

1 **RENEWABLE ENERGY AGREEMENT**

2  
3 **//PROJECTCO**  
4 **&**  
5 **//CUSTOMERCO**

6  
7 **//PROJECTNAME**

8  
9  
10 The "Execution Date," \_\_\_\_\_

11  
12 2018 July DOCUMENT TEMPLATE

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1    **1    RECITALS**

2    This Renewable Energy Agreement, the “Agreement”, is executed by and between the “Provider”,  
3    //PROJECTCO, a Delaware Limited Liability Company and the “Receiver”, //CUSTOMERCO, an Ohio  
4    Limited Liability Company.

5    WHEREAS the Receiver owns an “Industrial Facility”, //MANUFACTURING PLANT, that consumes  
6    electricity.

7    WHEREAS the Receiver desires to purchase electric energy generated by wind turbines to power, in part  
8    or whole, the Industrial Facility.

9    WHEREAS the Provider desires to construct, own, and operate a wind energy facility at the Receiver’s Site  
10   and furnish the electric energy produced to the Receiver.

11   WHEREAS the Provider desires a land lease and a utility and access easement necessary to construct and  
12   operate the Generating Facility and Supporting Infrastructure and Receiver desires to grant the land lease  
13   and a utility and access easements to the Provider.

14   WHEREAS the Provider and Receiver agree to the terms of this Agreement.

15   **2    TERMS AND DEFINITIONS**

16    **2.1   Terms Defined**

17    Terms shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in  
18    the singular or the plural or in the present or past tense. For convenience, defined terms will be capitalized  
19    in this Agreement, but defined terms used herein maintain their meaning regardless of capitalization and  
20    in no case shall failure to capitalize a term be construed as providing alternate meaning to the term.

21    **2.2   Terms Defined Inline**

22    When a term is in quotation marks in this document, it shall be construed that that clause or statement  
23    defines the term. Inline definitions shall take priority over all other term definitions.

24    **2.3   Specifically Defined**

25    Unless defined inline, terms shall have the meaning defined in Exhibit A.

26    **2.4   Terms Not Specifically Defined**

27    The plain meaning of terms not defined in this Agreement and otherwise used in this Agreement shall  
28    apply, unless such unlisted terms have meanings as commonly used in Prudent Wind Industry Practices,  
29    in which case the Prudent Wind Industry Practices meaning shall apply to the extent such meanings would  
30    be reasonably understood by a person similarly situated as the Receiver.

31    **3    DESCRIPTION OF FACILITY**

32    **3.1   The Site**

33    The “Site” shall include the Project Area, the Generating Facility, and the Supporting Infrastructure.

34    **3.2   Project Area**

35    The “Project Area” shall consist of the approximately //LAND DESCRIPTION. The Project Area is further  
36    described by the “Site Map” in Exhibit B.

**3.3 Generating Facility**

The “Generating Facility” shall consist of the following:

- A. Two/Three 1.5-Megawatt Goldwind GW 87/1500 Wind Turbines inclusive of their blades, generator, nacelle, and power conversion systems;
- B. The towers, foundations, and other structures material to the support of the wind turbine;
- C. The low voltage collection system and the pad mount transformers at the bases of the wind turbine; and
- D. All ancillary structures and systems necessary to produce energy including the Industrial Control System, the “ICS”, and the Supervisory Control and Data Acquisition System, the “SCADA System”.

**3.4 Supporting Infrastructure**

The “Supporting Infrastructure” shall consist of the following:

- A. The high voltage (34,500 volt) collection system, both underground and overhead, extending from the wind turbine pad mount transformer to the grounding transformer, the turbine switchgear, the interconnection switchgear, and the Generator Point of Common Coupling “GPCC” including junction boxes necessary for system isolation as further described in Site Drawings;
- B. The fiber-optic and communication systems, including buried, above-ground, wired, and wireless, that connect the wind turbines, the Control Center, the switchgear, and other miscellaneous components necessary for the operation of the Generating Facility;
- C. The access roads and crane pads;
- D. The utility pole, inclusive of equipment installed on the pole, for the interconnection; and
- E. The Control Equipment Enclosure.

**4 PROVIDER’S RESPONSIBILITIES****4.1 Interconnection**

Provider shall design and physically construct and operate the Generating Facility and Supporting Infrastructure in a manner consistent with the requirements of the Interconnection Agreement. Provider shall provide design documents, all supporting information, and all payment necessary for Receiver to secure an Interconnection Agreement with Utility. Provider shall support and cooperate with Receiver’s efforts to secure and maintain an Interconnection Agreement for a Net Metered project. The “Interconnection Agreement” is a distributed generation interconnection agreement with the Utility, the form of the Interconnection Agreement shall be determined by the standard template from the Utility.

**4.2 Safety**

At all times, in the performance of its obligations under this Agreement, Provider shall operate in a safe manner. Provider shall maintain a safety program, a current copy which shall be provided to the Receiver. The Provider’s safety program shall, at a minimum, meet or exceed all applicable legal requirements for worker and workplace safety, including 29 CFR 1926 and 29 CFR 1910 (OSHA) as applicable. Provider shall be responsible for enforcing the safety program on all employees and subcontractors during the Term of this Agreement.

In the event the Provider is notified by the Receiver of a safety concern, the Provider shall promptly address said safety concern.

1 The Provider shall promptly notify the Receiver if the Provider or any of its contractors experience a  
2 recordable injury, a lost time injury, a death, or a major equipment incident associated with the Site.

3 In the event the Provider or any of its contractors experiences any of the following at the Site, the Receiver  
4 may, in the Receiver's sole discretion, require that the Provider, at the Provider's sole cost, adhere to  
5 additional safety procedures or requirements as determined by the Receiver.

- 6 A. More than two (2) recordable injuries in any twelve (12) month period
- 7 B. More than one (1) lost time injury in any twelve (12) month period
- 8 C. A death

9 While working at the Receiver's Industrial Facility, the Provider shall adhere to the Receiver's safety plan.  
10 In the event the Provider's safety plan is more restrictive than the Receivers' in a particular topic, the more  
11 stringent safety plan shall govern while working on the Receiver's property.

### 12 **4.3 Standard of Care**

13 At all times during the engineering, construction, operation, and maintenance of the Site, the Provider shall  
14 work, and cause all subcontractors to work, in a workmanlike manner consistent with Prudent Wind  
15 Industry Practices.

### 16 **4.4 Initial Construction**

17 "Initial Construction" shall be the period of construction that commences with the execution of this  
18 Agreement and ends when the Generating Facility and Supporting Infrastructure are producing energy.

19 Provider shall construct, and bear all costs for the construction of, the Generating Facility and the  
20 Supporting Infrastructure. The site map is attached as Exhibit B. The location of the turbines shall be as  
21 identified in Exhibit C. Changes to the location, the turbine model, or the essential characteristics of the  
22 Generating Facility shall be made only with the written permission of the Receiver and such permission  
23 shall not be unreasonably withheld. The basis for all design shall be the current Site Drawings, Exhibit C.  
24 The Provider shall, during the construction of the Supporting Infrastructure, make all reasonable efforts to  
25 accommodate requests of the Receiver with respect to location, style, and identification of the Supporting  
26 Infrastructure.

27 Provider shall use commercially reasonable efforts to minimize disturbance to the Receiver's facility during  
28 construction at the Site. Provider shall keep the Site clean, orderly, and as close as possible to original  
29 condition during and after construction.

30 At the completion of the Initial Construction of the Generating Facility and Supporting Infrastructure, the  
31 Provider shall give the Receiver written notice and the Receiver shall have 15 business days to confirm, in  
32 writing, that the Site has been left in an acceptable condition. If the Receiver does not either approve or  
33 reject the condition of the site within the aforementioned time limit, then the Site shall be deemed to have  
34 been left in acceptable condition.

### 35 **4.5 Production of Energy**

36 The Generating Facility shall be designed to produce energy that will be supplied to the Receiver's existing  
37 high voltage distribution system and interconnected at the Point of Common Coupling behind the  
38 Receiver's existing utility meter under a Net Metering agreement with the Utility.

39 The Generating Facility and the Supporting Infrastructure shall be designed to comply with applicable  
40 Utility standards, the Interconnection Agreement, and specifically IEEE 1547.

1 4.5.1 Quality of Energy

2 The energy produced by the Generating Facility shall be at a voltage to match the Utility and shall be of a  
3 character that does not disrupt or degrade the quality of the energy regularly available from the grid.  
4 Additionally, the energy shall be supplied with a Power factor between 0.95 leading and 0.95 lagging, as  
5 selected by Receiver. Provider shall make all commercially reasonable efforts to accommodate any energy  
6 quality requests made by Receiver provided the requests are in accordance with the Interconnection  
7 Agreement and Prudent Wind Industry Practices.

8 4.5.2 Required Outages

9 Provider shall make commercially reasonable efforts to minimize the number and duration of outages to  
10 Receiver's existing plant infrastructure. In the event an outage to the Receiver's existing infrastructure is  
11 required, the Provider shall make all efforts to coordinate that outage with Receiver as far in advance as  
12 possible. In the event of an emergency that necessitates a plant outage, Provider shall make all efforts to  
13 minimize disruption to Receiver's plant. In an emergency, the operation of Receiver's plant shall take  
14 priority over restoring the Generating Facility to operation.

15 **4.6 Continued Operation**

16 Provider intends to operate the Generating Facility throughout the Term of this Agreement. Provider shall  
17 make commercially reasonable efforts to continue the operation of the Generating Facility and shall  
18 minimize all delays and interruptions in operations. In the event a wind turbine becomes inoperable,  
19 Provider shall use commercially reasonable efforts to restore the wind turbine to operation.

20 If Provider becomes aware of a situation that will prevent the operation of one or more wind turbines for  
21 more than 48 hours, then Provider shall give Receiver written notice of the situation, what is proposed to  
22 be done to fully resolve the situation, and the expected duration of the situation.

23 Provider shall, at the Provider's expense, regularly maintain the Generating Facility and Supporting  
24 Infrastructure in accordance with Prudent Wind Industry Practices.

25 **4.7 Insurance**

26 During the Initial Construction of the Generating Facility and Supporting Infrastructure, Provider shall  
27 maintain the following insurance coverage and cause all subcontractors to maintain the following  
28 insurance coverage:

- 29 A. Commercial General Liability coverage of not less than \$2,000,000 per occurrence  
30 B. Excess Liability coverage of not less than \$3,000,000 per occurrence  
31 C. Commercial Automobile Liability coverage of not less than \$1,000,000 per occurrence  
32 D. Construction All Risk coverage of not less than the full replacement value of the Generating Facility  
33 and Supporting Infrastructure  
34 E. Workers' Compensation coverage as required by applicable law

35 After the Initial Construction of the Generating Facility and Supporting Infrastructure is complete, Provider  
36 shall maintain the following insurance coverage for the Term of the Agreement:

- 37 A. Commercial General Liability coverage of not less than \$2,000,000 per occurrence  
38 B. Excess Liability coverage of not less than \$3,000,000 per occurrence  
39 C. Commercial Automobile Liability coverage of not less than \$1,000,000 per occurrence  
40 D. Workers' Compensation coverage as required by applicable law

41 Provider shall name Receiver as an additional insured for all of the above coverage except Workers'  
42 Compensation.



1 Provider shall cause all Major Subcontractors to maintain insurance coverage, excluding the Construction  
2 All Risk coverage, of not less than the amounts described in this section. "Major Subcontractors" shall be  
3 those with a subcontract with a total expected value equal to or greater than \$250,000 or those  
4 subcontractors who are performing work that would reasonably be considered high risk.

5 The Provider shall cause all Minor Subcontractors to maintain coverage, excluding Construction All Risk  
6 and Excess Liability coverage, of not less than the amounts described in this section. "Minor  
7 Subcontractors" shall be those with a subcontract (of any level) with a total expected value of less than  
8 \$250,000 provided that the work being performed would not be considered high risk.

9 All coverage required in this section shall be maintained with an insurance company that has a credit rating  
10 of A or better, as determined by A.M. Best.

#### 11 **4.8 Metering**

12 The measurement of energy, both received and supplied, shall be completed at the GPCC. The potential  
13 transformers, current transformers, and meter shall be of an accuracy not less than the following:

- 14 A. Potential Transformer: ANSI C57.13 : Class 0.6
- 15 B. Current Transformer: ANSI C57.13 : Class 0.6
- 16 C. Meter: ANSI C12.20 : Class 0.2

17 The meter shall measure the flow of energy in both directions. The meter shall be available for inspection  
18 and remote viewing by Receiver.

19 Provider shall have a Professional Engineer inspect the meter and certify, in writing, that it is correctly  
20 installed and programed to measure energy at the Site. If, at any time, the meter becomes defective, then  
21 Provider shall promptly replace the meter with a comparable meter and shall cause a Professional Engineer  
22 to again inspect and certify that the meter is properly installed and programmed to correctly measure  
23 energy at the Site.

24 Provider shall maintain electronic records of the metering logs for not less than two (2) years.

25 Provider, in Provider's sole discretion, may elect to install a backup measurement system of similar quality.  
26 In the event of a defective meter, the burden of the proof shall be on Provider to prove the amount of energy  
27 that has been delivered to Receiver.

28 Provider shall permit Receiver to install a redundant meter if the Receiver, in its sole discretion and cost,  
29 elects to do so.

#### 30 **4.9 Billing and Reporting**

31 The "Billing Period" shall be from 12:01AM on the first day of the month until midnight on the last day of  
32 the month.

33 Provider shall submit an invoice to Receiver in the form of Exhibit D within seven (7) days of the end of a  
34 Billing Period. The bill shall be provided either electronically or via US Mail, subject to the preference of  
35 Receiver. The bill shall show starting and ending meter readings for the Billing Period, including both  
36 energy received by the Generating Facility and energy provided by the Generating Facility.

37 The Provider shall invoice the Receiver for the Net Electricity furnished to the Receiver, by the Provider,  
38 during the Billing Period. All Net Electricity measurement and billing shall be based in kilowatt hours  
39 (kWh).

40 The bill shall also include reactive energy consumption and generation for informational purposes only.

1 No later than the 15<sup>th</sup> of the month, Provider shall prepare and provide a report to Receiver that includes  
2 not less than the following information:

- 3 A. The generation, by turbine, for the previous month
- 4 B. Explanation of any Generating Facility outages lasting longer than four (4) hours during the  
5 previous month
- 6 C. Expected production vs. actual production for the previous month
- 7 D. Estimated production for the next 3 months
- 8 E. Explanation of any safety accidents or incidents that occurred at the Site
- 9 F. A schedule for any planned service on the Generating Facility or Supporting Infrastructure

#### 10 **4.10 Schedule**

11 Provider shall use commercially reasonable efforts to adhere to the schedule contained in Exhibit E.

12 Provider shall begin to produce energy from all turbines in the Generating Facility no later than the  
13 Guaranteed Project Operational Date.

14 The “Guaranteed Project Operational Date” shall be \_\_\_\_\_.

15 In the event that the Provider fails to meet the Guaranteed Project Operational Date then the Provider shall  
16 pay the Receiver Liquidated Damages in an amount of \$xx per month for each partial or full month until  
17 the Provider begins to produce energy from all turbines in the Generating Facility.

#### 18 **4.11 Taxes**

19 Provider shall be responsible for all taxes related to the generation and furnishing of energy produced by  
20 the Generating Facility. Receiver shall be responsible for any additional tax liability it incurs as a result of  
21 reduced operating costs resulting from the purchase of energy from Provider.

22 Receiver agrees to cooperate to support Provider in the application for any tax reducing measures including  
23 but not limited to the Investment Tax Credit, Production Tax Credit, Payment In Lieu of Taxes and full or  
24 partial local tax abatement. Provider shall compensate Receiver for its actual expenses in the cooperation  
25 under this section.

#### 26 **4.12 Security**

27 During the entire term of this Agreement, Provider shall be responsible for providing physical and  
28 electronic security for the Generating Facility and Supporting Infrastructure. At a minimum, the security  
29 measures shall include:

- 30 A. Lock and key security for the wind turbines
- 31 B. Lock and key security for the pad mount transformers and switchgear
- 32 C. Lock and key security for the Control Equipment Enclosure
- 33 D. SCADA and electronic security consistent with Prudent Wind Industry Practices

##### 34 **4.12.1 Right to Record**

35 Provider shall have the right, in its sole discretion, to utilize video and/or audio security in the area  
36 immediately surrounding the wind turbines, inside the wind turbines, in the area immediately  
37 surrounding the Control Equipment Enclosure, and inside the Control Equipment Enclosure. Provider  
38 shall provide posted notice if it elects to use video and/or audio security.

39 Provider shall have the right to record and preserve indefinitely any video or audio surveillance from the  
40 areas identified in this section.

1 At the request of Receiver, Provider shall provide Receiver with access to any video security being used by  
2 Provider at the Site.

### 3 **4.13 Permitting**

4 Provider shall be responsible for obtaining all permits required for construction of the Generating Facility  
5 and Supporting Infrastructure.

6 Receiver shall cooperate with the Provider as necessary to obtain the permits necessary for construction of  
7 the Generating Facility and Supporting Infrastructure.

8 In the event that the Provider, exercising all efforts, is unable to obtain all permits necessary to construct  
9 and operate the Generating Facility within 120 days of the execution of this Agreement then either the  
10 Provider or the Receiver may terminate this Agreement by providing written notice to the other Party. In  
11 the event of a Termination under this clause the Provider shall promptly restore the Site to its original  
12 condition and vacate the Site.

### 13 **4.14 Cooperation**

14 Provider shall exercise commercially reasonable efforts to cooperate with Receiver to deal with any issues  
15 caused by the installation of the Generation Facility or Supporting Infrastructure that are not directly  
16 contemplated in this Agreement.

### 17 **4.15 Record Keeping and Inspection**

18 Provider shall keep and maintain records of the design, construction, and operation of the Generating  
19 Facility and Supporting Infrastructure in accordance with Prudent Wind Industry Practices. The records  
20 shall be kept for the term of the Agreement and secured using Prudent Wind Industry Practices.

21 Provider shall make the records available for inspection by Receiver at Receiver's request.

22 Provider shall make commercially reasonable efforts to accommodate any physical inspection requests  
23 made by Receiver, provided the requests do not violate Provider's safety program.

### 24 **4.16 Decommissioning**

25 If, and only if, any of the following conditions occur, then the affected wind turbine or turbines shall be  
26 considered to be "Terminal":

- 27 A. The term of this Agreement is completed and an extension has not been agreed to
- 28 B. A wind turbine is unable to produce energy for two hundred seventy (270) consecutive days
- 29 C. Provider elects to declare a turbine as Terminal

30 In the event that a wind turbine is determined to be Terminal, then, within ninety (90) days, Provider shall,  
31 at the Provider's expense, complete "Decommissioning" by performing the following for that specific wind  
32 turbine:

- 33 A. Deconstruct the wind turbine and tower
- 34 B. Remove the wind turbine, including the blades, generator, nacelle, and tower from the Site
- 35 C. Remove the pad mount transformer and supporting foundation
- 36 D. Remove the tower foundation to not less than two (2) feet below grade

37 When all wind turbines at the Site have been determined to be Terminal, then, in addition to the above  
38 requirements, Decommissioning, also at the Provider's expense, shall also include the following which  
39 shall be completed within one hundred twenty (120) days:

- 1       A. Remove the Control Equipment Enclosure
- 2       B. Remove all electrical cables within three (3) feet of grade throughout the Site or if requested by the
- 3       Receiver, all cables buried by the Provider in conjunction with this Agreement and located on the
- 4       Receiver’s property.
- 5       C. Remove the interconnection pole unless otherwise instructed by Receiver
- 6       D. Remove the switchgear, grounding transformer, and supporting foundations
- 7       E. Restore areas around the foundations and Control Center to preexisting condition
- 8       F. Complete a final dressing of the Site access roads to a neat and orderly condition
- 9       G. Release all easements and/or leases between the Receiver and the Provider, and, if requested by
- 10      the Receiver, allowing such releases to be recorded by the County
- 11      H. Ensure and warrant that the Provider has not left any hazardous materials, introduced by the
- 12      Provider, on the Receiver’s property

13    5    **RECEIVER’S RESPONSIBILITIES**

14    **5.1    Interconnection**

15    Receiver shall furnish Provider with unrestricted access to the point of interconnection of the Project to

16    Receiver’s side of the grid interconnection. Additionally, Receiver shall cooperate with Provider in the

17    submission of all applications, permits, and agreements related to the interconnection provided that

18    Provider shall bear all external costs associated with the interconnection and the interconnection

19    application. Receiver shall enter into a distributed generation Interconnection Agreement with its Utility,

20    including a Net Metering agreement. Receiver shall have the right to cancel or modify the agreement with

21    the Utility provided that Receiver shall not be relieved of the requirement to purchase energy from

22    Provider.

23    **5.2    Safety**

24    Receiver agrees to adhere to the Provider’s Safety Plan in the areas immediately surrounding the Project

25    Site.

26    Receiver shall provide the Provider with a copy of the Receiver’s safety plan and shall update the Provider

27    in the event that the safety plan is modified.

28    **5.3    Standard of Care**

29    At all times, Receiver shall the conduct its operations in a reasonable and prudent manner.

30    **5.4    Purchase of Energy**

31    Receiver agrees to purchase all Net Electricity delivered by Provider to the Generation Point of Common

32    Coupling as evidenced by data from a meter that meets the requirements of Section 4.8. “Net Electricity”

33    shall be determined by subtracting the absolute value of the energy consumed by the Generating Facility,

34    as measured in kilowatt hours, from the absolute value of the energy delivered to Provider by the

35    Generating Facility, as measured in kilowatt hours. The Receiver shall purchase the energy at the rates

36    defined in Section 6.2.

37    **5.5    Insurance**

38    At all times during the term of this Agreement, Receiver shall maintain the following insurance:

- 39       A. Commercial General Liability coverage of not less than \$2,000,000 per occurrence
- 40       B. Excess Liability coverage of not less than \$3,000,000 per occurrence
- 41       C. Commercial Automobile Liability coverage of not less than \$1,000,000 per occurrence

1 If the Receiver elects to self-insure, it shall demonstrate coverage levels equivalent to those required by this  
2 section and shall, in accordance with relevant state laws, evidence such coverage in writing.

3 All coverage required in this section shall be maintained with an insurance company that has a credit rating  
4 of A or better, as determined by A.M. Best.

#### 5 **5.6 Billing and Payment**

6 Receiver agrees to pay all invoices within thirty (30) days of receipt. In the event Receiver disagrees with  
7 the invoice then Section 10.1 shall control resolution of the Billing Dispute. All amounts past due shall incur  
8 interest at the maximum legal rate permitted or 18% annually, whichever is less. There shall be no reduction  
9 in the invoice payment for prompt payment. Billing shall be forwarded by e-mail to the Receiver in  
10 accordance with Section 14.3. Provider shall cooperate with Receiver to conduct a good faith reconciliation,  
11 summary, or review of the billing at any time.

#### 12 **5.7 Renewable Energy Credits**

13 Receiver agrees to maintain an attribute tracking system account to store the Renewable Energy Credits  
14 that Provider delivers to Receiver. Alternatively, Receiver, in its sole election, may direct the Provider to  
15 retire the Renewable Energy Credits in the name of the Receiver's Industrial Facility and to furnish the  
16 Receiver with a certificate evidencing the retirement.

#### 17 **5.8 Security and Access**

18 Receiver shall furnish Provider with access to the Site to allow Provider to complete its obligations under  
19 this Agreement. Receiver agrees to exercise reasonable judgment and diligence in securing its property,  
20 including the Project, at all times. Provider shall make all efforts to provide Receiver with 24 hours advance  
21 notice of the need for access to the Receiver's property. However, as necessary to protect against immediate  
22 threats to life and property, Receiver shall grant Provider emergency access as necessary.

#### 23 **5.9 Cooperation**

24 Receiver shall exercise commercially reasonable efforts to cooperate with Provider to deal with any issues  
25 caused by the installation of the Generation Facility or Supporting Infrastructure that are not directly  
26 contemplated in this Agreement.

#### 27 **5.10 Electricity Emergency Declaration**

28 Receiver shall have the right, in its sole discretion, to declare an "Electricity Emergency" whenever the  
29 production of electricity by the Provider may be detrimental to the operation of the Receiver's facilities. In  
30 the event that the Receiver declares an Electricity Emergency, the Provider shall immediately, upon  
31 receiving notification of the Electricity Emergency, cease production of electricity by the Generating  
32 Facility.

33 The Receiver shall still be responsible for payment for the energy that would have been produced by the  
34 Generating Facility if the Electricity Emergency had not been declared. The energy that would have been  
35 produced shall be calculated by multiplying the wind speed observed at the top of the wind turbines by  
36 the corresponding production from the power curve for the turbine. The calculation shall be at ten (10)  
37 minute intervals and shall be completed on a per turbine basis.

38 In the event Receiver directs Provider to disconnect the Generating Facility at the GPCC, and this act results  
39 in on-site wind data not being available, then the energy that would have been produced shall be  
40 determined by multiplying the turbine capacity factor for the preceding week by the nameplate rating of  
41 the turbines by the duration of the curtailment. The calculation shall be at ten (10) minute intervals and  
42 shall be completed on a per turbine basis.

1 **5.11 Right to Inspect**

2 At any time during any phase of the project, Receiver shall have the right to inspect any portion of the Site,  
3 Generating Facility, or Supporting Infrastructure.

4 **5.12 Parent Guarantee**

5 *Add if applicable.*

6 **6 PURCHASE RATES**

7 **6.1 Term**

8 The Term of this Agreement shall be the earlier of twenty (20) years from the Project Operational Date or  
9 the date at which all wind turbines have been declared to be Terminal and the Decommissioning is  
10 complete.

11 **6.2 Energy Purchase Rates Initial Term**

12 Receiver agrees to purchase all Net Electricity from Provider at the following rates:

- 13 A. For year 1: \$0.0XX per kilowatt hour
- 14 B. For year 2: \$0.0XX per kilowatt hour
- 15 C. For year 3: \$0.0XX per kilowatt hour
- 16 D. For year 4: \$0.0XX per kilowatt hour
- 17 E. For year 5: \$0.0XX per kilowatt hour
- 18 F. For year 6: \$0.0XX per kilowatt hour
- 19 G. For year 7: \$0.0XX per kilowatt hour
- 20 H. For year 8: \$0.0XX per kilowatt hour
- 21 I. For year 9: \$0.0XX per kilowatt hour
- 22 J. For year 10: \$0.0XX per kilowatt hour
- 23 K. For year 11: \$0.0XX per kilowatt hour
- 24 L. For year 12: \$0.0XX per kilowatt hour
- 25 M. For year 13: \$0.0XX per kilowatt hour
- 26 N. For year 14: \$0.0XX per kilowatt hour
- 27 O. For year 15: \$0.0XX per kilowatt hour
- 28 P. For year 16: \$0.0XX per kilowatt hour
- 29 Q. For year 17: \$0.0XX per kilowatt hour
- 30 R. For year 18: \$0.0XX per kilowatt hour
- 31 S. For year 19: \$0.0XX per kilowatt hour
- 32 T. For year 20: \$0.0XX per kilowatt hour

33 **6.3 Extended Term Purchase Price**

34 The energy purchase rates during an extension of this agreement, if applicable, shall be determined by  
35 mutual agreement.

36 **6.4 Buyout Options**

37 Receiver shall have the option, in its sole discretion, to purchase //PROJECTCO, inclusive of all of its assets,  
38 on, and only on the milestone dates set forth in Exhibit G (each a "Milestone Date"). All Milestone Dates  
39 are measured from the Project Operational Date. The "Purchase Price" for each Milestone Date shall be as  
40 defined in Exhibit G and in no event shall the Purchase Price be less than the Fair Market Value as of the  
41 Milestone Date, which shall be determined in accordance with Exhibit G.

1 If, at the time Receiver elects to execute its buyout option, the entity //PROJECTCO has any debt, then the  
2 Purchase Price, as defined above, shall include the payoff of all debt by Provider at Provider's cost (cash-  
3 free, debt-free). //PROJECTCO's long term service contracts and other non-debt related obligations shall  
4 remain intact at the time of sale of the entity.

5 In order to exercise its buyout option, Receiver shall provide written notice to Provider no less than six (6)  
6 months prior to the Milestone Date. The Date of Sale shall be the first day following the Milestone Date.

7 If the Receiver elects to execute its buyout option, then the Provider shall, by mutually agreed upon form,  
8 grant the Receiver the necessary easements and leases that are necessary for the continued operation of the  
9 Generating Facility throughout the Term of this Agreement and terminate any and all existing utility and  
10 ingress/egress easements related to this Agreement by and between Receiver and Provider.

#### 11 **6.5 Termination for Convenience**

12 At any time, Receiver may terminate this Agreement for convenience. In the event of a termination for  
13 convenience, Receiver shall pay Provider according to the following:

- 14 A. Prior to 5 years after Project Operational Date: \$XXXXXX  
15 B. More than 5 years after Project Operational Date: the corresponding Purchase Price for the closest  
16 Milestone Date proceeding the buyout.

#### 17 **6.6 Renewable Energy Credits**

18 The Renewable Energy Credits and any green attributes resulting from the energy produced at the  
19 Generating Facility shall be owned by Provider.

20 Provider shall supply Receiver with an equal amount of Renewable Energy Credits as those generated by  
21 the Generating Facility, noting that Provider may procure the Renewable Energy Credits that it provides  
22 to Receiver from any domestic source. These replacement Renewable Energy Credits shall be delivered to  
23 Receiver not less than annually in accordance with Section 5.7.

#### 24 **7 OPTION TO EXTEND AGREEMENT**

25 Provider and Receiver agree to have their respective Responsible Individuals meet for an in-person meeting  
26 at the Site to negotiate in good faith to attempt to extend the term of this Agreement. The Parties may elect  
27 to extend the Term of this Agreement either under current or revised pricing in five (5) year increments.

28 Neither Party is obligated to agree to an extension of this Agreement.

29 Any extension of this Agreement shall be documented using an Amendment.

#### 30 **8 LIMITATIONS OF LIABILITY AND INDEMNIFICATION**

##### 31 **8.1 Indemnification**

32 Provider and Receiver (each, in such case, an "Indemnifying Party") shall indemnify, defend, and hold the  
33 other Party and its employees, directors, officers, managers, members, shareholders, and agents (each, in  
34 such case, an "Indemnified Party") harmless from and against any and all third party claims, suits,  
35 damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees) including, but not  
36 limited to, those arising out of property damage (including environmental claims) and personal injury and  
37 bodily injury (including death, sickness, and disease) to the extent caused by the Indemnifying Party's (i)

1 material breach of any obligation, representation, or warranty contained herein and/or (ii) negligence or  
2 willful misconduct.

### 3 **8.2 Limits of Liability**

4 For breach of any provision of this Agreement for which an express remedy or measure of  
5 damages is provided in this agreement, the rights of the non-defaulting Party and the liability of  
6 the defaulting Party shall be limited as set forth in this agreement, as the sole and exclusive full,  
7 agreed-upon and liquidated damages, and not as a penalty, and all other damages or remedies  
8 are waived. If no remedy or measure of damages is expressly provided, or if a remedy or measure  
9 of damages is expressly nonexclusive, the non-defaulting Party shall have the right to exercise all  
10 rights and remedies available to it at law or in equity, provided, however, that the liability of the  
11 defaulting Party shall be limited to direct, actual damages only, and all other damages and  
12 remedies are waived. In no event shall either Party be liable to the other Party for consequential,  
13 incidental, punitive, exemplary or indirect damages, lost profits, or business interruption  
14 damages, by statute, in tort, contract, or otherwise.

## 15 **9 ASSIGNMENT**

### 16 **9.1 Unconditional Assignment by Receiver**

17 Receiver may freely assign its rights and responsibilities under this Agreement provided all of the  
18 following conditions are met:

- 19 A. The entire Agreement is assigned by Receiver to the assignee (i.e. partial assignment is prohibited);
- 20 B. The assignee has a credit rating, as determined by Standard and Poor's or Moody's, equal to or  
21 higher than Receiver's credit rating at the time of the assignment
- 22 C. The assignee's, or their affiliate entities', primary business is not the business of designing or  
23 manufacturing of wind turbines
- 24 D. The assignee is reasonably expected to be able to fulfill the obligations of the Receiver contained in  
25 this Agreement
- 26 E. Receiver's interest in the Project Area, if any, is transferred to the assignee in a concurrent  
27 transaction
- 28 F. Receiver provides Provider with 30 days advance written notice prior to the assignment and the  
29 aforementioned notice contains sufficient detail to document that the conditions of this Section  
30 have been met; and
- 31 G. The assignment is made as an incidental part of a larger assignment for a legitimate business  
32 purpose including but not limited to the sale of the Industrial Facility, sale of the Receiver's assets,  
33 or sale of a division of the Receiver's Company.

### 34 **9.2 Conditional Assignment by Receiver**

35 If the Receiver wishes to assign its rights and responsibilities under this Agreement but is unable to meet  
36 the conditions contained in Section 9.1 then the Receiver may do so, but prior to the Assignment the  
37 Provider, in the Provider's sole discretion, may require any or all of the following restrictions to be met as  
38 part of the assignment:

- 39 A. Provider may place restrictions on the amount of Site Data that will be shared with assignee  
40 including, without limitation, restricting the sharing of all Site Data other than Net Energy  
41 production; and/or



- 1 B. Provider may restrict the assignee’s right to inspect the Generating Facility and Supporting  
2 Infrastructure for the purpose of protecting the intellectual property and trade secrets of the  
3 Generating Facility and Supporting Infrastructure; and/or  
4 C. Provider may require that a prepayment or a letter of credit (the election of which security method  
5 to be used shall be by Receiver) be issued by either the Receiver or the assignee for the full  
6 outstanding amount of the expected energy payments during the Term of this Agreement provided  
7 that in such case Provider shall still be responsible for continuing the performance of their  
8 obligations under this Agreement.

9 In the event of a conditional assignment by Receiver, the Receiver shall provide the Provider with 30 days  
10 advance written notice of the assignment and the Provider shall have 20 days from receiving the  
11 aforementioned notice to declare, in writing to the Receiver, which, if any, of the above conditions are being  
12 imposed on the assignment.

### 13 9.3 Assignment by Provider

14 Provider shall not assign its rights or obligations under this Agreement provided, except, that Provider is  
15 free to change ownership interests in the Provider without restriction or notification to Receiver. In all cases  
16 of Assignment by Provider either One Energy Capital LLC or One Energy Capital Corporation will remain  
17 as the sole manager of the Provider.

## 18 10 DISPUTES AND MODIFICATIONS

### 19 10.1 Billing Disputes

20 In the event that either Party disagrees with a regular invoice related issue including form, accounting,  
21 energy quantity, billing arithmetic, rate, or any other issue directly related to the amount invoiced or paid  
22 then the dispute shall be deemed a “Billing Dispute” and this Section shall be used to resolve the Billing  
23 Dispute. A Party may use a consultant, on its behalf, to conduct or review billing matters provided that  
24 only a Party may initiate a Billing Dispute under this section. All Billing Disputes must be initiated within  
25 1 year of the applicable bill that is the subject of the dispute.

26 All disputes related to billing for generated electricity shall be settled in the following manner:

- 27 A. First by informal efforts by the employees of the Provider and Receiver.  
28 B. Second, by the Party initiating the Billing Dispute documenting their dispute, and the  
29 justification thereof, in writing, and providing the other Party with the opportunity to respond  
30 similarly in writing. Each party shall have 5 Business Days to provide their respective written  
31 dispute and response.  
32 C. Third, by an in person one-on-one meeting of the Provider’s and Receiver’s Responsible  
33 Parties. The meeting shall be conducted at the Project Site and shall take place within 15  
34 Business Days of receiving written request from either Party.  
35 D. Finally, by a technical determination by a Registered Professional Engineer selected by mutual  
36 agreement of the Parties and paid for by the losing Party. The Registered Professional Engineer  
37 shall be licensed in the State of Ohio and shall be directed to determine the technical accuracy  
38 of the invoice.

39 If, the above efforts are exhausted and the Billing Dispute remains unresolved then, and only then, the  
40 dispute shall be considered a Non-Billing Dispute and shall be resolved in accordance with Section 10.2

41 In all cases, all undisputed amounts shall be paid promptly in accordance with this Agreement.

## 10.2 Non-Billing Disputes

All disputes that arise under this Agreement that are not Billing Disputes, or are exhausted Billing Disputes, shall be settled in accordance with this Section. All efforts shall be used by both Parties to resolve all disputes as quickly and cost effectively as possible.

- A. First by providing written notice of dispute to the other party. The written notice of dispute shall contain a detailed explanation of the justification for the dispute and clearly state the desired outcome. The opposing Party shall have 15 Business Days to provide a similar written response to the issues raised by the disputing Party.
- B. Second, by good faith and in-person meeting at the Site by both Responsible Parties. The meeting shall take place within 15 Business Days of receiving written notice that the above written response is not an acceptable resolution to the dispute. Prior to this meeting the Parties shall each provide a written explanation of their position, and if any facts are undisputed, then as to such undisputed facts the Parties shall stipulate to the same. Each Party shall supply to the other any documentation supporting its position and any stipulated facts. Notes shall be taken by each Party at this meeting and exchanged. These written explanations and notes shall be considered admissible in future legal discovery. This meeting shall not be considered a settlement meeting.
- C. Third, for all disputes where technical issues, as opposed to legal or contractual issues, are in question, the Parties shall, after the on-site meeting, promptly agree on and hire an independent Registered Professional Engineer, or Engineering Firm, to consider the facts and present a sealed (stamped) written technical opinion on the technical areas of the dispute. The Registered Professional Engineer shall be licensed in the State in which the Site is located. This sealed (stamped) technical opinion shall be used, when possible, by both Parties to mitigate costs associated with damages. The Party that originally initiated the dispute shall pay for the Registered Professional Engineer until the overall dispute is resolved and the prevailing Party is determined.
- D. Lastly, if the dispute, after the conclusion of the process set out above, is still unresolved then any Party may pursue legal action to resolve the dispute in the court having jurisdiction.

The Prevailing Party shall be entitled to recover all reasonable external costs necessary to enforce this Agreement including attorney's fees, court fees, mediation fees, and expert witness fees. The maximum allowable hourly billing rate for the purpose of determining reasonable attorney's costs shall be \$400 per hour.

The "Prevailing Party" shall be the Party that prevails (whether affirmatively or by means of a successful defense) with respect to claims having the greatest value or overall importance as reasonably determined by the court.

## 11 [LAND LEASE AND] EASEMENT

[Receiver hereby agrees to grant Provider a ground lease for the areas identified as "Leased Areas" in Exhibit B ("Lease"), which shall include without limitation a 300 foot square circumscribed around the Generating Facility. The term of the Lease shall be the Term of this Agreement unless the Receiver has defaulted on this Agreement in which case the term of the Lease shall be the useful life of the original Generating Facility. The payment for this Lease shall be \$100.00 per year and shall be due on the date of the execution of the Lease and payable annually.

The Lease shall not be payable by offset. The form of the Lease shall be that attached as Exhibit F-1, incorporated herein by this reference. A memorandum of the Lease shall be executed by Receiver and

1 Provider and recorded in the real property public records of the county in which the Site is located, as more  
2 particularly described in the Lease.]

3 Receiver and Provider agree to cooperate to determine routing of collection system across Receiver's  
4 property to the PCC. Once final routing is mutually agreed to, the Receiver agrees to grant the Provider a  
5 "Utility Easement" and "Access Easement" as necessary to install and access the collection line. The term  
6 of the easement(s) shall be the Term of this Agreement unless the Receiver has defaulted on this Agreement  
7 in which case the term of the Easements shall be the useful life of the original Generating Facility. The form  
8 of each such easement shall be that attached hereto as Exhibit F, incorporated herein by this reference. Each  
9 such easement shall be fully executed by Receiver and Provider, and shall be recorded in the real estate  
10 public records of the county in which the Site is located.

11 Receiver agrees that the easement(s) shall encumber the title to the Site (and any property owned by  
12 Receiver in which the Site is located), run with the land thereof for the Term, and shall survive any future  
13 sale of the property within which the Site is located. In the event of a termination and thus  
14 Decommissioning, the Provider shall abide by Section 4.16.

15 If the Receiver elects to execute its buyout option, then Provider shall release all easements and/or leases  
16 between the Receiver and the Provider, and, if requested by the Receiver, allowing such releases to be  
17 recorded by the County.

## 18 12 DEFAULTS

### 19 12.1 Default Defined

20 The occurrence of one or more of the following shall constitute an event of "Default":

- 21 A. A Party voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or  
22 similar debtor-relief proceedings, or becomes insolvent or generally does not pay its debts as they  
23 become due, or admits in writing its inability to pay its debts, or makes an assignment for the  
24 benefit of creditors.
- 25 B. Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been  
26 commenced against a Party and such proceedings remain undismissed or unstayed for a period of  
27 180 days.
- 28 C. A Party is in material breach of its obligations under this Agreement and such material breach  
29 continues uncured for thirty (30) days after receipt of written notice from the other Party; provided  
30 that so long as the first Party is exercising diligent efforts to cure such breach, the first Party shall  
31 be entitled to an additional (60) days period of time required to cure such breach.
- 32 D. With respect to the Provider only, all wind turbines at the Site are determined to be Terminal.

### 33 12.2 Provider Default

34 In the event of a Default by the Provider the Provider shall, in the sole election of the Provider, either  
35 commence and complete Decommissioning or surrender the Generating Facility and Supporting  
36 Infrastructure to the Receiver. If the Provider elects to surrender the Generating Facility and Supporting  
37 Infrastructure to the Receiver then the Provider shall release all easements and/or leases between the  
38 Receiver and the Provider, and, if requested by the Receiver, allowing such releases to be recorded by the  
39 County and grant the Receiver an easement and/or lease as necessary to continue to operate the Generating  
40 Facility during the Term. If the Receiver declines the surrender, then the Provider shall complete  
41 Decommissioning pursuant to Section 4.16 solely at the Provider's expense.

**1 12.3 Receiver Default**

2 In the event of a Default by the Receiver the Provider shall be entitled to payment for the full expected  
3 electricity production of the facility during the Term of this Agreement. The full cost shall be calculated by  
4 multiplying the historical mean Net Electricity by the corresponding future energy purchase rates  
5 identified in Section 6.2.

6 Alternatively, the Receiver and Provider agree to use commercially reasonable efforts (which may include  
7 approaching potential alternate receivers) to cooperate to ensure the Provider receives an equal or greater  
8 payment during the same Term for energy production by the Generating Facility. This may include, but is  
9 not limited to, modifying the Supporting Infrastructure to generate energy directly on to the Utility's  
10 distribution system. The Receiver shall be responsible for all upgrade costs and shall, if necessary, be  
11 responsible for trueing-up the rate received from the Utility to ensure that the Provider receives not less  
12 than the original rates defined in Section 6.2. In no event shall cooperative efforts under this clause be  
13 construed against the Forward Contract provisions of Section 14.9. The cooperative efforts of this clause  
14 shall be construed as using reasonable efforts to mitigate damages only.

**15 13 REPRESENTATIONS AND WARRANTIES****16 13.1 Receiver's Representations and Warranties**

17 As of the date of execution of this Agreement the Receiver represents and warrants to Provider the  
18 following:

- 19 A. The Project Area is free of Hazardous Materials other than those disclosed Exhibit H.
- 20 B. Receiver represents and fully warrants to Provider that Receiver is the owner of all real property  
21 rights necessary grant the lease and easement(s) described in Exhibit F, and Receiver further  
22 represents that Receiver does not require the consent of any lender or any other third party to do  
23 so.
- 24 C. Receiver is a limited liability company duly organized, validly existing and in good standing under  
25 the laws of Ohio.
- 26 D. The execution, delivery and performance of this Agreement by Receiver has been duly authorized  
27 by all necessary corporate actions required by the Receiver and does not conflict with any other  
28 obligations of the Receiver or any laws applicable to the Receiver.
- 29 E. The Obligations hereunder are enforceable against Receiver, except to the extent limited by law.

**30 13.2 Provider's Representations and Warranties**

31 As of the date of execution of this Agreement the Provider represents and warrants to Receiver the  
32 following:

- 33 A. Provider is a limited liability company duly organized, validly existing and in good standing under  
34 the laws of Delaware.
- 35 B. All estimates made by Provider that relate to the production of the Generation Facility have been  
36 made in good faith and are in line with Prudent Wind Industry Practices.
- 37 C. The execution, delivery and performance of this Agreement by Provider has been duly authorized  
38 by all necessary corporate actions required by the Provider and does not conflict with any other  
39 obligations of the Receiver or any laws applicable to the Provider.

1 D. The Obligations hereunder are enforceable against Provider, except to the extent limited by law.

2 **14 GENERAL PROVISIONS**

3 **14.1 Jurisdiction**

4 This Agreement shall be construed, interpreted, and the rights of the Parties determined in accordance with  
5 the laws of the State of Ohio without reference to its choice of law provisions.

6 The Parties hereby irrevocably submit to the jurisdiction of the Federal District Court for the Northern  
7 District of Ohio and the Court of Common Pleas for the County of Hancock over any dispute arising out  
8 of or relating to this Agreement or any of the transactions contemplated hereby; and each Party hereby  
9 irrevocably (i) agrees that all claims in respect of such dispute or proceeding shall be heard and determined  
10 in such court, and (ii) waives, to the fullest extent permitted by applicable law, any objection which it may  
11 now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of  
12 inconvenient forum.

13 **14.2 Drafting and Interpretation**

14 The section, paragraph, and clause titles contained in this Agreement are for convenience and reference  
15 only, and in no way define, describe, extend, or limit the scope of intent of this Agreement or the intent of  
16 any provision contained therein.

17 The Parties agree that this Agreement was mutually drafted and that both Parties had the opportunity to  
18 contribute to the contents of this Agreement.

19 In the event of a conflict in this Agreement, the following order of precedence shall apply with the highest  
20 precedent listed first:

- 21 A. Properly executed Amendment
- 22 B. Definitions inline
- 23 C. Definitions in Exhibit A
- 24 D. This Agreement exclusive of exhibits
- 25 E. The exhibits of this Agreement

26 **14.3 Communication, Invoices, and Notices**

27 Communication required under or pertaining to this Agreement shall be by electronic mail, certified mail  
28 via the United States Postal Service, or Federal Express, provided that in all cases a receipt or other form of  
29 confirmation of receipt must be obtained.

30 Communication, Invoices and Notices must be directed to the following contact information, which may  
31 be amended by either Party by providing written notice to the other Party.

32	Provider	Jereme Kent, General Manager
33		//PROJECTCO
34		12385 Township Rd. 215
35		Findlay, OH 45840
36		contracts@oneenergyllc.com
37		419-905-5274

38 Receiver:

39

1 Both Provider and Receiver shall designate, in writing, a “Responsible Individual” authorized to act on  
2 behalf of the respective Party. Responsible Individuals shall have the authority to negotiate and administer  
3 this Agreement on behalf of the respective Party and their decisions shall be binding on the respective  
4 Party. The Parties may designate a new Responsible Individual at any time by providing written notice,  
5 signed by an officer of the company, to the other Party provided that a Party will have one and only one  
6 Responsible Individual at any one time.

7

8 *(This space intentionally blank)*

1

2 The Responsible Individuals, as designated at the time of execution of this Agreement are:

3           Provider:       Jereme Kent, General Manager  
4                               //PROJECTCO  
5                               12385 Township Rd. 215  
6                               Findlay, OH 45840  
7                               jeremekent@oneenergyllc.com  
8                               419-905-5274

9           Receiver:  
10**11 14.4 Force Majeure**

12 A "Force Majeure" event is any extraordinary event beyond the control of the Parties that would not have  
13 been prudent to anticipate and that significantly impaired the Party's ability to perform one or more of its  
14 obligations in this Agreement.

15 In the event a Party is unable to complete its obligations under this Agreement due to a Force Majeure  
16 event, the Party shall immediately notify the other Party of the existence and anticipated effect of the Force  
17 Majeure event. The Party affected by the Force Majeure event shall be allowed a reasonable accommodation  
18 to recover from the Force Majeure event provided that the existence of the Force Majeure event does not  
19 excuse either Party from completing their obligations under this Agreement.

20 The burden of proof for the existence of a Force Majeure event shall be on the Party claiming the event.

21 If power production is compromised by a Force Majeure event then the Receiver shall not be responsible  
22 for payment for lost power production provided that the Receiver is making commercially reasonable  
23 efforts to recover from Force Majeure event.

**24 14.5 Confidentiality**

25 For purposes of this Agreement, "Confidential Information" means any and all documents, materials, data,  
26 and other information of any nature whatsoever (whether written, oral, electronic, or otherwise) relating  
27 to the work or the Project that may be provided or disclosed by a Party, its subcontractors or their Affiliates  
28 (individually, a "Disclosing Party") to the other Party, its Subcontractors or their Affiliates (individually, a  
29 "Receiving Party") in connection with the work or this Agreement, including such confidential information  
30 as has been furnished to Provider by Turbine Supplier. Notwithstanding the foregoing, Confidential  
31 Information shall not include the following: (i) information that, at the time of disclosure by the Disclosing  
32 Party, is publicly available, or information that later becomes publicly available through no act or omission  
33 of the Receiving Party in violation of the terms hereof; (ii) information that the Receiving Party can  
34 demonstrate was in its possession prior to disclosure by the Disclosing Party; (iii) information received by  
35 the Receiving Party from a third party who, to the best of the Receiving Party's knowledge, did not acquire  
36 such information on a confidential basis either directly or indirectly from the Disclosing Party; (iv)  
37 information that the Receiving Party can demonstrate was independently developed by it or for it and that  
38 was not obtained, in whole or in part, from the Disclosing Party; or (v) information that the Disclosing  
39 Party authorizes the Receiving Party to disclose.

40 The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the  
41 Disclosing Party and, unless authorized in writing in advance by the Disclosing Party or otherwise

1 provided in this Article 14, shall not disclose such Confidential Information to any other person or entity.  
2 Notwithstanding the foregoing,

- 3 A. Receiver, as Receiving Party, may disclose Confidential Information to its officers, employees,  
4 insurers, bankers, financiers, advisors, and agents who, in all such cases, reasonably need to know  
5 such Confidential Information in connection with Receiver's fulfillment of its obligations under  
6 this Agreement;
- 7 B. Provider, as Receiving Party, may disclose Confidential Information to its officers, employees,  
8 Subcontractors, bankers, financiers, advisors, and agents who, in all such cases, reasonably need to  
9 know such Confidential Information in connection with Provider's fulfillment of its obligations  
10 under this Agreement; and
- 11 C. A Receiving Party may disclose Confidential Information to its successors or affiliates; provided  
12 that, in each case, the Receiving Party shall inform such recipients of the confidential nature of such  
13 Confidential Information and shall remain liable for any disclosures thereof.

14 In the event that a Receiving Party is required by law to disclose any Confidential Information, the  
15 Receiving Party shall provide immediate notice of such requirement to the Disclosing Party, and shall  
16 cooperate with the Disclosing Party in its efforts, if any, to obtain an appropriate protective order. If, in the  
17 absence of a protective order, the Receiving Party nonetheless, in the opinion of its counsel, is required by  
18 law to disclose such Confidential Information, then the Receiving Party may so disclose such Confidential  
19 Information without liability hereunder; provided however, the Receiving Party shall furnish only that  
20 portion of material which is legally required to be disclosed and, upon the Disclosing Party's request,  
21 cooperate, at the Disclosing Party's expense, to obtain assurances that confidential treatment shall be  
22 accorded to such information.

#### 23 **14.6 Title and Risk of Loss**

24 Provider shall have Title to the Generating Facility and Supporting Infrastructure. The Provider shall have  
25 risk of loss for all equipment that comprises the Generating Facility and Supporting Infrastructure.

#### 26 **14.7 Title to Site Data**

27 Provider shall have Title to all Site Data. "Site Data" shall mean all data generated by the Generating Facility  
28 and Supporting Infrastructure. Provider agrees to not use the Site Data in any manner that would have an  
29 adverse impact on the Receiver.

30 Upon request from Receiver, Provider agrees to provide Receiver with copies of all Site Data. Provider  
31 grants Receiver an unconditional license to use all Site Data. Receiver agrees not to use Site Data in a  
32 manner that would have an adverse impact on Provider. Receiver agrees that Site Data shall be considered  
33 Confidential Information.

34 Either the Provider or Receiver may use the wind turbine availability and electricity production statistics,  
35 including energy yield and capacity factor, publicly.

#### 36 **14.8 Amendments**

37 "Amendment(s)" are documents that are mutually agreed to and mutually executed by the Parties'  
38 Responsible Individuals and modify one or more clauses, conditions, or terms of this Agreement. Neither  
39 Party shall be obligated to execute an Amendment. Amendments, when mutually executed, take  
40 precedence over this Agreement.



1 This Agreement may only be modified by Amendments. All Amendments must be physically signed in  
2 the same manner required for the execution of this Agreement and they must contain the phrase  
3 “Amendment” clearly printed on the document.

4 Emails and regular communication used in the course of performing the Parties’ obligations under this  
5 Agreement are not Amendments and do not modify the terms of this Agreement.

#### 6 **14.9 Forward Contract**

7 The Parties acknowledge and agree that the Agreement and the transactions consummated thereunder  
8 constitute a “Forward Contract” within the meaning of the United States Bankruptcy Code and that each  
9 of Provider and Receiver is a “Forward Contract Merchant” within the meaning of the United States  
10 Bankruptcy Code.

#### 11 **14.10 Execution**

12 This Agreement shall be executed in two identical and complete printed copies, each executed by both  
13 parties with wet signatures and with each copy being considered an original.

#### 14 **14.11 Binding Nature**

15 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors  
16 and permitted assigns.

#### 17 **14.12 Relationship of Parties**

18 Provider shall exercise independent professional judgment in the performance of this Agreement. Receiver  
19 shall have neither the right to control, nor have any actual, potential or other control over the means and  
20 methods by which Provider nor its Subcontractors conducts its independent business operations. Neither  
21 Provider nor its Subcontractors nor their respective employees shall be statutory agents, representatives,  
22 or employees of Receiver in the performance of the work. Furthermore, the Parties agree that Provider shall  
23 not be a partner or joint venturer of Receiver with respect to the work.

#### 24 **14.13 Severability and Survival**

25 Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force  
26 following the termination or expiration of this Agreement shall survive the termination or expiration of  
27 this Agreement.

28 Should any provision of this Agreement for any reason be declared invalid or unenforceable by any court  
29 or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions,  
30 and the remaining portions shall remain in full force and effect as if this Agreement had been executed  
31 without the invalid portion.

#### 32 **14.14 Entire Agreement**

33 This Agreement and the other documents, agreements, and/or provisions in other agreements referenced  
34 in this Agreement contain the entire agreement between the Parties with respect to the subject matter  
35 hereof, and supersede any and all prior and contemporaneous written and oral agreements, proposals,  
36 negotiations, warranties, guarantees, understandings, and representations pertaining to the subject matter  
37 hereof.

#### 38 **14.15 Ongoing Representations for Financing**

39 Both Parties acknowledge that from time to time it may be necessary to provide an ongoing representation  
40 related to this Agreement to support the one of the Parties normal business operations or business financing

1 including without limitation full-force and effect, validity, no default letters. The Parties agree to cooperate  
2 to provide such normal and customary representations throughout the Term of this Agreement.

3 **14.16 Special Conditions**

4 If any

5 *Execution on following page.*

1 The undersigned, intending to be legally bound, duly executed this Renewable Energy Agreement as of  
2 the day and year identified in the preamble to this Agreement.

3

4 **PROVIDER**

**RECEIVER**

5 //PROJECTCO

//CUSTOMERCO

6 By: One Energy Capital Corporation,

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

7 an Ohio Corporation

Name: \_\_\_\_\_

8 its Manager

Title: \_\_\_\_\_

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

10 Jereme Kent

11 President

12

13 **EXHIBITS**

14 **A. DEFINITIONS**

15 **B. SITE MAP**

16 **C. SITE DRAWINGS**

17 **D. FORM OF INVOICE**

18 **E. SCHEDULE**

19 **F. LAND EASEMENTS**

20 **G. PURCHASE PRICE AND FAIR MARKET VALUE DETERMINATION**

21 **H. HAZARDOUS MATERIAL DISCLOSURE**

22

23

1 **Exhibit A:**

2 **Definitions**

3 **Business Day** means every day other than a Saturday, Sunday or a day on which banks are required or  
4 authorized by law or executive order to close in the State in which the Project is located or other nationally  
5 recognized holiday.

6 **Generator Point of Common Coupling (GPCC):** The point, as determined and certified by a Professional  
7 Engineer in the applicable drawings, where the Provider's Supporting Infrastructure and Generating  
8 Facility system interconnect with the Receiver's electrical distribution system.

9 **Hazardous Materials** means all explosive or radioactive substances or wastes and all hazardous or toxic  
10 substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos  
11 containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other  
12 substances, pollutants or wastes of any nature regulated by any environmental law applicable at the Site.

13 **IEEE 1547** means the *Standard for Interconnecting Distributed Resources with Electric Power Systems*, inclusive  
14 of all sub publications, as published by the Institute of Electrical and Electronics Engineers.

15 **OSHA** means 29 CFR 1926 or 29 CFR 1910, whichever is applicable, as those provisions may be amended  
16 from time to time.

17 **Parties (Party):** The Receiver, the Provider, or the Receiver and the Provider, as determined by context.

18 **PCC, Point of Common Coupling:** The point in the electrical distribution system, as defined by the Utility,  
19 where the Receiver's system interconnects with the Utility's system.

20 **Project Operational Date:** The date upon which the Generating Facility, including all turbines, begins to  
21 produce energy and begin normal operation.

22 **Prudent Wind Industry Practices** means, in connection with the design and construction of, with respect  
23 to Buyer, and the supply, commissioning, repair or replacement of components for, as applicable, with  
24 respect to Supplier, wind energy generation systems of a type and size and having geographical and  
25 climatic attributes similar to the Project, those practices, methods, specifications and standards of safety,  
26 performance, quality, dependability, efficiency and economy generally recognized by industry members  
27 in the US as good and proper, and such other practices, methods or acts which, in the exercise of reasonable  
28 judgment by those reasonably experienced in the industry in light of the facts known at the time a decision  
29 is made, would be expected to accomplish the result intended at a reasonable cost and consistent with  
30 applicable laws, reliability, safety and expedition. Prudent Wind Industry Practices are not intended to be  
31 limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum  
32 of good and proper practices, methods and acts.

33 **Renewable Energy Credit:** An intangible certificate, as determined by applicable State and National laws,  
34 equal to one megawatt-hour of produced electricity and evidencing said production by a qualified  
35 renewable energy resource and registered with GATS, M-RETS, Green-e, or other similar accredited  
36 attribute tracking system in general use by the utility industry.

37 **Turbine Supplier:** Goldwind USA Inc., its parent or affiliate.

38 **Utility:** [TBD as appropriate]

**EXHIBIT B:  
SITE MAP**

**EXHIBIT C:  
“SITE DRAWINGS”**

**EXHIBIT D:  
FORM OF INVOICE**

<b>INVOICE</b>					
OEE ___ LLC					Invoice #
12385 Township Rd. 215					Invoice [
Findlay, OH 45840					Terms
877.298.5853					
					Due Date
Provider Reference Number					
Bill To:					
Receiver					PO #
Receiver Address					
Receiver Address			Receiver Reference Number		
<b>DETAIL</b>					
Billing Period					
Start Date					
End Date					

**EXHIBIT E:  
SCHEDULE**

<b>ITEM</b>	<b>Start</b>	<b>End</b>
Survey, Engineering and Interconnection	_____	_____
Site Civil and Foundation Work	_____	_____
Site Electrical Work	_____	_____
Turbine Delivery and Erection	_____	_____
Commissioning and Startup	_____	_____



**EXHIBIT F:**  
**FORM OF LEASE AND LAND EASEMENT**

**F1: Lease**

**F2: Utility Easement**

**F3: Access Easement**

**F4: Easement Map**

**EXHIBIT F1, FORM OF LEASE****GROUND LEASE FOR WIND ENERGY GENERATION FACILITY**

This Ground Lease for Wind Energy Generation Facility ("Lease") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, ("Effective Date") by and between //CUSTOMERCO, a \_\_\_\_\_ the "Landlord"), and //PROJECTCO, a Delaware Limited Liability Company (the "Tenant"),

**RECITALS:**

A. The Landlord is the owner of the real property described on Exhibit "A" attached hereto and by this reference made a part hereof, located in \_\_\_\_\_ County ("County"), Ohio, together with all appurtenances, easements and privileges thereto belonging (hereinafter referred to as the "Premises"); and,

B. The Tenant desires to lease from the Landlord the Premises in order to construct, own, and operate a wind energy facility and supporting infrastructure at the Premises and sell the electric power produced to //CUSTOMER, LLC ("//CUSTOMER"); and,

C. //CUSTOMER and Landlord are wholly-owned subsidiaries of //CUSTOMER North America, Inc., an Ohio corporation; and,

D. The //CUSTOMER desires to purchase electric power generated by wind turbines installed by the Tenant at the Premises; and,

D. //CUSTOMER and Tenant have entered into that certain Renewable Energy Agreement dated \_\_\_\_\_ ("REA") that provides (among other things) for the sale by Tenant of such electric power to //CUSTOMER; and,

E. The Landlord, desiring to enable Tenant to accomplish its purposes recited above, agrees to lease the Premises to the Tenant and the Tenant agrees to take the Premises from the Landlord upon the terms, covenants and conditions as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein and other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1 **Premises.** The landlord hereby leases to the tenant the premises, provided however, that this lease is cross-defaulted, and cross-contingent, with the rea. Any default under the rea shall constitute a default hereunder, and any default hereunder shall constitute a default under the rea. In the event of a rightful termination of the rea by either party, then this lease shall likewise be deemed terminated.

2 **Term.** The initial term of this Lease shall commence on the Effective Date hereof and end on December 31st of the twenty first (21st) full calendar year following the "Rental Commencement Date" (as hereinafter defined). "Lease Year" shall be defined as each successive period of twelve (12) consecutive calendar months commencing on the first day of January of each year during the term hereof and ending on December 31 of each year of the term hereof. If the Rental Commencement Date is other than January 1 of any calendar year, the period between the Rental Commencement Date and December 31 of that year shall be the "First Partial Lease Year" and in such event "Lease Year 1" shall be the first full calendar year

following such First Partial Lease Year. In the event of a Receiver Default under the REA the term of the lease shall be extended to the useful life of the original Generating Equipment, as defined in the REA.

3 Option to Extend. The parties, by mutual agreement, may extend this Lease if the REA is extended by Landlord and Tenant, upon the same terms and conditions as may be agreed to in any such extension of the REA (the initial term and any extension terms, if exercised, are hereinafter collectively referred to as the "Term" and the last day of the Term shall be referred to herein as the "Termination Date"). The terms, covenants, and conditions of this Lease shall remain the same for each extension term. Rent shall be determined in accordance with Section 4 hereof.

4 Rent. The Tenant covenants and agrees to pay the Landlord the rent (hereinafter referred to as the "Rent") for the Premises, payable annually in the amount of One Hundred Dollars (\$100.00) on the first day of each calendar year during the Term, commencing on the date that Tenant takes possession of the Premises ("Rent Commencement Date"). Landlord acknowledges that Landlord has received sufficient, good, and valuable consideration for this Lease in addition to the Rent, by virtue of Tenant entering into this Lease and the REA with Landlord.

- (a) If the Rental Commencement Date or Termination Date shall be other than the first day of the month, then rent and other charges shall be prorated to the Rental Commencement Date or Termination Date and rent for the first (partial) month shall be paid on the Rental Commencement Date.
- (b) Rent will be paid to the Landlord at the place designated for the Landlord to receive notices, or at such other place the Landlord may specify in writing.

5 Use of Premises/Investigation Period. The Tenant shall use the Premises for a power production generation facility and related uses consisting of wind generated power facilities ("Intended Use") and such other lawful purposes as are consistent with the Tenant's purposes. Should it be determined prior to the end of the Investigation Period (as defined below) that Tenant will not be able to use the Premises for the Intended Use because of the lack of regulatory authority approval, nonconformance to zoning or other regulations, non-availability of appropriate utilities, inadequate drainage, lack of access, poor site soil conditions, unsatisfactory environmental conditions, Landlord title or survey defects, or for any other reason beyond the reasonable control of the Tenant, then and in that event, the Tenant's sole and exclusive remedy shall be to terminate this Lease on or before the end of the sixtieth (60th) day after the Effective Date ("Investigation Period") by providing written notice to Landlord prior to the expiration of the Investigation Period and upon delivery of said notice, Landlord and Tenant shall be relieved of all further obligations under this Lease (except for any provision of this Lease that expressly survive Termination).

6 Right of Entry. Landlord hereby grants permission to Tenant or its agents to enter upon the Premises at any time after the Effective Date for the purpose of conducting engineering studies, including but not limited to soil tests, environmental studies, surveys and site planning work. The Tenant hereby agrees to indemnify and hold Landlord harmless of and from any and all claims or obligations of any kind that may be incurred as a result of said use of the Premises and, if this Lease is terminated by Tenant pursuant to Section 5 hereof, Tenant shall repair any damage caused to the Premises by Tenant's investigations. In the event Landlord suffers any claims or loss pursuant to this Section, Tenant shall immediately reimburse Landlord hereunder and any such amounts shall be immediately due and payable in full. This Section 6 shall specifically survive the expiration or sooner termination of this Lease.

7 Taxes. During the Term of this Lease, and for such further time as the Tenant or any person claiming under it shall hold the Premises or any part thereof, Landlord shall pay directly to the County and/or any other taxing authority and discharge the annual installment of all real estate taxes, including ad valorem and non-ad valorem taxes and assessments, charged or imposed upon the Premises; provided that Tenant shall pay any such taxes imposed upon any of the improvements erected thereon by the Tenant or anyone claiming by, through or under it. Tenant shall pay, before delinquency, any and all taxes and assessments of whatever kind or nature levied or assessed and which become payable during the Term upon Tenant's equipment, furniture, fixtures and other Tenant personal property located on the Premises. Further, Tenant shall pay any and all sales, use, excise or similar taxes which are imposed upon, arise from or relate in any way to the leasehold herein conveyed or the Rent required to be paid hereunder.

Landlord shall obtain from the County Property Appraiser a separate property identification number for the Premises, and as such the Premises will be assessed for real estate tax purposes separately from the adjoining property of the Landlord. Following the Effective Date, the Property Appraiser shall be requested to issue thereafter tax assessment notices and tax bills simultaneously to both the Landlord and the Tenant; provided that Tenant shall be listed as the primary party to receive such notices from the Property Appraiser.

Tenant shall timely reimburse Landlord for any and all taxes and assessments, charged or imposed upon any of the improvements erected thereon by the Tenant or anyone claiming by, through or under it that have been paid directly by Landlord to the taxing authority. In the event Tenant fails to reimburse Landlord for taxes, assessments or charges paid, as provided hereinabove within sixty (60) days of the date of invoice, Tenant shall also pay interest to Landlord for such sums paid at the rate of 18% per annum until paid. In the event the Landlord fails to pay any real estate taxes, assessments, rates, as provided hereinabove within sixty (60) days of the date any of the same are due and payable, in addition to any other remedy provided to Tenant under this Lease, the Tenant shall have the option to pay such taxes, and any sums so expended shall be paid by Landlord to Tenant with interest on said sum at the rate of 18% per annum until paid in full.

8 Title and Survey Status. The Landlord represents it owns the Premises in fee simple, subject only to: (i) Real estate taxes and assessments for 20\_\_ accruing after the Effective Date of this Lease and subsequent years; (ii) those other title matters listed either in:

8.1.1.1 Schedule B-II of any existing owner's title policy;

8.1.1.2 disclosed by list describing any such title matters; or

8.1.1.3 those matters shown on any existing surveys,

provided by Landlord to Tenant during the Investigation Period (collectively the "Permitted Exceptions") and that Landlord has the full right, power and authority to enter into this Lease for the Term granted. Tenant may, at Tenant's expense, conduct any additional title searches, surveys, and obtain any title commitments and policies as Tenant may desire.

Tenant shall have a priority interest in the Premises described herein subject only to the Permitted Exceptions or qualifications set forth in and permitted by this Lease. Landlord shall indemnify and hold Tenant harmless from any defeasance or deprivation of use of any part of the Premises during the Term of this Lease, not resulting from any of the Permitted Exceptions.

Tenant shall pay for the cost of Tenant's studies and investigations, and leasehold acquisition or construction costs for Tenant's facilities, any survey ordered by Tenant, the premium for any title insurance policy (with leasehold endorsement), and Tenant's own attorney fees. Landlord shall pay on or before the Rental Commencement Date the cost of Landlord's share of any prorations as set forth above, split the recording fees for the Memorandum of Lease, the cost of obtaining, preparing and recording any corrective instrument(s), any broker's commissions, and Landlord's own attorney fees.

9 Hazardous Materials. To the best of its knowledge, information and belief, Landlord hereby represents and warrants to Tenant as of the Effective Date of this Lease that except as disclosed in or pursuant to the REA: There is not located in, on, upon, over or under the Premises (i) asbestos in any form, (ii) urea formaldehyde foam insulation, or (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, is known to pose a hazard to the health and safety of any persons that now or may hereafter occupy the Premises or property adjacent to the Premises (hereinafter sometimes collectively called "hazardous materials");

Landlord agrees to defend, indemnify and hold Tenant harmless of and from any and all losses, claims, costs, fees, penalties, charges, assessments, taxes, fines, expenses, damages, liability, including reasonable attorneys' fees and legal assistants' fees, and the like which Tenant may hereafter be liable for, suffer, incur or pay arising under or out of any claim asserted by any person, entity, agency, organization or body against Tenant or the Premises as a result of handling, generation, treatment, storage, disposal, transport, release, discharge, spill, or emission of any hazardous or toxic substances or wastes, pollutants or contaminants from the Premises by Landlord, its agents, contractors or employees, or arising out of any breach of Landlord's warranties and representations contained in this Lease, or out of any act or violation of any applicable laws on the part of Landlord, its agents, contractors or employees. In the event Tenant suffers any claims or loss pursuant to this Section, Landlord shall immediately reimburse Tenant hereunder and any such amounts shall be immediately due and payable in full. Landlord's liability under this provision shall survive the expiration or any termination of this Lease.

Hazardous materials shall not be stored, managed or used at the Premises by Tenant, its agents, contractors or employees, except in amounts reasonably necessary for the conduct of Tenant's Intended Use. Tenant agrees to defend, indemnify and hold Landlord harmless of and from any and all losses, claims, costs, fees, penalties, charges, assessments, taxes, fines, expenses, damages, liability, including reasonable attorneys' fees and legal assistants' fees, and the like which Landlord may hereafter be liable for, suffer, incur or pay arising under or out of any claim asserted by any person, entity, agency, organization or body against Landlord or the Premises as a result of handling, generation, treatment, storage, disposal, transport, release, discharge, spill, or emission of any hazardous or toxic substances or wastes, pollutants or contaminants from the Premises by Tenant, its agents, contractors or employees, or arising out of any violation of Section 9 by Tenant, its agents, contractors or employees, or by out of any act or violation of any applicable laws on the part of Tenant, its agents, contractors or employees. In the event Landlord suffers any claims or loss pursuant to this Section, Tenant shall immediately reimburse Landlord hereunder and any such amounts shall be immediately due and payable in full. Tenant's liability under this provision shall survive the expiration or any termination of this Lease.

10 Eminent Domain. If all of the Premises, or such a portion thereof as will make the Premises unsuitable for the Intended Use, is condemned for any public or quasi-public use or purpose by a legally constituted authority, then, in either of such events, this Lease shall terminate on the date when possession is taken by such public or quasi-public authority. The Rent and other Tenant obligations shall be prorated

as of the date when possession is taken. Such termination shall be without prejudice to the rights of either the Landlord or the Tenant to recover compensation from the condemning authorities for any loss or damage to either party (and their respective interests) by such condemnation. Tenant may pursue any claim of business damages, its leasehold interest, fixtures, equipment, improvements made, or cost of relocation against the condemning authority only, and not from Landlord. In the event only a portion of the Premises is taken, such that the remaining portion is, in the Tenant's reasonable judgment, still suitable for the purposes set forth herein, then and in that event, the Rent and other charges provided by this Lease shall be adjusted to reasonably reflect the decrease in utilization of the Premises by the Tenant.

11 Regulatory Approval. To the extent set forth in this Section, the obligations of the Tenant are expressly contingent upon Tenant's receipt of the approval of all appropriate regulatory bodies which have jurisdiction over the Tenant and the Premises regarding the contents and execution of this Lease and the conduct of Tenant's Intended Use on the Premises. Failure to obtain such approval within a reasonable period of time shall constitute a basis for cancellation of this Lease.

12 Attornment and Subordination. Tenant agrees to subordinate this Lease and its leasehold interest to the lien of any deeds of trust, mortgages or the lien resulting from any other method of financing or refinancing placed upon the Premises by the Landlord with a lender authorized to do business in the State of Ohio, to any advances made thereunder and to all other amounts secured thereby, and all renewals, replacements, modifications, consolidations and extensions thereof and to supply any customary subordination, non-disturbance and attornment agreement ("SNDA") within fifteen (15) days after receipt of a request of Landlord for the same. Provided, however, any such subordinations shall only be effective if the SNDA contains or Landlord first obtains an agreement for the benefit of the Tenant from the proposed mortgagee, beneficiary or secured party to the effect that upon obtaining title to the Premises through foreclosure, conveyance in lieu of foreclosure or otherwise, such mortgagee, beneficiary or third party shall be substituted for the Landlord hereunder, and such mortgagee, beneficiary or secured party and the Tenant shall be in the relationship of landlord and tenant under the provisions of this Lease, and this Lease shall remain in full force and effect. Any such SNDA and all mortgages and other documents associated therewith, once recorded, shall be deemed to be a Permitted Exception to the title to the Premises. Any such SNDA shall provide that Landlord's lender shall receive notice from Tenant of any default by Landlord under this Lease and the right to cure any such Landlord default within thirty (30) days after the lender's receipt of any such notice.

13 Estoppel Certificates. At any time and from time to time upon the written request of either of the parties hereto, Landlord or Tenant, as the case may be, shall deliver to the requesting party within fifteen (15) days of such request, a certificate stating (i) whether or not this Lease is in full force and effect, (ii) whether or not any rights to renew the Term of this Lease have been exercised and the date on which this Lease will terminate, (iii) whether or not this Lease has been modified or amended in any way and attaching a copy of such modification or amendment, (iv) whether or not there are any existing defaults under this Lease to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any, (v) the status of Rent payments; and (vi) any other reasonable information requested.

14 Default. Tenant shall be in default upon the occurrence of any of the following events:

14.1.1.1 Failure to pay any Rent promptly within fifteen (15) days after the same shall become due and payable; and/or;

- 14.1.1.2 The Tenant shall materially fail to fully and promptly perform or comply with any term, provision, covenant or agreement of this Lease other than the payment of Rent within thirty (30) days after receipt of notice from Landlord; and/or;
- 14.1.1.3 The Tenant becomes insolvent or makes any transfer in fraud of creditors, or makes an assignment for the benefit of creditors; and/or;
- 14.1.1.4 A receiver or trustee or liquidator is appointed for all or substantially all the assets of Tenant; and/or;
- 14.1.1.5 The estate or interest of Tenant in the Premises, or any portion thereof, or in this Lease, is levied upon or attached in any proceedings and such process is not vacated or discharged within sixty (60) days after the date of such levy or attachment; and/or;
- 14.1.1.6 There is any entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstated and in effect for a period of ninety (90) or more consecutive days; and/or;
- 14.1.1.7 There is commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of Tenant generally to pay its debts as such debts become due, or the taking of corporate action by Tenant in furtherance of any of the foregoing; and/or
- 14.1.1.8 Tenant shall be in default under the terms of the Renewable Energy Agreement.

15 Default Remedies.

15.1 Monetary Default. In the event the Tenant shall fail to pay the Rent as required by the terms of this Lease within fifteen (15) days after the due date thereof, Tenant shall no longer have any right of possession of the Premises, and all rights of Tenant (but not the obligations) under this Lease shall expire and terminate within thirty (30) days after written notice from Landlord to Tenant of such default, provided, however, that such rights shall be reinstated and not cease if Tenant pays to Landlord within such thirty (30) day period after receipt of any such notice all arrears of Rent payable by Tenant under this Lease (together with interest thereon at the rate of 12% per annum from the date due until the date paid) and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by or on behalf of Landlord by reason of any default and fully cures and corrects any default then existing hereunder to the satisfaction of Landlord.

15.2 Non-Monetary Default. In the event the Tenant is in default under any non-monetary provision of this Lease all rights of Tenant (but not the obligations) under this Lease shall expire and

terminate within thirty (30) days after the date of written notice from Landlord to Tenant of such default, unless Tenant within said thirty (30) day period fully cures (or commences to cure, if such cure is not capable of being completed within said period and fully cures such default within ninety (90) days after receipt of Landlord's notice) and corrects any and every such non-monetary default then existing hereunder to the complete satisfaction of Landlord. In the event that within any twelve (12) calendar months Tenant commits two (2) or more non-monetary defaults, then Tenant shall be in material default under this Lease, whether or not Tenant has timely cured the same.

15.3 Notice of Termination. In the event of a monetary default or a non-monetary default, by the Tenant, and upon the failure of the Tenant to cure any such default within the times permitted (or if Tenant has commenced to cure a default that is not capable of being wholly cured within the thirty (30) day period set forth for curing the same, but has failed to continue diligent efforts to so cure, or has attempted but failed to completely so cure within the ninety (90) day period identified above), if any, the Landlord shall have the option, at any time thereafter except if such default has been previously cured, of terminating this Lease by written notice of the election of such option to the Tenant; any such termination shall be effective upon receipt of such written notice by the Tenant. Upon termination of this Lease as provided in this Section, the Landlord may thereafter peaceably resume possession of the Premises, or may institute such legal action as may be appropriate to resume possession of the Premises. Upon termination of this Lease, the Landlord may re-let the Premises, in whole or in part, and may apply any rent therefrom first to the payment of any loss, cost or expense, including reasonable attorneys' fees incurred by the Landlord by reason of the Tenant's default, and the balance of any such rent shall be applied to the remaining sums then due from the Tenant to the Landlord. The Landlord shall in addition have such further rights and remedies as may be available to the Landlord with respect to the collection of rent or possession of the Premises as may be provided under the laws of the State of Ohio.

16 Performance by Non-Defaulting Party. In the event either party fails to perform under the provisions of this Lease after notice and a reasonable time for performance, the other party may, at its option, take whatever reasonable action is deemed necessary to cure the failure to perform, and the defaulting party agrees to pay the non-defaulting party for all damages, costs, fees, expenses, judgments, charges and reasonable attorneys' fees incurred by the non-defaulting party in exercising the option herein granted. In the event the Tenant is the non-defaulting party and the Tenant exercises its option to perform for and on behalf of the Landlord, the Tenant may set off against its Rent obligations any amounts, costs, fees, expenses, charges and reasonable attorneys' fees incurred by the Tenant in connection with the exercise of its option to perform for and on behalf of the Landlord; provided, however, that prior to incurring any costs which Tenant intends to set off against Rent, Tenant shall provide Landlord with written notice of the intended cost or expense and Landlord shall have a period of thirty (30) days after receipt of such written notice to cure such default before Tenant shall be entitled to incur costs to be set off against Rent.

17 Mechanic's Lien. Tenant in constructing improvements on the Premises for the Intended Use or to make any alterations or additions thereto shall not allow any mechanic's lien to be recorded against Landlord's interest in the Premises. Landlord agrees to cooperate with Tenant and to execute and record a Notice of Commencement in the real property public records of the County (at Landlord's expense) in the form attached hereto as Exhibit "B". Further, Landlord agrees that in the event it receives any Notice of Furnishing provided to it by any person or entity providing labor, services, or materials to the Premises, that Landlord will promptly remit each such Notice of Furnishing to Tenant within fifteen (15) business days after receipt thereof by Landlord. If any mechanic's or other liens shall be filed against the Premises or any improvements thereon by reason of or arising out of any labor or material furnished for the Tenant



at the Premises, the Tenant shall immediately either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. In the event Tenant fails to timely remove any such lien as set forth above, then Landlord at any time may do so and shall have the right to recover from Tenant as Additional Rent all costs, expenses, bond premiums, fees (including attorneys' fees), court costs, recording costs, etc. of every kind and nature, incurred by Landlord in so doing.

18 Insurance.

18.1 Tenant's Insurance. During the Term and for any additional time that Tenant possesses or is otherwise responsible for all or any portion of the Premises, Tenant shall obtain and maintain at its expense the following types and amounts of insurance:

18.1.1.1 Commercial General Liability Insurance. Tenant shall obtain and maintain insurance for bodily injury, property damage, personal and advertising injury arising from the occupancy, operation, use, and maintenance of the Premises, including those areas designed solely for use with the Premises.

18.1.1.2 Other Insurance. Tenant shall maintain other coverage as required under the REA.

18.1.1.3 Certificate of Insurance. Copies of certificates of Tenant's insurance shall be delivered to Landlord within ten (10) days of the Effective Date and thereafter within thirty (30) days prior to the expiration of the term of each policy.

18.2 Landlord's Insurance. At all times during the Term, Landlord will carry and maintain general commercial liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the common areas of the Property.

18.3 Notwithstanding the foregoing, Landlord shall have the option to, and has hereby elected to maintain self-insurance having retentions sufficient to satisfy potential liabilities arising hereunder, in full satisfaction of the requirement of the above Insurance requirements.

19 ENVIRONMENTAL INDEMNITY. Tenant shall indemnify and hold harmless Landlord and its affiliates for any environmental or natural resource events, claims, fines, violations of law, or other liability directly or indirectly resulting from the installation, maintenance, or operation of the wind turbine on the premises. This environmental indemnity shall include, without limitation, costs of repair, correction, defense, and remediation. This indemnification shall include, without limitation, (a) personal injury (including death) and property damage claims, (b) the payment of liens, (c) diminution in the value of the premises, (d) damages for the loss or restriction on use of the premises, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, and expert fees, (g) natural resources damages, and (h) the cost of any investigation of site conditions, and the cost of any repair, cleanup, remediation, removal, or restoration work or detoxification if required by any governmental authorities. Any costs or expenses incurred by landlord for which tenant is responsible under this section or for which Tenant has indemnified landlord: (i) shall be paid to landlord fifteen (15) days after the date of invoice, during the term of this lease as additional rent; and (ii) from and after the termination or expiration of this lease shall be reimbursed by tenant fifteen (15) days after the date of invoice.

20 Landlord's Covenant of Quiet Enjoyment. Subject to the Permitted Exceptions, Landlord covenants and warrants that so long as Tenant is not in default under the conditions and during the Term of this Lease and any extension of said Term, Tenant's quiet and peaceable enjoyment of the Premises shall not be disturbed or interfered with by any one claiming by, through or under Landlord.

21 Notices. All notices provided for in this Lease shall be sent or delivered by overnight courier, or registered or certified mail, to the parties, return receipt requested, at the addresses set forth below or at such other addresses as the parties shall designate to each other in writing:

Landlord:

Tenant: //PROJECTCO  
12385 Allen Twp Rd 215  
Findlay, OH 45840  
Attn: Jereme Kent, General Manager  
contracts@oneenergyllc.com

Any notice or demand so given, delivered, or made by United States mail shall be deemed so given, delivered or made on the second business day after same is deposited in the United States mail, registered or certified mail, addressed as above provided, with postage thereon fully prepaid. Any such notice, demand, or document not given, delivered, or made by registered or certified mail as aforesaid shall be deemed to be given, delivered, or made upon receipt of the same by the party to whom the same is to be given, delivered, or made. Landlord and Tenant may from time to time notify the other of changes with respect to whom and where notices should be sent by sending notification of such changes pursuant to this Section. Attorneys for Landlord or Tenant may give and receive notices for their respective clients. Notice to Landlord's mortgage lenders shall be to the addresses provided by such mortgage lenders.

22 Compliance with Law. Tenant will comply with all federal, state, municipal and other laws, ordinances, rules and regulations applicable to the Premises and the business conducted thereon by Tenant, and shall, at its own cost and expense, obtain, comply with and keep in effect all necessary permits and licenses from any governmental authorities as may be required in connection with its use of the Premises, including but not limited to, disposing of any debris that may be directly or indirectly generated or caused by the wind turbine including those items required to be removed in accordance with applicable state, local and federal law.

23 Personal Property and Fixtures. Notwithstanding anything to the contrary herein contained, the Tenant shall, at the termination of the lease Term, by the lapse of time or otherwise, be entitled to remove its personal property, fixtures including without limitation all wind power generation fixtures from the Premises, and vacate the Premises in a broom clean condition, normal wear and tear excepted, so long as Tenant repairs all damage to the Premises caused by the removal of such fixtures and equipment. In the event Tenant fails to so remove its personal property and fixtures within sixty (60) business days after any termination of this Lease or after vacation or abandonment of the Premises by Tenant, Landlord may in its discretion do so and in such event Tenant shall pay all costs incurred by Landlord in doing the same. During the Term, the Tenant shall retain title to all improvements and fixtures (including without limitation wind power generation fixtures) placed on the Premises by the Tenant. Upon the expiration of the Term, any improvements (except the removable personal property and fixtures,

including without limitation all wind power generation fixtures), that remain on and become a part of the Premises, shall be thereafter owned by the Landlord.

24 Notice of Lease. A short form memorandum of lease shall be prepared in recordable form, executed by both parties and recorded in the Public Records of the County. The short form memorandum of lease shall give notice of the Tenant's interest in the Premises and of its rights under this Lease. Tenant agrees that within thirty (30) days of the expiration or earlier termination of this Lease that Tenant shall prepare a termination of the memorandum of lease for the signature of both parties, at Tenant's sole cost and expense. No copy of this Lease shall be recorded in the public records. This Section shall survive the expiration or earlier termination of this Lease.

25 Amendments. The Lease may not be modified or amended except by written agreement properly executed and delivered by and to both the Landlord and the Tenant.

26 Parties Bound. The Lease and its covenants, terms, and conditions shall be binding upon and inure to the benefit of the successor and assigns of the parties hereto and shall run with the Premises during the Term of the Tenant's leasehold estate.

27 Entire Agreement. The Lease contains the entire agreement of the parties (except as to the REA related hereto), and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, shall be of any force or effect. Further, this Lease shall be construed and enforced in accordance with the laws of the State of Ohio. Venue shall lie exclusively in the courts of the State of Ohio in the County for any legal action(s) arising under or in connection with this Lease.

28 Assignment. Landlord may freely assign its respective interests under this Lease. Tenant may assign its rights under this Lease upon the prior written approval of Landlord. Such approval not to be unreasonably withheld.

29 Prorations. Rental and other amounts owed by the Tenant pursuant to this Lease shall be prorated between Landlord and Tenant at the commencement and termination of the lease Term, unless otherwise herein agreed to the contrary.

30 Captions. The captions appearing in this Lease are inserted as a matter of convenience only and in no way define, limit, construe or describe the scope or intent of such sections, or in any way affect this Lease. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of the singular shall be deemed to include the plural and the use of the plural shall be deemed to include the singular.

31 Time. Time is of the essence of this Lease, and this provision shall apply to all terms and conditions contained herein. When the day of performance for any event or condition falls on a weekend or national or banking holiday, such performance or event shall be deferred until the close of business on the next succeeding business day. For purposes of this Lease, the "Effective Date" shall mean the later date of both the Landlord and Tenant having executed this Lease.

32 Waiver of Covenants. No consent or waiver by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent to or waiver of any other breach of the same or any other covenant, condition or duty of that party. No such consent or waiver shall be valid

unless in writing, and no such consent or waiver shall be implied by the failure of a party to declare a forfeiture or for any other reason.

33 Attorneys' Fees. The Prevailing Party shall be entitled to recover all reasonable external costs necessary to enforce this Agreement including attorney's fees, court fees, mediation fees, and expert witness fees. The maximum allowable hourly billing rate for the purpose of determining reasonable attorneys' fees shall be \$400 per hour. The "Prevailing Party" shall be the Party that prevails (whether affirmatively or by means of a successful defense) with respect to claims having the greatest value or overall importance as reasonably determined by the court.

34 Brokers. Tenant and Landlord each represents and warrants to the other that no real estate broker, agent, commission salesman, or other person has represented the warranting party in the negotiations for and procurement of this Lease and of the Premises, and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any real estate broker, agent, commission salesman or other person, other than the brokerage firms stated herein. Each party shall indemnify and hold harmless the other party for any claims made against the other party by any broker acting or claiming to act on behalf of the indemnifying party. The indemnification and hold harmless provisions of this Section include, but are not limited to, court costs, reasonable attorney fees and other professional fees and expenses, including the cost of any appeal.

35 Independent Consideration. If Tenant terminates this Lease pursuant to a right to do so contained in this Lease for any reason other than Landlord's default, then Tenant shall pay to Landlord in cash the sum of One Hundred Dollars (\$100.00) as independent consideration for the rights granted to Tenant pursuant to this Lease. Further, Tenant and Landlord acknowledge that good, sufficient, independent, full, fair and adequate consideration has been given for the indemnifications contained in this Lease, and that but for said indemnifications, neither Landlord nor Tenant would have been willing to enter into this Lease.

36 Anti-Terrorism Representation and Warranty. Landlord and Tenant each represent and warrant that neither they nor the officers and directors controlling Landlord and Tenant, respectively, are acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. Each party agrees to defend, indemnify, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representation and warranty.

*(Execution on next page)*

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

WITNESSES:

LANDLORD:

\_\_\_\_\_  
Witness Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

Print Name: \_\_\_\_\_

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

TENANT:

//PROJECTCO,  
a Delaware Limited Liability Company

\_\_\_\_\_  
Witness Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

Print Name: \_\_\_\_\_

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

**LEGAL DESCRIPTION AND SKETCH OF THE PREMISES**

Exhibit "A"  
to  
Ground Lease

Exhibit B to Land Lease  
Form of Notice of Commencement

[Space Above This Line For Recording Data]

**NOTICE OF COMMENCEMENT**

STATE OF OHIO )  
 ) ss:  
COUNTY OF \_\_\_\_\_)

**KNOW ALL MEN BY THESE PRESENTS** that, the undersigned in accordance with Section 1311.04 of the Ohio Revised Code ("ORC") gives notice that within ninety (90) days from the date of the recording of these presents among the Public Records of the within named County, the undersigned will cause the commencement of improvement of the following described real property located in \_\_\_\_\_ County, Ohio, to wit:

- (1) **LEGAL DESCRIPTION:** THAT CERTAIN REAL PROPERTY MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.  
**ADDRESS (if available):** \_\_\_\_\_
- (2) **THE GENERAL DESCRIPTION of said IMPROVEMENTS is as follows:**  
Wind energy generation facility and supporting infrastructure
- (3) **THE FEE SIMPLE TITLE OWNER:**  
Name: CUSTOMER CORP, LLC  
Address: \_\_\_\_\_  
Interest: Fee Simple
- (4) **THE TENANT OF REAL PROPERTY CONTRACTING FOR SAID IMPROVEMENTS:**  
Name: OEE XX?, LLC  
Address: \_\_\_\_\_  
Interest: Lessee/Tenant
- (5) **THE NAME and address of the CONTRACTOR (if any):**  
Name: One Energy Solutions LLC  
Address: 12385 Township Road 215, Findlay, Ohio 45840
- (6) **DATE CONTRACT WITH CONTRACTOR FIRST EXECUTED:** \_\_\_\_\_
- (7) **THE SURETY on the payment bond, if any, and the amount of such bond is as follows:** NONE
- (8) **THE LENDER MAKING THE LOAN FOR THE CONSTRUCTION OF THE IMPROVEMENTS:**  
Name: NONE  
Address: \_\_\_\_\_
- (9) **THE PERSONS, in the State of Ohio, designated by Owner upon whom notices and other documents may be served as provided by Section 1311.04(A)(5), ORC is as follows:**  
NONE
- (10) **THE EXPIRATION DATE of this Notice of Commencement is** \_\_\_\_\_ **(six years from the recording date hereof, if left blank).**
- (11) **TO LIEN CLAIMANTS AND SUBSEQUENT PURCHASERS:**

**TAKE NOTICE THAT LABOR OR WORK IS ABOUT TO BEGIN ON OR MATERIALS ARE ABOUT TO BE FURNISHED FOR AN IMPROVEMENT TO THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT. A PERSON HAVING A MECHANICS' LIEN MAY PRESERVE THE LIEN BY PROVIDING A NOTICE OF FURNISHING TO THE ABOVE-NAMED DESIGNEE AND THE ABOVE-NAMED DESIGNEE'S ORIGINAL CONTRACTOR, IF ANY, AND BY TIMELY RECORDING AN AFFIDAVIT PURSUANT TO SECTION 1311.06 OF THE REVISED CODE. A COPY OF THIS NOTICE MAY BE OBTAINED UPON MAKING A WRITTEN REQUEST BY CERTIFIED MAIL TO THE ABOVE-NAMED OWNER, PART OWNER, LESSEE, DESIGNEE, OR THE PERSON WITH WHOM YOU HAVE CONTRACTED.**

IN WITNESS WHEREOF, these presents have been duly executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER

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



Affidavit Verification pursuant to Section 1311.04(A)12, ORC:

Under penalty of perjury, I declare that I have read the foregoing and verify that the facts stated in it are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Natural Person

The foregoing instrument was sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of, an Ohio limited liability company who ( ) is personally known to me, or ( ) has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
Notary Name: \_\_\_\_\_  
(Type or Print)  
My Commission Expires:

Exhibit F2, Form of Utility Easement

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(space above this line for recording data)

**UTILITY EASEMENT**

**THIS UTILITY EASEMENT** (the "Agreement") is made this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 20\_\_\_, by, //CUSTOMERCO a \_\_\_\_\_ ("Grantor") and //PROJECTCO, a Delaware limited liability company ("Grantee").

**WHEREAS**, Grantor is the owner of that certain tract of real property more particularly described on Exhibit "A" attached hereto and incorporated herein ("Property"); and

**WHEREAS**, Grantor is desirous of providing to Grantee a nonexclusive utility easement for any and all utilities, including without limitation, electricity, water, sewer, drainage, cable, and other utilities, over, across, under, and through a portion of the Property for the benefit of the Premises in order to provide the Premises with utilities and related access thereto, to and from that certain public roadway described on Exhibit "B" attached hereto and made a part hereof ("Public Road"); and

**WHEREAS**, the easement imposed hereunder is desired to: (i) constitute a burden on and a benefit to all persons or entities hereafter owning all or any portion of the Property; and (ii) constitute a covenant running with the land; and (iii) be binding upon Grantor, Grantee and their respective successors and assigns.

**NOW THEREFORE**, for good and valuable consideration, Grantor, for themselves and their respective successors and assigns, impose and place upon the Property the following easement:

**ARTICLE I. EASEMENT GRANT.**

Section 1.01 Grantor hereby grants, gives and conveys to Grantee and its guests, tenants, employees, invitees, licensees and designees, a nonexclusive easement for any and all utilities, including without limitation, electricity, water, sewer, drainage, cable, and other utilities, and access thereto, over, across, under, and through, that portion of the Property situated as described in Exhibit "C" attached hereto and incorporated herein, as an appurtenance to and for the benefit of the Premises for utility purposes and general access thereto, to and from the Premises ("Utility Easement") for the term of the Lease, being twenty (20) years from the date hereof, and as it may be extended or earlier terminated pursuant to the Lease (collectively the "Term"), a memorandum of which is being recorded in the public records on even date herewith.

## **ARTICLE II. PROHIBITIONS.**

Section 2.01 The unreasonable obstruction, in any way, of the Utility Easement is prohibited, including, but not limited to: (i) blocking the Utility Easement; and (ii) the construction of any walls, fences, gates or other improvements which would obstruct the Utility Easement.

Section 2.02 Grantor hereby reserves the right, for itself and its own guests, tenants, employees, invitees, licensees, designees, successors and assigns, (a) to utilize the Utility Easement and (b) to grant such additional non-exclusive utility, access or other easements, rights, rights-of-way or other privileges over, across or under any or all of the Utility Easement as Grantor shall determine to be appropriate in its sole and exclusive discretion; provided, however, that any such other easements, rights, rights-of-way and/or privileges under this subparagraph (b) granted over, across or under the Utility Easement shall not unreasonably interfere with the use of the Utility Easement herein granted to Grantee.

## **ARTICLE III. INSTALLATION.**

Section 3.01 Grantee may construct and install within the Utility Easement, and shall bear all costs associated therewith, any electrical, water, sewer, stormwater drainage, cable and other lines, pipes, and facilities, and other improvements related thereto, for the Utility Easement situated within the Property pursuant to plans which are reasonably acceptable to Grantor.

Section 3.02 Any construction activities performed in the Utility Easement shall be performed in compliance with applicable laws, regulations, orders and ordinances of the local, county, state and federal government, or any department or agency thereof having jurisdiction over the Property.

## **ARTICLE IV. MISCELLANEOUS.**

Section 4.01 This Agreement shall run with the land and shall be binding upon every owner(s) of the Property and the Premises, or any portion thereof or any interest therein, and the respective heirs, executors, administrator, personal representatives, successors and assigns, for the duration of the Term. This Agreement shall be construed in accordance with Ohio law and shall not be amended, or modified, or terminated, unless in writing executed by the then owner(s) of the Property and recorded in the Public Records of the county in which the Property is located. The proper venue of any action or proceeding arising hereunder shall be \_\_\_\_\_County, Ohio.

Section 4.02 Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any party by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof and the same shall remain in full force and effect.

Section 4.03 Grantee may enforce the provisions of this Agreement against the Grantor, and in the event of any legal proceedings or litigation resulting therefrom, the prevailing party or parties shall be entitled to recover all costs and reasonable attorneys' fees incurred in the action or proceeding (including those incurred at trial and appellate levels), in addition to any other relief to which it or they may be entitled.

Section 4.04 This Agreement shall become effective upon its recordation in the Public Records of \_\_\_\_\_County, Ohio.

Section 4.05 In the event of default by a party hereto in its respective obligations hereunder, the non-defaulting party shall have (in addition to any other remedies which may be contained herein) all

remedies available to it at law or in equity, including, without limitation, the right to specific performance and damages.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by fully authorized signatories as of the date first written above.

WITNESSES:

GRANTOR:

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

GRANTEE:

//PROJECTCO,  
a Delaware limited liability company

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

STATE OF OHIO )  
 ) S.S.:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of //CUSTOMERCO, a \_\_\_\_\_, on behalf of said corporation, who is ( ) personally known to me or has ( ) produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Name: \_\_\_\_\_  
(Type or Print)  
My Commission Expires:

STATE OF OHIO )  
 ) SS:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of //PROJECTCO, a Delaware limited liability company, on behalf of said limited liability company, who is ( ) personally known to me or has ( ) produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Name: \_\_\_\_\_  
(Type or Print)  
My Commission Expires:

Exhibit F3: Form of Access Easement


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(space above this line for recording data)

**ACCESS EASEMENT AGREEMENT**

**THIS ACCESS EASEMENT AGREEMENT** (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by //CustomerCo, a \_\_\_\_\_ ("Grantor") and //PROJECTCO, a Delaware limited liability company ("Grantee").

**WHEREAS**, Grantor is the owner of that certain tract of real property more particularly described on Exhibit "A" attached hereto and incorporated herein ("Property") for the construction and operation of a wind energy generation facility interconnection; and

**WHEREAS**, Grantor is desirous of providing to Grantee a nonexclusive access easement for pedestrian and vehicular ingress and egress over, across and through a portion of the Property for the benefit of the Premises in order to provide the Premises with a means of ingress and egress to and from that certain public roadway described on Exhibit "B" attached hereto and made a part hereof ("Public Road"); and

**WHEREAS**, the easement imposed hereunder is desired to: (i) constitute a burden on and a benefit to all persons or entities hereafter owning all or any portion of the Property; and (ii) constitute a covenant running with the land; and (iii) be binding upon Grantor, Grantee and their respective successors and assigns.

**NOW THEREFORE**, for good and valuable consideration, Grantor, for themselves and their respective successors and assigns, impose and place upon the Property the following easement:

**ARTICLE V. EASEMENT GRANT.**

Section 5.01 Grantor hereby grants, gives and conveys to Grantee and its guests, tenants, employees, invitees, licensees and designees, a nonexclusive easement for pedestrian and vehicular ingress and egress across that portion of the Property situated as described in Exhibit "C" attached hereto and incorporated herein, as an appurtenance to and for the benefit of the Premises for purposes of pedestrian and vehicular general use, ingress and egress to and from the Premises ("Access Easement") for the term of the Renewable Energy Agreement, being twenty (20) years from the date hereof, and as it may be extended or earlier terminated pursuant to the Lease (collectively the "Term"), a memorandum of which is being recorded in the public records on even date herewith.

**ARTICLE VI. PROHIBITIONS.**

Section 6.01 The unreasonable obstruction, in any way, of the Access Easement is prohibited, including, but not limited to: (i) parking of any cars or trailers upon or otherwise blocking-off the Access Easement; and (ii) the construction of any walls, fences, gates or other improvements which would obstruct access in the Access Easement.

Section 6.02 The Access Easement shall not be closed without the prior written consent of Grantee, which consent shall not be unreasonably withheld.

Section 6.03 Grantor hereby reserves the right, for itself and its own guests, tenants, employees, invitees, licensees, designees, successors and assigns, (a) to utilize the Access Easement and (b) to grant such additional non-exclusive utility, access or other easements, rights, rights-of-way or other privileges over, across or under any or all of the Access Easement as Grantor shall determine to be appropriate in its sole and exclusive discretion; provided, however, that any such other easements, rights, rights-of-way and/or privileges under this subparagraph (b) granted over, across or under the Access Easement shall not unreasonably interfere with the use of the Access Easement herein granted to Grantee.

#### **ARTICLE VII. CONSTRUCTION.**

Section 7.01 Grantee may construct and install within the Access Easement, and shall bear all costs associated therewith, a private roadway and any paving, gravel cover, signage, stormwater drainage facilities, and other improvements for the Access Easement situated within the Property pursuant to plans which are reasonably acceptable to Grantor.

Section 7.02 Any construction activities performed in the Access Easement shall be performed in compliance with applicable laws, regulations, orders and ordinances of the local, county, state and federal government, or any department or agency thereof having jurisdiction over the Property.

#### **ARTICLE VIII. MAINTENANCE.**

Section 8.01 Grantee shall maintain in good condition and repair, and shall bear all maintenance repair and replacement costs associated with any paving, gravel cover, signage, stormwater drainage facilities, and other improvements within the Access Easement. Grantor shall pay all real property taxes and assessments on the Access Easement.

Section 8.02 No rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist.

#### **ARTICLE IX. MISCELLANEOUS.**

Section 9.01 This Agreement shall run with the land and shall be binding upon every owner(s) of the Property and the Premises, or any portion thereof or any interest therein, and the respective heirs, executors, administrator, personal representatives, successors and assigns, for the duration of the Term. This Agreement shall be construed in accordance with Ohio law and shall not be amended, or modified, or terminated, unless in writing executed by the then owner(s) of the Property and recorded in the Public Records of the county in which the Property is located. The proper venue of any action or proceeding arising hereunder shall be \_\_\_\_\_ County, Ohio.

Section 9.02 Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any party by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof and the same shall remain in full force and effect.

Section 9.03 Grantee may enforce the provisions of this Agreement against the Grantor, and in the event of any legal proceedings or litigation resulting therefrom, the prevailing party or parties shall be entitled to recover all costs and reasonable attorneys' fees incurred in the action or proceeding (including those incurred at trial and appellate levels), in addition to any other relief to which it or they may be entitled.

Section 9.04 This Agreement shall become effective upon its recordation in the Public Records of \_\_\_\_\_ County, Ohio.

Section 9.05 In the event of default by a party hereto in its respective obligations hereunder, the non-defaulting party shall have (in addition to any other remedies which may be contained herein) all remedies available to it at law or in equity, including, without limitation, the right to specific performance and damages.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by fully authorized signatories as of the date first written above.



WITNESSES:

GRANTOR:

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

GRANTEE:

//PROJECTCO,  
a Delaware limited liability company

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Witness Signature  
Print Name: \_\_\_\_\_

**EXHIBIT F4 TO BE ADDED ONCE LOCATION OF EASEMENTS ARE AGREED TO PER SECTION 11.**

**EXHIBIT G:**

**PURCHASE PRICE AND FAIR MARKET VALUE DETERMINATION**

The Purchase Price for each Milestone Date below shall be based on the year the purchase right is exercised and shall mean:

<u>MILESTONE DATE</u>	<u>PURCHASE PRICE</u>
A. Less than 5 Complete Years	\$
B. 5 Complete Years	\$
C. 8 Complete Years	\$
D. 10 Complete Years	\$
E. 13 Complete Years	\$
F. 15 Complete Years	\$

**FAIR MARKET VALUE DETERMINATION**

The Parties agree that the following technical stipulations shall exist in the determination of Fair Market Value:

1. The lifespan of the turbines is 20 years
2. The residual value (scrap value) of the turbines is calculated based on the amount of steel, copper, and permanent magnets contained in the turbine at the then generally accepted scrap values for the respective materials.
3. Absent a project specific quote, the cost of decommissioning shall be \$350,000 per turbine.
4. The REA prices, as defined in this agreement, are to be used for determining future revenue for the project.
5. The capacity factor for the Generating Facility (used to predict future cash flow) shall be the average site capacity factor from the preceding 3 years of operation.

An example of a fair market value calculation follows:

**Example Fair Market Value**

**Example Year 15**  
 Residual life 5 years (20-15)  
 Capacity Factor Historical to Date, 34%  
 Annual Production Estimate = 34% \* 24 \* 365 \* 3,000kWh = 8,935,200 kWh  
 Rate = \$0.0575 / kWh  
 Corporate Tax Rate 35%  
 Scrap Value = market rate \* qty. Assume Steel 700/ton \* 250 ton + Copper 4/lbs \* 10,000lbs = 215000 per turbine  
 NPV discount rate of 5%  
 Fair Market Value = present value of future net revenue stream including end of life obligations

Year	Revenue	Expense	EBIT	Tax On EBIT	Net
16	\$ 513,774	\$ 60,000	\$ 453,774	\$ 158,821	\$ 294,953
17	\$ 513,774	\$ 60,000	\$ 453,774	\$ 158,821	\$ 294,953
18	\$ 513,774	\$ 60,000	\$ 453,774	\$ 158,821	\$ 294,953
19	\$ 513,774	\$ 60,000	\$ 453,774	\$ 158,821	\$ 294,953
20	\$ 513,774	\$ 60,000	\$ 453,774	\$ 158,821	\$ 294,953
Scrap Value &	\$ 430,000	\$ 350,000	\$ 80,000	\$ 28,000	\$ 52,000

NPV = FMV = **\$1,315,795.77**

1  
2  
3  
4  
5

**EXHIBIT H:  
HAZARDOUS MATERIAL DISCLOSURE**

[add]