



**STATE OF IDAHO  
COMMERCIAL LEASE NO. EXXXX  
WIND POWER PROJECT**

Lessor: STATE OF IDAHO, State Board of Land Commissioners  
c/o State of Idaho, Department of Lands  
300 N. 6<sup>th</sup> Street  
Boise, ID 83720-0050  
Phone No.: (208) 334-0200  
Facsimile No.: (208) 334-5342 or (208) 334-3698  
Email: CommercialProgram@idl.idaho.gov

Lessee: \*\*\*  
c/o \*\*\*  
Address  
Address  
Address  
Phone No.: (\*\*\*)(\*\*\*)  
Facsimile No.: (\*\*\*)(\*\*\*)  
Email: \*\*\*

Leased Premises: See legal description and map attached as Attachments B and C, respectively.

Existing Conditions: Lease is subject to existing conditions identified in Attachment D.

Lease Term: Forty-Nine (49) Years, beginning January 1, 2022, and terminating on December 31, 2071.

Annual Rent, including Potential Royalty: Consists of Phase 1 Rent; Phase 2 Rent; Phase 3 Rent, including potential Royalty; and Phase 4 Rent, as more fully described in Article 5, herein.

Additional Payments: Meteorological Tower Rent, Power Lines Rent, Temporary Facilities Rent, Road Payments, Facilities Rent, etc. as more fully described in Article 5, herein.

Required Security: Phase 1: \$ \*\*  
Phases 2 through 4 as described in Article 8, herein.

Commercial General Liability Insurance: Combined single limit per occurrence, not less than \$3,000,000;  
Each annual aggregate limit shall not be less than \$3,000,000; as more fully described in Article 9.

Index: Summary  
Commercial Lease No. EXXXX Provisions  
Signature Pages  
Attachment A – Special Terms and Conditions  
Attachment B – Legal Description of Leased Premises  
Attachment C – Site Map(s)  
Attachment D – Existing Conditions  
Attachment E – Sage Grouse and Slickspot Peppergrass Conservation Measures  
Attachment F – Annual Report

**\*This Summary Page of Lease Provisions ("Summary") is for convenience and ease of review only. The information stated in the Summary is intended to be accurate and consistent with the contract terms set forth in the following Lease. In the event any information stated in the Summary is inconsistent with the Lease, the Lease will control.**

**STATE OF IDAHO**  
**COMMERCIAL LEASE FOR XXXX WIND PROJECT**  
**LEASE No. XXXX**

This Lease No. XXXX ("Lease"), is dated as of the last signature of the Parties ("**Execution Date**"), and effective as of the 1st day of January, 2022 ("**Effective Date**"), and is made by and between the **IDAHO STATE BOARD OF LAND COMMISSIONERS**, whose administrative agency is the **IDAHO DEPARTMENT OF LANDS** ("**Lessor**"); and \_\_\_\_\_, a type of entity duly organized under the laws of State, and authorized to do business in the State of Idaho ("**Lessee**"). Lessor and Lessee are collectively referred to herein as the "**Parties**" and individually as a "**Party**".

In consideration of the Parties' covenants, the conditions contained in this Lease, and Lessee's payments of Rents and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1 - DEFINITIONS**

**1. Definitions.** Definitions in Title 58, Chapter 3, Idaho Code must be applied to and govern words and phrases used in this Lease. Where words and phrases are specifically defined within this Lease and not in statute, such words and phrases will be given the identified and defined meaning throughout this Lease.

1.1 The term "**across**" means into, on, over, across, along, above, and below the Leased Premises.

1.2 "**Affiliated Party**" means a subsidiary, parent company, or any other entity that Lessee, or an owner of Lessee, has a financial interest in, by an ownership interest of ten percent (10%) or more.

1.3 "**Board**" means the Idaho State Board of Land Commissioners or its designee, including IDL.

1.4 "**Collection Facilities**" means overhead and underground electrical distribution, collection systems, and cabling.

1.5 "**Construction Plan**" shall have the meaning and application as provided in Sections 4.2 and 6.3.

1.6 "**Decommissioning and Reclamation Plan**" shall have the meaning and application as provided in Sections 4.4 and 6.4.

1.7 "**Default Rate**" means the legal rate of interest under Idaho Code § 28-22-104(1).

1.8 "**Due Diligence Period**" shall have the meaning provided in Section 2.4.1.

1.9 "**Effective Date**" shall have the meaning stated in the Preamble.

1.10 "**Electrical Power Production**" means the generation or storage of electricity using the Wind Energy Facilities.

1.11 "**Execution Date**" means the date of the last signature of the Parties.

1.12 "**Government Approvals**" means any authorization, approval, consent, waiver, exception, license, filing, registration, ruling, permit, tariff, certification, exemption, and any other action, omission, or requirement, including an environmental impact assessment or archeological study, for, by, or with any governmental authority relating to Lessee's activities pursuant to this Lease, including the construction,

use, operation, placement, monitoring, replacement, removal, or decommissioning of the Wind Energy Facilities and Improvements, or Lessee's execution or delivery of electricity from the Wind Energy Facilities to the transmission grid.

1.13 **"Gross Annual Revenue"** means the aggregate total revenue in money and the value of any other consideration actually received by Lessee, a sub-lessee, or Affiliated Party during a calendar year from any of the following: i) the sale, to any purchaser or Affiliated Party, of electrical energy generated by Wind Energy Facilities on the Leased Premises; ii) the sale of credits of any kind to any purchaser or Affiliated Party, including green tags, renewable energy credits or certificates, tradable renewable certificates, greenhouse gas reduction credits, and renewable energy credits; iii) revenues resulting from Lessee's installation of low voltage ride through equipment; iv) payments received from any purchaser that are based on curtailed energy rather than sold energy; v) the gross proceeds or other cash benefits received in connection with, under, or derived from any legal agreement, contract, compromise, settlement, judgment, or arrangement for or relating to the sale, use, or other disposition of electricity generated or capable of being generated from the Leased Premises; and vi) proceeds from Lessee's business interruption insurance required under Section 9.1 of this Lease, where such proceeds represent lost income from the production or conversion of electrical energy on the Leased Premises. Gross Annual Revenue shall not include the following: i) any proceeds received from the sale, lease, financing, or other disposition of any Wind Energy Facilities or Improvements; or ii) production tax credits, investment tax credits, and any other tax credits arising from this Lease. If Lessee provides or sells electrical energy generated by Wind Energy Facilities on the Leased Premises to Lessee for internal uses (recognizing that electrical energy used to operate the Wind Energy Facilities is not an internal use), or to a subsidiary, or Affiliated Party, the revenue, for the purposes of calculating Gross Annual Revenue, shall be calculated to include the greater of the actual sale price; or the published rate applicable to the Project, as approved and published by the Idaho Public Utilities Commission, or other governing public utilities commission, during the relevant Lease Year in which such Phase 3 Rent is due. All costs of any type must be borne by Lessee, and no cost, including integration charges, imbalance charges, or transmission tariffs will reduce the Gross Annual Revenue or any Rents due to Lessor, directly or indirectly.

1.14 **"Hazardous Materials and Waste Management Plan"** and **"HMWMP"** shall have the meaning as provided in Article 13.

1.15 **"Hazardous Substance"** and **"Hazardous Substances"** mean any chemicals, materials, substances, pollutants or contaminants, including petroleum, crude oil, petroleum wastes, motor fuels and lubricants, radioactive materials, hazardous wastes, toxic substances, asbestos, PCBs, lead paint, or any other material similarly defined or listed as hazardous, toxic, dangerous, or a similar term, in all applicable Environmental Laws, as identified in Section 2.2.7 and Article 13.

1.16 **"IDL"** means the Idaho Department of Lands.

1.17 **"Improvements"** means all Wind Turbines, Collection Facilities, Wind Energy Facilities, other buildings or structures, roads and access driveways, signage or advertising structures, and any other change to the Leased Premises necessary for Lessee to construct, install, use, operate, monitor, maintain, repair, replace, relocate, reconstruct, or remove Wind Energy Facilities.

1.18 The terms **"including"** and **"includes"** mean including, but not limited to.

1.19 **"Lease Year"** means the period of time between midnight on the Effective Date or the anniversary of the Effective Date, and the moment immediately preceding midnight on the day before the next anniversary of the Effective Date.

1.20 **"Nameplate Capacity"** means the maximum rated output of each Wind Turbine installed on the Leased Premises, expressed in megawatts ("**MW**") and assigned by the manufacturer of each Wind Turbine, regardless of whether or not the Wind Turbine is operating.

1.21 **"Mortgage"** or **"Leasehold Mortgage"** mean either, or both, a leasehold mortgage or a security interest in personal property, as permitted under Article 10.

1.22 **"Phase 1 Report"** shall have the meaning provided in Section 2.4.1.B.

1.23 **"Production Area"** means any portion of the Leased Premises associated with the Wind Energy Facilities specified in the Construction Plan, describe in Section 6.3, as directly engaged in Electrical Power Production.

1.24 **"Project"** means the **XXXX Wind and Solar Project** to be located in Elmore County, Idaho.

1.25 The terms **"prorate"**, **"prorated"** and **"proration"** mean apportionment of any specific amount paid based upon the percentage of the Lease Year remaining before the next anniversary of the Effective Date, or the partial acreage utilized pursuant to Sections 5.6.3 or 5.6.4.

1.26 **"Rent"** and **"Rents"** mean all of the amounts to be paid by Lessee to Lessor, individually and collectively, in accordance with Article 5.

1.27 **"Research and Analysis Plan"** shall have the meaning provided in Sections 4.1 and 6.2.

1.28 **"Royalty"** and **"Royalties"** mean Lessor's share of all Gross Annual Revenue from the Leased Premises, free of any and all of Lessee's costs, either direct or indirect, and in accordance with Article 5.

1.29 **"State"** means the State of Idaho and its departments, boards, commissions, agencies and employees.

1.30 **"Supporting Area"** means any portion of the Leased Premises specified in the Construction Plan, required by Article 6, as supporting Lessee's activities on the Leased Premises, but not any portion of the Leased Premises identified as a Production Area in the Construction Plan.

1.31 **"Use Agreement"** and **"Use Agreements"** mean (i) any power purchase agreement or any contract to sell electrical energy converted from Wind Energy from the Leased Premises to an electric utility, power system operator, or third party; (ii) any agreement for the distribution of Wind Energy from the Leased Premises through a federal power marketing agency, or to a utility regulated by a state agency; and (iii) any agreement or plan to use the Wind Energy on the Leased Premises for internal purposes of Lessee or an Affiliated Party.

1.32 The term **"unreasonably interfere"** means an action or decision that will impair the ability to operate the Wind Energy Facilities or will result in the loss of generation capacity of the Wind Energy Facilities.

1.33 **"Wind Energy"** means the conversion of kinetic energy in the wind into electrical energy, or electricity, by the Wind Energy Facilities.

1.34 **"Wind Energy Facilities"** means Improvements owned, controlled, operated, or managed in connection with or to facilitate Electrical Power Production, including: (i) Wind Turbines; (ii) Collection Facilities; (iii) electrical distribution and transmission lines, electric transformers and substations, power generation facilities, conduits, footing, foundations, towers, poles and substations, interconnector and switching facilities; (iv) telecommunications equipment, communication lines, Supervisory Control and Data Acquisition ("SCADA") system lines or wireless networks; (v) meteorological ("MET") towers and wind measurement equipment; (vi) batteries, battery management systems, power storage facilities and equipment of any kind; (vii) maintenance yards, lay-down yards, pads and related facilities and equipment; (viii) temporary construction-related equipment, including a concrete batch plant, and other directly related equipment and facilities; and (ix) other buildings or systems operated in conjunction with converting Wind Energy into electrical energy for sale or use off of the Leased Premises.

1.35 **“Wind Energy Purposes”** means Lessee’s acts under this Lease to determine the feasibility of converting the wind’s kinetic energy to electrical energy; constructing, installing, using, replacing, relocating, maintaining, updating, and removing Wind Energy Facilities and other Improvements; creating, collecting, and transmitting electrical energy converted from Wind Energy on the Leased Premises; and administrative purposes necessarily related to the foregoing activities.

1.36 **“Wind Turbines”** and **“Wind Turbine”** mean any and all wind power generating machines or systems of any kind, including supporting towers, foundations, blades, internal systems including the nacelle, generators, and controls, the pad transformer, and any other associated equipment or structures needed to capture and convert the wind’s kinetic energy into electricity.

## **ARTICLE 2 - LEASED PREMISES; GRANTS; RESERVATIONS**

### **2.1. Lessor’s Grant of Rights to Lessee.**

2.1.1. Grant. Lessor hereby grants to Lessee the exclusive right and privilege to engage in or direct development activities and use the surface and subsurface of specific lands located in Elmore County, State of Idaho, containing 1,080 acres, more or less, and more particularly described in Attachment B, which is incorporated herein by this reference (**“Leased Premises”**), together with the rights and privileges for the use and occupancy, as provided for or limited in Sections 2.1 and 2.2 of this Lease.

A. *Supplemental Legal Description*. Lessee may provide Lessor with a supplemental description of the Leased Premises with a metes and bounds description of the Leased Premises prepared by Lessee’s surveyor. Following Lessor’s review of the supplemental description, the Parties will include it as part of Attachment B without requiring a written modification of this Lease pursuant to Section 15.12. Following Lessor’s review of the supplemental description, Lessee may record a notice of said description with the real property records of Elmore County. Lessee will promptly provide Lessor a copy of any such recorded document.

B. *Exclusivity*. By Lessor’s grant of the, above, exclusive right and privilege, Lessee holds the rights and opportunities to convert, maintain, and capture the flow of wind and wind resources across the Leased Premises, to the exclusion of any person other than Lessee, and Lessee’s successors or assignees. Lessee’s exclusivity will not be construed as precluding Lessor’s grant of other, non-Wind Energy, leases and uses that do not conflict or interfere with Lessee’s rights under this Lease.

C. *Grants to Other Users*. Lessor shall not permit any activities on the Leased Premises that will unreasonably interfere with Lessee’s authorized uses of the Leased Premises, as stated in this Lease.

2.1.2. Conditions of Grant. Lessor’s grant is made subject to Lessor’s reservations set forth in Section 2.3, below, and the following conditions:

A. Lessee agrees to take the Leased Premises as is, and subject to all existing encumbrances or conditions affecting the Leased Premises, including those listed on Attachments D and E, and any other easements, leases, permits, licenses, and prior encumbrance or other contract from Lessor, of any kind whatsoever.

B. Lessee agrees to take the Leased Premises subject to any geological deficiencies or limitations that a survey, physical inspection, or exploration might show; and all conditions, restrictions, and limitations appearing of public record.

C. Lessee’s performance of and compliance with all the terms and conditions contained in this Lease.

D. Lessee's compliance with and performance of all Environmental Laws and other applicable Government Approvals relating to, or imposing liability or standards of conduct, presently in effect or that may be promulgated or amended in the future, concerning the Wind Energy Purposes, all Improvements, and any resulting or related Hazardous Substances.

**2.1.3. Title; No Warranty.**

A. Lessee acknowledges that Lessor does not warrant title to the Leased Premises for the Wind Energy that may be discovered there. This Lease is issued only under such title as the State may have as of the Effective Date or as may be subsequently acquired. Lessee shall be solely responsible for satisfying itself with respect to the ownership of the Leased Premises. If Lessor is subsequently divested of said title, no liability shall be incurred by Lessor by virtue of this Lease for any loss or damage to Lessee. Nor shall any claim for refund of any bonus bid, Rent, or Royalty paid to Lessor be made by Lessee, its successors or assignees.

B. Lessee acknowledges that neither Lessor, nor any agent or representative of Lessor or of the State, has made any representation or warranty whatsoever, express or implied, with respect to the title, merchantability, or fitness of the Leased Premises for any particular purpose or use, including specifically the use for which this Lease is granted. Lessee accepts the Leased Premises in its "as is" condition. In entering this Lease, Lessee relies solely upon Lessee's own inspection of, and due diligence regarding, the Leased Premises.

C. The provisions of this Section 2.1.3 will survive the termination of this Lease.

2.1.4. Lessee's Costs. Lessee acknowledges that all costs, of any kind, to develop, construct, operate on, decommission, and reclaim the Leased Premises related to Lessee's intended uses are the responsibility of Lessee. Lessor will not financially contribute to Lessee's costs for any reason.

**2.2. Lessee's Use of the Leased Premises.**

2.2.1. Permitted Uses. Lessee is entitled to use and occupy so much of the Leased Premises as may be required for all purposes reasonably incident to Wind Energy Purposes, subject to Lessor's reservations in Section 2.3, including the following:

A. Determining the feasibility of Wind Energy and power generation on the Leased Premises, including studies of wind speed, wind direction, and other meteorological data and geotechnical and environmental studies, including: extracting soil samples; performing avian, flora and fauna, endangered species, and habitat studies; performing archaeological studies; performing studies of jurisdictional waters; performing aerial mapping; performing field and ALTA surveys; and other related activities, studies or testing as Lessee reasonably determines are necessary, useful, or appropriate, and whether performed by Lessee or a third party authorized by Lessee.

B. Constructing, installing, using, replacing, relocating, reconstructing, removing from time to time, monitoring, maintaining, repairing, operating, decommissioning, and reclamation of Improvements, Production Areas, and Supporting Areas.

C. Converting Wind Energy into electrical energy and collecting, storing and transmitting the electrical energy so converted; and deriving all revenues, profits, and benefits therefrom, subject to payment of Rents to Lessor.

D. The right of ingress and egress for the Leased Premises over State-owned land at all times during the Lease Term. Issuance by Lessor to Lessee of any necessary use permit for any road not owned by the State, but for which Lessor holds an easement.

E. Capturing, using, and converting the unobstructed and open wind resources across the Leased Premises. By the grant of this permitted use, Lessor shall not permit any other use of



the Leased Premises that may result in construction of any obstruction to the open and unobstructed access to the wind throughout the entire Leased Premises, including to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any Wind Energy Facility is or may be located at any time, from time to time, and for a distance from each Wind Energy Facility location to the boundaries of the Leased Premises, together vertically through all space located above the surface of the Leased Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Leased Premises through such location to each point and on and along such line to the opposite exterior boundary of the Leased Premises.

F. The installation, use, repair, replacement, and removal of underground and above-ground wires and cables used for the transmission of electrical energy or for communication purposes for the Project. The installation, use, repair, replacement, and removal of all necessary appliances and fixtures for use in connection with said wires and cables; this clause applies to both the Project-related and non-Project-related transmission facilities.

G. Permitting the Wind Turbines located on the Leased Premises to create or emit onto the Leased Premises any audio, visual, view, light, shadow, noise, vibration, air turbulence, wake, flicker, electromagnetic, radio, or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Wind Energy Facilities, the Project, or any development activities.

2.2.2. Not Self-Executing. These use and occupancy rights are not self-executing. Lessee must inform Lessor of upcoming development activities prior to beginning work on any Improvements, Production Areas, or Supporting Areas.

2.2.3. Dwelling Rights. Lessee may not establish any permanent residence, dwelling, or place of abode of any type, on the Leased Premises without the express prior permission from Lessor in a separate written contract that will govern any such additional use of the Leased Premises. For purposes of this Lease provision, a permanent residence is any structure that any person will use for shelter, sleep, or to keep personal property for a timeframe of three (3) months or longer, irrespective of occasional absences.

2.2.4. Overhang. Lessor grants to Lessee the right to permit the rotors of Wind Turbines owned by Lessee located on adjacent properties, not owned by Lessor, to overhang the Leased Premises. Lessee's location of Wind Turbines on the Leased Premises, including at or near the property lines, shall be mutually agreed upon by Lessee and Lessor. Lessor's agreement to the location of the Wind Turbines shall not be unreasonably conditioned, withheld, or delayed. However, Lessee shall not permit the rotors of any Wind Turbines owned by Lessee located on the Leased Premises to overhang any adjacent property, whether owned by Lessor or any third-party owner, without the express written permission of such affected property owner. Lessee shall provide Lessor with a copy of all written permissions from any such third-party owner.

2.2.5. Ownership of Improvements; Exception. Throughout the Lease Term, and separate from any option of Lessor, Lessor shall have no ownership or other interest in any Improvements, other than roads and appurtenances thereto. Lessee may remove any or all such Improvements, but not roads or appurtenances thereto, at any time in accordance with the terms of this Lease, including Sections 2.3.4 and 7.2.

2.2.6. No Waste or Nuisance.

A. Lessee shall not use the Leased Premises in any manner that would constitute waste or create a nuisance; nor shall Lessee allow any of the same to be committed on the Leased Premises.

B. Lessee shall not excavate or remove material, including sand, gravel, or other aggregate, from the Leased Premises, nor deposit material upon the Leased Premises other than as is necessary for the construction of Wind Energy Facilities and Improvements according to the Construction

Plan required in Section 6.3. The natural characteristics of the Leased Premises, including the topographical, hydrological, and natural drainage must be considered and preserved to the greatest extent possible when Lessor determines that such consideration and preservation is in the best interest of the Leased Premises. Excavation or deposit of material for construction of Wind Energy Facilities or Improvements on the Leased Premises must be limited to excavation or deposit at the location of the Wind Energy Facilities or Improvements, and only such excavation or deposit necessary to prepare the location for placing the Wind Energy Facilities or Improvements thereon will be allowed. Only clean, non-contaminated, natural fill materials, free of weed seed, may be brought onto the Leased Premises. Lessee must address disposition of material excavated from the Leased Premises in the Construction Plan.

#### 2.2.7. Compliance with Environmental Laws and Government Approvals.

A. Lessee shall, at all times, comply with the following environmental laws and any other Government Approvals relating to or imposing liability or standards of conduct concerning Hazardous Substances (collectively “**Environmental Laws**”) presently in effect or that may be passed or amended in the future, which now or at any time in the future may be applicable to the Project:

- i. Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*;
- ii. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*;
- iii. Clean Air Act, 42 U.S.C. § 7401, *et seq.*;
- iv. Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251, *et seq.*;
- v. Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136, *et seq.*;
- vi. Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*;
- vii. Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; and
- viii. Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*

B. Lessee shall, at all times, comply with all other applicable Government Approvals relating to or imposing liability or standards of conduct for the Project, the Leased Premises or any part thereof, or to any adjoining waterways, roads, sidewalks, streets, or walkways to the extent applicable to Lessee or Lessee’s activities, or to any material use or condition of the Leased Premises or any part thereof.

C. In accordance with Idaho Code § 58-307(4), Lessee and Lessor will consult with the county commissioners of Elmore County before the Effective Date regarding local planning and zoning ordinances, to assist Lessee’s uses of the Leased Premises, subject of this Lease, to be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable.

2.2.8. Use of Leased Premises Mineral Deposits. Lessee shall not extract for use off the Leased Premises, or for use on the Leased Premises other than to backfill excavated locations, any minerals from the Leased Premises, including sand, gravel, or other aggregate without first entering into a separate written contract, including a royalty schedule, which will govern such additional use of resources from the Leased Premises. Mineral extraction operations and reclamation may be included in the Construction Plan required in Section 6.3, or may be specified through a separate reclamation plan.

**2.3. Lessor’s Reservation of Rights.** Lessor expressly reserves and excepts the following rights from this Lease:

2.3.1. Right of Entry. Lessor retains the right to enter upon the Leased Premises at any time during the Lease Term for any purpose. Lessor retains the right to inspect the Leased Premises, including any Production Area, Supporting Area, or Improvements upon reasonable notice to Lessee.

2.3.2. Resources and Fee Title. Lessor retains all rights to all water, timber, oil and gas, minerals, solar, geothermal, easements and rights-of-way, and fee title to the Leased Premises. Notwithstanding the



foregoing, Lessee has the right to use sand, gravel, or other aggregate located on the Leased Premises in accordance with Section 2.2.8.

2.3.3. Grant of Easements, Licenses, Permits, Leases, and Other Leased Premises Interests. Subject to the prohibition on Lessor to permit obstructions, Lessor retains the right to grant and issue easements, licenses, permits, leases, and any other property interest across the Leased Premises, provided said easements, licenses, permits, and leases do not unreasonably interfere with Lessee's use pursuant to this Lease, or with the permitted Improvements installed, maintained, or operated by Lessee upon the Leased Premises. Lessor must notify and consult with Lessee before, in Lessor's discretion, granting or issuing any new easement, license, permit, or lease on the Leased Premises.

A. It shall be Lessee's duty to "fence out" or otherwise preclude entrance to any Production Area, Supporting Area, or Improvements that either Party reasonably determines a need to preclude other users. Any fence or other method of preclusion must first be approved by Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed.

B. Subject to Article 5 and Section 6.1 of this Lease, Lessor shall retain the right to use that portion of the Leased Premises not occupied by Wind Energy Facilities or unoccupied air space needed for the generation of Wind Energy as provided in this Lease, for any other use, including farming, grazing, timber harvesting, hunting, conservation, recreational activities, mineral development, or other similar purposes; and Lessor shall be entitled to use any private road constructed by Lessee on the Leased Premises for access to the balance of the Leased Premises; provided, however, that Lessor's activities on the Leased Premises shall not unreasonably interfere with: (i) the development, construction, or operation of the Wind Energy Facilities; (ii) the capture, use or conversion of wind resources; or (iii) the open and unobstructed access to the wind across the Leased Premises, as reasonably determined by Lessee.

2.3.4. Ownership of Roads and Appurtenances. Upon termination of this Lease for any reason, all interests of Lessee in all roads and appurtenances shall terminate and Lessor will be the sole owner of all roads and appurtenances thereto constructed by or for Lessee across the Leased Premises; provided however, that if Lessor determines, in its sole discretion, that any road or appurtenance thereto constructed by Lessee should be removed and the land reclaimed, then Lessee must remove any such roads and appurtenances, and reclaim the land pursuant to the Decommissioning and Reclamation Plan, or as directed by Lessor.

2.3.5. Changes in Use for the Protection of Health and Safety. Lessor retains the right to require changes to Lessee's Construction Plan for the protection of public health and safety, or preservation of the Leased Premises or its environmental characteristics.

2.3.6. Reservation of Water Rights and Use. Lessor reserves as its sole property any and all water from any source arising on, or placed in beneficial use on, the Leased Premises and to hold all water rights for any beneficial use that may develop as a result of this Lease. However, Lessee shall have use of such water, if approved in the Construction Plan, during the term of this Lease and without cost.

2.3.7. Right of Ingress and Egress. Lessor reserves the right of access, and ingress and egress across the Leased Premises including by way of any existing road or any road constructed by or for Lessee during the Lease Term. Use of any such road by Lessor or its agent must not unreasonably interfere with Lessee's activities with regard to the Leased Premises.

2.3.8. Closure of Roads. Lessor reserves the right to close Lessor's roads to or within the Leased Premises for any period reasonably necessary for road protection, fire suppression, public safety, water quality protection, wildlife and fish critical habitat protection, or administrative purposes deemed necessary by Lessor. If possible, Lessor will give Lessee notice of any planned road closure at least sixty (60) days in advance of any such closure. Lessor must make reasonable efforts to limit the term of any emergency road closures to the period necessary to resolve the emergency.

2.3.9. Closure of Operations. Lessor reserves the right, in situations of imminent danger to life or property, upon such notice as is reasonable in the circumstances, to require Lessee to cease operations on the Leased Premises, without compensation to Lessee. Closure of operations may be determined by IDL, or in coordination with another government agency, to protect public safety, the environment, or endowment assets, including for fire suppression on the Leased Premises or adjacent lands.

2.3.10. Sale or Exchange of Leased Premises.

A. Lessor may sell or exchange title in all or any portion of the Leased Premises during the Lease Term. In the event of such sale or exchange, this Lease shall not terminate. Lessor shall assign to the purchaser all of Lessor's rights, title, interests, and obligations under this Lease. Lessor's assignee shall assume full performance of Lessor's obligations for the remaining duration of the Lease Term, and any that survive termination of this Lease.

B. If Lessor sells or exchanges title in less than the entire Leased Premises, and such portion, or portions, are not material to Lessee's Wind Energy Purposes, the Parties may agree to modify this Lease and remove such portion, or portions, from the Leased Premises; thereby, precluding the need of assignment to the purchaser.

C. Lessor will notify Lessee that the Leased Premises is being considered for disposition at least one hundred eighty (180) calendar days in advance of any auction or any exchange closing.

2.3.11. Public Use. Lessee must allow the general public the right to use the Leased Premises for any lawful use authorized by the Board for lands owned by the State, except for any such use which is incompatible with Lessee's uses under this Lease, and further excepting exclusive use areas approved by Lessor pursuant to Section 6.3.2. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach State-owned lands. Lessee shall not restrict public use of State lands authorized by the Board without prior written approval of Lessor. Nothing in this Lease shall be deemed a limitation on Lessor's authority to control public use of the Leased Premises where such use is authorized by the Board. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b).

2.3.12. Harvest of Seed. Lessor reserves the right to harvest seed from plants on the Leased Premises. Lessor shall coordinate the harvesting activities with Lessee at the earliest reasonable time to minimize impacts on Lessee's operations.

2.3.13. Rights Not Expressly Granted. Lessor reserves all rights and privileges of every kind and nature, except as specifically granted in this Lease.

**2.4. Lessee's Due Diligence.**

2.4.1. Due Diligence Period. Lessee shall have a period of one hundred and eighty (180) calendar days after the Execution Date ("**Due Diligence Period**") to complete the due diligence items described below in this Subsection 2.4.1. During such period Lessee shall obtain and review, or waive its right to obtain and review, the following:

A. A survey of the Leased Premises prepared by a licensed land surveyor satisfactory to Lessee ("**Survey**"). Lessor shall receive a copy of any Survey prepared by Lessee, or on its behalf. Lessee shall pay the cost of the Survey.

B. A Phase I environmental site assessment of the Leased Premises (the "**Phase 1 Report**"). Lessor shall receive a copy of any Phase 1 Report prepared by or on behalf of Lessee. The cost of the Phase 1 Report shall be paid by Lessee.

2.4.2. Right of Review and Termination. Prior to the expiration of the Due Diligence Period, and subject to Section 2.1.3, Lessee shall give Lessor written notice of any objection of Lessee to any matter disclosed by the Survey, or the Phase 1 Report to which Lessee objects ("**Disapproved Matters**"). If Lessee does not object to a matter disclosed within the Due Diligence Period, such matter shall be deemed to have been approved by Lessee. If Lessee gives notice of objection as to any such matter within the Due Diligence Period, Lessor shall have the option, but not any obligation, to cure the Disapproved Matters. If Lessor elects to cure the Disapproved Matters, Lessor will take reasonable actions to attempt to eliminate, cure, or otherwise remediate the Disapproved Matters, at Lessor's cost, within ninety (90) calendar days ("**Cure Period**"). Notice of Lessor's election to attempt to cure shall be given to Lessee within fifteen (15) calendar days following receipt of Lessee's notice of objection. If Lessor does not eliminate, cure, or otherwise remediate such Disapproved Matters within the Cure Period, Lessee's sole and exclusive remedies shall be to i) terminate this Lease by giving written notice to Lessor on or before thirty (30) days after expiration of the Cure Period; ii) try to remedy such Disapproved Matters itself; or iii) waive any such Disapproved Matters, and proceed. If Lessee does not elect to terminate on or before thirty (30) days after expiration of the Cure Period, Lessee shall be deemed to have elected to waive any uncured Disapproved Matters, and this Lease shall continue in full force and effect.

2.4.3. Limitation on Activities. Until the end of the Due Diligence Period, Lessee's actions on the Leased Premises shall be limited to those necessary to complete Lessee's due diligence items and as allowed in Section 4.1.

### **ARTICLE 3 – TERMS OF LEASE; TERMINATION**

**3.1. Term of Lease.** Subject to the other provisions of this Lease, the term of this Lease shall be for a period of forty-nine (49) years, beginning on the Effective Date and ending at 11:59 p.m. on December 31, 2071 ("**Lease Term**").

**3.2. New Lease.** If Lessee has fully complied with the terms and conditions of this Lease, and is not in default, then Lessee may apply for a new lease by filing an application with Lessor prior to April 30 of the year in which the Lease Term ends, in accordance with Idaho Code § 58-307(8). Lessee understands that the terms and conditions of any new lease are in Lessor's sole discretion and may be materially different than the terms and conditions of this Lease. A new lease is subject to the auction requirement of Article IX, § 8 of the Idaho Constitution and the conflict auction provisions of Title 58, Chapter 3, Idaho Code, and any applicable rules promulgated thereunder. Lessor will value the creditable Improvements prior to any conflict auction for a new lease in accordance with any then-existing applicable statute or rule. If Lessee is not the successful lessee of a new lease for the Leased Premises, then Lessee shall, prior to the termination of this Lease, vacate the Leased Premises, and Lessee shall be paid the value of the approved Lessee-owned Improvements by the successful new lessee.

**3.3. Use of Phases.** The Lease Term will be separated into phases, more particularly described in Article 4. The phases may vary in time or occur simultaneously for different portions of the Leased Premises, as is more particularly described in the Construction Plan required under Section 6.3. If different phases occur simultaneously, Rent shall be apportioned as set forth in Section 5.7.

**3.4. Maximum Phase Term.** The timeframe of any phase must not exceed the applicable period(s) set forth in Article 4.

**3.5. Termination.**

3.5.1. Termination by Lessee.

A. During Phase 1 of this Lease, as described in Sections 4.1 and 6.2, and provided Lessee is not then in default, Lessee may terminate this Lease by giving Lessor sixty (60) calendar days' prior written notice of termination. Lessee shall restore the Leased Premises to its natural contour and vegetative state, as existed immediately preceding Lessee's activity on the Leased Premises and pursuant

to the Decommissioning and Reclamation Plan.

B. During Phase 2 of this Lease, as described in Sections 4.2 and 6.3, and provided Lessee is not then in default, Lessee may terminate this Lease by giving Lessor ninety (90) calendar days' prior written notice of termination. Lessee shall complete all obligations under the Decommissioning and Reclamation Plan; termination will not be deemed complete until such obligations are fulfilled.

C. During Phase 3 of this Lease, as described in Sections 4.3 and 6.4, and provided Lessee is not then in default, Lessee may terminate this Lease by giving Lessor one hundred eighty (180) calendar days' prior written notice of termination. Lessee shall complete all obligations under the Decommissioning and Reclamation Plan; termination will not be deemed complete until such obligations are fulfilled.

D. Upon termination during any phase, Lessee's actions on the Leased Premises shall be limited to those necessary for completion of its obligations under the Decommissioning and Reclamation Plan.

E. If different phases are occurring simultaneously, then the termination provisions applicable to the most advanced phase shall apply and must be completed by Lessee.

3.5.2. No Refund of Rents. Under no circumstances will Lessor refund to Lessee any amount or portion of Rent in the event of Lessee's termination during any phase.

3.5.3. Termination by Lessor for Lessee's Default and Failure to Cure.

A. *Events of Default.* Lessor will provide Lessee with a written notice of default in the event any of the following events of default occur ("**Notice of Default**"). Lessee shall be in default of this Lease if any one or more of the following occurs:

- i. Lessee fails to pay Lessor the applicable, annual Phase Rent amount when due;
- ii. Lessee fails to pay any other Rents in accordance with Article 5, performance security in accordance with Article 8, or other amount to Lessor when due;
- iii. Lessee fails to pay, or contest in compliance with Section 11.2, any tax assessment, or other government fee when due;
- iv. Lessee fails to complete a phase prior to the conclusion of its maximum period, as more particularly described in Article 4, without the prior written approval of Lessor;
- v. Lessee fails to observe or perform any other obligation, covenant, condition, or undertaking set forth in this Lease;
- vi. Lessee fails to obtain any Governmental Approvals necessary for activities during, and upon completion of, any phase described in Article 4;
- vii. Lessee violates any applicable Environmental Laws or Government Approvals;
- viii. Lessee makes an assignment or other transfer for the benefit of its creditors in anticipation of or preparation for commencing a proceeding in bankruptcy;
- ix. Lessee becomes insolvent or proceedings in bankruptcy or for liquidation, reorganization, or rearrangement of Lessee's affairs are instituted by or against Lessee;
- x. A receiver or trustee is appointed for all or substantially all of Lessee's business or assets;

xi. A trustee is appointed for Lessee after a petition has been filed for Lessee's reorganization under the United States Bankruptcy Code, or if this Lease has been rejected under § 365 of the United States Bankruptcy Code;

xiii. Lessee makes an assignment, sublease, novation, or other transfer of this Lease in any manner contrary to Article 10 or Article 14; or

xiv. Lessee allows or causes a lien or encumbrance of any kind to be placed, filed, or recorded against the Leased Premises in any manner contrary to Article 12.

B. *Duty to Cure.* Lessee shall cure every default set forth in the Notice of Default within the following timeframes:

i. In the event of Lessee's failure to pay any amount due to Lessor, such as the events of default at Subsection 3.4.2.A.i and ii above, Lessee shall cure any such default, including payment of any and all late charges and interest, within thirty (30) calendar days from the date of the Notice of Default.

ii. In the event of bankruptcy or receivership that is the result of an action brought against Lessee and without Lessee's concurrence, Lessee shall have ninety (90) calendar days from the commencement of the proceeding, to have the same dismissed and any receiver or trustee appointed therein discharged.

iii. In the event of Lessee's violation of, or failure to obtain, any Governmental Approvals necessary for any activity during any phase of this Lease, Lessee shall have ninety (90) calendar days from the date of the Notice of Default to demonstrate that such Governmental Approvals have been obtained, are not necessary, or to seek such Governmental Approvals. If such Governmental Approvals are necessary for Lessee's activities and are not obtained, then Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation on the Leased Premises until the violation has been remedied to the satisfaction of Lessor, in its reasonable discretion.

iv. Except as otherwise stated in this Lease, Lessee shall cure every default set forth in the Notice of Default within sixty (60) calendar days from the date of the Notice of Default. If Lessee has, within the cure period, diligently and in good faith worked to correct the default, then Lessor shall extend the cure period for a length of time that Lessor believes to be reasonably necessary to complete the cure. Any such extension will be contingent upon Lessee's continued diligence toward a cure throughout the cure period.

v. All cure periods shall run concurrently and not consecutively.

C. *Failure to Cure.* In the event of any default by Lessee, which is not cured within the applicable cure period, if any, and subject to the terms of Article 10, Lessor may terminate this Lease; may enforce any or all violations against Lessee; may seek resolution by judicial action or otherwise; and may seek any single, combination of, or any and all remedies available at law or in equity. Lessor's pursuit of any particular right or remedy for a failure to cure, and any resulting breach of this Lease, shall not, in and of itself, constitute a waiver or relinquishment of any other claim or remedy against Lessee. Lessor may, in its sole discretion, pursue any, all, or none of the following:

i. Terminate this Lease and re-enter upon all or any part of the Leased Premises, either with or without process of law, Lessee hereby waiving any demand for possession, and remove Lessee and any persons or property from the Leased Premises, with all such costs becoming the sole obligation of Lessee;

ii. Re-lease the whole, or any part or parts of the Leased Premises, either in the name of Lessor or otherwise, for less than or the balance of the Lease Term, and grant concessions or charge a higher Rent than that in this Lease;

iii. Remit payment on any tax, assessment, or other governmental fee due by Lessee. In that event, Lessee shall, upon Lessor's demand repay to Lessor the amounts so paid, reasonable attorney fees and all other court costs, and any other expenses incurred because of or in connection with such payments, together with interest at the Default Rate until paid in full;

iv. Pursue judicial action to collect from Lessee damages incurred by or resulting to Lessor from Lessee's failure to observe and perform any term, condition, covenant, duty, or obligation of this Lease;

v. Allow the Lease to remain in full force and effect while enforcing any or all of Lessor's rights and remedies; or

vi. Remove any or all of Lessee's property or Improvements and store the same at Lessee's expense or require Lessee to remove the same.

D. *Liability for Damages.* The failure of Lessor to re-lease the Leased Premises or any part or parts of it shall not release or affect Lessee's obligations under this Lease or liability for damages. In computing such damages, there shall be added to the amount due any expenses incurred by Lessor in connection with re-leasing, including: legal expenses, reasonable attorney fees, brokerage fees, advertising costs, cost to keep the Leased Premises or Improvements in good order, or for preparing the Leased Premises or Improvements for re-leasing. Any such costs shall be considered and included as Rents to be paid by Lessee. Any judicial action brought to collect the amount of the deficiency for any period shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent period by a similar proceeding. Lessor, in putting the Leased Premises in good order or preparing the same for re-leasing may, at Lessor's option, make such alterations, repairs, or replacements to the Leased Premises or Improvements as Lessor, in Lessor's sole discretion, considers advisable and necessary for the purpose of re-leasing the Leased Premises. The making of such alterations, repairs, or replacements shall not operate or be construed to release Lessee from liability pursuant to this Lease. Lessor shall in no event be liable in any way whatsoever for failure to re-lease the Leased Premises; or in the event that the Leased Premises are re-leased, for failure to collect the Rent due by Lessee under such re-lease contract; and in no event shall Lessee be entitled to receive any excess, if any, of such net Rents collected over the sums payable by Lessee to Lessor. In the event of a breach or threatened breach by Lessee of any of the covenants or provisions of this Lease, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings, and other remedies were not herein provided for. The mention in this Lease of any particular remedy shall not preclude Lessor from any other remedy, in law or in equity. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Lessee is evicted or dispossessed for any cause, or in the event Lessor obtains possession of the Leased Premises, by reason of a default and failure by Lessee to cure any of the covenants and conditions of this Lease, or otherwise.

3.5.4. Surrender by Lessee Upon Termination. Upon termination of this Lease for any reason, Lessee must quietly and peaceably surrender possession of the Leased Premises to Lessor. Within ninety (90) calendar days of termination, unless otherwise set forth in Section 6.4.3, Lessee must remove from the Leased Premises all materials, tools and machines, Wind Energy Facilities and other Improvements, with the exception of any roads or appurtenances that Lessor determines will remain. Anything subject to removal, but not removed, will be deemed abandoned and, at Lessor's option, will be deemed transferred to, and shall become, the property of the State by operation of law without any further action required by Lessor; or Lessor may require Lessee to remove it; or Lessor may cause the same to be removed at Lessee's sole cost and expense.

3.5.5. Reclamation of Leased Premises. Prior to or upon termination of this Lease, Lessee shall complete reclamation of the Leased Premises in accordance with the provisions of this Lease, including Article 4, and the Decommissioning and Reclamation Plan accepted by Lessor as provided in Article 6.

3.5.6. Holding Over. If Lessee, or any successor-in-interest, should remain in possession of the Leased Premises after termination of this Lease, for any reason, such holding over shall be construed as a



tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease, except that the reasonable rent, due on the first day of each month of the holdover period, shall be two times the annual Rent payable immediately preceding the first day of the holdover period. Nothing contained herein shall be construed as Lessor's permission for Lessee to hold over, or as limiting Lessor's remedies at law or in equity against Lessee. If the Leased Premises are not surrendered at the end of the Lease Term, Lessee shall indemnify Lessor for, from, and against any loss or liability resulting from the delay by Lessee in so surrendering the Leased Premises, including any claims made by any succeeding lessee based on such delay.

**3.6. Lessee's Continuing Obligations.** All obligations of Lessee and any surety of Lessee pursuant to this Lease, which accrue during the Lease Term, or which accrue upon the termination of this Lease, shall survive the termination of this Lease.

**3.7. All Rights Return to Lessor.** Upon termination of this Lease for any reason, all rights granted to Lessee will return to Lessor.

## ARTICLE 4 – LEASE PHASES

### 4.1. Phase 1 - Research and Analysis.

4.1.1. **Term of Phase 1.** Phase 1 will begin on the Execution Date, will run simultaneously with the Due Diligence Period, and will continue for up to forty-eight (48) months from the Effective Date, except as provided in Section 4.1.3.

4.1.2. **Phase 1 Activity.** During Phase 1, Lessee shall engage in the activities and submit all the requirements set forth in this Subsection 4.1.2. All such activities shall be described in the Research and Analysis Plan, more particularly described in Section 6.2, to be developed by Lessee and provided to Lessor before Lessee commences any surface-disturbing Phase 1 activities. All such activities and requirements shall be conducted at Lessee's sole cost and expense.

A. Lessee shall conduct all studies necessary for the development of Wind Energy Facilities on the Leased Premises. These studies may occur off the Leased Premises in the same general geographic location if the studies can be reasonably extrapolated to the Leased Premises. Studies may include the installation of wind measurement equipment.

B. Lessee may complete the title report and the Phase 1 Report, and must conduct any other environmental studies required to obtain Government Approvals for subsequent phases, including, if required, avian interaction and migration pattern studies.

C. Lessee shall obtain all required Government Approvals for subsequent phases, and shall submit to Lessor an Opinion Letter, prepared and signed by a law firm that includes attorneys admitted to practice and in good standing in the state of Idaho ("**Opinion Letter**"), providing a legal opinion regarding and including the following: whether all Government Approvals necessary for Lessee's commencement of Phase 2 have been obtained; whether the operation of the Wind Energy Facilities are legally and validly permitted by issuance of requisite Government Approvals; whether the Wind Energy Facilities are held in the name of Lessee or Lessee's anticipated assignee; and whether Lessee is in substantial compliance with all requisite Government Approvals as of the date of the Opinion Letter. Copies of all reviewed or referenced Government Approvals must be enclosed with the Opinion Letter.

D. Lessee shall provide to Lessor evidence of any and all, but at least one existing Use Agreement that is valid and enforceable by Lessee; which, may be in redacted form consistent with Title 74, Chapter 1, Idaho Code. Lessor's acceptance of a partial copy or a redacted copy of a Use Agreement, does not limit Lessor's ability to request and be provided with a full and unredacted copy, subject to confirmation that all confidential provisions in the Use Agreement, as designated by Lessee pursuant to Section 15.2, will remain confidential and not be publicly disclosed.

E. Lessee shall provide to Lessor the Construction Plan and proof of the related requisite security, as more particularly described in Section 6.3.

F. Lessee shall provide to Lessor the Decommissioning and Reclamation Plan and proof of the related requisite security, as more particularly described in Section 6.4.

G. Lessee shall provide to Lessor the Hazardous Materials and Waste Management Plan, more particularly described in Section 13.1. Included in the HMWMP shall be a list of hazardous materials used or stored on the Leased Premises. Material Safety Data Sheets (also known as "MSDS") for all hazardous materials used or stored on the Leased Premises shall be provided to Lessor upon request.

H. Within thirty (30) calendar days of Lessor's receipt of the Opinion Letter, or any plan, or other document required to be provided by Lessee, Lessor may request additional information from Lessee, or provide written comments and recommendations, or provide in writing required changes to any plan. The Parties will discuss Lessor's recommended or required changes at either Party's request.

4.1.3. Conclusion of Phase 1. Phase 1 shall conclude at the earlier of the following circumstances: i) thirty-one (31) calendar days following Lessor's receipt of the Opinion Letter and all required plans and other documents; or ii) if, after receipt of the Opinion Letter and all required plans and other documents, Lessor has no recommendations or required changes and provides written notice of the same to Lessee.

4.1.4. Maximum Phase 1 Length. Unless extended by Lessor in writing, Phase 1 of this Lease shall not extend longer than forty-eight (48) months from the Effective Date. Lessee must submit the written request for extension to Lessor at least thirty (30) calendar days prior to the end of Phase 1.

#### **4.2. Phase 2 - Construction.**

4.2.1. Term of Phase 2. Phase 2 will begin at the conclusion of Phase 1, and will continue for up to thirty-six (36) months from the conclusion of Phase 1, except as provided in Section 4.2.5.

4.2.2. Phase 2 Activities. During Phase 2, Lessee shall engage in and complete construction of the Wind Energy Facilities and related Improvements on the Leased Premises, as more particularly described in the Construction Plan. All Phase 2 activities and requirements shall be conducted at Lessee's sole cost and expense.

4.2.3. Conclusion of Phase 2. Phase 2 of this Lease shall conclude upon the completion of all of the following:

A. Lessor's acknowledgement of receipt, which will be timely provided, of complete and correct copies of all easements, or other types of access or right-of-way agreements, held by Lessee, or made for Lessee's benefit, relating to all connecting lines and pipelines, transmission lines, substations, and other facilities outside the Leased Premises that are necessary to operate and maintain the Wind Energy Facilities, or to carry out the Wind Energy Purposes.

B. Lessor's acknowledgement of receipt, which will be timely provided, of "as built" drawings showing the exact location of all constructed Wind Energy Facilities and other Improvements on the Leased Premises.

C. Lessor's acknowledgement of receipt, which will be timely provided, of all additional or amended Use Agreements that are valid and enforceable by Lessee, entered into after Lessee's disclosure under Subsection 4.1.2.D; which, may be in redacted form consistent with Title 74, Chapter 1, Idaho Code. Lessor's acceptance of a redacted copy of a Use Agreement, does not limit Lessor's ability to request and be provided with a full and unredacted copy, subject to confirmation that all confidential provisions in the Use Agreements, as designated by Lessee pursuant to Section 15.2, will remain confidential and not be publicly disclosed.

D. Lessee must submit to Lessor any proposed changes to the Construction Plan, HMWMP, or the Decommissioning and Reclamation Plan. Lessor will evaluate the proposed changes pursuant to Section 4.3.3, to determine whether the change will be considered a material modification. Within thirty (30) calendar days of Lessor's receipt of any such changes, Lessor may request additional information from Lessee, or provide written comments and recommendations, or provide in writing additional required changes to any such plan. The Parties will discuss Lessor's recommended or required changes at either Party's request.

4.2.4. Partial Transition to Phase 3. Lessee may submit the items required in Subsection 4.2.3 for the conclusion of Phase 2 for individual Wind Energy Facilities, or groupings of Wind Energy Facilities; provided, that conclusion of Phase 2 for such individual or groupings of Wind Energy Facilities is consistent with all related Use Agreements.

4.2.5. Maximum Phase 2 Length. Unless extended by Lessor in writing, Phase 2 of this Lease shall not extend longer than thirty-six (36) months from the commencement of Phase 2. Lessee must submit the written request for extension to Lessor at least thirty (30) calendar days prior to the end of Phase 2.

### 4.3. Phase 3 - Operation.

4.3.1. Term of Phase 3. Phase 3 will begin upon the whole conclusion, or partial transition of Phase 2, and may continue for the remainder of the Lease Term, except as otherwise provided in Section 4.3.5.

4.3.2. Phase 3 Activities. During Phase 3, Lessee shall engage in Wind Energy Purposes and Electrical Power Production from Wind Energy converted on the Leased Premises for utilization and sale pursuant to all applicable Use Agreements. All such activities and requirements shall be conducted at Lessee's sole cost and expense. Within thirty (30) calendar days of its execution or issuance, Lessee will provide Lessor a complete and correct copy of every new or amended Use Agreement that is valid and enforceable by Lessee; which, may be in redacted form consistent with Title 74, Chapter 1, Idaho Code. Lessor's acceptance of a redacted copy of a Use Agreement, does not limit Lessor's ability to request and be provided with a full and unredacted copy, subject to confirmation that all confidential provisions in the Use Agreement, as designated by Lessee pursuant to Section 15.2, will remain confidential and not be publicly disclosed.

#### 4.3.3. Material Modifications to Improvements in Phase 3.

A. Lessee must submit to Lessor any proposed material modifications to any Improvements, and changes to the Construction Plan, HMWMP, or the Decommissioning and Reclamation Plan that Lessee deems necessary during Phase 3. Within thirty (30) calendar days of Lessor's receipt of any such proposed modifications or changes, Lessor may request additional information from Lessee, or provide written comments and recommendations, or provide in writing additional required changes to any such proposal. The Parties will discuss Lessor's recommended or required changes at either Party's request.

B. Lessee shall submit a revised Construction Plan to Lessor prior to modifying any of the Improvements. Modifications to any Improvements shall not remove the Production Areas subject to such modifications from the requirements of this Lease, including the payment of Rent, applicable to Phase 3. Lessee shall provide Lessor with complete and correct updated drawings showing all modifications to the Wind Energy Facilities and Improvements on the Leased Premises as such modifications are completed.

C. For purposes of this Section 4.3, "**material modifications**" means any of the following circumstances: i) an increase or decrease in the Project's Nameplate Capacity by fifteen percent (15%) or more; ii) addition or removal of any permanent Improvement; iii) a significant change in the location of any permanent Improvement; or iv) results in an increase of decommissioning and reclamation costs by fifteen percent (15%) or more.

4.3.4. Conclusion of Phase 3. Phase 3 of this Lease shall conclude upon the occurrence of any one, or combination, of the following:

A. Written notice of termination of this Lease by either Party, and as more particularly set forth in Section 3.5, subject to and in accordance with the provisions of Article 10.

B. At the end of the Lease Term, and conclusion of an auction of the new lease as described in Section 3.2.

4.3.5. Maximum Phase 3 Length. Unless extended by Lessor in writing and based upon the anticipated execution of a new lease with Lessee as described in Section 3.2, Phase 3 of this Lease shall not extend longer than the end of the Lease Term.

#### **4.4. Phase 4 - Decommissioning and Reclamation.**

4.4.1. Term of Phase 4. Phase 4 will begin upon Lessor's written confirmation that all Phase 3 requirements have been fulfilled to Lessor's satisfaction, or upon an earlier termination as more particularly described in Section 3.5. Lessee's obligations relative to the Decommissioning and Reclamation Plan shall survive the termination of this Lease.

4.4.2. Conclusion of Phase 4. Phase 4 shall conclude upon Lessor's written confirmation that all Phase 4 requirements have been fulfilled to Lessor's satisfaction; such confirmation shall not be unreasonably withheld, conditioned, or delayed.

**4.5. Transition of Supporting Areas.** Supporting Areas shall be transitioned into Phase 2 and Phase 3 concurrently with the first Production Area transitioning to such phase. Supporting Areas shall be transitioned into Phase 4 concurrent with the last Production Area transitioning to such phase. A Production Area may not be transitioned or converted to a Supporting Area without the prior written permission of Lessor, which shall not be unreasonably withheld, conditioned, or delayed.

**4.6. Annual Activities Report.** Throughout the Lease Term, and before the last business day of each Lease Year, Lessee must provide to Lessor a report of all Wind Energy Purposes activities that occurred on the Leased Premises during such timeframe.

**4.7. Subcontractors.** At least fifteen (15) calendar days prior to any contractor or subcontractor entering upon the Leased Premises, Lessee must provide to Lessor a list of all contractors and subcontractors that will be present on the Leased Premises, including any subcontractor that may be assigned to manage or oversee the day-to-day operations at the Leased Premises. Lessee must obtain Lessor's prior written approval of contractors and subcontractors assigned to manage or oversee the day-to-day operations, which approval will not be unreasonably withheld, conditioned, or delayed.

**4.8. Key Employees.** As soon as practicable after initiating each phase, Lessee must provide a list of key employees assigned to oversee as many of the following responsibilities as apply for all operations on the Leased Premises, including the following: resource assessment and energy projections; financing; design, engineering, procurement, and construction specifications; interconnection and substation design; environmental assessments; community liaison; permits and related approvals; regulatory compliance; construction; commissioning potential; decommissioning and reclamation; risk management; insurance; bonding; operations; and maintenance. Lessee must update this list of key employees at the start of each new phase, and notify Lessor of all changes to any key employees within ten (10) business days of the change. Lessee must provide at least one point of contact in the event of an emergency who will be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year.

### **ARTICLE 5 – ANNUAL RENT; ROYALTY; ADDITIONAL PAYMENTS**

**5.1. Effective Date Fee.** Within five (5) business days of the Execution Date, Lessee shall pay Lessor

Two Thousand Five Hundred Dollars (\$2,500.00) (the “**Execution Date Fee**”). The Execution Date Fee shall be non-refundable.

## **5.2. Phase 1 Rent.**

5.2.1. Throughout Phase 1, Lessee shall pay an annual rental amount equal to Twenty-Five Dollars (\$25.00) per acre, times the total acreage of the Leased Premises as set forth in Attachment B (“**Phase 1 Rent**”). Beginning in the second Phase 1 year and continuing each year thereafter for the remainder of the Lease Term, as may be applicable, the Phase 1 Rent shall be adjusted, upward, by 2% each year. Each annual Phase 1 Rent amount shall be paid to Lessor, in advance, on or before each subsequent anniversary of the Effective Date.

5.2.2. In no event shall any Phase 1 Rent be less than Twenty-Five Dollars (\$25.00) per acre, times the total acreage of the Leased Premises as set forth in Attachment B.

5.2.3. Under no condition will Lessee receive any refund of any portion of Phase 1 Rent during Phase 1.

## **5.3. Phase 2 Rent.**

5.3.1 During Phase 2, Lessee shall pay an annual rental amount equal to **One Thousand Dollars (\$1,000.00)** times the total number of MW of expected Nameplate Capacity to be installed on the Leased Premises (“**Phase 2 Rent**”) as presented to Lessor in the Construction Plan. Beginning in the second Phase 2 year, the Phase 2 Rent shall be adjusted, upward, by 2% each year. Each annual Phase 2 Rent amount shall be paid to Lessor, in advance, on or before each subsequent anniversary of the Effective Date.

5.3.2. At no time during the Lease Term will Phase 2 Rent be less than the most recent, full Lease Year amount of Phase 1 Rent, with a 2% upward adjustment. If applicable, the difference between Phase 2 Rent paid and the applicable Phase 1 Rent will be paid to Lessor within thirty (30) calendar days of the end of each Lease Year during Phase 2.

5.3.3. Lessee shall not receive any refund of Phase 2 Rent at termination of this Lease. If Lessee proceeds to Phase 3 prior to the expiration of a full Lease Year, Lessee shall be entitled to a credit in the amount of the prorated portion of that Lease Year’s Phase 2 Rent; which will be applied by Lessor toward the first payment of Phase 3 Rent. Lessee shall not be entitled to proration of any applicable Phase 1 Rent.

## **5.4. Phase 3 Rent.**

5.4.1. During Phase 3, Lessee shall pay an amount equal to the greater of the amounts set forth in (A) or (B) below (“**Phase 3 Rent**”), to be trued-up at the end of each Lease Year:

A. Regardless of whether any Wind Turbine is operating on the Leased Premises, the amount equal to the following schedule times the total Nameplate Capacity installed on the Leased Premises (“**Wind Capacity Fee**”) shall be paid to Lessor, in advance, on or before the Effective Date anniversary in each applicable Phase 3 Lease Year:

Years 1 to 10:	\$4,000.00
Years 11 to 20:	\$4,500.00
Years 21 to 30:	\$5,000.00
Years 31 to 49:	\$6,000.00

OR

B. The following applicable percentage of Gross Annual Revenue for the applicable Lease Years during Phase 3 from the sale of Wind Energy generated by the Wind Turbines located on the Leased Premises (“**Royalty**”):

Years 1 to 10:	3.50%
Years 11 to 20:	4.00%
Years 21 to 30:	4.50%
Years 31 to 49:	5.50%

If applicable, the difference between the paid Wind Capacity Fee and the Royalty will be paid to Lessor within thirty (30) calendar days of the end of each Lease Year during Phase 3.

5.4.2. At no time during the Lease Term will Phase 3 Rent be less than the most recent, full Lease Year amount of Phase 1 Rent, with a 2% upward adjustment. If applicable, the difference between Phase 3 Rent paid and the applicable Phase 1 Rent will be paid to Lessor within thirty (30) calendar days of the end of each Lease Year during Phase 3.

5.4.3. In the event the installed MW capacity of any Wind Turbine increases during the Lease Term as a result of any repowering effort, the Wind Capacity Fee shall likewise increase where applicable by substituting the increased installed Wind Turbine MW capacity for the former Nameplate Capacity. The Wind Capacity Fee shall be prorated for partial years.

5.4.4. The Wind Capacity Fee shall be paid each year, in advance, on or before the anniversary of the Effective Date. The Royalty for each such year shall be paid in arrears, if, to the extent, and in the amount that the Royalty is greater than the Wind Capacity Fee.

5.4.5. In connection with each Phase 3 Rent payment, at the end of the Lease Year, Lessee shall provide to Lessor a signed statement setting forth the amount of Gross Annual Revenue received by Lessee during such Lease Year, and the applicable Royalty calculation. Every Royalty payment shall be paid within thirty (30) calendar days following each anniversary of the Effective Date; provided however, that if Phase 3 initially begins on a date other than the anniversary of the Effective Date, Rent for the initial period shall be prorated.

5.4.6. Phase 3 Rent shall not be prorated if Lessee proceeds to Phase 4 prior to the expiration of a full Lease Year, and Lessee shall not be entitled to a credit against Phase 4 Rent or a refund of any Phase 4 Rent paid for such Lease Year.

5.4.7. Each payment to Lessor under this Section 5.4 will include a summary of the method of calculation of the payment, including the applicable percentage of Gross Annual Revenue for the applicable Lease Year.

5.4.8. Lessee shall submit to Lessor quarterly net metering reports on the first business day of each January, April, July, and October during Phase 3 for verification of the prior quarter's Electrical Power Production. If Lessor requires a different format for, and other information to be included in, the content of the net metering report, Lessor will provide those requirements to Lessee.

5.4.9. Lessor shall not be entitled to any form of tax benefits, payments or credits derived from any federal, state or local tax credit or incentive program, including the federal production tax credit or federal investment tax credit.

## **5.5. Phase 4 Rent.**

5.5.1. During Phase 4, Lessee shall pay the Wind Capacity Fee, as last paid during Phase 3, in advance annually, on each anniversary of the Effective Date ("**Phase 4 Rent**").

5.5.2. At no time during the Lease Term will Phase 4 Rent be less than the most recent, full Lease Year amount of Phase 1 Rent, with a 2% upward adjustment. If applicable, the difference between Phase 4 Rent paid and the applicable Phase 1 Rent will be paid to Lessor within thirty (30) days of the end of each Lease Year during Phase 4.



5.5.3. Phase 4 Rent shall be prorated if Lessee completes Phase 4 prior to the expiration of a full Lease Year, and Lessee shall be entitled to a refund of prorated Phase 4 Rent paid for such year, and not subject to Section 3.5.2. Completion of Phase 4, for the purpose of such proration, shall occur on the date of Lessor's written confirmation that all Phase 4 requirements have been fulfilled to Lessor's satisfaction; such confirmation shall not be unreasonably withheld, conditioned, or delayed.

## **5.6. Additional Payments.**

5.6.1. **Meteorological Tower Rent.** Should Lessee install on the Leased Premises one or more meteorological towers, Lessee will pay Lessor an annual sum of \$3,000.00 on a prorated basis per tower or device and be responsible for installation and removal of the tower(s) and related device(s) ("**Meteorological Tower Rent**"). The first installment of the Meteorological Tower Rent shall be paid by Lessee to Lessor within thirty (30) calendar days after the completion of the installation of the tower, and subsequent installments shall be due and payable within thirty (30) calendar days of each anniversary of the completion of the installation of the tower while meteorological tower(s), related devices, and other supporting structures, are in place. For avoidance of doubt, no Meteorological Tower Rent shall be due for any remote monitoring devices such as SoDAR or LiDAR equipment. Beginning in the second Phase 3 Lease Year and continuing each year thereafter for the remainder of the Lease Term, the Meteorological Tower Rent shall be adjusted, upward, by 2% each year.

5.6.2. **Power Line Payments.** If Lessee installs any electrical, communication or Collection Facilities (collectively "**Power Lines**") that are buried on the Leased Premises, but Lessee does not install at least seven (7) Wind Turbines on the Leased Premises, then Lessee will pay Lessor \$1.00 per linear foot of trench Lessee locates on the Leased Premises ("**Underground Transmission Payment**"). Lessee will pay Lessor \$4.00 per linear foot for any aboveground Power Lines that Lessee installs on the Leased Premises ("**Aboveground Transmission Payment**"), in the event that Lessee does not install at least seven (7) Wind Turbines on the Leased Premises. Lessee will pay the Underground Transmission Payment and Aboveground Transmission Payment to the Lessor within sixty (60) calendar days after the commencement of Phase 3 and in advance, on or before the Effective Date anniversary in each applicable Lease Year thereafter. Beginning in the second Phase 3 Lease Year and continuing each year thereafter until the end of the Lease Term, both the Underground Transmission Payment amount and the Aboveground Transmission Payment amount shall be adjusted, upward, by 2% each year.

5.6.3. **Temporary Facilities Payments.** Lessee may erect or create temporary storage yards, laydown areas, construction compounds, concrete batch plants or similar temporary facilities ("**Temporary Facilities**") on the Leased Premises. If Lessee elects to place Temporary Facilities on the Leased Premises, Lessee shall pay Lessor a one-time payment of \$5,000.00, assuming the total footprint of the Temporary Facilities does not exceed five (5) acres. Lessee will pay Lessor an additional one-time payment of \$2,000.00 per acre (prorated for partial acreage) for Temporary Facilities that exceed five (5) acres in total land area. The Temporary Facilities Payment shall be paid by Lessee to Lessor within sixty (60) calendar days after the completion of the installation of the Temporary Facilities.

5.6.4. **Substation, Power Storage, O&M Building Rent.** For each substation, power storage, or operations and maintenance ("**O&M**") facility to be constructed on the Leased Premises, Lessee will pay Lessor annual rent equal to \$25,000.00 per substation or power storage facility, and \$15,000.00 per O&M facility, including any parking lot and fenced area, assuming the total footprint of each substation or power storage facility does not exceed five (5) acres and the total footprint of any O&M facility does not exceed three (3) acres in total land area. Lessee will pay Lessor an additional annual rent of \$2,500.00 per acre (prorated for partial acreage) for each substation or power storage facility that exceeds five (5) acres, or O&M facility exceeding three (3) acres in total land area (collectively, "**Facilities Rent**"). The Facilities Rent amount shall be paid annually. The first annual Facilities Rent amount shall be paid by Lessee to Lessor within sixty (60) days following the commencement of Phase 3, and subsequent annual payments shall be due and payable within sixty (60) days after the Effective Date of each Lease Year through the Lease Term. The Facilities Rent for any partial calendar year shall be prorated, as applicable. Beginning in the second Phase 3 Lease Year and continuing each year thereafter to the end of the Lease Term, the Facilities Rent amount shall be adjusted, upward, by 2% each year.

**5.7. Apportionment of Rent During Simultaneous Phases.** If different phases are occurring simultaneously, then all Rent applicable to the most advanced phase shall apply.

**5.8. Lessee's Records.** Lessee shall keep full, complete, and proper books, records and accounts of Gross Annual Revenue according to generally accepted accounting principles as would be normally examined and required to be kept by an independent accountant when performing an audit of Lessee's business to verify the accuracy of Lessee's statements of Gross Annual Revenue. All such books, records, and accounts shall be kept for a period of at least seven (7) years following the end of each Lease Year. Within three (3) years after the end of any Lease Year, Lessor, its agents and employees, upon at least seven (7) business days' prior written notice, may examine and inspect all of the books and records relating to the Leased Premises, including relevant income tax returns, for the purpose of investigating and verifying the accuracy of any prior statement of Gross Annual Revenue. During the Lease Term, Lessee may mark any records provided under this section as trade secrets, proprietary information, or by such other designation as Lessee believes applicable to exempt such documents from public disclosure pursuant to the Idaho Public Records Law (Idaho Code §§ 74-101 through 74-126), and Lessor shall treat the information as confidential as set forth in Section 15.2. If the results of the audit show that Lessee's statement or statements of Gross Annual Revenue for any period has been understated, then, within ten (10) business days of the receipt of notice of the determination of such deficiency, Lessee shall pay any applicable deficiency to Lessor, together with interest thereon at the Default Rate, from the date such payment should originally have been made until the date actually paid in full; provided however, this provision for payment of a deficiency shall not be deemed a waiver of any default remedies available to Lessor as a result of such deficiency. If the results of the audit show that Gross Annual Revenue for the audit period have been understated by five percent (5%) or more, Lessee shall also pay Lessor the cost of the audit.

**5.9. Late Payment Charges; Notice.** In the event any Rent payment or other financial obligation due by Lessee to Lessor under this Lease are not paid in full when due, Lessee shall also pay: 1) interest accruing thereon at the statutory rate of interest (12% per annum) as provided by law until payment is made in full; and 2) a late charge which shall accrue in full as of the first day of each and every calendar month of any such delinquency, until payment is made in full, in the amount of Twenty-Five Dollars (\$25.00) or an amount equal to one percent (1%) of the unpaid principal obligation(s), whichever is greater. All payments shall be applied first to the payment of accrued interest and to accrued late charges, and then to the reduction of unpaid principal. There shall be no compounding of accrued interest or late charges. The Parties acknowledge and agree that the late charge described herein is a reasonable attempt to estimate and to compensate Lessor for higher administration costs associated with administering late payments, and is not intended as a penalty. By assessing interest and late charges, Lessor does not waive any right to declare a breach, or to pursue any right or remedy available to Lessor by reason of such breach available at law or in equity, after the expiration of any applicable notice or cure period.

**5.10. Most Favored Nation.**

5.10.1. Lessee represents that, as of the Execution Date, the terms of Rent contained in Sections 5.2, 5.3 and 5.4 of this Lease are as favorable as, or more favorable than, other then-existing leases with any landowners whose property constitutes a portion of the Project (each a "**Project Lease**"). Lessee further represents and warrants that Lessee shall not renegotiate any Project Lease or negotiate any new lease within the Project that contains more favorable payment terms than the Rent contained in this Lease unless Lessee discloses and offers such payment terms to Lessor. If Lessor accepts such payment terms, the Parties shall enter into an amendment to this Lease adopting such as amended Rent terms.

5.10.2. If Lessee executes additional Project Leases, and if any Project Lease contains Phase 3 Rent amounts, whether or not called Phase 3 Rent, that are more favorable than those contained in Section 5.4 of this Lease, then Lessee shall offer to Lessor to amend Article 5 of this Lease to match such more-favorable Phase 3 Rent amounts contained in such Project Lease (as applicable, a "**Rent Increase**"). Lessor shall not be entitled to receive a Rent Increase if Lessor fails or refuses to execute a Rent Increase amendment, which will be negotiated by the Parties, within ninety (90) calendar days after Lessee delivers

written notice of the requisite Rent Increase; provided however, that the Rent Increase agreement shall not add any new provision to or modify any provision of this Lease other than those related to Phase 3 Rent.

5.10.3. Lessee shall be under no obligation to disclose any confidential information from a Project Lease, including any financial provisions or rent amounts, *provided however*, subject to the receipt of consent to disclose by Lessee from the lessors under the Project Leases, Lessor shall have the right, at any time during the Lease Term, to request and receive a written summary of Project Lease financial provisions for such Phase 3 Rents, whether or not called Phase 3 Rents, which summary shall be verified or notarized as providing correct and complete information. Lessor reserves the right to adjust the Phase 3 Rent rates under this Lease to reflect any greater rates paid by Lessee on any other Project Lease. Such adjustments may occur upon ninety (90) calendar days' written notice to Lessee.

## ARTICLE 6 – PLANS

**6.1. Plans Generally.** Lessee shall provide a Research and Analysis Plan, the Construction Plan, a Decommissioning and Reclamation Plan, and the HMWMP, as more particularly set forth, below, and in accordance with Article 4 and Article 13. The Construction Plan, HMWMP, and the Decommissioning and Reclamation Plan may be submitted as a single plan with the information required by this Lease, or as separate plans.

6.1.1. Information in All Plans. All plans must provide information or data on all items that are necessary or useful in effectuating and managing the Wind Energy Purposes, including the following:

A. A statement describing the proposed measures Lessee will take for the protection of the environment, including the prevention or control of fires; soil loss and erosion; pollution of surface and ground waters; damage to wildlife and other natural resources; air and noise pollution; and hazards to public health and safety during any activities under this Lease.

B. All pertinent information and data required to support the plan of operations for the utilization of Wind Energy.

6.1.2. Schedule of Activities. Each plan must include a detailed schedule of known and anticipated activities, organized in a practical and understandable format. The schedule must include critical path and major milestones with sufficient detail to assess the Project's progress. Updates to the schedule must be provided to Lessor on a quarterly basis. Lessor's review or approval of such plans will be in accordance with Article 4.

6.1.3. Lease Governs. Notwithstanding Lessor's receipt or approval of any plan, the terms and conditions of any required plan shall not be inconsistent with, alter, or amend any of the terms and conditions of this Lease without the Parties modifying this Lease, as provided in Section 15.12. In the event of any inconsistency between any plan and this Lease, the terms and conditions of this Lease shall govern.

**6.2. Research and Analysis Plan.** The Research and Analysis Plan shall describe all due diligence and exploratory activities, as described below, that have been conducted as of the date of the plan, or will be conducted on the Leased Premises during Phase 1; and that are necessary to complete or obtain all studies, surveys, reports, and Government Approvals required for commencement of construction under Phase 2 of this Lease.

6.2.1. Exploratory Activities. The type, location, and schedule of all exploratory activities which have or will occur on the Leased Premises, including soil testing, surveys, wind and solar resource assessment activities, and all reports and studies including seismic, environmental and aviary studies.

6.2.2. Requirements for Development and Production. Lessee must include a list of all information, data, and Governmental Approvals that Lessee knows or anticipates will be required to support Lessee's Construction Plan, HMWMP, and Decommissioning and Reclamation Plan.

**6.3. Construction Plan.** The Construction Plan shall describe all Wind Energy Facilities and Improvements to be constructed on the Leased Premises, and all activities to be conducted on the Leased Premises. The Construction Plan shall include the following components:

6.3.1. Facilities and Improvements. Maps and other information sufficient to locate the proposed locations and specifications of all Wind Energy Facilities and Improvements on the Leased Premises. Information concerning Wind Energy Facilities shall include numbers, type, size, manufacturer, model, and foundation design of any surface area that may be disturbed with the placement of proposed Wind Energy Facilities and Improvements. Information concerning the construction of roads on the Leased Premises shall identify all gates, culverts, and road construction materials, including those materials, if any, proposed to be acquired from the Leased Premises in accordance with Section 2.2.8. Information concerning the construction of pipes, pipelines, transmission lines, and any other items to be placed above or below the surface of the Leased Premises, if applicable, shall identify where any such items are to be installed on the surface or buried and how they cross existing or planned roads.

6.3.2. Areas of Exclusive Lessee Use. The portion(s) of the Leased Premises that Lessee proposes to hold for its exclusive use and to exclude the public and other lessees of Lessor from accessing. Lessee shall describe the basis for excluding the public and other lessees of Lessor from such portions of the Leased Premises.

6.3.3. Construction Schedule. The schedule of construction and development on the Leased Premises. If Lessee anticipates partial transitions of the Leased Premises to phases of this Lease, the Construction Plan shall set forth the portions of the Leased Premises to be transitioned separately; the Electrical Power Production projected for each phase; the planned schedule for the partial transitions; and the contingencies and factors that determine the timing of each transition. Lessee shall further include a pictorial and numerical apportionment of the Leased Premises into Production Areas, including those to be transitioned separately, and Supporting Areas.

6.3.4. Government Approvals. A complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the commencement of construction under Phase 2 and for operation under Phase 3, including the Opinion Letter required pursuant to Section 4.1.2.C. In the event that additional Government Approvals, necessary for the commencement of construction under Phase 2 or operation under Phase 3, come to the attention of either Party, that Party shall immediately notify the other Party in writing and the Construction Plan shall be amended accordingly by Lessee.

6.3.5. Vegetation and Soil Management. A description of the means whereby Lessee will maintain the natural vegetation, control erosion, and control noxious weeds on the Leased Premises. The description shall also include the means whereby Lessee will ensure that Lessee's activities on the Leased Premises do not adversely impact the waters on or adjoining the Leased Premises. The description shall also address any overburden or stockpile areas for material excavated from the Leased Premises.

6.3.6. Surveys. A list of all environmental, biological, habitat, and cultural resources survey data, including archeological and historic surveys, concerning the Leased Premises conducted by or on behalf of Lessee. Lessee shall provide copies of such surveys to Lessor. The surveys submitted to Lessor must include the study protocol, survey locations, and complete results.

6.3.7. Operations Requirements. A description of Electrical Energy Production operations that conforms to the best practices and engineering principles in use in the industry. Operations shall be conducted in such manner as to protect the natural resources on the Leased Premises, and to result in the maximum ultimate recovery of Wind Energy with a minimum of waste.

6.3.8. Security Requirements. An estimate of the dollar amounts required for Construction Security, Operating Security, and Decommissioning and Reclamation Security under Article 8.

6.3.9. Administrative Information. The names and mailing addresses of Lessee's primary Construction Plan supervisors and operators; the names and mailing addresses of any company providing

project services to Lessee, and the names of each company's contact person; and any other contract operators who will be involved in the construction on the Leased Premises.

**6.4. Decommissioning and Reclamation Plan.** The Decommissioning and Reclamation Plan shall set forth the means whereby Lessee shall restore the Leased Premises to its prior, natural contour and vegetative state following the construction or modification of Wind Energy Facilities and Improvements, and upon termination of this Lease and removal of all Improvements.

6.4.1. Prerequisite to Construction. No construction of any Wind Energy Facilities or Improvements, no alteration of the Leased Premises, nor any change in such construction or alteration plans may occur until Lessor has accepted, in writing, the Decommissioning and Reclamation Plan. Lessor shall complete its review of the Decommissioning and Reclamation Plan, and issue an approval or request additional information or revisions, within sixty (60) days of receipt from Lessee. If Lessor fails to issue an approval or request additional information or revisions within sixty (60) days of receipt, the Decommissioning and Reclamation Plan shall be deemed approved.

6.4.2. Information Required. The Decommissioning and Reclamation Plan shall describe the method and manner for decommissioning all Wind Energy Facilities and Improvements, and reclamation of all planned construction, and known alterations, of any Improvements on the Leased Premises. The Decommissioning and Reclamation Plan shall include a complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the activities under such plan; which must also be addressed by the Opinion Letter. In the event that additional Government Approvals necessary for the activities under the Decommissioning and Reclamation Plan come to the attention of either Party, that Party shall immediately notify the other Party in writing and the Decommissioning and Reclamation Plan shall be amended accordingly by Lessee.

6.4.3. Minimum Reclamation Required. Both before and after submission of the Decommissioning and Reclamation Plan to Lessor, the Lessee agrees to the following minimum restoration measures following construction, modification, decommissioning, or removal of the Wind Energy Facilities and Improvements, and upon termination of this Lease:

- A. Disturbed areas will be contoured to closely match a pre-disturbance state;
- B. Rock base and geo-technical material will be excavated from all roads and removed from the Leased Premises. Roads will then be ripped, covered with a minimum 12 inches of topsoil, and revegetated;
- C. Foundations will be removed to a depth of a minimum of 48 inches and backfilled with topsoil to a natural contour, and revegetated;
- D. Revegetation measures will utilize a seed mix approved by the Lessor. Revegetation will not be considered complete until establishment of perennial vegetative cover; and
- E. Lessee posts the Decommissioning and Reclamation Security in a form acceptable to the Lessor.

6.4.4. Disposal of Waste. The Decommissioning and Reclamation Plan shall address the disposal of any known or identified Hazardous Substances that may be stored or located on the Leased Premises at the termination of this Lease.

**6.5. Plan Reviews.** All plans must undergo an annual operating review during which time Lessee shall disclose to Lessor any construction or alteration of the Leased Premises planned by Lessee during the upcoming year. Lessor may present reasonable modifications to any previously approved plan to ensure that the plan, and the corresponding amount of Lessee's security, adequately addresses such planned construction or alteration. In any event, Lessor may review any plan required under this Lease on an annual basis and present reasonable modifications to any such plan which may be reasonably necessary to protect



the Leased Premises or the Wind Energy resources, including taking into account the nature and extent of Lessee's use or alteration of the Leased Premises and the work reasonably necessary to restore the Leased Premises to its natural, pre-lease, state.

## **ARTICLE 7 – TITLE TO IMPROVEMENTS; USE; REQUIRED MAINTENANCE; REMOVAL**

### **7.1. Title to Improvements.**

7.1.1. Title During Lease Term and Upon Early Termination. Title to all Improvements constructed by or at the request of Lessee shall remain in Lessee during the Lease Term. Upon the termination of this Lease, all Improvements shall be removed by Lessee and the Leased Premises restored by Lessee pursuant to the approved Decommissioning and Reclamation Plan, unless Lessor exercises its option to acquire title pursuant to Sections 2.3.4 or 7.1.2.

7.1.2. Title Upon Termination for Uncured Default. Upon the termination of this Lease for Lessee's uncured default, as provided herein, and at Lessor's sole option, title to the Improvements shall vest in Lessor by operation of law without any further action required by Lessor if Lessee has not removed all Improvements within nine (9) months of such termination, weather permitting, and completed the requirements of the Decommissioning and Reclamation Plan. Lessee, or Lessee's successor-in-interest, shall prepare and record any documents that Lessor may require to evidence such ownership in Lessor. Any security interest in the personal property constituting the Improvements is subject to the terms of this Article 7.

7.1.3. Further Disposition of Title. In the event Lessor leases the Leased Premises to a new lessee for continued Wind Energy Purposes following the termination of this Lease for uncured default, Lessor shall sell the Improvements to the new lessee. Lessor shall apply the proceeds of such sale first to any Rents due and owing from Lessee at the time of the sale, next to reimbursement for all costs related to such sale, and last will pay the remainder, if any, to Lessee, or Lessee's successor-in-interest. Upon payment to Lessor, title to such Improvements shall vest in the new lessee and be subject to the terms of the State's lease with the new lessee. The value of the Improvements shall be as agreed between Lessor and Lessee, or Lessee's successor-in-interest; provided however, that if the Parties are unable to agree, the value shall be determined through an independent appraisal that determines the current market value of the Improvements. Lessee, or Lessee's successor-in-interest, and Lessor shall each be responsible for one-half (1/2) of the cost of such appraisal, which may be recovered by Lessor as a cost of sale.

**7.2. Removal.** Lessee must not remove Improvements from the Leased Premises without Lessor's prior written approval, which will not be unreasonably withheld or conditioned, other than as is necessary for modification or replacement of such Improvements, as is routine in Lessee's ordinary course of business. Lessee must continue to maintain and restore or replace Improvements on the Leased Premises sufficient to maintain the operations for Electrical Power Production. Any Wind Energy Facilities and Improvements at or near the end of their useful life, which are not necessary for operations, may be removed by Lessee in accordance with the Decommissioning and Reclamation Plan or as approved by Lessor.

**7.3. Use and Operation of Wind Energy Facilities and Improvements.** Use and operation of the Wind Energy Facilities and Improvements on the Leased Premises shall be in conformance with the terms of this Lease and shall comply with all applicable federal, state and local laws and rules, and safety standards whether currently existing, amended, or enacted during the term of this Lease, including Environmental Laws.

**7.4. Maintenance of Wind Energy Facilities and Improvements.** During the Lease Term, Lessee, at its sole expense, shall keep and maintain all of the Wind Energy Facilities and Improvements, in good condition and repair; and shall make all necessary repairs, replacements, and renewals, whether structural or nonstructural, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition. It is the intention of the Parties that Lessor shall have no liability for any of the foregoing.



Lessee will not be required to restore, repair, or replace any Wind Energy Facilities or Improvements that are at or near the end of their useful life unless it is necessary to maintain the operations for Electrical Power Production. Lessee, at Lessee's expense, shall be responsible for all Improvements, additions, alterations, maintenance, and repairs necessary or appropriate such that the Leased Premises and all Wind Energy Facilities and Improvements are in compliance with applicable law. Lessee waives any provisions of applicable law that may require any duty of repair by Lessor, or permit Lessee to make repairs at the expense of Lessor.

#### **7.5. Repair and Replacement: Damaged Wind Energy Facilities and Improvements.**

7.5.1. Continuation of Lease. Except as provided in Section 15.5, no loss or damage by fire or any other cause resulting in either partial or total destruction of the Leased Premises, or of any Wind Energy Facilities or Improvements now or hereafter located in or on the Leased Premises, or any fixtures, equipment, or machinery used, or intended to be used, in connection with the Leased Premises or the Wind Energy Facilities or Improvements thereon, may operate to terminate this Lease or to relieve or discharge Lessee from the payment of any Rents due or payable under this Lease, or from the performance and observance of any of the agreements, covenants and conditions contained in this Lease to be performed and observed by Lessee. Nothing in Section 7.5.1 shall limit Lessee's right to terminate under Section 3.5.1.

7.5.2. Restoration. In the event of any damage by fire or any other cause resulting in either the partial or total destruction of any Wind Energy Facilities or Improvements now or hereafter located in or on the Leased Premises, or any fixtures, equipment, or machinery used, or intended to be used, in connection with the Leased Premises or the Wind Energy Facilities or Improvements, Lessee shall, at its sole expense and whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, promptly commence and complete the restoration, replacement, or rebuilding of the Wind Energy Facilities and Improvements, fixtures, equipment, or machinery, as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Nothing in Section 7.5.2 shall limit Lessee's right to terminate under Section 3.5.1.

7.5.3. Application of Insurance Proceeds. Insurance proceeds paid on account of any damage to or destruction of the Leased Premises, or any Wind Energy Facilities, shall be applied first to restoration of the Wind Energy Facilities, and any associated, material fixtures, equipment, or machinery. Lessor may elect to require that such insurance proceeds be paid into a depository chosen by Lessor and held pending payment of costs and expenses of restoration of both the Leased Premises and the Wind Energy Facilities. Nothing in Section 7.5.3 shall limit Lessee's right to terminate under Section 3.5.1.

**7.6. Cooperation with Governmental Agencies and Third Parties.** As provided in this Lease, Lessor shall timely act in its review of, or response to, information or requests for information related to the Project. An authorized representative of IDL will participate in meetings with government agencies or other third parties regarding the Project, at Lessee's request, or when otherwise deemed appropriate by IDL. Lessor will assist in the provision of public records that may relate to the Leased Premises or the Project, at Lessee's request, or when otherwise deemed appropriate by IDL.

**7.7. Cooperation with Lenders.** Within thirty (30) calendar days of receipt of request from Lessee, or from any existing or proposed lender of Lessee, Lessor shall execute an estoppel certificate i) certifying that this Lease is in full force and effect and has not been modified, or, if the same is not true, stating the current status of this Lease; ii) certifying to the best of Lessor's knowledge there are no uncured events of default under this Lease, or, if any uncured events of default exist, stating with particularity the nature thereof; and iii) containing any other certifications as may be requested. Any such statements may be conclusively relied upon by Lessee or any existing or proposed lender.

## ARTICLE 8 – PERFORMANCE SECURITY

### 8.1. Performance Security Generally.

8.1.1. Acceptable Types of Security. Acceptable types of security under this Lease include bonds, irrevocable letters of credit (“**Letters of Credit**”), cash bonds, or cash (collectively or individually “**security**”). All security must be in a form acceptable to Lessor and conditioned on Lessee’s compliance with the following: all laws and rules of the State, all provisions of this Lease, and any terms or conditions imposed by any State agency. All bonds must be issued by an Idaho qualified U.S. Bonding Corporation, and any Letters of Credit must be issued by an FDIC insured bank located in the state of Idaho or with an approved intermediary facilitating bank located in Idaho for purposes of presentation and payment on the Letters of Credit in Idaho. Any bond or Letters of Credit shall be subject to Lessor’s approval. Any bond or Letters of Credit shall provide for notice to Lessor prior to any cancellation or lapse thereof.

8.1.2. Procurement and Maintenance of Security; Breach. Upon the failure of Lessee to procure and maintain any required security during the Lease Term, Lessor may terminate this Lease after Notice of Default and Lessee’s failure to cure within the time set forth in the Notice of Default. A substitute bond or Letters of Credit, or an extension of the expiration date of any existing bond or Letters of Credit must be received by Lessor no later than one hundred twenty (120) calendar days before the expiration or termination of the bond or Letters of Credit. Failure to provide notice of such replacement or extension one hundred twenty (120) days prior to the expiration or termination will constitute a material breach of this Lease and will be grounds for Lessor to terminate this Lease, or to pursue any other remedy at law or in equity, including presenting any such Letters of Credit for payment, or to make demand under any such bond. Presentation of any such bond or Letters of Credit, or the demand and payment under any such bond or Letters of Credit or forfeiture of cash, will in no way limit the liability or obligations of Lessee, or the rights and remedies of Lessor under this Lease. The form of any bond or Letters of Credit must be presented to Lessor for acceptance in writing by Lessor prior to the issuance of the bond or Letters of Credit. The bond or Letters of Credit may be rejected as insufficient in Lessor’s discretion, or may be modified or amended as required by Lessor.

8.1.3. Lessor Determined Security. The amount of bond or Letters of Credit to be obtained by Lessee, or cash from Lessee, for each phase of Lessee’s operations described in this Lease, including Sections 8.2, 8.3, and 8.4 and any adjustment under Section 8.1.4, will be determined in writing by Lessor and will be based on the then-current cost as determined by Lessee and reviewed by Lessor, plus fifteen percent (15%), of a third-party contractor’s completion of the Decommissioning and Reclamation Plan as may be required for each phase and as provided by Lessee. In the alternative, and at Lessee’s sole cost, the Parties may hire a mutually-agreeable third party to estimate and recommend appropriate amount of security for each phase under this Lease.

8.1.4. Adjustment of Security Amount. At intervals of not less than five (5) years, and after approval of the Construction Plan and the Decommissioning and Reclamation Plan, Lessor may, following consultation with Lessee, revise the construction or reclamation cost estimate to reflect then-current third party costs for the work and materials necessary to complete the Construction Plan or the Decommissioning and Reclamation Plan. Within thirty (30) calendar days of receipt of such revised estimate, Lessee shall cause the existing security to be adjusted to reflect the amount of the revised estimate.

8.2. **Research and Analysis Security.** Lessee shall furnish the requisite security within sixty (60) calendar days of Lessor’s receipt of the Research and Analysis Plan, pursuant to Sections 4.1 and 6.2. Said security must be in favor of Lessor to protect Lessor against any and all loss due to Lessee’s failure to reclaim areas disturbed by the Research and Analysis activities; payment of any amount of Rent that is past due and owing to Lessor pursuant to this Lease; or, if security remains following reclamation and payment of owed Rent, Lessee’s failure to pay contractors, subcontractors, and others who provided goods and services to Lessee in relation to the Leased Premises. The period of liability of the Phase 1 security shall not be terminated until the completion of the Phase 1 activities and satisfactory reclamation of all affected areas, if required; the expiration of the timeframe under applicable law for filing of lien claims with respect to any work on the Leased Premises performed during Phase 1; written notice by Lessee to Lessor

certifying the satisfaction of such events; and the written consent of Lessor regarding release of such security, which consent will not be unreasonably withheld. Following the period of liability of the Phase 1 security, the applicable security will be released by Lessor.

**8.3. Construction Security.** Prior to the commencement of Phase 2, Lessee shall furnish the requisite security. Said security must be in favor of Lessor to protect Lessor against any and all loss due to Lessee's failure to complete construction in accordance with the Construction Plan; payment of any amount of Rent that is past due and owing to Lessor pursuant to this Lease; or, if security remains following reclamation and payment of owed Rent, Lessee's failure to pay contractors, subcontractors, or others who provided goods and services to Lessee in relation to the Leased Premises. The period of liability of the Phase 2 security shall not be terminated until the completion of construction of all Improvements to be constructed, and any other work to be performed on the Leased Premises under the Construction Plan, or completion of reclamation of all affected areas; the expiration of the timeframe under applicable law for filing of lien claims with respect to such construction; written notice by Lessee to Lessor certifying the satisfaction of such events; and the written consent of Lessor regarding release of such security, which consent will not be unreasonably withheld. Following the period of liability of the Phase 2 security, the applicable security will be released by Lessor.

**8.4. Operating and Reclamation Security.** Prior to the commencement of Phase 3, Lessee shall furnish the requisite security. Said security must be in favor of Lessor to protect Lessor against any and all loss due to Lessee's failure to complete reclamation of all affected area pursuant to the Decommissioning and Reclamation Plan; payment of any amount of Rent that is past due and owing to Lessor pursuant to this Lease; or, if security remains following reclamation and payment of owed Rent, Lessee's failure to pay contractors, subcontractors, or other who provided goods and services to Lessee in relation to the Leased Premises. The period of liability of said Phase 3 and Phase 4 security shall not terminate until all terms and conditions of the approved Decommissioning and Reclamation Plan have been completed in accordance with Sections 4.4 and 6.4; any amount of Rent that is past due and owing to Lessor is paid; the expiration of the timeframe under applicable law for filing of lien claims; written notice by Lessee to Lessor certifying the satisfaction of such events; and the written consent of Lessor regarding release of such security, which consent will not be unreasonably withheld. Following the period of liability of such security, the applicable security will be released by Lessor.

## **ARTICLE 9 - INSURANCE AND INDEMNIFICATION**

**9.1. Required Insurance; Special Endorsements.** For the duration of this Lease and until all activity in accordance with this Lease is completed, Lessee shall have and maintain, at Lessee's sole expense, the policies of insurance set forth below. Lessee must comply with all terms and conditions of such insurance, and must require all of its contractors and subcontractors to maintain the same types of insurance and limits. By requiring the insurance policies, Lessor does not represent that coverage and limits will be adequate to protect Lessee; and such coverage and limits will not be deemed as a limitation on Lessee's liability to Lessor or under any obligations or indemnities granted to Lessor in this Lease.

**9.1.1. Commercial General Liability.** Lessee shall maintain commercial general liability ("CGL") with a combined limit of not less than Three Million Dollars (\$3,000,000) per each occurrence. If such CGL insurance, or any umbrella policy, contains a general aggregate limit, it must apply separately to the Leased Premises, must not be less than Three Million Dollars (\$3,000,000), and must provide that defense costs will be and remain outside policy limits. Lessee waives all rights against Lessor and any additional insured for recovery of damages to the extent these damages are covered by the CGL or commercial umbrella liability insurance maintained pursuant to this Lease. CGL insurance and any umbrella policy shall:

A. Be in a form and from an insurance company satisfactory to Lessor and must cover liability for bodily injury, property damage, personal and advertising injury, and completed operations arising from Lessee's use or occupation of the Leased Premises including, without limitation, operations, independent contractors, products, completed operations, personal injury, advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract.

B. Include a waiver of subrogation in favor of the State, the Board, and IDL, as further described in Section 9.1.11.

C. Include the State, the Board, IDL, and all their officers, agents, and employees as additional insureds with respect to Lessee's activities to be performed under this Lease. Such status as additional insureds must be evidenced by an endorsement acceptable to Lessor.

D. Include liability and property damage coverage that will protect Lessee and the State, the Board, and IDL from claims for damages for bodily injury, including accidental death, as well as for claims for property damages, which may arise from operations under this Lease.

E. Not contain exclusions related to any equipment and operations for the Project, explosion, fire, collapse, or property damage hazards.

9.1.2. Builders Risk/Installation Floater Insurance. During the course of any construction or alteration of Wind Energy Facilities or Improvements on the Leased Premises by Lessee, Lessee must maintain in force, at its own expense, Builders Risk/Installation Floater Insurance, including soft costs and any offsite locations, on an all risk of direct physical loss form, including earthquake and flood, for an amount proportionate to the amount of the construction contracts performed on the Leased Premises. Any deductible amount must not exceed Two Hundred Fifty Thousand Dollars (\$250,000) for each loss, except earthquake and flood deductibles which must not exceed two percent (2%) of the value at risk at the time of each loss or Two Hundred Fifty Thousand Dollars (\$250,000) for each loss, whichever is more. Alternatively, Lessee may provide a complete copy of Builders Risk/Installation Floater Insurance coverage held by Lessee's contractor, which provides at least equivalent coverage, for the entire project of which the Wind Energy Facilities and Improvements to be constructed pursuant to this Lease are a part.

9.1.3. Property Insurance for Leased Premises. Lessee must, throughout the Lease Term, at Lessee's expense, keep and maintain in full force and effect commercial property insurance covering the Wind Energy Facilities and Improvements located on the Leased Premises. Commercial property insurance must, at a minimum, cover all perils insured under the ISO Special Causes of Loss Form and loss from earthquake and flood, as required in the Builders Risk Insurance. The amount insured must equal the full estimated replacement cost of the property insured. Any coinsurance requirement in the policy must be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as otherwise appropriate under the particular policy form. Lessor must be included as a loss payee under the commercial property insurance, and such status as an additional insured must be evidenced by an endorsement acceptable to Lessor. During Phase 3 of this Lease, Lessee must purchase, as part of Lessee's property insurance, business income, business interruption, extra expense or similar coverage, for actual loss sustained. In no event will Lessor be liable for any business interruption or other consequential loss sustained by Lessee.

9.1.4. Automobile and Umbrella Liability Insurance. Lessee must maintain during the Lease Term, at Lessee's expense, business automobile liability coverage and, if necessary, a commercial umbrella liability insurance with a limit of not less than One Million Dollars (\$1,000,000) each accident. Such insurance must cover liability arising out of any automobile used on or in relation to the Leased Premises, including owned, hired, and non-owned automobiles.

9.1.5. Workers Compensation and Employers' Liability Insurance. Lessee shall maintain workers compensation and employer's liability insurance in accordance with all state and federal law requirements. The employer's liability shall have limits not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury by accident, Five Hundred Thousand Dollars (\$500,000) disease policy limit, and Five Hundred Thousand Dollars (\$500,000) disease, per each employee. Lessee is responsible for workers compensation insurance for contractors and subcontractors who provide services under this Lease. Lessee must provide either a certificate of workers compensation insurance issued by a surety licensed to write workers compensation insurance in the state of Idaho, as evidence that the Lessee has in effect a current Idaho workers compensation insurance policy; or an extraterritorial certificate approved by the Idaho

Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

9.1.6. Aviation Liability Insurance. If Lessee or its contractors or subcontractors utilize drones or other aviation equipment in relation to any activity on the Leased Premises, and if such insurance described in this Section 9.1.6 is available and is not part of Lessee's Commercial General Liability insurance, or is not provided by Lessee's contractors or subcontractors, Lessee or its contractors or subcontractors, as the case may be, must, prior to such use, procure and maintain for the duration of the drone usage on the Leased Premises aviation liability insurance against claims for injuries to persons or damage to property which may arise from or in connection with the ownership, maintenance or use of the Unmanned Aerial Vehicle, a.k.a. drone. The aviation liability insurance must have products and completed operations, property damage, and bodily injury limits no less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate.

9.1.7. Certificates of Insurance. Lessee shall furnish certificates of insurance to Lessor before Lessee commences any work. Each of Lessee's contractors and subcontractors shall provide certificates of insurance to Lessor prior to the start of the contractor's or subcontractor's work related to this Lease. Every certificate or endorsement must show the policy number and the policy effective dates. Failure of Lessor to demand every certificate or other evidence of full compliance with these insurance requirements, or failure of Lessor to identify a deficiency in coverage shall not be construed as a waiver of Lessee's obligation to maintain such insurance. If Lessee's liability policies do not contain the standard ISO separation of insured provision, or a substantially similar clause, they will be endorsed to provide cross-liability coverage.

9.1.8. Subject to Approval. Within thirty (30) calendar days of Lessor's receipt of any certificate of insurance, Lessor may request additional information from Lessee, or provide written comments and recommendations, or provide in writing required changes to the insurance coverage if such coverage is not compliant with the requirements of this Article 9. The Parties will discuss Lessor's recommended or required changes at either Party's request.

9.1.9. Primary Basis. Lessee's insurance must be issued on a primary basis, non-contributory with any other insurance coverages or self-insurance programs afforded to, and non-contributory with, any additional insured, or carried by the State.

9.1.10. Acceptable Insurer's Qualifications; Deductibles. Insurance coverage required under this Lease shall be obtained from insurers rated A-VII or greater in the latest AM Best Rating Guide and in good standing and authorized to transact business in Idaho. Lessee shall be financially responsible for all deductibles. The coverage provided by all required policies will be primary to any coverage of the State on or related to this Lease and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability.

9.1.11. Waiver of Subrogation. All policies listed above shall contain waivers of subrogation. Lessee waives all rights against the State, the Board, IDL, and all officers, employees, and agents for recovery of damages to the extent these damages are covered by the required policies. Policies may contain deductibles, but such deductibles will not be deducted from any claim payment or damages due to Lessor. Lessee agrees to obtain any endorsement that may be necessary to effectuate this waiver of subrogation; but, this provision applies regardless of whether Lessor has received such endorsement from the insurer.

9.1.12. Advance Notice. Lessee must provide a minimum of thirty (30) calendar days' advance written notice of cancellation, material change, or nonrenewal of policies required under this Lease. If the insurance carrier refuses to provide notice to Lessor, Lessee must notify Lessor in writing of any cancellation or reduction in coverage or limits of any insurance within seven (7) calendar days of receipt of insurer's notification to that effect. Lessee shall ensure that should any of the above-described policies be cancelled before the expiration date, or if there is a material change, potential exhaustion of aggregate



limits or intent not to renew insurance coverage, that written notice will be delivered to Lessor in accordance with this Lease.

**9.2. Payment of Premiums – Policy Renewals – Lessor’s Right to Purchase.** Lessee shall pay all premiums and be responsible for all deductibles for all of the insurance policies it is required to carry under the terms of this Lease. Lessee shall deliver evidence of such payments to Lessor. Lessee shall renew all expiring policies, and shall furnish Lessor with certificates showing such renewed policies at least ten (10) business days before the policy’s expiration date. If Lessee fails to maintain any insurance policy required under this Article 9, then such failure will be an event of default under this Lease, and Lessor shall have the right, but not the obligation, to purchase said insurance at Lessee’s expense, in addition to any other remedy available under this Lease, or at law or in equity. Lessor’s election to pay any such insurance obligation shall not act as a waiver or release of Lessee’s default. In the event of Lessor’s election to pay, Lessee shall, upon Lessor’s demand, repay to Lessor the amounts so paid, including reasonable attorney fees and all other court costs and expenses reasonably incurred because of or in connection with such payments, together with interest thereon at the Default Rate. Lessor may collect or enforce any such payment in the same manner as though it were an installment of Rent to be paid by Lessee. As Rent, such payment shall be due on the day when Lessor demands repayment of or reimbursement therefor.

**9.3. Indemnification by Lessee.** During the Lease Term, Lessee shall indemnify and hold harmless Lessor, including Lessor’s officers, agents, and employees against any and all losses, claims, actions, debts, demands, obligations, judgments for damages or injury to persons or property, which may be made against Lessor, or against its title in the Leased Premises, arising out of, or in connection with, any alleged act or omission of Lessee or any person claiming under, by, or through Lessee. If it becomes necessary for Lessor to defend any action seeking to impose any such liability, Lessee shall pay Lessor all costs of court, litigation expenses, and attorney fees incurred by Lessor in effecting such defense, in addition to all other sums that Lessor may be called upon to pay by reason of the default or the entry of a judgment against it in the litigation in which such claim is asserted. Without limiting the survival of any other provision of this Lease, this Section 9.3 shall survive the termination of this Lease and any cause of action to enforce it shall not accrue until Lessor’s discovery of such losses, claims, actions, debts, demands, obligations, or judgments.

## ARTICLE 10 – PERMITTED LEASEHOLD MORTGAGES

### 10.1. Lessee’s Right to Mortgage.

10.1.1. Mortgage Right. Upon Lessor’s prior written consent, which consent will not be unreasonably conditioned, withheld or delayed, with Lessor using best efforts to respond to such consent request review within ten (10) business days, and provided Lessee is not in default under the Lease, Lessee may encumber or hypothecate its interest in the leasehold estate created by this Lease by one or more mortgage, deed of trust, collateral assignment, or security agreement in this Lease or the Wind Energy Facilities to a Lender, as defined below, or related to an approved assignment of Lessee’s interest in this Lease together with an assignment of Lessee’s interest in any Wind Energy Facilities (individually and collectively “**Leasehold Mortgage**” or “**Mortgage**”), and in connection with any secured or unsecured financing or tax equity investment with any financial institution, person, or other entity that, from time to time, provides secured financing or tax equity for, or otherwise encumbers all, or part, of Lessee’s interest in this Lease, the Wind Energy Facilities, or the Project, collectively, with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors, or assigns (individually and collectively “**Lender**” or “**Mortgagee**”).

A. No Lender will have any rights or obligations under this Lease until such time as it acquires Lessee’s interests subject to the lien of Lender’s mortgage by foreclosure, deed in lieu of foreclosure, or otherwise assumes the obligations of Lessee directly, as allowed under this Lease.

B. No Mortgage shall be valid or enforceable until written consent of the same is provided.



10.1.2. Lease Terms. Any Leasehold Mortgage and all rights acquired thereunder shall be subject and subordinate to all rights and interests of Lessor under this Lease, and any Mortgages shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease. The length of any Leasehold Mortgage shall not exceed the Lease Term of this Lease. The encumbrance of this Lease through any Mortgage shall terminate if this Lease is terminated for any reason provided for in this Lease.

10.1.3. Notice to Lessor. Regardless of any other form of notice, actual or constructive, no Mortgagee of a Leasehold Mortgage on this Lease shall have the rights or benefits set forth in this Article 10, nor shall any of the provisions of this Article 10 be binding upon Lessor, unless and until a complete and correct copy of the fully executed note, or other tax equity or lending agreement, and any assignment thereof, shall have been delivered to Lessor. Lessee shall promptly provide Lessor with a copy of any amendment, other modification, or supplement to such documents. In the event of a default on the Mortgage by Lessee, either or both Mortgagee and Lessee shall mail a copy of all related default notices to Lessor.

10.1.4. No Attachment to Fee Interest. Every Mortgage shall contain a statement which disclaims any interest or lien against Lessor's fee interest in the Leased Premises and provides that Lessor shall have no liability whatsoever in connection with any such Mortgage, or the instruments or obligations secured thereby.

10.1.5. Modification. Lessor and Lessee agree that, once all or any part of Lessee's interests in the Lease are mortgaged or assigned to a Lender, they will not modify this Lease without prior written consent of the Lender as set forth in this Lease. The Lender's consent will not be unreasonably conditioned, withheld or delayed, with the Lender using best efforts to respond to such consent request review within ten (10) business days.

10.1.6. Mortgagee Assignment. Any such Mortgage shall provide that, in the event of any assignment of the Mortgage, or in the event of a change of address of the interested party named in the Mortgage, notice of the new name and address shall be provided in writing to Lessor.

**10.2. Mortgage Protection.** If any Mortgage is entered into by Lessee, then any Mortgagee will, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Article 10. Lessee will send written notice to Lessor of the name and address of any such Mortgagee or include such name and address in an estoppel certificate to be executed by Lessor. Failure of Lessee to give notice of any such Mortgagee will not invalidate such Mortgage.

**10.3. Mortgagee's Right to Possession; Right to Acquire; and Right to Assign.** A Mortgagee will have the right, subject to timely payment of all Rents due pursuant to Article 5 and to Lessor's consent, as applicable: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Wind Energy Facilities or any portion thereof and to perform all obligations to be performed by Lessee hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. As applicable, Lessor's prior written consent will be required for the acquisition of the encumbered leasehold estate by a third party who is authorized to contract with the State of Idaho and acquires the same by foreclosure or assignment in lieu of foreclosure.

**10.4 Notice of Default; Opportunity to Cure.** Lessor will use best efforts to contemporaneously deliver a copy of any Notice of Default to each Mortgagee for which Lessor has received advanced written notice of such Mortgagee's interest, concurrently with delivery of such Notice of Default to Lessee. Failure of Lessor to give any such notice to each Mortgagee will not invalidate the Notice of Default. Any best effort by Lessor to provide such notice shall not minimize or replace any separate obligation of Lessee to provide any Mortgagee with any notice including a Notice of Default issued by Lessor.

10.4.1 Mortgagee Composition. To the extent that a Mortgagee may consist of more than one persons or entities, notice from Lessor to any one will be deemed notice to all constituting the Mortgagee. If there are multiple people or entities constituting said Mortgagee, then Mortgagee may identify which one person or entity shall be provided any and all notices from Lessor for all constituting the Mortgagee.

10.4.2. Default Period. The Mortgagee will have the same period after receipt of the Notice of Default to remedy the default, or cause the same to be remedied, as is given to Lessee under Section 3.5.3. In an event of default other than non-payment of Rents, and upon written notice of its election to cure under this Section 10.4.2, the Mortgagee will have an additional ninety (90) calendar days to cure the default. If Lessee or the Mortgagee has, within the applicable cure period, diligently and in good faith worked to correct the default, then Lessor shall extend the cure period for a length of time that Lessor believes to be reasonably necessary to complete the cure.

A. If the Mortgagee elects to substitute itself for Lessee and perform the duties of Lessee under this Lease for purposes of curing such defaults, the Mortgagee must advise Lessor, in writing, of its election.

B. Lessor hereby consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives, or contractors) to enter upon the Leased Premises to complete such performance with all the rights, privileges, and obligations of the Lessee, including identification of subcontractors and key employees pursuant to Sections 4.7 and 4.8. Lessor will not exercise its rights to terminate this Lease prior to the expiration of the applicable cure period or extension of a cure period.

10.4.3. Payment of Rents. Prior to any period of possession of the Leased Premises, the Mortgagee shall remit to Lessor all Rents due and owing pursuant to Article 5. During any period of possession of the Leased Premises, and its corresponding rights, privileges and obligations, by a Mortgagee (or a receiver requested by such Mortgagee) and during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid to Lessor all Rents including Royalty payments and all other monetary charges payable by Lessee under this Lease that have accrued and are unpaid at the beginning of said period and those accruing thereafter during said period. Following acquisition of Lessee's leasehold estate by the Mortgagee, or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale who is qualified to contract with the State of Idaho and perform under this Lease, this Lease will continue in full force and effect and the Mortgagee or party acquiring title to Lessee's leasehold estate will, as promptly as reasonably possible, commence the cure of all remaining defaults reasonably susceptible of being cured by the Mortgagee or party acquiring title hereunder, and thereafter will diligently process such cure to completion, whereupon such Events of Default will be deemed cured upon review and approval by Lessor.

10.4.4. Performance of Obligations. A Mortgagee who acquires Lessee's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure will be liable to perform the obligations of Lessee as established by this Lease so long as such Mortgagee has control or ownership of the leasehold estate, or control or possession of the Leased Premises.

10.4.5. Exception to Event of Default by Lessee's Bankruptcy or Insolvency. Neither the bankruptcy nor the insolvency of Lessee will be grounds for terminating this Lease as long as all obligations of Lessee under this Lease are performed by the Mortgagee.

10.4.6. Default Cured. Subject to the provisions of this Lease that survive its termination, nothing in this Article 10 will be construed to extend this Lease beyond the Lease Term or to require a Mortgagee to continue foreclosure proceedings after every Event of Default has been cured. If every Event of Default is cured and the Mortgagee discontinues foreclosure proceedings, then this Lease will continue in full force and effect.

**10.5 Refinancing.** Lessee may refinance a Mortgage periodically provided that all of the following conditions are met:

10.5.1. The holder or Mortgagee of the new mortgage must be an institutional lender such as a bank, trust company, savings and loan association, insurance company, title insurance company, or other commercial business authorized and licensed to make mortgage loans in Idaho and in the county in which the Leased Premises are located;

10.5.2. The new mortgage given for refinancing shall comply with all of the provisions this Lease.

10.5.3. If the new Mortgage complies with the above-conditions, Lessee may execute, acknowledge, and deliver the new mortgage as a permitted Mortgage for the purpose of subjecting Lessee's respective interests in the Wind Energy Facilities and other Improvements to the lien thereof, and the new mortgage shall cover and be a lien on the Wind Energy Facilities or other Improvements, subject to the terms and conditions of this Lease.

**10.6 Mortgagee's Consent to Amendment, Termination, or Surrender.** Notwithstanding any provision of this Lease to the contrary, so long as there exists an unpaid Mortgage that Lessor has written notice of, Lessor will not accept a voluntary surrender of the Leased Premises or any part thereof or a voluntary termination, or a voluntary release of this Lease from Lessee prior to expiration of the Lease Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and will be enforceable by such Mortgagee.

**10.7 No Waiver.** No payment made to Lessor by a Mortgagee will constitute an agreement that such payment was, in fact, due under this Lease, and a Mortgagee, having made any payment to Lessor pursuant to Lessor's incorrect or mistaken notice or demand will be entitled to the return of any such payment, as required by Idaho law.

**10.8 Estoppel Certificates.** Upon at least thirty (30) calendar days' prior written notice from the other Party, the responding Party shall execute, acknowledge, and deliver to the requesting Party, or any third party specified, a statement certifying that this Lease is unmodified, and in full force and effect, or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications; the dates to which the Rents payable under this Lease have been paid; and stating whether or not, to the best knowledge of and based upon current information available to the signer of the certificate, the requesting Party is in default in the performance of any covenant, agreement, or condition contained in this Lease and, if so, specifying each such default of which the signer may have knowledge, and further certifying as to such other matters relating to this Lease as may be reasonably requested. It being the Parties' intent that any such statement delivered pursuant to this section may be reasonably relied on by any prospective purchaser or assignee of either Party's interest in the Leased Premises, or by either Party; provided however, that any such notices between the Parties shall not be deemed a waiver of any actual default or breach of any provision of this Lease.

## **ARTICLE 11 – PAYMENT OF EXPENSES, UTILITIES AND TAXES**

**11.1. Lessee's Obligation.** On or before any due date, Lessee agrees to pay any and all real or personal property taxes, assessments, or fees of any nature that may be legally assessed or levied against Lessee or the Leased Premises, or any portion of the Leased Premises, or on any Improvements. Lessee shall make such payment directly to the taxing authority and hold Lessor harmless from any such tax, assessment, or fee.

**11.2. Contesting Taxes.** Lessee may contest the validity of any tax, assessment, or fee for which Lessee is responsible under this Lease, as long as such contest is pursued in good faith and with due diligence, and Lessee has paid the obligation in question or posted the financial assurance, discussed below, in the event of an adverse determination. Lessee will not be in default of Section 11.1, provided that written notice is given to Lessor of Lessee's intention to contest the tax, assessment, or fee; and, provided that Lessee furnishes Lessor with a bond made by a surety company qualified to do business in the state of Idaho, or pays cash to a recognized escrow agent in the County in which the Leased Premises are located, or as otherwise agreed in writing by Lessor, equal to one hundred and ten percent (110%) of the

amount of the tax or obligation Lessee intends to contest, conditioned on payment when the validity of such tax or obligation has been determined. Lessee shall give Lessor written notice and post the financial assurance not later than sixty (60) calendar days before the contested tax, assessment, or fee is due.

**11.3. Triple Net Lease; Lessor Obligations Not Altered.** This Lease is intended to be an absolute triple net lease, and Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair, or reconstruction of the Wind Energy Facilities or other Improvements. Lessee understands that Lessor is exempt from payment of any federal, state, or local taxes.

## **ARTICLE 12 – LIENS AND ENCUMBRANCES**

**12.1 No Lien.** Lessee shall not cause, permit, or suffer any lien or encumbrance of any kind or nature to be placed on or enforced against Lessor's fee interest. Lessee shall not cause, permit, or suffer any lien or encumbrance of any kind or nature to be placed on or enforced against the Leased Premises, or Lessee's leasehold interest, or on or against any of the Wind Energy Facilities or other Improvements without the written consent of Lessor, as set forth in Article 10. Lessee shall ensure that full payment is made for all labor performed for Lessee and for any and all materials joined or affixed to the Leased Premises, including any Improvements.

### **12.2 Release of Lien.**

12.2.1. If any claim of lien or encumbrance, other than as allowed in Article 10, is claimed on or filed against either Lessor's or Lessee's interest in this Lease, or any portion of or interest in the Leased Premises, then Lessee shall cause any such claim of lien or encumbrance to be released upon the earliest of the following periods: i) within thirty (30) calendar days after Lessee is given written notice of such claim or encumbrance; ii) within thirty (30) calendar days of a claim or encumbrance being filed or recorded; or iii) within thirty (30) calendar days after Lessor is given written notice of any such claim or encumbrance, and transmits written notice of the same to Lessee. Lessee must cause the release of any lien or encumbrance by: i) paying the lien or encumbrance holder; ii) paying to the court the amount necessary to relieve and release any such lien or encumbrance; or iii) any other manner that, as a matter of law, will result in the release of any such lien or encumbrance on or against any portion of, or interest in this Lease, the Leased Premises, the Wind Energy Facilities or other Improvements, or Lessor's title.

12.2.2. Lessor will not allow any liens or encumbrances, arising out of work done or services performed on behalf of Lessor, to be placed on any Improvements unless such work or services are directly for or on the Wind Energy Facilities or other Improvements and an event of uncured default by Lessee has occurred, or as otherwise allowed for in this Lease. If a lien is filed against any Improvement, arising out of any work done or services performed on behalf of Lessor unrelated to this Lease, Lessor will, at its own expense, take whatever action is needed to remove such lien within thirty (30) calendar days of when the Lessor receives written notice of the existence of such lien.

**12.3 Improvements Are Not Fixtures.** Lessor and Lessee agree that none of the Wind Energy Facilities or other Improvements installed by Lessee shall constitute fixtures regardless of the manner in which such Improvements are attached to or installed on the Leased Premises.

## **ARTICLE 13 – HAZARDOUS MATERIALS**

### **13.1 Hazardous Substances.**

13.1.1. Lessee shall not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by Lessee, its agents, employees, contractors, subcontractors, or invitees on the Leased Premises, unless the use or generation of the Hazardous Substance is necessary for the prudent generation, conversion, or transmission of Wind Energy on the Leased Premises; or during the construction

or preparation of the Leased Premises for the construction of the Wind Energy Facilities or other Improvements; or for the maintenance of the Wind Energy Facilities or other Improvements, and only if no functional and reasonably economic nonhazardous substance or process, which does not generate Hazardous Substances, can be used in place of the Hazardous Substance or the process which generates the Hazardous Substance. Other than for maintenance of inventories necessary for the prudent generation, conversion, or transmission of Wind Energy on the Leased Premises, Lessee shall not cause or permit long-term storage of any Hazardous Substance on the Leased Premises.

13.1.2. In the event that Lessee must utilize Hazardous Substances for the prudent generation, conversion, or transmission of Wind Energy on the Leased Premises, or the construction or preparation of the Leased Premises for the construction of the Wind Energy Facilities or other Improvements, or the maintenance of the Wind Energy Facilities or other Improvements, Lessee must provide to Lessor, prior to Phase 2, an HMWMP. The HMWMP must include, at a minimum, the following information: i) a detailed map indicating the planned location of all Hazardous Substance storage areas on the Leased Premises; ii) the location of spill containment and cleanup materials; iii) the location of drains in the storage areas and destination of those drains; iv) and the location of fire suppression equipment. The HMWMP shall include a detailed Spill Prevention Plan that includes information regarding the handling of Hazardous Substances and the procedures to be followed in the case of any spill.

13.1.3. All Hazardous Substances shall be marked in accordance with National Institute for Occupational Safety and Health (**NIOSH**) standards, and storage facilities will be marked in accordance with National Fire Protection Association (**NFPA**) 704 Hazardous Material Information System approved markings.

**13.2 Environmental Laws.** Lessee shall at all times and in all respects comply with all applicable Environmental Laws. Lessee's duty of compliance with such Environmental Laws includes the duty to undertake the following specific actions:

13.2.1. Lessee must, at its own expense, procure, maintain in effect, and comply with all conditions of any and all Governmental Approvals required by all applicable Environmental Laws, including permits required for discharge of appropriately treated Hazardous Substances into the ambient air, or any sanitary sewers serving operations on the Leased Premises; and

13.2.2. Except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated or disposed by Lessee from the Leased Premises shall be removed and transported solely by duly licensed transporters to a duly licensed treatment or disposal facility for final treatment or disposal.

## **ARTICLE 14 – ASSIGNMENT; SUBLEASING**

### **14.1. Assignment.**

14.1.1. This Lease shall not be assigned to any other party without the prior written consent of Lessor.

14.1.2. The Parties understand and acknowledge that Lessee **XXXX**, does intend on effectuating an assignment of this Lease during Phase 1. Such Lessee may receive pre-approval by Lessor of such assignment before or after this Lease is fully executed and effective, and before the requisite copies of final documents are filed with IDL, under Sections 14.3 and 14.5. Such pre-approval shall be provided by Lessor in which such assignment is to a "**Qualified Assignee**" that meets the following qualifications: i) an entity or individual that controls, is under the control of, or is under common control with Lessee, is at least as financially capable as Lessee, is capable to fulfilling the obligations of Lessee, and assumes in writing the obligations of Lessee under this Lease; or ii) an entity or individual that is at least as financially capable as Lessee to perform the obligations of Lessee under this Lease, and is experienced in the ownership and operation of wind energy facilities, or who has engaged a third party that is experienced in the ownership



and operation of wind energy facilities to manage the Project, and assumes in writing the obligations of Lessee under this Lease. Lessor's approval of a Qualified Assignee may not be unreasonably delayed or withheld, provided however, without limiting Lessor's discretion, Lessor will have thirty (30) calendar days following Lessor's receipt of the proposed assignment form and supporting information, to request additional information, or provide written comments or concerns regarding Lessee's proposed Qualified Assignee. The Parties will discuss Lessor's comments or concerns at either Party's request. Upon Lessor's approval of a Qualified Assignee and provided that such Qualified Assignee has assumed in writing all of Lessee's duties and obligation under this Lease, such Lessee shall be relieved of all of its obligations arising under this Lease, from and after the effective date of assignment to a Qualified Assignee. Such Lessee shall deliver to Lessor complete and correct copies of the requisite documents, under Sections 14.3 and 14.5, within a reasonable amount of time of the effective date of the assignment, not to exceed ninety (90) calendar days.

**14.2. Responsibilities.** Except as stated in Section 14.1.2, any assignor and its surety shall continue to comply with this Lease and all Government Approvals until the effective date of the pre-approved assignment. After the effective date of such assignment, the assignee and its surety shall be bound by this Lease and all applicable Government Approvals to the same extent as if the assignee were the original lessee, irrespective of any conditions in the assignment to the contrary. The assignor shall remain liable for all Rents due and any damages accruing prior to the effective date of the assignment, and any provisions of this Lease that survive termination unless a written release is subsequently granted and executed by Lessor, which release shall be in Lessor's sole discretion.

**14.3. Overriding Royalty.** This Lease may be assigned with an overriding royalty interest. Any assignment that creates an overriding royalty that exceeds five percent (5%) of Gross Annual Revenue in any Lease Year during which the overriding royalty exists will be deemed a violation of this Lease. Lessee or any assignor-lessee must state whether it intends to grant overriding royalties in the application for lease assignment submitted to IDL. Lessor may suspend or terminate any overriding royalty if it affects the economic viability of Electrical Power Production or Wind Energy Purposes. A reservation or assignment of an overriding royalty will not relieve any assignor-lessee of any obligations for payment of Rents to Lessor. Any reservation or assignment of overriding royalty by Lessee or any assignor-lessee must terminate upon the termination of this Lease.

**14.4. Sublease.** No part of Lessee's interest may be sublet without Lessor's express prior written consent. Any sublease must be expressly subject to all terms and conditions of this Lease, and shall provide no greater interest in the Leased Premises than Lessee has through this Lease. A correct and complete executed copy of the sublease agreement must be provided to Lessor prior to the effectiveness of any such sublease or Lessor's written approval thereof. If Lessor allows the sublease of the Lease, the following continuing obligations shall apply: i) Lessee shall remain liable to Lessor for the full performance of all obligations under this Lease; ii) the sublessee of Lessee, by accepting the sublease of this Lease, shall and does agree to abide by all terms of this Lease; and iii) such sublease shall be subject to all terms and conditions of this Lease, and to such other terms and conditions as Lessor may reasonably require.

**14.5. Form of Assignment or Sublease.** An approved assignment or sublease must be a valid legal instrument, properly executed and acknowledged, stating the number of this Lease, a legal description of the Leased Premises, the name and address of the assignee-lessee or sublessee, the interest transferred, and the consideration. A fully executed copy of the instrument of assignment or sublease must be filed with IDL along with IDL's application of approval of an assignment form, and any processing fees. If an instrument of assignment or sublease partitions the Leased Premises between two or more assignees or sublessees, a separate application for assignment and filing fee must be filed for each assignee or sublessee and for each lease assigned.

**14.6. Limited Consent.** Any consent by Lessor, herein contained or hereafter given, to any act or assignment shall be held to apply only to the specific transaction, hereby or thereby approved. Such consent shall not be construed as a waiver of any duty of Lessee, or its successors or assigns, including Lessee's obligation to obtain Lessor's prior written consent to any other or subsequent assignment, sublease, mortgage, encumbrance, or as a modification or limitation of any right of Lessor.



## ARTICLE 15 – ADDITIONAL LEASE PROVISIONS

### 15.1. Hold Harmless; Indemnification.

15.1.1. In no event shall any official, officer, employee, or agent of Lessor, or of the State, be in any way personally liable or personally responsible for any covenant or obligation contained in this Lease, whether expressed or implied, nor for any statement, representation, or warranty made by Lessor in connection with this Lease. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of Lessor shall have any personal liability or personal responsibility under this Lease, and the sole responsibility and liability for the performance of this Lease and all of the provisions and covenants herein contained pertaining to Lessor shall rest in, and be vested with, the State.

15.1.2. Lessee shall indemnify, defend, and save harmless Lessor, the State of Idaho, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorney fees, and suits whatsoever caused by, arising out of, or in connection with Lessee's acts or omissions under this Lease, or Lessee's failure to comply with any applicable state, local, or federal statute, law, regulation, rule, or ordinance.

15.1.3. Upon the receipt by Lessee of Lessor's or the State of Idaho's tender of indemnity and defense, Lessee shall immediately take all reasonable actions necessary, including providing a legal defense for Lessor and the State of Idaho, and to begin fulfilling its obligation to indemnify, defend, and save harmless Lessor and the State of Idaho. Lessee's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of Lessor under this Lease. However, if it is determined by a final judgment that Lessor's negligent act or omission is the sole proximate cause of a suit or claim, neither Lessor nor the State of Idaho shall be entitled to indemnification from Lessee with respect to such suit or claim, and Lessor and the State of Idaho in its discretion, may reimburse Lessee for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Subsection 15.1.4.

15.1.4. Any legal defense provided by Lessee to Lessor and the State of Idaho under this section must be free of any conflicts of interest, even if retention of separate legal counsel for Lessee and, Lessor and the State of Idaho, is necessary. Any attorney appointed to represent Lessor or the State of Idaho must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).

15.1.5. Without limiting the survival of any other provision of this Lease, this Section 15.1 will survive the termination of this Lease, and any cause of action to enforce this Lease will not accrue until Lessor and the State's discovery of such losses, claims, actions, debts, demands, obligations, or judgments.

**15.2. Public Records.** Pursuant to Idaho Code §§ 74-101 *et seq.*, information or documents received from Lessee may be open to public inspection and copying unless specifically exempt from disclosure. Lessee shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the statutory basis for such exemption. Lessor will not accept the marking of an entire document as exempt. In addition, Lessor will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. Lessee shall indemnify and defend Lessor against all liability, claims, damages, losses, expenses, actions, attorney fees, and suits whatsoever for honoring any designation by Lessee, or for Lessee's failure to designate individual documents as exempt. Lessee's failure to designate as exempt any document or portion of a document that is released by Lessor shall constitute a complete waiver of any and all claims for damages caused by any such release.

**15.3. Timber Removal.** Lessee will not interfere with the removal of timber purchased by a third party prior to or subsequent to the issuance of this Lease. The cutting or removal of timber is prohibited, other than that expressly permitted and authorized by Lessor, which approval will not be unreasonably withheld, conditioned, or delayed. Prior to Lessee cutting or removing timber from the Leased Premises, Lessor must

be given written notice at least three (3) months in advance of the intended cutting or clearing operation. Lessee will reimburse Lessor for the value of any merchantable timber and pre-merchantable timber cut or cleared from the Leased Premises. The value for such timber will be established by Lessor using accepted fair market value appraisal techniques. Upon payment to Lessor, title to the timber shall pass to Lessee.

#### **15.4. Noxious Weed Control.**

15.4.1. Cooperation and Costs. Lessee shall cooperate with Lessor or any other agency authorized to undertake programs for control or eradication of noxious weeds. As may be necessary, Lessee shall take measures to control noxious weeds on the Leased Premises, except those resulting from activities beyond Lessee's control. Costs for control of noxious weeds on the Leased Premises shall be the responsibility of Lessee.

15.4.2. Weed Free. Prior to moving equipment onto the Leased Premises, Lessee shall use reasonable efforts to ensure that all equipment is free of noxious weeds and their seeds as defined by the Idaho Department of Agriculture and any local Coordinated Weed Management Area. Cleaning of contaminated equipment and vehicles shall not take place on the Leased Premises.

**15.5. Force Majeure.** If Lessor or Lessee is delayed, hindered, or prevented from performing any act required hereunder by reason of any act of God; strike; lockout; labor trouble; inability to procure materials; failure of power; restrictive government laws or regulations enacted after the Effective Date, which preclude activities that are the subject of this Lease; riot; insurrection; war; escalation of hostilities; or other reason beyond the Party's control making performance impossible, then performance of that act, and that act only, shall be excused for the reasonable period of the delay upon proper and satisfactory proof presented to Lessor. Notwithstanding the foregoing, the time for commencement of Phase 3 will not be extended unless the force majeure event impacts the entire Production Area. Lessor must be notified within fifteen (15) calendar days of any force majeure event. For that event, the period for the performance of the act shall be extended for a reasonable period equivalent to the period of the delay. Lessee shall work diligently to eliminate the delay and immediately notify Lessor when the reason for the force majeure event has ceased. Neither Lessee's financial condition nor the failure of any of Lessee's contractors or subcontractors or any other party with whom Lessee contracts shall be an event of force majeure excusing the performance of any act. The reduction or cessation of wind on the Leased Premises is not a force majeure event.

**15.6. Taxes.** Lessee shall pay when due any and all taxes lawfully assessed and levied under the laws of the State of Idaho upon Lessee's interest in the Leased Premises, including Wind Energy produced under this Lease, and upon Improvements constructed, used, or maintained by Lessee on the Leased Premises.

**15.7. Time of Essence.** Time is expressly declared to be of the essence of each and every term, covenant, condition, duty, and obligation of this Lease.

**15.8. Promotion.** Except as allowed by Lessor's prior written approval, Lessee shall not use the name of Lessor, including the State Board of Land Commissioners, Idaho Department of Lands, State of Idaho, or any agency thereof; or the fact that any of Lessee's operations are conducted in whole, or in part, on State Endowment Trust Lands, in any advertisement or prospectus promoting the sale of stock. The reflection of this Lease as an asset of Lessee on the accountings, financial records and statements of Lessee shall not constitute a breach of this paragraph.

**15.9. Relationship of Parties.** Nothing contained in this Lease shall be construed as creating any relationship between the Parties other than that of landlord and tenant; and nothing contained in this Lease shall be construed to create any other relationship between the Parties, including any relationship of principal-agent, master-servant, employer-employee, partnership or joint venture.

**15.10. No Waiver.** A waiver by Lessor of any breach of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of any past, present, or future breach of the same or any other term, covenant, or condition of this Lease. The acceptance of Rent by Lessor hereunder shall not be construed to be a waiver of any violation of any terms or conditions of this Lease. No payment by Lessee of a lesser

amount than is due according to the terms of this Lease shall be deemed or construed to be anything other than a partial payment on account of the most recent Rent payment due, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed to create an accord and satisfaction.

**15.11. Entire Agreement.** This Lease (comprised of the Summary, the Lease provisions, Signature Page, and all Attachments, including any Special Terms and Conditions, as amended) contains the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all prior agreements. The execution of this Lease has not been induced by either Party, or any agent of either Party, by representations, promises, or undertakings not expressed herein and, further, there are no collateral agreements, stipulations, covenants, promises, inducements, or undertakings whatsoever between the respective parties concerning this Lease except those which are expressly contained herein.

**15.12. Written Modifications.** Except as provided herein, no modification, extension, assignment, release, discharge, change, or waiver of any provision of this Lease shall be of any force, effect, or value unless signed in writing by Lessor, or its duly authorized agent.

**15.13. Severability.** In the event any provision of this Lease shall be held invalid or unenforceable under applicable Idaho law, the validity, legality, or enforceability of the remaining provisions, and the application thereof, shall not in any way be affected or impaired. In such event, the remaining provisions of this Lease shall be interpreted as closely as possible to provisions held invalid or unenforceable.

**15.14. Notices.** All notices between the Parties in connection with this Lease shall be in accordance with terms of this Lease. Any notice given in connection with this Lease shall be in writing and shall be delivered to the other Party by hand; by certified mail, postage prepaid, return receipt requested; or by email transmittal (provided receipt of the email is confirmed by a reply email or by telephone), as indicated below. Notice shall be deemed delivered immediately upon personal service, email transmission, or forty-eight hours after depositing notice in the United States mail. If any type of "undeliverable" message is received by the Party transmitting an email, delivery shall be presumed to not have occurred. If a Party shows that the person assigned to an email address was no longer employed by the Party at the time of transmittal, delivery shall be presumed to not have occurred. The notices shall be sent to the addresses stated on the Summary. Either Party may change the place for giving notice by written notice to the other Party.

**15.15. Joint Liability.** If Lessee consists of more than one person or entity, such persons and entities shall be jointly and severally liable for each term, condition, covenant, duty and obligation of this Lease.

**15.16. Cumulative Remedies.** Arising from this Lease, Lessor shall have all rights and remedies which this Lease and the laws of the State of Idaho may provide, in law or in equity. All rights and remedies accruing to Lessor shall be cumulative; that is, Lessor may pursue all rights that the law and this Lease afford to it, in whatever order Lessor desires and the law permits, without being compelled to resort to any one remedy in advance of any other.

**15.17. Survival.** Any provision of this Lease that expressly or by implication comes into or remains in force following the termination of this Lease shall survive the termination of this Lease for the period set forth in such provision, or if no period is set forth in such provision, for the period that is coextensive with the applicable statute of limitations. Notwithstanding anything to the contrary in this Lease, any indemnification obligations shall survive the termination of this Lease.

**15.18. Governing Law and Forum.** This Lease shall be construed in accordance with and governed by the laws of the State of Idaho. Each Party expressly consents to the jurisdiction and venue of the Idaho State District Court located in Ada County in the event of any dispute with respect to this Lease or the Leased Premises.

**15.19. Legal Fees.** In the event either Party initiates a legal proceeding under this Lease, the prevailing party in that legal proceeding shall be entitled to such additional sums as the court may award for reasonable attorney fees (including fees from the Office of the Attorney General of the State of Idaho) and

costs (including appraisal fees and expert fees) incurred in such proceeding.

**15.20. Headings.** Headings in this Lease are for convenience and reference only and shall not be used to interpret or construe any term of this Lease.

**15.21. Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Lessor has executed this instrument as set forth below.

STATE BOARD OF LAND COMMISSIONERS

\_\_\_\_\_  
President of the State Board of Land Commissioners  
and Governor of the State of Idaho

Countersigned:

\_\_\_\_\_  
Secretary of the State of Idaho

\_\_\_\_\_  
Director of the Idaho Department of Lands

STATE OF IDAHO            )  
                                      )ss.  
COUNTY OF ADA            )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared BRAD LITTLE, as the President of the State Board of Land Commissioners and Governor of the State of Idaho, that executed the within instrument, and acknowledged to me that he executed the same as said President and Governor, and that the State Board of Land Commissioners and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

(seal)

\_\_\_\_\_  
Notary Public for State of Idaho  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO            )  
                                      )ss.  
COUNTY OF ADA            )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared LAWRENCE E. DENNEY, as Secretary of the State of Idaho, that executed the within instrument, and acknowledged to me that he executed the within instrument as said Secretary of State and that the State Board of Land Commissioners and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

(seal)

\_\_\_\_\_  
Notary Public for State of Idaho  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO            )  
                                      )ss.  
COUNTY OF ADA            )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared DUSTIN T. MILLER, the Director of the Idaho Department of Lands and Secretary of the State Board of Land Commissioners, and acknowledged to me that he executed the within instrument as said Director and Secretary, and that the State Board of Land Commissioners and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

(seal)

\_\_\_\_\_  
Notary Public for State of Idaho  
My Commission Expires: \_\_\_\_\_



\_\_\_\_\_, a \_\_\_\_\_ type of entity, whose mailing address is \_\_\_\_\_.

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

ATTACHMENT A

**SPECIAL TERMS AND CONDITIONS**

Insert lease-specific special terms and conditions.

## ATTACHMENT B

### LEGAL DESCRIPTION OF LEASED PREMISES

The following described parcels located in Sections 11, 14 and 23, Township 4 South, Range 8 East, Boise Meridian, in Elmore County, Idaho:

Section 11: N1/2, N1/2S1/2, S1/2SW1/4, SW1/4SE1/4

Section 14: W1/2

Section 23: NW1/4

Contains 1080 acres, more or less.

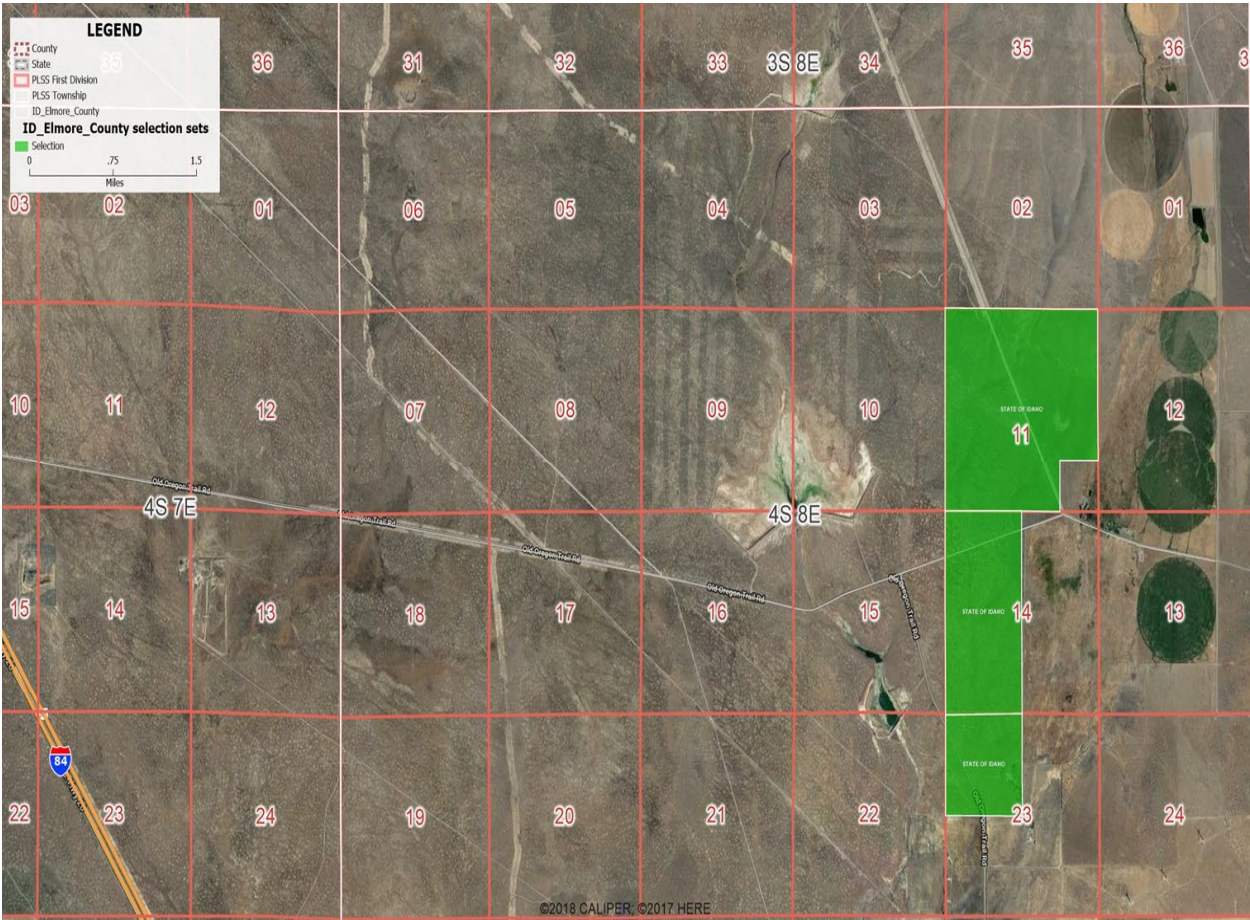
The following tables are for Idaho Department of Lands' internal purposes only and is not intended to be part of the legal description:

Instru- ment #	Township	Range	Section	Legal Description	County	Endowment	Acres
TBD	4S	8E	11	NWNW+NENW+SWNW+SENW+ NWNE+NENE+SWNE+SENE+ NWSW+NESW+SWSW+SESW+ NWSE+NESE+SWSE	Elmore	HS	600
TBD	4S	8E	14	NWNW+NENW+SWNW+SENW+ NWSW+NESW+SWSW+SESW	Elmore	HS	320
TBD	4S	8E	23	NWNW+NENW+SWNW+SENW	Elmore	HS	160

Mineral Owner	Surface Owner	Sage Grouse IMHA	Sage Grouse PMHA
State	State	TBD	TBD

ATTACHMENT C

SITE MAP(S)



ATTACHMENT D  
**EXISTING CONDITIONS**

Insert OR Delete

## ATTACHMENT E

### Special Terms and Conditions

#### SAGE GROUSE and SLICKSPOT PEPPERGRASS CONSERVATION MEASURES

In accordance with Executive Order No. 2015-04 and the Idaho State Board of Land Commissioners Greater Sage-Grouse Conservation Plan ("LB SG Plan"), the following conservation measures ("CMs") will apply to all lands within the Leased Premises which are within sage-grouse Priority Habitat Management Areas ("PHMAs") or Important Habitat Management Areas ("IHMAs") as identified in the LB SG Plan, as may be amended from time to time. In the event of a conflict between the location of the PHMAs and IHMAs identified in the LB SG Plan and Exhibit C to this Lease, the LB SG Plan shall control. The most recent version of the LB SG Plan can be found at IDL's website.

For proposed activities by third parties on state endowment trust lands in PHMA and IHMA, IDL will implement CMs as enforceable stipulations in authorizing documents such as leases. With the high diversity of terrain and vegetation types within the sage-grouse region of Idaho, it is difficult to design a "one size fits all" set of CMs. Science and technology also change over time and new options or alternatives may be proposed as part of a site-specific management plan. Site-specific management plans submitted by Lessee should provide equal or better results than the CMs described below. IDL and Lessee agree to cooperate in the development of site-specific management plans, including but not limited to vegetative fuels control, range improvement construction, and sage-grouse conservation projects. Site-specific management plans will be reviewed and approved by the appropriate IDL staff. When anticipated results are uncertain, IDL will confer with the Idaho Department of Fish and Game ("IDFG") prior to approving any site-specific management plan.

#### I. Improvement, Construction, and Conservation Projects

- A. Consistent with this Lease, all improvement and construction projects will require written authorization from IDL prior to installation. Project proposals must be submitted to IDL for consideration and may be subject to a habitat analysis by the IDFG. Upon written authorization by IDL, project installation and construction will require full compliance with conservation measures identified in the LB SG Plan.
- B. Existing Improvements: If improvements in existence at the time this Lease is executed are identified by IDL, IDFG, or the Lessee within PHMAs and IHMAs that are not in compliance with the LB SG Plan, IDL will assess the impact of the improvements on a case-by-case basis. When needed IDL will consult with IDFG to determine what, if any, mitigation is necessary based on the specific circumstances of the site.
- C. Conservation Projects within PHMAs: Because PHMAs include characteristics such as existing high-quality sagebrush habitat; highest sage-grouse breeding densities; have been identified as essential to conservation and persistence of the species; and are of importance to the conservation of the species range-wide, these lands will be prioritized by IDL for management and conservation actions. Such actions could include, but are not limited to, a review and subsequent amendment of the existing management plan that is part of this Lease; analysis and mitigation of existing improvements; and priority consideration for conservation projects that provide landscape-level enhancements to habitat.

#### II. Fuels Management

- A. IDL and Lessee agree to communicate and work together to develop written fuels management plans, implement fuels reduction projects, and use sound treatment(s) to reduce vegetative fire fuels, reduce annual grass densities, and to enhance and protect PHMAs and IHMAs, when appropriate.



### **III. Invasive Plant Species**

- A. Vehicles and equipment operated by Lessee that will travel off approved or designated transportation routes will be inspected and cleaned of seeds and propagules by Lessee or Lessee-directed personnel to prevent the spread of invasive and noxious plant species.
- B. Lessee and Lessee-directed personnel will inventory and monitor invasive and noxious plant species throughout the Lease Term and report such activities to IDL.
- C. Reclamation activities conducted by or directed by Lessee will include the use of certified weed-free seed mixes approved by IDL. All materials used for reclamation (e.g. mulch, straw, etc.) will be certified weed-free by the appropriate federal or State of Idaho agency.
- D. Lessee will use best management practices and appropriate treatments including chemical, mechanical and biological to treat invasive and state-listed noxious plant species, in accordance with this Lease.

### **IV. Alternative Energy Projects**

- A. Surface Use and Timing.
  - I. No surface occupancy is allowed within 1 km (0.62 mi.) of an occupied lek within PHMAs and IHMAs.
  - II. Lessee will use construction methods that will minimize surface disturbance. This could include utility placement through borings instead of trenches.
  - III. Lessee will place infrastructure in already-disturbed locations, as feasible, where habitat has not been established. Surface disturbances will be clustered by Lessee in order to limit surface occupancy. Lessee will use maps, lek routes, and other relevant local information to identify leks and avoid project activities or related activities near active leks (within 1km/0.62 miles) so as not to disturb displaying birds. Dates of concern are from March 15 through May 1 in lower elevation habitats, and March 25 through May 15 in higher elevation habitats.
  - IV. Unless approved by IDL, major construction and maintenance activities by Lessee shall be avoided in sage-grouse winter range (winter concentration areas) from December 1 to February 15.
  - V. Lessee will limit noise levels from discretionary activities within PHMAs and IHMAs to not more than 10 decibels above ambient sound levels (typically 20-24 dBA) at occupied leks from two hours before sunset to two hours after sunrise during breeding season. Ambient noise levels shall be determined by measurements taken at the perimeter of an occupied lek at sunrise.
- B. Placement of fences and other structures.
  - I. All fencing and other infrastructure placement and construction and any movement of existing fencing or other infrastructure within PHMAs and IHMAs requires IDL written approval and may be subject to IDFG analysis prior to such written approval.
  - II. Lessee shall use USDA-NRCS Fence Collision Risk Tool data, as amended from time to time, and local knowledge to determine low, medium, or high risk levels around occupied leks. Lessee shall flag new and existing wire fence segments in high risk areas, at a minimum, with collision diverter markers as defined by USDA-NRCS design practice specifications. Examples of high risk areas include fencing with characteristics such as evidence of grouse fence strikes, gentle topography near a lek or fences that bisect winter concentration area. Lessee shall flag fences in riparian areas, near lek locations and other sensitive areas specifically identified by either IDL or IDFG.
  - III. In addition to the requirements of this Lease, IDL will consider the impacts on sage-grouse when determining whether to authorize the placement of new fences and structures. Notwithstanding the foregoing, IDL will not approve construction of fencing and other structures with a height over 5 feet within 1 km (0.62 mi) of occupied leks, as determined by IDFG, unless authorized in writing by IDFG, Lessee shall place tall structures including but not limited to corrals, loading facilities, water storage tanks, windmills, etc., as far as possible from occupied leks to reduce opportunities for perching raptors. Careful

consideration, based on local conditions, will also be given by IDL when authorizing the placement of new fences or structures near other important seasonal habitats (e.g. winter-use areas, movement corridors, etc.). In order to reduce potential impacts, fence markers will be used to mitigate mortality within areas identified by IDL, IDFG or Lessee.

C. No design and placement of water developments is required for or planned for this Lease.

D. Site Reclamation

- I. Lessee will complete any required site reclamation as soon as phases of operation or construction are completed. Site reclamation will stabilize the site with plant species that are suitable to the site and include sage brush and native forb species; provide the opportunity for sage-grouse habitat to develop over time; and prevent non-native invasive species from occupying the site. Lessee will irrigate or mulch the site, as necessary, to establish seedlings more quickly.

**V. Slickspot Peppergrass (*Lepidium papilliferum*), AKA LEPA) Conservation Measures**

- A. No ground disturbance of any type will be allowed near known lepidium papilliferum ("LEPA") occurrences. Ground disturbance buffers will be determined by Lessor, and may be subject to consultation with IDFG and/or the United States Fish and Wildlife Service ("USFWS").
- B. Lessee will operate motorized vehicles only on existing roads and two track trails, and will not drive off-road over area with LEPA occurrences, unless approved, in advance, by Lessor. When needed, Lessor will consult with IDFG and/or USFWS regarding Lessor approved exceptions.
- C. Environmental analyses conducted by Lessee will include potential impacts to LEPA, as applicable.