



# **RENEWABLE ENERGY AGREEMENT - HIGHLIGHTED**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

**RENEWABLE ENERGY AGREEMENT**

**//PROJECTCO  
&  
//CUSTOMERCO**

**//PROJECTNAME**

The "Execution Date," \_\_\_\_\_

2019 February DOCUMENT TEMPLATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

# Table of Contents

## 1 CONTENTS

- 1 Recitals.....6
- 2 Terms and Definitions .....6
  - 2.1 Terms Defined .....6
  - 2.2 Terms Defined Inline .....6
  - 2.3 Specifically Defined .....6
  - 2.4 Terms Not Specifically Defined.....6
- 3 Description of Facility .....6
  - 3.1 The Site .....6
  - 3.2 Project Area .....6
  - 3.3 Generating Facility .....7
  - 3.4 Supporting Infrastructure .....7
- 4 Provider’s Responsibilities .....7
  - 4.1 Interconnection.....7
  - 4.2 Safety.....7
  - 4.3 Standard of Care.....8
  - 4.4 Initial Construction .....8
  - 4.5 Production of Energy.....8
    - 4.5.1 Quality of Energy.....9
    - 4.5.2 Required Outages .....9
  - 4.6 Continued Operation.....9
  - 4.7 Insurance .....9
  - 4.8 Metering .....10
  - 4.9 Billing and Reporting.....10
  - 4.10 Schedule.....11
  - 4.11 Taxes .....11
  - 4.12 Security .....11
    - 4.12.1 Right to Record .....11
  - 4.13 Permitting.....12
  - 4.14 Cooperation.....12
  - 4.15 Record Keeping and Inspection .....12
  - 4.16 Decommissioning.....12
- 5 Receiver’s Responsibilities.....13

1 5.1 Interconnection .....13

2 5.2 Safety .....13

3 5.3 Standard of Care .....13

4 5.4 Purchase of Energy .....13

5 5.5 Insurance .....13

6 5.6 Billing and Payment .....14

7 5.7 Renewable Energy Credits .....14

8 5.8 Security and Access .....14

9 5.9 Cooperation .....14

10 5.10 Electricity Emergency Declaration .....14

11 5.11 Right to Inspect .....15

12 5.12 Parent Guarantee .....15

13 6 Purchase Rates .....15

14 6.1 Term .....15

15 6.2 Energy Purchase Rates Initial Term .....15

16 6.3 Extended Term Purchase Price .....15

17 6.4 Buyout Options .....15

18 6.5 Termination for Convenience .....16

19 6.6 Renewable Energy Credits .....16

20 7 Option to Extend Agreement .....16

21 8 Limitations of Liability and Indemnification .....16

22 8.1 Indemnification .....16

23 8.2 Limits of Liability .....17

24 9 Assignment .....17

25 9.1 Unconditional Assignment by Receiver .....17

26 9.2 Conditional Assignment by Receiver .....17

27 9.3 Assignment by Provider .....18

28 10 Disputes and Modifications .....18

29 10.1 Billing Disputes .....18

30 10.2 Non-Billing Disputes .....19

31 11 [Land Lease and ]Easement .....19

32 12 Defaults .....20

33 12.1 Default Defined .....20

34 12.2 Provider Default .....20

35 12.3 Receiver Default .....21

1 13 Representations and Warranties .....21

2 13.1 Receiver’s Representations and Warranties .....21

3 13.2 Provider’s Representations and Warranties .....21

4 14 General Provisions .....22

5 14.1 Jurisdiction .....22

6 14.2 Drafting and Interpretation .....22

7 14.3 Communication, Invoices, and Notices .....22

8 14.4 Force Majeure .....23

9 14.5 Confidentiality .....23

10 14.6 Title and Risk of Loss .....24

11 14.7 Title to Site Data .....24

12 14.8 Amendments.....25

13 14.9 Forward Contract .....25

14 14.10 Execution .....25

15 14.11 Binding Nature .....25

16 14.12 Relationship of Parties .....25

17 14.13 Severability and Survival .....25

18 14.14 Entire Agreement .....25

19 14.15 Ongoing Representations for Financing .....26

20 14.16 Special Conditions.....26

21 Exhibits

22 A. Definitions

23 B. Site Map

24 C. Site Drawings

25 D. Form of Invoice

26 E. Schedule

27 F. Land Easements

28 G. Purchase Price and Fair Market Value Determination

29 H. Hazardous Material Disclosure

30

31

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 Equipment Enclosure, 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 experience 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 resulting from an injury

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



#### 4.5.1 Quality of Energy

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

#### 4.5.2 Required Outages

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

### 4.6 Continued Operation

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

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

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

### 4.7 Insurance

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

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

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

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

Provider shall name Receiver as an additional insured for all of the above coverage except Workers' 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 Equipment Enclosure 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 justification  
29 thereof, in writing, and providing the other Party with the opportunity to respond similarly in  
30 writing. Each party shall have 5 Business Days to provide their respective written dispute and  
31 response.  
32 C. Third, by an in person one-on-one meeting of the Provider's and Receiver's Responsible Parties.  
33 The meeting shall be conducted at the Project Site and shall take place within 15 Business Days of  
34 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 of  
38 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 JEASEMENT

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

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

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

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

## 16 12 DEFAULTS

### 17 12.1 Default Defined

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

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

### 31 12.2 Provider Default

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

### 12.3 Receiver Default

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

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

## 13 REPRESENTATIONS AND WARRANTIES

### 13.1 Receiver's Representations and Warranties

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

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

### 13.2 Provider's Representations and Warranties

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

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

1 Receiver:  
2

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

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

10 Provider: Jereme Kent, General Manager  
11 //PROJECTCO  
12 12385 Township Rd. 215  
13 Findlay, OH 45840  
14 jeremekent@oneenergyllc.com  
15 419-905-5274

16 Receiver:  
17

18 **14.4 Force Majeure**

19 A “Force Majeure” event is any extraordinary event beyond the control of the Parties that would not have  
20 been prudent to anticipate and that significantly impaired the Party’s ability to perform one or more of its  
21 obligations in this Agreement.

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

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

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

31 **14.5 Confidentiality**

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

1 such information on a confidential basis either directly or indirectly from the Disclosing Party; (iv)  
2 information that the Receiving Party can demonstrate was independently developed by it or for it and that  
3 was not obtained, in whole or in part, from the Disclosing Party; or (v) information that the Disclosing  
4 Party authorizes the Receiving Party to disclose.

5 The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the  
6 Disclosing Party and, unless authorized in writing in advance by the Disclosing Party or otherwise  
7 provided in this Article 14, shall not disclose such Confidential Information to any other person or entity.  
8 Notwithstanding the foregoing,

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

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

#### 29       **14.6 Title and Risk of Loss**

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

#### 32       **14.7 Title to Site Data**

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

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

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



**14.8 Amendments**

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

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

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

**14.9 Forward Contract**

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

**14.10 Execution**

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

**14.11 Binding Nature**

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

**14.12 Relationship of Parties**

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

**14.13 Severability and Survival**

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

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

**14.14 Entire Agreement**

This Agreement and the other documents, agreements, and/or provisions in other agreements referenced in this Agreement contain the entire agreement between the Parties with respect to the subject matter hereof, and supersede any and all prior and contemporaneous written and oral agreements, proposals,

1 negotiations, warranties, guarantees, understandings, and representations pertaining to the subject matter  
2 hereof.

3 **14.15 Ongoing Representations for Financing**

4 Both Parties acknowledge that from time to time it may be necessary to provide an ongoing representation  
5 related to this Agreement to support the one of the Parties normal business operations or business financing  
6 including without limitation full-force and effect, validity, no default letters. The Parties agree to cooperate  
7 to provide such normal and customary representations throughout the Term of this Agreement.

8 **14.16 Special Conditions**

9 If any

10 *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

## **Exhibit A:**

### **Definitions**

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

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

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

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

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

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

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

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

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

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

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

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