

**Execution**

**POWER PURCHASE AGREEMENT**

**Between**

**FIRST STATE MARINE WIND LLC,**

**as Seller**

**and**

**UNIVERSITY OF DELAWARE,**

**as Buyer**

**Dated as of June 11, 2010**



## TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS AND RULES OF INTERPRETATION.....	4
1.1 Rules of Construction.....	4
1.2 Definitions.....	5
ARTICLE 2 - TERM AND TERMINATION .....	12
2.1 Term.....	12
2.2 Continuing Effect .....	12
ARTICLE 3 -FACILITY DESCRIPTION .....	12
3.1 Summary Description.....	12
3.2 Location.....	12
ARTICLE 4 - COMMERCIAL OPERATION .....	13
4.1 Commercial Operation Date.....	13
ARTICLE 5 - PURCHASE AND SALE; DELIVERY AND METERING .....	13
5.1 Purchase, Sale and Delivery.....	13
5.2 Delivery Arrangements.....	13
5.3 Payments Due to Seller for Buyer's Unexcused Failure to Take.....	14
5.4 Metering.....	15
5.5 Measurements.....	15
5.6 Testing and Correction.....	15
ARTICLE 6 - [RESERVED].....	16
ARTICLE 7 -TITLE; RISK OF LOSS .....	16
7.1 Title and Risk of Loss.....	16
ARTICLE 8 - PAYMENT CALCULATIONS .....	17
8.1 Contract Price.....	17
ARTICLE 9 - BILLING AND PAYMENT .....	18
9.1 Billing Invoices.....	18
9.2 Payments.....	18
9.3 Billing Disputes.....	18
9.4 Account Information.....	18
9.5 Records; Auditing.....	18
ARTICLE 10 - DEFAULT AND REMEDIES .....	19
10.1 Events of Default of Seller.....	19
10.2 Financing Party's Right to Cure Default of Seller .....	20
10.3 Events of Default of Buyer.....	20
10.4 Remedies of Seller.....	21

10.5	Remedies of Buyer .....	21
10.15	Waiver and Exclusion of Other Damages. ....	24
<b>ARTICLE 11 - CONTRACT ADMINISTRATION AND NOTICES .....</b>		<b>25</b>
11.1	Notices in Writing. ....	25
11.2	Representative for Notices. ....	25
11.3	Authority of Representatives. ....	25
11.4	Billing and Payment Records. ....	25
11.5	Dispute Resolution. ....	25
<b>ARTICLE 12 - FORCE MAJEURE.....</b>		<b>26</b>
12.1	Definition of Force Majeure. ....	26
12.2	Applicability of Force Majeure. ....	27
12.3	Force Majeure Termination. ....	27
12.4	Extension of Term. ....	27
<b>ARTICLE 13 – REPRESENTATIONS, WARRANTIES AND COVENANTS .....</b>		<b>27</b>
13.1	Seller’s Representations, Warranties and Covenants. ....	27
13.2	Buyer’s Representations, Warranties and Covenants. ....	29
<b>ARTICLE 14 – [RESERVED].....</b>		<b>30</b>
<b>ARTICLE 15 – INDEMNITY.....</b>		<b>30</b>
15.1	Indemnification.....	30
15.2	Claims.....	30
<b>ARTICLE 16 – LEGAL AND REGULATORY COMPLIANCE .....</b>		<b>31</b>
16.1	Compliance with Laws. ....	31
16.2	Certificates. ....	31
<b>ARTICLE 17 – ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS.....</b>		<b>31</b>
17.1	Assignment. ....	31
17.2	Accommodation of Financing Party.....	31
17.3	Subcontracting. ....	32
<b>ARTICLE 18 – [RESERVED].....</b>		<b>32</b>
<b>ARTICLE 19 – MISCELLANEOUS .....</b>		<b>32</b>
19.1	Waiver. ....	32
19.2	Taxes. ....	32
19.3	Relationship of the Parties.....	33
19.4	Severability.....	33
19.5	Complete Agreement; Amendments. ....	34
19.6	Binding Effect.....	34
19.7	Headings. ....	34
19.8	Counterparts.....	34

19.9	Governing Law.....	34
<b>ARTICLE 20</b>	<b>- CONFIDENTIALITY .....</b>	<b>34</b>
20.1	Confidential Information.....	34
20.2	Disclosure to Affiliates and Representatives.....	36
20.3	Disclosure Pursuant to Applicable Law.....	36
20.4	Disclosure to Financing Parties.....	36
20.5	Injunctive Relief and Consequential Damages.....	36
20.6	Survival of Confidentiality Provisions.....	37
20.7	Public Announcements.....	37

## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this "**Agreement**") is made as of June 11, 2010 (the "**Effective Date**"), by and between First State Marine Wind LLC, a Delaware limited liability company ("**Seller**"), and The University of Delaware, a non-profit educational institution chartered under the laws of the State of Delaware ("**Buyer**"). Seller and Buyer are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS Seller desires to develop, design, construct, own and operate a wind power electric generating facility with an aggregate expected installed, nameplate capacity of approximately two (2) MW, which is further defined below as the "**Facility**"; and

WHEREAS Seller desires to sell, and Buyer desires to purchase, on the terms set forth in this Agreement, all Metered Output from the Facility and Other Facility Attributes related to the generation of such Metered Output.

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

### ARTICLE 1 - DEFINITIONS AND RULES OF INTERPRETATION

1.1 **Rules of Construction.** The capitalized terms listed in this Article 1 shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter.
- (B) The words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (C) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement.
- (D) The Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement; *provided*, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.
- (E) This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.
- (F) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement.

(G) Use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation”.

(H) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

(J) In the event of a conflict, a mathematical formula describing a concept or defining a term shall prevail over words describing a concept or defining a term.

(K) References to any amount of money shall mean a reference to the amount in United States Dollars.

(L) Words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Good Utility Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Good Utility Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings.

1.2 Definitions. The following terms shall have the meanings set forth herein:

“*Affiliate*” of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term “control” (including the terms “controls”, “under the control of” and “under common control with”) means (i) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such person or entity or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such person or entity, or (ii) the right to direct the policies or operations of such person or entity.

“*After-Tax Basis*” means, with respect to any payment received or deemed to have been received by any Party, the amount of such payment (the “*Base Payment*”) supplemented by a further payment (the “*Additional Payment*”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local Taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment.

**“Agreement”** means this Power Purchase Agreement between Seller and Buyer, including the Exhibits attached hereto.

**“Ancillary Services”** means those services other than Metered Output, Environmental Attributes and Capacity Attributes that are defined as ancillary services in the Open Access Transmission Tariff of PJM as of the Effective Date.

**“Applicable Law”** means shall mean all laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations and permits of any governmental authority having jurisdiction over the Facility, the transmission of electricity, health and safety, the environmental condition of the Facility and the Facility site, this Agreement and each other document, instrument or agreement delivered hereunder or in connection herewith or with the Facility.

**“Business Day”** means any calendar day that is not a Saturday, Sunday, or a NERC recognized holiday. A Business Day shall open at 8:00 a.m. Prevailing Time and close at 5:00 p.m. Prevailing Time.

**“Buyer”** shall have the meaning set forth in the Preamble.

**“Capacity Attributes”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Facility is located. For purposes of PJM’s market design, Capacity Attributes include the amount of generating capacity, expressed in MW, which the Project can reliably contribute during summer peak hours, and which can be traded as unforced capacity credits in the PJM capacity markets as determined by PJM or which can be traded or are subject to compensation in any successor PJM capacity market or resource adequacy mechanism.

**“Commercial Operation Date”** means, with respect to the Facility, the first calendar day following receipt by Buyer of notice from Seller that each of the following have been achieved (i) the Substantial Completion Date has been achieved pursuant to the EPC Agreement, and (ii) the Facility is capable of producing and delivering Metered Output to the Metered Output Delivery Point.

**“Commercial Operation Year”** means any consecutive twelve (12) Month period during the Term of this Agreement, commencing with the first Day of the Month following the Commercial Operation Date of the Facility, and each anniversary of such date thereafter.

**“Confidential Information”** shall have the meaning set forth in Section 20.1(E).

**“Contract Price”** shall have the meaning set forth in Section 8.1.



**“CPI Adjustment”** means an adjustment according to the following formula: The month in which the Commercial Operation Date shall occur, shall be the “base month.” The corresponding month in each subsequent year of the Term and any renewal term shall be the “anniversary month.” The adjustment shall be determined using the Consumer Price Index – All Urban Consumers – U.S. City Average (“CPI-U”), as published by the U.S. Bureau of Labor Statistics. If the CPI-U for an anniversary month shall exceed the CPI-U for the base month, then the annual payment being adjusted shall be increased by the percentage by which the CPI-U for such anniversary month exceeds the CPI-U for the base month. In the event the CPI-U shall hereafter be converted to a different standard reference base or otherwise revised, the determination of any increase in the annual rent shall be made with use of such conversion factor, formula or table for converting the CPI-U as may be published by the U.S. Bureau of Labor Statistics or, if not so published by the U.S. Bureau of Labor Statistics, then with the use of such conversion factor, formula or table for converting the CPI-U as may be published by a nationally recognized publisher of similar statistical information. If the CPI-U shall no longer be published then, for purposes of determining the annual rent there shall be substituted for the CPI-U such other index as Buyer and Seller shall agree upon. In no event will the CPI Adjustment cause a reduction of any payment from the prior year amount of any payment adjusted under this Agreement

**“Day”** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Prevailing Time on any calendar day and ending at 24:00 hours Prevailing Time on the same calendar day.

**“Deemed Generated Energy”** means the quantity of electric energy, expressed in kWh, that Seller reasonably calculates would have been produced by the Facility and made available at the Metered Output Delivery Point during any period, and shall be determined by taking into account (a) during such period, the actual wind speeds (interpolated over time intervals, if necessary) measured by wind monitoring equipment located at the Facility that was available for operation immediately prior to the commencement of the period in question, or, if monitoring equipment is unavailable during a relevant interval, then using other available data or interpolated data determined using Good Utility Practices and (b) the power curve provided by the applicable wind turbine manufacturer (adjusted by historical data for the Facility compiled by Seller), as applied to the wind speeds referred to in clause (a), as adjusted for line losses to the Metered Output Delivery Point using historical data compiled by Seller.

**“Disclosing Party”** shall have the meaning set forth in Section 20.1.

**“Dispute”** shall have the meaning set forth in Section 11.5(A).

**“Dispute Notice”** shall have the meaning set forth in Section 11.5(A).

**“Early Termination Date”** shall have the meaning set forth in Section 10.7.

**“Easement Agreement”** means the Dredge Spoils Area Easement Agreement dated July 19, 2002, as amended on February 2, 2010, between the State of Delaware,

Department of Natural Resources and Environmental Control and Buyer, which easement is recorded in the Sussex County Recorder of Deeds Office at Deed Book 2734 page 193.

**“Effective Date”** shall have the meaning set forth in the Preamble.

**“Environmental Attributes”** means any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Facility, or otherwise attributable to the generation, purchase, sale or use of Metered Output or Test Energy from or by the Facility during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any rights to such Environmental Attributes, including the Delaware Department of Natural Resources and Environmental Controls (or successor thereto).

**“EPC Agreement”** means that certain Engineering, Procurement and Construction Agreement, by and between Gamesa Wind US, LLC and First State Marine Wind LLC, dated as of June 10, 2010.

**“Event of Default”** shall have the meaning set forth in Article 10.

**“Expected Commercial Operation Date”** shall have the meaning set forth in Section 4.1.

**“Facility”** means that certain wind power electric generation facility to be constructed in Lewes, Delaware, as more specifically described in Exhibit A.

**“Facility Information”** shall have the meaning set forth in Section 20.1(F).

**“Financing Party”** means any Person providing direct or indirect debt or equity financing, refinancing or extending credit (including any financing lease) to Seller or Seller’s Affiliates or the agent for such Person(s), or any agent or designee of such Person that has been granted a security interest in all or part of the Facility or this Agreement. Any Person or Persons who acquires a direct or indirect interest in Seller as a part of a transaction to ensure that the Facility is owned at least in part by a Person able to use any Tax credits or Tax depreciation benefits associated with holding an ownership interest in the Facility (including any subsequent transferees of any such Person or Persons) shall also be considered to be “Financing Parties”.

**“Force Majeure”** shall have the meaning set forth in Section 12.1.

**“GATS Account”** means an electronic account established by Seller or Buyer under PJM EIS GATS for the transfer by Seller and receipt by Buyer of Environmental Attributes associated with Metered Output from the Facility.

**“GATS Operating Rules”** means the Operating Rules for PJM EIS GATS, as amended or revised.

**“Good Utility Practice(s)”** means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the renewable energy electric generation industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition.

**“Governmental Authority”** means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal, and the Transmission Provider; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

**“Indemnified Party”** shall have the meaning set forth in Section 15.1.

**“Indemnifying Party”** shall have the meaning set forth in Section 15.1.

**“Installed Capacity”** means the aggregate nameplate capacity of the wind turbine included in the Facility (at the time of measurement of “Installed Capacity”), expressed in kW.

**“Interest Rate”** shall have the meaning set forth in Section 9.2.

**“kWh”** shall have the meaning set forth in Section 5.1.

**“LBPW”** means the Lewes Board of Public Works, or successor thereto.

**“Market Value”** shall have the meaning set forth in Section 10.8.

**“Material Adverse Effect”** means any event, occurrence, change or effect of whatever nature (or events, occurrences, changes or effects, taken together) that (i) is, or is reasonably likely to be, materially adverse to the present or future business, operations, assets, liabilities, properties, results of operations or condition (financial or otherwise) of the Facility or, including the design, development, construction or operation of the Facility as currently contemplated, or (ii) prevents or materially impairs or delays, or is reasonably likely to prevent or materially impair or delay, Seller’s ability to perform its obligations under this Agreement or to consummate the transactions contemplated hereby or thereby.

***“Metered Output”*** means the instantaneous electrical energy output (in kWh), intermittent and variable within the hour, made available from the Facility on and after the Commercial Operation Date at the Metered Output Delivery Point, as measured by the Meters installed at the Metered Output Delivery Point.

***“Metered Output Delivery Point”*** means the meter described as a revenue grade Mark-V Energy Meter with the location specified in “University of Delaware - Lewes Wind Turbine Proposed One-Line Diagram, Drawing E-1. New Primary Metering Cabinet, 15kV 200A with 3 CT’s & PT’s.”

***“Meters”*** shall have the meaning set forth in Section 5.5.

***“Month”*** means a calendar month commencing at 00:00 Prevailing Time on the first Day of such month and ending at 24:00 Prevailing Time on the last Day of such month.

***“NERC”*** means the North American Electric Reliability Corporation or any successor organization.

***“Other Facility Attributes”*** means all Products other than Metered Output.

***“Party” or “Parties”*** shall have the meaning set forth in the Preamble and includes any permitted assignee of a Party.

***“Parties’ Representatives”*** shall have the meaning set forth in Section 11.5(A).

***“Permits”*** means all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required to own, construct, operate or maintain the Facility, make available the Products at the applicable delivery points, and otherwise sell and transfer the Products to Buyer.

***“Person”*** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

***“PJM EIS GATS”*** means the Generation Attribute Tracking System maintained by PJM Environmental Information Services, Inc. for the PJM region, or any successor entity or system.

***“PTCs”*** means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible.

***“PTC Compensation Amount”*** means an amount equal to the PTCs, calculated on an After-Tax Basis, to which Seller would have been entitled with respect to Metered Output

that (a) Buyer failed to take for its own account or for the account of others or (b) Buyer was unable to take due to a downstream reduction in transmission capacity.

***“Prevailing Time”*** means Eastern prevailing time, meaning prevailing standard time or daylight savings time in the Eastern time zone.

***“Products”*** means, collectively, Metered Output, Environmental Attributes, Capacity Attributes and Ancillary Services.

***“Receiving Party”*** shall have the meaning set forth in Section 20.1.

***“Regulatory Charge Credit”*** shall have the meaning set forth in Section 8.1.

***“Seller”*** shall have the meaning set forth in the Preamble.

***“Seller’s Cost to Cover”*** means the positive difference, if any, between (a) the Contract Price effective for the applicable period, stated in \$/MWh, multiplied by the Metered Output not taken or purchased by Buyer as required hereunder for the applicable period, plus the PTC Compensation Amount with respect to Metered Output, and (b) the net proceeds, including with respect to any PTCs, stated in \$/MWh, realized by Seller from the sale to a third Person of electrical energy, environmental attributes, capacity attributes or ancillary services not taken or purchased by Buyer as required hereunder, minus any additional reasonable transaction costs, including those related to transmission and scheduling, directly associated with such sale; *provided* that if the difference between clause (a) minus clause (b) is zero or negative, then Seller’s Cost to Cover shall be zero Dollars (\$0).

***“Site”*** means the site on which the Facility will be constructed and located, including any interests reasonably necessary for the construction, operation and maintenance of the Facility. The Site is described in the Easement Agreement.

***“System Emergency”*** means any Transmission System condition that: (i) requires (as determined and declared by the Transmission Provider in the case of the Transmission System) automatic or immediate action to prevent or limit harm to or loss of life or property, to prevent loss of transmission or distribution facilities or generation supply, or to preserve system reliability, and (ii) affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

***“Tax”*** or ***“Taxes”*** means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, income, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, payroll, unemployment, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto.

***“Term”*** means the period of time during which this Agreement shall remain in full force and effect, and which is further defined in Article 2.

***“Termination Payment”*** shall have the meaning set forth in Section 10.8.

***“Test Energy”*** means, instantaneous electrical energy output (in kWh), intermittent and variable within the hour, made available from the Facility prior to the Commercial Operation Date for the Facility at the Metered Output Delivery Point, as measured by the Meters installed at the Metered Output Delivery Point.

***“Test Energy Delivery Date”*** means the date that the Facility begins to deliver Test Energy to the Metered Output Delivery Point.

***“Transmission Provider”*** means LBPW or any successor organization thereto or other entity that operates the Transmission System, or to the extent applicable, the owner of the Transmission System.

***“Transmission System”*** means the transmission facilities operated by the Transmission Provider, now or hereafter in existence, which provide energy transmission service downstream from the Metered Output Delivery Point.

## ARTICLE 2 - TERM AND TERMINATION

2.1 **Term.** This Agreement shall become effective as of the Effective Date, and shall remain in full force and effect until the last Day of the six (6<sup>th</sup>) Commercial Operation Year of the Facility, subject to any early termination provisions set forth herein and the extension provisions provided in this Agreement (the ***“Term”***).

2.2 **Continuing Effect.** Applicable provisions of this Agreement, including all indemnity rights, audit rights and confidentiality obligations, shall continue in effect after termination of this Agreement, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to such termination and, as applicable, to provide for final billings and adjustments related to the period prior to such termination, repayment of any money due and owing to either Party pursuant to this Agreement, repayment of principal and interest associated with security funds, if any, and the indemnifications specified in this Agreement.

## ARTICLE 3–FACILITY DESCRIPTION

3.1 **Summary Description.** Exhibit A to this Agreement provides a general description of the Facility, including a good faith estimate of the approximate amount of Metered Output that the Facility is expected to produce. The Parties acknowledge and agree that Exhibit A may be updated by Seller from time to time as necessary.

3.2 **Location.** The Facility shall be located on the Site. A description of the Site, and the terms governing the rights of Seller to use the Site, is included in the Easement Agreement.

## ARTICLE 4- COMMERCIAL OPERATION

4.1 Commercial Operation Date. Seller shall provide thirty (30) Days prior written notice of the expected Commercial Operation Date for the Facility (the date specified in such notice, the "*Expected Commercial Operation Date*"), and shall notify Buyer in writing when the Commercial Operation Date has been achieved and declared for the Facility by Seller.

## ARTICLE 5- PURCHASE AND SALE; DELIVERY AND METERING

### 5.1 Purchase, Sale and Delivery.

5.1.1 In accordance with and subject to the terms and conditions of this Agreement, beginning with the delivery of Test Energy and continuing through the end of the Term, Seller shall deliver and sell to Buyer, and Buyer shall take and purchase from Seller, all right, title and interest in and to the number of kilowatt hours ("*kWh*") of Test Energy and Metered Output that is made available at the Metered Output Delivery Point. Metered Output and Test Energy shall be deemed made available to Buyer for invoicing purposes in the Month in which Metered Output is made available at the Metered Output Delivery Point.

5.1.2 In accordance with and subject to the terms and conditions of this Agreement, beginning with the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to all Environmental Attributes, if any, attributable to the Metered Output.

5.1.3 In accordance with and subject to the terms and conditions of this Agreement, beginning with the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, any right, title and interest in and to all Capacity Attributes, if any, available with respect to the Facility.

5.1.4 In accordance with and subject to the terms and conditions of this Agreement, beginning with the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to Ancillary Services, if any, available with respect to the Facility.

### 5.2 Delivery Arrangements.

5.2.1 Seller shall be responsible for all interconnection costs, electric losses and transmission arrangements and other costs required to make available Metered Output and Test Energy to Buyer at the Metered Output Delivery Point. Buyer shall be responsible for all electric losses and transmission arrangements and costs required to take Metered Output and Test Energy at the Metered Output Delivery Point and deliver such energy to points beyond. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force

Majeure event), Seller shall be responsible for all charges and penalties, and any transmission related charges, including imbalance penalties, operating reserve charges and congestion charges (including negative LMP) associated with Metered Output and Test Energy made available by Seller at the Metered Output Delivery Point.

5.2.2 Seller shall make available and Buyer shall take Metered Output and Test Energy at the Metered Output Delivery Point on an as-generated, instantaneous basis. Seller shall notify, request and confirm the quantity of Metered Output and Test Energy to be made available on any given Day or Days (or in any given hour or hours) during the Term at the Metered Output Delivery Point with the Transmission Provider in accordance with all requirements applicable thereto. The Parties agree to use commercially reasonable efforts to comply with all applicable policies of the Transmission Provider in connection with the scheduling and delivery of Metered Output and Test Energy hereunder.

5.2.3 For each Month during the Term of this Agreement, Seller shall deliver to Buyer's GATS Account all Environmental Attributes associated with the Metered Output generated during the previous Month, or in the event that the PJM EIS GATS is not available, Seller shall deliver to Buyer an Environmental Attributes Attestation and Bill of Sale substantially in the form attached as Exhibit B or other appropriate documentation required for the transfer of Environmental Attributes associated with Metered Output made available by Seller during such Month. Seller and Buyer shall take all action necessary to ensure the proper transfer of the Environmental Attributes from Seller to Buyer in accordance with the GATS Operating Rules. Seller and Buyer shall bear their respective costs to create and maintain a GATS Account for the purposes specified in this Agreement, and to transfer or receive Environmental Attributes into Buyer's GATS Account, as the case may be. Environmental Attributes shall be deemed made available to Buyer in the Month in which such Environmental Attributes are transferred pursuant to this Section 5.2.3.

5.2.4 At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall cooperate with Buyer with respect to any testing or measurements that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer. Buyer shall bear all reasonable, out-of-pocket costs associated with preparing and executing any such documents and instruments. Capacity Attributes shall be deemed made available to Buyer in the Month in which such Capacity Attributes are transferred pursuant to this Section 5.2.4.

5.2.5 At Buyer's request, the Parties shall execute such documents and instruments reasonably required to effect recognition and transfer of the Ancillary Services, if any, to Buyer. Buyer shall bear all reasonable, out-of-pocket costs associated with preparing and executing any such documents and instruments. Ancillary Services shall be deemed made available to Buyer in the Month in which such Ancillary Services are transferred pursuant to this Section 5.2.5.

5.3 Payments Due to Seller for Buyer's Unexcused Failure to Take. If Buyer fails to take Metered Output and such failure to take is not excused by Seller's default or an Event of Force Majeure, then Buyer shall pay to Seller (a) if Seller is able to sell such Metered Output to a



third party, Seller's Cost to Cover, or (b) if Seller is unable to sell such Metered Output to a third party, the Deemed Generated Energy, as determined by Seller, for such period multiplied by the Contract Price; plus the PTC Compensation Amount associated with such Deemed Generated Energy.

5.4 Metering. Seller or its designee shall install, own, operate and maintain all metering and data processing equipment needed for the registration, recording and transmission of information regarding Metered Output and Test Energy generated by the Facility (collectively, the "*Meters*").

5.5 Measurements. Seller's or its designee's readings of the Meters shall be conclusive as to the amount of Metered Output and Test Energy generated by the Facility; *provided, however*, that if any Meter is out of service or is determined, pursuant to Section 5.6, to be registering inaccurately, measurement of Metered Output or Test Energy generated by the Facility shall be determined in the manner and in the sequence set forth below:

(A) if any other meters have been installed and are functioning within the accuracy standards of Section 5.6, measurement of Metered Output and Test Energy generated hereunder shall be by such meters; or

(B) by using the integrated instantaneous kilowatt value used to monitor the output from the computer monitoring system; or

(C) by Seller's estimating by reference to the measurements made during other comparable time periods having similar wind-generating conditions when the Meters were registering accurately, such estimate being subject to Buyer's approval, not to be unreasonably withheld, conditioned or delayed.

If no reliable information exists as to the period over which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy was equal to (x) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (y) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Meter through the date of the adjustments; *provided, however*, that, in the case of clause (y), the period covered by the correction shall not exceed six (6) Months.

If the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Seller shall use the corrected measurements as determined in accordance with this Article 5 to recompute the amount due for the period of the inaccuracy. If the difference is a positive number, the difference shall be paid by Buyer to Seller not later than thirty (30) Days after the Buyer receives notice of the amount due. If the difference is a negative number, the difference shall be taken as an offset to the following Month's invoice.

5.6 Testing and Correction.

(A) Seller shall test and verify the accuracy of the Meters annually and shall provide Buyer with copies of reports of such testing and verification within fifteen (15) Business Days of receipt or production of such reports.

(B) Each Meter shall be accurate within the variance requirements outlined by the Transmission Provider. In the event that the Transmission Provider does not specify such variance requirements, the Meter shall be accurate within a two percent (2%) variance. The following steps shall be taken to resolve disputes regarding the accuracy of the Meters:

(1) If either Seller or Buyer disputes a Meter's accuracy or condition, it shall so advise the other Party in writing.

(2) After testing, should the Meter be found to register within the permitted variance requirements of the Transmission Provider, the disputing Party shall bear the cost of inspection; otherwise, the cost shall be borne by the non-disputing Party.

(3) Any repair or replacement shall be made at the expense of Seller as soon as practicable, based on the testing report.

(4) Following testing, corrections shall be made as follows: (a) if any Meter is found to be accurate or to be in error by not more than the permitted variance requirements of the Transmission Provider, previous recordings of such Meter shall be considered accurate in computing Metered Output or Test Energy hereunder, and such Meter shall be promptly adjusted to record correctly; or (b) if any Meter is found to be in error by an amount exceeding the variance requirements of the Transmission Provider, then such Meter shall be promptly adjusted to record correctly, and any previous recordings by such Meter shall be adjusted in accordance with this Section 5.7.

## **ARTICLE 6 - [RESERVED]**

### **ARTICLE 7--TITLE; RISK OF LOSS**

#### **7.1 Title and Risk of Loss.**

7.1.1 Metered Output. Title to and risk of loss related to the Test Energy and Metered Output shall pass and transfer from Seller to Buyer at the Metered Output Delivery Point.

7.1.2 Environmental Attributes. Title to and risk of loss related to the Environmental Attributes shall pass and transfer from Seller to Buyer upon receipt by Buyer of Environmental Attributes in Buyer's GATS Account or, if applicable where GATS is not available, upon receipt by Buyer of an Environmental Attributes Attestation and Bill of Sale substantially in the form provided as Exhibit B.

7.1.3 Capacity Attributes. Title to and risk of loss related to the Capacity Attributes shall pass and transfer from Seller to Buyer upon execution of required transfer documentation pursuant to Section 5.2.

7.1.4 Ancillary Services. Title to and risk of loss related to the Ancillary Services shall pass and transfer from Seller to Buyer upon execution of required transfer documentation pursuant to Section 5.2.

7.1.5 Liens and Encumbrances. Seller shall make available to Buyer the Products free and clear of all liens, security interests, claims and encumbrances or any other interest therein or thereto by any Person arising prior to (i) with respect to the Metered Output, the Metered Output Delivery Point or (ii) with respect to any Other Facility Attributes, the transfer of such Other Facility Attributes pursuant to Section 5.2.

## ARTICLE 8 – PAYMENT CALCULATIONS

8.1 Contract Price. Buyer shall pay Seller for each kWh of Metered Output and Test Energy produced during such month, which payment shall include payment for the Environmental Attributes, Capacity Attributes and Ancillary Services associated therewith, the following (the “*Contract Price*”):

- (a) For the period beginning with the Test Energy Delivery Date and ending with the end of the first Commercial Operation Year, the price shall be (i) 11.7 cents/kWh per kWh of Metered Output and Test Energy taken by Buyer directly or deemed to be taken as a result of any net metering or virtual net metering arrangement Buyer has with LBPW (“*Consumed Energy*”) plus (ii) the avoided cost of LBPW (as established by notification from LBPW) in cents/kWh for every other kWh of Metered Output and Test Energy (“*Excess Energy*”).
- (b) For each Commercial Operation Year after the first Commercial Operation Year, the price of (i) Consumed Energy on a per kwh basis, will be escalated on the first day of each succeeding Commercial Operation Year by the lesser of:
  - i. Two and one half percent (2.5%), or
  - ii. The CPI Adjustment.

and (ii) the avoided cost of LBPW (as will be established by notification from LBPW) in cents/kWh for Excess Energy.

the date of written notice from Buyer to Seller and the Financing Party as provided for in Sections 10.2 and 11.1.

(D) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could materially impact Seller's ability to perform its obligations hereunder shall constitute an Event of Default; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within sixty (60) Days.

10.2 Financing Party's Right to Cure Default of Seller. Buyer shall provide notice of the occurrence of any Event of Default described in Section 10.1 hereof to any Financing Party, and Buyer will accept a cure performed by any Financing Party and will negotiate in good faith with any Financing Party as to the cure period(s) that will be allowed for any Financing Party to cure any Seller Event of Default hereunder. Buyer will accept a cure performed by any Financing Party so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Financing Party. Notwithstanding any such action by any Financing Party, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

10.3 Events of Default of Buyer.

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

(1) Buyer's actual fraud or willful misconduct in connection with this Agreement;

(2) Buyer's dissolution or liquidation; *provided* that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(3) Buyer's assignment of this Agreement or assignment of any of its rights hereunder for the benefit of creditors (except for an assignment permitted pursuant to Section 17.1); and/or

(4) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or Buyer voluntarily taking advantage of any such law or act by answer or otherwise.

(B) Any of the following shall constitute an Event of Default of Buyer upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Seller to Buyer as provided for in Section 11.1:

(1) Buyer's failure to make any payment due hereunder;

(2) Buyer's failure to comply with any other material obligation under this Agreement, which would have a Material Adverse Effect on Seller, other than for the failure

of Buyer to comply with an obligation under this Agreement for which a specific remedy has been agreed.

(C) If any representation or warranty made by Buyer in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Term, and if such cessation would reasonably be expected to have a Material Adverse Effect on Seller, it shall constitute an Event of Default unless cured within thirty (30) Days after the date of written notice from Seller to Buyer as provided for in Section 11.1.

(D) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer that could materially impact Buyer's ability to perform its obligations hereunder shall constitute an Event of Default; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within sixty (60) Days.

10.4 Remedies of Seller. Subject to Section 10.15, upon the occurrence and notice to Buyer of an Event of Default of Buyer, Seller shall have the right (but not the obligation) to:

(i) suspend performance of its obligations under this Agreement;

(ii) sell to a third Person, free and clear of any claims by Buyer, all Metered Output and Other Facility Attributes for such period during which Seller suspends performance hereunder; and

(iii) receive from Buyer direct damages incurred by Seller in connection with such Event of Default (including during any applicable cure period, whether or not Seller has elected to suspend performance during such cure period). Subject to Section 10.15, the Parties agree that the damages recoverable hereunder on account of an Event of Default include Seller's Cost to Cover.

10.5 Remedies of Buyer. Subject to Section 10.15, upon the occurrence and notice to Seller of an Event of Default of Seller, Buyer shall have the right (but not the obligation) to:

(i) suspend performance of its obligations under this Agreement (except for the payment of amounts due and owing prior to the occurrence of the Event of Default of Seller); and/or

(ii) receive from Seller direct damages incurred by Buyer in connection with such Event of Default (including during any applicable cure period, whether or not Buyer has elected to suspend performance during such cure period).

10.6 Additional Cure Periods. Immediately upon an Event of Default the Non-Defaulting Party may terminate this Agreement upon delivery of a notice of termination as provided in Section 10.7; provided, that the Non-Defaulting Party shall not be entitled to terminate this Agreement in the case of an Event of Default that is not reasonably capable of being cured within the applicable cure period, if the Defaulting Party (a) has commenced to cure the default within such applicable cure period, (b) is diligently pursuing such cure, (c) such

Event of Default is capable of being cured by the Defaulting Party within a reasonable time after the expiration of such cure period, and (d) such Event of Default is in fact cured within such reasonable period of time.

10.7 Termination for an Event of Default. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Sections 10.2 and 10.3, the Non-Defaulting Party shall have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in Sections 10.4 and 10.5, respectively, to (a) designate by notice to the Defaulting Party a day, no earlier than the day such notice becomes effective and no later than sixty (60) Days after the day such notice becomes effective, on which this Agreement shall terminate (the “Early Termination Date”); (b) recover in connection with such termination a Termination Payment, and (c) subject to the express limitations set forth in Section 10.10 and Section 10.15, pursue any other right or remedy available under this Agreement or Applicable Law subject to the express limitations on remedies set forth in this Agreement.

10.8 Termination Payment.

(a) Upon termination of this Agreement as a result of an Event of Default, the Non-Defaulting Party shall calculate an amount (the “Termination Payment”) equal to the aggregate of (i) the Market Value (as defined below) of this Agreement to the Non-Defaulting Party, plus (ii) any Costs incurred by the Non-Defaulting Party as a result of the termination of this Agreement due to the Defaulting Party’s default, plus (iii) any unpaid amounts owing under this Agreement from the Defaulting Party to the Non-Defaulting Party which arose prior to the Early Termination Date, minus (iv) any unpaid amounts owing under this Agreement from the Non-Defaulting Party to the Defaulting Party, adjusted by (v) the extent to which the Non-Defaulting Party is able to mitigate under Section 10.11. If the Termination Payment is a positive amount, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party. If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party.

(b) “Market Value” means the product of (i) the fair market price of electrical energy and environmental attributes, capacity attribute, and ancillary services, whether sold separately or bundled as a package, for the lesser of (A) five (5) years or (B) the remaining Term, determined in a commercially reasonable manner by the Non-Defaulting Party, taking into account, among other valuations, a reasonable number of quotations from leading dealers in energy contracts, settlement prices on established, actively traded power exchanges and other bona fide third party offers, and other relevant market information, and (ii) the average Deemed Generated Energy for the lesser of (A) five (5) years or (B) the remaining Term.

10.9 Notice of Termination Payment. As soon as practicable after the designation of an Early Termination Date, the Non-Defaulting Party shall notify the Defaulting Party of the amount of the Termination Payment, if any, payable by the Defaulting Party to the Non-Defaulting Party. The notice shall include a written statement setting forth in reasonable detail the calculation of such amount, together with reasonable supporting documentation. If such statement shows a Termination Payment due by the Defaulting Party, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within thirty (30) Days after receipt of

such notice. If the Defaulting Party disputes the correctness of the notice or statement from the Non-Defaulting Party, the provisions of Section 11.5 shall apply. The Parties' obligations under this Agreement shall remain in effect after termination of this Agreement for purposes of complying with all of the provisions of this Section 10.9.

10.10 Other Remedies. The termination of this Agreement shall not relieve either Party of any unfulfilled obligation or undischarged liability of such Party as of the Early Termination Date, including any damages incurred by either Party as a result of any breach of or Event of Default under this Agreement prior to the Early Termination Date; provided, that the Termination Payment determined as set forth herein shall be the Parties' sole and exclusive remedy under this Agreement for termination.

10.11 Duty/Right to Mitigate.

(a) Each Party agrees that it has a duty to mitigate damages, and that it shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement; provided, that in no event shall the mitigating Party be required to pay any amounts to the nonperforming Party in connection with such mitigation. The Parties shall exercise commercially reasonable efforts when purchasing or selling, as the case may be, electrical energy, environmental attributes, capacity attributes or ancillary services in order to mitigate damages.

(b) If the Non-Defaulting Party elects to terminate this Agreement following an Event of Default, the Non-Defaulting Party shall make commercially reasonable efforts to enter into long-term agreement(s) for the purchase or sale, as the case may be, of electrical energy, environmental attributes, capacity attributes or ancillary services, on terms and conditions reasonably similar to the terms and conditions of this Agreement and consistent with the Non-Defaulting Party's customary business practices (including with respect to satisfaction of counterparty credit); provided, that it shall not be a condition to collecting the Termination Payment.

10.12 Remedies Cumulative. Subject to the express limitations set forth in Section 10.15, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

10.13 Reserved.

10.14 Effect of Termination of this Agreement. The provisions of this Agreement shall remain in effect only to the extent necessary (a) to provide for final billings and adjustments related to the period before termination with respect to Metered Output and associated Other Facility Attributes made available before the termination date, (b) to resolve any disputes under

Section 11.5 and (c) to provide for payment of any money due and owing any Party pursuant to this Agreement; provided, however, that such termination shall not affect or excuse the performance of any Party under any provision of this Agreement that by its terms survives any such termination.

**10.15 Waiver and Exclusion of Other Damages.**

(A) THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

(B) FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, INCLUDING UNDER SECTIONS 10.4, 10.5 AND 10.8, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

(C) IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY.

(D) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN); *PROVIDED*, THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFORE FROM THE OTHER PARTY HERETO, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES.

(E) IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

(F) THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.



## ARTICLE 11- CONTRACT ADMINISTRATION AND NOTICES

11.1 Notices in Writing. Notices required by this Agreement shall be addressed to the other Party at the addresses noted in Exhibit C, as may be updated by either Party upon ten (10) Days written notice to the other Party. Notices required to be in writing shall be delivered by hand delivery, express courier, facsimile or electronic mail (so long as a copy of such electronic mail notice is provided thereafter by hand delivery or express courier). Except as may otherwise be specified in this Agreement, all notices, requests, statements and other communications shall be deemed to have been duly given on (A) the date of delivery if delivered by hand or by express courier, (B) the time stamp upon delivery if sent by electronic mail, (C) date of receipt of a time-stamped, legible copy thereof if sent by facsimile, or (D) the earlier of the dates set forth in clauses (A), (B) and (C) if delivery is made by more than one of such means.

11.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices. Either Party may, by ten (10) Days written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

11.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement.

11.4 Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

### 11.5 Dispute Resolution.

(A) Each of Seller or Buyer shall appoint a representative to coordinate with the other Party the implementation of this Agreement (each a "**Representative**" and collectively the "**Representatives**"). If any dispute arises with respect to any Party's performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), senior officers or executives of Buyer and senior officers or executives of Seller shall meet, either in person or by telephone, within ten (10) Business Days after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such senior officers or executives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), either Party may refer the dispute to a court pursuant to Section 11.5(B), which shall be the sole legally binding forum available to the Parties for resolution of a dispute hereunder.

(B) Each Party irrevocably submits to the jurisdiction and venue of any Delaware state or federal court in Delaware in any dispute arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such dispute may be heard

and determined in such court. Each Party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such proceeding. The Parties further agree, to the extent permitted by law, that any final and unappealable judgment against any of them in any proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

(C) Each Party waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any dispute arising out of or relating to this Agreement. Each Party certifies that it has been induced to enter into this Agreement or instrument by, among other things, the mutual waivers and certifications set forth above in this Section 11.5.

(D) While any dispute is pending, the Parties shall continue to perform their obligations under this Agreement notwithstanding such dispute.

## ARTICLE 12- FORCE MAJEURE

### 12.1 Definition of Force Majeure.

(A) The term “*Force Majeure*”, as used in this Agreement, means causes or events that delay or prevent a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(B) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, Force Majeure events may include without limitation: acts of God, actions of the elements such as heavy rains, floods, earthquakes, hurricanes, ice storms, landslides or tornadoes; high winds of sufficient strength or duration to materially damage the Facility or significantly impair its operation; explosion; lightning; fire; volcanic activity; sabotage; vandalism beyond that could reasonably be prevented by Seller; terrorism; war; riots; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); System Emergency; and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any Permits required by any Governmental Authority.

(C) The term Force Majeure does not include the inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above.

#### 12.2 Applicability of Force Majeure.

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

(1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(4) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

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

#### 12.3 Force Majeure Termination.

(A) Seller may terminate this Agreement by giving written notice of such termination to Buyer, if a Force Majeure occurs and prevents Seller from making available Metered Output from the Facility, or performing other material obligations or conditions under this Agreement for a period of at least twelve (12) consecutive Months. Such termination shall be effective as of the Day specified in the written notice.

12.4 Extension of Term. If an event of Force Majeure occurs, at the option of Seller, the Term shall be extended, on a day-for day basis, for a period of time equal to the sum of all such occurrences.

### **ARTICLE 13– REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of Seller, and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary corporate actions, and do not and will not:

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

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a Material Adverse Effect on the ability of Seller to perform its obligations under this Agreement;

(3) result in a breach or constitute a default under Seller's organizational documents, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the ability of Seller to perform its obligations under this Agreement; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the ability of Seller to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Seller

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

(E) , all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution and delivery of this Agreement, have been duly obtained and are in full force and effect.

13.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a non-profit educational institution chartered under the laws of the State of Delaware duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified in each other jurisdiction where the failure to so qualify would have a Material Adverse Effect upon the business or financial condition of Buyer, and Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary institutional action, and do not and will not:

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

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Buyer or violate any provision in any corporate documents of Buyer, the violation of which could have a Material Adverse Effect on the ability of Buyer to perform its obligations under this Agreement;

(3) result in a breach or constitute a default under Buyer's charter, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the ability of Buyer to perform its obligations under this Agreement; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the ability of Buyer to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Buyer

(D) Buyer will cooperate with Seller, as necessary from time to time, to obtain all Permits required hereunder.

(E) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(F) All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Buyer's execution, delivery and performance of this Agreement, have been duly obtained and are in full force and effect.

#### ARTICLE 14 – [RESERVED]

#### ARTICLE 15 – INDEMNITY

15.1 Indemnification. Each Party (the "*Indemnifying Party*") agrees to indemnify, defend and hold harmless the other Party (the "*Indemnified Party*") from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by an Event of Default under this Agreement, violation of any Applicable Law, or by the negligent or tortious acts, errors, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. The indemnification of third party claims provided under this Section 15.1 is not limited by the limitation on damages set forth in Section 10.6. Nothing in this Section 15.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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

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

(B) Except as otherwise provided in this Article 15, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 15, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort to obtain such insurance proceeds.

## ARTICLE 16 – LEGAL AND REGULATORY COMPLIANCE

16.1 Compliance with Laws. Each Party shall at all times comply with all applicable laws, ordinances, rules, and regulations applicable to it, except for any non-compliance which, individually or in the aggregate, does not have a Material Adverse Effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all necessary Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

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

## ARTICLE 17– ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

17.1 Assignment. Except as permitted in this Article 17, neither Party shall assign this Agreement or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided* (x) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party; and (y) any assignee shall expressly assume the assignor's obligations hereunder, and assignor shall be relieved of its obligations and liabilities hereunder.

### 17.2 Accommodation of Financing Party.

(A) Seller, without the approval of Buyer, may grant a security interest in its rights and obligations under this Agreement to any Financing Party as security for any loan or other investment (in the form of debt, equity, lease financing or otherwise) made to Seller *provided*, that no such grant shall relieve Seller of any of its duties or obligations hereunder. Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Financing Party to which Seller's interest under this Agreement has been encumbered. Such notice shall include the name of the Financing Party to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

(B) If Seller encumbers its interest under this Agreement as permitted by this Section 17.2, the following provisions shall apply:

(1) Financing Party shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Section 10.2, and such act performed by Financing Party shall be as effective to prevent or cure a default as if done by Seller.

19.5 Complete Agreement; Amendments. The terms and provisions contained in this Agreement constitutes the entire agreement between Buyer and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Buyer and Seller with respect to the sale of the Products. This Agreement may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto and the Financing Party, if any.

19.6 Binding Effect. This Agreement, as it may be amended from time to time pursuant to this Article 19, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

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

19.8 Counterparts. This Agreement may be executed in any number of counterparts, including in facsimile and electronic formats (including portable document format (.pdf)), each of which is an original and all of which constitute one and the same instrument.

19.9 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Delaware, excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction. The Parties hereby submit to the exclusive jurisdiction of the courts of the State of Delaware.

## ARTICLE 20- CONFIDENTIALITY

20.1 Confidential Information. Upon a Party receiving or learning of Confidential Information (the "*Receiving Party*") from or of the other Party (the "*Disclosing Party*"), the Receiving Party shall:

(A) keep such Confidential Information in strictest confidence and shall not disclose any such Confidential Information to any other Person, except as may be provided herein;

(B) restrict access to such Confidential Information to employees (and others who agree to be bound by this Agreement) who have a need to know such Confidential Information for the purposes of developing and financing the Facility and for the purposes of this Agreement and who have been notified that such information is Confidential Information, including Persons who agree to be bound by this Agreement who may provide debt or equity financing to Seller;

(C) use such Confidential Information solely for the purpose of developing and financing the Facility and for the purposes of this Agreement; and



(D) upon the termination of this Agreement and at the request of the Disclosing Party, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(E) “*Confidential Information*” shall include (1) any and all information prepared or delivered to a Party by the other Party or its representatives (including information or data received by the other Party from a third party and as to which the other Party has confidentiality obligations) in relation to this Agreement, and (2) information that is known to a Party, or should be known to a reasonable person given the facts and circumstances of the disclosure, as being treated as confidential or proprietary by the other Party.

(F) Seller has and will develop information regarding the operation and maintenance and technical support, know-how and processes applicable to the Facility, as well as information regarding generation output, transmission-interconnection and non-technical aspects such as the permits and land access agreements of the Facility (collectively “*Facility Information*”), and any such Facility Information provided to Buyer shall be deemed to be “Confidential Information”. For purposes of the definition of “Facility Information”, general descriptive information about the Facility such as its total capacity, the name of the manufacturer of the wind turbine included in the Facility and the model name of such wind turbine, the location and geographical description of the Facility shall not be considered Confidential Information.

(G) The terms of this Agreement shall also be considered Confidential Information, except that (1) a Party may disclose the terms of this Agreement to an index publisher or to a comparable credit rating agency that has executed a confidentiality agreement with the third party, and (2) Seller may disclose the terms of this Agreement to any Financing Party.

(H) Notwithstanding anything to the contrary set forth in this Article 20, the following information shall not be considered Confidential Information:

(1) information that at the time of disclosure or acquisition was publicly available or later became publicly available other than by breach of this Agreement or a confidentiality obligation owed to the Disclosing Party; or

(2) information that at the time of disclosure or acquisition was already known to the Receiving Party, except to the extent such information was disclosed to the Receiving Party pursuant to an agreement or understanding of confidentiality.

(I) Except as otherwise expressly provided herein, neither Party shall, unless authorized in writing by the other Party to do so:

(1) distribute or disclose to any person, firm, entity, or corporation (other than those otherwise authorized pursuant to this Article 20) any of the Confidential Information, or any facts related thereto; or

(2) permit any third Person to have access to such Confidential Information.

(J) The Parties hereby agree that any Confidential Information related to research performed on the Project by the Buyer shall be governed by the terms and conditions of that certain Industrial Partner Membership Agreement and that certain Collaborative Research Addendum entered into by Gamesa Technology Corporation Inc. and Buyer in the last quarter of 2009.

20.2 Disclosure to Affiliates and Representatives. Notwithstanding the foregoing, each Party may disclose Confidential Information to such Party's Affiliates and any of such Party's or such Party's Affiliates' employees, officers, board members, consultants and attorneys and other Persons involved in assisting such Party or such Party's Affiliates in connection with this Agreement; *provided* that such representatives are informed of the requirements of this Article 20 and agree to be bound in writing by the provisions of this Agreement. A Receiving Party shall be responsible for ensuring that all persons to whom it discloses Confidential Information under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized Person pursuant to the requirements of this Agreement.

20.3 Disclosure Pursuant to Applicable Law. Notwithstanding anything to the contrary in this Article 20, in the event a Receiving Party is requested pursuant to Applicable Law to disclose Confidential Information, such Receiving Party shall, (A) to the extent permitted by Applicable Law, give the Disclosing Party prompt notice of such request so that the Disclosing Party may seek an appropriate protective order, or (B) coordinate with the Disclosing Party to use reasonable efforts to request the highest possible level of confidential treatment accorded by such requesting entity (including redacting any information that the Disclosing Party deems is proprietary or confidential). If, in the absence of a protective order or stay, the Receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is finally required (after, if advance notice to the Disclosing Party is permitted by applicable law, exhausting any appeal requested by the Disclosing Party at the Disclosing Party's expense), the Receiving Party may disclose such Confidential Information.

20.4 Disclosure to Financing Parties. Notwithstanding anything to the contrary in this Article 20, Confidential Information may be disclosed by Seller to any Financing Party (or any potential Financing Party), and the agent or trustee of any of the foregoing so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 20 to the same extent as if it were a Party.

20.5 Injunctive Relief and Consequential Damages. Each of the Parties acknowledges and agrees that the other Party would be irreparably harmed if any Confidential Information of the Disclosing Party were to be disclosed to third Persons, or if any use were to be made of such Confidential Information other than that permitted under this Agreement, and further agrees that the Disclosing Party shall have the right to seek injunctive relief upon any violation or threatened violation of the terms of this Article 20, in addition to all other rights and remedies available at law or in equity, without having to post a bond or other security. The Parties also acknowledge that due to the nature of the harm associated with the disclosure of Confidential Information, punitive, indirect or consequential damages may be appropriate compensation, and the

Disclosing Party shall have the right to seek such damages upon any violation of the terms of this Article 20.


20.6 Survival of Confidentiality Provisions. The terms and conditions set forth in this Agreement shall be deemed to be Confidential Information subject to the confidentiality provisions of this Article 20. The obligations of the Parties under this Article 20 shall remain in full force and effect for two (2) years following the termination of this Agreement.


20.7 Public Announcements. Neither Party may issue or make any public announcement, press release or statement regarding this Agreement unless such public announcement, press release or statement is issued jointly by the Parties or, prior to the release of the public announcement, press release or statement, such Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed; *provided* that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with Applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party.

*[remainder of this page intentionally left blank]*


IN WITNESS WHEREOF, the Parties have caused this Power Purchase Agreement to be executed and delivered as of the date first set forth above.

**FIRST STATE MARINE WIND LLC**

By:   
Name: Robert M. Specter  
Title: vice President

By:   
Name: VICTOR CONTRERAS  
Title: General Counsel

**THE UNIVERSITY OF DELAWARE**

By:   
Name: Scott R. Douglass  
Title: Executive VP and University Treasurer

**EXHIBIT A**  
**FACILITY DESCRIPTION**

The facility at the University of Delaware includes a single Gamesa G90 2 MW wind turbine located in the dredge spoils area adjacent to the universities Lewes campus. The facility is serviced by an existing 12.47 kV overhead feed from Pilot Town Rd. Facility components include a new 2.35 MVA Isolation transformer, pad-mount enclosure with a 15 kV fused disconnect and primary metering cabinet, Transdata Mark-V Energy Meter, underground communications conduit and cable, underground electrical conduit and cable, five (5) electrical poles with over head cable, a pole mounted recloser, utility meter with pole mounted Ct's and Pt's, and 140A fused cut-outs. The turbine's 34.5 kV output is stepped down by the 2.35 MVA transformer to 12.47 kV and routed through the 15kV fused disconnect and metering cabinet. The new Mark-V Energy Meter located in the metering cabinet is used to track and log turbine production. Turbine output is then routed underground to a new utility riser pole; transferred above ground through the Lewes BPW's interconnection and metering and interconnected into the existing 12.47 kV feed on university property.




As an authorized agent of (Wholesale Provider) \_\_\_\_\_, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

**Additional statement required of provider selling electricity.**

**I declare that the electricity listed above was delivered into the PJM regional grid for sales in Delaware.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

**EXHIBIT C  
NOTICE ADDRESSES**

To Buyer:

**For contract issues:**

Mr. David W. Singleton  
Associate Vice President for Facilities  
General Services Building  
University of Delaware  
Newark, DE 19716

**Copy of all correspondence to:**

Office of General Counsel  
University of Delaware  
124C HULLIHEN HALL  
Newark, DE 19716  
302-831-7361

**Copy of final contract and all subsequent invoices:**

Procurement Services  
General Services Building  
University of Delaware  
Newark, DE 19716

To Seller:

Mr. David W. Singleton  
Associate Vice President for Facilities  
General Services Building  
University of Delaware  
Newark, DE 19716

With a copy to

Gamesa Technology Corporation, Inc.  
2050 Cabot Boulevard West  
Langhorne PA 19047  
Attention: General Counsel



**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

Commercial General Liability Insurance: Seller shall maintain or cause to be maintained commercial general liability combined single limit insurance for the Facility, including broad form contractual liability and property damage insurance, personal injury, coverage for premises/operations explosion, collapse and underground hazards, independent contractors, and products/completed operations broad form property damage, blanket contractual liability for both oral and written contracts, independent contractor's and personal injury, for Buyer and Seller with primary coverage limits of no less than Fourteen Million Dollars (\$14,000,000) for injuries or death to one or more persons or damage to property resulting from any one occurrence and a Fourteen Million Dollars (\$14,000,000) aggregate limit.

Property Insurance: Seller shall maintain all-risk property damage insurance in the full replacement value of the Facility and including coverage for loss of production for twelve months

