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| **BALANCE OF PLANT**  **ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT[[1]](#footnote-1)**  **([\_\_\_] Wind Project)** |
| **by and between**  **[\_\_\_\_\_\_\_\_\_\_]**  **Contractor’s License No. [\_\_\_\_\_\_\_\_]**[[2]](#footnote-2)  **and**  **[\_\_\_\_\_\_\_\_\_\_]** |
|  |
| Dated as of [\_\_] |

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**BALANCE OF PLANT**

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

This BALANCE OF PLANT ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT, dated as of [\_\_] (this “Agreement”), is entered into by and between [\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] doing business as (“Owner”), and [\_\_\_\_\_\_\_], a [\_\_\_\_\_] formed under the laws of the State of [\_\_\_\_\_\_\_] (“Contractor”). Owner and Contractor are each hereinafter sometimes referred to as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, Owner intends to develop a wind power plant (the “Project”)[[3]](#footnote-3) located in [\_\_\_\_\_], Utah, as more fully described in and including all of the components set forth in Exhibit 1 and Exhibit 3, Exhibit 3A, Exhibit 3B, Exhibit 14, Exhibit 15, Exhibit 24 (collectively, the “Technical Specifications”), on the real property more fully described in Exhibit 2 (the “Site”);

**WHEREAS**, Contractor has represented that it is experienced and qualified in providing technical assistance, licensing, engineering, procurement, supply, construction management, construction, unloading, erecting, installation, commissioning, start-up and testing services, and that it possesses the requisite expertise and resources to complete the Work;

**WHEREAS**, Owner desires to obtain, and Contractor desires to provide, through itself or through Subcontractors, the Work, including, among other things, engineering, procurement, construction and related services for the Contractor Facilities and engineering, construction, assembly, erection, and installation services for the WTGs, for the Contract Price;

**WHEREAS**, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth; and

**WHEREAS**, after the Full Notice to Proceed, the Project Company as Owner may assign all of its rights, title and interest in, and obligations under, the Agreement to a prospective or actual purchaser of the Project assets and such prospective or actual purchaser will accept such assignment of all such rights, title, and interest and assumes all such obligations of Owner (except for payment obligations) under the Agreement in each case so that such prospective or actual purchaser of the Project assets, as of the effective date of such assignment, is the Owner under the Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS
   1. **Definitions**. As used in this Agreement, the following terms have the meanings indicated:

“AAA” means the American Arbitration Association.

“Abandons” means, other than in the event of a Force Majeure Event or an Owner-Caused Delay, that Contractor abandons, ceases to perform the Work or leaves the Site for a period longer than thirty (30) consecutive Days.

“Access Road Completion” has the meaning set forth in Section 7.1.

“Access Roads Completion Certificate” means a certificate in the form of Exhibit 17C.

“Actual Delay” has the meaning set forth in Section 9.3.

“Affiliate” means, when used with reference to a specified Person, any Person directly or indirectly Controlling, Controlled by, or under common Control with such specified Person. Notwithstanding the foregoing, for purposes of this Agreement (i) Transmission Provider shall not be deemed to be an Affiliate of Owner; and (ii) Affiliates of Owner shall extend only to Berkshire Hathaway Energy Company and such subsidiaries it directly or indirectly Controls.

“Agreement” has the meaning set forth in the preamble, including all Exhibits hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

“Applicable Codes” means codes, standards or criteria, such as the National Electric Code and those codes, standards or criteria promulgated by the American Society of Mechanical Engineers, Underwriters Laboratories and Institute of Electrical and Electronics Engineers, and other standards institutions which are generally recognized as applicable to the Work or the Project.

“Applicable Laws” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of any Governmental Authority, as construed from time to time by such Governmental Authority, including Environmental Laws.

“Applicable Permits” means each and every national, regional and local license, authorization, consent, ruling, exemption, variance, order, judgment, certification, filing, recording, permit or other approval with or of any Governmental Authority, including each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of, in connection with, or related to, the Work or the design, construction or operation of the Project, including those set forth on Exhibit 6A and Exhibit 6B.

“Applicable Standards” means Prudent Industry Practices, Prudent Engineering Practices, the Interconnection Agreement and Applicable Codes, including those set forth in this Agreement; provided, however, that if any portion of such standards or codes conflicts with or is less stringent than any Applicable Law or Applicable Permit, such conflicting or less stringent portions of such standards shall not be deemed “applicable.”

“Application for Payment” means an application for payment in the form attached hereto as Exhibit 10.

“Arbitration Rules” has the meaning set forth in Section 23.2(c).

“As-Built Drawings” has the meaning set forth in Section 2.7.

“Availability Completion” means successful achievement of the pre functional test with respect to achievement of WTG Mechanical Completion for the first WTG to reach WTG Mechanical Completion at the Site.[[4]](#footnote-4)

“BCP” has the meaning set forth in Section 20.1.

“Business Day” means a Day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for business in the State of Utah.

“Cancellation Cost Cap” means the maximum applicable payment amount as set forth in the Cancellation Cost Cap column of the Schedule of Values that is due to Contractor in any given period should Owner terminate this Contract for convenience pursuant to Section 15.7 or should Contractor terminate this Contract pursuant to Section 15.4(b).

“Cash Flow Curve” means the periodic cash flow curve set forth in the Schedule of Values that constitutes the cumulative maximum payment obligation Owner will have to Contractor under this Agreement for any given period during the performance of the Work.

“Change Order” means a written document signed by Owner and Contractor in accordance with Article 9, authorizing an addition, deletion or revision to the Work, an adjustment of the Contract Price or Construction Schedule, and/or any other obligation of Owner or Contractor under this Agreement, which document is issued after execution of this Agreement.

“Claim Notice” has the meaning set forth in Section 19.5.

“Closing Completion” has the meaning set forth in Section 7.4.

“Closing Completion Certificate” means a certificate in the form of Exhibit 17G.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commissioning” means the start-up commissioning and testing activities to be conducted in accordance with the Commissioning Procedures.

“Commissioning Procedures” means the procedures set forth in Exhibit 14, the Wind Turbine Supply Contract.

“Confidential Information” has the meaning set forth in Section 20.1.

“Construction Schedule” means the critical path method construction schedule based on and consistent with the provisions set forth in Exhibit 4 for the progression of the Work by Contractor (including the achievement of the Guaranteed Mechanical Completion Date), created in accordance with Section 2.6 and as updated from time to time pursuant to the terms of this Agreement.

“Consumable Parts” has the meaning set forth in Section 2.8(g).

“Contract Documents**”** means this Agreement and any documents delivered hereunder, each of which is hereby incorporated by reference and made a part hereof for all purposes.

“Contract Price” means the sum of [\_\_\_\_\_\_\_\_\_\_\_\_\_] ($\_\_\_\_\_\_\_\_\_\_), as the same may be modified from time to time in accordance with the terms of this Agreement.

“Contractor” has the meaning set forth in the preamble.

“Contractor Acquired Permits” means those Applicable Permits to be acquired by Contractor and designated on Exhibit 6A and any other Applicable Permits, other than Owner Acquired Permits.

“Contractor Critical Path Items” means those items that are designated as “Contractor Critical Path Items” in the Construction Schedule.

“Contractor Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors for performance of the Work but which is not intended to be incorporated into the Project.

“Contractor Event of Default” has the meaning set forth in Section 15.1.

“Contractor Facilities” means, collectively, the Infrastructure Facilities, and all other structures, equipment and components comprising the Project other than the Owner-Furnished Equipment.

“Contractor Lien” means any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, charge or encumbrance on the Work, the Equipment, the Project, the Site or any part thereof directly or indirectly created, incurred, assumed or suffered to be created by any Contractor Party (other than in accordance with any other Project Transaction Document), any Subcontractor, or any of their respective employees, laborers or materialmen.

“Contractor Party” or “Contractor Parties” means each of Contractor, Contractor’s Guarantor and any of their respective present and future Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns.

“Contractor Performance Security” means a corporate guaranty from Contractor’s Guarantor in the form attached hereto as Exhibit 11.[[5]](#footnote-5)

“Contractor Submittals” means the drawings, specifications, plans, calculations, model, designs and other deliverables described in Exhibit 7.

“Contractor’s Insurance” has the meaning set forth in Section 18.1, as further described in Part I of Exhibit 13.

“Contractor’s Representative” has the meaning set forth in Section 6.2.

“Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.

“Day” means a calendar day unless it is specified that it means a Business Day.

“Defect” or “Defective” means, unless otherwise defined elsewhere in this Agreement as to a specific aspect of the Work, any designs, engineering, Equipment, installation or other Work which, in Owner’s reasonable judgment:

1. does not conform to Exhibit 1 or the Technical Specifications, or the Contractor Submittals that have been reviewed by Owner;
2. is of improper or inferior workmanship or quality;
3. includes a Serial Defect; or
4. is inconsistent with Prudent Utility Practice.

“Design Basis and Project Site Data” means the Design Basis and Project Site Data set forth in the Technical Specifications.

“Direct Costs” means the actual and substantiated costs (without mark-up) that are reasonably incurred by Contractor as a result of the event requiring the Change Order for the following items: (a) payroll wages paid for labor in the direct employ of Contractor at the Site; (b) cost of materials and permanent equipment; (c) payments made by Contractor to Subcontractors (such payments excluding any mark-ups by Contractor); (d) rental charges of machinery and equipment for the Work; (e) permit fees; (f) costs of mobilization and/or demobilization; and (g) associated engineering costs, if any, directly related to Work implemented under the Change Order. Direct Costs exclude any home-office, overhead or other indirect costs.

“Disclosing Party” has the meaning set forth in Section 20.1.

“Dispute” has the meaning set forth in Section 23.1.

“Dispute Initiator” has the meaning set forth in Section 23.2(a).

“Documentation” shall mean all Contractor Submittals, design documents, Monthly Progress Reports, Weekly Progress Reports engineering change notices (ECNs), requests for information (RFIs), as-built drawings, system turnover packages, isometrics, specifications (including the Technical Specifications), studies, system descriptions, lists, diagrams, procedures, instructions, reports, test results, calculations, manuals, and project schedules required by or referenced in the Technical Specifications or elsewhere in this Agreement, including all electronically originated and stored information and other data and information originated by Contractor or any Subcontractor in connection with Contractor’s obligations under this Agreement.

“Dollar” and “$” means the lawful currency of the United States of America.

“Effective Date” has the meaning set forth in Section 27.19.

“Electrical Works” means the facilities and equipment, including the Interconnection Facilities (as defined in the Interconnection Agreement), as further described in Exhibit 1 and Exhibit 3B.

“Electrical Works Completion Certificate” means the certificate in the form of Exhibit 17E.

“Electrical Works Completion” has the meaning set forth in Section 7.3.

“Emergency” means an event occurring at the Site or any adjoining property that poses actual or imminent risk of serious personal injury to any Person or material physical damage to the Project requiring immediate preventative or remedial action, as reasonably determined by the Party assessing the subject event.

“Environmental Laws”means any federal, Indian tribe (including any agency, council or political subdivision thereof), state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment and human health, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601, et seq.; the Clean Air Act, 42 U.S.C. 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; and any other law that governs: (a) the existence, removal, or remediation of Hazardous Materials on real property; (b) the emission, discharge, release, or control of Hazardous Materials into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Materials.

“Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors that are installed or incorporated into the Project or otherwise form or are intended to form part of the Work or the Project (other than Contractor Equipment).

“Event of Default” means either a Contractor Event of Default or an Owner Event of Default, as the context may require.

“FERC Electrical Plant Chart of Accounts” shall have the meaning set forth in Exhibit 28.

“FERC Unit of Plant Cost Allocation Book” shall have the meaning set forth in Exhibit 28.

“Final Completion” has the meaning set forth in Section 7.7.

“Final Completion Certificate” means the certificate in the form of Exhibit 19.

“Final Completion Date” means the date on which Final Completion occurs.

“Financing Parties” means any and all lenders, security holders, note or bond holders, lessors, lien holders, investors (including tax-equity investors), equity providers, holders of indentures, security agreements, mortgages, deeds of trust, pledge agreements and providers of swap agreements, interest rate hedging agreements, letters of credit and other documents evidencing, securing or otherwise relating to the construction, interim or long-term financing or refinancing of the Project or a portfolio of projects including the Project, and their successors and permitted assigns, and any trustees or agents acting on their behalf. The term “Financing Party” includes, for the avoidance of doubt, any Person or Persons that owns the Project and leases the Project to Owner or an Affiliate of Owner, as applicable, under a lease, sale-leaseback or synthetic lease structure.

“Force Majeure Event” means, when used in connection with the performance of a Party’s obligations under this Agreement, any act, condition or event occurring after the Effective Date which renders said Party unable to perform or comply with its obligations under this Agreement, but only if and to the extent (a) such event is not within the reasonable control, directly or indirectly, of the Party (or in the case of Contractor, any Affiliate thereof) seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby (or in the case of Contractor, any Affiliate thereof) has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect thereof on its ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby (or in the case of Contractor, any Affiliate thereof) and (d) the Party seeking to have its performance obligations excused thereby (or in the case of Contractor, any Affiliate thereof) had no actual or constructive prior knowledge of such event.

1. Without limiting the meaning of but subject to the preceding sentence, the following events constitute Force Majeure Events to the extent that they render a Party unable to perform or comply with its obligations under this Agreement:

war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

acts of God, including storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, objects striking the earth from space (such as meteorites), or any other naturally occurring event for the location of the Site, or at such location in which Contractor performs the Work or Owner performs its obligations under this Agreement, that impacts the ability of the affected Party to perform its obligations under this Agreement;

sabotage or destruction by a third party (other than any contractor retained by or on behalf of the invoking Party) of plants, facilities and equipment located in the continental United States of America necessary for the performance by the affected Party of its obligations under this Agreement; and

except as set forth in subsections (ii)(C) and (ii)(D) below, industrial action, work stoppage, labor strike, boycott, or labor shortage in the continental United States of America.

1. Notwithstanding anything to the contrary in this definition, the term Force Majeure Event shall not be based on or include any of the following:

economic hardship of either Party;

Owner’s inability to pay;

a strike, work stoppage or labor dispute limited only to any one or more of Owner, Owner’s Affiliates, Contractor or subcontractors thereof, or any other third party employed by a Party to work on the Project including strikes of Contractor or Subcontractor personnel at the Site or at Contractor’s or Subcontractor’s facilities;

any labor shortages involving Contractor or a Subcontractor;

Contractor’s compliance or inability to comply with the Project Labor Agreement, except if Contractor’s inability to comply is caused solely by a Force Majeure Event of the specific type described in subsection (i)(D) above;

Site Conditions, except if Contractor’s inability to comply is caused solely by a Force Majeure Event of the specific type described in subsection (i)(B) above;

a Party’s inability to obtain sufficient labor, materials, equipment or other resources to build the Project and perform the Work, except if such Party’s inability to obtain sufficient labor, materials, equipment or other resources to build the Project and perform the Work is caused solely by a Force Majeure Event of the specific type described in any of subsections (i)(A) through (i)(D) above;

the lack of wind or other fuel source of an inherently intermittent nature, except to the extent it is of the specific type described in subsection (i)(B) above;

reductions in generation from the Project resulting from ordinary wear and tear, deferred maintenance or operator error;

curtailment or reduction in deliveries at the direction of a Transmission Provider;

a Party’s inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Project and necessary interconnection agreements or approvals, including, without limitation, approvals by any Governmental Authority that are subject to pre-decisional analysis under the federal National Environmental Policy Act, 42 U.S.C. §§ 4321-4370d;

an Equipment failure, except if such Equipment failure is caused solely by a Force Majeure Event of the specific type described in any of subsections (i)(A) through (i)(D) above;

utility interruptions;

transportation or shipping accidents; or

unavailability of preferred shipping methods.

“Foundation” means each Wind Turbine Generator foundation to be completed in accordance with this Agreement.

“Foundation Completion” has the meaning set forth in Section 7.2.

“Foundation Completion Certificate” means a certificate in the form of Exhibit 17D.

“Full Notice to Proceed” means a notice signed by a duly authorized representative of Owner to Contractor authorizing Contractor to commence and complete all Work under this Agreement.

“Governmental Authority” means any national, federal, Indian tribe (including any agency, council or political subdivision thereof), state, regional, province, town, city, county, local or municipal government, whether domestic or foreign or other administrative, regulatory or judicial body of any of the foregoing and all agencies, authorities, departments, instrumentalities, courts and other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing. For clarity, each of the Western Electricity Coordinating Council and the UPSC shall be a Governmental Authority.

“Guaranteed Access Road Completion Date” means [\_\_\_\_\_\_\_\_\_\_\_], for the [\_\_\_\_\_\_\_] Site, as may be extended only in accordance with the express terms of this Agreement.

“Guaranteed Closing Completion Date” means [\_\_\_\_\_\_\_].

“Guaranteed Date” means each of the Guaranteed Access Road Completion Date and the Guaranteed Mechanical Completion Date.

“Guaranteed Mechanical Completion Date” means [\_\_\_\_\_\_\_].[[6]](#footnote-6)

“Hazardous Materials” means (a) any regulated substance, hazardous constituent, hazardous materials, hazardous wastes, hazardous substances, toxic wastes, radioactive substance, contaminant, pollutant, toxic pollutant, pesticide, solid wastes, and toxic substances as those or similar terms are defined under any Environmental Laws; (b) any friable asbestos or friable asbestos-containing material; (c) polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids; (d) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof; and (e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or contaminant that, whether by its nature or its use, is subject to regulation or giving rise to liability under any Environmental Laws.

“Indemnifying Party” means, with respect to an indemnification obligation under this Agreement, the Party providing such indemnification.

“Indemnitee” means an Owner Party or a Contractor Party, as the context may require, being indemnified pursuant to Section 19.5.

“Independent Engineer” has the meaning set forth in Section 27.5.

“Independent Expert” means an independent third-party engineer mutually agreed upon by the Parties.

“Infrastructure Facilities” means all of the works, buildings, roads, pad mounted transformers, Electrical Works and other permanent fixtures as more fully described in Exhibit 1, Exhibit 3A and Exhibit 3B.

“Insolvency Event” means, with respect to a Person, such Person becomes insolvent, institutes or has instituted against it a case under Title 11 of the United States Code or is unable to pay its debts as they mature or makes a general assignment for the benefit of its creditors, or a receiver is appointed for the benefit of its creditors or on account of its insolvency.

“Intellectual Property Claim” means an allegation, claim or legal action asserted by a third party against an Owner Party alleging unauthorized use, disclosure, misappropriation, infringement, or other violation of such third party’s Intellectual Property Rights arising from (a) Owner Party’s use of the Licensed Technology to the extent used in accordance with the license granted pursuant to Section 14.1 or (b) Contractor’s performance (or that of its Affiliates or Subcontractors) under this Agreement asserted against Owner that (i) concerns any Equipment, Contractor Equipment or other goods, materials, supplies, items or services provided by Contractor (or its Affiliates or Subcontractors) under this Agreement, (ii) is based upon or arises out of the performance of the Work by Contractor (or its Affiliates or Subcontractors), including the use of any tools or other implements of construction by Contractor (or its Affiliates or Subcontractors) or (iii) is based upon or arises out of the design or construction of any item by Contractor (or its Affiliates or Subcontractors) under this Agreement or the use, or operation, of any item according to directions embodied in Contractor’s (or its Affiliates’ or Subcontractors’) Contractor Submittals, or any revision thereof, prepared or provided by Contractor.

“Intellectual Property Rights” means all intellectual property rights throughout the world, including all rights in patents and inventions (whether or not patentable); registered and unregistered copyrights, trademarks, database rights, semiconductor mask work rights; proprietary rights, trade secrets, know-how and confidential information.

“Interconnection Agreement” means [\_\_\_\_\_].

“Interconnection Facilities” means those facilities described in the Interconnection Agreement.

“Interim Punch List” has the meaning set forth in Section 7.5(b).

“Job Book” means all Contractor (and Subcontractor) engineering, design, purchasing and other information relating to the Work in the format and with the content as set forth in Exhibit 23.

“Job Site” means the Site and any other areas where Contractor may temporarily obtain care, custody and control, use, easement or license for purposes directly, indirectly or incidentally related to performance of, or as an accommodation to, the Work.

“Key Personnel” has the meaning set forth in Section 6.2.

“Licensed Technology” has the meaning set forth in Section 14.1.

“Losses” means any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys’ fees and disbursements) of any kind.

“Major Subcontract” means a Subcontract with a Major Subcontractor.

“Major Subcontractor” means (a) a Supplier of the distribution transformers or step-up transformers for the Project, (b) Contractor’s electrical installation Subcontractors, Site preparation/grading Subcontractors and Project substation design and construction Subcontractors and (c) any other Subcontractor or Supplier for the Project with Subcontracts having an aggregate value in excess of Two Hundred Thousand Dollars ($200,000) for performance of any part of the Work.

“Mechanical Completion Delay Liquidated Damages” has the meaning set forth in Section 7.9(c)(i).

“Milestone” means any milestone for the Work listed on Exhibit 4.

“Minimum Credit Rating” of a Person means that the Credit Rating of that Person is at least (a) BBB- (or its equivalent) as determined by Standard & Poor’s and (b) Baa3 (or its equivalent) as determined by Moody’s.

“Monthly Progress Report” means a progress report prepared by Contractor setting forth the detail required in Exhibit 8A.

“MW” means one million (1,000,000) watts of electric power.

“Notice of Dispute” has the meaning set forth in Section 23.1.

“Operating Manual” means the complete system instructions and procedures for the operation and maintenance of the Project, which shall comply with the requirements of the Work, including Contractor’s, manufactures’, suppliers’ and Subcontractors’ recommendations, lists of Spare Parts, all safety information and any precautionary measures therefor.

“Owner” has the meaning set forth in the preamble.

“Owner Acquired Permits” means those Applicable Permits to be acquired by Owner, as designated on Exhibit 6B.

“Owner-Caused Delay” means (a) any Owner suspension of the Work designated as an Owned-Caused Delay pursuant to Section 11.1 or (b) a failure by Owner (which failure is not otherwise excused by a Force Majeure Event or otherwise in accordance with this Agreement) to perform any of its material obligations under this Agreement including any failure by Owner to timely approve Contractor’s Submittals delivered in connection with this Agreement on or prior to the applicable date as provided in this Agreement (unless a deemed response to such notice is provided for hereunder); provided, however, that any actions by Transmission Provider shall in no event constitute an Owner-Caused Delay.

“Owner Event of Default” has the meaning set forth in Section 15.3.

“Owner-Furnished Equipment” means (i) WTGs and (ii) any other equipment or components of the Project to be furnished or procured by Owner as expressly set forth in Exhibit 1.

“Owner Inspection Parties” has the meaning set forth in Section 8.1.

“Owner Party” or “Owner Parties” means Owner and its present and future Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns. Notwithstanding the foregoing, for purposes of this Agreement, Transmission Provider shall not be deemed to be an Owner Party.

“Owner Subcontractor” means the Turbine Vendor and any other subcontractor (other than the Contractor) engaged by Owner to perform work in connection with the Project.

“Owner Taxes” means all Utah sales and use taxes with regard to any tangible personal property purchased or leased for, used in the permanent construction of, or incorporated into the Project.

“Owner’s Code of Business Conduct” means the Owner’s Code of Business Conduct set forth on Exhibit 29.

“Owner’s Engineer” means any engineering firm or firms or other engineer or engineers selected and designated by Owner, which may include an employee or employees of an Owner Party.

“Owner’s Insurance” has the meaning set forth in Section 18.2, as further described in Part II of Exhibit 13.

“Owner’s Representative” means the individual designated by Owner in accordance with Section 6.1.

“Party” and “Parties” have the meanings set forth in the preamble.

“Person” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization, limited liability company or any other entity or organization, including any Governmental Authority. A Person shall include any officer, director, member, manager, employee or agent of such Person.

“Placed in Service” means “placed in service” for purposes of Sections 45, 48 and 168 of the Code.

“Progress Payment” has the meaning set forth in Section 4.4.

“Project” means the complete, integrated, wind-powered, electric generating facility to be located on the Site, consisting of all foundations, structures, facilities, appliances, lines, transformers, WTGs, Towers, conductors, instruments, equipment, apparatus, components, roads and other property comprising and integrating the entire facility described generally in the Scope of Work and the Technical Specifications.

“Project Labor Agreement” means that certain Project Labor Agreement among Contractor and [\_\_\_\_\_\_\_].[[7]](#footnote-7)

“Project Mechanical Completion” has the meaning set forth in Section 7.6.

“Project Mechanical Completion Certificate” means a certificate in the form of Exhibit 17B.

“Project Mechanical Completion Date” means the date on which Project Mechanical Completion occurs.

“Project Schedule” means the schedule attached hereto as Exhibit 4.

“Project Substation” means the substation at the Site.

“Project Transaction Documents” means this Agreement, the Contractor Performance Security, and any other agreements between Contractor or any Affiliate of Contractor and Owner relating to the engineering, procurement, construction, development, acquisition, ownership, operation or maintenance of the Project.[[8]](#footnote-8)

“Prudent Engineering Practices” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by professional construction and engineering firms performing engineering, procurement and construction services on wind energy facilities of the type, size and location similar to the project which, in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the construction and use of wind energy generating and operating equipment and other electrical equipment, facilities and improvements, with commensurate standards of safety, efficiency and economy, and as are in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to engineering, construction and project management practices. Prudent Engineering Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“Prudent Utility Practice” means those standards of design, engineering, construction, workmanship, care and diligence and those practices, methods and acts that would be implemented and normally practiced or followed by prudent wind engineering, construction, and installation firms in the design, engineering, procurement, installation, construction, testing and commissioning (and operation associated therewith) of rate-based, utility-scale wind facilities in the Western United States and otherwise performing services of a similar nature in the jurisdiction in which the Work will be performed and in accordance with which practices, methods and acts, in the exercise of prudent and responsible professional judgment by those experienced in the industry in light of the facts known (or that reasonably should have been known) at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, good engineering design practices, safety, reliability, Applicable Codes, Applicable Laws, and Applicable Permits.

“Punch List” has the meaning set forth in Section 7.5(b)(i).

“Punch List Holdback” means an amount equal to one hundred fifty percent (150%) of the cost for each Punch List Item.

“Punch List Items” means each item of Work that:

* + - * 1. Owner and Contractor agree remain to be performed by Contractor as provided in Article 7;
        2. does not, in Owner’s reasonable judgment, affect the ability of Owner to safely operate the Project in accordance with Applicable Standards and in compliance with all Applicable Laws;
        3. does not, in Owner’s reasonable judgment, affect the operability (including capacity, efficiency, reliability, or cost effectiveness), safety or mechanical or electrical integrity of the Project; and
        4. does not, in Owner’s reasonable judgment, affect the ability to Commission and test the WTGs, Infrastructure Facilities and the other components of the Project.

“Quality Assurance Plan” means a plan substantially in the form of Exhibit 21.

“Real Property Rights” means all rights in or to real property necessary to perform the Work and to develop, construct, complete, operate, maintain and access the Project and the Site, including those rights set forth in deeds, leases, option agreements, co-tenancy and shared facility agreements, Applicable Permits, easements, licenses, private rights-of-way agreements and crossing agreements that exist as of the Effective Date, including as set forth on Exhibit 2.

“Receiving Party” has the meaning set forth in Section 20.1.

“Release” means the release, threatened release, discharge, deposit, injection, dumping, spilling, leaking or placing of any Hazardous Material into the environment so that such Hazardous Material or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters under Applicable Law and Applicable Permits.

“Relevant Rating Agency” means Moody’s or S&P.

“Required Manuals” means the manuals (including any Spare Parts manuals), instructions and training aids, whether created by Contractor, Subcontractor or Supplier, reasonably necessary for the safe and efficient operation, maintenance, curtailment, start-up and shut down of the Project and Equipment as reasonably determined by Owner, including those identified in Exhibit 7.

“Retainage” means an amount equal to ten percent (10%) of the amount payable pursuant to each Progress Payment (other than the payment to be made in connection with Final Completion).

“SCADA System” means the supervisory control and data acquisition system installed by Contractor in the Project, as more specifically described in the Technical Specifications under “SCADA System” and in Exhibit 24.

“Schedule of Values” means the schedule of values attached hereto as Exhibit 9 which allocates the Contract Price to different separately identifiable portions of the Work and includes the Cancellation Cost Cap and Cash Flow Curve.

“Scheduled Final Completion Date**”** means the date described as such in the Project Schedule.

“Scope of Work” means the scope of the work to be performed by Contractor under this Agreement, as further described in the Exhibits.

“Serial Defect” means any failure or non-conformance has occurred with respect to five percent (5%) or more units of any particular item of Equipment, and such failure or non-conformance could reasonably be expected to result from the same cause.

“Site” has the meaning set forth in the Recitals.

“Site Condition” has the meaning set forth in Section 2.22.

“Site Safety Plan” means the site safety plan attached hereto as Exhibit 20.

“Spare Parts” means the spare parts provided by Contractor to Owner in accordance with Exhibit 27.

“Subcontract” means any purchase order, agreement or subcontract with a Subcontractor.

“Subcontractors” means any Person (including a Supplier) that, directly or indirectly, and of any tier (other than Contractor but including any Affiliate of Contractor) supplies any items or performs any portion of the Work in furtherance of Contractor’s obligations under this Agreement.

“Supplier” means any Equipment supplier with which Contractor or Subcontractor contracts in furtherance of Contractor’s obligations under this Agreement.

“Survival Period” has the meaning set forth in Section 19.7.

“Taxes” means any and all taxes, charges, duties, imposts, levies and withholdings imposed by any Governmental Authority, including sales tax, use tax, property tax, transfer tax, income tax, withholding taxes, corporation tax, franchise taxes, margin tax, capital gains tax, capital transfer tax, inheritance tax, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and any interest, penalty, fine or other amount due in connection therewith.

“Technical Dispute” has the meaning set forth in Section 23.2(a).

“Technical Specifications” has the meaning set forth in the Recitals.

“Termination Payment” means (a) with respect to a termination by Contractor for an Owner Event of Default in accordance with Section 15.4(b) or a termination by Owner for convenience pursuant to Section 15.7, an amount equal to the Direct Costs incurred by Contractor (and not previously paid by Owner) through the effective date of the termination, which amount shall not in the aggregate exceed the Cancellation Cost Cap; and (b) with respect to a termination by Owner for a Contractor Event of Default, such amount determined in accordance with Section 15.5(b).

“Title Company” means [\_\_\_\_\_\_].

“Tower” means each steel tubular tower component of a Wind Turbine Generator (having a hub height of approximately [\_\_] meters) as further described in the Wind Turbine Supply Contract.

“Transmission Provider” means the transmission function of PacifiCorp d/b/a Rocky Mountain Power. Notwithstanding the foregoing, for purposes of this Agreement, Transmission Provider shall not be deemed to be Owner, an Owner Party or an Affiliate of Owner.

“Turbine Blade” means a [\_\_] meter rotor diameter turbine blade component of a Wind Turbine Generator as further described in the Wind Turbine Supply Contract.

“Turbine Nacelle” means the turbine nacelle component of a Wind Turbine Generator, including gearbox, generator, blade pitch controls, brakes, hydraulic systems, lightning protection system, and nacelle yaw controls, and associated control and ancillary equipment.

“Turbine Vendor” means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

“UPSC” has the meaning set forth in Section 2.5(a).

“UTC” means the Utah Code.

“Warranty” has the meaning set forth in Section 16.1(a).

“Warranty Period” has the meaning set forth in Section 16.1(b).

“Warranty Service” has the meaning set forth in Section 16.1(c).

“Weekly Progress Report” means a weekly progress report prepared by Contractor setting forth the detail required in Exhibit 8B.

“Wind Day” means a day or portion thereof consisting of at least [5 hours] between the hours of 7 a.m. and 5 p.m. on which (i) the Contractor has scheduled construction activities at the Job Site involving erection of Towers and/or WTGs which cannot be performed due to sustained winds in excess of [30 mph] for erection of Towers and Turbine Nacelles and [25 mph] for the erection of the Turbine Blades or (ii) due to the necessary sequencing of Work or other scheduling considerations or contingencies, Contractor is unable to perform other Work at the Job Site that would not be affected by such sustained wind conditions; provided, however, in order to qualify as a Wind Day, such event and the scheduling and other impacts resulting therefrom must be beyond the reasonable control of the Contractor, be unavoidable or incapable of being prevented or overcome by the reasonable efforts and due diligence of the Contractor, and have an impact which will actually, demonstrably and adversely affect Contractor’s ability to complete a Milestone.[[9]](#footnote-9)

“Wind Turbine Generator” or “WTG” means all or any portion of one (1) [\_\_\_\_\_\_] wind

turbine generator, including the following components: a Tower, a Turbine Nacelle, three (3) Turbine Blades, hub, controller, control panels, wind vanes and anemometers, all as more particularly described in the Technical Specifications and to be delivered to the Site by the Turbine Vendor in accordance with the terms of the Wind Turbine Supply Contract.

“Wind Turbine Supply Contract” means that certain contract executed by and between Owner and Turbine Vendor and attached hereto asExhibit 14.

“Work” means all obligations, duties, and responsibilities assigned to or undertaken by Contractor under this Agreement, as further described in Exhibit 1, with respect to the Project, including any of the foregoing obligations performed prior to the Effective Date, which shall be deemed to be Work performed by Contractor under this Agreement, notwithstanding the fact that it was performed in whole or in part prior to the Effective Date.

“WTG Construction Period” has the meaning set forth in Section 10.1.

“WTG Mechanical Completion” has the meaning set forth in Section 7.5.

“WTG Shipment” means the shipments of controllers, towers, nacelle/hubs and blades for a WTG, each such complete shipment constituting a WTG Shipment. Scheduled WTG Shipments are shown in Exhibit 14.

* 1. **Rules of Interpretation**. Unless otherwise required by the context in which any term appears:
     + - 1. capitalized terms used in this Agreement have the meanings specified in this Article 1;
         2. the singular shall include the plural;
         3. references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time hereunder;
         4. all references to a particular entity shall include a reference to such entity’s successors and permitted assigns;
         5. the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular Section or subsection of this Agreement;
         6. all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;
         7. references to this Agreement shall include a reference to all appendices, annexes, schedules and Exhibits hereto, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time;
         8. references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
         9. the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and
         10. references to an Applicable Law or Applicable Permit shall mean a reference to such Applicable Law or Applicable Permit as the same may be amended, modified, supplemented or restated and be in effect from time to time.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1. RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES
   1. **Work to be Performed**. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed all Work in accordance with the terms and conditions of this Agreement. Contractor shall, at its own cost and expense, (i) design (or arrange for design pursuant to a Subcontract executed in accordance with this Agreement), engineer (or arrange for engineering pursuant to a Subcontract executed in accordance with this Agreement), procure, construct, start-up the Contractor Facilities, unload, assemble, erect, and install the WTG, conduct testing of the Contractor Facilities, and perform all of its other obligations hereunder, including without limitation completion of the Scope of Work in accordance with the Technical Specifications, (ii) manage, supervise, inspect and furnish or caused to be furnished all materials, equipment, machinery, tools, labor, transportation, temporary structures, temporary utilities, administration and other services and items required to complete and deliver to Owner the fully integrated and operational Project, all in accordance with this Agreement (including without limitation the Project Schedule and the Scope of Work, as each may be modified from time to time in accordance with the terms hereof by a Change Order or other amendment hereto), Applicable Laws and Applicable Standards.
   2. **General; Applicable Standards**.
      1. Applicable Standards for the Work. Subject to the remedies provided for herein, Contractor shall perform the Work and turn the Project over to Owner in a manner that is: (i) sufficient, complete and adequate in all respects necessary for the Project to successfully achieve WTG Mechanical Completion for each WTG Shipment on or before the Guaranteed Mechanical Completion Date; (ii) in conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in wind power projects of similar size and nature to the Project; (iii) in compliance with the terms of this Agreement, all Applicable Laws and Applicable Permits and Applicable Standards; and (iv) approved as to form, use and content by public and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the Project, or any portion thereof, is necessary for the construction, operation of the Project, or interconnection of the Project in compliance with the Interconnection Agreement.
   3. **Scope of Work; Exclusions Therefrom**. In light of the foregoing, Contractor has included within the Contract Price the cost to complete the Work. Items need not be specifically listed in this Agreement or in the Exhibits in order to be deemed to be items included in the Work. It is understood that Contractor is better qualified to list exclusions than Owner is to list inclusions. Therefore, any item indicated on this Agreement, reasonably inferable therefrom, incidental thereto or required in accordance with any Applicable Law or Applicable Permit, that is not specifically excluded from the Scope of Work in Contractor’s exclusions set forth on Exhibit 1of this Agreement, is to be considered part of the Work.
   4. **Storage; Security of WTG**. Prior to the date of Project Mechanical Completion, and with respect to the WTGs upon delivery of the WTGs to the Site by the Turbine Vendor and with respect to the step-up transformers upon delivery of the step-up transformers to the Site by the step-up transformer supplier, Contractor shall provide appropriate storage and security for all Owner-Furnished Equipment, including the WTGs and step-up transformers, Consumable Parts, materials, supplies and other equipment required to unload, assemble, erect and install the WTGs and other property owned or leased by Contractor or any Subcontractor located at the Site at areas thereon provided by Owner, incorporated in the Owner-Furnished Equipment. Contractor shall use the same care to protect any of the Owner-Furnished Equipment at any time in its possession or under its control while performing the Work as it does with its own property, and shall be responsible for any damage to such property resulting from its failure to use such care and any damage or loss to such property until the date of Project Mechanical Completion. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner.
   5. **Compliance; Permits; Approvals**.
      1. Compliance and Cooperation with Applicable Laws, Applicable Permits, Applicable Codes and Prudent Utility Practices. Whether or not expressly set forth in any specific section or exhibit, Contractor shall comply with all Applicable Laws, Applicable Permits, Applicable Codes and Prudent Utility Practices in the course of performing the Work and cause the Project to comply with all Applicable Laws and Applicable Permits prior to the Project Mechanical Completion Date. Contractor shall provide to Owner such information, reports, and documents and take such other actions as may be reasonably requested by Owner to assist Owner in performing its notification and submittal responsibilities as set forth in any Applicable Permit, including as set forth in Section 2.21, and in connection with Owner’s claiming of sales and property tax abatements with respect to the Project. The Project shall be designed and constructed in compliance with all of the requirements for a renewable energy system as may be provided under the Utah Code, including Title 54, Chapter 17, Part 8, Section 801 *et. al.*, any regulations promulgated thereunder, and the associated implementing rules and regulations of the Utah Public Services Commission (“UPSC”).
      2. Contractor Acquired Permits; Other Approvals. Contractor shall obtain and maintain in full force and effect the Contractor Acquired Permits and shall file on a timely basis any documents as are required to obtain and maintain the Contractor Acquired Permits in full force and effect. Contractor shall also be responsible for obtaining and maintaining in Contractor’s or Owner’s name in connection with the Work, as applicable, all construction permits, transportation permits, road use agreements, crossing rights with respect to electrical distribution lines, cable TV lines, drain tiles, rural water lines, telecommunication lines, and other licenses and, with respect to rights-of-way, those necessary to build the Project, all of which, as necessary for operation of the Project, shall be included as Contractor Submittals as a condition of Final Completion. The Contract Price includes consideration for Contractor to obtain the Contractor Acquired Permits and such other approvals. Any Taxes, permit fees and other costs required for the procurement or maintenance of the Contractor Acquired Permits and such other approvals shall be at Contractor’s sole expense. Additionally, Contractor shall provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit.
   6. **Commencement of Work; Scheduling and Milestones**.
      1. Notice to Proceed. The execution of this Agreement by the Parties shall be deemed to be Owner’s notice to Contractor to proceed with the Work. On the Effective Date, Contractor shall commence and shall thereafter diligently pursue the Work assigning to it a priority that will permit the attainment of Access Road Completion on or before the Guaranteed Access Road Completion Date, and WTG Mechanical Completion for all WTGs on or before the Guaranteed Mechanical Completion Date. Contractor shall proceed with the performance of the Work in accordance with the Project Schedule.
      2. Project Schedule. Contractor shall perform the Work in accordance with the Project Schedule, including completing the Work required on or before the Guaranteed Access Road Completion Date and the Guaranteed Mechanical Completion Dates, as such Project Schedule may be adjusted pursuant to the terms hereof. Contractor hereby covenants and warrants to Owner that in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays (including without limitation delays due to weather and Wind Days as and to the extent provided in Article 10) incident to such Work. Contractor shall meet or achieve each Milestone noted as such on the Project Schedule no later than the date set forth opposite such Milestone on such Project Schedule. Contractor shall coordinate and incorporate the schedules of all Subcontractors and Owner Subcontractors into all applicable schedules, work plans and progress reports. Contractor shall provide the Project Schedule and any updates thereto that provide for the orderly, practicable and expeditious completion of the Work in accordance with the requirements of this Agreement on a weekly basis as the Work progresses, including the incorporation of delay and acceleration analyses where appropriate; provided, however, that Contractor shall not be relieved from the obligation to meet any Milestone set forth on the Project Schedule unless such date is extended pursuant to a Change Order, or otherwise pursuant to a written notice from Owner. The current portion of the Project Schedule and any update shall be presented electronically on a weekly basis and in such reasonable detail as Owner may require and shall address all material elements of the Work. Contractor shall submit to Owner not later than the fifth (5th) day of each month a Monthly Progress Report in the form of Exhibit 8A. Additionally, the updated and complete Project Schedule shall be made available to the Owner monthly, and as otherwise reasonably requested by Owner. Contractor shall attend and participate in daily planning meetings at the Job Site between representatives of Owner, Owner Subcontractors and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there shall be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligation to meet the Milestone specified hereunder.
      3. Acceleration of Work. If, at any time or from time to time, Owner determines, in its reasonable discretion, that:
         1. Contractor has failed to show adequate progress of the Work toward completion of a Milestone included in the Project Schedule, or
         2. Contractor has failed to achieve a Milestone included in the Project Schedule, then, on each such date, after receiving a written request from Owner, Contractor shall promptly but in any event within five (5) Business Days, submit for approval by Owner a written recovery plan to complete all necessary Work to achieve completion of the remaining Milestones included in the Project Schedule by the date set forth for such Milestone in the Project Schedule. Owner shall promptly approve or submit reasonable revisions to such written recovery plan, and Contractor shall incorporate such revisions into such recovery plan and thereafter diligently prosecute the Work in accordance with such recovery plan. Approval by Owner of such recovery plan shall not (i) be deemed in any way to have relieved Contractor of its obligations under this Agreement relating to the failure to timely achieve either of the Guaranteed Access Roads Completion Date or the Guaranteed Mechanical Completion Dates, or (ii) be a basis for an increase in the Contract Price. If Contractor cannot cause prosecution of the Work to conform to the Project Schedule within ten (10) days, then Owner shall have the right to direct Contractor to accelerate the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work. In the event of any acceleration pursuant to this Section 2.6(c)(ii), Contractor shall cause prosecution of the Work to conform to the Project Schedule within ten (10) days. Contractor shall receive no reimbursement for costs arising out of, Contractor shall not be entitled to a Change Order with respect to, and Contractor shall be solely responsible for any costs or expenses incurred by Contractor as a result of, formulation and implementation of the recovery plan or the acceleration of the Work described in this Section 2.6(c)(ii). This Section 2.6(c)(ii)shall not be construed to limit any of the rights and remedies Owner may have under any provision of this Agreement. Nothing herein shall be construed to excuse, limit, alter or amend Contractor’s obligations to cooperate with Owner and, where appropriate, to participate in any dispute resolution proceedings.
   7. **As-Built Drawings**. Contractor shall prepare and submit to Owner a complete set of as-built drawings prepared by Contractor in accordance with the requirements of this Agreement, which accurately and completely represent in reasonable detail the physical placement of the Contractor Facilities and all Owner-Furnished Equipment as assembled, erected and installed (the “As-Built Drawings”) no later than the Scheduled Final Completion Date. Such As-Built Drawings shall also be provided in [\_\_\_\_\_] editable electronic format.
   8. **Engineering and Design; and Other**.
      1. Engineering. Contractor shall perform (or arrange for performance pursuant to a Subcontract executed in accordance with this Agreement) all engineering and design services for completion of the Contractor Facilities in conformity with the requirements of this Agreement. All engineering work of or on behalf of Contractor requiring certification shall be certified, and all Contractor Submittals requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions. Engineering and design specifications for Owner-Furnished Equipment are set forth in Wind Turbine Supply Contract, and Contractor shall design, prosecute and install the Work so as to effect complete integration of the Contractor Facilities with the Owner-Furnished Equipment according to Applicable Standards.
      2. Design. Contractor shall design (or arrange for design pursuant to a Subcontract executed in accordance with this Agreement) the Contractor Facilities such that they are capable of complying with the requirements of this Agreement, Applicable Laws, and Applicable Standards. No later than is reasonably necessary to achieve the Milestones, Contractor shall prepare (or arrange for preparation pursuant to a Subcontract executed in accordance with this Agreement) and submit all Contractor Submittals for the Work for Owner’s review. Based on the Technical Specifications, Contractor shall prepare comprehensive Contractor Submittals setting forth in detail the requirements for the construction of the Work. As the drawings and specifications for the Work are issued, they shall be clearly identified as Contractor Submittals.
      3. Review of Contractor Submittals, Reports and Manuals.
         1. Plan for Review Schedule. Contractor shall provide to Owner within fifteen (15) days following the Effective Date a submittal schedule setting out the anticipated dates of issue of all other Contractor Submittals sufficient to enable Owner to plan its review of the documentation. The timing of Contractor Submittals in the schedule shall coordinate with the requirements of the Wind Turbine Supply Contract so as not to cause delay of any installations or other activities thereunder. Contractor shall transmit in a timely fashion one (1) set of reproducible Contractor Submittals as prepared by Contractor or any Subcontractor in conjunction with the performance of the Work (in addition to the final As-Built Drawings and documentation to be included in the Job Books) for each Job Book deliverable to Owner under Section 2.8(i)(iii), and, pursuant to Owner’s reasonable request therefor, any additional Contractor Submittals and drawings not listed above.
         2. Submission of Contractor Submittals. Contractor shall submit to Owner, periodically through the date of Project Mechanical Completion, current complete copies of the Contractor Submittals list, and shall submit to Owner, within a reasonable time after the request therefor, each other document and drawing that Owner requires for the construction, operation and maintenance of the Contractor Facilities. If this Agreement is terminated prior to the Project Mechanical Completion Date, Contractor shall furnish Owner with any and all final documents which have been prepared, and the most up-to-date versions of documents which are not yet final.
         3. Owner Comment. Except as otherwise provided in this Agreement, within fifteen (15) days of receipt of any Contractor Submittal, Owner shall notify Contractor of any resulting comments or queries. If Owner fails to respond within such period, then such Design Document shall be deemed to have been reviewed by Owner. Contractor shall, within ten (10) days of Owner’s notification of any comments or queries on any Design Document, amend such drawing or document or otherwise respond to Owner’s comments or queries. Notwithstanding anything contained herein to the contrary, Owner’s review and/or acceptance of the Design Documents, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including, but not limited to, its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Design Documents. Owner shall notify Contractor as soon as practicable after it becomes aware of any errors in such designs; provided, however, that failure to so notify Contractor will not constitute a breach of this Agreement by Owner or otherwise affect Owner’s rights under this Agreement.
         4. Safety; Quality Assurance. Contractor shall take all precautions for the safety of all Persons present at the Site and to prevent accidents or injury to individuals or damage to property on, about, or adjacent to the Site. Contractor shall provide to all such Persons, at its own expense, safety equipment required to protect against injuries during the performance of the Work and shall provide (or cause to be provided) appropriate safety training to its employees, Subcontractors and Suppliers. Contractor and Owner hereby agree that the Site Safety Plan shall be implemented by Contractor to secure the Project and the Site during the execution of the Work, both before and after transfer of custody and control to Owner, including any remedial or warranty Work. Contractor shall notify all Persons accessing the Site of the Site Safety Plan, which shall apply to all such Persons. During the performance of the Work, Contractor shall be responsible for the oversight of all Persons at the Site and for the performance of the Work in accordance with the Site Safety Plan and with all Applicable Laws governing occupational health and safety, Applicable Permits and Prudent Utility Practices. Contractor shall require that any employee or personnel of Contractor or any Subcontractor or Supplier shall have passed a drug test within ten (10) Days prior to first coming on to the Site. Contractor and Owner further agree that the Quality Assurance Plan attached hereto as Exhibit 21 shall be implemented by Contractor.
      4. Preparatory Work. Contractor pursuant to this Agreement shall undertake all geotechnical work at and a topographical survey of, the Site, including any required utility locating notifications. Contractor shall undertake all necessary site preparation. All such preparatory work contained in this Section 2.8(d)shall be performed in accordance with the requirements of this Agreement.
      5. Materials, Equipment and Related Services. Contractor shall procure and supply, at its own expense, whether by producing itself or by procuring from others, all materials, equipment and services required for performance of its obligations under this Agreement (whether on or off the Site), including the furnishing of labor, equipment, materials and tools for performance of the Work. All equipment and materials purchased by Contractor shall be new (except as otherwise agreed to in writing by Owner and Contractor) and of suitable grade for their respective purpose, and plant identification shall be consistent throughout the Work. Contractor shall provide appropriate storage for materials, supplies and equipment for use in performance of the Work. Contractor shall have exclusive responsibility for construction methods, means, techniques and procedures and for the establishment of and compliance with safety procedures at the Site. All materials, supplies and equipment which may be used in performance of the Work and which are stored at a location other than on the Site shall be segregated from other materials, supplies and equipment.
      6. Utilities. As part of the Work, Contractor shall arrange and pay for construction power and water (including all water used for dust control) and the installation of construction telecommunication lines and utilities, but only to the extent necessary for Contractor to perform its Work hereunder, and pay when due all such utility usage charges. For all permanent utilities, such as backfeed power, permanent water and power (i.e., for operations and maintenance facilities), permanent telecommunication lines, grid telemetry, and infrastructure necessary (including internet access) to transmit data gathered by the SCADA System, Contractor shall arrange and pay for such permanent utilities prior to the Project Mechanical Completion Date and Owner shall pay for such permanent utilities after the Project Mechanical Completion Date.
      7. Consumable Parts. Contractor shall supply within the Contract Price all consumable parts required for assembling, erecting, installing, testing or otherwise performing the Work (the “Consumable Parts”) (excluding consumable parts comprising the Owner-Furnished Equipment). All Consumable Parts not used during Project start-up and testing shall become the property of Owner.
      8. List of Consumable Parts and Spare Parts. Sufficiently in advance of the first WTG Mechanical Completion Date to allow Owner to purchase timely and assemble and store same at the Site at or prior to commercial operation of the Project, Contractor shall provide a general list in Microsoft Excel format of recommended spare parts necessary to operate and maintain the Project (excluding spare parts comprising the Owner-Furnished Equipment) (the “Spare Parts”) and Consumable Parts necessary to operate and maintain the Project. For each Spare Part, the list shall indicate price, delivery lead time and maintenance cycle, if any, and shall be in Microsoft Excel format.
      9. Operating Manuals and Job Books.
         1. Record-Keeping. All Documentation relating to the Project shall be kept by Contractor in an organized fashion for reference by Owner during the performance by Contractor of the Work. Contractor shall also maintain at the Site at least one (1) copy of all Contractor Submittals, Change Orders and other modifications.
         2. Operating Manuals and Procedures. Contractor shall submit for Owner’s written approval a draft of the Operating Manual and operating procedures which shall be part of the Job Books and submitted and revised as provided in this Section 2.8(i).
         3. Job Books. Not later than the Project Mechanical Completion Date, Contractor shall deliver to Owner for Owner’s review and approval three (3) copies of the final Job Books, substantially in the format and having the contents set forth in Exhibit 23. The Job Books shall be prepared in English only. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an editable electronic copy of such information; and Owner shall have a non-exclusive, irrevocable, royalty-free license to use such information for the purposes of construction, operation, maintenance, service, and/or repair of the Project.
   9. **Labor and Personnel**.
      1. Properly Licensed; Sufficient Qualified Personnel. Contractor shall use, and shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or Applicable Permits to enable such persons to perform work forming part of the Work.
      2. Project Labor Agreement.
         1. Contractor shall comply in all material respects with the terms and conditions of the Project Labor Agreement; provided, however that Contractor is solely responsible for such compliance, and the Project Labor Agreement and compliance thereunder are not obligations of Owner and do not excuse Contractor from, or entitle Contractor to any schedule or cost relief with respect to, its performance of Work and other obligations under this Agreement.
         2. Contractor shall remove from any performance of the Work, and cause any Subcontractor to remove from any performance of the Work, as soon as reasonably practicable, any Person performing the Work (including any Key Personnel) who is creating a risk of bodily harm or injury to themselves or others or whose actions create a risk of material property damage. Additionally, as soon as practicable after receiving a request by Owner, Contractor shall remove such Person (including any Key Personnel) from the Site, and cause any Subcontractor to remove such Person (including any Key Personnel) from the Site.
         3. Contractor shall also remove, and cause its Subcontractors and agents to remove, any employee, agent or other Person engaged in the performance of the Work for Contractor (including any Key Personnel) or such Subcontractor, as the case may be, whose off-Site conduct violates any Applicable Laws or Applicable Permits. If a Person is harming or having a negative effect on the perception of the Project or Owner’s relationship with the surrounding community based on two or more documented incidents, Owner may provide notice to Contractor and Contractor and Owner will meet to discuss an appropriate response. If the Parties cannot otherwise agree Contractor shall remove and cause its Subcontractors and agents to remove such Person.
      3. Training of Personnel.
         1. Design and Review of Training Program. Contractor shall design the training program (in accordance with the provisions of Exhibit 1) to be used for the training of Owner’s designated operating personnel in the requirements for the start-up, shut-down, operation and maintenance of, and safety, general process understanding and emergency procedures for, the Project and all of its sub-systems and shall submit such training program to Owner by no later than the date that is six (6) months prior to the scheduled Project Mechanical Completion Date, which shall include the Operating Manual and focus on the use of the Operating Manual by operating personnel. Owner will review, comment on, and approve or disapprove such program in writing within twenty-five (25) Days after such submission by Contractor. If Owner conditions its approval on reasonable changes in the program submitted by Contractor, Contractor will effect such changes at no additional cost to Owner and resubmit the program to Owner within ten (10) Days after Contractor receives Owner’s conditional approval. Owner will then have ten (10) Days after such resubmission to review, comment on the original comments, and approve or disapprove the program as resubmitted by Contractor. Such procedure shall continue with the same ten (10) Day time periods until a program is approved by Owner.
         2. Commencement of Training. Commencing on the date that is six (6) months prior to the scheduled Project Mechanical Completion Date, Contractor shall train Owner’s designated operating personnel in the requirements for the start-up, shut-down, operation and maintenance of, and safety, general process understanding and emergency procedures for, the Project and all of its sub-systems pursuant to the training program approved by Owner.
   10. **Security**. Contractor shall be responsible for the proper security and protection of the Site and all Equipment and materials furnished by Contractor and the Work performed until Project Mechanical Completion. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner.
   11. **Hazardous Materials**. Contractor shall comply with the provisions of Article 12 with respect to Hazardous Materials as part of and in connection with the Work.
   12. **Start-Up and Testing**. Contractor shall perform the start-up and testing of the Contractor Facilities, including the calibration, pre functional testing and functional testing of all controls and equipment in accordance with Exhibit 1, Exhibit 3A, Exhibit 3B, and Exhibit 14. Contractor shall conduct all start-up, synchronization, operation and testing of the Contractor Facilities in accordance with this Agreement, applicable manufacturers’ instructions and warranty requirements, Applicable Laws, Applicable Standards, Applicable Permits, and any and all applicable rules as agreed to by Owner and the Contractor. Owner and its respective authorized representatives shall have the right to inspect the Work and to be present during the start-up, synchronization, operation and testing of the Contractor Facilities.[[10]](#footnote-10)
   13. **Clean-up; Non-Interference**. Contractor shall at all times keep the Site reasonably free from waste materials and rubbish related to the Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. During the period from WTG Mechanical Completion to Final Completion, Contractor’s performance of the Work shall not unreasonably interfere with the Commissioning of the WTGs or the commercial operation of the Project. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of Article 15, Contractor shall: (i) remove all Contractor Equipment from the Job Site (other than Equipment, supplies and materials necessary or useful to the operation or maintenance of the Project and Equipment, supplies and materials directed by Owner to remain at the Job Site until completion of the Project); (ii) clean out all conduits; (iii) tear down and remove all temporary structures on the Job Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed power plant; (iv) remove all waste and rubbish from and around the Job Site; and (v) re-grade areas disturbed during the Work, as required by this Agreement and the conveyances and other documentation creating the Real Property Rights. During construction of the Project, Contractor shall use commercially reasonable efforts to minimize the disruption to public roads caused by the construction process and to repair any damages caused to a public road by Contractor during the construction process. After construction, Contractor shall leave such public roads in a state of equal condition as they were prior to construction, excepting normal wear and tear.
   14. **Delivery and Unloading of Owner-Furnished Equipment**. Contractor shall unload the WTGs in compliance with the Wind Turbine Supply Contract, and Contractor shall be responsible for any reasonable costs and demurrage resulting from Contractor’s failure to unload the WTGs in accordance with the terms and conditions of the Wind Turbine Supply Contract. Contractor shall unload the step-up transformers in compliance with Exhibit 15, and Contractor shall be responsible for any reasonable costs and demurrage resulting from Contractor’s failure to unload the step-up transformers in accordance with Exhibit 15.
   15. **Interconnection**. Contractor shall be responsible for performing all Work necessary to interconnect the WTGs, the Project Substation and other components of the Work, as set forth in the Scope of Work and Technical Specifications, and in compliance with the Interconnection Agreement.
   16. **Defects**.
       1. Correction of Defects. Prior to Project Mechanical Completion, Contractor shall promptly correct or cause the correction of any part of the Work that is Defective, deficient or is otherwise not in accordance with this Agreement, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether Owner has previously reviewed or inspected or otherwise accepted such part of the Work in any way. Contractor shall bear the cost of re-performing any Defective, deficient or non-conforming Work. All internal and third party costs reasonably incurred by Owner in attending or in consequence of any re-testing or inspection necessitated by any Work that is Defective, deficient or is otherwise not in accordance with this Agreement shall be deducted from the Contract Price. In the event that any part of the Work is discovered to be in a Defective, deficient or non-conforming condition after Project Mechanical Completion, correction of such Defective, deficient or non-conforming condition shall be governed by Article 16. Acceptance of any test, Equipment or Work by Owner shall not affect any rights Owner may have under a Warranty pursuant to Article 16.
       2. Serial Defects. If any Serial Defect arises at any time prior to Project Mechanical Completion, Owner shall provide notice to Contractor of such Serial Defect or, if Contractor becomes aware of any such Serial Defect, Contractor shall provide written notice of the same to Owner. Contractor shall determine what changes, repairs or replacements to any affected items of Equipment are necessary to correct such Serial Defect and to avoid further failures of the Equipment at the Project which may not have yet experienced such failures, and Contractor shall make such necessary changes, repairs or replacements to all the Equipment installed at the Project (whether or not such Equipment is installed, has been tested or has experienced such failures) all at its own cost and expense. Contractor shall repeat such process on an iterative basis until such Serial Defect and the underlying cause thereof is corrected.
   17. **Cooperation**. Contractor shall cooperate with Owner in connection with Owner’s efforts to obtain the approvals, certificates, Applicable Permits and Owner’s Commissioning of the WTGs. Contractor acknowledges that work may be performed by others (including without limitation the Turbine Vendor and other Owner Subcontractors) at the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that Owner, through itself or through its employees, Subcontractors or agents, will continue to work and perform activities in connection therewith at the Job Site during the execution of the Work under this Agreement. Contractor shall cooperate and cause its Subcontractors to cooperate with Owner, Owner’s Representatives and Owner Subcontractors (including Turbine Vendor), who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors unreasonably hinders or increases the work being done by Owner and other unrelated contractors. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by Owner, whether such Work is partially or entirely complete, when, in the reasonable judgment of Owner, such access or use is necessary for the performance and completion of the work of others. All material and labor shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by this Agreement. In addition, Contractor shall use reasonable efforts, and cause its Subcontractors to use their reasonable efforts, to assist Owner in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the host community caused by the construction of the Project. Such programs shall include: (i) sequencing of the Work so as to minimize the impacts of noise and dust at and around the Job Site and (ii) using local labor and other resources whenever reasonably possible and cost effective. Owner shall require Owner Subcontractors to similarly cooperate with Contractor and to comply with Contractor’s safety plan and safety requirements.
   18. **Contractor’s Key Personnel**. Contractor shall appoint Contractor’s Key Personnel in accordance with Section 6.2.
   19. **FAA Lighting**. Upon Owner’s request, Contractor shall supply and install the FAA lighting required for each WTG. Owner shall pay Contractor the per unit price set forth on Exhibit 25 for each WTG that Contractor installs the FAA required lighting.
   20. **FERC Electrical Plant Chart of Accounts**. Within thirty (30) Days after the Final Completion Date, Contractor shall deliver to Owner a FERC Unit of Plant Cost Allocation Book, including a FERC Electrical Plant Chart of Accounts, containing the information described in Exhibit 28 and otherwise in form and substance acceptable to Owner. Owner shall have thirty (30) Days to review such FERC Unit of Plant Cost Allocation Book and provide comments to Contractor, and Contractor shall incorporate Owner's comments therein and provide the final FERC Unit of Plant Cost Allocation Book to Owner not later than seventy-five (75) Days after the Final Completion Date.
   21. **Notification**. To the extent not prohibited by Applicable Law, with respect to the Project, Contractor shall provide Owner, promptly and in any event within five (5) Business Days (or such other time period set forth below) following (a) Contractor’s actual knowledge of its occurrence or (b) Contractor’s receipt of the relevant documentation, with written:
       1. Notification of all events requiring the submission by Contractor of a report to any Governmental Authority pursuant to the Occupational Safety and Health Act;
       2. Notifications and copies of all citations by Governmental Authorities concerning accidents or safety violations at the Site and, within five (5) Business Days of such written notice, a follow up report containing a description of any steps Contractor is taking and proposes to take, if any, with respect to such accident or safety violations;
       3. Notifications and copies of all written communication to or from any Governmental Authority, relating to any breach or violation or alleged breach or violation of any Applicable Law, any Applicable Permit, Applicable Codes or any provision of the Interconnection Agreement;
       4. Updates of status of communications with insurance companies related to claims with respect to an accident, incident or occurrence at the Site or in the performance of Work;
       5. Notifications and copies of any actions, suits, proceedings, patent or license infringements, or investigations pending or threatened against it at law or in equity before any court or before any Governmental Authority (whether or not covered by insurance) that (A) if determined adversely to Contractor would have a material adverse effect on Contractor’s ability to perform its obligations under this Agreement or (B) relates to the Project; and
       6. Notifications within (A) (x) one (1) Business Day after Contractor has actual knowledge of any accident related to the Work that has a material and adverse impact on the environment or on human health (including any accident resulting in the loss of life) and (y) within three (3) Business Days after Contractor has actual knowledge of any recordable, lost-time injury related to the Work and (B) ten (10) Business Days thereafter, a report describing such accident or injury, the impact of such accident or injury and the remedial efforts required and (as and when taken) implemented with respect thereto.
   22. **Site Conditions**. Contractor has inspected the Site, including both surface and subsurface conditions, and has satisfied itself as to all matters regarding the geotechnical and physical condition thereof, including those matters related to the environment, availability and quality of water, heat and other weather conditions at the Site, physical conditions at the Site, topography and ground surface conditions (including as such conditions may impact surface water runoff), any underground utilities, sound attenuation conditions, subsurface geology and conditions, nature and quality of surface and subsurface materials to be encountered (collectively, “Site Conditions”), and shall be responsible at its sole expense for all necessary works in relation to, or because of, such Site Conditions both below and above ground (including (subject to Article 12 and Article 19) the existence of Hazardous Materials, archeological or religious sites, and monuments) on the Site in connection with Contractor’s performance of the Work. Contractor shall be solely responsible for performing any preliminary Work on the Site necessary for the commencement of construction to occur, including removal of all physical impediments to performing Work on the Site, above and below ground, and preparing the Site for the Work. Contractor specifically acknowledges and accepts the Site Conditions and agrees that no claims by Contractor for additional payment or extensions of time shall be permitted with respect to the Site Conditions on the ground of any misunderstanding or misapprehension of the matters referred to in this Section 2.22 or on the ground of incorrect or insufficient information in respect of the Site or the Site Conditions, and Contractor specifically waives any right to seek a Change Order relating to any of the foregoing. Contractor acknowledges and agrees that none of Owner, any of its Affiliates or any of its agents or representatives have made, nor shall they make, any express or implied warranty to Contractor as to Site Conditions. Additionally, Contractor shall install the piles necessary for the Project as part of the Scope of Work. If additional soil samples, other geotechnical information or information about Site Conditions are needed before the piles can be installed, this additional sampling or gathering of additional information is the sole responsibility of Contractor.
   23. **Other Reports and Quality Control Documents**. Contractor shall provide Owner with other reports and quality control documentation relating to the Work, the Equipment, the Project and the Subcontractors as Owner may reasonably request.
   24. **Construction Methods**. Contractor shall make itself and its Subcontractors available to discuss and shall promptly respond to any reasonable questions from Owner, Owner’s Engineer, any Financing Parties or the Independent Engineer regarding construction methods or procedures used during construction of the Project.
   25. **Real Property Rights**.
       1. Compliance with Real Property Rights. Contractor shall comply with the terms of the Real Property Rights.
       2. Access to Site. If the Real Property Rights do not allow for the currently contemplated route of access to the Site, then obtaining any additional Real Property Rights needed for alternative routes of access and the construction and use of such alternative routes of access to the Site shall be at Contractor’s sole cost and expense. Contractor shall be responsible to ensure that the access to the Site is sufficient to permit cranes and other operating and rigging equipment that will be used in the performance of the Work, if any, freedom to maneuver on or about the Site.
       3. Relocation of Facilities. If any lack of necessary Real Property Rights or exercise by a counterparty of its rights under any agreement relating to the Real Property Rights requires relocation of any utilities, transmission lines or other facilities from their existing or currently planned location, Contractor shall bear the sole construction cost associated with relocating any such utilities, transmission lines or other facilities.
       4. Construction Real Property Rights. To the extent not already obtained, Contractor shall obtain any additional Real Property Rights and easements necessary for Contractor to perform the Work. Contractor shall notify Owner upon the occurrence, or potential occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving Real Property Rights or one or more owners or occupiers of land so situated as to potentially result in a situation that would reasonably be expected to have a material adverse effect upon the performance of the Work. Owner shall cooperate with Contractor in resolving all such problems.
       5. Damage from Construction. Contractor shall be required to reimburse Owner for any payment Owner is required to make to any other party to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor’s performance of the Work.
       6. Acknowledgment. Contractor acknowledges that it has reviewed the Real Property Rights, confirmed adequacy of the Real Property Rights, and is satisfied that such Real Property Rights are sufficient for Contractor to perform the Work hereunder.
   26. **Tax Abatement Requirements.** Contractor acknowledges that Owner expects to obtain the sales and property tax abatements applicable to the Project under Utah law and recognizes that such abatements place specific requirements on Contractor and the construction of the Project. In connection therewith, Contractor agrees and warrants that all Work will be carried out in all respects necessary to fully comply with the requirements of [*Utah Code Provisions*], and any regulations promulgated thereunder, and Contractor agrees to cooperate with all requests by Owner in connection therewith.
   27. **Taxes**. Contractor represents and warrants: (i) Contractor has not and will not claim production tax credits or investment tax credits under Code sections 45 or 48 with respect to any portion of the Project, Equipment, or Work; (ii) Contractor has not and will not claim depreciation deductions under Code sections 167 or 168 with respect to any portion of the Project, Equipment, or Work; (iii) No portion of the Project, Equipment, or Work as described in Code section 168(g)(1)(D); (iv) Contractor has acquired and held the Project, Equipment, and Work for sale in the normal course of its business of constructing and selling wind powered electrical generating facilities to third parties; (v) There has been no “original use” (within the meaning of Code section 48) of the Project, Equipment, or Work, other than original use by Owner; and (vi) No portion of the Project, Equipment, or Work has been or will be Placed in Service other than by Owner.
2. SUBCONTRACTORS
   1. **Suppliers and Subcontractors**.
      1. Set forth in Exhibit 22 is a schedule of qualified Major Subcontractors who, notwithstanding anything to the contrary herein, Contractor shall be entitled to engage in furtherance of Contractor’s obligations under this Agreement without the consent of Owner. Contractor shall notify Owner of any proposed additional Major Subcontractors or replacements thereof with whom Contractor anticipates engaging. Owner shall have the right to review and approve such engagement, such approval not to be unreasonably withheld or delayed. Contractor shall update and amend Exhibit 22 by notice to Owner from time to time as necessary to reflect approved additions or changes thereto, provided Contractor may not change the supplier of WTGs without Owner’s express written consent in its sole discretion.
      2. No Subcontract shall bind or purport to bind Owner, but each Major Subcontract shall (i) provide that the Subcontractor expressly agrees, upon Owner’s request if this Agreement is terminated, to the assignment of such Major Subcontract to, at Owner’s request, Owner, a Financing Party or any successor engineering, procurement and construction contractor to Contractor, (ii) incorporate by reference and flow down the provisions of this Agreement to the work or services performed by such Subcontractor, irrespective of whether such provisions are expressly made to so apply, including any provisions related to standards of performance, safety, insurance, indemnification, liability, choice of law and dispute resolution (iii) provide that Owner, any Financing Party or any successor engineering, procurement and construction contractor are a third-party beneficiary under such Major Subcontract.
      3. The use by Contractor of any Subcontractor shall not (i) constitute any approval of the Work undertaken by any such Subcontractor, (ii) relieve Contractor of its duties, responsibilities, obligations or liabilities hereunder, (iii) relieve Contractor of its responsibility for the performance of any work rendered by any such Subcontractor or (iv) create any relationship between Owner, on the one hand, and any such Subcontractor, on the other hand, or cause Owner to have any responsibility for the actions or payment of such Subcontractor. As between Owner and Contractor, Contractor shall be solely responsible for the acts, omissions or defaults of its Subcontractors and any other Persons for which Contractor or any such Subcontractor is responsible (with the acts, omissions and defaults of its Subcontractors and any such other Person being attributable to Contractor).
      4. In no event shall any act or omission by any Subcontractor constitute a Force Majeure Event except to the extent caused by an event or circumstance that itself constituted a Force Majeure Event.
      5. Until the Final Completion Date, Contractor shall furnish Owner with (i) claims, notices of claim, and other information relating to disputes with any Subcontractor and (ii) such information with respect to any Subcontractor as Owner may reasonably request; it being understood and agreed that information that Owner may reasonably request may include technical specifications, drawings, operating and maintenance manuals, Spare Parts lists, sourcing information for Spare Parts and consumables, inspection and test reports and training materials relative to the Work. Until the expiry of the Warranty Period, Contractor shall furnish Owner with reports received from the Subcontractors or other Persons relating to recall notices, defect notices or other similar product communications.
   2. **Insurance**. Contractor and each Subcontractor shall obtain and maintain insurance required in accordance with Article 18 and Exhibit 13.
3. CONTRACT PRICE
   1. **Contract Price.** As full compensation for the Work and all of Contractor’s obligations hereunder, Owner shall pay to Contractor, and Contractor agrees to accept as full compensation for the Work, the Contract Price. All payments due and payable to Contractor shall not exceed the applicable amount for such period in the Cash Flow Curve set forth in the Schedule of Values. The Contract Price shall be adjusted only as expressly provided under the terms of this Agreement and is otherwise firm and fixed and, except as otherwise indicated in this Article 4 below, shall be deemed to include all expenses to be incurred by Contractor related to Contractor’s performance of its obligations under this Agreement. The Contract Price includes all Taxes except Owner Taxes as provided in this Article 4, as well as all permit fees related to all Contractor Acquired Permits and assistance provided by Contractor in acquiring all Owner Acquired Permits and any other obligation of Contractor hereunder. The Contract Price shall be paid by Owner to Contractor in accordance with the terms of this Article 4.
   2. **Payments**.
      1. Owner shall pay the Contract Price according to the Schedule of Values. Each Progress Payment shall be due and payable only to the extent it is supported by the completion of the corresponding Work set forth in the Schedule of Values for the payment of such Progress Payment. Subject to and in accordance with any mutually agreed upon Change Order, in no circumstance shall Owner have an obligation to pay any Application for Payment in amounts in excess of the Schedule of Values.
      2. Within thirty (30) Days after the acceptance of the Project Mechanical Completion Certificate, Owner shall release to Contractor the Retainage, less an amount equal to the Punch List Holdback for all Punch List Items that have not been completed at such time pursuant to the terms hereof. On the Final Completion Date, concurrent with the payment for the Final Completion, Owner shall release to Contractor any remaining Punch List Holdbacks then held by Owner. Any interest accruing on the Retainage shall accrue for the account of Owner and not Contractor.
      3. If Contractor fails to perform any Punch List Item on the Punch List within sixty (60) Days after the Project Mechanical Completion Date, Owner may elect by written notice to Contractor to retain the Punch List Holdback applicable to such Punch List Item and complete such Punch List Item itself. Upon Owner making such election, Contractor shall forfeit any return of such portion of the Punch List Holdback and Contractor’s obligation to perform such Punch List Item shall be deemed satisfied.
   3. **Milestone Assessment**. Contractor and Owner shall periodically, and in any event at least once each month, review the Work completed and assess the progress of on-Site Work completed and completion of the relevant Milestone. Owner’s Engineer and any Independent Engineer may be present during such review and assessment of the Work.
   4. **Application for Payment**. On or before the tenth (10th) Day of each month during the performance of the Work, Contractor shall submit to Owner an Application for Payment (in the form of Exhibit 10) with respect to that portion of the Work (including Punch List Items) which Contractor has satisfactorily completed during that month and for which Contractor has not been previously paid. Each Application for Payment shall set forth, as the amount of the Contract Price Contractor is entitled to be paid for such month, with respect to the items of Work set forth in the Schedule of Values, the aggregate of the amounts obtained by multiplying (x) the value of each item of Work set forth in the Schedule of Values and (y) that portion of such item of Work, expressed as a percentage, which has been satisfactorily completed during such month, as verified and approved by Owner, less (z) Retainage (for such month, the “Progress Payment”). Each Application for Payment shall be reasonably detailed and shall be accompanied by supporting Documentation evidencing the achievement of the Milestone pursuant to the Schedule of Values for which the Progress Payment is being requested, shall be accompanied by lien waivers required to be delivered pursuant to Section 4.5 and shall be sent by either (i) written notice, or (ii) electronic mail and confirmed by first class mail (with the date of receipt of the original by first class mail to be the date of receipt). In addition, as a condition precedent to Owner’s obligation to make payment, Contractor shall be current in its delivery of Monthly Progress Reports, Weekly Progress Reports and other Documentation required for all periods through the month for which payment is requested. In no event shall the aggregate amounts invoiced by Contractor or payable by Owner under each Application for Payment exceed the aggregate amount of the Contract Price payable cumulatively through such month according to the Cash Flow Curve. Owner shall make all payments of undisputed amounts when they become due, but in any event, no later than thirty (30) Days after receipt of the Application for Payment; provided that the payments in respect of any Application for Payment with respect to Project Mechanical Completion shall be due within thirty (30) Days after Owner’s acceptance of the Project Mechanical Completion Certificate. If Owner disputes a portion of an Application for Payment, Owner shall notify Contractor of such Dispute and shall pay to Contractor the undisputed portion in accordance with this Section 4.4. If such dispute is resolved within thirty (30) Days after receipt of the Application for Payment, Owner shall make payment of such resolved amounts within thirty (30) Days after resolution of the dispute. No partial payment made under this Agreement shall be construed to be an acceptance or approval by Owner of any part of the Work or to relieve Contractor of any of its obligations under this Agreement. Contractor shall be responsible for paying or ensuring the payment of all Subcontractors in connection with the Work completed by the Subcontractors in accordance with the terms of their Subcontracts.
   5. **Lien Releases**. Contractor shall submit with each Application for Payment a conditional partial lien release in the form set forth in Exhibit 12A for the amount requested in the current Application for Payment in respect of work performed or materials delivered on the Site during the period covered by such Application for Payment. Both Contractor and its Major Subcontractors shall provide Owner a conditional final lien release in the form set forth in Exhibit 12B as a condition precedent to payment by Owner of the final Application for Payment. In addition to the lien releases described in this Section 4.5, Contractor shall deliver to the Title Company, as and when required by the Title Company in order to issue title insurance to any Financing Party and to provide an endorsement thereto with respect to mechanic’s liens pending disbursement coverage, (a) Contractor’s sworn statement and (b) a mechanic’s lien subordination agreement, each executed by Contractor and in form and substance acceptable to the Title Company.
   6. **Release of Liability**. Contractor’s acceptance of payment of the Application for Payment for Final Completion shall constitute a release by Contractor of Owner from all liens (whether statutory or otherwise and including mechanics’ or suppliers’ liens), claims and liability with respect to the payment of the Contract Price or any event or circumstance that would entitle Contractor to request a Change Order in respect of any event that occurs prior to Final Completion, except claims for which Contractor has delivered a dispute notice to Owner, claims that are based on facts or circumstances arising after Final Completion and claims arising under Article 19. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Agreement.
   7. **Overdue Payments**. Overdue payment obligations of either Party hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the lesser of (a) the rate published by the *Wall Street Journal* as the “prime rate” on the Business Day preceding the date on which such interest begins to accrue plus two percent (2%) and (b) the maximum rate allowed under Applicable Law.
   8. **Disputed Payments**. Failure by Owner to pay any invoiced amount disputed in good faith until such dispute has been resolved in accordance with Article 23 shall not alleviate, diminish, modify or excuse the performance of Contractor or relieve Contractor’s obligations to perform hereunder, subject to the provisions of such Article 23. Contractor’s acceptance of any payment, and Owner’s payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts expeditiously and in any case in accordance with the provisions of Article 23. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If an Application for Payment was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner with respect to such Application for Payment are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor, at the interest rate set forth in Section 4.7, from the date on which such payment was originally due under Section 4.4 until the date such payment is actually received by Contractor. If amounts disputed in good faith that have been paid by Owner are later resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such payment at the interest rate set forth in Section 4.7, from the date on which the payment was originally made by Owner until such refunded payment is received by Owner.
   9. **Contractor Performance Security**. On the Effective Date, Contractor shall deliver to Owner and maintain in full force and effect the Contractor Performance Security in the form set forth in Exhibit 11. If Contractor fails to deliver the Contractor Performance Security or the issuer thereof repudiates or breaches its obligation to pay or perform thereunder, Owner shall be excused from paying any Progress Payments until such time as Contractor shall have delivered replacement contractor performance security in a form acceptable to Owner in its sole discretion.
   10. **Holdback**.
       1. Any provision hereof to the contrary notwithstanding, upon the occurrence and continuance of any of the following events, Owner, upon notice to Contractor, may, but shall have no obligation to, withhold or retain such portion (including all) of any payment due to Contractor under this Agreement as reasonably necessary to ensure the performance of the Work, to cover one hundred fifty percent (150%) of the Losses or reasonably anticipated Losses to Owner related to such event, or to otherwise protect fully Owner’s rights hereunder:
          1. A Contractor Event of Default shall have occurred;
          2. Contractor shall have failed to timely make undisputed payments to its Subcontractors for material or labor used in the Work and Owner is not in breach of its obligations to pay Contractor;
          3. Owner in good faith shall have determined based upon the Construction Schedule that Contractor cannot with prompt and reasonable acceleration of the Work achieve Scheduled Final Completion Date; provided, however, that amounts withheld or retained on account of this Section 4.10(a)(iii) shall not exceed the amount of any Mechanical Completion Delay Liquidated Damages which would be payable under Section 7.9(c); or
          4. Any part of such payment shall be attributable to Work that contains a defect or has not been performed in accordance with the terms of this Agreement.
       2. No payment made under this Section 4.10 shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. Should any dispute arise with respect to Owner’s exercise of its rights under this Section 4.10, such dispute shall be subject to resolution in accordance with the expedited payment dispute procedures provided in Article 23. Contractor shall not have any rights of termination or suspension under Section 15.4 as a result of Owner’s exercise or attempted exercise of its rights under this Section 4.10.
   11. **Setoff**. Notwithstanding any other provision in this Agreement, Owner shall be entitled to set off against any amount it owes to Contractor under this Agreement, any undisputed amount(s) that either (a) Contractor owes to Owner under this Agreement or (b) Contractor or any Affiliate of Contractor owes to Owner under the Project Transaction Documents.
   12. **Taxes.** The Contract Price includes any and all Taxes imposed under Applicable Law on Contractor, the Subcontractors, the Work, the construction or sale of Equipment to Owner or installation of the Project, except for Owner Taxes. In addition to the Contract Price, Owner assumes exclusive liability for and shall pay all Owner Taxes. Contractor and Owner agree to cooperate with each other to minimize the Tax liability of both Parties to the extent legally permissible and commercially reasonable for such Party. Contractor shall provide Owner with such assistance as may be reasonably requested by Owner in demonstrating eligibility for exemptions or exclusions from such Taxes (and any other Tax exemptions) to the relevant Governmental Authority, including as provided in Section 2.26. Contractor shall, in accordance with Applicable Law, timely administer and timely pay all Taxes that are included in the Contract Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and furnish copies of such information and reports (other than information specifically pertaining to Contractor’s income and profit) to Owner as reasonably requested by Owner and within thirty (30) Days after any request from Owner, Contractor shall provide Owner with any other information regarding allocation of quantities, descriptions, and costs of property provided by Contractor and installed as part of the Project that is necessary in connection with the preparation of Owner’s tax returns or as a result of an audit by a taxing authority. The Owner or its designee shall be entitled to all tax benefits associated with the Project, and Contractor will have no claim with respect to such benefits.
4. OWNER RESPONSIBILITIES
   1. **Access**.From the Effective Date until the Project Mechanical Completion Date, Owner shall provide Contractor with reasonable access to the Site as suitable and necessary for Contractor to complete the Work and perform its obligations in accordance with this Agreement. From the Project Mechanical Completion Date until the Final Completion Date, Owner shall provide Contractor with reasonable access to the Site as suitable and necessary for Contractor to complete the Punch List Items. Owner shall also provide Contractor with access to the SCADA System (consistent with Section 20.2). Owner shall provide reasonable access to the Site for Contractor to complete work in connection with the Warranties. Notwithstanding the foregoing, Contractor’s access shall be subject to the terms of the Real Property Rights and any lack of access due to Contractor’s failure to comply with the Real Property Rights or otherwise with the terms of this Agreement shall not be considered a breach by Owner.
   2. **Compliance with Laws and Permits**. Owner shall at all times fully comply with Applicable Laws and Applicable Permits. Owner shall obtain and maintain in full force and effect all Owner Acquired Permits.
   3. **Owner Scope**. Owner shall perform any obligations clearly identified as being Owner’s responsibility pursuant to Exhibit 1. In connection with Owner’s obligations under this Agreement, Owner shall be entitled to hire any third party quality consultants to advise Owner concerning the quality control and performance of the Project.
   4. **Owner’s Representative**. Owner shall appoint an Owner’s Representative in accordance with Section 6.1.
   5. **Insurance**. Owner shall obtain and maintain insurance required in accordance with Article 18.
   6. **Cooperation**. Owner shall, and shall cause its contractors and their respective hired personnel (including Turbine Supplier) to, cooperate with Contractor and Subcontractors in coordinating the work of Owner’s contractors and personnel who are working at or near the Site with the Work being performed by any Contractor Party or Subcontractor at or near the Site.
   7. **Owner-Provided Information**. Owner, or its Affiliates, or their respective employees, representative and agents (or Owner’s Engineer) may provide Contractor with opinions, recommendations and other statements or information and Contractor acknowledges that all such opinions, recommendations, statements and information have been or will be provided as background information and as an accommodation to Contractor. Contractor further acknowledges that neither Owner nor any of its Affiliates or their respective employees, representative or agents (nor Owner’s Engineer) makes any representations or warranties with respect to the accuracy of such information (including oral statements) or opinions expressed. Contractor further agrees, represents and warrants that it is not relying on Owner or Owner’s Affiliates, or any of their respective employees, representatives or agents (or Owner’s Engineer) for any information, data, inferences, conclusions, or other information with respect to Site Conditions, including the surface and sub-surface conditions of the Site and the surrounding areas, or the design of the Project, the Work, or otherwise.
   8. **Conditions Precedent to Owner’s Obligations**. Owner’s obligations under this Agreement are subject to the fulfillment or waiver by Owner of each of the following conditions:
      1. Owner has issued a Full Notice to Proceed to Contractor hereunder; and
      2. Owner has received all required board and management approvals to authorize the issuance of such Full Notice to Proceed.

Contractor acknowledges that the decision whether or not to grant such approvals are in the sole, unreviewable discretion of Owner’s board of directors and management; provided, however, that Contractor is entitled to assume that if Owner issues a Full Notice to Proceed, Owner has obtained all board and management approvals necessary to authorize such issuance.

1. REPRESENTATIVES; KEY PERSONNEL
   1. **Owner’s Representative**. Owner designates, and Contractor agrees to accept, [\_\_\_\_\_\_\_\_\_\_\_] as “Owner’s Representative” (the “Owner’s Representative”) for all matters relating to this Agreement and Contractor’s performance of the Work (except as otherwise stated in this Agreement). The acts and omissions of Owner’s Representative with respect to this Agreement are deemed to be the acts and omissions of Owner and shall be fully binding upon Owner. Owner may, upon written notice to Contractor pursuant to Article 22, change the designated Owner’s Representative.
   2. **Contractor’s Key Personnel and Contractor’s Representative**. Contractor designates, and Owner accepts, those individuals set forth on Exhibit 5 (the “Key Personnel”) for all matters relating to Contractor’s performance under this Agreement. The individual designated by Contractor on Exhibit 5 as “Contractor’s Representative” (the “Contractor’s Representative”) shall have full responsibility for the prosecution and scheduling of the Work and any issues relating to this Agreement. If Contractor elects to replace Key Personnel, it shall promptly deliver a notice to Owner with the name and résumé of the proposed replacement individual. Owner shall have the right to approve any such replacement of Key Personnel, provided, however, that such approval shall not be unreasonably withheld or delayed. The actions taken by Contractor’s Representative are deemed to be the acts of Contractor.
   3. **Power to Bind**. The Parties shall vest, respectively, Owner’s Representative and Contractor’s Representative with sufficient powers to enable them to assume the obligations and exercise the rights of each Party, as applicable, under this Agreement.
   4. **Notices**. Notwithstanding Section 6.1, Section 6.2, and Section 6.3, all amendments to this Agreement, Change Orders, notices and other communications between Contractor and Owner contemplated herein shall be delivered in writing and otherwise in accordance with Article 22.
2. COMPLETION OF WORK
   1. **Access Road Completion**. Contractor shall achieve Access Road Completion on or before the Guaranteed Access Road Completion Date and otherwise in accordance with the requirements of this Agreement. “Access Road Completion” shall mean that Contractor has achieved completion of the following:
      * + 1. the access roads to each applicable Foundation,
          2. the turning radius (which such turning radii satisfy the requirements set forth in the Wind Turbine Supply Contract) that are necessary for the public roads in the State of [state project is located in] and from the public roads to the private access roads,
          3. and other road improvements and work necessary to permit the delivery of the Wind Turbine Generator (including the Tower) to each Foundation, and otherwise in accordance with the requirements of this Agreement, and
          4. Owner has accepted or is deemed to have accepted an Access Road Completion Certificate with respect to such Work pursuant to Section 7.8.
   2. **Foundation Completion**. Contractor shall achieve Foundation Completion with respect to each individual Foundation on or before the Milestone Date therefor and otherwise in accordance with the requirements of this Agreement. “Foundation Completion” means with respect to a Foundation the achievement of the following with respect to each individual Foundation:
      * + 1. such Foundation is mechanically completed and installed in accordance with the Technical Specifications and the requirements of this Agreement;
          2. such Foundation is structurally complete and contains all necessary embedded inserts;
          3. the concrete portion of such Foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the base Tower of the WTG thereon;
          4. backfilling of the area surrounding such Foundation has been completed;
          5. Contractor has documented any changes to each Foundation and the Infrastructure Facilities (both above-ground and below-ground in the immediate surrounding area of the such Foundation); and
          6. Owner has accepted or is deemed to have accepted a Foundation Completion Certificate with respect to such Work pursuant to Section 7.8.
   3. **Electrical Works Completion**. Contractor shall achieve Electrical Works Completion on a per-circuit basis and otherwise in accordance with the requirements of this Agreement. “Electrical Works Completion” with respect to an individual circuit of Electrical Works and equipment associated therewith means the achievement of the following milestones:
      * + 1. The padmount foundations have been completed;
          2. all of the Electrical Works including the installation of all grounding, necessary to energize the WTGs, are completed in accordance with the requirements of this Agreement;
          3. subject to Punch List Items, all materials and equipment associated with such Electrical Works have been installed in accordance with the Technical Specifications, the Commissioning checklist set forth in Exhibit 1 and Exhibit 3B, and the other requirements of this Agreement and checked for adjustment;
          4. such Electrical Works and all other Infrastructure Facilities necessary to achieve connection of such WTGs to the electricity transmission system interconnected at the Project Substation, are energized;
          5. all of the Electrical Works necessary to achieve connection of such padmount transformers to the Project Substation in accordance with this Agreement have been installed, insulated, protected and tested, including synchronization with such system;
          6. subject to Punch List Items, all of such Electrical Works have been properly constructed, installed, insulated and protected where required for such operation, correctly adjusted, tested and commissioned, are mechanically, electrically and structurally sound as set forth in the Technical Specifications, and can be used safely in accordance with the Contract Documents, Applicable Laws and Applicable Standards;
          7. Contractor has prepared and submitted a list of Punch List Items with respect to such circuit of Electrical Works; and
          8. Owner has accepted or is deemed to have accepted an Electrical Works Completion Certificate with respect to such Electrical Works pursuant to Section 7.8.
   4. **Closing Completion**. Contractor shall cause Closing Completion with respect to the Facility to occur on or before the Guaranteed Closing Completion Date and otherwise in accordance with the requirements of this Agreement. “Closing Completion” means, as to the Facility, the achievement of the following:[[11]](#footnote-11)
   5. **Mechanical Completion of WTGs**. Contractor shall cause WTG Mechanical Completion with respect to each WTG to occur on or before the Guaranteed Mechanical Completion Date and otherwise in accordance with the requirements of this Agreement. “WTG Mechanical Completion” means, as to a WTG, the achievement of the following:
      * 1. Closing Completion and valid delivery and acceptance by Owner of a Closing Completion Certificate with respect to the Facility;
        2. subject to Punch List Items, such WTG is assembled, erected and installed so as to be demonstrably completed in accordance with the Technical Specifications, the WTG Mechanical Completion Certificate set forth in Exhibit 17A, the Wind Turbine Supply Contract and the other requirements of this Agreement;
        3. subject to Punch List Items, all materials and equipment associated with such WTG have been installed in accordance with the Technical Specifications and verified in accordance with the installation checklists set forth in Exhibit 14;
        4. Contractor has prepared and submitted a list of Punch List Items with respect to such WTG or other component;
        5. the WTG is ready to commence Commissioning;
        6. Electrical Works Completion with respect to the Electric Works circuit line to which the WTG is connected and valid delivery and acceptance by Owner of an Electric Works Completion Certificate with respect to such circuit;
        7. Turbine Vendor acknowledges that all Work necessary for Turbine Vendor to commence to Commission the WTG has been successfully completed by Contractor; and
        8. Owner has accepted or is deemed to have accepted a WTG Mechanical Completion Certificate with respect to such WTG pursuant to Section 7.8.
      1. Commissioning of WTGs. Upon receipt by Owner of a WTG Mechanical Completion Certificate with respect to a WTG and promptly after Owner’s countersignature thereof as provided in Section 7.8, Owner shall commence or shall cause to be commenced, with Contractor’s cooperation and assistance, commissioning of such WTG; provided however, Contractor’s obligation to provide assistance pursuant to this Section 7.5(a)shall be limited to providing information, access, lockout/tagout and assistance solely relating to the interface between Contractor’s Work and the work of the Turbine Vendor.
      2. Punch List. In connection with and as a condition to the achievement of Electrical Works Completion for a particular circuit and the achievement of WTG Mechanical Completion as to each WTG, Contractor shall develop a list (each, an “Interim Punch List”) setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of this Agreement. Contractor agrees that installation of the fiber optic cable and connection to the Project’s SCADA system is not an Interim Punch List Item. In addition to Contractor providing the Interim Punch List to Owner in accordance with this Article 7, Contractor shall also promptly provide a copy of such list to Owner upon Owner’s request. Contractor shall make such revisions to such list as and when requested by Owner from time to time.
         1. As a condition to Project Mechanical Completion, Contractor shall prepare and submit to Owner a comprehensive list (the “Punch List”) setting forth remaining Punch List Items, including any items from the Interim Punch Lists that have not been completed and also including a listing of Contractor deliverables required to be provided to Owner hereunder as a prerequisite to the achievement of Final Completion, including without limitation, Lien releases, As-Built Drawings, and other required documentation, as well as performance of Job Site clean-up and other post-construction activities, and also including Contractor’s reasonable estimate of the cost to complete each such Punch List Item. Contractor shall make such revisions to the Punch List as and when reasonably requested by Owner from time to time.
         2. The Owner shall reasonably estimate the cost to complete all items on the Punch List that have not been completed. The Parties agree that with respect to Punch List Items that remain uncompleted and which are preventing Final Completion, it may be more expedient for Owner to complete such Punch List Items, at its sole election and option. If Owner so elects, at its sole discretion, Owner may, in lieu of requiring Contractor to complete the Punch List Items, require Contractor to pay to Owner an amount equal to one hundred percent (100%) of the commercial value of the remaining Punch List Items as established as provided above in this Section 7.5(b). Upon such election by Owner, such Punch List Items shall be deemed removed from the Punch List. Owner shall have the right to offset such amount owed by Contractor against any amounts owed by Owner to Contractor at Final Completion or otherwise under this Agreement.
   6. **Project Mechanical Completion**. Contractor shall cause Project Mechanical Completion to occur timely following WTG Mechanical Completion of each of the WTGs and otherwise in accordance with the requirements of this Agreement. “Project Mechanical Completion” means the achievement of the following:
      * 2. WTG Mechanical Completion has occurred with respect to each WTG;
        3. except for Punch List Items, all WTGs have been properly assembled, erected, installed, is mechanically, electrically and structurally sound as set forth in the Technical Specifications, so that it can be used safely in accordance with this Agreement, Applicable Laws and Applicable Standards;
        4. Contractor has prepared and submitted to Owner the final and complete Punch List in accordance with Section 7.5(b);
        5. Contractor has delivered three (3) draft copies of the Job Books (which include Operating Manuals) in accordance with Section 2.8(i);
        6. all quality assurance documentation has been provided to Owner in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Assurance Plan;
        7. Contractor has provided appropriate and timely training as required hereunder; and
        8. Owner has accepted or is deemed to have accepted a Project Mechanical Completion Certificate pursuant to Section 7.8.
      1. Punch List Work. Notwithstanding achievement of Project Mechanical Completion, Contractor shall remain obligated to complete the Punch List Items in accordance with this Agreement. Contractor shall give Owner written notice at least five (5) Business Days prior to declaring that Project Mechanical Completion has occurred and shall provide on such date a written Punch List. Owner shall be entitled to verify and, if necessary, correct or add to, the list of Punch List Items provided by Contractor. Contractor agrees to update such Punch List from time to time (but not less often than monthly) after Project Mechanical Completion and until Final Completion.
   7. **Final Completion**. Contractor shall cause Final Completion to occur on or before the Scheduled Final Completion Date. “Final Completion” means the achievement of the following as to the Project:
      * + 1. Project Mechanical Completion has been achieved in accordance with Section 7.6;
          2. Contractor has performed all of the Work such that the Project may be operated as a fully-integrated wind-powered electricity generating plant and all the tests, electrical continuity and ground fault tests have been successfully completed and any Defects found have been corrected;
          3. the Contractor Facilities are capable of being operated in a safe and proper manner in accordance with Applicable Laws and Applicable Permits (including for this purpose all variances or waivers of any Applicable Permits if such variances or waivers are final, irrevocable and permanent modifications to the requirements of Applicable Law or Applicable Permits);
          4. Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof or bonds protecting Owner that are reasonably acceptable to Owner;
          5. any and all Liens in respect to the Project, this Agreement, the Equipment, the Job Site or any fixtures, personal property or Equipment included in the Work created by, through or under, or as a result of any act or omission of, Contractor or any Subcontractor or other Person providing labor or materials in connection with the Work shall have been released or bonded in form satisfactory to Owner (provided that Contractor’s final lien waiver, in substantially the form of Exhibit 12Battached hereto from Contractor and Subcontractor’s final lien waivers in the form of Exhibit 12Battached hereto from each Major Subcontractor or bonds protecting Owner that are reasonably acceptable to Owner, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);
          6. all of Contractor’s supplies, personnel and waste have been removed from the Site and Contractor has satisfied all of its clean-up obligations hereunder;
          7. all Punch List Items have been corrected or performed and all other Work required to be completed by Contractor has been performed in each case to Owner’s reasonable satisfaction;
          8. the Contractor Facilities have been constructed in accordance with this Agreement and the Contractor Submittals and the final plans accurately reflect the Project as constructed;
          9. Contractor shall have paid all Mechanical Completion Delay Liquidated Damages due under this Agreement, if any;
          10. all As-Built Drawings and documentation shall have been delivered to, and accepted by, Owner; and
          11. Owner has accepted or is deemed to have accepted a Final Completion Certificate pursuant to Section 7.8.
   8. **Achievement of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Availability Completion, Project Mechanical Completion, and Final Completion**. When Contractor believes that it has achieved any of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Availability Completion, Project Mechanical Completion or Final Completion, it shall deliver to Owner a completed Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Availability Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, as the case may be. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain sufficient detail to enable Owner to determine that Contractor has achieved Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Availability Completion, Project Mechanical Completion or Final Completion, as the case may be.
      * + 1. Owner shall, within five (5) Business Days, in the case of an Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, or a WTG Mechanical Completion Certificate and ten (10) Business Days, in the case of an Availability Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, following receipt of such certificate, either (a) deliver to Contractor a countersigned Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Availability Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, as the case may be, indicating its acceptance of the achievement of such milestone, or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner fails to notify Contractor of its acceptance or rejection of any of the foregoing certificates within the relevant time frame set forth in this paragraph, such certificate shall be deemed accepted by Owner.
          2. If Owner delivers the notice under the preceding clause (b), Contractor shall promptly either (i) notify Owner that Contractor disputes Owner’s determination or (ii) take such action, including the performance of additional Work, to achieve such milestone, and upon completion of such actions shall issue to Owner another certificate with respect to such milestone pursuant to this Section 7.8. Such procedure shall be repeated as necessary until such milestone has been achieved (whether by Owner’s affirmative acceptance or deemed acceptance or by a determination made pursuant to the dispute resolution procedures of this Agreement). For the purposes of this Agreement, the date of achievement of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Availability Completion, Project Mechanical Completion or Final Completion, as the case may be, shall be the date on which Contractor delivers to Owner, respectively, the Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Availability Certificate, Project Mechanical Completion Certificate or Final Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Contractor disputes any rejection by Owner of a certificate submitted in accordance with this Section 7.8, Contractor shall proceed with further Work as directed by Owner under protest, reserving the right to submit a claim under Article 10for the additional Work required by Owner.
   9. **Completion Guarantees**.
      1. Guaranteed Access Road Completion Date. Contractor guarantees that it shall achieve Access Road Completion on or before the Guaranteed Access Road Completion Date.
      2. Guaranteed Mechanical Completion Date. Contractor guarantees that it shall achieve Project Mechanical Completion on or before the Guaranteed Mechanical Completion Date.
      3. Mechanical Completion Delay Liquidated Damages.
         1. Obligation to Pay. Owner and Contractor acknowledge and agree that in the event of any failure to achieve, as required by Section 7.9(b), Project Mechanical Completion on or before the Guaranteed Mechanical Completion Date, such failure will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor fails to achieve Project Mechanical Completion before the Guaranteed Mechanical Completion Date, it shall pay to Owner, as liquidated and agreed damages and not as a penalty, an amount equal to the following: $[\_\_\_\_\_]/day (the “Mechanical Completion Delay Liquidated Damages”).[[12]](#footnote-12)
         2. Reasonable Amount; Exclusive Remedy. It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article 7as Mechanical Completion Delay Liquidated Damages for failure to achieve the Guaranteed Mechanical Completion Date are reasonable, considering the damages that Owner would sustain in any of such events, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained as a result of delay in achieving Project Mechanical Completion. Subject to Owner’s rights pursuant to Section 7.9andSection 15.1, payment of Mechanical Completion Delay Liquidated Damages is the exclusive remedy for delays in achieving Project Mechanical Completion. Contractor hereby waives any rights or defenses that it may have under law that any liquidated damage payable hereunder is a penalty or otherwise void under law.
         3. Accrual; Payment. Contractor’s obligation to pay Mechanical Completion Delay Liquidated Damages when and as provided in this Section is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by (i) any default by Owner in the performance or observance of any of its obligations hereunder, or any offset rights of Contractor pursuant to Section 7.9(e), provided in either case that Owner has paid all undisputed amounts due at such time to Contractor hereunder, (ii) the assignment by Owner of this Agreement to any Person, or (iii) any other circumstances, happening, condition or event. Contractor shall pay such liquidated damages without deduction, set-off, reduction or counterclaim. Contractor shall continue to make such payments of Mechanical Completion Delay Liquidated Damages until achievement of Project Mechanical Completion. In no event shall the payment of Mechanical Completion Delay Liquidated Damages excuse Contractor from performance of any of its other obligations hereunder, including the obligation to cause Project Mechanical Completion to occur.
         4. Termination for Failure to Achieve Project Mechanical Completion within Sixty Days of Guaranteed Mechanical Completion Date. If and in the event Contractor fails to achieve Project Mechanical Completion within sixty (60) days of the Guaranteed Mechanical Completion Date, then (i) Contractor shall be considered in default, and may, at Owner’s sole and exclusive discretion, be terminated in accordance with Section 15.1of this Agreement, and (ii) Contractor shall continue to pay the Mechanical Completion Delay Liquidated Damages described in this Section 7.9through any such termination of Contractor or until the exhaustion of the aggregate maximum amount of Mechanical Completion Delay Liquidated Damages payable by Contractor hereunder, whichever occurs first.
      4. Access Roads Delay. If Contractor fails to achieve Access Road Completion on or before the Guaranteed Access Road Completion Date, Contractor shall be required to pay Owner all amounts that Owner pays the Turbine Vendor under the terms of the Wind Turbine Supply Contract resulting from such delay, and Contractor shall also be responsible for all costs and expenses of Owner or Contractor as a result of the failure to achieve Access Roads Completion on or before the Guaranteed Access Road Completion Date.
      5. Offset Rights; Security for Obligations. Owner shall have the right to offset any amounts owing to Owner under this Article against Progress Payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.
3. INSPECTION
   1. **Inspection**. Owner, its Affiliates, its representatives (including Owner’s Engineer), any Financing Party, its representatives (including any Independent Engineer), and the Transmission Provider (collectively, “Owner Inspection Parties”) shall have the right to observe and inspect any Equipment at the Site and the material, design, engineering, service, workmanship or any other portion of the Work at the Site; provided that (a) such observations and inspections shall be arranged at reasonable times and with reasonable advance notice to Contractor and (b) Owner has granted such Person access to the Site and Work for such purpose. Notwithstanding the foregoing, any personnel of such Owner Inspection Parties that have completed Contractor’s safety training and worker environmental training may observe and inspect the Work at the Site at any time subject to compliance with the Site Safety Plan. Prior to Project Mechanical Completion, Contractor shall promptly correct or cause the correction of any part of the Work that is defective, deficient or is otherwise not in accordance with this Agreement, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether Owner has previously reviewed or inspected or otherwise accepted such part of the Work in any way. Contractor shall bear the cost of re-performing any defective, deficient or non-conforming Work and removing any deficient Work from the Site. In the event that any part of the Work is discovered to be in a defective, deficient or non-conforming condition after Project Mechanical Completion, correction of such defective, deficient or non-conforming condition shall be governed by Article 16.
   2. **Off-Site Inspections**. If requested by Owner, Contractor shall obtain access and arrange for Owner Inspection Parties to inspect the off-Site facilities of Contractor and any Supplier under a Major Subcontract, including to witness tests of the Equipment being supplied by them and to partake in manufacturing facility tours, such inspections to be arranged at reasonable times and with reasonable advance notice. Contractor shall incorporate a forward-looking schedule into each Monthly Progress Report of the tests (if any) to be performed on such Equipment. If any Owner Inspection Party desires to be present at any such test listed on the Monthly Progress Report, Owner shall give Contractor five (5) Business Days’ notice prior to the date of such test. If the Contractor proposes to conduct any testing on Equipment that is not otherwise identified in a Monthly Progress Report, the Contractor must provide the Owner Inspection Parties no less than ten (10) Business Days’ notice of such proposed testing so that such Owner Inspection Parties may arrange to observe such testing.
4. CHANGES AND EXTRA WORK
   1. **Owner Requested Change Order**. Without invalidating this Agreement, Owner may request changes in the Work or the Project. Owner shall request such changes in the Work or the Project by delivering a written Change Order request to Contractor. As soon as practicable after receipt of a Change Order request, but in no event later than five (5) Days after receipt of a Change Order request, Contractor shall prepare and forward to Owner in writing: (i) a quotation for the price for the extra or changed Work and change to the Schedule of Values (if applicable); (ii) an estimate of any required adjustment to the Construction Schedule; (iii) any adjustment to Performance Criteria; and (iv) an estimate of any impact of the proposed change on any Applicable Permit, warranty and any other term or condition of this Agreement. The Parties shall negotiate in good faith to determine the adjustment to the Contract Price for Change Orders contemplated by this Section 9.1. If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 9.1, then the adjustment to the Contract Price may be determined in accordance with Exhibit 16 but only if the Parties so agree. If the Parties do not agree either (A) to a fixed price Change Order, or (B) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 16, then Owner may nonetheless direct Contractor to proceed with the Work that is the subject of the Change Order, in which case (1) for a deductive Change Order, the Contract Price shall be reduced by the amount of any reduction in Contractor’s Direct Costs and (2) in the case of an additive Change Order (or Change Order involving additive and deductive elements), Contractor shall be paid an amount equal to any net increase in its Direct Costs in performing the Change Order plus a markup of six percent (6%). Contractor shall submit Applications for Payment no more frequently than monthly with respect to Contractor’s Direct Costs in accordance with the preceding sentence and Owner shall be obligated to pay such undisputed amounts within thirty (30) Days after Owner’s receipt of Contractor’s Application for Payment.
   2. **Contractor Requested Change Order**. Contractor may propose a Change Order to Owner if the proposed changes improve the Project or are otherwise advisable for the Work. Any such proposed Change Order shall not affect the obligation of Contractor to perform the Work and to deliver the Project in accordance with this Agreement unless and until Owner executes a Change Order pursuant to Section 9.6. If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 9.2, then the adjustment to the Contract Price may be determined in accordance with Exhibit 16 but only if the Parties so agree. If the Parties do not agree either (a) to a fixed price Change Order or (b) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 16, then no Change Order shall be executed. If Contractor proceeds with a proposed change in the Work pursuant to this Section 9.2 without receiving the consent of Owner, Contractor shall be responsible for the removal of any such work if a Change Order request is not subsequently approved by Owner; provided, however, that in the event of any Emergency, Contractor shall act, in its good faith discretion, to prevent threatened damage, injury or loss to any Person or property.
   3. **Mandatory Change Order**. Contractor shall be entitled to an adjustment in the Contract Price in the event of an Owner-Caused Delay and an adjustment in the Construction Schedule (including to any Guaranteed Dates) as set forth below upon the occurrence of any of the following events: (a) an Owner-Caused Delay or (b) a Force Majeure Event, in each case as and only to the extent permitted by Article 10. Contractor shall only be entitled to a Change Order if and to the extent it can demonstrate that the occurrence of a preceding event had an actual and demonstrable adverse impact (i) on Contractor’s Direct Costs or (ii) when taken together with all other delays caused by the events described in (a) and (b) above of which Contractor has timely provided notice to Owner in accordance with this Agreement, on Contractor’s ability to perform any Contractor Critical Path Item necessary for the achievement of any Guaranteed Date and, in such event, the Contractor Critical Path Items shall be correspondingly extended by the period of time (if any) that Contractor is actually and demonstrably delayed in the performance of such Contractor Critical Path Item as a result of the impact of such event (such period, the “Actual Delay”).
   4. **Limitation on Change Orders**. Change Orders shall be limited to (i) changes requested by Owner in accordance with Section 9.1, (ii) changes requested by Contractor and mutually agreed to by the Parties in accordance with Section 9.2 and (iii) changes in connection with mandatory Change Orders in accordance with Section 9.3. Notwithstanding anything to the contrary, other than to the extent resulting from a Force Majeure Event occurring after the Effective Date, in no event shall any Site Condition give rise to a Change Order.
   5. **Determining Change Order**. Any adjustment of the Construction Schedule pursuant to a Change Order shall be determined in accordance with Section 9.3 as well as Article 10. Any adjustment of the Contract Price shall include all costs to Contractor associated with the performance of the extra Work or changes or a reduction of the Contract Price based on savings to Contractor associated with the changes, as applicable. Adjustments in the Contract Price shall be determined in accordance with Section 9.1, Section 9.2 and Section 9.3, as applicable, as well as Article 10.
   6. **Change Order Must Be in Writing**. No change in the Work or extra Work shall be valid and effective unless it is in writing in the form of a Change Order signed by the representatives of both Parties that includes a description of the amount of any adjustment of the Contract Price and any adjustment to the Construction Schedule, the Schedule of Values or the Performance Criteria due to the change.
5. FORCE MAJEURE EVENT; OWNER-CAUSED DELAY; WIND DAYS
   1. **Certain Events.** No failure or omission to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim against a Party, or be deemed to be a breach or an Event of Default under this Agreement, if such failure or omission shall be caused by or arise out of a Force Majeure Event or an Owner-Caused Delay; provided that the Party claiming relief strictly complies with the provisions of Article 10. Notwithstanding anything to the contrary in the foregoing, the obligation to pay money in a timely manner in accordance with the terms hereof shall not be subject to the Force Majeure Event or Owner-Caused Delay provisions hereof. Furthermore, the Parties acknowledge and agree that adherence to the Project Schedule may be impacted by Wind Days (and the delays resulting therefrom) during the period beginning on the commencement of the start of erection of Wind Turbine Generators and continuing through the Project Mechanical Completion Date (the “WTG Construction Period”). If the number of Wind Days occurring during the WTG Construction Period exceeds eight (8) days at the Site during the WTG Construction Period (counting for purposes of this paragraph only Wind Days which affect the progress of Contractor at the Job Site), and as a sole result of such Wind Day, Contractor is required to extend the period that Contractor is leasing a large crane, thereupon, such occurrence shall be treated as a Force Majeure Event and Contractor shall be entitled to a Change Order for the amount of delay to the Guaranteed Project Mechanical Completion Date, which is caused by the excess Wind Days in respect thereof in accordance with Section 10.4.
   2. **Notice of Force Majeure Event and Owner-Caused Delay.** If a Party’s ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Owner-Caused Delay (in the case of Contractor), the Party claiming relief shall provide prompt notice, but in any event not later than twenty-four (24) hours of when the Force Majeure Event or Owner-Caused Delay first prevents or delays performance under this Agreement, to Contractor’s Representative or Owner’s Representative, as applicable, of any delay or anticipated delay in the claiming Party’s performance of this Agreement due to such Force Majeure Event or Owner-Caused Delay, including a description of the event including reasonable details (to the extent available and known to the claiming Party, at such time) regarding the underlying facts and conditions pursuant to which such Party is claiming a Force Majeure Event or Owner-Caused Delay and the anticipated length of the delay. After such notice, the claiming Party shall deliver written notice as soon as practicable, but in any event not later than five (5) Business Days after the claiming Party becomes aware of the delay or anticipated delay, describing in detail the particulars of the occurrence giving rise to the claim, including what date the claiming Party became aware of the occurrence of such event and an estimate of the event’s anticipated duration and effect upon the performance of its obligations, any action being taken to avoid or minimize its effect, and a proposed recovery schedule (the “Delay Notice”). The Party claiming relief due to a Force Majeure Event or Owner-Caused Delay shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event or an Owner-Caused Delay promptly after such information becomes available to such Party. IT IS A CONDITION TO CONTRACTOR’S RIGHT TO RECEIVE AN EXTENSION OF TIME, AN INCREASE TO THE CONTRACT PRICE AND OTHER ADJUSTMENTS TO THE CONSTRUCTION SCHEDULE THROUGH A CHANGE ORDER AS PROVIDED IN SECTION 10.3 THAT CONTRACTOR PROVIDE NOTICE TO OWNER WITHIN TWENTY-FOUR (24) HOURS OF THE TIME CONTRACTOR BECAME AWARE OR SHOULD HAVE BECOME AWARE OF THE FACTS OR CIRCUMSTANCES THAT PERMIT CONTRACTOR TO SEEK A CHANGE ORDER UNDER SECTION 10.3; IN THE EVENT CONTRACTOR DOES NOT PROVIDE NOTICE WITH SUFFICIENT DETAIL WITHIN TWENTY-FOUR (24) HOURS OF THE TIME CONTRACTOR BECAME AWARE OR SHOULD HAVE BECOME AWARE OF THE FACTS OR CIRCUMSTANCES THAT PERMIT CONTRACTOR TO SEEK A CHANGE ORDER UNDER SECTION 10.3, CONTRACTOR SHALL NOT BE ENTITLED TO A CHANGE ORDER UNDER ARTICLE 10 OR ANY OTHER RELIEF HEREUNDER.
   3. **Force Majeure Event and Owner-Caused Delay Conditions**. Upon the occurrence of a Force Majeure Event or an Owner-Caused Delay, the suspension of, or impact on, performance due to such Force Majeure Event or Owner-Caused Delay shall be of no greater scope and no longer duration than is required by such event (taking into account the obligations affected thereby). In addition, the claiming Party shall exercise reasonable efforts to (a) minimize and mitigate the effects of any delay caused by, and costs arising from said Force Majeure Event or Owner-Caused Delay, (b) continue to perform its obligations hereunder not affected by such event and (c) correct or cure the effect of such event. When the Party claiming relief due to such Force Majeure Event or Owner-Caused Delay is able to resume performance of its affected obligations, such Party shall provide prompt notice to the other Party to that effect and promptly resume performance of all of its obligations under this Agreement.
   4. **Contractor’s Remedies**.
      1. Force Majeure Event. As Contractor’s sole remedy for the occurrence of a Force Majeure Event, and provided that Contractor has otherwise materially complied with the applicable obligations it may have under Section 10.2 and Section 10.3, Contractor shall be entitled to an extension to the Construction Schedule (including to the Guaranteed Dates) to the extent of the Actual Delay in accordance with Section 9.3. Force Majeure Events shall not entitle Contractor to an adjustment in the Contract Price or otherwise be compensable.
      2. Owner-Caused Delay. As Contractor’s sole remedy for the occurrence of an Owner-Caused Delay, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 10.2 and Section 10.3, Contractor shall be entitled to an extension to the Construction Schedule (including to the Guaranteed Dates) to the extent of the Actual Delay in accordance with Section 9.3. If Contractor’s costs increase despite Contractor’s reasonable efforts to mitigate any such increases pursuant to Section 10.3, the Contract Price shall be increased by the Direct Costs incurred by Contractor as a direct result of such Owner-Caused Delay**.**
      3. Changes Orders. Upon the occurrence of an event that entitles Contractor to relief under this Section 10.4, and subject to Contractor’s compliance with the applicable provisions of this Article 10 and Article 9 in all material respects, Contractor and Owner shall prepare a Change Order in accordance with Article 9. The remedies set forth in this Section 10.4 shall be Contractor’s sole remedies for any such event.
6. SUSPENSION OF THE WORK
   1. **Owner-Directed Suspension**. Owner may, upon five (5) Business Days’ prior written notice to Contractor, direct Contractor to suspend its performance of all or any portion of the Work; provided that no prior written notice shall be required if such suspension is due to an Emergency or is otherwise required by Applicable Law. Upon the commencement of the suspension, Contractor shall stop the performance of the suspended Work except as may be necessary to carry out the suspension and protect and preserve the Work completed prior to the suspension. Contractor shall thereafter resume any suspended Work upon receipt of a written direction from Owner to resume the Work. Except as otherwise provided in Section 11.2, any period of Owner-directed suspension that extends beyond thirty (30) Days shall constitute an Owner-Caused Delay.
   2. **Costs and Schedule Relief for Contractor-Caused Suspension**. Notwithstanding anything to the contrary, Contractor shall bear its own costs and delays incurred due to a suspension by Owner pursuant to Section 11.1 where such suspension is necessitated due to a breach of this Agreement by Contractor, any act or omission by any Contractor Party or Subcontractor, an Emergency or as otherwise required by Applicable Law, and Contractor shall not be entitled to a change to the Construction Schedule or an extension of time to the Guaranteed Dates in any of such cases.
7. HAZARDOUS MATERIALS
   1. **Use by Contractor**. Contractor shall minimize and manage the use of Hazardous Materials in the performance of its obligations under this Agreement and shall not permit any of the Subcontractors, directly or indirectly, to cause any Release in, on or under the Project, the Site or the adjacent area except to the extent required for the performance of the Work, in such case, in accordance with Applicable Laws and Applicable Permits (including the performance of investigatory, monitoring, or other remedial work upon the Project, the Site or adjacent areas to the extent reasonably necessary to comply with Applicable Laws and Applicable Permits).
   2. **Remediation by Contractor**. Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by Applicable Laws and Applicable Permits in connection with any Release, disposal or the presence of Hazardous Materials, where existing prior to the Effective Date or brought onto or generated at the Site by any Contractor Party or Subcontractor or to the extent any such Release is caused by the negligent acts or omissions of any Contractor Party or Subcontractor, except to the extent such Release is caused by any Owner Party after the Effective Date. Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws and Applicable Permits relating to the use, transportation, storage, handling or presence of Hazardous Materials, or any Release, by any Contractor Party, Subcontractor or any Person acting on its or their behalf or under its or their control of any such Hazardous Materials brought onto or generated at the Site by any Contractor Party or Subcontractor, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work.
   3. **Hazardous Materials File**. During the performance of the Work, Contractor shall maintain and update a file of all safety data sheets for all Hazardous Materials used in connection with the Work hereunder, or used by or on behalf of any Contractor Party or Subcontractor at the Site and shall promptly deliver such file and any updates to Owner.
   4. **Notice of Hazardous Materials**. If Contractor discovers, encounters or is notified of any Release or exposure to Hazardous Materials at the Site:
      1. Contractor shall promptly notify Owner thereof and take all reasonable efforts, consistent with Applicable Law or Applicable Permits, to mitigate the impacts associated with such Hazardous Materials including, as appropriate, containing any Release and stopping Work in and restricting access to areas affected by such Hazardous Materials;
      2. if any Contractor Party or Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall, as promptly as reasonably practicable, remove such Hazardous Materials from the Site and remediate the Site to the extent required by all Applicable Laws and Applicable Permits in each case at Contractor’s sole cost and expense, except where such materials were Released after the Effective Date by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor; and
      3. if any Contractor Party or any Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay or costs incurred by Contractor as a result of the existence of such Hazardous Materials, except where such materials were Released after the Effective Date by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor.
   5. **Hazardous Materials Disposal System**. Contractor shall, in consultation with Owner, arrange and contract with contractors (who are appropriately licensed and insured) for the transportation from the Site and the management or disposal in accordance with Applicable Law and Applicable Permits of Hazardous Materials generated by or produced in connection with Contractor’s performance of the Work. To the extent required by Applicable Law or Applicable Permits, Contractor shall (a) prepare and maintain accurate and complete documentation of all Hazardous Materials used by Contractor or Contractor Parties at the Site in connection with the Project, and of the disposal of any such materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site and (b) prepare and deliver all required notifications and reports to Governmental Authorities in connection with the presence of Hazardous Materials at the Site that were brought onto the Site or generated by any Contractor Party or Subcontractor. Contractor shall comply with Owner’s reasonable requirements and procedures with respect to the disposal of such Hazardous Materials.
   6. **Scope of Contractor Environmental Indemnification**. Contractor hereby specifically agrees to indemnify, defend and hold Owner and the Owner Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including all reasonable consulting, engineering, attorneys’ or other professional fees), whether or not involving damage to the Project or the Site, that they may incur or suffer by reason of:
      1. any use of or introduction of Hazardous Materials to the Site by any Contractor Party or Subcontractor in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;
      2. any Release or disturbance of Hazardous Materials in connection with the performance of the Work by Contractor or any of its Subcontractors (except as provided in Section 12.7);
      3. any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by any Contractor Party or any Subcontractor;
      4. any action reasonably necessary to abate or remediate Hazardous Materials described in paragraphs (a) or (b) above, or prevent a violation or threatened violation of any Environmental Law by any Contractor Party or Subcontractor; and
      5. any action required by Contractor to mitigate a situation created by the violation of any Applicable Law or Applicable Permit by any Contractor Party or Subcontractor.
   7. **Scope of Owner Environmental Indemnification**. Owner hereby specifically agrees to indemnify, defend and hold Contractor and Contractor Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including, all reasonable consulting, engineering, attorneys’ or other professional fees), whether or not involving damage to the Project or the Site, that they may incur or suffer by reason of:
      1. any Hazardous Materials present or used, brought upon, transported, stored, kept, discharged, or spilled by Owner or any Owner Party in, on, under or from the Site after the Effective Date including any Release by Owner or its Affiliates, in accordance with the terms of this Agreement and all Applicable Laws;
      2. any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by Owner; and
      3. any action reasonably necessary to abate or remediate Hazardous Materials described in paragraphs (a) or (b) above, or to prevent a violation or threatened violation of any Environmental Law by Owner.
8. TITLE AND RISK OF LOSS
   1. **Equipment – Risk of Loss Before Project Mechanical Completion**. From the Effective Date and until the Project Mechanical Completion Date, subject to the provisions of this Article 13, Contractor has care, custody and control of all Equipment and other items that become part of the Project and shall exercise due care with respect thereto and assumes the risk of loss and full responsibility for the cost of replacing or repairing any damage to the Project and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased for permanent installation in or for use during construction of the Project.
   2. **Equipment – Risk of Loss After Project Mechanical Completion**. Owner shall take possession and control and shall assume and shall bear the risk of loss and responsibility in respect of the Project completed and transferred to Owner (excluding Contractor Equipment) upon the Project Mechanical Completion Date or the earlier termination of this Agreement, unless the loss or damage to the Project is (a) caused by any Contractor Party, Subcontractor or other Person over whom Contractor has control or (b) a defect covered by the Warranties provided by Contractor under this Agreement.
   3. **Title**.
      1. Contractor warrants good and marketable title, free and clear of all Contractor Liens (to the extent Owner’s payments to Contractor are made in accordance with this Agreement), to all Work, Equipment and other items furnished by Contractor or any of the Subcontractors that become part of the Project.
      2. Title to the Project, and to any discrete and identifiable item or series of Equipment, shall pass to Owner upon the earliest to occur of (i) receipt by Contractor of payment (less any Retainage) in full therefor, (ii) delivery of such Equipment to the Site; (iii) Project Mechanical Completionand (iv) with respect to any applicable Equipment, incorporation of such Equipment into the Project.
9. INTELLECTUAL PROPERTY
   1. **Title to Plans and Specifications**. Upon Owner’s payment of the Contract Price as provided in this Agreement, the documentation prepared by Contractor (including all Contractor Submittals) shall become the exclusive property of Owner; provided, however, that Contractor’s intellectual property rights in any such documentation shall remain with Contractor and nothing in this Agreement shall be construed as limiting Contractor’s rights to use its know-how, experience and skills of its employees (excluding Owner confidential information), whether or not acquired during performance of the Work, or to perform any construction or other services for any other person. Notwithstanding the foregoing, Contractor agrees to grant, and hereby does grant, to Owner an irrevocable, fully paid-up, royalty-free, perpetual, non-exclusive, world-wide, transferable license to use such intellectual property rights as needed for installing, owning, operating, repairing, maintaining, replacing, modifying and expanding the Project (the “Licensed Technology”).
   2. **Intellectual Property**. Contractor shall include, as a term or condition of each contract with a Major Subcontractor employed by it in the performance of the Work, an intellectual property indemnification provision (including patents, trademarks, copyrights and trade secrets) extending from the Major Subcontractor to Owner and Contractor, with similar obligations as those set forth in Section 14.4. Contractor shall enforce and render all assistance Owner may reasonably require on a reimbursable cost basis to enforce the terms of those indemnifications by such Major Subcontractors. This obligation shall not reduce or otherwise affect Contractor’s obligation to provide all Work to Owner free and clear of all intellectual property infringement or other violation claims.
   3. **Procurement of Proprietary Rights**.
      1. Contractor warrants that no infringement of any patents, trademark, registered design, copyright, design right or other registerable or proprietary intellectual property right of any kind will be caused by the performance of the Work, the ownership of confidential information or the Project and the Project’s operation in accordance with the Required Manuals.
      2. Contractor shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into the Project. In performing the Work, Contractor shall not incorporate into the Project any materials, methods, processes or systems which involve the use of any confidential information or intellectual property rights that Owner or Contractor do not have the right to use in connection with the performance of the Work or the construction, ownership or operation of the Project or which may cause any Losses to Owner or Contractor arising out of claims of infringement of any domestic intellectual proprietary rights, or applications for such rights, or use of confidential information.
   4. **Intellectual Property Infringement**.
      1. Contractor shall pay all royalties, license and other fees payable under or in respect of, and shall defend, indemnify and hold harmless the Owner Parties from and against any claim arising out of, resulting from, or reasonably incurred in contesting, (i) any unauthorized disclosure by Contractor or any Subcontractor or use of any trade secrets, (ii) any other intellectual property infringement (including patent, copyright or trademark infringement) caused by Contractor’s performance, or that of its Subcontractors, under this Agreement, or (iii) any claim asserted against such Owner Party that (A) concerns any equipment or other items provided by Contractor or any Subcontractor under this Agreement, (B) is based upon the performance of the Work by Contractor or any Subcontractor, including the use of any tools or implements for construction by Contractor or any Subcontractor, or (C) is based upon the design or construction of any item or unit specified by Contractor under this Agreement or upon the operation of any item or unit according to directions embodied in Contractor’s final process design, or any revision thereof, prepared or approved by Contractor unless to the extent that such claims relate, in whole or in part, to (a) Owner’s modification of such equipment or other items made without Contractor’s approval, (b) the combination of such item with other products, materials, equipment, parts or apparatus not approved by Contractor, unless such combination was done in accordance with this Agreement, any change order, the Technical Specifications, or otherwise agreed to by the Contractor, and provided that such claim could not be brought but for such combination and such claim is based on infringement by the other products, materials, equipment, parts or apparatus or (c) a failure to promptly install an update required by Contractor, provided such update does not reduce or potentially reduce the performance of the Project as of such date or otherwise adversely affect the Project in any way with respect to the Project Transaction Documents or otherwise.
      2. If such claim for infringement or other violation results in a suit against an Owner Party, Contractor shall, at its election and in the absence of a waiver of this indemnity by such Owner Party, have sole charge and direction of said suit on such Owner Party’s behalf so long as Contractor diligently prosecutes the same. If Contractor has charge of a suit brought against an Owner Party by a third party, such Owner Party shall render such assistance at Contractor’s expense as Contractor may reasonably require in the defense of such suit except that such Owner Party shall have the right to be represented therein by counsel of its own choice and at its own expense. If such Owner Party is enjoined from completion of the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof as a result of such claim or any litigation based thereon, Contractor shall promptly seek to have such injunction removed at no cost to any Owner Party. If in such claim any device is held to constitute an infringement or other violation and its use is enjoined, Contractor shall either secure for each of the Owner Parties the right to continue using such device by suspension of the injunction or by procuring for such Owner Party a license, or otherwise at Owner’s option and at Contractor’s expense, replace such device with a non-infringing or violating device of equivalent utility, performance and expected life, or modify it so that it becomes non-infringing or violating without impairing its utility, performance and expected life.
10. DEFAULTS AND REMEDIES
    1. **Contractor Events of Default**. Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a “Contractor Event of Default”):
       1. Contractor fails to pay any amount due and owing to Owner under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of twenty (20) Business Days or more after receipt of notice from Owner stating that if Contractor does not pay such amount Owner may terminate in accordance with Section 15.2;
       2. an Insolvency Event occurs with respect to Contractor or, while the Contractor Performance Security is required to be in place, Contractor’s Guarantor;
       3. Contractor fails to maintain any insurance coverages required of it in accordance with Article 18 and Contractor fails to remedy such breach within thirty (30) Days after the date on which Contractor first receives a notice from Owner with respect thereto;
       4. Contractor assigns or transfers this Agreement or any right or interest herein except in accordance with Article 21;
       5. prior to the Final Completion Date, Contractor or any Affiliate of Contractor defaults under any other Project Transaction Document, or any such document is invalid, no longer in effect or unenforceable for any reason;
       6. except as a result of an Owner Event of Default, a Force Majeure Event, an Owner-Caused Delay or such other event for which Contractor is entitled to schedule relief under Section 9.3, Contractor fails to achieve Project Mechanical Completion within sixty (60) Days of the final Guaranteed Mechanical Completion Date;
       7. except as a result of an Owner Event of Default, a Force Majeure Event, an Owner-Caused Delay or such other event for which Contractor is entitled to schedule relief under Section 9.3, Contractor fails to achieve Final Completion within sixty (60) Days of the Guaranteed Final Completion Date;
       8. the total amount of Liquidated Damages or other damages owed by Contractor to Owner under this Agreement (including damages for any Losses incurred by Owner or Owner Parties pursuant to Article 17) exceed the applicable maximum liability thresholds set forth in Section 24.2;
       9. except as a result of an Owner Event of Default, a Force Majeure Event, an Owner-Caused Delay or such other event for which Contractor is entitled to schedule relief under Section 9.3, Contractor Abandons the Work and Contractor fails to remedy such breach within ten (10) Business Days after receipt of notice from Owner;
       10. Contractor violates in any material respect any of the provisions of this Agreement not otherwise addressed in this Section 15.1, which violation remains uncured for thirty (30) Days following Contractor’s receipt of written notice thereof from Owner; provided, that if such violation is capable of cure but cannot reasonably be cured within such thirty (30) Day period, then Contractor’s right to cure shall extend beyond for an additional period (not to exceed thirty (30) Days) so long as Contractor is diligently attempting to cure such violation;
       11. a representation or warranty made by Contractor in or pursuant to this Agreement was false or misleading in any material respect as of the date on which it was made and has not been cured within ten (10) Days after Contractor receives a notice from Owner with respect thereto; provided that such ten (10) Day limit shall be extended if: (i) such failure is reasonably capable of cure and curing such failure reasonably requires more than ten (10) Days; and (ii) Contractor commences such cure within such ten (10) Day period and diligently prosecutes and completes such cure within sixty (60) Days thereafter, in each case, after the date on which Contractor receives a notice from Owner with respect thereto;
       12. Contractor’s Guarantor defaults in the performance of its obligations under the Contractor Performance Security or the Contractor Performance Security ceases to be in full force and effect as required by Section 4.9 and, in either case, Contractor has failed to deliver a comparable replacement therefor within five (5) Business Days after such failure;
       13. the Transmission Provider terminates the Interconnection Agreement due to an event of default or termination right thereunder resulting from (i) the negligence or willful misconduct of any Contractor Party or any Subcontractor in connection with this Agreement or (ii) the failure of any Contractor Party or any Subcontractor to comply with any of its obligations or a breach under this Agreement; or
       14. Contractor fails to comply with the requirements of Section 27.22.
    2. **Owner Rights and Remedies**. If a Contractor Event of Default occurs, subject to Article 24 and without permitting double recovery, Owner shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:
       1. Owner may terminate this Agreement by giving notice of such termination to Contractor and, upon such termination:
          1. Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner such of Contractor’s subcontracts or purchase orders as Owner may request (in which case Contractor shall execute all assignments or other reasonable documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to effect such assumption by Owner), and shall license, in the manner provided herein, to Owner all Intellectual Property Rights (to the extent not previously licensed in accordance with the terms hereof) of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may reasonably direct, and Owner may take possession of any or all Contract Documents necessary for completion of the Work (whether or not such Contract Documents are complete); and
          2. Contractor shall be liable to Owner for damages as provided in Section 15.5 or as otherwise provided herein;
       2. Owner may direct Contractor to turn over to Owner all Equipment and other materials paid for by Owner;
       3. Owner may proceed against the Contractor Performance Security in accordance with its terms;
       4. Subject to the dispute resolution procedures set forth in Article 23, Owner may seek equitable relief solely to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement;
       5. Owner may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement;
       6. Subject to the dispute resolution procedures set forth in Article 23 and without permitting double recovery, Owner may seek actual damages subject to the limitations of liability set out in this Agreement;
       7. Owner may pursue remedies under Section 4.10;
       8. Owner may pursue remedies in accordance with Section 15.6; and
       9. Without limiting Contractor’s right to assert any defenses with respect to such payment, Owner may make such payments, acting reasonably, that Contractor is failing to pay in connection with the relevant Contractor Event of Default and either offset the cost of such payment against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts to Owner.
    3. **Owner Events of Default**. Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an “Owner Event of Default”):
       1. Owner fails to pay any amount of the Contract Price owing under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of twenty (20) Business Days after Owner has received a notice of such payment default from Contractor stating that if Owner does not pay such amount Contractor may terminate this Agreement in accordance with Section 15.4; or
       2. An Insolvency Event occurs with respect to Owner.
    4. **Contractor Rights and Remedies**. If an Owner Event of Default occurs, subject to Article 24 and Section 15.5 and without permitting double recovery, Contractor shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Contractor hereunder:
       1. Contractor may suspend the Work by giving notice of such suspension to Owner concurrently with or at any time after Contractor gives Owner notice described in Section 15.3(a);
       2. Contractor may terminate this Agreement upon providing notice of such termination to Owner and shall be entitled to the remedy set forth in Section 15.5(a);
    5. **Termination Payment**.
       1. Upon any termination of this Agreement by Contractor for an Owner Event of Default, Owner shall pay the applicable Termination Payment due to Contractor on the date that is thirty (30) Days after Owner’s receipt from Contractor of an Application for Payment for such Termination Payment. Such Termination Payment shall be Contractor’s sole and exclusive remedy with respect to an Owner Event of Default that results in termination of this Agreement.
       2. In addition to the remedies provided in Section 15.2, upon termination of this Agreement for a Contractor Event of Default, subject to Article 24, Owner shall be entitled to recover from Contractor promptly upon notice to Contractor, as damages for loss of bargain and not as a penalty, (and in addition to all other amounts Owner is entitled to recover under this Agreement, including any liquidated damages or indemnification obligations owing from Contractor) an amount equal to the reasonable and direct costs of completing the Work (taking into account the requirements of the Construction Schedule and including compensation for obtaining a replacement contractor required as a consequence of such Contractor Event of Default) minus those costs that would have been payable to Contractor but for such Contractor Event of Default (and after considering all other amounts Owner is entitled to recover under this Agreement, including any liquidated damages or indemnification obligations owing from Contractor). Upon determination of the total cost of such remaining Work, Owner shall notify Contractor in writing of the amount, if any, of the resulting Termination Payment that Contractor shall pay Owner.
    6. **Termination Right Not Exclusive**. Except as otherwise set forth in Section 15.5(a), a Party’s right to terminate this Agreement pursuant to this Article 15 is in addition to, and without derogation from, any other rights and remedies such Party may have against the other Party under this Agreement or any Applicable Law, and each Party expressly reserves all such rights and remedies it may have against the other Party, whether in contract, tort or otherwise.
    7. **Owner Termination for Convenience.** Owner may in its sole discretion terminate the Work and this Agreement for convenience and without cause at any time by giving notice of termination to Contractor to be effective upon the receipt of such notice by Contractor. In the event of such termination, as Contractor’s sole and exclusive remedy, Owner shall, on the date that is thirty (30) Days after Owner’s receipt of an Application for Payment therefor, pay the applicable Termination Payment due to Contractor.
    8. **Contractor Conduct**. Upon issuance of a notice of termination pursuant to this Article 15, Contractor shall: (a) cease operations as directed by Owner in the notice; (b) take action necessary, or that Owner may reasonably direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in such notice, or except as expressly requested by Owner or under Section 15.2(a)(i), terminate all existing subcontracts and purchase orders that are terminable without premium, penalty or termination charges and enter into no further subcontracts and purchase orders with respect to the Work or the Project.
11. WARRANTIES
    1. **Warranty Provisions**.
       1. Warranty. Contractor warrants and guarantees to Owner during the Warranty Period that: (i) the Contractor Facilities and the Work shall be free from improper workmanship and Defects, new, unused and undamaged when installed, in compliance with Applicable Law, the Applicable Permits, the Applicable Standards, and the requirements of this Agreement, suitable for Owner’s use as a wind-powered electrical generation facility (subject to normal wear and tear and maintenance and operation requirements and obsolescence that may result from advance in technology or other changes in needs or uses) under the climatic and normal operating conditions described in the Technical Specifications; (ii) the design, engineering, construction and procurement services related to the Contractor Facilities and the assembly, installation and erection of the WTGs and all aspects of the Work shall be performed with Contractor’s best skill and judgment, in a good and workmanlike manner, conform to and be designed, engineered and constructed in accordance with the Contractor Submittals, Scope of Work, Technical Specifications, all Applicable Laws, Applicable Standards and Applicable Permits and other terms of this Agreement, conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in wind power projects similar to the Project, and contain the Equipment, supplies and materials described in the Scope of Work; (iii) the completed Work shall perform as explicitly described or implied in this Agreement, except that the Contractor shall not be responsible for any failure of the completed Work to perform its intended functions as a complete, integrated wind-powered electric generating facility which is caused by the failure of the Owner-Furnished Equipment; and (iv) none of the Work, the Contractor Facilities, the Equipment, the Contractor Submittals, Technical Specifications, final plans and the design, engineering and other services rendered by Contractor hereunder, nor the use or ownership thereof by Owner in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks ((i), (ii), (iii) and (iv), collectively, the “Warranty”).
       2. Warranty Period; Extensions Thereof. The Warranty shall commence on the Project Mechanical Completion Date and shall continue until and expire on the second (2nd) anniversary of the Project Mechanical Completion Date (such applicable period, the “Warranty Period”); provided, however, if: (a) Owner fails to observe any Defect during the Warranty Period; and (b) such Defect would not have been revealed during the Warranty Period, despite Owner’s operation of the Project in accordance with commercially reasonable practices, then the Warranty Period (and the corresponding rights and obligations identified in this Article 16) shall be extended to effect repair of such Defect, provided Owner delivers Contractor written notice of such Defect within twelve (12) months from the end of the Warranty Period. Provided further that if ten percent (10%) or more of any type of component of the Project requires repair or replacement within the Warranty Period, then the warranty for that type of component shall be automatically extended for all such components of that type for an additional two (2) years from the date of the failure that caused the percentage of failures to reach ten percent (10%).
       3. Correction of Deficiencies. If during the Warranty Period the Work is found to contain Defects, or Contractor is otherwise in breach of any of the warranties set forth in this Section 16.1and Contractor receives written notice thereof during the Warranty Period or promptly after the end of the Warranty Period (or the later period as provided in Section 16.1(b), Contractor shall at its sole cost and expense (including the cost of labor and equipment), promptly correct, repair, replace such Defect or otherwise cure such breach as promptly as practicable upon being given written notice directing Contractor to correct such Work or remedy such breaches of Warranties with materials of new and good quality, or re-perform all such defective components of the Infrastructure Facilities or the Work (“Warranty Service”). Owner shall provide Contractor with reasonable access (with an object of minimizing revenue and operational disruption) to the Project in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Project. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including, without limitation, necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Owner’s reasonable satisfaction that there is not a risk of the reoccurrence of such problem. Contractor’s obligations under this Section shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any Subcontractor to Contractor or Owner concerning any Defect or breach of warranty.
       4. Conformance of Warranty Service to Specifications. Contractor warrants in favor of Owner that all materials incorporated into the Work as part of repairs to and replacements of Work by Contractor or any Subcontractor, and repairs to and replacements of Work pursuant to the warranties set forth in this Section 16.1shall conform to the requirements of this Agreement and all applicable warranties for the foregoing and shall be free from Defects. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty complies with the requirements of the warranties set forth in this Section 16.1. The warranty period for the Warranty Services shall continue until and expire on the later of (i) the end of the Warranty Period or (ii) one year from the completion of such Warranty Service.
       5. Warranty Service at Contractor’s Cost; Survival. Contractor shall perform all Warranty Service at its own cost and expense. The provisions of this Section apply to Work performed by Subcontractors as well as Work performed directly by Contractor. Contractor’s obligation to correct, repair, replace or re-perform defective Work pursuant to this Article 16 shall survive the termination of this Agreement to the extent of Work performed by Contractor or any of its Subcontractors or paid for by Owner. Contractor shall not be excused from performing such Warranty Service after the end of the Warranty Period, if it receives notice of the Defect during the Warranty Period or as otherwise provided in this Article 16.
       6. Risk of Loss or Damage. Whenever Warranty Service is required pursuant to this Article 16, Contractor shall bear the risk of physical loss or damage to the Project as a result of Contractor’s activities performing Warranty Service, to the extent not covered by Owner’s builder’s risk insurance as required to be provided by Owner pursuant to Section 18.2, and in the event of any reimbursement by Owner’s builder’s risk insurance for such damage, Contractor shall be responsible for associated deductibles or retention. If any Work must be removed from the Site, transportation charges associated with any repair shall be borne by Contractor.
       7. “Immediate Need” Corrective Actions. Where Owner determines that an “immediate need” exists, Owner may undertake corrective action, but Contractor reserves its right to investigate and determine the eligibility of such warranty claims. For the purposes of this Section 16.1(g), “immediate need” shall mean a situation where Owner reasonably believes that an imminent threat of harm to persons or property or a situation exists that could materially adversely impact the operation of the Project or the transmission system of the Utility. If the Owner has independently taken corrective action in the case of an “immediate need” pursuant to this Section 16.1(g), then Owner shall issue to Contractor: (i) a failure report, which shall contain technical and logistical information in sufficient detail to enable Contractor to evaluate (a) the Owner’s representation of an “immediate need” and (b) the appropriateness of the Owner’s corrective action, which shall be provided by Owner to Contractor within a reasonable period of time after the occurrence of such immediate need event; and (ii) copies of invoices received or prepared for costs and expenses claimed by Owner for reimbursement by Contractor (but only if such Owner work is due to a Defect in the Work or breach of the Warranty and not in relation to any defect or fault in the Utility’s transmission system). Work performed by Owner in relation to a warranty claim under this Section 16.1(g) shall be billed on a “time and materials” basis (as further defined below) and such invoices shall be paid by Contractor within thirty (30) days (subject to review and approval by Contractor). For the purposes of this Section 16.1(g), “time and materials” shall mean: (a) with respect to “time,” the product of one hundred ten percent (110%) of the normal hourly wage (including fringe benefits, insurance and taxes) Owner pays with respect to its particular employee (not including overhead) multiplied times the number of hours each employee performed the particular work; and (b) with respect to “materials,” one hundred ten percent (110%) of the actual purchase price paid by Owner or an Affiliate to a third party for the materials incorporated or consumed in connection with the work; and (c) with respect to work performed by a subcontractor (other than an entity which is an Affiliate of Owner, work done by any such entity being deemed work done by Owner through its own employees for purposes of this Section 16.1(g)), one hundred ten percent (110%) of the actual amount paid by Owner to the subcontractor for such work.
    2. **Delay**. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified in writing of such noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than the date made available by Owner in such notice for performing the Warranty Service, which date shall be at least ten (10) Business Days after such notice. If, after notification of a Defect, Contractor shall delay past such date in commencing or continuing, or shall delay unnecessarily in completing, Warranty Service with respect to such Defect, then Owner may correct such Defect so that the defective component complies with the requirements of this Agreement, and Contractor shall be liable for all Direct Costs, charges and expenses reasonably incurred by Owner in connection with such repair or replacement and shall forthwith pay to Owner an amount equal to such costs, charges and expenses upon receipt of invoices with supporting documentation certified by Owner. Nothing in this Section 16.2 shall in any way limit or relieve Contractor of its obligations under this Agreement.
    3. **Subcontractor Warranties**.
       1. Contractor shall, for the protection of Contractor and Owner, obtain from the Subcontractors such guarantees and warranties with respect to Work performed as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in Section 16.1and shall be made available and assignable to Owner to the full extent of the terms thereof upon the expiration of the Warranty Period. Owner shall be an express third-party beneficiary of all such guarantees and warranties. To the extent available, Owner shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Change Order issued in accordance with the provisions of Article 9. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall deliver to Owner copies of all relevant contracts providing for such guarantees and warranties.
       2. Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall assign to Owner all warranties received by it from Subcontractors or otherwise obtained under Section 16.3(a). Such assignment of warranties to Owner must also allow Owner to further assign such warranties. However, in the event that Owner makes any warranty claim against Contractor with respect to services supplied in whole or in part by any Subcontractor, and Contractor fulfills its obligations with respect to such claim by Owner, Contractor shall be entitled to enforce for its own benefit any warranty given by such Subcontractor with respect to such services.
    4. **NO IMPLIED WARRANTIES**. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, FOR PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT. The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth in this Agreement.
    5. **End of Warranty Period**. During the thirty-day period prior to the scheduled end of the Warranty Period, Contractor and Owner shall jointly conduct an inspection and test of the Work to determine if any additional warranty items are required to be repaired or replaced pursuant to the Warranty in order to develop a list of such items; provided, however, that such actions by Owner shall not constitute a waiver of Owner’s rights with respect to latent Defects not discovered at such time.
    6. **Limitations**. The provisions of this Article 16shall survive expiration or termination of this Agreement.
    7. **Proprietary Rights**. Without limiting any of the provisions of this Agreement, if Owner or Contractor is prevented from completing the Work or any part thereof, or from the use, operation or enjoyment of the Work or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from Contractor’s performance (or that of its Subcontractors) under this Agreement, including, without limitation, the Work, the Contractor Submittals, the Technical Specifications or other items and services provided by Contractor or any Subcontractor hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its Affiliates or assigns, as applicable, the right to use such materials, Contractor Submittals or Technical Specifications in connection with the operation and maintenance of the Project, without obligation or liability; or (b) replace such materials, Contractor Submittals or Technical Specifications, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor’s sole expense, but subject to all the requirements of the Contract Documents.
12. PUBLICITY
    1. **Press Releases**. Subject to Section 20.1, as applicable, the Parties shall jointly agree upon the necessity and content of any press release in connection with the matters contemplated by this Agreement. Contractor shall coordinate with Owner with respect to, and provide Owner advance copies of the text of, any proposed announcement or publication that may include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case, who agree to keep such information confidential. Contractor shall not disseminate any such announcement or publication without Owner’s consent, which may be withheld in Owner’s sole and absolute discretion.
13. INSURANCE
    1. **Contractor’s Insurance**. Contractor shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part I of Exhibit 13 (“Contractor’s Insurance”). Unless otherwise specified in Exhibit 13, Contractor’s Insurance shall commence no later than the Effective Date and shall remain in full force and effect at all times from commencement of the Work until Project Mechanical Completion, unless required for a longer or shorter period in accordance with Exhibit 13.
    2. **Owner’s Insurance**. Owner shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part II of Exhibit 13 (“Owner’s Insurance”). Owner’s Insurance shall commence on the Effective Date and shall remain in full force and effect at all times until Project Mechanical Completion, unless required for a longer or shorter period in accordance with Exhibit 13. Subject to the prior agreement of the Parties and the affected insurers, Owner’s Insurance may be included, at Owner’s cost and responsibility, under one or more policies of Contractor’s Insurance.
    3. **Ratings**. All policies of insurances required or otherwise contemplated under this Agreement shall be provided by insurance companies having an A.M. Best Insurance Reports rating of A- X or better, and shall otherwise be in accordance with the requirements of this Article 18 and Exhibit 13.
    4. **Policy Requirements**. Contractor’s Commercial General Liability and Worker’s Compensation insurance policies shall: (a) provide for a waiver of subrogation rights against Owner and all Owner Parties and any Financing Parties, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy; and (b) list Owner and the Owner Parties as “additional named insureds” with respect to liability arising out of or in connection with the Work by or on behalf of Contractor, excluding any contributory liability of Owner or any Owner Parties.
    5. **No Limitation and Release**. Unless otherwise expressly provided in this Agreement, the insurance policy limits set forth in Exhibit 13 shall not be construed to limit the liability of the insured Party under this Agreement. Notwithstanding the foregoing sentence, each Party releases and waives any and all rights of recovery against the other Party and all of its Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters that the other Party may otherwise have or acquire in, or from, or in any way connected with, any loss covered by policies of insurance maintained or required to be maintained by that Party pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
    6. **Reduction or Ceasing to be Maintained**. If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting any other rights of the other Party set forth in this Agreement that arises as a result of such failure) the other Party may at its option take out and maintain the insurance required hereby and, in such event, (a) Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor, or (b) Owner shall promptly reimburse Contractor for the premium of any such replacement insurance, as applicable.
    7. **Expiration**. With respect to any insurance carried by Contractor which may expire before the date specified in Section 18.1, Contractor shall, at least one (1) month prior to the relevant policy renewal date, submit to Owner certificates of insurance, insurer binders or other satisfactory evidence that coverage required by this Article 18 has been renewed.
14. INDEMNITY
    1. **Contractor Indemnity**. Contractor shall indemnify, hold harmless and defend Owner and all Owner Parties from and against the following:
       1. all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable during the performance of the Work or from performing or from a failure to perform any of its obligations under this Agreement, or any curative action under any Warranty following performance of the Work;
       2. all Losses associated with a take of a protected species if any are found on the Site during the performance of the Work;
       3. Losses sustained by Owner as a result of Contractor’s breach of Section 3.29;
       4. all Losses incurred by Owner as a result of a claim under the Project Labor Agreement against Owner arising from the construction of the Project and performance of the Work;
       5. all Losses that directly arise out of or result from all claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanic’s lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys’ fees and expenses incurred by any Owner Party in discharging any Contractor Lien, except to the extent of a breach by Owner in relation to any obligation it has to make a payment under this Agreement;
       6. all Losses that directly arise out of or result from employers’ liability or workers’ compensation claims filed by any employees or agents of Contractor or any of the Subcontractors, regardless of negligence of Owner or any Owner Party contributing to such Losses;
       7. all Losses arising from third-party claims, including by Subcontractors, for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Contractor or any of the Subcontractors to comply with the terms and conditions of Applicable Laws during their performance of the Work;
       8. all fines or penalties issued by any Governmental Authority that directly arise out of or result from the failure of the Project (or any portion thereof), as designed, constructed and completed by Contractor or any Subcontractor, to be capable of operating in compliance with all Applicable Laws or the conditions or provisions of all Applicable Permits;
       9. any and all fines, penalties or assessments issued by any Governmental Authority that Owner may incur as a result of executing any applications to any such Governmental Authority at Contractor’s request;
       10. all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Contractor to pay, as and when due, all Taxes (other than Owner Taxes), fees or charges of any kind imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;
       11. all Losses arising from claims by any Governmental Authority claiming Taxes (other than Owner Taxes) based on gross receipts or on income of Contractor, any of the Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of the Subcontractors, or any of their respective agents or employees under this Agreement;
       12. all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Contractor, a Subcontractor or any of their respective agents or employees to comply with any Applicable Permit;
       13. all Losses arising from claims by any counterparties to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor’s performance of the Work;
       14. all Losses, including claims for property damage, personal injury or bodily injury or death, whether or not involving damage to the Project or the Site, that arise out of or result from:
           1. the use of Hazardous Materials by Contractor or any of its Subcontractors in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;
           2. any Release in connection with the performance of the Work by Contractor or any of its Subcontractors; or
           3. any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor or any of its Subcontractors with respect to Hazardous Materials in connection with the performance of the Work.
    2. **Owner Indemnity**. Owner shall indemnify, hold harmless and defend Contractor and all Contractor Parties from and against the following:
       1. all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any grossly negligent or willful act or omission during the performance by Owner or any Affiliate, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable, of their obligations or from a failure to perform any of their obligations under this Agreement;
       2. all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay, as and when due, all Owner Taxes for which Owner is obligated to pay pursuant to the terms of this Agreement;
       3. all Losses that directly arise out of or result from employers’ liability or workers’ compensation claims filed by any employees or agents of Owner, regardless of negligence of any Contractor Party or Subcontractor contributing to such Losses; and
       4. all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Owner, or any of its contractors, agents or employees, to comply with any Owner Acquired Permit.
    3. **Patent Infringement and Other Indemnification Rights**.
       1. Contractor shall defend, indemnify, and hold harmless the Owner Parties against all Losses arising from any Intellectual Property Claim. If Owner provides notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense, settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys’ fees, awarded against Owner. In addition to the indemnity set forth above, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of a final, non-appealable judgment of a court of competent jurisdiction or as a result of injunctive relief provided by a court of competent jurisdiction, Contractor shall use its best efforts to have such injunction removed at no cost to Owner; and Contractor shall, at its own expense and without impairing the performance requirements set forth in this Agreement: (i) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, Equipment or other Work; (ii) if the obligation set forth in subclause (i) is not commercially feasible, modify the infringing service, Equipment or other Work with service, Equipment or other Work, as applicable, with substantially the same performance, quality and expected life, so that the same becomes non-infringing; or (iii) if the obligations set forth in subclauses (i) and (ii) are not commercially feasible, replace the infringing service, Equipment or other Work with non-infringing service, Project or other Work, as applicable, of comparable functionality and quality; provided that in no case shall Contractor take any action which adversely affects Owner’s continued use and enjoyment of the applicable service, Equipment, or other Work without the prior written consent of Owner.
       2. Notwithstanding anything set forth in Section 24.3(a) to the contrary, Contractor shall have no indemnity obligations under Section 24.3(a) for any Intellectual Property Claim to the extent arising from or in connection with (i) any modification of the Work by Owner or any third party (other than any Contractor Party or Subcontractor) of the Work, the Project, the Equipment or other goods, materials, supplies, items or services provided by Contractor (or any of its Affiliates or Subcontractors) that was not, in either case, authorized by any Contractor Party or Subcontractor or (ii) Owner’s material variation from Contractor’s recommended written procedures for using the Work (unless otherwise authorized by any Contracting Party or Subcontractor).
       3. Owner’s acceptance of the supplied materials and equipment or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder.
    4. **Environmental Indemnification**. The scope of Contractor’s and Owner’s indemnification obligations with respect to environmental matters are addressed in Section 19.1(n), Section 12.6 and Section 12.7.
    5. **Right to Defend**. An Indemnitee shall provide notice to the Indemnifying Party within thirty (30) Days after receiving notice of the commencement of any legal action or of any claims or threatened claims against such Indemnitee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 19 or any other provision of this Agreement providing for an indemnity (such notice, a “Claim Notice”), and the Indemnifying Party shall thereafter promptly elect whether to assume such defense. The Indemnitee’s failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the Indemnifying Party only by the amount of damages attributable and prejudicial to such failure or tardiness, but shall not otherwise relieve the Indemnifying Party from any liability that it may have under this Agreement. If the Indemnifying Party assumes the defense, (i) it shall retain counsel reasonably acceptable to the Indemnitee and (ii) the Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, and the fees and expenses of such special counsel shall be borne by the Indemnitee unless the Indemnifying Party agrees otherwise or except as set forth in the following sentence. If the Indemnifying Party does not assume the defense of the Indemnitee, does not diligently prosecute such defense, or if a conflict (including any actual or potential differing of interest between the Parties) precludes counsel for Indemnifying Party from providing the defense, then the Indemnitee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys’ fees of the Indemnitee’s counsel, reasonable costs of investigation, court costs and other costs of suit, arbitration, dispute resolution or other proceeding, and any reasonable amount determined to be owed by Indemnitee pursuant to such claim, shall be borne by the Indemnifying Party, provided that the Indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense, and provided further that the Indemnifying Party shall reimburse the Indemnitee on a monthly basis for such costs and expenses. Subject to all of the foregoing provisions of this Section 19.5 as between the Parties, the Indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 18 as to which it has assumed the defense; provided that to the extent the Indemnifying Party, in relation to such insurer, controls settlement: (a) such settlement shall include a dismissal of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and (b) the Indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld or delayed; provided further that, except as provided in the preceding sentence concerning the Indemnifying Party’s failure to assume or to diligently prosecute the defense of any claim, no Indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the Indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnitee reasonably believes that the matter in question involves potential criminal liability against such Indemnitee. Other than as provided in this Section 19.5, the Indemnifying Party shall not settle any claim without the prior written approval of the Indemnitee, which approval shall not be unreasonably withheld, delayed or conditioned. The Indemnitee shall provide reasonable assistance to the Indemnifying Party when the Indemnifying Party so requests, at the Indemnifying Party’s expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the Indemnifying Party with regard to the defense or indemnity obligations.
    6. **Comparative Fault**. Except as expressly provided to the contrary herein, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Losses attributable to such Party’s fault.
    7. **Survival of Indemnity Obligations**. The indemnities set forth in this Article 19 shall survive the Final Completion Date or the earlier termination of this Agreement for a period expiring five (5) years following the Final Completion Date or said termination, whichever first occurs; provided that (i) with respect to indemnities arising out of or related to the Warranties, the indemnities shall survive for a period of five (5) years after the last Day of the applicable Warranty Period; (ii) indemnities arising out of or related to environmental matters (including as set forth in Article 12) shall survive for a period equal to the applicable statute of limitations; (iii) the indemnities arising out of Section 19.3 shall survive for a period expiring ten (10) year following the Final Completion Date or the earlier termination of this Agreement; and (iv) indemnities arising out of or related to Tax shall survive for a period equal to the later of (A) five (5) years following the Final Completion Date and (B) the applicable statute of limitations plus one hundred twenty (120) Days (such period, as applicable, the “Survival Period”). All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such applicable Survival Period. If any Claim Notice is made within such Survival Period, then the indemnifying period with respect to all claims identified in such Claim Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims. For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of this Article 19 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.
15. CONFIDENTIALITY
    1. **Dissemination of Confidential Information**. Neither Party (the “Receiving Party”) shall (1) use for any purpose other than (i) performing its obligations under this Agreement or (ii) within the scope of the license and rights granted pursuant to Section 14.1 or (2) divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. “Confidential Information” means proprietary information concerning the business operations or assets of Owner or Contractor (as the case may be), and may include this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party; (d) information approved for public release by express prior written consent of an authorized officer of the Disclosing Party or (e) information independently developed by the Receiving Party without use of the information provided by the Disclosing Party or in breach of this Article 20. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, but only to the extent, that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Laws and prior to making or permitting any such disclosure, Receiving Party shall, to the extent legally permitted, provide Disclosing Party with prompt notice of any such requirement so that Disclosing Party (with Receiving Party’s assistance if requested) may seek a protective order or other appropriate remedy, (ii) as otherwise required by Applicable Law, (iii) in connection with any government or regulatory filings, including without limitation, filings with any state energy regulatory commission, (iv) to any power purchaser, transmission provider, or an Owner contractor or prospective contractor (or advisors retained on their behalf) or their successors and permitted assigns, any Financing Parties, Independent Engineer, Owner’s Engineer and its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations. The Parties acknowledge that the UPSC and the Utah [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] have the power to examine Owner’s books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to the UPSC and/or BCP (or any representatives thereof), as the case may be, any Confidential Information so requested or required without any requirement of notice to or consultation with Contractor.
    2. **SCADA System Information**. Notwithstanding any other provision of this Article 20, Contractor shall have the right to remotely access the SCADA System installed by Contractor in the Project in order to collect all plant data for its own uses to the end of the Warranty Period; provided, however, that such access by Contractor shall be subject to any limitations Owner may impose that pertain to ensuring electric system reliability or infrastructure security. For the avoidance of doubt, this Agreement does not give Contractor any right to have operational control of the Project. Information shall not be distributed outside Contractor’s organization without the express written consent of Owner.
    3. **Return of Confidential Information**.
       * + 1. Except for Confidential Information necessary for Contractor to perform the Work and its obligations under this Agreement or as necessary for Owner in connection with the construction, operation or maintenance, use, modification, repair, disposal, removal or alteration of the Project, and subject to and in accordance with Section 14.1, at any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy (as determined by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information and all other documents in Receiving Party’s possession that contain any such Confidential Information; provided that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies and may retain such Confidential Information if required by Applicable Law; and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.
           2. Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to Confidential Information until the date that is two (2) years after the earlier of (i) the Final Completion Date or (ii) the termination of this Agreement.
16. ASSIGNMENT
    1. **Prohibition on Assignment**. Except as set forth in Section 21.2, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
    2. **Exceptions**. Notwithstanding the foregoing, (a) Owner, without the consent of the Contractor, shall be entitled to assign its right, title and interest in and to this Agreement to: (i) PacifiCorp d/b/a Rocky Mountain Power, (ii) any successor to Owner provided such successor is a public utility holding a certificate of public convenience and necessity granted by the UPSC pursuant to [*Utah Code Section*], where such assignment does not occur by operation of Law, (iii) a Person (other than a natural person) providing retail electric service in Utah, (iv) a Person (other than a natural person) whose Credit Rating, as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment or (v) a Person (other than a natural person) as otherwise required by Law, (b) Owner shall be entitled to assign its right, title and interest in and to this Agreement to any Financing Parties by way of security for the performance of obligations to such Financing Parties without the consent of Contractor who, subject to any consent entered into by Contractor with the Financing Parties, may further assign such rights, title and interest under this Agreement upon exercise of remedies by a Financing Party following a default by Owner under the financing agreements entered into between Owner and the Financing Parties and (c) each Party shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in connection with a merger or acquisition of substantially all of the assets of such Party, subject, with respect to any such assignment by Contractor, to the Contractor Performance Security and the continued validity thereof. Contractor shall execute any consent and agreement or similar documents with respect to such an assignment described in subclause (b) as the Financing Parties may reasonably request and acknowledges that such consent and agreement or similar document may, among other things, require Contractor to give the Financing Parties notice of, and an opportunity to cure, any breach of this Agreement by Owner. Contractor shall reasonably cooperate with Owner in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the Financing Parties. Contractor shall, at Owner’s cost and subject to the confidentiality provisions set forth in Article 20, make available to any Financing Parties and other Persons involved in the financing or refinancing of the Project who have a need-to-know (e.g., counsel to a lender or any such other Person, Governmental Authority, underwriters, rating agencies, independent reviewers and feasibility consultants) such information in the control of Contractor (including financial information concerning Contractor) as may reasonably be requested by Owner on behalf of the Financing Parties or the Financing Parties’ engineer with respect to financing of the Project. Contractor further agrees that, in connection with the financing or refinancing of the Project, Contractor shall, at the request of Owner, provide an opinion of counsel as to the enforceability against Contractor of this Agreement until expiration of the last Warranty Period. Any authorized assignment of this Agreement by either Party shall relieve such Party of its obligations hereunder at such time as the authorized successor agrees in writing to be bound by such assigning Party’s obligations hereunder.
    3. **Indemnitees; Successors and Assigns**. Upon any assignment by either Party hereunder, with respect to indemnification obligations, the definition of “Owner Party” or “Contractor Party”, as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and permitted assigns.
    4. **Assignment to Owner Affiliate; Assignment With Consent**. This Agreement or any right or obligation contained herein may be assigned by Owner, without the prior consent of Contractor, to (i) PacifiCorp d/b/a Rocky Mountain Power, its Affiliates, or their Financing Parties as a collateral assignment, on the understanding that, on enforcement of such collateral assignment by PacifiCorp d/b/a Rocky Mountain Power, its Affiliates or such Financing Parties, PacifiCorp d/b/a Rocky Mountain Power, its Affiliates or such Financing Parties (or their respective designee) may assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of Owner hereunder, (ii) any of its Affiliates, including the Project Company, or (iii) to PacifiCorp d/b/a Rocky Mountain Power, its Affiliates or to any other actual or prospective purchaser or owner of the Project assets (and such purchaser or owner may assign its rights in this Agreement back to Owner or any of its Affiliates without the consent of Contractor); provided that such Affiliate, purchaser or owner of the Project assets assumes all of Owner’s obligations hereunder in such assignment (except for payment obligations that remain with the assigning Owner); and provided, further, that, in the case of an assignment of this Agreement by Owner to PacifiCorp d/b/a Rocky Mountain Power or its Affiliates, unless otherwise Notified by Owner to Contractor, Owner shall remain responsible for all payments of the Contract Price (and only such payments) not yet paid arising after such assignment through and including the Final Payment. Owner shall have the right to assign this Agreement to any other financially qualified party without Contractor’s prior written consent. Except as otherwise provided in this Section 21.4 or in Section 21.5, this Agreement may be otherwise assigned by the Parties only upon the prior written consent of the other Party. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the permitted assignee; any other assignment shall be void and without force or effect.
    5. **Assignment to Financing Parties**. Notwithstanding Section 21.4, Contractor agrees to (i) the assignment by Owner, without the consent of Contractor, of its rights and obligations under this Agreement to the Financing Parties in connection with the financing of the Project or to any designee of the Financing Parties, and (ii) the Financing Parties’ performance of Owner’s obligations under this Agreement after such assignment.
17. NOTICES
    1. **Notices.** Any notice, request, demand or other communication required or permitted under this Agreement shall be deemed to be properly given by the sender and received by the addressee if made in writing and sent: (a) by personal delivery; (b) in portable document format (PDF) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested; (c) by overnight or certified mail, postage prepaid, return receipt requested; or (d) by next day air courier service. Notices given pursuant to this Section 22.1 shall be addressed as follows to:

|  |  |
| --- | --- |
| Owner: | PacifiCorp d/b/a/ Rocky Mountain Power  1407 W Temple, Suite 310  Salt Lake City, Utah 84116  Attention: [\_\_\_\_\_\_\_\_\_]  Email: [\_\_\_\_\_\_\_\_\_] |
|  | |
|  |  |
| Contractor: | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Attention: [\_\_\_\_\_\_\_\_\_]  Email: [\_\_\_\_\_\_\_\_\_] |

A Party, the Financing Parties or the Independent Engineer, by giving notice as provided in this Section 22.1, may, as to itself, change any of the details for the service of notice hereunder or designate a reasonable number of additional “with a copy to” recipients.

* 1. **Effective Time**. Any notice or notification given personally, through overnight mail or through certified letter shall be deemed to have been received on delivery, any notice given by express courier service shall be deemed to have been received the next Business Day after the same shall have been delivered to the relevant courier, and any notice given by PDF transmission shall be deemed to have been received on the date of delivery (but only to the extent such transmission was promptly followed by mail as provided in Section 22.1) if delivered prior to 5:00 pm Mountain Time; provided, that if such date of delivery is not a Business Day or is delivered after 5:00 pm Mountain Time, then the date of delivery shall be the immediately following Business Day.

1. DISPUTE RESOLUTION; GOVERNING LAW
   1. **Good Faith Negotiations**. In the event that any question, dispute, difference or claim arises out of or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), which either Party has notified to the other Party in a written notice stating that it is a “Notice of Dispute”, senior management personnel from both Contractor and Owner shall attempt to resolve the Dispute for a minimum period of thirty (30) Days following issuance of the Notice of Dispute, and such attempt shall include at least one in-person meeting between senior management personnel from both Contractor and Owner, each of whom has the authority to finally settle the Dispute on behalf of that Party. If the Dispute is not resolved by negotiation, the provisions of Section 23.2 and Section 23.3 below shall apply.
   2. **Technical Disputes; Optional Arbitration**.
      1. Technical Disputes. If a Notice of Dispute relates to a Dispute that is technical in nature (a “Technical Dispute”), such Dispute shall be submitted to an Independent Expert for expedited dispute resolution pursuant to the following provisions of this Section 23.2(a). The Parties shall negotiate in good faith to select an Independent Expert. If the Parties cannot agree within five (5) Business Days then the Party initiating the dispute (the “Dispute Initiator”) shall send notice to the other Party proposing two potential independent engineers set forth in the definition of “Independent Expert”. The other Party shall then have two (2) Business Days after receipt of such notice to select an Independent Expert from such two (2) potential independent engineers identified in such notice. If the other Party does not make a selection within such two (2)-Business Day period, the Dispute Initiator shall select an Independent Expert from such two (2) potential independent engineers identified in such notice. The Parties shall formalize their positions regarding the dispute in writing within four (4) Days of the submission of the Technical Dispute and submit such positions to the Independent Expert. The Parties and the Independent Expert shall meet at the Site within five (5) Business Days of the Independent Expert’s receipt of the materials referenced in the immediately preceding sentence and the Independent Expert shall issue a binding ruling that both Parties will obey within five (5) Business Days thereof. The Party that will pay for the Independent Expert and all costs related thereto shall be the losing Party, as determined by the Independent Expert.
      2. Any Dispute other than a Technical Dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement or pursuant to Section 23.1, may proceed to court pursuant to Section 23.3 unless the Parties mutually agree in writing to resolve such Dispute by arbitration as provided herein.
      3. If the Parties elect to pursue arbitration, upon the expiration of the thirty (30) Day negotiation period set forth in Section 23.1, either Party may submit such Dispute to arbitration by providing a written demand for arbitration to the other Party, and such arbitration shall be conducted in accordance with the Rules of the AAA for the Resolution of Construction Industry Disputes (the “Arbitration Rules”) in effect on the date that the submitting Party gives notice of its demand for arbitration under this Section 23.2. The arbitration shall be conducted at a location as agreed by the Parties, or if the Parties cannot so agree, the arbitration shall be conducted in Salt Lake County, Utah. Unless otherwise agreed by the Parties, discovery shall be conducted in accordance with the Federal Rules of Civil Procedure and the Parties shall be entitled to submit expert testimony or written documentation in the arbitration proceeding. The decision of the arbitrator(s) shall be final and binding upon Owner and Contractor and shall be set forth in a reasoned opinion, and any award may be enforced by Owner or Contractor, as applicable, in any court of competent jurisdiction. Any award of the arbitrator(s) shall include interest from the date of any damages incurred for breach of this Agreement, and from the date of the award until paid in full, at a rate equal to the lesser of (i) the rate published by the *Wall Street Journal* as the “prime rate” on the Business Day preceding the date on which such interest begins to accrue plus two percent (2%) and (ii) the maximum rate allowed under Applicable Law. Each of Owner and Contractor shall bear its own cost of preparing and presenting its case; however, the prevailing party in such arbitration shall be awarded its reasonable attorney’s fees, expert fees, expenses and costs incurred in connection with the Dispute. The fees and expenses of the arbitrator(s), and other similar expenses, shall initially be shared equally by Owner and Contractor, subject to reimbursement of such arbitration costs and attorney’s fees and costs to the prevailing party. The arbitrator(s) shall be instructed to establish procedures such that a decision can be rendered within ninety (90) Days after the appointment of the arbitrator(s). The arbitration may include, by consolidation or joinder or in any other manner, any additional persons or entities if (1) such persons or entities are materially involved in a common issue of law or fact in dispute and (2) such persons or entities are either contractually bound to arbitrate or otherwise consent to arbitration.
      4. Appointment of Arbitrator(s). All arbitrators appointed to hear a Dispute pursuant to paragraph (i) or paragraph (ii) below shall have significant construction contract resolution experience and experience and understanding of the contemporary wind power industry and WTG systems.
         1. Where the amount in dispute is less than One Million Dollars ($1,000,000) the Dispute shall be heard by a single neutral arbitrator agreed by the Parties. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) Business Days after the written demand for arbitration is provided, then the arbitrator shall be selected pursuant to the Arbitration Rules.
         2. Where the amount in dispute is for One Million Dollars ($1,000,000) or more, the Dispute shall be heard by a panel of three (3) arbitrators. Each Party shall select one neutral arbitrator to sit on the panel. The arbitrators selected by the Parties shall in turn nominate a third neutral arbitrator from a list of arbitrators mutually satisfactory to the Parties.
      5. Arbitrator Confidentiality Obligation. The Parties shall ensure that any arbitrator appointed to act under this Article 23 will agree to be bound to comply with the provisions of Article 20 with respect to the terms of this Agreement and any information obtained during the course of the arbitration proceedings.
   3. **Governing Law/Litigation/Choice of Forum/Waiver of Jury Trial**. THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF UTAH, EXCLUDING ANY OF ITS CONFLICT OF LAW PROVISIONS THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. SUBJECT TO THE OTHER PROVISIONS OF THIS ARTICLE 23 AND THE ARBITRATION OPTION DESCRIBED IN SECTION 23.2, FOR PURPOSES OF RESOLVING ANY DISPUTE ARISING UNDER THIS AGREEMENT, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS (AND IN THE ABSENCE OF JURISDICTION THEREIN THE UTAH STATE COURTS IN SALT LAKE COUNTY) LOCATED IN THE STATE OF UTAH. THIS CONSENT TO JURISDICTION IS BEING GIVEN SOLELY FOR PURPOSES OF THIS AGREEMENT, AND IT IS NOT INTENDED TO, AND SHALL NOT, CONFER CONSENT TO JURISDICTION WITH RESPECT TO ANY OTHER DISPUTE IN WHICH A PARTY TO THIS AGREEMENT MAY BECOME INVOLVED. THE PARTIES ACKNOWLEDGE AND AGREE THAT TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED. EACH PARTY HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE VENUE OF SUCH ACTION, SUIT OR PROCEEDING IN SUCH COURT OR THAT SUCH SUIT, ACTION OR PROCEEDING IN SUCH COURT WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME. EACH PARTY FURTHER AGREES THAT SUCH COURT SHALL HAVE *IN PERSONAM* JURISDICTION OVER EACH OF THEM WITH RESPECT TO ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING. THE PARTIES SUBMIT TO THE JURISDICTION OF SAID COURT AND WAIVE ANY DEFENSE OF *FORUM NON CONVENIENS*.  EACH PARTY, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE RIGHTS OR OBLIGATIONS SET FORTH IN THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF CONTRACTOR OR OWNER OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES, AGENTS, ATTORNEYS, OR OTHER REPRESENTATIVES, OR ANY OTHER PERSONS AFFILIATED WITH OWNER OR CONTRACTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 23.3. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.
   4. **Work to Continue**. During the pendency of any dispute proceedings, as required under the terms of this Agreement, Owner shall continue to make undisputed payments and each Party shall continue to perform its obligations under this Agreement.
2. LIMITATION OF LIABILITY
   1. **Consequential Damages**. Neither Contractor nor Owner shall be liable to the other for, nor shall a court or arbitrator assess, any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including losses of use, profits, business opportunity, reputation or financing, subject to the following exclusions which constitute amounts which shall not be deemed to be limited or waived by the foregoing restriction: (a) the Liquidated Damages; (b) claims made by, damages incurred by, or amounts payable pursuant to an indemnity given hereunder; (c) damages arising out of a breach of Article 20 by either Party; (d) claims arising out of fraud or willful misconduct; and (e) all Termination Payments.
   2. **Overall Limitation of Liability**. Notwithstanding any other provision of this Agreement, the cumulative maximum liability of a Party to the other Party under this Agreement shall not exceed one hundred percent (100%) of the Contract Price, the maximum liability of Contractor for Mechanical Completion Delay Liquidated Damages shall not exceed twenty percent (20%) of the Contract Price. The foregoing limitation of liability shall not apply with respect to claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given hereunder or claims arising out of such Party’s fraud or willful misconduct. To the extent any provision of this Agreement establishes a lower limit of liability of a Party with respect to a particular component or type of liability, such lower limit of liability shall control with respect to the relevant component or type of liability. Notwithstanding anything herein to the contrary, no liabilities of Contractor to Owner that are covered by insurance carried by Contractor pursuant to Article 18 (except deductibles paid by Contractor) shall count towards Contractor’s cumulative maximum liability to Owner pursuant to this Agreement.
3. SURVIVAL
   1. **Survival**. The provisions within the Articles with the following titles shall survive termination of this Agreement: Contract Interpretation and Effectiveness, Taxes, Force Majeure Event; Owner-Caused Delay, Hazardous Materials, Intellectual Property, Suspension of the Work, Defaults and Remedies, Warranties, Publicity, Indemnity, Confidentiality, Assignment, Dispute Resolution; Governing Law, Limitation of Liability, Miscellaneous and any other provision which expressly or by implication survives termination.
4. REPRESENTATIONS AND WARRANTIES
   1. **Representations and Warranties of Contractor**. Contractor represents and warrants to Owner that as of the Effective Date:
      1. Organization, Standing and Qualification. Contractor is a [\_\_\_\_\_\_\_], duly organized, validly existing, and in good standing under the laws of the State of [\_\_\_\_\_\_\_], and has full power to execute, deliver and perform its obligations hereunder to own, lease and operate its properties and to engage in the business it presently conducts and contemplates conducting under this Agreement, and is and will be duly licensed or qualified and in good standing under the laws of the State of Utah and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to execute and deliver this Agreement or perform its obligations hereunder.
      2. Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors’ rights generally and by general equitable principles.
      3. No Conflict. The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with or cause a default under any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents, (ii) violate or conflict with any Applicable Law or (iii) subject the Project or any component part thereof to any lien other than as contemplated or permitted by this Agreement.
      4. Government Approvals. Other than with respect to the Applicable Permits, neither the execution nor the delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority. Contractor represents and warrants that all Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect or Contractor has no knowledge of any reason that any Contractor Acquired Permit cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit Contractor to timely commence and perform the Work to completion in accordance with the terms and conditions of this Agreement.
      5. Violation of Laws; No Suits; Proceedings. Contractor is not in violation of any Applicable Laws or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would materially and adversely affect its performance of any obligations under this Agreement. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor’s knowledge after due inquiry, threatened against it before any court, arbitrator or Governmental Authority that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.
      6. Business Practices. Neither Contractor nor any Subcontractor, or their respective employees, officers, representatives, or other agents of Contractor have made or will make any payment or have given or will give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor is in compliance with the requirements set forth in Section 3.29.
      7. Licenses. All Persons who will perform any portion of the Work have or will have all business and professional certifications and licenses if and as required by the terms and conditions of this Agreement, Applicable Codes, Applicable Law and Applicable Permits to perform such portion of the Work under this Agreement and Contractor has no knowledge of any reason that any such certifications and licenses cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit such Persons to timely commence and perform any portion of the Work to completion in accordance with the terms and conditions of this Agreement.
      8. Financial Condition and Adequate Resources. Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement. Contractor has or will procure adequate resources and is qualified, in each case directly or through its Subcontractors, to perform the Work in accordance with the terms and conditions of this Agreement.
      9. Intellectual Property. Contractor owns or has the right to use, or will be able to secure from its Affiliates or Subcontractors the right to use, all Intellectual Property Rights necessary to perform the Work without infringing on the rights of others and to enable Owner to use the Intellectual Property Rights in connection with the ownership, operation, use, maintenance, modification, altering, commissioning, de-commissioning, disposal of or removal of the Project without infringement on the rights of others. The Licensed Technology (and the use thereof to the extent used in accordance with the license granted under Section 14.1) do not and shall not infringe, or cause the infringement of, the Intellectual Property Rights of a third party.
   2. **Representations and Warranties of Owner**. Owner represents and warrants to Contractor that as of the Effective Date:
      1. Organization, Standing and Qualification. Owner is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Oregon, and has the full power to execute, deliver and perform its obligations hereunder and engage in the business it presently conducts and contemplates conducting under this Agreement, and Owner is and will be duly licensed or qualified and in good standing under the laws of the State of Utah and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
      2. Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors’ rights generally and by general equitable principles.
      3. No Conflict. The execution, delivery and performance by Owner of this Agreement will not violate or conflict with or cause a default under any Applicable Law or any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.
5. MISCELLANEOUS PROVISIONS
   1. **Terms in Subcontracts**. All Subcontracts shall conform to the requirements of this Agreement, insofar as applicable. All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and the Subcontractor which shall contain provisions that:
      * + 1. reasonably preserve and protect all the rights of Owner under this Agreement and to the Work to be performed under the Subcontract, so that the subcontracting thereof will not prejudice such rights;
          2. require that such Work be performed in accordance with the applicable requirements of this Agreement;
          3. require such Subcontractor to make available a representative with whom the Owner may discuss questions regarding the progress of the Work being performed by the Subcontractor;
          4. require such Subcontractor to provide and maintain adequate insurance consistent with the insurance required pursuant to this Agreement;
          5. require such Subcontractor to remove any employee or independent contractor of such Subcontractor used in the Work or in such Subcontractor’s warranty obligations within two (2) Business Days after receiving notice from Owner to remove such employee or independent contractor if: (i) such employee or independent contractor, in Owner’s reasonable judgment, creates a safety or security hazard or a material risk of either: (A) non-achievement of Project Mechanical Completion or Final Completion; or (B) material non-performance by Contractor in accordance with this Agreement; and (ii) Contractor has not corrected such safety or security hazard or other non-performance identified in clause (i) to the reasonable satisfaction of Owner during such two (2) Business Day period;
          6. provide that, if following any termination of this Agreement, the Subcontract shall be assigned from the Contractor to the Owner, the Owner shall not be liable for obligations that accrue under the Subcontract before the date of such assignment; and
          7. such other provisions as required by other provisions of this Agreement (including the exhibits hereto).
   2. **Books and Record; Retention**. Contractor agrees to retain for ten (10) years (or any longer Warranty Period) all material records relating to its performance of the Work or Contractor’s warranty obligations herein.
   3. **Attorneys’ Fees**. If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing Party shall be entitled to be awarded its reasonable attorney’s fees, expert fees, expenses and costs incurred in connection with such action or proceeding.
   4. **Inspection, Review and Approval**. Notwithstanding Owner’s inspection, review, monitoring, observation, acknowledgement, comment or Owner’s approval of any items reviewed, inspected, monitored or observed in accordance with this Agreement, neither Owner nor any of its representatives or agents reviewing such items, including the Owner’s Engineer, shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work in accordance with this Agreement. Owner’s or its representative’s inspection, review, monitoring, observation, acknowledgement, comment or approval of any items shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor. Unless otherwise expressly provided herein, Owner shall not unreasonably delay its review of any item submitted by Contractor for review or approval for review or approval; provided, however, the foregoing shall not be used to decrease any express time limitation for such review or approval set forth herein. Any review, inspection, monitoring or observation by Owner or its representatives in accordance with this Agreement shall not constitute any approval of the Work undertaken by such Person, cause Owner to have any responsibility for the actions, the Work or payment of such Person (other than in respect of Owner’s obligations to pay Contractor in accordance with Article 4) or to be deemed to be in an employer-employee relationship with Contractor or any Subcontractor, or in any way relieve Contractor of its responsibilities and obligations under this Agreement or be deemed to be acceptance by Owner with respect to such Work.
   5. **Independent Engineer**. Contractor acknowledges that an independent engineer or engineering firm (the “Independent Engineer”) may be engaged by Owner for the purpose of providing to Owner or Financing Parties a neutral, third party overview of the Work. The Independent Engineer shall provide independent opinions and determinations, arrived at reasonably and in good faith, with respect to: (a) the status of the Work; (b) the performance of the Project and equipment; (c) invoices submitted by Contractor; (d) Contractor’s quality control procedures for the Work and major components thereof; and (e) the approval of Change Orders. Owner undertakes that it will use reasonable efforts to ensure that the Independent Engineer gives its countersignature or indicates that it is not willing to do so in relation to the relevant matter within the time specified in this Agreement for Owner to respond in relation to such matter; provided that any such unwillingness on the part of the Independent Engineer shall not affect or limit Owner’s obligations hereunder. The Independent Engineer may, at its option, attend any meetings between Owner and Contractor related to the progress of the Project and shall approve all Contractor’s Applications for Payments prior to any payment being made by Owner thereunder; provided that any failure by the Independent Engineer to approve a Contractor’s Application for Payment shall not affect or limit Owner’s obligations hereunder. Notwithstanding anything else to the contrary contained herein, the Independent Engineer shall have no right to direct Contractor or any portion of the Work or to make any Change Order. Contractor shall maintain a complete, accurate and up-to-date log of all Change Orders and, upon request of the Independent Engineer, shall furnish copies of such log to the Independent Engineer. Contractor shall afford the Independent Engineer the same rights as Owner with respect to access to the Site.
   6. **Financing Matters**. In connection with any collateral assignment by Owner of its rights, title and interest under this Agreement to any Financing Party in accordance with Section 21.2, Contractor shall execute and deliver any usual and customary consent in accordance with Section 21.2 and use commercially reasonable efforts to cause Major Subcontractors to execute subordination agreements. Contractor agrees to make available, or to use commercially reasonable efforts to cause its Subcontractors to make available, to the Financing Parties and the Independent Engineer, subject to an appropriate confidentiality agreement, independent reviewers, feasibility consultants, and other financial institutions or parties involved in the financing process, such information in the control of Contractor, its Affiliates and Subcontractors (including financial information concerning Contractor, its Affiliates and the Subcontractors) as may be reasonably requested by Owner. Contractor acknowledges that the Financing Parties and the Independent Engineer may monitor, inspect and review the Work as permitted by Article 8.
   7. **Fees and Expenses**. Except as specifically set forth herein, each Party shall be responsible for any legal fees and expenses, financial advisory fees, accountant fees and any other fees and expenses incurred by such Party in connection with the negotiation, preparation and enforcement of this Agreement and the transactions contemplated hereby.
   8. **Related Contracts**. Services and work performed at any time by Contractor or its Affiliates under any other Project Transaction Document shall not constitute Work hereunder. Owner shall use reasonable efforts to make claims against Contractor and its Affiliates under the appropriate Project Transaction Document. Notwithstanding the foregoing, Contractor shall not contend that it is not liable for any claim of Owner under or arising out of this Agreement on the grounds that the loss or damage suffered by Owner was caused by an act or omission, or the failure to comply with the terms of any other Project Transaction Document by, any Contractor Party or Subcontractor, and Contractor irrevocably waives any such defense in any Dispute. Contractor shall inform Owner if it believes that Owner made a claim under the wrong Project Transaction Document. If Contractor and Owner do not agree that such claim should have been made under a different Project Transaction Document, Contractor and Owner shall resolve any such dispute regarding which Project Transaction Document a claim should have been made under by submitting such dispute to resolution in accordance with Article 23.
   9. **Audit Rights**. With respect to any Change Order which adjusts the Contract Price by compensating Contractor on a reimbursable cost or time and materials basis, Contractor shall maintain, in accordance with Prudent Utility Practice and generally accepted accounting principles consistently applied, records and books of account as may be necessary for substantiation of all Contractor claims for additional compensation. Owner, Owner’s Engineer, the Financing Parties, if any, and their authorized representatives shall be entitled to inspect and audit such records and books of account during normal business hours and upon reasonable advanced notice during the course of the Work and for a period of five (5) years after the Final Completion Date (or such longer period, where required by Applicable Law); provided, however, that the purpose of any such audit shall be only for verification of such costs, and Contractor shall not be required to keep records of or provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs. Contractor shall retain all such records and books of account for a period of at least five (5) years after the Final Completion Date (or such longer period, where required by Applicable Law). Contractor shall use commercially reasonable efforts to cause all Major Subcontractors engaged in connection with the Work or the performance by Contractor of its warranty obligations herein to retain for the same period all their records relating to the Work for the same purposes and subject to the same limitations set forth in this Section 27.9. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner’s Engineer, and their respective officers, directors, members, managers, employees and agents in connection with any such audit, subject to the provisions of Article 20. If, as a result of any audit conducted pursuant to this Section 27.9, the results of such audit indicate that Contractor received more or less than the amount to which it was entitled under this Agreement, either Owner shall pay the additional amount owed to Contractor or Contractor shall refund any overpayment to Owner, as applicable, in either case within ten (10) Days of a written request therefor. Owner shall be responsible for all costs and expenses of such audit unless an overpayment by Owner of more than three percent (3%) of the subject payment is discovered, in which case Contractor shall be responsible for such costs and expenses.
   10. **Third Party Beneficiaries**. The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (except as expressly set forth herein).
   11. **Further Assurances**. Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the Project by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.
   12. **No Waiver**. A Party’s waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party’s right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 27.13.
   13. **Amendments in Writing**. Without limiting any provision of Article 9 with respect to mandatory Change Orders, no oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.
   14. **Order of Precedence**. In the event of a conflict or inconsistency between any of the Contract Documents forming part of this Agreement, the following order of precedence shall apply: (a) any duly executed amendment or Change Order to this Agreement (and between them, the most recently executed amendment or Change Order shall take precedence); (b) this Agreement (to the extent not superseded by a subsequent amendment); (c) Exhibit 1, Exhibit 16, the Technical Specifications, Exhibit 7, Exhibit 20 and Exhibit 21 to this Agreement in the order indicated; (d) the Exhibits to this Agreement not otherwise specified in subclause (c) above; (e) the Contractor Submittals; and (f) any other Contract Documents not previously noted.
   15. **Entire Agreement**. This Agreement and the exhibits attached hereto constitute the complete and entire agreement between the Parties with respect to the engineering, procurement, construction, testing and commissioning of the Project and supersedes any previous communications, negotiations, representations or agreements, whether oral or in writing, with respect to the subject matter addressed herein. NO PRIOR COURSE OF DEALING BETWEEN THE PARTIES SHALL FORM PART OF, OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF, THIS AGREEMENT. For the avoidance of doubt, this Agreement shall not supersede the other Project Transaction Documents, which shall remain in full force and effect.
   16. **Invalidity**. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but, to the extent permitted by law, if for any reason any provision which is not essential to the effectuation of the basic purpose of this Agreement is determined to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. Any such invalid, illegal or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid, illegal or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, illegal or unenforceable, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, illegality or unenforceability and to restore this Agreement as near as possible to its original intent and effect (including economic effect).
   17. **Binding Effect**. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs and assigns and shall inure to the benefit of the Parties hereto and their respective permitted successors, heirs and assigns.
   18. **No Agency**. The Parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party (except and solely to the extent expressly provided in this Agreement pursuant to which Owner appoints Contractor as Owner’s agent). Nothing in this Agreement shall be construed to give either Party any right, power or authority to enter into any agreement or undertaking for, or act as an agent or representative of, or otherwise bind, the other Party. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.
   19. **Effective Date**. The effective date of this Agreement is the date when this Agreement has been signed by both Parties (the “Effective Date”), and Owner shall be deemed to have issued a full notice to proceed as of the Effective Date.
   20. **Counterparts**. This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute one and the same instrument. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile, .pdf or emailed signatures, which shall be deemed to be an original and shall be as effective for all purposes as delivery of a manually executed counterpart.
   21. **Time is of the Essence**. To the extent that there is not a specific time period specified in this Agreement, time is of the essence with respect to a Party’s performance of its obligations under this Agreement.
   22. **Business Ethics**. Contractor, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Contractor’s obligations under this Agreement and shall comply with the Owner’s Code of Business Conduct as it may be revised, updated or amended from time to time. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its subcontractor and its employees, officers, agents and representatives to comply with, all Applicable Laws, statutes, regulations and codes prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act 2010. Without limiting the generality of the foregoing, Contractor specifically represents and warrants that neither Contractor nor any Subcontractor, employees, officers, representatives or other agents of Contractor have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Agreement and to verify Contractor’s compliance with this Section 27.22. Owner shall be permitted to audit such records as reasonably necessary to confirm Contractor’s compliance with this Section 27.22. Contractor shall immediately provide notice to Owner of any facts, circumstances or allegations that constitute or might constitute a breach of this Section 27.22 and shall cooperate with Owner’s subsequent investigation of such matters. Contractor shall indemnify and hold Owner harmless for all fines, penalties, expenses or other losses sustained by Owner as a result of Contractor’s breach of this provision. The Parties specifically acknowledge that Contractor’s failure to comply with the requirements of this Section 27.22 shall constitute a condition of default under this Agreement.

**[Signature Page Follows.]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

Owner:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

By:

Its:

Contractor:

\_

a \_\_\_\_\_\_\_\_\_\_\_\_\_ corporation

By:

Its:

1. Further conforming changes will be required for a geothermal Project. [↑](#footnote-ref-1)
2. Note to Bidders: A Utah contractor’s license is required prior to execution of the BOP EPC agreement. [↑](#footnote-ref-2)
3. Note to Bidders: If there are multiple facilities, it is contemplated that a separate BOP EPC Agreement will be entered into for each facility. [↑](#footnote-ref-3)
4. Note to Bidders: The timing, conditions and requirements of Availability Completion remain subject to further review and change by Owner’s tax advisors. [↑](#footnote-ref-4)
5. Note to Bidders**:** Subject to Contractor credit review, a letter of credit or other security may be required during the Term and the Warranty Period. [↑](#footnote-ref-5)
6. Note to Bidders: Please provide the proposed Guaranteed Mechanical Completion Date. [↑](#footnote-ref-6)
7. Note to Bidders: If the Site is on Tribal lands, any applicable Tribal labor requirements and related provisions will need to be addressed. [↑](#footnote-ref-7)
8. Note to Bidders: Project Transaction Documents should reference any O&M Agreement, Supply Agreement, Performance Guarantee or other agreements between Owner and Contractor or an Affiliate of Contractor, as applicable. [↑](#footnote-ref-8)
9. Note to Bidders: Final details with respect to Wind Days will be typical and customary as related to the specific project site, tower height, and technology used. [↑](#footnote-ref-9)
10. Note to Bidders: See definition of Availability Completion. Protocol for the pre functional test of each WTG prior to energization and synchronization (prior to WTG Mechanical Completion) to be provided by bidders. [↑](#footnote-ref-10)
11. Note to Bidders: The requirements for achieving Closing Completion will be provided by PacifiCorp but modeled after the requirements for the other milestones in Article 7. Closing Completion will occur before Mechanical Completion when material physical Work with respect to the Facility remains outstanding. [↑](#footnote-ref-11)
12. Note to Bidders: Please provide liquidated damages to be included in definitive BOP EPC. [↑](#footnote-ref-12)