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NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF)
TUCSON ELECTRIC POWER COMPANY FOR)
APPROVAL OF A RENEWABLE ENERGY)
POWER PURCHASE AGREEMENT WITH RED)
HORSE WIND 2, LLC.)

DOCKET NO. E-01933A-13-

E-01933A-13-0056

APPLICATION

Tucson Electric Power Company ("TEP" or "Company"), through undersigned counsel, hereby requests that the Arizona Corporation Commission ("Commission") approve the Power Purchase Agreement ("PPA") between TEP and Red Horse Wind 2, LLC ("Red Horse Wind") for renewable resources pursuant to A.A.C. R14-2-1804(G) of the Commission's Renewable Energy Standard and Tariff ("REST") rules. This PPA will allow TEP to procure 51 megawatts ("MW") of wind energy, and also up to 3 MW of solar energy. Approval of the PPA will provide TEP with approximately 2.5 percent of the total 15 percent Renewable Energy Requirement.

Pursuant to Commission Decision No. 71856 (September 1, 2010), TEP was ordered to "conduct a Request for Proposal of at least 50 [MW] of wind power from an in-state wind generator, and file its results with the Commission for its review and consideration as part of Tucson Electric Power Company's 2012 REST Implementation Plan." In June of 2011, TEP released its Request for Proposal ("RFP") for 50 MW of in-state wind. In compliance with the Decision, the Company completed the RFP process and submitted summaries of the results directly to the Commission's Utility Division ("Staff") on September 15, 2011.¹

¹ On April 18, 2011, TEP requested an extension of time to provide the RFP results until September 15, 2011. On August 24, 2011, the Commission approved TEP's request in Decision No. 72251.

1 The RFP generated ten submissions, from eight different wind developers. The RFP
2 utilized the Accion Group, Inc. as the independent monitor to oversee the process and ensure that
3 it was conducted in an open, fair, and non-biased environment so that all participants had equal
4 access to information. The initial bids in response to the RFP were evaluated based on several
5 factors, including: proposed energy costs; technology choice; water consumption; delivery
6 location; operational, environmental and technical attributes; transmission impacts (including
7 third-party transmission agreements); incremental costs (including those associated with
8 transmission upgrades and interconnection required to deliver the energy product); local economic
9 development opportunities; project capacity; generation profile; any firming provided; land rights
10 and associated risks; timeliness of project completion; permit acquisition; and the bidder's
11 experience and financial viability. Final selection was based on the cost of the project, cost-
12 effectiveness, water consumption, location, bidder's credit, bidder's risk analysis, and project
13 completion viability.

14 In October 2011, after completing a full evaluation of the responses to the RFPs, TEP
15 began contract negotiations with Red Horse Wind for 50 MW of wind powered electric generation
16 ("Project"). The final contract terms are for a total of 51 MW of electrical output, which may
17 include up to 3 MW of solar. The PPA was ultimately executed on February 20, 2013,² and a
18 redacted version is attached as **Exhibit A**. The PPA itself is confidential because of competitively
19 sensitive terms, including pricing. An un-redacted copy of the PPA will be provided to Staff
20 pursuant to a protective agreement to be executed in this docket.

21 By the time the Project is complete and delivering energy, TEP expects to have more than
22 250 MW of solar and only 50 MW of wind generated electricity. Commission approval of this
23 PPA is important in order for TEP to continue diversification of its energy portfolio. The PPA
24 provides TEP rate payers with a reasonably priced long-term fixed price energy source, since the
25 20 year levelized Market Cost of Comparable Conventional Generation ("MCCG") for Arizona
26

27 ² The prolonged execution of the PPA was the result interconnection issues and uncertainty regarding federal production tax incentives.

1 wind production is approximately \$60 MWh, based on the current 2013 Palo Verde Market
2 forecasts.

3 Additionally, the Project is not expected to be in-service and providing energy to TEP prior
4 to December 2014; therefore the Company will not be requesting recovery of a portion of these
5 costs until TEP submits its 2015 REST Implementation Plan. The PPA will add approximately
6 \$1,200,000 to the annual REST budget. For comparison purposes only, if the cost of this PPA
7 were to be added to the TEP's 2013 REST budget, the average surcharge cap would increase by 5
8 percent, thus resulting in an average increase in the monthly REST surcharge of \$0.14 per
9 residential customer.

10 This PPA for in-state wind will also benefit the economy of Southeastern Arizona by
11 expending approximately \$35 million in labor and materials costs during construction, as well as
12 providing four full time jobs once complete. The energy from the PPA will also help TEP meet
13 critical capacity needs, reduce the Company's dependence on coal and natural gas, and reduce the
14 Company's exposure to carbon risk. Additionally, it is estimated that the production from this
15 Project will save approximately 78 million gallons of water annually, in comparison to equivalent
16 conventional generation.

17 Finally, the development of this Project is dependent on Commission approval of the
18 underlying PPA.

19 TEP believes this Project will benefit the Company and its customers and requests that the
20 Commission issue an Order that makes the following findings:

- 21 1) That the PPA was selected through a fair and competitive procurement process;
- 22 2) That the PPA will provide energy that is an Eligible Renewable Energy Resource
23 pursuant to REST Rule R14-2-1802;
- 24 3) That the PPA is an appropriate component of TEP's energy portfolio and is
25 compatible with appropriate implementation plans under the REST;
- 26 4) That the PPA is a reasonable means of complying with the long-term REST
27 requirements and that TEP's participation in the PPA is in the public interest; and

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5) That with respect to any subsequent inquiry into the prudence of the PPA, the expense of renewable energy purchased under the PPA should not be deemed imprudent solely because the expense is greater than that of other generation, or because it exceeds the REST requirements.

WHEREFORE Tucson Electric Power Company requests that the Commission approve the PPA with Red Horse Wind identified herein pursuant to A.A.C. R14-2-1804G as set forth above.

RESPECTFULLY SUBMITTED this 12th day of March 2013.

TUCSON ELECTRIC POWER COMPANY

By 

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Original and 13 copies of the foregoing filed this 12th day of March 2013 with:

Docket Control
Arizona Corporation Commission
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Phoenix, Arizona 85007

1 Copy of the foregoing hand-delivered/mailed
2 this 12th day of March 2013 to:

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By Mary Appolits

EXHIBIT

“A”

POWER PURCHASE AGREEMENT
BETWEEN
TUCSON ELECTRIC POWER COMPANY
AS BUYER
AND
RED HORSE WIND 2, LLC
AS SELLER

February 20, 2013

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (“Agreement”) is entered into and effective on this 20th day of February, 2013 (the “Effective Date”), by and between RED HORSE WIND 2, LLC, an Arizona limited liability company (“Seller”), and TUCSON ELECTRIC POWER COMPANY, an Arizona corporation (“Buyer”). Buyer and Seller are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, on June 24, 2011, Buyer issued a Request for Proposals for Arizona-based wind projects, and Seller submitted a proposal for approximately 51 MW located in southern Arizona fifteen (15) miles west of Wilcox in Cochise County; and

WHEREAS, Buyer has accepted Seller’s proposal. Seller intends to construct and own, operate and maintain, or will arrange for the operation and maintenance of, a wind, solar and/or other resource-powered electric generating project located in Cochise County, Arizona (as further defined below the “Project”), consisting of a wind-powered electric generating plant with an installed capacity of approximately 51 MW, with an option at Seller’s discretion to include therein up to 3 MW of solar-powered electric generation (as further described below, the “Plant”); and

WHEREAS, Seller intends to interconnect into TEP’s existing Winchester 345 kV substation via a 7.5-mile radial generator lead line across fee and state land; and

WHEREAS, Buyer and Seller mutually desire to enter into this Agreement, whereby Seller shall sell and Buyer shall purchase (a) approximately 51 MW of the Electrical Output (as defined below) generated by the Plant up to the Contract Capacity (as defined below), and (b) all of the Renewable Energy Credits and Other Attributes (both as defined below) associated with such Electrical Output, as provided herein.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller and Buyer, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS

ACC: means the “Arizona Corporation Commission”

Agreement: means this Power Purchase Agreement entered into between Seller and Buyer, as amended by the Parties from time to time.

Affected Party: has the meaning provided in Section 17.16.

Affiliate: means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, “control,” “controlled” and “under common control” with respect to any Person means the possession,

directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise.

Alternate: means an alternate Authorized Representative as set forth in Section 5.4.

Authorized Representative: has the meaning provided in Section 5.4.

AZPTCs: means renewable energy production tax credits applicable to electricity produced from certain renewable sources pursuant to Arizona SB 1254, or such substantially equivalent tax credits that provide Seller with a tax credit based on energy production from any portion of the Plant, as in effect on the date hereof (including any increases in value resulting from any applicable inflation adjustments).

Balancing Authority: means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

Balancing Authority Area: means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

Business Day: means any Day that banks are open for business in New York, New York and in the State of Arizona.

Buyer: has the meaning provided in the preamble to this Agreement.

Buyer's Failed Acceptance Payment: has the meaning provided in Section 4.2(d).

Buyer's Rejection Notice: has the meaning provided in Section 3.4(c).

Change in Law Notice: has the meaning provided in Section 17.16.

Claims: means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) arising from property damage, bodily injuries or death suffered by any Person, in each case on account of any claim by a Person not a Party to this Agreement.

Commencement of Construction: means the date on which construction of the Plant commences. Construction includes any excavation, site grading or foundation work, but does not include clearing of vegetation.

Commercial Operation: means for a wind turbine when (a) such wind turbine is able to generate Electrical Output and deliver to the Delivery Point, (b) such wind turbine has been commissioned, and (c) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation of such wind turbine.

Commercial Operation Date: means the date Seller certifies to Buyer as the “Commercial Operation Date,” which date will be no earlier than the Day immediately following the Day on which the following conditions have been fulfilled: (a) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation for **8,760 hours per year** less hours allowed for Planned Outages pursuant to Section 5.4, and (b) Commercial Operation for wind turbines comprising at least **eighty percent (80%)** of the maximum Contract Capacity of **51 MW** has been achieved. In no case shall the Commercial Operation Date be earlier than **December 1, 2014**

Commercially Reasonable or Commercially Reasonable Efforts: means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action; and (b) is consistent with Prudent Utility Practices, taking into consideration the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take such action, the duration and type of action and the competitive environment in which such action occurs.

Confidential Information: has the meaning provided in Section 17.2.

Contest: means, with respect to any Person, a contest of and/or challenge to (a) any Governmental Approval or any act or omission by Governmental Agencies, or (b) the amount or validity of any claim pursued by or against such Person in good faith and by appropriate legal, administrative or other proceedings diligently conducted.

Contract Capacity: means, with respect to the Plant, an installed capacity of up to **51 MW**, equal to the nameplate capacity of the wind turbines (and including, at Seller’s discretion, up to **3 MW** of solar-powered generation within the 51 MW of capacity) that have reached Commercial Operation by the Commercial Operation Date plus (without duplication) the nameplate capacity of any additional wind turbines that have reached Commercial Operation by the end of one year following the Scheduled Commercial Operation Date.

Contract Price: has the meaning provided in Section 4.2(a).

Contract Year: means the period commencing each calendar year on the same calendar date as the Commercial Operation Date (as such date may be extended in accordance with Section 2.1) and ending one (1) year later.

Day: means the 24-hour period beginning and ending at 12:00 midnight (Mountain Standard Time).

Delivery Point: means TEP’s existing Winchester 345 kV substation and is the same as the Interconnection Point.

Effective Date: has the meaning assigned to such term in the preamble to this Agreement.

Electrical Output: means the electric energy output associated with the Contract Capacity, net of Station Service Power – Non-Retail, delivered to the Delivery Point, as measured by the meters installed at the Interconnection Point pursuant to Article 8 of this Agreement.

Emergency Condition: means a condition or situation: (1) that is imminently likely to endanger life, health or property; (2) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the distribution system operated by affected local utility or the transmission system operated by the Transmission Provider; or (3) that, in the case of the Seller, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Plant or the Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions, as well as **any abnormal condition that requires automatic or immediate manual action by the Transmission Provider to prevent or limit loss to, or adverse impact on, the transmission system, facilities or generation supply.**

Excess Upgrade Costs: has the meaning provided in Section 3.4(a).

Event of Default: has the meaning provided in Section 15.1.

FERC: means the Federal Energy Regulatory Commission, or any successor agency.

Final Facility Study: means an engineering study conducted by the Transmission Provider or a third party consultant, as scheduling priorities and resources permit, for the Seller to determine a list of the required facilities, including the cost and the time required for completion for such facilities, which will be required to interconnect the Plant with the Transmission Provider's Transmission System.

Financial Close: means the date on which Seller funds or secures the amount of debt and/or equity financing under the Financing Documents necessary to construct the Plant and all conditions precedent under such Financing Documents have been satisfied or waived and the first funding under such Financing Documents has occurred, which, for purposes of this Agreement, shall be no later than **April 1, 2015**.

Financing Documents: means, collectively, the contracts, agreements and documents by and between the Seller or any Affiliate of Seller and the Financing Parties, pursuant to which the financing for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Plant (or portfolio of assets which includes the Plant or any interest therein) is documented.

Financing Parties: means any Person (including any trustee or agent on behalf of such Person) providing debt financing or refinancing to Seller or any Affiliate of Seller for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Plant (or portfolio of assets which includes the Plant or any interest therein).

Force Majeure Event: has the meaning assigned to such term in Section 14.1.

Forced Outage: means an unplanned component failure, transmission system failure, or other condition that requires all or a portion of the Plant or the Interconnection Facilities to be removed from service immediately.

Government Agency: means any federal, state, local, territorial, tribal or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power having jurisdiction over the Plant, Buyer or Seller, as the case may be.

Governmental Approval: means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of or regulation by any Government Agency relating to the acquisition, development, ownership, leasing, occupation, construction, start-up, testing, operation or maintenance of the Plant or to the execution, delivery or performance of this Agreement or the Interconnection Agreement.

Grossed Up PTC Rate: has the meaning provided in Section 4.2(d).

Imbalance: means the excess or deficiency of the actual amount of Electrical Output measured at the Delivery Point over the Scheduled delivery of energy into the system of the receiving Transmission Provider at the Delivery Point independent of any adjustments for losses on the systems required by the Transmission Provider.

Imbalance Charges: means all charges, fees and other penalties incurred by either Party as a result of an Imbalance.

In-Service Date: means the projected date for the Transmission Provider to complete the Interconnection Facilities, which date may be adjusted as necessary by the Transmission Provider.

Indemnified Party: has the meaning provided in Section 16.1.

Interconnection Agreement: means an interconnection agreement and other related agreements for the provision of interconnection services, in form and substance satisfactory to Seller, between TEP and Seller pursuant to which the Interconnection Facilities will be constructed, operated, and maintained during the Term.

Interconnection Costs: means the costs of the Interconnection Facilities that interconnect the Plant to TEP's Transmission System.

Interconnection Facilities: means all the facilities installed for the purpose of interconnecting the Plant to TEP's Transmission System at the Interconnection Point, including, but not limited to the 7.5 mile radial generator lead line from the generator collector substation to the Interconnection Point, the upgrades at the Winchester 345 kV substation, the network upgrades at or beyond the Interconnection Point, and all transformers and associated equipment, relay and switching equipment, metering, SCADA communication and safety equipment, as further specified in the Interconnection Agreement.

Interconnection Point: means TEP's existing Winchester 345 kV substation, and is the same as the Delivery Point.

Law: means any applicable statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing imposed by a Government Agency, whether in effect now or at any time in the future.

Meters: has the meaning set forth in Section 8.1(a).

Month: means a calendar month.

MW: means megawatt.

MWh: means megawatt-hour.

Operating Procedures: has the meaning provided in Section 5.4.

Other Attributes: means any and all fuel, emissions, air quality, or other environmental characteristics, credits, benefits, reductions, offsets, and allowances, howsoever entitled or named associated with the Electrical Output purchased hereunder, in which the Seller has property rights or will have property rights upon such attributes coming into existence, if any, and include without limitation (i) 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 laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, and all rights to report ownership in the same and (ii) items such as financial congestion rights; but shall not include, PTCs, AZPTCs, RECs, any other monetary incentives, grants, credits, rebates, incentive payments, benefits, allowances or entitlements or subsidies, any other tax benefits (or cash grants in lieu thereof), tax credits, depreciation or tax write-offs, in each case associated with the Plant, the Electrical Output, the Contract Capacity or RECs.

Party: has the meaning set forth in the preamble to this Agreement.

Person: means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or Government Agency or any business entity whose existence may be authorized by a Government Agency.

Planned Outage: means the removal of all or a portion of the Plant, the Plant's substation or the Interconnection Facilities from service to perform repairs that are scheduled in advance and have a predetermined expected duration (e.g., overhauls, inspections and testing).

Plant: has the meaning set forth in the recitals to this Agreement, as further described in Exhibit A to this Agreement.

Prime Rate: has the meaning provided in Section 10.2(b).

Project: has the meaning set forth in the recitals to this Agreement, as further described in Exhibit A to this Agreement.

Prudent Utility Practices: means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the wind electric power generation industry in the United States) 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, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, the Federal Energy Regulatory Commission and applicable Governmental Approvals and Law. Prudent Utility Practices are not intended to require optimum practices, methods or acts, but rather are a range of acceptable practices, methods or acts expected within the independent electric power industry to accomplish the desired results, having due regard for, among other things, preservation of manufacturers' warranties and operating instructions and the requirements of Government Agencies.

PTCs: means production tax credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. §45, or such substantially equivalent tax credits that provide Seller with a tax credit based on energy production from any portion of the Plant, as in effect under applicable Law on the date hereof (including any increases in value resulting from applicable inflation adjustments).

PTC Renewal: means an extension by the applicable Governmental Agencies of the placed-in-service deadline for wind facilities qualifying for the PTCs under Section 45(d)(1) of the Code to a date at least late enough to provide that PTCs will be available when each of the wind turbines that are to be included in the Plant is placed in service.

Renewable Energy Credit ("REC"): means each renewable energy credit associated with Electrical Output purchased hereunder, evidenced by electronic certificates, which represent the "generation attributes" or "alternative energy credits" of each MWh of energy generated (or any equivalent or successor certificate satisfied through the operation of the Plant). RECs do not include PTCs, AZPTCs, any other monetary incentives grants or subsidies associated with the RECs, Contract Capacity, the Electrical Output, or the Other Attributes, or any energy, capacity, reliability, or other power attributes used by Seller to provide electricity services.

Renewable Energy Standard Tariff ("REST"): has the meaning provided in Section 4.2(c).

Schedule, Scheduled or Scheduling: means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Electrical Output to be delivered on any given Day or Days during the Term at the Delivery Point.

Scheduled Commercial Operation Date: has the meaning provided in Section 2.2.

Seller: has the meaning provided in the preamble to this Agreement.

Seller's Failed Delivery Payment: has the meaning provided in Section 4.2(c).

Seller's Termination Notice: has the meaning provided in Section 3.4(a).

Seller's Termination Payment: has the meaning provided in Section 15.2(b).

Station Service Power – Retail: means electric energy used to operate the Plant that is purchased from a third party or otherwise obtained from sources other than the Plant.

Station Service Power – Non-Retail: means electric energy used to operate the Plant that is generated by the Plant.

Supervisory Control and Data Acquisition (“SCADA”) means communication and safety equipment necessary for the Delivery Point. **System Impact Study** shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's transmission system. The study shall identify and detail the system impacts that would result if the Plant were interconnected without project modifications or system modifications, focusing on the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system as identified in the interconnection feasibility study, or to study potential impacts, including but not limited to those identified in the scoping meeting as described in the Open Access Transmission Tariff (OATT) Standard Large Generator Interconnection Procedures (LGIP).

Taxes: has the meaning provided in Article 11.

TEP: means Tucson Electric Power Company acting in its capacity as Transmission Provider for Tucson Electric Power Company's Transmission System and for interconnection of the Plant pursuant to the Interconnection Agreement.

Term: has the meaning provided in Section 2.1.

Test Price: has the meaning provided in Section 4.2(b).

Transmission Provider: means each applicable provider of transmission, distribution or control area services or any independent system operator or regional transmission organization, regional reliability council or any other Person empowered to exercise authority over TEP's Transmission System.

Transmission Services: means services that allow a transmission service customer to use the transmission facilities of other electric utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver energy to another transmission customer.

Uncommitted Capacity: means any rated electric energy output and Other Attributes generated by the Plant other than the Contract Capacity.

ARTICLE 2 TERM, COMMENCEMENT OF OPERATION; SUBSTITUTION OF PLANT

2.1 Term

This Agreement will become effective as of the Effective Date and will continue in effect for twenty (20) years from the Commercial Operation Date (the “Term”), unless otherwise extended or terminated in accordance with the provisions of this Agreement.

2.2 Scheduled Commercial Operation Date

The “Scheduled Commercial Operation Date” will be **the later of April 1, 2015 or 30 days after completion of the Interconnection Facilities**; or as such date may be extended on a Day-by-Day basis for any delay in achieving the Commercial Operation Date that results from (a) a Force Majeure Event, (b) an Event of Default of Buyer, (c) an Emergency Condition, or (d) as mutually agreed upon between the Parties.

2.3 Commencement of Operation

The respective rights and obligations of Buyer and Seller under this Agreement relating to the commercial operation of the Plant will commence on the Commercial Operation of the first wind turbine.

2.4 Payments for Delayed Commercial Operation

(a) Seller shall use Commercially Reasonable Efforts to achieve the Commercial Operation Date by no later than the Scheduled Commercial Operation Date. If the Commercial Operation Date is not so achieved by the Scheduled Commercial Operation Date, Seller’s sole obligation to Buyer and Buyer’s exclusive remedy (except as provided in the immediately following paragraph (b)) for such failure shall be the payment by Seller of delay damages as liquidated damages as follows: **\$5,000 per Day** for each Day after the Scheduled Commercial Operation Date that Seller continues to fail to achieve the Commercial Operation Date. In no event shall the aggregate amount of delay liquidated damages under this Section 2.4 payable by Seller exceed **\$500,000**. Seller and Buyer acknowledge and agree that if additional wind turbines achieve Commercial Operation after the Commercial Operation Date but prior to the date that is six (6) months following the Scheduled Commercial Operation Date, such wind turbines shall be included as part of the Plant and as Contract Capacity for all purposes hereunder; provided, however, that in no event shall the Contract Capacity exceed 51 MW.

(b) Buyer may terminate this Agreement if the Commercial Operation Date is not reached within one (1) year after the Scheduled Commercial Operation Date as its sole and exclusive remedy other than for payment of any delay liquidated damages accrued in accordance with Section 2.4(a) as of such date. For the avoidance of doubt, there shall be no Seller’s Termination Payment with respect to such a termination.

(c) All such amounts will be paid by Seller on the 30th Day of the Month following the Month containing the Day such amount accrued.

(d) Once payment of such delay liquidated damages has been made under this Section 2.4, there shall be no Event of Default hereunder notwithstanding anything herein to the contrary, and Seller shall be relieved of any further liability in respect of damages to Buyer solely for failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

ARTICLE 3 EARLY TERMINATION RIGHTS

3.1 Seller's and Buyer's Commercially Reasonable Efforts

(a) Seller shall use Commercially Reasonable Efforts to (i) achieve Commencement of Construction on or before **December 31, 2014**. At Seller's request (and at its own cost and expense), Buyer will reasonably cooperate with Seller as may be necessary in order to assist Seller in achieving the item set forth in (i); provided, that either Party may terminate this Agreement upon written notice to the other party, if the item set forth in (i) is not achieved by the time set forth therefor, without further financial or other obligation to the other Party; provided, further, however, that the Parties may agree to extend such dates (and, correspondingly, the Scheduled Commercial Operation Date).

(b) Buyer shall use Commercially Reasonable Efforts to obtain, within one hundred and twenty (120) Days following the Effective Date, approval of this Agreement by the ACC, such approval to be in a form that would not permit termination of this Agreement in accordance with Section 3.3.

3.2 Early Termination Right Regarding Force Majeure

(a) If a Force Majeure Event occurs prior to the Commercial Operation Date, the Scheduled Commercial Operation Date and each of the dates set forth in Section 3.1 shall be extended on a Day-for-Day basis during the period that performance continues to be delayed or prevented by the Force Majeure Event, provided that in no event will any delay or failure of performance caused by a Force Majeure Event extend this Agreement beyond its stated term.

(b) If any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than one (1) year from the date of notice provided by such Party in accordance with Section 14.2(a), then the other Party may, at any time following the end of such period while such Force Majeure Event continues, terminate this Agreement immediately upon written notice to the affected Party, without further obligation to either Party, except as to payment of any costs and liabilities incurred before the effective date of such termination; provided, such notice of termination must be given during the period that performance continues to be delayed or prevented by the Force Majeure Event. Notwithstanding the foregoing, the Parties agree that the one (1) year period shall be extended if the Party whose performance is delayed or prevented has undertaken Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying performance in accordance with Prudent Utility Practices and the expected date by which performance will no longer be affected by the Force Majeure Event is no more than ninety (90) Days from the end of the one (1) year period. Notwithstanding any such Commercially Reasonable Efforts, if the Party is unable to perform

after the passage of the additional ninety (90)-Day period, the other Party shall have the right to terminate this Agreement.

3.3 Early Termination Right Regarding Regulatory Approval

Notwithstanding any provisions of this Agreement to the contrary, each Party shall have the right to terminate this Agreement, without any further financial or other obligation to the other Party as a result of such termination except as to payment of any costs and liabilities incurred before the effective date of such termination and payable under this Agreement, by notice to the other Party if, within the earlier of (i) one hundred and eighty (180) Days following the Effective Date and (ii) **July 30, 2013**, the ACC (i) disapproves this Agreement, (ii) approves this Agreement but excludes or limits Buyer's right to recover from its ratepayers applicable costs incurred hereunder, (iii) approves this Agreement subject to material changes or conditions imposed on Buyer or Seller, or (iv) fails to approve or otherwise take final action with respect to this Agreement. Absent such notice of termination by either Party on or before the earlier of (i) one hundred and eightieth (180th) Day following the Effective Date and (ii) **July 30, 2013**, this contingency shall be deemed waived and neither Party may terminate this Agreement pursuant to this Section 3.3.

3.4 Early Termination Regarding Interconnection Costs

(a) If, on or prior to **April 1, 2014** (i) the System Impact Study is issued by the applicable Transmission Provider or Providers and the initially estimated aggregate planning level costs of all transmission system upgrades necessary to accommodate the transmission of the Electrical Output from the Plant to the Delivery Point exceeds **\$5,000,000** (any such cost of system upgrades in excess of \$5,000,000, the "Excess Upgrade Costs") and (ii) Seller elects, in its sole discretion, not to pay for such Excess Upgrade Costs by providing written notice of such election to Buyer ("Seller's Termination Notice") no later than fifteen (15) Days following the issuance of such System Impact Study, then, subject to Section 3.4(c), Seller shall have the right to terminate this Agreement without any further financial or other obligation to Buyer, and Buyer likewise shall have no further obligations hereunder, financial or otherwise, as a result of such termination.

(b) If the System Impact Study is not issued on or prior to **April 1, 2014**, then Seller shall have the right to terminate this Agreement without any further financial or other obligation to Buyer, and Buyer likewise shall have no further obligations hereunder, financial or otherwise, as a result of such termination. In such case, Seller shall provide written notice to Buyer of such termination no later than **April 16, 2014** ;

(c) Notwithstanding Section 3.4(a) of this Agreement, Buyer shall have the right, in its sole discretion, to reject Seller's Termination Notice under Section 3.4(a), by providing written notice to Seller ("Buyer's Rejection Notice") within fifteen (15) Days following receipt of Seller's Termination Notice. Such notice from Buyer shall state that Buyer agrees, to do one of the following: (i) directly pay for such Excess Upgrade Costs; (ii) reduce, with the written approval of Seller, which may be withheld or granted in Seller's sole discretion, the Contract Capacity to that amount which can be accommodated without the transmission system upgrades identified in the System Impact Study but not built due to Seller's failure to fund such Excess

Upgrade Costs; or (iii) enter into good faith negotiations with Seller for a period not to exceed thirty (30) Days for the purpose of adjusting the Contract Price to reflect the Excess Upgrade Costs to enable the Seller to pay for such Excess Upgrade Costs. In the event that Buyer timely provides a Buyer's Rejection Notice, then this Agreement shall remain in full force and effect (except where the Parties are unable, after good faith negotiations pursuant to clause (iii), to agree to an adjusted Contract Price, in which case this Agreement shall terminate immediately following such thirty (30) Day period. In the event that Buyer fails to timely provide a Buyer's Rejection Notice, then this Agreement shall terminate upon Buyer's receipt of Seller's Termination Notice.

3.5 Early Termination Regarding PTC Expiration.

If at any point prior to the Financial Close Seller determines that a PTC Renewal has not occurred and is continuing, Seller may, in its discretion, terminate this Agreement immediately upon written notice to Buyer, without further obligation to either Party, except as to payment of any costs and liabilities incurred before the effective date of such termination.

**ARTICLE 4 SALE AND PURCHASE
COMMITMENTS; PAYMENT**

4.1 Sale and Purchase of Electrical Output and Credits

During the Term of this Agreement, Seller shall deliver and sell to Buyer and Buyer shall accept and purchase from Seller all of (a) the Electrical Output up to the Contract Capacity delivered to the Delivery Point during each hour; (b) the RECs associated with the Electrical Output delivered; and (c) the Other Attributes (if any) associated with the Electrical Output delivered. Buyer will arrange and pay for all transmission services and ancillary services necessary for Buyer to receive the Electrical Output up to the Contract Capacity at and from the Delivery Point. Buyer acknowledges and agrees that there are no minimum delivery quantities or requirements and that Seller has no obligation to generate, procure or otherwise obtain for sale to Buyer Other Attributes if no such Other Attributes exist. Seller warrants good and marketable title to all Electrical Output, RECs and Other Attributes (if any) delivered to the Delivery Point and provided to Buyer free and clear of liens and encumbrances. Seller agrees upon written request from Buyer to execute and deliver to Buyer such additional documents, instruments and assurances and to take such additional actions as Buyer may reasonably request to fully vest all right, title and interest in and to the Electrical Output, RECs and Other Attributes (if any) in Buyer. Except as provided in Section 4.2(d), during an Event of Default of Buyer or during the duration of a Force Majeure Event that prevents delivery of the Electrical Output, RECs, or Other Attributes (if any) respectively to the Buyer, Seller will not have the right to sell to third parties any of the Electrical Output, RECs or Other Attributes (if any) associated with such Electrical Output. For the purpose of clarity, nothing contained herein shall prevent Buyer from selling to third parties the Uncommitted Capacity and any products (including electrical output, renewable energy credits and other attributes) associated with the Uncommitted Capacity.

4.2 Payment

(a) Contract Price. Buyer will pay Seller for the Electrical Output, RECs, and Other Attributes (if any) delivered to Buyer at the Delivery Point based on the Electric Output metered at the Interconnection Point at a purchase price of [REDACTED] (the "Contract Price").

(b) Test Energy. Prior to the Commercial Operation Date, Buyer will pay Seller for all of Electrical Output and associated RECs and Other Attributes (if any) delivered to Buyer at the Delivery Point based on the Electric Output metered at the Interconnection Point at a purchase price indexed to the Four Corners daily market clearing price per MWh (the "Test Price").

(b) Seller's Obligation to Deliver Electrical Output, RECs and Other Attributes.

(i) Sales Basis: Seller shall sell the entire Electrical Output, RECs and Other Attributes (if any) produced by the Plant up to the Contract Capacity to Buyer on a unit contingent basis. The Parties agree that for purposes of this Agreement, "unit contingent" means that Seller shall operate and maintain the Plant in accordance with Prudent Utility Practices on a non-firm basis, and that Seller shall not be responsible for lost energy due to, for example, wind unavailability, Force Majeure Events, Forced Outages, Planned Outages, Emergency Conditions, and reasonably anticipated events that are not within the control of Seller and that may affect the ability of the Plant to generate electricity.

ii) Other Sales by Seller: Seller shall have the right to sell all or part of the Electrical Output, RECs or Other Attributes (if any) to a party other than the Buyer at any time during an Event of Default of Buyer, during the duration of a Force Majeure Event that prevents delivery of the Electrical Output, RECs, or Other Attributes (if any) respectively to the Buyer, or in accordance with Section 4.2(d).

iii) Liquidated Damages owed by Seller: If Seller sells all or part of the Electrical Output, RECs or Other Attributes (if any) to a party other than Buyer, other than as may be permitted during an Event of Default of Buyer, during the duration of a Force Majeure Event that prevents delivery of the Electrical Output, RECs, or Other Attributes (if any) respectively to the Buyer, or in accordance with Section 4.2(d), Seller promptly shall pay to Buyer for the Electrical Output, RECs and/or Other Attributes not delivered, as liquidated damages (and not as a penalty), an amount equal to: (i) the positive difference, if any, between (A) Buyer's replacement price in \$/MWh for the Electrical Output, RECs and/or Other Attributes, multiplied by the quantity in MWh of Electrical Output, and/or RECs and/or Other Attributes, not delivered, less (B) the Contract Price in \$/MWh, multiplied by the quantity in MWh of Electrical Output, RECs and/or Other Attributes not delivered, plus (ii) (A) Buyer's reasonable costs and expenses (in \$) in connection with a replacement purchase and (B), to the extent

that Buyer is unable to mitigate its REC-related damages by purchasing substitute RECs and instead must pay the alternative compliance payment due and owing under the ACC's Renewable Energy Standard Tariff, or any successor rule, regulation or requirement thereto ("REST") with respect to RECs, any penalties assessed by the ACC against Buyer for failure to meet REST requirements that result from such non-permitted sale by Seller to a third party (such amount referred to herein as the "Seller's Failed Delivery Payment"). Buyer shall have an affirmative obligation to mitigate its damages hereunder. The Seller's Failed Delivery Payment provided for in this Section 4.2(c) shall be Buyer's sole and exclusive remedy for any failure by Seller to deliver Electrical Output, RECs and/or Other Attributes that Seller is required to deliver hereunder. Notwithstanding anything contained herein to the contrary, except in the case of a Force Majeure Event that prevents delivery of the Electrical Output, RECs, or Other Attributes (if any) respectively to the Buyer, or as may be permitted during an Event of Default of Buyer, or in accordance with Section 4.2(d), Seller may not sell any of the Electrical Output, RECs or Other Attributes (if any) to a party other than Buyer without the Buyer's prior written consent. Seller's failure to obtain such prior written consent shall constitute an Event of Default under Section 15.1(a) below.

(c) Buyer's Failure to Accept Delivery of Electrical Output, RECs and Other Attributes. If Buyer fails to accept delivery of all or a portion of the Electrical Output, RECs and/or Other Attributes tendered at the Delivery Point by Seller as provided herein for any reason other than due to a Force Majeure Event or Emergency Condition that prevents such acceptance by Buyer, then Buyer shall pay to Seller (x) the Contract Price, plus (y) (the nominal value of the PTCs and AZPTCs not received (in \$/MWh) **multiplied by 1.66**), (the "Grossed Up PTC Rate") plus any Imbalance Charges or other charges or penalties assessed on Seller in connection with such Buyer failure, multiplied by the quantity in MWh of tendered Electrical Output, RECs and/or Other Attributes not accepted by Buyer (collectively referred to herein as the "Buyer's Failed Acceptance Payment"). Seller shall have an affirmative obligation to use Commercially Reasonable Efforts to mitigate its damages hereunder which may include selling the Electrical Output, RECs and/or Other Attributes to third parties. In the event that Seller sells all or any portion of such Electrical Output, RECs and/or Other Attributes to a third party, Seller shall offset the net amount of the proceeds from such sale (after payment of reasonable costs and expenses associated with such sale) from the Buyer's Failed Acceptance Payment, and the Grossed Up PTC Rate shall not apply to the extent of such sale solely to the extent such sale would permit Seller to claim PTCs therefore. In no event shall Seller be required to make any payment to Buyer if the proceeds from such a sale exceed the Buyer's Failed Acceptance Payment. Seller shall include in a Monthly invoice delivered to Buyer pursuant to Article 10 the amount owed by Buyer, if any, pursuant to this Section 4.2(d) and a description in reasonable detail of the calculation of such amount. For the avoidance of doubt, in no event shall the payments required to be made by Buyer hereunder limit the damages otherwise owed by Buyer, or any other remedies available to Seller, in respect of any termination of this Agreement following an Event of Default with respect to Buyer.

4.3 Measurement and Quality of Electricity

All Electrical Output will be measured at the Interconnection Point and will meet the specifications established by the Interconnection Agreement. For purposes of Monthly billing in accordance with Article 10, Seller will ensure that the Meters are read at the end of each Month.

ARTICLE 5 OPERATION AND MAINTENANCE OF THE PLANT

5.1 Seller's Obligation

Seller will operate and maintain, or cause the operation and maintenance of, the Plant in accordance with Prudent Utility Practices and the material terms and conditions contained in the Interconnection Agreement. In addition: (a) Seller shall provide to Buyer such Electrical Output scheduling and reporting information as provided in the Operating Procedures developed pursuant to Section 5.4, and (b) Seller shall reasonably cooperate with Buyer in order for Buyer to comply with applicable requirements of each applicable Transmission Provider, including performing, at Buyer's expense, any required capacity tests and calculations and providing any relevant data with respect to the Plant that is maintained and compiled by Seller in the ordinary course of operating the Plant.

5.2 Access and Information

(a) Each Party will keep complete and accurate records and all other data to the extent specified in the Operating Procedures, and that are reasonably required by either Party for the purpose of proper administration of this Agreement, including without limitation metering records, billing records kept in accordance with Section 10.2, and such records regarding ownership, management, control, operation and maintenance of the Plant as may be required by any applicable Law. Each Party will maintain such records for a minimum of three (3) years and for any additional length of time required by any applicable Law. Subject to the confidentiality requirements of Section 17.2, each Party will, upon reasonable request of the other Party, provide the other Party with prompt reasonable access to non-privileged records and data in such Party's possession or control that relate to this Agreement or either Party's performance of its obligations hereunder. In addition, before the Commercial Operation Date, on or before **the tenth (10th) Day of each Month**, Seller will provide to Buyer a Monthly progress report stating the percentage completion of the Plant, a brief summary of construction activity completed during the prior Month and contemplated for the following Month, and such other information as Buyer reasonably requests.

(b) Upon reasonable prior notice (in light of the circumstances) and during regular business hours, subject to the safety and security rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Plant site and the Plant: (i) for the purpose of reading or testing metering equipment in accordance with Section 8.2, (ii) as necessary to witness any required capacity tests in accordance with the applicable requirements of any Transmission Provider necessary to determine the amount of capacity associated with the Plant, (iii) in connection with the operation and maintenance of the Interconnection Facilities, (iv) to provide tours of the Plant to customers

and other guests of Buyer, and (v) for other reasonable purposes at the reasonable request of Buyer.

5.3 Permits; Compliance with Laws

(a) Subject to the right of Contest, Seller will, at its expense, use Commercially Reasonable Efforts to acquire and maintain in effect, from any and all Governmental Agencies with jurisdiction over Seller and/or the Plant, all Governmental Approvals, in each case necessary (i) for the construction, operation and maintenance of the Plant in accordance with this Agreement and (ii) for Seller to perform its obligations under this Agreement.

(b) Subject to the Seller's right to Contest any such Law or Governmental Approval, Seller will, at all times, comply in all material respects with all Laws and Governmental Approvals necessary for Seller to perform its obligations under this Agreement.

(c) Subject to the Buyer's right to Contest, Buyer will, at all times, comply in all material respects with all Laws and Governmental Approvals necessary for Buyer to perform its obligations under this Agreement.

(d) Subject to the each Party's right to Contest their applicability, both Parties will comply with all applicable requirements of each Transmission Provider and Balancing Authority.

5.4 Operating Procedures

Buyer and Seller will use Commercially Reasonable Efforts to develop written operating procedures ("Operating Procedures") before synchronization with the applicable Transmission Provider, which Operating Procedures will only be effective if made by mutual written agreement of the Parties. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of Day-to-Day communications; (2) key personnel lists for Seller and Buyer; (3) Forced Outage and Planned Outage reporting; and (4) Electrical Output scheduling and reporting.

As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues which may arise during the performance of this Agreement, the Operating Procedures will also provide that the Parties will both appoint an authorized representative (with respect to each Party, the "Authorized Representative") and may appoint an alternate (with respect to each Party, the "Alternate") to act in its Authorized Representative's absence. The Authorized Representatives and Alternates shall be managers or other supervisory personnel well experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement with full authority to act for and on behalf of the Parties appointing them; provided, however, in no event shall the Authorized Representatives or Alternates have the authority to amend, waive or otherwise modify the terms of this Agreement. Each Party will notify the other in writing of its Authorized

Representative and Alternate and these appointments will remain in full force and effect until written notice of substitution is delivered to the other Party.

ARTICLE 6 SCHEDULING AND DELIVERY

6.1 Delivery of Renewable Energy

Seller shall be responsible for all arrangements and costs required to deliver the Electrical Output from the Plant to Buyer at the Delivery Point. Buyer shall be responsible for all electric losses, transmission and ancillary services arrangements and costs from and after the Delivery Point, including without limitation those incurred in delivering such energy and services to Buyer loads beyond the Delivery Point.

6.2 Transmission Scheduling

Buyer shall arrange and be responsible for scheduling Transmission Services at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Electrical Output at the Delivery Point. Deliveries shall be scheduled in accordance with this Agreement and with the then-current applicable tariffs, protocols, operating procedures and reliability standards for the relevant region.

6.3 Seller's Notice Obligations

Seller will inform Buyer as soon as practicable of any major limitations, restrictions, deratings or outages affecting more than **twenty-five percent (25%)** of the Contract Capacity for the following Day, and will promptly update Seller's notice to the extent of any material changes in this information.

ARTICLE 7 INTERCONNECTION

7.1 Interconnection Agreement; Interconnection Facilities

(a) Seller shall make timely efforts to enter into an Interconnection Agreement. Pursuant to the Interconnection Agreement, Seller will design, operate, maintain and control (or cause the design, operation, maintenance and control by TEP) during the Term, at Seller's sole cost and expense, all Interconnection Facilities located at the Plant site up to, and including, the Interconnection Point in compliance with TEP's rules and the Interconnection Agreement. Subject to Section 3.4(c) hereof, Seller will be solely responsible for all of the costs and expenses associated with interconnection of the Plant up to and including the Interconnection Point. Seller shall also be solely responsible for all of the costs and expenses for any associated system impact or facilities studies or requirements

(b) Notwithstanding anything expressed or implied herein to the contrary:

(i) the Interconnection Agreement shall provide for the completion of all Interconnection Facilities no later than the Scheduled Commercial Operation Date; and

(ii) Seller shall be responsible for paying all Interconnection Costs, and Buyer shall have no liability therefor, provided that if the Interconnection Cost should generate a credit under Laws with respect to transmission of the Electrical Output, Seller and Buyer shall cooperate to realize such credit and to provide that Seller shall have the benefit of such credit as it may be realized by Seller or Buyer.

(c) The Parties agree that i) the Interconnection Agreement and OATT LGIP, as applicable, govern the Transmission Provider's requirements with respect to the Interconnection Facilities and related studies; and that ii) this Agreement is not intended to impose liability for any action or inaction on the part of the Transmission Provider to complete or not complete the System Impact Study by the date specified in Section 3.4. Buyer and Seller acknowledge and agrees that (i) in order to achieve the Scheduled Commercial Operation Date the Interconnection Facilities must be complete and operational no later than projected In-Service Date and (ii) each the Commercial Operation Date may need to be extended on a day-for-day basis for each day beyond the projected In-Service Date that the Interconnection Facilities are not completed, except in the case where such delay is caused by Seller.

7.2 Risk of Loss; Exclusive Control

As between the Parties, Seller will be deemed to be in exclusive control of the Electrical Output before the Delivery Point and Buyer will be deemed to be in exclusive control of the Electrical Output at and after the Delivery Point. Risk of loss related to the Electrical Output will transfer from Seller to Buyer at the Delivery Point.

7.3 Station Service Power - Retail

Seller will be solely responsible for obtaining and paying for all Station Service Power – Retail.

ARTICLE 8 METERING

8.1 Meter Requirements

(a) The meters and metering equipment used to determine the Electrical Output (collectively, the "Meters") will be installed, owned, operated, maintained and repaired in accordance with the Interconnection Agreement.

(b) Seller shall use Commercially Reasonable Efforts to ensure that the Interconnection Agreement will provide that the Meters will have telemetering equipment that will be capable of sending telemetering data to Buyer over independent communication paths.

The Meters shall provide hourly metering data of actual electric energy delivered at the Delivery Point and utilized by TEP for billing purposes. Buyer and Seller agree that TEP's reasonable determination of the Electrical Output of the Plant shall be binding on both Parties. Seller shall provide Buyer with real-time data of actual electric energy generated by the Plant; provided, however, that in the event of any discrepancy between such real-time data and data from the Meters, the Parties shall, for all purposes of this Agreement, rely on data from the Meters.

(c) Notwithstanding any provision to the contrary, nothing contained in this Article 8 shall require Seller to take any action that is contrary to the terms of the Interconnection Agreement and in the event of any discrepancy between the terms contained in this Article 8 and the terms contained in the Interconnection Agreement, the terms of the Interconnection Agreement shall govern.

8.2 Inspection and Testing of the Meters

(a) Subject to the terms of the Interconnection Agreement, Seller will provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, meter inspections, tests and adjustments, and will cause TEP to test any adjustments to be made thereto in accordance with Section 8.2(c). Seller will use Commercially Reasonable Efforts to have such inspections performed at its cost at least once per every two (2) years.

(b) Subject to the terms of the Interconnection Agreement, not more than once per calendar year, Seller will use Commercially Reasonable Efforts to have additional inspections or tests of the Meters performed at Buyer's request upon thirty (30) Days prior written notice by Buyer and as permitted by TEP. Seller and Buyer will agree on a mutually convenient time for such inspections or tests, and Seller will permit a qualified representative of Buyer to inspect or witness such testing of the Meters provided that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety and health standards. The actual expense of any such requested additional inspection or testing will be borne by Buyer unless, upon such inspection or testing the Meters are found to register inaccurately by more than +/-2.0%, in which event the expense of the requested additional inspection or testing will be borne by Seller.

(c) Subject to the terms of the Interconnection Agreement, if, as a result of any test performed in accordance with this Section 8.2, any of the Meters is found to be registering outside the applicable ANSI accuracy standard in effect at the time of the test, such Meter shall be restored to the ANSI accuracy standard or an accurate meter substituted and payments pursuant to this Agreement shall be corrected in accordance with this Section 8.2(c). If the payments by Buyer to Seller must be corrected, as required in this Section 8.2(c), the account between Seller and Buyer shall be corrected for a period equal to one-half of the elapsed time since the most recent test, up to a maximum correction period of one (1) year, by applying the percentage of inaccuracy so found. If, however, the meter became defective or inaccurate at a reasonably ascertainable time since the most recent test, the correction shall extend back to such time. Should metering equipment at any time fail to register, the energy delivered shall be determined from the best available data. Subject to the terms of the Interconnection Agreement, the Meters shall be kept under seal and such seals may only be broken when the meters are to be tested, adjusted, modified, or relocated in accordance with this Agreement and/or the

Interconnection Agreement. When there is to be any break to a seal, Seller must notify Buyer as soon as possible.

ARTICLE 9 COMMISSIONING AND TESTING

9.1 Seller's Notice and Testing Obligation

Seller will notify Buyer of the commissioning and initial testing of the Plant and of each capacity test thereafter, which commissioning and tests must be conducted in accordance with the requirements of the Interconnection Agreement. Seller agrees to provide Buyer with a copy of the Interconnection Agreement.

9.2 Test Energy

Seller will deliver, and Buyer will accept, the Electrical Output generated during the commissioning and initial testing of the Plant. Buyer will pay for such Electrical Output in accordance with Section 4.2(b). Testing shall be coordinated and approved by both Parties. Buyer shall ensure all reliability conditions have been met prior to commencing testing; but may not unnecessarily withhold approval for testing without sufficient reason.

ARTICLE 10 BILLING AND PAYMENT

10.1 Billing

Seller shall be responsible for billing between the Parties and shall bill Buyer for the Electrical Output, RECs and Other Attributes (if any) at the Contract Price or Test Price, as applicable, specified in Section 4.2 based on the amount of Electrical Output delivered to Buyer at the Delivery Point in accordance with Seller's readings of the Meters as provided in Section 4.2 and 4.3. Seller shall include on the bill delivered to Buyer each Month during the Term any charges assessed against Seller that are the responsibility of Buyer as provided in Section 6.1.

10.2 Payment

(a) Seller shall bill Buyer by the tenth **(10th) Day of each Month** for all Electrical Output, RECs and Other Attributes (if any) sold and purchased under this Agreement during the previous Month. Seller shall promptly provide a copy of the invoice for each Month to Buyer by **email at settlementsbilling@tep.com**. Seller's failure to timely provide Buyer with the Monthly invoice shall not waive Buyer's responsibility for payment. If Buyer, in good faith, disputes the amount of any such invoice or any part thereof, Buyer will pay to Seller such amount as Buyer acknowledges is correct. If Buyer disputes the amount due, Buyer shall provide supporting documentation to verify the amount paid. Upon the Parties' resolution of any accounting discrepancy or disagreement, Buyer and Seller agree to settle the outstanding balance which is due within five (5) Business Days following such resolution. If it is ultimately determined that Buyer owes the disputed amount, Buyer shall pay Seller the amount with interest, as determined below. Undisputed and non-offset portions of amounts invoiced under this Agreement shall be paid in accordance with each Parties invoice instructions on or before the due date or shall be subject to the late payment interest charges set forth in Section 10.2(b).

(b) Buyer's payment under this Agreement will be due on the first Business Day that is at least 20 Days following the date of Buyer's actual receipt of the invoice and shall be made by electronic fund transfer to Seller's account as designated by Seller. Each Party shall have the right to setoff, recoup or net any amounts due and owing from the other Party under this Agreement (including liquidated damages and amounts payable under Section 4.2(c) and (d)) against amounts payable to the other Party under this Agreement. This right of offset is exercisable upon written notice to the other Party, setting forth in reasonable detail the calculation of the amounts offset. Payments received after the due date shall be considered late and shall bear interest on the payment due at a rate equal to the prime rate (the "Prime Rate") plus two percent (2%) as published in the *Wall Street Journal* from time to time, for the actual number of Days elapsed from and including the Day after the due date, to and including the payment date. Alternatively, any overpayment to a Party made by the other Party arising solely out of an error made by the Party receiving the payment shall be reimbursed to the other Party with interest at a rate equal to the Prime Rate plus two percent (2%) for the actual number of Days elapsed from and including the Day after the Day overpayment was made by such Party to and including the date of reimbursement.

(c) Subject to the confidentiality provisions of Section 17.2, each Party shall have the right from time to time, upon reasonable prior written request and at its own expense, to audit the other Party's relevant, non-privileged books and records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder; provided, however, that any such audit shall be conducted during normal business hours and shall be subject to the audited Party's reasonable safety and security protocols.

ARTICLE 11 TAXES, FEES, AND TAX CREDITS

Subject to Seller's right to Contest the applicability or amount of any such Taxes, Seller will pay or cause to be paid all taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any Governmental Agency (collectively, "Taxes") on or with respect to Electrical Output before the Delivery Point. Subject to Buyer's right to Contest the applicability or amount of any such Taxes, Buyer will pay or cause to be paid all Taxes on or with respect to the Electrical Output, RECs and Other Attributes (if any) imposed at and after the Delivery Point. If Seller is required to remit or pay Taxes that are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse Buyer for such Taxes. Seller will receive and retain any existing or future tax credits or other tax benefits available to the owner or operator of the Plant, including all federal income tax credits under the Internal Revenue Code of 1986, as amended.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Seller

Seller represents and warrants to Buyer as of the Effective Date as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Arizona and is qualified and in good standing in

each other jurisdiction where the failure so to qualify would have a material adverse effect upon the business or financial condition of Seller, the Plant, or the ability of Seller to perform its obligations under this Agreement, 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 action, and do not and will not:

(i) require any consent or approval of Seller's members or managers which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any Law, order, writ, injunction, decree, determination, or award having applicability to Seller or any provision of the organizational documents of Seller, the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the organizational documents of Seller,

(iv) result in a breach of or constitute a default 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

(v) 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 constitutes a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy.

(d) There is no pending or, to Seller's knowledge, threatened action or proceeding affecting Seller before any court, Governmental Agency or arbitrator that could

reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

(e) Seller has the financial ability to perform its obligations under this Agreement, including but not limited to, to construct, operate and maintain the Plant and deliver the Electrical Output, RECs and Other Attributes as provided herein; provided that it is understood that Seller intends to obtain financing in order to construct the Plant.

12.2 Representations and Warranties of Buyer

Buyer represents and warrants to Seller as of the Effective Date as follows:

(a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona and is qualified and in good standing in each other jurisdiction where the failure so to qualify would have a material adverse effect upon the business or financial condition of Buyer, or the ability of Buyer to perform its obligations under this Agreement, and 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 corporate action, and do not and will not:

(i) require any consent or approval of Buyer's board of directors or any Buyer shareholder which has not been obtained, and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any Law, order, writ, injunction, decree, determination, or award having applicability to Buyer, the violation of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the articles of incorporation or by-laws of Buyer,

(iv) result in a breach of or constitute a default 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

(v) 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 constitutes a legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy.

(d) There is no pending or, to Buyer's knowledge, threatened action or proceeding affecting Buyer before any court, Governmental Agency or arbitrator that could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

(e) Buyer has the financial ability to perform its obligations under this Agreement, including but not limited to, to purchase and pay for the Electrical Output, RECs and Other Attributes as provided herein.

ARTICLE 13 INSURANCE

13.1 Insurance

At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Plant and its tangible assets in such amounts and against such risks and losses as are consistent with Prudent Utility Practices. Such insurance policies shall be maintained only with insurers rated at least A- VII by AM Best or comparable ratings agency.

Within ten (10) Business Days after receipt of a request for the same from Buyer, Seller shall deliver to Buyer a certificate of insurance for any or all policies maintained in accordance with this Section 13.1, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

Seller shall have the right to self-insure any of the required coverages in this Section 13.1 to the extent permissible by applicable statute. In the event that Seller elects to self-insure, Seller will provide Buyer with evidence of such insurance.

ARTICLE 14 FORCE MAJEURE EVENT

14.1 Force Majeure Event Defined

(a) As used in this Agreement, “Force Majeure Event” means causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes that damage the wind turbines; substation, electrical wires or interconnection facilities; earthquake; acts of God; unusually severe actions of the elements which would prevent construction, operation or maintenance of the Plant in accordance with Prudent Utility Practices, such as floods, extreme ice storms, extremely high winds, hurricanes, or tornadoes; sabotage; terrorism; war; explosions, blockages, insurrection, riots or public disorders; the existence of design and/or manufacturing defects in the products of Seller’s suppliers; strikes or other labor disputes or disruptions; expropriation or requisition by any Governmental Agency and actions or inactions by any Governmental Agency taken after the Effective Date (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) and the inability, despite using Commercially Reasonable Efforts of Seller to obtain any licenses, permits or other required Governmental Approvals, in each case, to the extent such cause or event prevents or delays performance of any material obligation imposed on the Party claiming such Force Majeure Event; provided, however, that neither Party shall have the right to relief pursuant to this Article 14 with respect to such Party’s payment obligations under this Agreement. In addition, each of the following shall be deemed a Force Majeure Event hereunder: (a) an Emergency Condition on the transmission system of a Party’s Transmission Provider, (b) curtailments of firm transmission service or network integration transmission service ordered by a Transmission Provider, including regional or interconnection-wide outages and extended path outages that prevent Seller from delivering some or all of the Electrical Output at the Interconnection Point, (c) scheduled or unscheduled maintenance on a transmission system performed by a Transmission Provider to the extent that such maintenance prevents Seller from delivering some or all of the Electrical Output at the Interconnection Point, (d) the performance of third-party suppliers of goods or services to Seller including delay or unavailability of equipment for the Plant or construction of the wind turbines or the balance of Plant and (e) serial or other defects with respect to the wind turbines, transmission distribution lines and other components of the Plant. .

(b) Force Majeure Event does not include: (i) changes in market conditions (including the loss of either Party’s markets) and actions or failures to act of any Governmental Agency or Transmission Provider that affect the price of energy, capacity, RECs or transmission; (ii) Seller’s failure to timely apply for Governmental Approvals that Seller knows or should know are required for the construction or operation of the Plant; (iii) the loss or failure of the wind to produce expected Electrical Output from the Plant; (iv) Buyer’s inability to use or resell the Electrical Output, the RECs and/or Other Attributes; (v) Seller’s ability to sell the Electrical Output, the RECs and/or Other Attributes at a price greater than the price paid by Buyer therefore under this Agreement; or (vi) any other economic hardship or changes in market conditions.

14.2 Applicability of Force Majeure Event

Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

(a) the non-performing Party will give the other Party written notice as soon as practically possible after such Party's discovery of the Force Majeure Event but in any event within **48 hours** of the commencement of the Force Majeure Event, with further details to be supplied promptly but in no event later than **ten (10) Days** thereafter, describing the particulars of the occurrence of the Force Majeure Event not contained in the initial notice;

(b) the delay or suspension in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

(c) the Party whose performance is delayed or prevented will proceed with Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying performance and will provide weekly written progress reports to the other Party during the period that performance is delayed or prevented, describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event, if known or capable of determination; and

(d) when the performance of the Party claiming the Force Majeure Event is no longer being delayed or prevented, that Party will give the other Party written notice to that effect and shall promptly resume performance.

ARTICLE 15 DEFAULT AND REMEDIES

15.1 Event of Default

(a) The occurrence of any one of the following will constitute an Event of Default with respect to Seller:

(i) Seller fails to make payments for undisputed amounts due under this Agreement to Buyer within **ten (10) Days** after written notice from Buyer that such payment is unpaid and due;

(ii) Seller fails to comply with any material provision of this Agreement (other than the obligation to pay money when due, which is covered by clause (i) above), and such failure continues uncured for 60 Days after written notice thereof by Buyer; provided, however, that if such breach is not susceptible to cure within 60 Days, then such 60 Day-cure period shall be extended for an additional period (not to exceed 180 Days provided Seller is diligently pursuing) to cure such breach;

(iii) Seller (a) is unable to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the

benefit of its creditors; (c) files a case in bankruptcy or any proceeding under any other insolvency law; (d) fails to controvert in a timely (but no more than 60 Days) and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; (e) takes any action for the purpose of effecting any of the foregoing; or (e) becomes insolvent;

(iv) Any material representation made by Seller under Section 12.1 is false in any material respect when made and Seller fails to remedy such false representation within 60 Days after written notice thereof by Buyer; provided, however, that if such breach is not susceptible to cure within 60 Days, this such 60 Day-cure period should be extended for an additional period (not to exceed 180 Days provided Seller is diligently pursuing) to cure such breach;

(v) Abandonment of the construction of the Plant for any period in excess of 180 consecutive Days, except in the case of a Force Majeure Event in which case the provisions of Article 14 shall apply; provided, however, if Seller is diligently seeking to cure the event which leads to the abandonment then such 180-Day period shall be extended for an additional 180 Days; or

(vi) Abandonment of the operation of the Plant for any period in excess of 180 consecutive Days, except in the case of a Force Majeure Event in which case the provisions of Article 14 shall apply; provided, however, if Seller is diligently seeking to cure the event which leads to the abandonment then such 180-Day period shall be extended for an additional 180 Days.

(b) The occurrence of any one of the following will constitute an Event of Default with respect to Buyer:

(i) Buyer fails to make payments for undisputed amounts due under this Agreement to Seller within ten (10) Days after written notice from Seller that such payment is unpaid and due;

(ii) Buyer fails to comply with any material provision of this Agreement (other than the obligation to pay money when due, which is covered by clause (i) above), and such failure continues uncured for 60 Days after written notice thereof by Seller; provided, however, that if such breach is not susceptible to cure within 60 Days, then such 60 Day-cure period shall be extended for an additional period (not to exceed 180 Days provided Buyer is diligently pursuing) to cure such breach;

(iii) Buyer (a) is unable to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) files a case in bankruptcy or any proceeding under any other insolvency law; (d) fails to controvert in a timely (but no more than 60 Days) and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; (e) takes any action for the purpose of effecting any of the foregoing or (f) becomes insolvent;

(iv) Any material representation made by Buyer under Section 12.2 is false in any material respect when made and Buyer fails to remedy such false representation within 60 Days after written notice thereof by Seller; provided, however, that if such breach is not susceptible to cure within 60 Days, this such 60 Day-cure period should be extended for an additional period (not to exceed 180 Days provided Buyer is diligently pursuing) to cure such breach; or

(v) Buyer fails to accept delivery of Electrical Output, RECs and/or Other Attributes for reasons other than a Force Majeure Event or Emergency Condition.

15.2 Remedies for Default

(a) Subject to the limitations contained in Section 15.3, if an Event of Default occurs with respect to a defaulting Party at any time during the Term, the non-defaulting Party may (i) deliver a written notice that establishes a date (which date will be no earlier than 30 Days after the non-defaulting Party delivers notice) on which this Agreement will be terminated, (ii) set off, recoup, net and apply amounts due and payable to the defaulting Party against amounts due and payable from the defaulting Party, and (iii) pursue any other remedies available at law or in equity, including actual damages, and except to the extent such remedies are expressly limited under Section 2.4, Section 15.2(b) or otherwise under this Agreement.

(b) If an Event of Default occurs pursuant to Section 15.1(a), then Buyer may deliver a written notice that establishes a date (which date will be no earlier than thirty (30) Days after the Buyer delivers such notice) on which this Agreement will be terminated; and (ii) on the date of such termination, Seller shall pay Buyer a termination payment equal to two dollars (\$2.00) multiplied by the expected future MWh of the Plant for the remainder of the Term, but in no event shall such amount exceed Two Million Five Hundred Thousand Dollars **(\$2,500,000)** ("Seller's Termination Payment") as liquidated damages (and not as a penalty). The Seller's Termination Payment provided for in this Section 15.2(b) shall be Buyer's sole and exclusive remedy for an Event of Default by Seller pursuant to Section 15.1(a); provided, this Section 15.2(b) shall not apply in the case of a Seller Event of Default resulting from Seller's sale of any of the Electrical Output, RECs or Other Attributes (if any) to a party other than Buyer without the Buyer's prior consent as required under Section 4.2(c) above.

15.3 Financing Party Cure Rights

In connection with Buyer's right to exercise the option to terminate this Agreement pursuant to Section 15.2, Buyer shall provide simultaneous delivery to the Financing Parties (as may be set forth in any collateral assignment agreement) of the notice to Seller under Section 15.1. Each Financing Party shall have the option to cure such Event of Default of Seller within the cure periods set forth in Section 15.1 or as otherwise mutually agreed. .

15.4 Effect of Termination

Notwithstanding expiration or termination of this Agreement for any reason, (a) each Party will remain responsible for the payment of expenses as are required of it hereunder and for the performance of obligations to be performed prior to the effective date of termination;

and (b) the Confidentiality provisions of Section 17.2, the Indemnification provisions of Article 16 and any other obligations expressly providing for performance after expiration or earlier termination of this Agreement shall survive for a period of **two (2) years** from such expiration of termination unless otherwise specified herein. Except to the extent expressly provided herein, no termination of this Agreement shall be deemed to be a waiver or relieve any Party from damages caused by reason of a material misrepresentation or a material breach of a representation, warranty, covenant or agreement made by the other Party, if such misrepresentation or breach is the cause of such termination.

ARTICLE 16 INDEMNIFICATION AND LIABILITY

16.1 Indemnification

(a) Each Party shall indemnify, defend and hold harmless the other Party and its Affiliates and each of their respective officers, directors, managers, agents, employees, contractors, subcontractors, and permitted successors and assigns (each of the foregoing, including the Party, an “Indemnified Party”), from and against all Claims made against the Indemnified Party (i) resulting from any breach of this Agreement by the indemnifying Party; and (ii) to the extent caused by the negligence or intentional misconduct of the indemnifying Party or the indemnifying Party’s own officers, directors, managers, agents, employees, contractors, subcontractors, and permitted successors and assigns to the extent such Claims arise out of or are in any manner connected with the performance of this Agreement by such indemnifying Party.

(b) Notwithstanding anything to the contrary in this Agreement, each Party shall indemnify, defend and hold harmless the other Party from any Claims arising from the Electrical Output, RECs and/or Other Attributes, if any, that occur when risk of loss of the Electrical Output, RECs and/or Other Attributes, if any, is vested in the indemnifying Party.

(c) Nothing in the foregoing provisions of this Section 16.1 will be construed to require one Party to this Agreement to indemnify an Indemnified Party for any cost or expense that is to be borne by the other Party pursuant to any express provision of this Agreement or for Claims, injury or damage to the extent caused by the gross negligence or willful misconduct of any of the Indemnified Parties.

(d) Without limiting Section 16.1(a), Buyer shall indemnify Seller for all liabilities related to the Electrical Output once sold and delivered to Buyer at the Delivery Point as provided herein, and Seller shall indemnify Buyer for all liabilities related to the Electrical Output prior to its delivery by Seller at the Delivery Point, except to the extent such liability is attributable to the gross negligence or willful misconduct by the Party (or any of its Affiliates) seeking indemnification hereunder.

16.2 Fines

(a) Any fines, penalties or other costs incurred by a Party or such Party’s agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with the requirements of any Laws or Governmental Approvals will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

(b) If such fines, penalties or other costs are assessed against Buyer by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Seller with any Laws or Governmental Approvals, Seller will indemnify and hold harmless Buyer against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Seller to comply therewith, subject to refund in the event that Seller or Buyer prevails in any Contest described below. Seller will also reimburse Buyer for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Buyer in connection with such losses, liabilities, damages and claims.

(c) If such fines, penalties or other costs are assessed against Seller by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Buyer with any Laws or Governmental Approvals, Buyer will indemnify and hold harmless Seller against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Buyer to comply therewith, subject to refund in the event that Buyer or Seller prevails in any Contest described below. Buyer will also reimburse Seller for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Seller in connection with such losses, liabilities, damages and claims.

(d) In the case of Section 16.2(b) and (c), each Party will, upon written notice to the other Party, have the right to reasonably Contest in the name of either or both Parties, as required, or to require the other Party to reasonably Contest, the assessment of such fines, penalties or costs and the Party requesting such Contest will be responsible for any costs and expenses (including the costs and expenses of the other Party) relating to such Contest.

16.3 Limitations of Liability, Remedies and Damages

(a) Each Party acknowledges and agrees that in no event will any partner, shareholder, member, manager, owner, officer, director, employee or Affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party and the sole recourse for payment or performance of the obligations under this Agreement will be against Seller or Buyer and each of their respective assets and not against any other Person, except for such liability as expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

(b) The obligation of an indemnifying Party to indemnify an Indemnified Party for Claims shall be subject to the following terms and conditions:

(i) The Indemnified Party shall give prompt written notice to the indemnifying Party of any Claim, which notice shall state the nature and basis of the assertion and the amount thereof, to the extent known; provided, however, that no delay on the part of the Indemnified Party in giving notice shall relieve the indemnifying Party of any obligation to indemnify unless (and then solely to the extent that) the indemnifying Party is actually prejudiced by such delay.

(ii) Any legal action resulting from a Claim shall be defended by the indemnifying Party with counsel designated by such indemnifying Party and

reasonably satisfactory to the Indemnified Party and such defense shall include all proceedings and appeals which such counsel shall reasonably deem appropriate. Notwithstanding the previous sentence, until the indemnifying Party assumes the defense of any Claim, the defense shall be handled by the Indemnified Party. Furthermore, if (A) the defendants in any such action include both the Indemnified Party and the indemnifying Party and the Indemnified Party reasonably concludes that there are likely to be defenses available to the Indemnified Party that are different from or in addition to those available to the indemnifying Party; (B) the Indemnified Party reasonably concludes that the indemnifying Party does not have sufficient financial resources to defend and fulfill its indemnification obligation with respect to the legal action; (C) the action involves other than money damages and seeks injunctive or other equitable relief; or (D) if a judgment against the Indemnified Party will, in the good faith opinion of the Indemnified Party, establish a custom or precedent which will be adverse to the best interests of its continuing business, the indemnifying Party shall not be entitled to assume the defense of the Claim and the defense shall be handled by the Indemnified Party. If the defense of the Claim is handled by the Indemnified Party under the provisions of this subsection, the indemnifying Party shall pay all reasonable legal and other expenses reasonably incurred by the Indemnified Party in conducting such defense.

(c) In any Claim defended by the indemnifying Party: (A) the Indemnified Party shall have the right to be represented by advisory counsel and accountants, at its own expense, (B) the indemnifying Party shall keep the Indemnified Party fully informed as to the status of such Claim at all stages thereof, whether or not the Indemnified Party is represented by its own counsel, (C) the indemnifying Party shall make reasonably available to the Indemnified Party and its attorneys, accountants and other representatives, all non-privileged books and records of the indemnifying Party relating to such Claim, and (D) the Parties shall render to each other such assistance as may be reasonably required in order to ensure the proper and adequate defense of the Claim.

(d) In any Claim defended by the indemnifying Party, the indemnifying Party shall not make any settlement of any claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, it shall not be deemed unreasonable to withhold consent to a settlement involving injunctive or other equitable relief against the Indemnified Party or its assets, employees or business, or relief which the Indemnified Party reasonably believes could establish a custom or precedent which will be adverse to the best interests of its continuing business.

(e) 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 the settlement agreed to.

(f) THE EXPRESS REMEDIES SET FORTH IN THIS AGREEMENT CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO SUCH MATTERS TO WHICH THEY RELATE, IN EACH CASE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE APPLICABLE PORTIONS OF THIS AGREEMENT. ACCORDINGLY, EACH PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PORTIONS OF THE AGREEMENT AND, WHERE AN EXPRESS REMEDY IS PROVIDED, ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY NOT PERMITTED BY SUCH PORTIONS ARE WAIVED. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF THAT PARTY, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, BUT EXCLUDING AMOUNTS PAYABLE BY THE INDEMNIFYING PARTY UNDER SECTION 16.1 HEREOF, TO THE EXTENT THAT THIRD PARTY CLAIMS INCLUDE SUCH DAMAGES). THE PARTIES AGREE THAT LIQUIDATED DAMAGES PAYMENTS REQUIRED BY THIS AGREEMENT DO NOT CONSTITUTE CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS AGREEMENT. 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, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE (SUCH LIMITATIONS NOT TO APPLY TO DAMAGES RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT). TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(g) The provisions of this Article 16 will survive the termination of this Agreement.

ARTICLE 17 GENERAL

17.1 Assignment

(a) This Agreement, or any rights or obligations of a Party hereunder, may not be assigned by either Party without the prior written approval of the other Party, which shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding Section 17.1(a), Seller will have the right, without the prior written consent of Buyer, subject to providing prior written notice to Buyer as set forth in Section 17.1(h) below, to assign, encumber, pledge or mortgage all of its rights, interests and obligations under this Agreement with respect to all (but not less than all) of the Plant (i) to an owner trust or an equity investment vehicle or a special purpose entity that, in each case, is wholly or jointly owned by Seller and owns 100% of the Plant, (ii) as security to a lender or other party for the purpose of providing financing or refinancing the Plant (or portfolio of assets

of which the Plant or an interest therein is a part), in which case Seller shall be able to assign those rights, interests and obligations under this Agreement with respect to the portion of the Plant subject to such financing or refinancing (and in connection therewith, Buyer shall, at Seller's expense, execute and deliver to the Financing Parties after receipt and review of reasonably requested information with respect to the identities of the Financing Parties, which may include non-confidential information about their corporate structures, in connection with any potential assignment or collateral assignment of this Agreement including in the financing or refinancing agreements, a consent to collateral assignment agreement in a form reasonably requested by the Financing Parties and reasonably acceptable to Buyer); or (iii) to an Affiliate or a third party provided that such Affiliate or third party acquires substantially all of Seller's assets and assumes all of Seller's rights and obligations under this Agreement.

(c) The foregoing restrictions shall not prohibit the sale of membership interests or other beneficial or ownership interests in Seller to third parties.

(d) Notwithstanding Section 17.1(a), Buyer will have the right, without consent of Seller, to re-sell all or part of the Electrical Output, RECs and Other Attributes (if any) to be purchased pursuant to this Agreement to utilities or other third parties in any lawful fashion. Regardless of any such sale, Buyer shall at all times remain liable for all obligations undertaken to Seller under the terms of this Agreement, including, without limitation, the purchase of the Electrical Output and associated RECs and Other Attributes (if any).

(e) Notwithstanding Section 17.1(a), Buyer may, without the consent of Seller, grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement if required to do so under the terms of a mortgage or indenture to which it is or becomes a party in connection with the general financing of its assets or operations.

(f) Notwithstanding Section 17.1(a), Buyer will have the right, without the consent of Seller, to assign all of its rights and obligations to an Affiliate; provided, that such Affiliate assumes all of Buyer's rights and obligations under this Agreement, including the obligation to provide and maintain credit support in accordance with this Agreement.

(g) Except for any collateral assignment agreement in connection with Section 17.1(a)(ii), any assignment made in accordance with the provisions of this Section 17.1 shall relieve the assigning Party of its obligations under this Agreement, other than with respect to amounts due and owing as of the effective date of such assignment or any other liability under this Agreement that arose prior to the effective date of such assignment.

(h) Except in connection with Section 17.1(d) and 17.1(e), the assigning Party shall give reasonable prior written notice to the other Party of any assignment which does not require the consent of the other Party. Any assignment in violation of this Section 17.1 will be void and of no force or effect.

17.2 Confidentiality

Any "Confidential Information" provided by either Party, or on behalf of such Party, to the other Party pursuant to this Agreement will be utilized by the receiving Party solely

in connection with the purposes of performing its obligations under this Agreement and will not be disclosed by the receiving Party to any third party, except with the disclosing Party's consent; provided, however, that the receiving Party shall be entitled to disclose Confidential Information of the disclosing Party to those of the receiving Party's employees, officers, managers, directors, agents, attorneys, accountants, consultants and other advisors who have a need to know such information for purposes of performance under this Agreement and to potential Financing Parties who have a need to know such information for purposes of any potential or actual Financial Close, provided the forgoing agree to keep such Confidential Information confidential in accordance with this Agreement, and to Governmental Agencies or government officials (including for purposes of this Agreement any national securities exchange) as necessary to obtain Government Approvals or as required by Law, regulation, requirement or order. "Confidential Information" shall mean all information whether of a technical, engineering, operational or financial nature, disclosed or obtained orally, in writing or otherwise, and specifically marked or otherwise identified as confidential by the disclosing Party, including, but not limited to, technical and business information, business plans, client identities, customer lists, personnel and financial data, supplier identities and terms, contract terms, price quotes, savings estimates, formulas, compilations and studies and including information received pursuant to this Agreement. Each Party shall endeavor to keep to a minimum the amount of Confidential Information that is furnished to the other Party, and Confidential Information shall not include information which: (a) at the time of receipt was already possessed by the receiving Party or was already in the public domain; (b) after being disclosed entered into public domain without any breach by the receiving Party of its obligations under this Section 17.2; (c) is rightfully obtained from any Person which had the lawful right to disclose it to the receiving Party and who did not receive the information as Confidential Information directly or indirectly from the disclosing Party or as Confidential Information from another party having obligations to the disclosing Party with respect thereto; or (d) is independently developed by the receiving Party, without incorporating or relying upon the other Party's Confidential Information. Disclosure by the receiving Party of disclosing Party's Confidential Information which is required by Law (including for this purpose the rules of the New York Stock Exchange) or in a judicial, administrative, or governmental proceeding shall not constitute a breach of this Agreement provided that the receiving Party timely notifies the disclosing Party of any such requirement (to the extent such notification is permitted by applicable law) in order to provide the disclosing Party a reasonable opportunity to seek an appropriate protective order; provided, however, if the disclosing Party does not obtain a protective order or other remedy against disclosure, the receiving Party agrees to furnish only that portion of the Confidential Information which the receiving Party is legally required to furnish. Both Parties acknowledge that any unauthorized disclosure or misappropriation of any of the Confidential Information of the disclosing Party in violation of this Agreement may place the disclosing Party at a competitive disadvantage and may cause the disclosing Party irreparable harm, the amount of which may be difficult to ascertain. The Parties agree that a proven injured Party shall be entitled to seek relief at law or in equity, including but not limited to injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section 17.2. All Confidential Information shall remain the property of the disclosing Party and if disclosed in tangible or electronic form, shall, at no cost to the disclosing Party, be returned or destroyed upon written request. This provision shall survive for a period of two (2) years from the date of termination or expiration of this Agreement.

17.3 Several Obligations

Except when specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing in the Agreement shall be construed to create an association, trust, partnership, fiduciary relationship, or joint venture or impose a trust or partnership duty, obligation or liability or agency relationship on or with regard to either Seller or Buyer. Each Party shall be liable for its own obligations under this Agreement. Any undertaking by one Party to the other Party under any provision of this Agreement shall not constitute the dedication of the electrical system or any portion thereof of either Party to the public or to the other Party, its customers, or any other person or entity.

17.4 Notices

Any notice of a routine character in connection with the delivery of electric energy or the operation of the Plant may be given in such manner as may be mutually agreeable between the Parties' Authorized Representatives. Any formal notice, demand, request, or communication required or authorized by this Agreement shall be delivered in writing either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to the following addresses:

Buyer: Tucson Electric Power Company
88 East Broadway Blvd Mail Stop HQE502
PO Box 711 Tucson, Arizona 85702
Attention: Carmine Tilghman
Director – Renewable Energy Resources
Telephone: (520) 745-7108
Facsimile: (520) 545-1536
E-mail: ctilghman@tep.com

With a copy to: Tucson Electric Power Company
88 East Broadway Blvd Mail Stop HQE901
PO Box 711 Tucson, Arizona 85702
Attention: Sherri Durand, Corporate Counsel
Telephone: (520) 917-8792
Facsimile: (520) 545-1370
E-mail: sdurand@tep.com

Seller: Red Horse Wind 2, LLC
c/o Torch Energy Advisors
1331 Lamar, Suite 1450
Houston, TX 77010
Attention: Jonathan Kilberg and Traci J. Guthrie
Telephone: (713) 753-1282
Facsimile: (713) 655-1711
E-mail: jkilberg@teai.com and traci.guthrie@teai.com

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if received by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier, (iii) if sent by electronic mail, upon electronic mail confirmation of receipt from the receiving Party or (iv) if delivered in person, upon receipt by the receiving Party. Either Party may from time to time change any of the recipients or its address(es) by giving the other Party notice of the change in accordance with this section.

17.5 Captions

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

17.6 Governing Law/Venue

(a) This Agreement shall be interpreted and governed by the laws of the State of Arizona without regard to conflicts of laws.

(b) SUBJECT TO SECTION 17.7, THE PARTIES HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT LOCATED IN PIMA COUNTY OR MARICOPA COUNTY, ARIZONA FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT TO THE EXTENT THAT THE FERC MAY HAVE JURISDICTION OVER THE MATTER. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

17.7 Dispute Resolution

(a) In the event a dispute arises between Buyer and Seller regarding the application or interpretation of, or in any way relating to this Agreement, Buyer and Seller shall use Commercially Reasonable Efforts to reach a reasonable and equitable resolution of the matter on an expedited basis. In the event such efforts do not result in the resolution of the dispute, either Party may by written notice request the other Party to designate an officer of its management to meet at the Plant, or at any other mutually agreed location, to resolve the dispute.

The designated officers shall meet promptly but in any event within twenty-one (21) Days following the notice date unless a later date is specified in the notice, and shall have the authority to resolve the dispute. In conjunction with any meetings pursuant to this paragraph, (i) upon request of either Party the other Party shall cooperate to select a mutually agreeable independent technical consultant to assist in the resolution of any technical dispute, the related costs and expenses of such consultant to be borne equally by the Parties; and (ii) all such discussions shall be confidential and deemed settlement discussions for purposes of all applicable procedural rules, should the dispute eventually result in litigation.

If the procedures referenced in the preceding paragraph do not result in resolution of the dispute within five (5) Days after commencement of the referenced officers' meeting (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute of limitations), the Parties shall be free to initiate litigation; provided that nothing herein shall be deemed to restrict the ability or right of either Party to seek injunctive relief.

(b) Unless otherwise agreed in writing, each Party will diligently continue to perform its obligations under this Agreement during the pendency of any disputes so long as all undisputed amounts payable hereunder have been paid.

17.8 No Third Party Beneficiary

Except for the Financing Parties as contemplated by Section 17.1, no provisions of this Agreement shall in any way inure to the benefit of any customer or any other third party so as to constitute any such person as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

17.9 Entire Agreement; Modification and Waiver; Severability

This Agreement and the other agreements referred to herein, constitute the entire agreement between the Parties relating to the transaction described in this Agreement and supersede any and all prior oral or written understandings. No addition to or modification of any provision of this Agreement shall be binding upon either Party or their respective successors-in-interest, legal representatives and permitted assigns, and neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such addition, modification or waiver is in writing and signed by a duly authorized officer of such Party.

If any term of this Agreement is found to be unenforceable, this Agreement will remain in full force and effect except that the unenforceable term will be replaced, by good faith agreement of the Parties, with an enforceable term as similar as possible to the unenforceable term.

17.10 Financial Accounting Standards

Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," Buyer may be required to consolidate a Seller's entity for which Buyer has entered into a long-term

power-purchase agreement. Seller agrees to provide all information reasonably needed in order for Buyer to determine whether or not the special purpose entity which owns Seller's generating facility must be consolidated by Buyer under FIN No. 46(R). If it is determined that consolidation is required:

(a) Seller agrees to provide all information needed to comply with the consolidation requirements of FIN 46(R) upon request (but in no event more frequently than each calendar quarter).

(b) Buyer shall treat Seller's financial statements or other financial information provided hereunder in strict confidence and, accordingly,

(i) utilize such Seller financial information only for purposes of preparing, reviewing or certifying its financial statements, for making regulatory, tax or other filings required by law in which it is required to demonstrate or certify its financial condition or to obtain credit ratings;

(ii) shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Company's or any Company parent company financial statements, to the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Company's or any Company parent company financial statement.

(c) Buyer shall pay all expenses of Seller required to comply with the provisions of this Section 17.10.

Seller shall not be required to provide any information under this Section 17.10 until it first has had an opportunity to meet and confer with Buyer and Buyer's independent auditor regarding the basis for its determination that consolidation may be required. Buyer shall promptly notify Seller of any such determination, and Seller shall have ten (10) Business Days after receipt of such notice in which to meet and confer with Buyer and Buyer's independent auditor.

17.11 Forward Contract.

The Parties acknowledge and agree that this Agreement and the transactions contemplated under this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

17.12 Communications; Press Releases.

The Parties shall cooperate and coordinate with each other with regard to any communications in respect of the Plant or the transactions contemplated by this Agreement with state and local community organizations and groups or the public generally, whether through press releases or otherwise. Each Party agrees to provide the other Party with a reasonable opportunity to stay fully informed with respect to all such matters, to participate therein jointly

and to review and provide prior comment upon any communications that it plans to deliver or submit to the foregoing persons and shall promptly provide the other Party with copies of any communications sent, delivered or received, provided that nothing in the foregoing shall operate to prevent a Party from complying with applicable Law or the requirements of any Government Agency concerning such matters. Notwithstanding, Seller may not identify Buyer or use Buyer's logo or name for reference purposes, press releases, website information or other marketing purposes without prior written permission from the Buyer, in Buyer's sole discretion.

17.13 Further Assurances.

The Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of the Parties. Buyer agrees to make Commercially Reasonable Efforts to provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Seller or the Financing Parties in connection with the financing of the Plant.

17.14 Joint Preparation.

The Parties have jointly prepared this Agreement, with access to counsel, 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. Because both Parties have participated in the negotiation and drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

17.15 Counterparts; Facsimile and PDF Delivery.

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart. The delivery of an executed counterpart of this Agreement by facsimile or PDF shall be deemed to be valid delivery thereof.

17.16 Change in Applicable Law.

If a Party's activities hereunder become subject to a change in Applicable Law of any kind whatsoever, including Applicable Laws addressing health or the environment or a change in the Dynamic Interchange Scheduling Program, and such change renders this Agreement illegal or unenforceable, then either Party (an "Affected Party") may deliver written notice to the other Party identifying such change in Applicable Law and describing in detail reasonably acceptable to the other Party the basis on which the Affected Party is making the claim under this Section 17.16 ("Change in Law Notice"). On the earlier of (x) the date that is ninety (90) Days after the applicable Party's receipt of the Change in Law Notice or (y) the date that both Parties agree in writing that no relief from the consequences of the change in

Applicable Law will be agreed to by the Parties prior to the end of such ninety (90) Day period, the Affected Party shall have the right to terminate this Agreement by delivery of written notice to such effect to the other Party, so long as the basis for the Affected Party's claim identified in the applicable Change in Law Notice has continued uninterrupted through the date of such termination. Upon any such termination, neither Party shall have any liability to the other Party as a result of the event giving rise to the termination, but such termination shall not relieve either Party from any other liability under this Agreement that arose prior to the effective date of termination, including liability for any undisputed amounts accrued and unpaid as of the effective date of such termination. Upon delivery of a Change in Law Notice, both Parties shall undertake Commercially Reasonable Efforts to mitigate the effects of the change in Applicable Law, including negotiating a replacement agreement, or amendments or modifications to this Agreement, that would substantially replicate or restore the economic benefits and risk allocations as expressed by the Parties in this Agreement notwithstanding the change in Applicable Law, provided, however, that neither Party shall be obligated to agree to any of the foregoing if it reasonably determines, in good faith, that doing so would not in fact replicate or restore the economic benefits and risk allocations as expressed by the Parties in this Agreement.

17.17 Regulatory Issues.

This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all Governmental Authorities (including FERC) having jurisdiction over the Plant, this Agreement, the Parties or either of them. Neither Party shall seek to prospectively or retroactively revise the prices, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to Sections 205, 206 or 306 of the Federal Power Act and each Party waives any and all rights it may have to seek any such changes. Absent the prior written agreement of both of the Parties to any proposed change, the standard of review for changes to the prices, terms and conditions of service of this Agreement proposed by any Party, a non-Party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra* doctrine). In the event that FERC requires the use of specific language to trigger application of the *Mobile-Sierra* doctrine and such specific language is not satisfied by the first sentence of this Section 17.17 then the first sentence of this Section 17.17 shall, without further action by the Parties, be deemed amended to incorporate the specific language required by FERC so that the *Mobile-Sierra* doctrine can be applied as expressly intended by the Parties. If the *Mobile-Sierra* doctrine is found by a court of competent jurisdiction to be invalid, the Parties specifically agree that the provisions of this Agreement shall not be changed except upon a finding of unequivocal public necessity by FERC.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

RED HORSE WIND 2, LLC

TUCSON ELECTRIC POWER COMPANY

By:  _____

By:  _____

Jonathon Kilberg

Carmine Tilghman

President, Torch Renewable Energy, LLC

Director, Renewable Energy Resources

February 20, 2013

February 20, 2013

EXHIBIT A

Description of the Project and the Plant

The Project will be a wind, solar and/or other resource-powered electric generating facility of approximately **71 MW** comprised of wind turbines, solar panels and/or other generating resources, supervisory control and data acquisition systems, interconnection facilities and related equipment. The Project will be located in Cochise County, Arizona.

The Plant will be a component of the Project and will consist of a wind-powered electric generating facility of approximately **51 MW** comprised of wind turbines, with an option at Seller's discretion to include up to **3 MW** of solar-powered electric generation, supervisory control and data acquisition systems, interconnection facilities and related equipment. Further description and Plant details to be provided by Seller prior to Commercial Operation Date, and this Exhibit A shall be updated and the Agreement amended to reflect such information.

Conceptual Layout of Plant

Turbine Model: Vestas V100, GE 1.6-100, Nordex N117, Siemens SWT 2.3, Repower MM92, or similar wind turbine model with pitch regulated, three bladed, horizontal-axis turbine employing blade pitch control to regulate rotor speed, yaw control to steer turbine direction, and asynchronous power electronic converter system

Total Plant Size (MW): **51**

Hub Height (m): approx. 100

Number of Turbines: approx. 30

Gross Plant Production (MWh): approx. 175,000

Net Plant Production (MWh): approx. 150,000

Gross Capacity Factor: approx. 38%

Net Capacity Factor: approx. 31%

Average Total Loss: approx. 18%

Wind Speed Uncertainty: approx. 10%

Gross Energy Uncertainty: approx. 16%

Net Energy Uncertainty: approx. 20%

Conceptual Loss Percentages for Plant

Wake Effect: approx. 5.3%

Availability: approx. 6.7%

Electrical: approx. 2.0%

Turbine Performance: approx. 3.3%

Environmental: approx. 2.1%

Curtailments: approx. 0.0%

Average Total Loss: approx. 18.0%