a right to possess, assume control of, and operate the Facility that is  
3 equal to or superior to GRE's right under this Section 12.7.

4 (B) GRE shall give Seller and the Facility Lender ten (10) Days notice in advance of the  
5 contemplated exercise of GRE's rights under this Section 12.7. Upon such notice, Seller  
6 shall collect and have available at a convenient, central location at the Facility all documents,  
7 contracts, books, manuals, reports, and records required to construct, operate, and maintain  
8 the Facility in accordance with Good Utility Practice. Upon such notice, GRE, its employees,  
9 contractors, or designated third parties shall have the unrestricted right to enter the Site and  
10 the Facility for the purpose of constructing and/or operating the Facility. Seller hereby  
11 irrevocably appoints GRE as Seller's attorney-in-fact for the exclusive purpose of executing  
12 such documents and taking such other actions as GRE may reasonably deem necessary or  
13 appropriate to exercise GRE's step-in rights under this Section 12.7.

14 (C) GRE shall be entitled to immediately draw upon the Security Fund to cover any expenses  
15 incurred by GRE in exercising its rights under this Section 12.7.

16 (D) During any period that GRE is in possession of and constructing and/or operating the Facility  
17 pursuant to this Section 12.7, GRE shall perform and comply with all of the obligations of  
18 Seller under this Agreement and, except to the extent the same would result in a violation of  
19 the applicable provisions of the Financing Documents, shall use the proceeds from the sale of  
20 electricity generated by the Facility to first, reimburse GRE for any and all expenses  
21 reasonably incurred by GRE in taking possession of and operating the Facility, and to second,  
22 remit any remaining proceeds to Seller.

23 (E) During any period that GRE is in possession of and operating the Facility, Seller shall retain  
24 legal title to and ownership of the Facility and GRE shall assume possession, operation, and  
25 control solely as agent for Seller.

26 (1) In the event that GRE is in possession and control of the Facility for an interim  
27 period, Seller may resume operation and GRE shall relinquish its right to operate  
28 when Seller demonstrates to GRE's reasonable satisfaction that it will remove those  
29 grounds that originally gave rise to GRE's right to operate the Facility, as provided  
30 above, in that Seller (i) will resume operation of the Facility in accordance with the  
31 provisions of this Agreement, and (ii) has cured any Events of Default of Seller  
32 which allowed GRE to exercise its rights under this Section 12.7.

33 (2) In the event that GRE is in possession and control of the Facility for an interim  
34 period, the Facility Lender, or any nominee or transferee thereof, may foreclose and  
35 take possession of and operate the Facility and GRE shall relinquish its right to  
36 operate when the Facility Lender or any nominee or transferee thereof, requests such  
37 relinquishment.

38 (F) GRE's exercise of its rights hereunder to possess and operate the Facility shall not be deemed  
39 an assumption by GRE of any liability attributable to Seller. If at any time after exercising its  
40 rights to take possession of and operate the Facility GRE elects to return such possession and  
41 operation to Seller, GRE shall provide Seller with at least 15 Days advance notice of the date  
42 GRE intends to return such possession and operation, and upon receipt of such notice Seller

1 shall take all measures necessary to resume possession and operation of the Facility on such  
2 date.

3 (G) In the event GRE assumes operation of the Facility under this Section 12.7, GRE shall  
4 operate the Facility in conformance with Prudent Electric Utility Practice and all  
5 Requirements of Law (including all requirements of all Permits) and the terms and conditions  
6 of this Agreement.

7 **12.8 Specific Performance.** In addition to the other remedies specified in this Article 12, in the event that  
8 any Event of Default is not cured within the applicable cure period set forth herein, the non-defaulting  
9 Party may elect to treat this Agreement as being in full force and effect and shall have the right to  
10 specific performance of the defaulting Party's obligations hereunder (other than payment obligations).  
11 If the breach by Seller arises from a failure by third party operating the Facility pursuant to an  
12 operating agreement entered into with Seller, and Seller fails or refuses to enforce its rights under the  
13 operating agreement which would result in the cure, or partial cure, of the Event of Default, GRE's  
14 right to specific performance shall include the right to obtain an order compelling Seller to enforce its  
15 rights under the operating agreement.

16 **12.9 Remedies Cumulative.** Subject to the exclusivity of Delay Damages provided in Section 12.4(A)  
17 hereof and the limitations on damages set forth in Section 12.6 hereof, each right or remedy of the  
18 Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other  
19 right or remedy provided for in this Agreement, and the exercise, or the beginning of the exercise, by  
20 a Party of any one or more of the rights or remedies provided for herein shall not preclude the  
21 simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

22 **12.10 Waiver and Exclusion of Other Damages.** The Parties confirm that the express remedies and  
23 measures of damages provided in this Agreement satisfy the essential purposes hereof. If no remedy  
24 or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct,  
25 actual damages only. Neither Party shall be liable to the other Party for consequential, incidental,  
26 punitive, exemplary or indirect damages, lost profits or other business interruption damages by  
27 statute, in tort or contract (except to the extent expressly provided herein); provided, that if either  
28 Party is held liable to a third party for such damages and the Party held liable for such damages is  
29 entitled to indemnification therefor from the other Party hereto, the indemnifying Party shall be liable  
30 for, and obligated to reimburse the indemnified Party for, such damages.

31 **12.11 Payment of Amounts Due.** Without limiting any other provisions of this Article 12 and at any time  
32 before or after termination of this Agreement, the Party to whom any damages (including Delay  
33 Damages) are owed under this Agreement may send the other Party an invoice for such damages and  
34 such invoice shall be payable in the manner, and in accordance with the applicable provisions, set  
35 forth in Article 9, including, without limitation, the provision for late payment charges, but subject to  
36 the limit on damages set forth in Section 12.6 hereof.

37 **12.12 Duty to Mitigate; Notice.** Each Party agrees that it has a duty to mitigate damages and covenants  
38 that it will use commercially reasonable efforts to minimize any damages it may incur as a result of  
39 the other Party's performance or non-performance of the Agreement.

40 **Article 13. - Contract Administration and Notices**

- 1    **13.1**    Notices in Writing. Notices required by this Agreement shall be addressed to the other Party,  
2 including the other Party's representative on the Operating Committee, at the addresses noted in  
3 **EXHIBIT C** as either Party updates them from time to time by written notice to the other Party. Any  
4 notice, request, consent, or other communication required or authorized under this Agreement to be  
5 given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed,  
6 postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or  
7 other communication shall be simultaneously sent by facsimile or other electronic means. Any such  
8 notice, request, consent, or other communication shall be deemed to have been received by the Close  
9 of the Business Day on which it was hand delivered or transmitted electronically (unless hand  
10 delivered or transmitted after such close in which case it shall be deemed received at the close of the  
11 next Business Day). Real-time or routine communications concerning Facility operations shall be  
12 exempt from this Section.
- 13    **13.2**    Representative for Notices. Each Party shall maintain a designated representative to receive notices.  
14 Such representative may, at the option of each Party, be the same person as that Party's representative  
15 or alternate representative on the Operating Committee, or a different person. Either Party may, by  
16 written notice to the other Party, change the representative or the address to which such notices and  
17 communications are to be sent.
- 18    **13.3**    Authority of Representatives. The Parties' representatives designated above shall have authority to  
19 act for its respective principals in all technical matters relating to performance of this Agreement and  
20 to attempt to resolve disputes or potential disputes. However, they, in their capacity as  
21 representatives, shall not have the authority to amend or modify any provision of this Agreement.
- 22    **13.4**    Operating Records. Seller and GRE shall each keep complete and accurate records and all other  
23 data required by each of them for the purposes of proper administration of this Agreement, including  
24 such records as may be required by state or federal regulatory authorities and GRE in the prescribed  
25 format.
- 26    **13.5**    Operating Log. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at  
27 the Facility with records of production for each clock hour; changes in operating status; Scheduled  
28 Outages/Deratings and Forced Outages for the purposes of proper administration of this Agreement,  
29 including such records as may be required by state or federal regulatory authorities and GRE in the  
30 prescribed format.
- 31    **13.6**    Billing and Payment Records. To facilitate payment and verification, Seller and GRE shall keep all  
32 books and records necessary for billing and payments in accordance with the provisions of Article 9  
33 hereof and grant the other Party reasonable access to those records. All records of Seller pertaining to  
34 the operation of a Facility shall be maintained at the Seller's principal corporate offices (currently  
35 located at \_\_\_\_\_) or on the premises of the Facility.
- 36    **13.7**    Examination of Records. Seller and GRE may examine the financial and Operating Records and  
37 data kept by the other Party relating to transactions under and administration of this Agreement, at  
38 any time during the period the records are required to be maintained, upon request and during normal  
39 business hours.
- 40    **13.8**    Exhibits. Either Party may change the information for their notice addresses in **EXHIBIT C** at any  
41 time without the approval of the other Party by giving written notice of such change to the other  
42 Party. **EXHIBIT D** may be changed in accordance with Section 16.2(B) hereof.

1 **13.9 Dispute Resolution.**

- 2 (A) In the event of any dispute arising under this Agreement (a “**Dispute**”), within 10 Days  
3 following the delivered date of a written request by either Party (a “**Dispute Notice**”), (i) each  
4 Party shall appoint a representative (individually, a “**Party Representative**,” together, the  
5 “**Parties’ Representatives**”), and (ii) the Parties’ Representatives shall meet, negotiate and  
6 attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the  
7 event the Parties’ Representatives cannot resolve the Dispute within 30 Days after  
8 commencement of negotiations, within 10 Days following any request by either Party at any  
9 time thereafter, each Party Representative (I) shall independently prepare a written summary  
10 of the Dispute describing the issues and claims, (II) shall exchange its summary with the  
11 summary of the Dispute prepared by the other Party Representative, and (III) shall submit a  
12 copy of both summaries to a senior officer of the Party Representative’s Party with authority  
13 to irrevocably bind the Party to a resolution of the Dispute. Within 10 Business Days after  
14 receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good  
15 faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within 14 Days  
16 following receipt of the Dispute summaries by the senior officers, either Party may seek  
17 available legal remedies.
- 18 (B) Notwithstanding any provision in this Agreement to the contrary, if no Dispute Notice has  
19 been issued within 24 months following the occurrence of all events and the existence of all  
20 circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge  
21 of either Party of such events and circumstances), the Dispute and all claims related thereto  
22 shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding  
23 thereon.
- 24 (C) Seller and GRE each hereby knowingly, voluntarily and intentionally waive (to the extent  
25 allowed by law) any rights they may have to a trial by jury in respect of any litigation based  
26 hereon, or arising out of, under, or in connection with, this Agreement or any course of  
27 conduct, course of dealing, statements (whether oral or written) or actions of Seller and GRE  
28 related hereto and expressly agree to have any disputes arising under or in connection with  
29 this Agreement be adjudicated by a judge of the court having jurisdiction without a jury.

30 **Article 14. - Force Majeure**

31 **14.1 Definition of Force Majeure.**

- 32 (A) The term “Force Majeure”, as used in this Agreement, means causes or events beyond the  
33 reasonable control of, and without the fault or negligence of the Party claiming Force  
34 Majeure, including, without limitation, acts of God, sudden actions of the elements such as  
35 floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to  
36 materially damage a facility or significantly impair its operation for a period of time longer  
37 than normally encountered in similar businesses under comparable circumstances; lightning;  
38 fire; ice storms; sabotage; vandalism beyond that which could reasonably be prevented by  
39 Seller; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or  
40 labor disruptions (even if such difficulties could be resolved by conceding to the demands of  
41 a labor group); and actions or inactions by any Governmental Authority taken after the date  
42 hereof (including the adoption or change in any rule or regulation or environmental

1 constraints lawfully imposed by such Governmental Authority) but only if such requirements,  
2 actions, or failures to act prevent or delay performance; and inability, despite due diligence, to  
3 obtain any licenses, permits, or approvals required by any Governmental Authority.

- 4 (B) The term Force Majeure does not include (i) any acts or omissions of any third party,  
5 including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless  
6 such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or  
7 partial curtailment in the electric output of the Facility that is caused by or arises from a  
8 mechanical or equipment breakdown or other mishap or events or conditions attributable to  
9 normal wear and tear or flaws, unless such mishap is caused by one of the following:  
10 catastrophic equipment failure; acts of God; sudden actions of the elements, including, but  
11 not limited to, floods, hurricanes, or tornadoes; sabotage; terrorism; war; riots; and emergency  
12 orders issued by a Governmental Authority; and (iii) any Interconnection Service  
13 Curtailment; and (iv) any Transmission Service Curtailment.

14 **14.2 Applicability of Force Majeure.**

- 15 (A) Neither Party shall be responsible or liable for any delay or failure in its performance under  
16 this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of  
17 Default, to the extent such delay, failure, occurrence or event is substantially caused by  
18 conditions or events of Force Majeure, provided that:

- 19 (1) the non-performing Party gives the other Party prompt written notice describing the  
20 particulars of the occurrence of the Force Majeure;
- 21 (2) the suspension of performance is of no greater scope and of no longer duration than  
22 is required by the Force Majeure;
- 23 (3) the non-performing Party proceeds with reasonable diligence to remedy its inability  
24 to perform and provides weekly progress reports to the other Party describing actions  
25 taken to end the Force Majeure; and
- 26 (4) when the non-performing Party is able to resume performance of its obligations  
27 under this Agreement, that Party shall give the other Party written notice to that  
28 effect.

- 29 (B) Except as otherwise expressly provided for in this Agreement, the existence of a condition or  
30 event of Force Majeure shall not relieve the Parties of their obligations under this Agreement  
31 (including, but not limited to, payment obligations) to the extent that performance of such  
32 obligations is not precluded by the condition or event of Force Majeure.

33 **14.3 Limitations on Effect of Force Majeure.** In no event will any delay or failure of performance  
34 caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.  
35 In the event that any delay or failure of performance caused by conditions or events of Force Majeure  
36 continues for an uninterrupted period of 365 Days from its occurrence or inception, as noticed  
37 pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end  
38 of such 365 Day period, terminate this Agreement upon written notice to the affected Party, without  
39 further obligation by either Party except as to costs and balances incurred prior to the effective date of  
40 such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend  
41 such 365 Day period, for such additional time as it, at its sole discretion, deems appropriate, if the

1 affected Party is exercising due diligence in its efforts to cure the conditions or events of Force  
2 Majeure.

3 **14.4 Delays Attributable to GRE.** Seller shall be excused from a failure to meet any specified  
4 Construction Milestone where Seller can establish that such a failure is solely attributable to any delay  
5 or failure by GRE obtaining any permits, consents or approvals from Governmental Authorities or  
6 third parties required for GRE to perform its obligations under this Agreement (whether or not caused  
7 by any conditions or events of Force Majeure) (“**Delay Conditions**”), provided, that in the event of  
8 such a failure, the Construction Milestone that is not met due to the Delay Condition(s), and any  
9 affected Construction Milestones that follow, shall be extended for a period of time equal to the  
10 period of time between (i) the Construction Milestone that is not met due to the Delay Condition(s)  
11 and (ii) the Day that GRE has corrected the Delay Condition(s).

## 12 **Article 15. – Representations, Warranties and Covenants**

13 **15.1 Seller’s Representations, Warranties and Covenants.** Seller hereby represents and warrants as  
14 follows:

15 (A) Seller is a \_\_\_\_\_ company duly organized, validly existing and in good standing  
16 under the laws of the State of \_\_\_\_\_. Seller is qualified to do business in each other  
17 jurisdiction where the failure to so qualify would have a material adverse effect on the  
18 business or financial condition of Seller; and Seller has all requisite power and authority to  
19 conduct its business, to own its properties, and to execute, deliver, and perform its obligations  
20 under this Agreement.

21 (B) The execution and delivery of this Agreement by Seller, and the performance by Seller of its  
22 obligations hereunder have been duly authorized by all necessary corporate action, and do not  
23 and will not:

24 (1) require any consent or approval by any governing body of Seller, other than that  
25 which has been obtained and is in full force and effect (evidence of which shall be  
26 delivered to GRE upon its request);

27 (2) violate any provision of Requirement of Law currently in effect having applicability  
28 to Seller or violate any provision in any formation documents of Seller, the violation  
29 of which could have a material adverse effect on the ability of Seller to perform its  
30 obligations under this Agreement;

31 (3) result in a breach or constitute a default under Seller’s formation documents or  
32 bylaws, or under any agreement relating to the management or affairs of Seller or any  
33 indenture or loan or credit agreement, or any other agreement, lease, or instrument to  
34 which Seller is a party or by which Seller or its properties or assets may be bound or  
35 affected, the breach or default of which could reasonably be expected to have a  
36 material adverse effect on the ability of Seller to perform its obligations under this  
37 Agreement; or

38 (4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge,  
39 lien, security interest, or other charge or encumbrance of any nature (other than as  
40 may be contemplated by this Agreement) upon or with respect to any of the assets or

1 properties of Seller now owned or hereafter acquired, the creation or imposition of  
2 which could reasonably be expected to have a material adverse effect on the ability  
3 of Seller to perform its obligations under this Agreement.

4 (C) This Agreement is a valid and binding obligation of Seller, enforceable in accordance with its  
5 terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws  
6 affecting rights of creditors generally or by general principles of equity.

7 (D) The execution and performance of this Agreement will not conflict with or constitute a  
8 breach or default under any contract or agreement of any kind to which Seller is a party or  
9 any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

10 (E) To the best knowledge of Seller, and except for those Permits, consents, approvals, licenses  
11 and authorizations identified in **EXHIBIT E**, which Seller anticipates will be obtained by  
12 Seller in the ordinary course of business in accordance with the Construction Milestones, all  
13 permits, consents, approvals, licenses, authorizations, or other action required by any  
14 Governmental Authority to authorize Seller's execution, delivery and performance of this  
15 Agreement have been duly obtained and are in full force and effect.

16 (F) Seller shall comply with all applicable local, state, and federal laws, regulations, and  
17 ordinances, including equal opportunity and affirmative action requirements and all  
18 applicable federal, state, and local environmental laws and regulations presently in effect or  
19 which may be enacted during the Term or any Extended Term of this Agreement.

20 (G) Seller shall disclose to GRE, to the extent that, and as soon as it is known to Seller, any  
21 violation of any environmental laws or regulations arising out of the construction or operation  
22 of the Facility, or the presence of Environmental Contamination at the Facility or on the Site,  
23 alleged to exist by any Governmental Authority having jurisdiction over the Site, or the  
24 existence of any past or present enforcement, legal, or regulatory action or proceeding  
25 relating to such alleged violation or alleged presence of Environmental Contamination.

26 (H) The Facility was not mandated by Minnesota State law or a MPUC order enacted or issued  
27 prior to August 1, 2001.

28 **15.2 GRE's Representations, Warranties and Covenants.** GRE hereby represents and warrants as  
29 follows:

30 (A) GRE is a corporation duly organized, validly existing and in good standing under the laws of  
31 the State of Minnesota and is qualified in each other jurisdiction where the failure to so  
32 qualify would have a material adverse effect upon the business or financial condition of GRE;  
33 and GRE has all requisite power and authority to conduct its business, to own its properties,  
34 and to execute, deliver, and perform its obligations under this Agreement.

35 (B) Subject to Section 2.6, the execution, delivery, and performance of its obligations under this  
36 Agreement by GRE have been duly authorized by all necessary corporate action, and do not  
37 and will not:

38 (1) require any consent or approval of GRE's Board of Directors, or shareholders, other  
39 than that which has been obtained and is in full force and effect (evidence of which  
40 shall be delivered to Seller upon its request);

- 1 (2) violate any provision of law, rule, regulation, order, writ, judgment, injunction,  
2 decree, determination, or award currently in effect having applicability to GRE or  
3 violate any provision in any corporate documents of GRE, the violation of which  
4 could have a material adverse effect on the ability of GRE to perform its obligations  
5 under this Agreement;
- 6 (3) result in a breach or constitute a default under GRE's corporate charter or bylaws, or  
7 under any agreement relating to the management or affairs of GRE, or any indenture  
8 or loan or credit agreement, or any other agreement, lease, or instrument to which  
9 GRE is a party or by which GRE or its properties or assets may be bound or affected,  
10 the breach or default of which could reasonably be expected to have a material  
11 adverse effect on the ability of GRE to perform its obligations under this Agreement;  
12 or
- 13 (4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge,  
14 lien, security interest, or other charge or encumbrance of any nature (other than as  
15 may be contemplated by this Agreement) upon or with respect to any of the assets or  
16 properties of GRE now owned or hereafter acquired, the creation or imposition of  
17 which could reasonably be expected to have a material adverse effect on the ability  
18 of GRE to perform its obligations under this Agreement.

- 19 (C) This Agreement is a valid and binding obligation of GRE, enforceable in accordance with its  
20 terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws  
21 affecting rights of creditors generally or by general principles of equity.
- 22 (D) The execution and performance of this Agreement will not conflict with or constitute a  
23 breach or default under any contract or agreement of any kind to which GRE is a party or any  
24 judgment, order, statute, or regulation that is applicable to GRE.
- 25 (E) To the best knowledge of GRE, and except for the RUS approval identified in Section 2.6  
26 hereof, all approvals, authorizations, consents, or other action required by any Governmental  
27 Authority to authorize GRE's execution, delivery and performance of this Agreement have  
28 been duly obtained and are in full force and effect.

29 **Article 16. - Insurance**

30 **16.1 Evidence of Insurance.** Seller shall, on or before June 1 of each Commercial Operation Year and  
31 pursuant to the corresponding Construction Milestone, provide GRE with a copy of insurance  
32 certificates acceptable to GRE evidencing that insurance coverages for the Facility are in compliance  
33 with the specifications for insurance coverage set forth in **EXHIBIT D** to this Agreement. Such  
34 certificates shall (a) name GRE as an additional insured (except worker's compensation); (b) provide  
35 that GRE shall receive 30 Days prior written notice of non-renewal or cancellation of any of the  
36 corresponding policies (except that such notice shall be 10 Days for non-payment of premiums); (c)  
37 provide a waiver of any rights of subrogation against GRE, its Affiliates and their officers, directors,  
38 agents, subcontractors, and employees; and (d) indicate that the Commercial General Liability policy  
39 has been endorsed as described above. All policies shall be written with insurers that GRE, in its  
40 reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld,  
41 conditioned or delayed). All policies shall be written on an occurrence basis, except as provided in

1 Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all  
2 instances regardless of like coverages, if any, carried by GRE. Seller's liability under this Agreement  
3 is not limited to the amount of insurance coverage required herein.

4 **16.2 Term and Modification of Insurance.**

- 5 (A) All insurance required under this Agreement shall cover occurrences during the Term and for  
6 a period of 2 years after the Term. In the event that any insurance as required herein is  
7 commercially available only on a "claims-made" basis, such insurance shall provide for a  
8 retroactive date not later than the date of this Agreement and such insurance shall be  
9 maintained by Seller, with a retroactive date not later than the retroactive date required above,  
10 for a minimum of 5 years after the Term.
- 11 (B) GRE shall have the right, at times deemed appropriate to GRE during the Term, to request  
12 Seller to modify the insurance minimum limits specified in **EXHIBIT D** in order to maintain  
13 reasonable coverage amounts. Seller shall make all commercially reasonable efforts to  
14 comply with any such request.
- 15 (C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably  
16 available and commercially feasible in the commercial insurance market, Seller shall provide  
17 written notice to GRE, accompanied by a certificate from an independent insurance advisor  
18 of recognized national standing, certifying that such insurance is not reasonably available and  
19 commercially feasible in the commercial insurance market for electric generating plants of  
20 similar type, geographic location and design. Upon receipt of such notice, Seller shall use  
21 commercially reasonable efforts to obtain other insurance which would provide comparable  
22 protection against the risk to be insured and GRE shall not unreasonably withhold its consent  
23 to modify or waive such requirement.

24 **Article 17. - Indemnity**

25 **17.1** Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other  
26 Party, and its officers, employees, directors and other representatives and agents (collectively, the  
27 "**Indemnified Party**") from and against all claims, demands, losses, liabilities, fines, remediation  
28 costs, penalties and expenses, including reasonable attorneys' fees, for personal injury or death to  
29 persons and damage to the Indemnified Party's real property and tangible personal property or  
30 facilities or the property of any other person or entity (collectively, "**Indemnified Losses**") to the  
31 extent arising out of, resulting from, or caused by an Event of Default under this Agreement, violation  
32 of any applicable environmental laws, or by the negligent or tortious acts, errors, or omissions of the  
33 Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. Nothing in the  
34 preceding sentence shall enlarge or relieve Seller or GRE of any liability to the other for any breach of  
35 this Agreement. In addition, Seller agrees to indemnify, defend and hold harmless GRE, and its  
36 officers, employees, directors and other representatives and agents, from and against all Indemnified  
37 Losses to the extent arising out of, resulting from, or caused by any Environmental Contamination or  
38 any violation of the federal, state or local environmental laws with respect to Seller, the Site or the  
39 Facility. These indemnification obligations of third party claims provided under this Article 17 are  
40 not limited by the limitation on damages set forth in Section 12.6 hereof. These indemnification  
41 obligations shall apply notwithstanding any negligent or intentional acts, errors or omissions of the  
42 Indemnified Party but the indemnifying Party's liability to pay damages to the indemnified Party shall

1 be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional  
2 acts, errors or omissions caused the damages. Neither Party shall be indemnified for its damages  
3 resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions  
4 shall not be construed to relieve any insurer of its obligation to pay claims consistent with the  
5 provisions of a valid insurance policy.

6 **17.2** Promptly after receipt by a Party of any claim or notice of the commencement of any action,  
7 administrative, or legal proceeding, or investigation as to which the indemnity provided for in this  
8 Article may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact.  
9 The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and  
10 satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action  
11 include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have  
12 reasonably concluded that there may be legal defenses available to it which are different from or  
13 additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party  
14 shall have the right to select and be represented by separate counsel, at the Indemnifying Party's  
15 expense, unless a liability insurer is willing to pay such costs.

16 **17.3** If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the  
17 Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim,  
18 provided that settlement or full payment of any such claim may be made only following consent of  
19 the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel  
20 that such claim is meritorious or warrants settlement.

21 **17.4** Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and  
22 hold the other Party and its successors and assigns harmless under this Article 17, the amount owing  
23 to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any  
24 insurance proceeds received by the Indemnified Party following a reasonable effort by the  
25 Indemnified Party to obtain such insurance proceeds.

## 26 **Article 18. - Legal and Regulatory Compliance**

27 **18.1** Each Party shall at all times comply with all applicable laws, ordinances, rules, and regulations  
28 applicable to it, except for any non-compliance which, individually or in the aggregate, could not  
29 reasonably be expected to have a material effect on the business or financial condition of the Party or  
30 its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required  
31 notices, shall procure and maintain all necessary governmental permits, licenses, and inspections  
32 necessary for performance of this Agreement, and shall pay its respective charges and fees in  
33 connection therewith.

34 **18.2** Each Party shall deliver or cause to be delivered to the other Party certificates of its officers,  
35 accountants, engineers or agents as to matters as may be reasonably requested, and shall make  
36 available, upon reasonable request, personnel and records relating to the Facility to the extent that the  
37 requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist  
38 the requesting Party in litigation, including, but not limited to, administrative proceedings before  
39 utility regulatory commissions.

## 40 **Article 19. - Assignment and Other Transfer Restrictions**

1 **19.1 No Assignment Without Consent.** Except as permitted in this Article 19, neither Party shall assign  
2 this Agreement or any portion thereof, without the prior written consent of the other Party, which  
3 consent shall not be unreasonably withheld or delayed; provided (i) at least 30 Days prior notice of  
4 any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the  
5 assignor's obligations hereunder, unless otherwise agreed to by the other Party, and no assignment,  
6 whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the  
7 assignee fails to perform, unless the other Party expressly agrees in writing to waive or release the  
8 assignor's continuing obligations pursuant to this Agreement; and (iii) before the Agreement is  
9 assigned by either Party, the assignee must first obtain such approvals as may be required by all  
10 applicable regulatory bodies.

11 (A) Seller's consent shall not be required for GRE to assign this Agreement for collateral  
12 purposes to RUS and its other secured lenders.

13 (B) GRE's consent shall not be required for Seller to assign this Agreement for collateral  
14 purposes to the Facility Lender. Seller shall notify GRE, pursuant to Section 13.1, of any  
15 such assignment to the Facility Lender no later than 30 Days after the assignment.

16 **19.2 Accommodation of Facility Lender.** To facilitate Seller's obtaining of financing to construct and  
17 operate the Facility, GRE shall make reasonable efforts to provide such consents to assignments,  
18 certifications, representations, information or other documents as may be reasonably requested by  
19 Seller or the Facility Lender in connection with the financing of the Facility; provided, that in  
20 responding to any such request, GRE shall have no obligation to provide any consent, or enter into  
21 any agreement, that materially adversely affects any of GRE's rights, benefits, risks and/or obligations  
22 under this Agreement. Seller shall reimburse, or shall cause the Facility Lender to reimburse, GRE  
23 for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of  
24 counsel) incurred by GRE in the preparation, negotiation, execution and/or delivery of any documents  
25 requested by Seller or the Facility Lender, and provided by GRE, pursuant to this Section 19.2.

26 **19.3 Change of Control.** Any direct or indirect change of control of Seller (whether voluntary or by  
27 operation of law) shall require the prior written consent of GRE, which shall not be unreasonably  
28 withheld.

29 **19.4 Notice of Facility Lender Action.** Within 10 Days following Seller's receipt of each written notice  
30 from the Facility Lender of default, or Facility Lender's intent to exercise any remedies, under the  
31 Financing Documents, Seller shall deliver a copy of such notice to GRE.

32 **19.5 Transfer Without Consent is Null and Void.** Any sale, transfer, or assignment of any interest in the  
33 Facility or in this Agreement made without fulfilling the requirements of the Agreement shall be null  
34 and void and shall constitute an Event of Default pursuant to Article 12.

35 **19.6 Subcontracting.** Seller may subcontract its duties or obligations under this Agreement without the  
36 prior written consent of GRE, provided, that no such subcontract shall relieve Seller of any of its  
37 duties or obligations hereunder.

38 **19.7 Sale of Facility.** Seller shall not lease, sell, agree to sell, convey or otherwise transfer or dispose of  
39 (in one or a series of related transactions) any of its interest or title in any material portion of its  
40 Facility assets, now owned or hereafter acquired, except as part of a collateral assignment or other

1 security instruments in favor of a Facility Lender, or in the ordinary course of business as parts need  
2 repair or replacement, without GRE's consent, which shall not be unreasonably withheld.

3 **Article 20. - Miscellaneous**

4 **20.1 Waiver.** Subject to the provisions of Section 13.9(B) hereof, the failure of either Party to enforce or  
5 insist upon compliance with or strict performance of any of the terms or conditions of this Agreement,  
6 or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of  
7 any such terms, conditions, or rights, but the same shall be and remain at all times in full force and  
8 effect.

9 **20.2 Taxes.**

10 (A) Seller shall pay or cause to be paid all taxes on or with respect to the Facility or on or with  
11 respect to the delivery and sale of Wind Energy (and associated Capacity and Environmental  
12 and Renewable Attributes) to GRE that are imposed before or upon the delivery of Wind  
13 Energy or Early Energy at the Point of Delivery. GRE shall pay or cause to be paid all taxes  
14 on or with respect to its properties and facilities or on or with respect to the delivery and sale  
15 of Wind Energy (and associated Capacity and Environmental and Renewable Attributes) to  
16 GRE that are imposed after the delivery of Wind Energy or Early Energy at the Point of  
17 Delivery. If a Party is required to remit or pay taxes that are the other Party's responsibility  
18 hereunder, such Party shall promptly reimburse the other for such taxes.

19 (B) The Parties shall cooperate to minimize tax exposure; however, neither Party shall be  
20 obligated to incur any financial burden to reduce taxes for which the other Party is  
21 responsible hereunder. All Wind Energy delivered by Seller to GRE hereunder shall be sales  
22 for resale, with GRE reselling such Wind Energy. GRE shall obtain and provide Seller with  
23 any certificates required by any Governmental Authority, or otherwise reasonably requested  
24 by Seller to evidence that the deliveries of Wind Energy hereunder are sales for resale.

25 **20.3 Fines and Penalties.**

26 (A) Each Party shall pay when due all fees, fines, penalties or costs incurred by such Party or its  
27 agents, employees or contractors for noncompliance by such Party, its employees, or  
28 subcontractors with any provision of this Agreement, or any contractual obligation, permit or  
29 requirements of law except for such fines, penalties and costs that are being actively contested  
30 in good faith and with due diligence by such Party and for which adequate financial reserves  
31 have been set aside to pay such fines, penalties or costs in the event of an adverse  
32 determination.

33 (B) If fees, fines, penalties, or costs are claimed or assessed against a Party by any Governmental  
34 Authority due to noncompliance by the other Party with this Agreement, any requirements of  
35 law with which compliance is required by this Agreement, any permit or contractual  
36 obligation, or, if the work of a Party or any of its contractors or subcontractors is delayed or  
37 stopped by order of any Governmental Authority due to such Party's noncompliance with  
38 any requirements of law with which compliance is required by this Agreement, permit, or  
39 contractual obligation, such Party shall indemnify and hold the other Party harmless against  
40 any and all losses, liabilities, damages, and claims suffered or incurred by such other Party,

1 including claims for indemnity or contribution made by third parties against such other Party,  
2 except to the extent such other Party recovers any such losses, liabilities or damages through  
3 other provisions of this Agreement.

4 **20.4 Disclaimer of Third Party Beneficiary Rights.** In executing this Agreement, neither Party extends,  
5 and shall not be construed to extend, its credit or financial support for the benefit of any third parties  
6 lending money to or having other transactions with the other Party. Nothing in this Agreement shall  
7 be construed to create any duty to, or standard of care with reference to, or any liability to, any person  
8 not a party to this Agreement.

9 **20.5 Relationship of the Parties.**

10 (A) This Agreement shall not be interpreted to create an association, joint venture, or partnership  
11 between the Parties nor to impose any partnership obligation or liability upon either Party.  
12 Except as specifically provided for in Section 12.7, neither Party shall have any right, power,  
13 or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an  
14 agent or representative of, the other Party.

15 (B) Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to  
16 the employment of persons to perform such services, including all federal, state, and local  
17 income, social security, payroll, and employment taxes and statutorily mandated workers'  
18 compensation coverage. None of the persons employed by a Party shall be considered  
19 employees of the other Party for any purpose; nor shall a Party represent to any person that he  
20 or she is or shall become an employee of the other Party.

21 **20.6 Equal Employment Opportunity Compliance Certification.** Seller acknowledges that as a  
22 government contractor GRE is subject to various federal laws, executive orders, and regulations  
23 regarding equal employment opportunity and affirmative action. These laws may also be applicable  
24 to Seller as a subcontractor to GRE. All applicable equal opportunity and affirmative action clauses  
25 shall be deemed to be incorporated herein as required by federal laws, executive orders, and  
26 regulations, including but not limited to 41 C.F.R. §60-1.4(a)(1-7).

27 **20.7 Survival of Obligations.** Cancellation, expiration, or earlier termination of this Agreement shall not  
28 relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or  
29 termination, prior to the term of the applicable Statute of Limitations, including without limitation  
30 warranties, remedies, or indemnities which obligation shall survive for the period of the applicable  
31 statute(s) of limitation.

32 **20.8 Severability.** In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits,  
33 or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or  
34 unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and  
35 conditions of the Agreement and their application not adversely affected thereby shall remain in force  
36 and effect.

37 **20.9 Complete Agreement; Amendments.** The terms and provisions contained in this Agreement  
38 constitute the entire agreement between GRE and Seller with respect to the Facility and shall  
39 supersede all previous communications, representations, or agreements, either verbal or written,  
40 between GRE and Seller with respect to the sale of Wind Energy from the Facility. This Agreement  
41 may be amended, changed, modified, or altered, provided that such amendment, change,

1 modification, or alteration shall be in writing and signed by both Parties hereto, and provided further,  
2 that the Exhibits attached hereto may be changed according to the provisions of Section 13.8 hereof.

3 **20.10 Binding Effect; Standard of Review.** This Agreement, as it may be amended from time to time  
4 pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their  
5 respective successors-in-interest, legal representatives, and assigns permitted hereunder.

6 Absent the agreement of Seller and GRE to a proposed change, the standard of review for  
7 changes to the Wind Energy Payment Rate proposed by GRE, Seller, a non-party or the Federal  
8 Energy Regulatory Commission acting *sua sponte* shall be the “public interest” standard of  
9 review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956)  
10 and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

11 **20.11 Headings.** Captions and headings used in this Agreement are for ease of reference only and do not  
12 constitute a part of this Agreement.

13 **20.12 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed  
14 counterpart shall have the same force and effect as an original instrument.

15 **20.13 Governing Law.** The laws of the State of Minnesota govern this Agreement. The Parties hereby  
16 submit to the exclusive jurisdiction of the courts of the State of Minnesota, and venue is hereby  
17 stipulated as Minneapolis, Minnesota.

18 **20.14 Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions  
19 contemplated by this Agreement constitute a “forward contract” within the meaning of the United  
20 States Bankruptcy Code and that Seller is a “forward contract merchant” within the meaning of the  
21 United States Bankruptcy Code.

22  
23 *[remainder of this page intentionally left blank]*  
24

1  
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3  
4

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**Seller:**

\_\_\_\_\_

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

**GRE:**

**GREAT RIVER ENERGY**

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

5

**EXHIBIT A**

**CONSTRUCTION MILESTONES**

**Page 1 of 1**

**Construction Milestone**

**Results Seller Must Achieve**

\_\_\_\_\_, 20\_\_

Seller shall provide GRE with documentation that all Permits have been obtained or will be obtained by the time needed to meet all Construction Milestones and a copy of the executed Interconnection Agreement.

\_\_\_\_\_, 20\_\_

Seller shall provide GRE with a copy of the executed Construction Contract and copies of the agreements establishing Seller's capital structure (equity contribution agreements; the Financing Documents; etc.).

\_\_\_\_\_, 20\_\_

Commercial Operation Date

**EXHIBIT B**

**FACILITY DESCRIPTION AND SITE MAPS**

**EXHIBIT C**

**NOTICE ADDRESSES**

**Page 1 of 1**

<b>GRE</b>	<b>Seller</b>
<b>Notices:</b>	<b>Notices:</b>

**EXHIBIT D**

**INSURANCE COVERAGE**

**Page 1 of 2**

**SPECIFICATION OF INSURANCE COVERAGE**

**[TO BE REVIEWED]**

Type of Insurance

Minimum Limits of Coverage

Commercial General Liability (CGL) \$1,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

Excess/Umbrella Liability \$10,000,000

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. Seller may comply with these requirements through the use of a self-insurance program.

GRE shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by [or on behalf of] Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of GRE shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by GRE shall be excess of and noncontributing with insurance afforded by this policy, except for claims, losses, damages, expenses or liabilities resulting from the sole negligence of GRE.

Business Automobile Liability \$1,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide

contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. Seller may comply with these requirements through the use of a self-insurance program.

Workers Compensation

Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.

## EXHIBIT D

### INSURANCE COVERAGE

#### Page 2 of 2

<u>Type of Insurance</u>	<u>Minimum Limits of Coverage</u>
Employers Liability	\$1,000,000 each accident for bodily injury by accident,  \$1,000,000 each employee for bodily injury by disease.  \$1,000,000 policy limit bodily injury by disease
Builder's Risk	Replacement value or maximum foreseeable loss of the Facility.
Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.	
All-Risk Property insurance covering	Full replacement value or maximum foreseeable loss of the Facility. A deductible may physical loss or damage to the Facility be carried and deductible shall be the absolute responsibility of Seller.
All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value or maximum foreseeable loss.	
Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of twelve (12) calendar months
Business Interruption insurance shall cover loss of revenues and/or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by GRE, subject to a reasonable deductible which shall be the responsibility of Seller. Notwithstanding any other provision of this Agreement, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.	

**EXHIBIT E**

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**