

# RESOLUTION

LOUISIANA STATE MINERAL AND ENERGY BOARD

## RESOLUTION #23-12-004

(LEGAL & TITLE CONTROVERSY REPORT)

Operating Agreement Approval -  
DOW LA Gulf Wind, LLC to  
develop wind energy for  
electricity production on portions  
of state owned offshore water  
bottoms in South Timbalier Area,  
Revised, Blocks 11, 16, 17, 18,  
19, 20, and 21 in Lafourche and  
Terrebonne Parishes, La

**WHEREAS**, the State Mineral and Energy Board received a request for final approval of an Operating Agreement between the State of Louisiana and DOW LA Gulf Wind, LLC for the rights to develop wind energy for the production of electricity on portions of state owned offshore water bottoms in the South Timbalier Area, Revised, Blocks 11, 16, 17, 18, 19, 20, and 21 in Lafourche and Terrebonne Parishes, Louisiana; and

**ON MOTION** of Mr. Arnold, seconded by Mr. Young, after discussion and careful consideration in Executive Session, the following Resolution was offered and unanimously adopted by the Board:

**NOW THEREFORE, BE IT RESOLVED** that the State Mineral and Energy Board approves the request for final approval of an Operating Agreement between the State of Louisiana and DOW LA Gulf Wind, LLC for the rights to develop wind energy for the production of electricity on portions of state owned offshore water bottoms in the South Timbalier Area, Revised, Blocks 11, 16, 17, 18, 19, 20, and 21 in Lafourche and Terrebonne Parishes, Louisiana.

## CERTIFICATE

**I HEREBY CERTIFY** that the above is a true and correct copy of a Resolution adopted at a meeting on the 13th day of December, 2023 of the State Mineral and Energy Board in the City of Baton Rouge, State of Louisiana, pursuant to due notice and in compliance with law, at which meeting a quorum was present, and that said Resolution is duly entered in the Minute Books of said Board and is now in full force and effect.

  
**JAMIE S. MANUEL, SECRETARY**  
**STATE MINERAL AND ENERGY BOARD**

**WIND ENERGY PRODUCTION AGREEMENT**

**La. R.S. 30:209(4)(a) Operating Agreement**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

THIS Operating Agreement (this “**Agreement**”), is entered into on the 13 day of December, 2024<sup>3</sup>, to be effective on the Effective Date, by and between:

- (1) The State of Louisiana acting through its authorized agent, the Louisiana State Mineral and Energy Board (“**Board**”), represented and undersigned by W. Paul Segura, Jr. duly authorized and whose mailing address is Post Office Box 2827, Baton Rouge, Louisiana 70821-2827; and
- (2) DOW LA Gulf Wind, LLC (“**Operator**”), represented herein by Shuhei Kurosawa, duly authorized by a resolution of Operator’s Board of Directors, a copy of which resolution is attached hereto and made a part hereof as Exhibit “A” and whose address is One International Place, Suite 910, Boston, MA 02110.

In this Agreement, the State and Operator may be referred to collectively as the “**Parties**” and individually as a “**Party**.”

**WHEREAS**, the State is the owner of the Property located in the Parishes of Terrebonne and Lafourche, State of Louisiana; and

**WHEREAS**, pursuant to La. R.S. 30:209, the State has the authority to enter into operating agreements whereby the State receives a share of revenues from the production of wind energy in whole or in part, as may be agreed upon by the Parties, in those situations where the Board determines it is in the best interest of the State either in equity or in developmental productivity to do so. The Board’s authority expressly extends to, but is not limited to, establishing a contractual agreement on unleased acreage to promote utilization of the State’s resources for wind energy. Further, pursuant to La. R.S. 30:209, the Board may do all other things that may appear to be necessary or desirable; and

**WHEREAS**, pursuant to La. R.S. 30:135, the Department of Natural Resources (“**DNR**”), through the Office of Mineral Resources (“**OMR**”), shall provide the necessary staff functions to assist the Board in its leasing, supervisory, and other activities; and

**WHEREAS**, this Agreement is entered into to grant Operator the exclusive right and privilege, subject to the terms and conditions of this Agreement and Applicable Laws, to develop and conduct the renewable energy activities of converting wind moving across the Property (defined below) into electrical energy, and collecting, transmitting, and selling the electrical energy so converted; and

**WHEREAS**, the Parties now enter into this Agreement to effect its terms and intent for the development and production of wind energy and for all other purposes necessary or incidental thereto; and

**WHEREAS**, The United States Supreme Court established the boundary of Louisiana's waters as three (3) geographical miles from the nearest land as set forth by the Special Master final decree in *United States v. Louisiana*, 455 US 726 (U.S. 6/22/1981).

**NOW, THEREFORE**, the Parties, in consideration of the premises and the mutual benefits to be derived respectively by the State and Operator, and the covenants and conditions set forth below, together with good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and confessed by both Parties hereto, the State and Operator do hereby agree and stipulate as follows:

The waterbottoms subject to this Agreement are situated in the Parishes of Terrebonne and Lafourche and constitute approximately 6,162 acres as particularly described in Exhibit "B" to this Agreement (the "**Property**"). This Agreement grants the Operator the exclusive right and privilege of converting wind moving across the Property into electrical energy, and collecting, transmitting, and selling the electrical energy so converted, subject to the terms and conditions of this Agreement and Applicable Laws.

#### **Article 1 - Definitions**

- 1.1 "**Anniversary Date**" means the same date on each next ensuing year or years after the Effective Date of this Agreement.
- 1.2 "**Applicable Law(s)**" means any applicable, valid, final, and non-appealable federal or state statute, law, rule, regulation, or order, or any judicial decision, as may now be in effect or which may be enacted, adopted, or made effective at a future date. Applicable Laws include, without limitation, all statutes, laws, rules, regulations, orders, and judicial decisions that pertain to the generation of electricity through the use of a wind turbines and related activities including but not limited to all such matters that pertain to protection of the environment, environmental matters, pollutants, minimum water quality standards, dredging, filling, local navigation, and/or health and safety matters.
- 1.3 "**Applicable Procedure(s)**" means the valid, final, and non-appealable standards, public processes, procedures, and rules applicable to the regulation of the Windpower Facilities, to the extent applicable, by any State or federal regulatory bodies having jurisdiction over all or a part of any one or all of the Windpower Facilities.
- 1.4 "**Construction**" means the erection of the support foundation, tower or mast, turbine, blades and equipment related directly to a WTG on the Property, conducted in good faith and with reasonable diligence to the point of completion that such WTG is capable of converting wind to electrical energy, whether or not the WTG is actually converting wind to electrical energy.
- 1.5 "**Contract Year**" means the calendar year beginning on the Effective Date of this Agreement and ending on the first anniversary of the Effective Date and for every year thereafter from anniversary date to anniversary date.
- 1.6 "**Gross Revenues**" means all amounts received by Operator from the sale of the electricity generated by the WTG(s) located on the Property, including the sale of credits for

greenhouse gas reduction. Gross Revenues shall be calculated without the deduction, either directly or indirectly, for the cost of producing, gathering, storing, transporting, delivering, marketing or otherwise generating electricity on the Property or its use. Gross Revenues shall consist of the following:

- (i) all amounts received by Operator from the sale of electricity generated by the WTGs located on the Property; provided, however, that if electricity is sold to a subsidiary or affiliate of Operator, then, and only then, the gross receipts from the sale of electricity under such contract shall be calculated using a sale price of not less than the arithmetical average of the prices paid by any purchaser or purchasers (including Operator or any subsidiary or affiliate of Operator) for electricity produced in Louisiana during the calendar year immediately preceding the year in which such electricity production from the Property occurs; **plus**
- (ii) all amounts received by Operator from the sale, transfer, or trade of any credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green power, renewable energy or alternative energy, created by any governmental authority and generated by Wind Energy Development; but specifically excluding any and all federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Wind Energy Development; **plus**
- (iii) all amounts received by the Operator in connection with or under or derived from any agreement, 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 Wind Energy Development; **plus**
- (iv) anything of value received by Operator in return for the electricity generated and/or for the electricity not generated due to an incentive.

1.7 “**Hazardous Materials**” means petroleum and petroleum-derived products, asbestos, presumed asbestos-containing materials or asbestos containing materials, urea formaldehyde or polychlorinated biphenyls, pollutants, wastes or substances defined or classified as "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," contaminants, chemicals, toxic or hazardous substances under Applicable Laws or other materials, substances, or wastes that are regulated by any governmental body under any provision of Applicable Laws.

1.8 “**LADWF**” shall denote the Louisiana Department of Wildlife and Fisheries.

1.9 “**Meteorological Towers**” means the tower structure and all wind measurement equipment including wind anemometers, wind vanes, LiDAR systems, guy-wired towers and loggers.

1.10 “**Name Plate Capacity**” means the megawatt capacity of any WTG installed (or to be installed), as determined by the manufacturer.

1.11 “**OCM**” means the Louisiana Department of Natural Resources, Office of Coastal Management.

- 1.12 **“Operations”** means selling electrical energy, produced from a WTG located on the Property, to a purchaser in commercial quantities.
- 1.13 **“Operator Group”** means and includes the Operator aforementioned and its directors, members, partners (general and limited), officers, agents, employees, contractors, subcontractors (of any tier), other representatives, and insurers, and each of its subsidiaries and affiliates, successors and assigns and their directors, members, partners (general and limited), officers, agents, employees, contractors, subcontractors, other representatives, and insurers, and each of them.
- 1.14 **“Permits”** means any and all licenses, permits, approvals, consents and/or other authorizations necessary and required by Applicable Laws and Applicable Procedures for Operator’s ownership, construction, operation, maintenance and decommissioning of the Windpower Facilities.
- 1.15 **“Repowering Activities”** means activities involved in decommissioning, removal and disposal of any damaged, obsolete or redundant Windpower Facilities installed by the Operator, and replacement with new components, such activity to be subject to additional permitting as necessary and Applicable Laws and Applicable Procedures.
- 1.16 **“Transmission Facilities”** means all improvements whose purpose is to deliver electrical power from wind produced by a WTG located on the Property to a utility grid or other delivery system. This includes, but is not limited to, the substations, converter stations, collector stations, electric transmission lines (including wires and cables), or interconnection and switching facilities from which Operator or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy.
- 1.17 **“Wind Energy Development”** means converting wind moving across the Property into electrical energy, and collecting, transmitting, and selling the electrical energy so converted.
- 1.18 **“Windpower Facilities”** means equipment and materials placed, installed or used, on, in or under the Property by Operator Group that are necessary for Wind Energy Development, including but not limited to WTGs, Transmission Facilities, electric collection and transmission lines and communication lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with WTG installations, Meteorological Towers and wind measurement equipment.
- 1.19 **“WTG”** or **“Wind Turbine Generator”** means any wind turbine generator or wind machine designed for the generation of electrical power from wind, including without limitation, the associated foundations, towers, blades, nacelles, support structures, guy wires, braces, and directly related equipment.

## **Article 2 - Approval Process**

- 2.1 **Advertisement and Public Hearing.** The Board, through OMR, shall cause this Agreement to be advertised in compliance with Applicable Law(s).

2.2 Approval or Disapproval. The Board shall render its determination regarding approval or disapproval of this Agreement at a Board meeting. If the Board approves this Agreement, as required by La. R.S. 30:209, this Agreement shall be effective as stated in Section 2.3.

2.3 Effective Date. The “**Effective Date**” of this Agreement shall be the first date on which both of the following have occurred:

- a) This Agreement has been signed by the duly authorized representative of Operator;

AND

- b) This Agreement has been approved by the Board in accordance with Section 2.2.

### Article 3 – Project Megawatt

3.1 The Operator agrees that as a material condition of the State to enter into this Agreement, that the the Operator agrees to and shall construct enough WTG’s on the Property to generate no less than an aggregate amount of 150 megawatts “(**Project Megawatt**)”. Once the Nameplate Capacity of each WTG is determined in accordance with the Construction and Operational Plan, the Project Megawatt shall be increased to one hundred percent (100%) of such Name Plate Capacity.

3.2 Except as automatically increased in accordance with Section 3.1 above, the Parties agree that the Project Megawatt can only be modified in writing and with the consent of the Parties.

### Article 4 - Term

4.1 Subject to earlier expiration because of the commencement of the Construction Term, the first six (6) years following the Effective Date of this Agreement shall be the “**Development Term**”. This Agreement shall terminate at the end of the Development Term if Operator has failed to begin Construction on the Property. However, upon a showing of good cause by Operator, this Agreement may be extended by the State in its discretion for an additional one (1) year period at the end of the Development Term (the “**Discretionary Development Term**”). In order for Operator to exercise this option, Operator shall notify the State at least ninety (90) days prior to the expiration of the Development Term (or applicable Discretionary Development Term) that it wishes to exercise this option. If extended by a Discretionary Development Term, then this Agreement shall terminate at the end of the Discretionary Development Term if Operator has failed to begin Construction on the Property. The Operator shall give the State written notice that Construction has begun on the Property.

4.2 If prior to the end of the Development Term or the Discretionary Development Term (if applicable), Operator has begun Construction on the Property, then this Agreement shall be maintained for an additional five (5) years from the end of the Contract Year in which Construction is begun (“**Construction Term**”). This Agreement shall terminate at the end of the Construction Term if Operator has failed to begin Operations on the Property. However, upon a showing of good cause by Operator, this Agreement may be extended by the State in its discretion for an additional one (1) year period at the end of the Construction Term (the “**Discretionary Construction Term**”) if Operator has failed to begin Operations on the Property. In order for Operator to exercise these options, Operator shall notify the State at least ninety (90) days prior to

the expiration of the Construction Term or the Discretionary Construction Term (if applicable) that it wishes to exercise this option. This Agreement shall terminate at the end of the Discretionary Construction Term if Operator has failed to begin Operations on the Property. If Operator begins Construction on the Property and maintains this Agreement into the Construction Term or the Discretionary Construction Term, Operator shall in good faith and with reasonable diligence continue the construction of enough WTGs on the Property to reach the Project Megawatt.

4.3. If prior to the end of the Construction Term or the Discretionary Construction Term (if applicable), Operator begins Operations on the Property, then this Agreement shall be maintained for a period of thirty (30) years, so long as Operations are occurring without a gap of more than six (6) months (“**Operational Term**”). Except for the rights described in Section 4.4, this Agreement shall terminate during the Operational Term if there has been a gap of more than six (6) consecutive months without Operations on the Property. However, at the end of the Operational Term, this Agreement may be extended by the State in its discretion (“**Discretionary Operational Term(s)**”). In order for Operator to exercise this option, Operator shall notify the State at least ninety (90) days prior to the expiration of the Operational Term or the Discretionary Operational Term(s) (if applicable) that it wishes to exercise this option. This Agreement shall terminate at the end of any Discretionary Operational Term if there has been no Operations for more than six (6) consecutive months during the Discretionary Operational Term. The Operator shall give the State written notice that Operations have begun.

4.4 Following the expiration, termination or release (whichever occurs first) of this Agreement at any point in time, Operator shall remain responsible for, and this Agreement shall remain in effect as to, any and all decommissioning, restoration, closure, monitoring or other obligations and requirements imposed by this Agreement, the Construction and Operational Plan, the Decommissioning Plan, Applicable Law(s) and Applicable Procedure(s), and Operator shall have all necessary and incidental rights to access the Property and utilize the Windpower Facilities to undertake such obligations and requirements.

#### Article 5

As adequate and total consideration for the rights granted to Operator pursuant to this Agreement, Operator shall make the following payments to the State:

5.1 Operator agrees to pay a lump sum payment to the order of the OMR, within thirty (30) days of the Effective Date of this Agreement, in the amount of fifty dollars and zero cents (\$50.00) per acre for the lands comprising the Property.

5.2 For the period commencing on the Effective Date until the end of the Construction Term or Discretionary Construction Term(s) (if applicable), Operator shall pay OMR in arrears an annual acreage rental at the rate set forth in the table below per acre for the lands comprising the Property, as calculated in this Article 4 (“Annual Acreage Rental”).

APPLICABLE PERIOD	ANNUAL PER ACRE RATE
Years 1-3	\$12.17 per acre
Years 4-5	\$24.24 per acre
Years 6-9	\$40.47 per acre
Years 10	\$44.63 per acre
Years 11-13	\$49.09 per acre

Annual Acreage Rentals shall be paid according to the amount of acres comprising the Property on the Effective Date and shall not be adjusted if acreage is subsequently released by Operator in accordance with this Agreement. Annual Acreage Rentals shall be payable within fifteen (15) business days after the end of each Contract Year. For the avoidance of doubt, the Annual Acreage Rental under this section shall be pro-rated for the number of days within the given Contract Year if the Operational Term commencement occurs during the given Contract Year rather than co-incident with the end of the Contract Year. The State is not required to give notice that Annual Acreage Rentals are due.

5.3 Upon commencement of the Operational Term, Operator shall pay OMR in arrears, due and payable fifteen (15) business days after the end of each Contract Year during the Operational Term (and during any Discretionary Operational Term, if applicable), an amount equal to the greater of (1) one and a half percent (1.5%) of Gross Revenues (as defined in Section 1.6) during a given Contract Year of the Operational Term (and/or Discretionary Operational Term if applicable) (“**Energy Royalty**”), or (2) a minimum guaranteed annual payment (“MGAP”). The MGAP shall equal to eighteen hundred dollars and zero cents (\$1,800.00) multiplied by the Project Megawatt.

5.4 The MGAP shall be in lieu of, and not in addition to the Energy Royalty, and in no event shall both an Energy Royalty and MGAP be due by Operator under this section. The payments under this section shall cease if and when the Operational Term (or Discretionary Operational Term, if applicable) terminates. For the avoidance of doubt, the MGAP payments under this section shall be pro-rated for the number of applicable days within the given Contract Year if the Operational Term (or Discretionary Operational Term, if applicable) commencement or termination, or the expiration, termination or release of this Agreement associated with such payment, occurs during the given Contract Year rather than co-incident with the end of the Contract Year.

5.5 The percentage used to calculate the Energy Royalty shall be increased 0.1% for inflation on every anniversary of the Effective Date following the commencement of Operations, unless the Project’s power purchase agreement contains an escalator provision that increases the per/kWh or per/MWh price on an average annual basis of at least 0.1%.

5.6 Operator agrees and acknowledges that it shall not be entitled, by reason of expiration or termination of this Agreement, or voluntary release of acreage by Operator, to any refund of any



bonus, rental or other payments previously paid, nor be released from the obligation required by Section 5.3 to pay the MGAP.

5.7 Except as otherwise approved by OMR in writing, Operator shall make each payment owed to the State under this Agreement by electronic fund transfer using the Automated Clearing House (ACH) Network service pursuant to the institution transfer instructions. The electronic-fund transfer shall be from a banking institution in the United States in U.S. Dollars payable to the "Office of Mineral Resources" into the account identified by OMR, or to any other account as OMR may from time to time designate to Operator. In the event Operator is not able to transfer the fund via ACH, it may obtain approval from OMR to use a different method of payment.

5.8 Together with every Energy Royalty or MGAP paid to the State, Operator shall include all information that it utilized to determine and calculate the amount thereof, including detailed information about the amount of any wind energy production and sales from the Property. Additionally, Operator shall include all information reasonably required by OMR to determine and calculate the Energy Royalty or MGAP. The information required herein shall be submitted to OMR in accordance with OMR's format specifications.

5.9 Operator shall pay the State an amount consistent with the State Land Office schedule for right of ways for any electric transmission cables installed on the Property in accordance with this Agreement. Furthermore, Operator agrees to consult the State Land Office for approval of the placement location of said cables and Operator agrees to install the cables in accordance with the requirements of the State Land Office. This Agreement does not provide for nor address rights of ways located outside the Property boundaries.

5.10 If Operator shall fail to perform any monetary payment obligation under this Agreement, then in such event the State shall cause a written notice to be served on Operator, which notice shall declare it to be the intention of the State to terminate this Agreement if the default is not cured. Operator shall have sixty (60) days after receipt of the aforesaid notice in which to remedy the nonpayment, and, if within such 60-day period, Operator does so remedy by paying the State the applicable monetary payment obligation required herein, then such termination notice shall be withdrawn and this Agreement shall continue in full force and effect. In the event that Operator fails to remedy the nonpayment within such 60-day period, this Agreement shall be terminated and of no further force or effect from and after the expiration of such 60-day period. The State shall be entitled to any penalties and interest authorized by Applicable Laws.

#### **Article 6 - Rights**

The State, pursuant to the authority of La. RS. 30:209 and other Applicable Law(s), does herein grant and retain certain rights, subject to the conditions herein set forth and immediately as of the Effective Date the following exclusive rights:

#### **State's Rights**

6.1 Retained Rights. The State retains the right to sell, exchange, utilize, transfer, or otherwise dispose of all or any portion of the Property and all rights in the Property not expressly granted to Operator by this Agreement, including but not limited to the right to carry on, in and upon the

Property, such operations necessary for and in connection with: (1) the discovery, extraction, preparation, utilization, removal and sale of any and all minerals above and below the Property; (2) the storage of carbon dioxide in the subsurface of the Property; and (3) seismic and geophysical surveys on and under the Property. (“Retained Rights”). Additionally, Operator agrees and acknowledges that this Agreement does not prohibit a party contracting with the State for a Retained Right from the right to use the the Property for the Retained Right contracted for. The party contracting with the State for a Retained Right must exercise its rights in accordance with any applicable rules or regulations and all Applicable Law(s) and Applicable Procedure(s).

6.2 This Agreement and the rights granted to Operator are subject to any and all existing pipeline, road or utility easements, seismic or geophysical agreements, leases or operating agreements for oil, gas or minerals, leases or operating agreements for the storage of carbon dioxide, or any other agreement granted by the State pertaining to the Property or any portion of the Property.

6.3 (a) Pursuant to La. R.S. 30:127(G), Operator shall maintain and preserve the public’s access to public waterways throughout the Property covered by this Agreement; (b) Subject to the the provisions of La. R.S. 30:127(G), Operator is permitted to protect portions of the Windpower Facilities as may be necessary for safety purposes; and (c) Operator shall grant the State, or any other person or entity authorized and acting on behalf of the State, access at all reasonable times via any road or waterway to inspect the Property to ensure compliance with all requirements of this Agreement or to exercise any right reserved explicitly or impliedly in this Agreement. Further, the State shall have the right to use any and all portions of the Property for any purpose or to issue rights-of-ways and servitudes upon the Property, provided doing so does not unreasonably interfere with the rights of Operator or the operations of the Windpower Facilities.

6.4 The mention of any express obligation of Operator herein shall never be construed as affecting any implied obligation which Operator may otherwise owe the State hereunder, but shall be considered as being in addition thereto. Similarly, the mention of any right or remedy of the State herein shall not preclude the State from exercising any other right or remedy to which the State might otherwise be entitled; and no failure of the State to enforce any provision of this Agreement shall operate as a waiver of the State’s right to thereafter enforce such provision or any other provision.

### **Operator’s Rights**

6.5 Operator shall have the right to determine the feasibility of Wind Energy Development on the Property by (i) installing, operating, maintaining, repairing and removing Meteorological Towers and wind measurement equipment necessary to study wind speed, wind direction and other meteorological data; and (ii) undertaking geotechnical reviews, environmental assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Property for Wind Energy Development.

6.6 Operator is hereby granted the exclusive right to use the Property for converting wind moving across the Property into electrical energy, and collecting, transmitting, and selling the electrical energy so converted, which includes, without limitation, the sole and exclusive right to

use and occupy the Property for the purposes of constructing, installing, maintaining, replacing, relocating, removing and repowering Windpower Facilities on the Property, subject to this Agreement, Applicable Law(s) and Applicable Procedure(s).

6.7 Other than as set forth in this Agreement, the State shall have no ownership or other interest in the Windpower Facilities installed on the Property and Operator shall own and have full control of all operations in connection with the construction, preparation, installation, maintenance, operation, expansion, enlargement, modification, replacement, repair, monitoring, electrical transmission, and disposition of the Windpower Facilities, subject to this Agreement, Applicable Law(s) and Applicable Procedure(s).

6.9 Without limiting the foregoing, Operator shall be responsible for obtaining all necessary Permits and satisfying the insurance, bonding, fee and other obligations mandated by this Agreement, Applicable Law(s) and/or Applicable Procedure(s) regarding the Windpower Facilities. Once obtained, the Permits shall be deemed to be Applicable Law(s) with which Operator will be responsible to comply.

6.10 All costs and expenses incurred in connection with operations associated with the Windpower Facilities on the Property, shall be borne solely by Operator. Furthermore, Operator shall, at its sole cost and expense, maintain the Windpower Facilities and make all repairs and replacements reasonably necessary to keep and maintain the Windpower Facilities on the Property, insofar and only insofar as repairs and replacements to the Property are necessitated by Operator's or its agents or contractors, in order to maintain the Windpower Facilities in good working condition. The State shall be held free and harmless from liability or responsibility for any and all costs and expenses so incurred under the terms of this Agreement.

6.11 Nothing in this Section shall prohibit the State, acting in its capacity as a regulatory authority (through the LADWF, OCM, Office of Conservation, Department of Environmental Quality, or other regulatory authority), from enforcing all Applicable Law(s) and Applicable Procedure(s).

**Correlative Rights.**

6.12 The Parties, their successors and assigns, agree to exercise their respective rights granted and reserved herein with reasonable regard for the rights of the other and shall use only so much of the Property, including its surface and water bottom, as is reasonably necessary to conduct their operations. The exercise of the rights granted herein shall be subject to the provisions of Applicable Law(s) and Applicable Procedure(s).

**Article 7 – Use and Manner of Operations**

7.1 Operator shall conduct all operations on or under the Property and its obligations under this Agreement as a reasonably prudent operator, in a good and workmanlike manner, and in compliance with this Agreement, all Applicable Law(s) and Applicable Procedure(s). Operator shall conduct operations using standard industry practices and procedures and proper safeguards, including taking necessary preparations and precautions to prevent and remedy pollution, fire, explosion, and environmental damage to the Property. Operator shall be responsible for all

damage to the Property caused by Operator's or Operator Group's operations including, but not limited to loss or damage to soil, surface and subsurface water, aquifers and vegetation and all environmental damage. This responsibility shall be irrespective of whether such damage is due to Operator's or Operator Group's negligence or to the inherent nature of Operator's or Operator Group's activities or operations. For the avoidance of doubt, this provision applies as to the Parties only and it is not intended to apply to or be for the benefit of any third persons.

7.2 Operator shall comply with and be subject to all Applicable Law(s) which govern: waste disposal, storage, treatment, transportation, or management; environmental quality (regardless of the environmental media involved), navigation, archeological resources, cemeteries, coastal resource management, and wetlands protection and restoration. Furthermore, Operator shall report all unpermitted and reportable discharges on the Property as required by Applicable Law(s).

7.3 At least six (6) months prior to commencement of Construction, the Operator shall schedule a meeting with the OMR and shall submit a Construction and Operational Plan to the OMR for their review. The Construction and Operational Plan shall include, but not be limited to, the following information:

A description of the WTGs Operator intends to install on the Property;

A description and schedule of the proposed activities the Operator intends to conduct to construct and install the Windpower Facilities;

The surface location and water depth for all proposed Windpower Facilities to be constructed and/or installed on the Property;

General structural and project installation information;

A contingency plan identifying the risk of equipment failure and the measures the Operator will put in place to secure the site and notify the State in the event of equipment failure; and

Any other information reasonably requested by the State to ensure the Operator's activities on the Property are conducted in accordance with this Agreement.

7.6 The Operator shall take measures to reduce risk to the State, including but not limited to, effecting compliance with any applicable wind energy standards, which may include those established by the American National Standards Institute (ANSI), the American Clean Power Association (ACP), the International Electrotechnical Commission (IEC), and any other entity recognized by offshore wind industry members in established markets that are responsible for establishing wind industry consensus standards. Such standards for wind energy development/operations include, but are not limited to:

- a) Wind turbine safety and design;
- b) Power performance;
- c) Noise/acoustic measurement;
- d) Mechanical load measurements;
- e) Blade structural testing;

- f) Power quality; and
- g) Siting.

7.8 The Operator shall physically deliver electricity produced by the Windpower Facilities at the point ("**Point of Delivery**") where the Transmission Facilities are connected to the conductors of a transmission and/or distribution service provider under the jurisdiction of the Louisiana Public Service Commission ("**LPSC**") that owns and maintains a transmission distribution system on or near the Property for the wholesale delivery and subsequent transportation of energy; including a municipally owned utility or rural electric cooperative (a "**TDSP**"); provided, however, that Operator may sell or arrange for the sale of such electricity at delivery points other than the Point of Delivery, in which event, unregulated delivery charges assessed to Operator, including scheduling fees, congestion management fees, load management fees and all other fees, shall be the responsibility of Operator and shall not be separately charged or otherwise invoiced to the State nor deducted from the calculation of Gross Revenues.

7.9 The supply of electricity by Operator to any third-party purchaser shall be accurately measured and metered by Metering Equipment at the Point of Delivery of such electricity from the Property. Operator shall not commingle electricity produced from the Property with electricity produced from other land or leases prior to accurate measurement and metering. "**Metering Equipment**" shall mean any and all equipment required for the measurement of electricity, demand, energy, reactive demand or reactive energy and the times during which such demand or energy is transported in accordance with generally accepted industry standards. Unless the accuracy of the Metering Equipment is disputed by notice delivered by either the State, or any person or entity acting as agent, or Operator to the other side, the Metering Equipment shall be deemed to be accurate. If notice is given, the Metering Equipment shall be examined within a reasonable period by the State, or any person or entity acting as agent, in accord with the applicable substantive rules of the LPSC. If such test finds that the inaccuracy of the registration of kWh or kW at normal loads exceeds that allowed by ANSI Standard C.12, or subsequent amendments thereto, suitable adjustment shall be made in the calculation of the Energy Royalty, and within a reasonable period following that determination, the Metering Equipment shall be re-calibrated or replaced. If such test finds the Metering Equipment to be accurate within such standard, the Metering Equipment shall be deemed to be accurate and the cost of moving, testing, and replacing the Metering Equipment shall be paid by the party who issued the notice. If it is discovered that any reading of the Metering Equipment or translation of the readings into charges have been incorrect then the amount of money due shall be paid forthwith. If appropriate meter reading personnel cannot gain access to read the Metering Equipment, or the Metering Equipment fails to register correctly the amount of electricity supplied, or the readings are not communicated to Operator in time for whatever reason, Operator shall reasonably estimate the quantity of the electricity produced, and Operator shall calculate and pay the Energy Royalty on the estimated amounts subject to any adjustments which may be necessary following the reading. Operator shall notify the State of any dispute or query regarding the Metering Equipment made by the LPSC.

7.10 Operator shall submit to OMR semiannual progress reports that will include a brief narrative of the overall progress since the beginning of the Effective Date or since the last progress report.

7.11 Operator shall make available to OMR upon request all environmental, wildlife, and archeological surveys, studies, inspections, or reports compiled or completed during the duration of the Agreement and three years thereafter and all relevant raw data used by Operator. Notwithstanding the foregoing, Operator shall submit to OMR at the end of the Development Term (including any Discretionary Development Term), a copy of any and all wind data collected during the Development Term or Discretionary Development Term (if applicable) of the Agreement and said copy shall be classified as proprietary or trade secret information pursuant to La. Stat. tit. 44 § 3.2.

7.12 At the conclusion of the activities covered by this Agreement, or at the termination of this Agreement, whichever comes first, Operator shall submit a final progress report to OMR, or its successor. The final progress report will include, at a minimum, a comprehensive narrative of Operator's activities and results from testing, surveys, and inspections.

7.13 Operator shall retain copies of all such progress and other reports for the duration of the Agreement and either ten (10) years thereafter or as required by the State.

7.14 Operator shall, at its sole cost and expense, keep and maintain the Windpower Facilities on the Property utilized, owned, placed and/or caused to be placed by Operator in good order and repair and in the appropriate condition for the safe conduct of any activities or enterprises conducted on the Property pursuant to the rights granted hereunder, in each case as a prudent operator using standard industry practices and procedures and proper safeguards and in accordance with Applicable Law(s).

#### **Article 10 - Insurance**

10.1 Coverage Required. Within 30 days of the Effective Date, Operator shall pay all costs and/or premiums, for policies of insurance, providing coverage against third party claims relating to the Windpower Facilities, including the Property, with a carrier approved in the State of Louisiana and rated by AM Best or a similar agency not lower than "A-" with a surplus size of "VII or higher." The policies of insurance shall be maintained in full force until the termination or expiration of this Agreement and continuing until all obligations are fulfilled. Such commercial general liability policies shall name the State as an additional insured. Such policies of insurance shall be subject to the terms and conditions of the policies and shall have the following limits:

- a) For bodily injury, One Million (\$1,000,000) Dollars per occurrence, with a Two Million (\$2,000,000) Dollars aggregate.
- b) For property damage which is not considered to be environmental damage, One Million (\$1,000,000) Dollars per occurrence, with a Two Million (\$2,000,000) Dollars aggregate.

- c) For environmental damage, Ten Million Dollars (\$10,000,000) for each occurrence.

10.2 Proof of Insurance. Operator shall provide the State with current certificates of insurance demonstrating compliance with the requirements of Article 10.1 above (a) within forty five (45) days of the Effective Date; (b) within fifteen (15) days following annual policy renewals during the term of this Agreement; and (c) within fifteen (15) days of each reasonable request therefor by the State; provided, however, that for insurance required under 10.1(c) above, the certificate of insurance shall be delivered no later than forty-five days prior to commencement of physical survey work at the Property. Such certificates of insurance shall contain the requirements that (i) those insurance companies provide thirty (30) days' prior written notice of any cancellation or termination of those insurance policies as stated on a standard accord cancellation form or such similar form, and (ii) the insurance companies providing commercial general liability insurance waive any right of subrogation in favor of the State limited to the extent of obligations and liabilities assumed by Operator under this Agreement.

10.3 Insurance Default Remedies, Notice and Cure Rights. In the event notice of cancellation of the insurance required by Section 10.2 is given and another certificate of insurance evidencing the issuance of another policy meeting all the terms and conditions of Section 10.1 is not furnished prior to cancellation (and except where such failure to furnish same is excused due to an Incident or any other provision of this Agreement or Applicable Law(s)), the rights of Operator granted under this Agreement shall automatically and without further notice to Operator, be suspended (but not terminated) and Operator shall immediately suspend on site activities under this Agreement. However, for avoidance of doubt, rights necessary to maintain the viability of the the Windpower Facilities for the purposes hereof and as necessary for health, safety, and/or environmental concerns shall be permitted at all times. The reinstatement of the requisite insurance coverage as evidenced by the certificate showing same to the State may thereon, give Operator notice that the suspension of on site activities is lifted. Should Operator fail to obtain coverage within one hundred twenty (120) days after receiving a written notice and request to obtain insurance from the State, this Agreement may terminate at the option of the State.

### **Article 11 - Bankruptcy and Security**

11.1 Operator agrees to acknowledge and verify in any appropriate manner to any bankruptcy court or to any other authority, and hereby also acknowledges and verifies, that the payments to the State required by this Agreement are not a part of Operator's estate, and that the estate has no claim or interest therein. Operator further hereby acknowledges that all legal and equitable title to any portion of the payments owed to the State is vested in the State and that Operator relinquishes all dominion, control, and title to the same. Operator and the State agree that so long as this Agreement remains in effect, this Agreement is an executory contract and unexpired within the meaning of Section 365 of the United States Bankruptcy Code.

### **Restoration Security**

11.2 Within sixty (60) days of submission of the Decommissioning Plan, prior to commencing Construction, Operator shall establish security ("**Restoration Security**") payable to the State in

an amount intended to cover Operator's Restoration Obligations and the carrying out of the Decommissioning Plan through one of the following or a combination thereof:

- a) a certificate of deposit issued in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the Board from a financial institution acceptable to the Board; or
- b) Providing a performance bond in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the Board issued by institution acceptable to the Board and authorized to do business in the state of Louisiana; or
- c) A letter of credit in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the Board from a financial institution acceptable to the Board.

11.3 The amount of the Restoration Security shall comply with the requirements of the Decommissioning Plan as defined in Article 15 and/or be the estimated cost of removing the Windpower Facilities, net of their estimated salvage value, as determined by the Parties in good faith. Initially, the Restoration Security shall be in an amount equal to 10% of the Restoration Obligations amount set forth in the Decommissioning Plan or \$150,000 per installed WTG, whichever is greater. On the sixth anniversary of the commercial operation date of the Project, the Restoration Security shall be increased to 50% of the Restoration Obligations amount set forth in the Decommissioning Plan. On the eleventh anniversary of the commercial operation date of the Project, the Restoration Security shall be increased to 100% of the Restoration Obligations amount set forth in the Decommissioning Plan. If the Parties cannot agree upon the amount of the Restoration Security within sixty (60) days after the date the Restoration Security is to be provided by Operator, then the amount of the Restoration Security shall be determined by an independent engineer mutually selected by the Parties, and the decision of such independent engineer shall be conclusive as between the Parties, unless either Party moves for court enforcement; provided further that, for the avoidance of doubt, a delay in agreeing on Restoration Security shall not prevent Operator from commencing Construction or Operations. The terms of any escrow fund, or performance bond shall expressly provide that the State shall be entitled to use amounts received from the Restoration Security to remedy any damage to the Property if Operator fails to comply with its Restoration Obligations of Article 15, Applicable Laws, including Louisiana Administrative Code (LAC) 43:V:701 *et seq.*. Interest earnings, if any, on any escrow fund shall be the property of Operator, and any amounts remaining in any escrow fund after Operator has complied with its obligations shall belong to Operator.

#### **Article 12 – Indemnification**

12.1 Operator unconditionally agrees that it will fully respond to, investigate, provide defense for, protect against, save, indemnify, and hold free and harmless the State, the Board, DNR, OMR, the Board members, and DNR's and OMR's employees and other representatives of, from, and against any and all demands, claims, causes of action, damages, judgments, costs, fees, expenses and attorney's fees of whatsoever kind or nature, including, but not limited to damages to persons or property, THAT MAY ARISE OUT OF, OR BY REASON OF, THE PERFORMANCE OF ALL SERVICES, ACTIVITIES, OBLIGATIONS, DUTIES AND OPERATIONS UNDER THIS AGREEMENT BY OPERATOR, OR ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS,



SUBCONTRACTORS, OR OTHER REPRESENTATIVES, OR ANY OTHER MEMBER OF OPERATOR GROUP.

**Article 13 – Inspection, Records and Audit Rights**

13.1 Subject to compliance with Operator's site safety rules and requirements, and provided that the State treats such information as strictly confidential to the extent allowed by Applicable Law(s) and Applicable Procedure(s), the State, or any person or entity acting as agent, representative or under the authority of the State shall have the right, at all reasonable times and upon reasonable notice, to examine, audit or inspect all books, records, accounts, statements, sales, invoices, maps, plans, seismic or geologic data, diagrams and other such documents pertaining to Operator's activities and obligations conducted pursuant to this Agreement, including but not limited to the development, production, and sales of electric energy and the calculation of payments required under Article 5 from the Effective Date of this Agreement. Except as provided in Section 13.2, Operator shall only be required to maintain the foregoing items for ten (10) years from the date of their generation.

13.2 Operator shall preserve and keep true, accurate and complete books, records, accounts, contracts and data used to verify the calculation of the payments required under Article 5 for as long as required by Applicable Law(s). Operator shall reasonably cooperate with the State in any such audit and the State shall conduct said audit as not to unreasonably interfere with Operator's operations.

13.3 Operator shall provide accurate records concerning Operator's payment obligations due under this Agreement, including but not limited to all accounts hereunder showing the amounts of wind energy produced and sold; provided that the State treats such records as strictly confidential, to the extent allowed by Applicable Law(s) and Applicable Procedure(s). The State may seek penalties in the event such accurate records are not timely provided in accordance with this Agreement and Applicable Law(s). The State and its agents shall, subject to all Operator site safety rules and requirements, have the right, upon reasonable prior notice to Operator and during normal business hours, to review such records as well as all other records created and maintained by Operator concerning the design, construction, maintenance, modification, and physical operation of the Windpower Facilities. Subject to all Operator site safety rules and requirements, the State and any of its duly authorized representatives shall have access at all times to each Transmission Facility, the Property, and to the Windpower Facilities and to all records and reports relating thereto. Operator shall reasonably cooperate with the State in any such review, and any such review shall be at the sole cost of the State and shall be done so as not to unreasonably interfere with Operator's operations. To the extent that such information is received or acquired by Operator from or in connection with operations hereunder subsequent to the date hereof, Operator agrees, upon written request by the State, to furnish timely to the State any and all data associated with the Windpower Facilities, provided that, to the extent allowed by Applicable Law(s) or Applicable Procedure(s), the State treats such records as strictly confidential.

13.4 For avoidance of doubt, all information obtained by the State pursuant to this Article shall be treated as strictly confidential by the State to the fullest extent allowed by Applicable Law(s)

and Applicable Procedure(s).

#### **Article 14 - Release of Acreage**

14.1 Upon its own initiative, Operator may release acreage by notifying the State in writing, at least thirty (30) days prior to the release, of its intent to do so and identifying the specific acreage to be released in the manner and format required by the State. Upon release of the acreage, Operator shall lose any rights granted by this Agreement on the portion of the Property released, except for the rights described in Section 4.4 of this Agreement and this Article. Additionally, Operator shall be required to undertake the Restoration Obligations in accordance with this Agreement for that acreage that has been released. If the Property released includes transmission lines installed by Operator for the transmission of energy produced from WTGs installed on the Property, Operator will retain a right or way for such lines until the lines are no longer utilized for the transmission of energy produced from WTGs installed on the Property. Operator will continue to make payments to the State for such right of ways in accordance with Section 5.9 of this Agreement.

#### **Article 15 – Restoration**

15.1 Operator shall be obligated to remove and decommission all Windpower Facilities owned, utilized, placed or caused to be placed by Operator on the Property no longer utilized for Wind Energy Development and Operator shall restore the Property, as near as practicable, to the condition existing on the Effective Date of this Agreement (“**Restoration Obligations**”), all at Operator’s sole risk, cost and expense and subject to compliance with Applicable Law(s) and Applicable Procedure(s).

15.2 Unless doing so would be in violation of Applicable Law(s), Operator shall complete the Restoration Obligations within a reasonable time (but no later than two (2) years ) following: (a) the date any Windpower Facilities are no longer utilized for Wind Energy Development; or (b) the date this Agreement has expired, terminated or been released (whichever occurs first) as to all or a portion of the Property. The failure of Operator to timely complete the Restoration Obligations shall subject Operator to and make Operator liable for any and all costs or expenses of any kind incurred by the State for removing said Windpower Facilities, but in no instance shall title to or ownership of said Windpower Facilities automatically vest in or transfer to the State nor shall said structures or facilities be deemed “improvements” to the Property for purposes of vesting title in same to the State.

15.3 The Restoration Obligations shall end on the date the State accepts, through written notice, that the Restoration Obligations have been completed by Operator. Operator shall cause to remain in full force and effect the insurance coverage and Restoration Security Deposit until the State accepts in writing that the Restoration Obligations have been completed.

15.4 The State recognizes Operator’s right to remove the the Windpower Facilities no longer utilized for Wind Energy Development.

15.5 Operator shall submit to OMR or its successor a “**Decommissioning Plan**” within six (6) months of the beginning of the Operational Term. The Decommissioning Plan shall include, but not be limited to the following:

- a) The manner in which the Restoration Obligations will be performed; and
- b) A detailed estimate of the cost of decommissioning by a professional engineer licensed in the state of Louisiana that shall include the following:
  - i. Dismantling and removing all towers, WTGs, transformers, overhead cables and debris of the Windpower Facilities;
  - ii. Removal of all cables or such portion of cables as required by Applicable Laws, Applicable Procedures and agreed to by OMR; and
  - iii. Removal of all foundations, buildings, and ancillary equipment or such portions thereof as required by Applicable Laws, Applicable Procedures and agreed to by OMR;

15.6 OMR may reject the Decommissioning Plan if it does not adequately describe the cost of restoration and decommissioning. The determination of the Restoration Security amount required in Article 11.3 shall be sufficient to cover the cost of the Decommissioning Plan. The Parties agree that the Restoration Security and the Decommissioning Plan shall be reviewed and updated once every five (5) years and the Restoration Security shall be increased as required by the updated Decommissioning Plan.

#### **Article 16 - Warranty of Title and Use**

16.1 Warranty of Title. Notwithstanding any provision herein to the contrary, this Agreement is granted and accepted without any warranty of title and without any recourse against the State whatsoever with respect to title, either express or implied. As such, the Parties acknowledge and agree that the State shall not be required to return any payments received pursuant to this Agreement, even notwithstanding any subsequent litigation or judicial decrees, orders, or rulings regarding title to all or any part of the Property or otherwise be responsible to Operator therefor. Operator represents that it has investigated the title or is satisfied with such title as the State may have. The State hereby disclaims any covenant of quiet enjoyment or peaceful possession of the Property.

16.2 Warranty of Use. The State makes no warranties as to the condition of the Property and Operator accepts the Property "AS IS". The State has no obligation to make any repairs, additions or improvements to the Property, and the State does not warrant the suitability of the Property for any purposes intended by Operator or contemplated by this Agreement.

16.3 Termination for Lack of Title. Notwithstanding anything stated in this Agreement to the contrary, this Agreement shall terminate, as to the portion of the Property implicated, if it is determined by a court of competent jurisdiction (and any applicable appeal delays have run or have been exhausted) that the State does not have title to the Property.

#### **Article 17 - Force Majeure and Suspending Events**

17.1 If, at any time this Agreement is being maintained by Operations, and Operator is prevented from continuing Operations by the occurrence of a Force Majeure or Suspending Event as defined in this Article, ("Incident"), and Operator cannot maintain this Agreement under any other operative provision of this Agreement, then and only then shall the date for Operator to recommence Operations in order to maintain this Agreement be postponed on a day-for-day basis

for so long as the adverse effects of the Incident continue, providing that Operator provides OMR with notice in accordance with this Article and that Operator is diligently, reasonably, and in good faith attempting to mitigate and eliminate the effects of the Incident to the extent such mitigation is within Operator's control. The occurrence of an Incident shall not maintain this Agreement for more than twelve (12) months from the date of the Incident onset unless extended by the State in the State's reasonable discretion.

17.2 A determination as to whether Operator can utilize this Article and whether Operator has complied with the requirements thereof is at the sole, reasonable discretion of the State. If an Incident has occurred, Operator is still required to comply with all the monetary obligation requirements of this Agreement.

17.3 Within ninety (90) days of the Incident onset, Operator shall submit a written notice containing the following: (1) the onset date, description and nature of the Incident; (2) the effects preventing continuation of Operations; (3) a description and evidence of Operator's diligent, reasonable and good faith efforts to mitigate and eliminate the effects of the Incident and to resume Operations; (4) an estimated time for resumption of Operations; and (5) any other information or documentation evidencing the existence of the Incident reasonably requested by the State. Notice given beyond ninety (90) days shall not be considered reasonable notice and the application may be denied by the State barring consequential extenuating circumstances.

17.4 Every thirty (30) days following the notice required in Section 17.3 of this Article, Operator shall be required to submit written, detailed reports on a monthly basis to OMR giving therein a description and evidence of Operator's diligent, reasonable, and good-faith efforts to mitigate and eliminate the effects of the Incident and to resume Operations. If the reports are not timely submitted or if Operator did not attempt in good faith to mitigate the effects of the Incident, the State, after notice and opportunity to be heard, may declare the Incident recognition to be ended and that Operator may not after such failure utilize this provision to excuse any failure to comply with any obligations of this Agreement relating to the particular Incident involved.

17.5 A "**Force Majeure**" event is a fortuitous event that is beyond Operator's control and is not ultimately determined to be caused by Operator or due to Operator's negligent or intentional commission or omission, or failure to take reasonable and timely foreseeable preventative measures that would have mitigated or negated the effects of the event, which prevents the occurrence of an act or event that would otherwise extend the effectiveness of this Agreement or prevent its termination. An example of a Force Majeure event may include, depending on the specific circumstances involved: (1) a major storm, major flood, or other similar natural disaster; or (2) a major accident such as a fire, collision, or explosion.

17.6 "**Suspending Event**" includes: (1) the lack of availability, after Operator has diligently, timely and in good faith attempted to secure same, of any required equipment, materials and/or personnel, such as the specific equipment necessary for Operations; or (2) the unreasonable or unexpected delay by any government agency or political subdivision in granting, modifying, or reinstating Permits necessary for Operations; or (3) an order of any federal or state court of competent jurisdiction preventing or suspending the Operations; or (4) the act of a third party, not under the control or at the instigation of Operator, in shutting down and unreasonably refusing to reopen the Windpower Facilities through which the generation of electricity from the Windpower

Facilities are necessarily passed through as part of the transmission of energy so as to prevent production; or (5) Repowering Activities; or (6) other events not described herein that may be recognized by the State.

**Article 18 - Miscellaneous Provisions**

18.1 It is understood and agreed that this Agreement shall not create the relationship of a partnership between the Parties hereto, and that no act done by any Party pursuant to the provisions hereof shall operate to create such relationship, nor shall the provisions of this Agreement be construed as creating such relationship.

18.2 It is expressly provided herein that neither this Agreement, nor anything herein contained, nor any of the data, maps, or exhibits considered in connection herewith, whether attached hereto or not, nor any course of conduct followed by any Party hereto pursuant to this Agreement, shall ever be considered to be or permitted to serve as a basis of estoppel against any Party hereto in question of title, where title to Property or a portion of the Property is in dispute, anything herein contained to the contrary notwithstanding.

18.3 This Agreement shall extend to and be binding upon the successors, assigns, and successive assigns of the Parties; however, it is understood and agreed that no future assignments of the rights granted hereunder shall be effective unless and until such assignment or assignments are first approved by the Board, and same shall be subject to any reasonable conditions imposed by the Board in giving its approval, which approval shall not be unreasonably withheld, conditioned, delayed, or denied. Notwithstanding the foregoing, Operator may pledge, grant a security interest in or collaterally assign this Agreement and all of its rights hereunder in connection with any financing (including any tax equity financing) or refinancing for the Project without the written consent of the Board, and to the extent of its lawful authority the Board agrees that in connection with any such financing, it shall negotiate in good faith to enter into any agreements reasonably required in connection therewith pursuant to a form containing terms and conditions agreeable to the Board, including consent to collateral assignment agreements and estoppels, in each case, in form and substance typical for non-recourse project financings, which agreements may include, among other things, customary rights in favor of lenders and investors to cure defaults or obtain a replacement agreement on the same terms and conditions as this Agreement in the event that this Agreement is terminated. Nothing in this Section 18.3 shall prevent any pledge of the ownership interests in Operator in connection with any financing (including any tax equity financing) or refinancing for the Project or the transfer of any such ownership interests in connection with such pledge.

18.4 Payments, notices, reports, statements, and any and all written documents herein required to be given or furnished by any of the Parties hereto shall be in writing and mailed or delivered (via nationally recognized overnight courier or hand delivery), to the following addresses of the Parties hereto, to-wit:

If to the State:	Department of Natural Resources Attn.: State Mineral and Energy Board Post Office Box 2827 Baton Rouge, Louisiana 70821-2827
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If to Operator:                   DOW LA Gulf Wind, LLC  
  c/o Diamond Offshore Wind  
  633 West Fifth Stree, Suite 2700  
  Los Angeles, CA 90071

18.5 This Agreement shall be recorded in the conveyance records of all Parishes where the Property is located in order to notify all interested third parties (including, without limitation, any lessees or other users or occupants of the Property) of the exclusive use of the Property for wind energy production. Operator agrees that it shall execute and record, within ninety (90) days after the expiration or termination of this Agreement covering all or any portion of the Property, an appropriate and legally sufficient release evidencing such expiration or termination, and shall also supply State with a copy or copies thereof with recordation information properly certified by the recorder of each Parish in which a Property is located. In the event Operator fails to comply therewith after thirty (30) days of written notice from the State, it shall be liable for reasonable attorney's fees and court costs incurred in bringing suit for such cancellation and for all damages resulting therefrom. Notwithstanding the foregoing, a disclosure filing in mutually agreeable form shall also be recorded in the conveyance records of all Parishes where the Property is located to notify all interested third parties (including, without limitation, any lessees or other users or occupants of the Property) of the use of the Property for Wind Energy Development.

18.6 This Agreement shall be interpreted and construed under the laws of the State of Louisiana. Should any provision, in whole or in part, of this Agreement be declared, found, or held invalid, illegal, or otherwise unenforceable, such declaration, finding, or holding shall not invalidate or render unenforceable the remaining provisions, which shall be construed and enforced as though the invalidated or unenforceable provision, or portion thereof, was not contained herein, provided that such remaining provisions fulfill the primary purpose of this Agreement.

18.7 The venue for any suit, action, or proceeding instituted, arising out of, or relating to this Agreement, shall only be in the Nineteenth (19<sup>th</sup>) Judicial District Court, East Baton Rouge Parish, State of Louisiana. Each Party irrevocably submits to the exclusive jurisdiction of said courts, waives any objection which it may have now or hereafter to such venue, and waives any other venue to which it may be entitled by virtue of domicile or otherwise.

18.8 This Agreement has been read and understood by each Party. The Parties to this Agreement have freely and voluntarily executed this Agreement for the consideration recited herein. They have not relied on any representation or statement by any Party other than those statements contained herein. They have relied solely and completely upon their own respective judgment and the advice of their own attorneys.

18.9 This Agreement is the result of arms-length negotiations between the Parties and each has had the opportunity to review and revise it prior to execution. As a result, both Parties agree that the rule of construing the terms and provisions of an instrument against the drafting Party is not and shall not be applicable to this Agreement. This Agreement constitutes the entire agreement as between the Parties, and it shall not be modified or amended, nor shall any of its requirements be

waived, except in a subsequent writing executed by all Parties.

18.10 Each Party represents and warrants to each and every other Party that the individuals executing this Agreement, and the agreements contemplated by this Agreement, have been duly authorized by their respective corporate principals and that this Agreement and the other documents contemplated by this Agreement, shall be binding on the Parties hereto in accordance with the provisions of such documents.

18.11 This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument. If counterparts are executed, the signatures of the Parties to each counterpart may be combined into and used as a single document.

18.12 The article and section headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

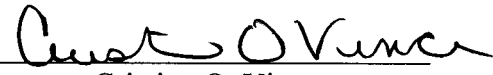
18.13 The Parties agree to cooperate in good faith in connection with Operator obtaining regulatory approvals and permits.

18.14 Safety Precautions and Other Protocols. Both Parties, and their respective contractors, subcontractors, invitees, and agents shall comply with Occupational Safety and Health Administration rules and regulations applicable to industrial sites when entering any area of the Property on which Operator's Windpower Facilities are located.


**This Part Left Intentionally Blank**

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

Before me, the undersigned authority, personally came and appeared Cristina O. Vince, who by me first duly sworn, deposed and said, That she is one of the witnesses to the execution of the foregoing instrument and that she saw W. Paul Segura, Jr. sign said instrument as Chairman of the **STATE MINERAL AND ENERGY BOARD**, in the presence of appearer and Michael N. Romig the other subscribing witness.

  
Cristina O. Vince

SWORN TO AND SUBSCRIBED before me on this  
the 4th day of April, 2024.

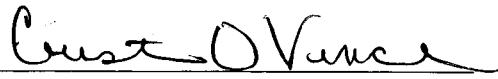
  
Ryan M. Seidemann  
#28991




THUS DONE AND SIGNED on the date or dates herein below written, in the presence of the undersigned competent witnesses.

WITNESSES:

**The Louisiana State Mineral and Energy Board**

  
CRISTINA O. VINCE

  
MICHAEL N. ROMIG

Name:   
W. Paul Segura, Jr.  
Title: Chairman  
Date: 3/16/24

**Operator: DOW LA Gulf Wind, LLC**

By: Diamond Offshore Wind Louisiana, LLC,  
Its sole member

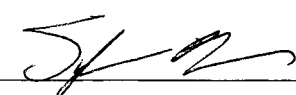
By: Diamond Offshore Wind Capital, LLC,  
Its sole member

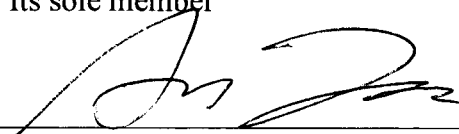
By: Diamond Offshore Wind Management, LLC  
Its sole member

By: Diamond Generating Corporation  
Its sole member

WITNESSES:

  
\_\_\_\_\_

  
\_\_\_\_\_

By:   
\_\_\_\_\_

Name: Shuhei Kurosawa

Title: CEO

Date: February 14, 2024

**ACTION BY UNANIMOUS WRITTEN CONSENT  
OF THE SOLE MEMBER  
OF  
DOW LA GULF WIND, LLC**

The undersigned, being the sole member (the "Member") of DOW LA GULF WIND, LLC, a Delaware limited liability company (the "Company"), pursuant to Section 18-302(d) of the Delaware Limited Liability Company Act and the Limited Liability Company Agreement of the Company (the "Agreement"), do hereby consent in writing to adopt, effective as of February 13, 2024, the following resolutions with full force and effect. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

**WHEREAS**, the Company has negotiated that certain Wind Energy Production Agreement (the "Operating Agreement") to build and operate an offshore wind farm in certain state waters of Louisiana and desires to enter into such agreement with the State of Louisiana;

**WHEREAS**, the board of the Louisiana Office of Mineral Resources approved the form of the Operating Agreement at its meeting on December 13, 2023, the form of such approved Operating Agreement being attached hereto as Exhibit A;

**NOW, THEREFORE, BE IT RESOLVED:** that it is in the best interest of the Company to enter into the Operating Agreement, and therefore, it is hereby approved.

**RESOLVED FURTHER:** that Shuhei Kurosawa, CEO of Diamond Generating Corporation, parent company of the Company, be and hereby is authorized and appointed to execute the Operating Agreement on behalf of the Company.

**RESOLVED FURTHER:** that Mr. Kurosawa be, and hereby is, authorized and directed to do and perform or cause to be done and performed all such acts, deeds, and things, and to make, execute, and deliver, or cause to be made, executed, and delivered, all such agreements, undertakings, documents, instruments or certificates in the name of the Company and to incur and pay such expenses, fees, and taxes as are, in the opinion of Mr. Kurosawa executing the same, considered necessary or advisable (such necessity or advisability to be conclusively evidenced by the execution thereof) to effectuate or carry out fully the purpose and interest of the foregoing resolutions; and that any and all such actions heretofore or hereafter taken by Mr. Kurosawa relating to and within the terms of these resolutions are hereby adopted, affirmed, approved, and ratified in all respects as the act and deed of the Company.

*[signature page follows]*

IN WITNESS WHEREOF, the undersigned have executed this written consent as of the date first written above.

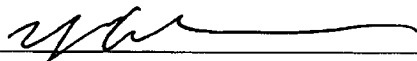
**Sole Member:**

DIAMOND OFFSHORE WIND LOUISIANA, LLC

By: Diamond Offshore Wind Capital, LLC  
Its sole member

By: Diamond Offshore Wind Management, LLC  
Its sole member

By: Diamond Generating Corporation  
Its sole member

By:  \_\_\_\_\_

Name: Yoshihisa Watanabe

Title: Secretary

**EXHIBIT B:**

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**DOW LA Gulf Wind, LLC/Lafourche and Terrebonne Parishes Offshore Wind Acreage  
Boundary (6,162.02 acres +/-)**

**NOTE: The plat and X-Y coordinates were provided in NAD 27 LA- South Projection - US Feet**

"DOW LA Gulf Wind, LLC/Lafourche and Terrebonne Parishes Offshore Wind Acreage Boundary" includes a tract, title to which is in the State in its public trust domain, and includes all of the lands now or formerly constituting the beds and bottoms of all water bodies of every nature and description and all islands and other lands formed by accretion or reliction, except tax lands, and includes all lake beds and water bottoms owned by the State of Louisiana, situated in Lafourche and Terrebonne Parishes, Louisiana, within the following boundaries:

Portion of Blocks 11, 16, 17, 18, 19, 20, and 21, South Timbalier Area, Revised, Lafourche and Terrebonne Parishes, Louisiana

That portion of Blocks 11, 16, 17, 18, 19, 20, and 21, South Timbalier Area, Revised, Lafourche and Terrebonne Parishes, Louisiana, belonging to the State of Louisiana, being more fully described as follows: Beginning at a point on the West line of said Block 18, South Timbalier Area, Revised, having the Coordinates of X = 2,290,338.06 and Y = 124,825.00; thence North 88 degrees 52 minutes 27 seconds East 14,760.92 feet to a point on the Eastern line of said Block 18 having Coordinates of X = 2,305,096.10 and Y = 125,115.00; thence North 87 degrees 57 minutes 15 seconds East 364.13 feet to a point having Coordinates of X = 2,305,460.00 and Y = 125,128.00; thence North 80 degrees 42 minutes 35 seconds East 14,284.39 feet to a point having Coordinates of X = 2,319,557 And Y = 127,434; thence North 73 degrees 8 minutes 57 seconds East 310.47 feet to a point on the Western line of said Block 20 and having Coordinates of X = 2,319,854.14 and Y = 127,524.00; thence North 72 degrees 25 minutes 41 seconds East 7,999.32 feet to a point having Coordinates of X = 2,327,480.19 and Y = 129,939.00; thence North 72 degrees 21 minutes 7 seconds East 7,484.24 feet to a point on the Eastern line of said Block 20 having Coordinates of X = 2,334,612.18 and Y = 132,208.00; thence North 72 degrees 21 minutes 38 seconds East 1,217.73 feet to a point having Coordinates of X = 2,335,772.65 And Y = 132,577; thence South 24 degrees 47 minutes 32 seconds East 2,646.60 feet to a point having Coordinates of X = 2,336,882.44 And Y = 130,174.33, being a point on the Three Mile Line, as decreed by the Supreme Court of the United States, as determined by a Special Master appointed therein, in litigation styled United States v. State of Louisiana et al No. 9 Original, in 1975; thence along said Three Mile Line the following courses: Southwesterly on a straight line to a point having Coordinates of X = 2,334,612.18 and Y = 129,277.12; Southwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,327,933 and Y = 146,251 to a point having Coordinates of X = 2,333,794 and Y = 128,978.00; Southwesterly on a straight line to a point having Coordinates of X = 2,328,327 and Y = 127,123; Southwesterly along an arc to the right having a radius of 18,240.60 feet and a center at X = 2,322,466 and Y = 144,396 to a point having Coordinates of X = 2,326,959 and Y = 126,717; Southwesterly on a straight line to a point having Coordinates of X = 2,326,906 and Y = 126,704; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,319,608 and Y = 143,421 to a point having Coordinates of X = 2,324,588 and Y = 125,873; Southwesterly on a straight line to a point having Coordinates of X = 2,322,643 and Y = 125,321; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,317,663 and Y = 142,869 to a point having Coordinates of X = 2,322,368 and Y = 125,246; Southwesterly on a straight line to a point having Coordinates of X = 2,318,607 and Y = 124,242; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,313,902 and Y = 141,865 to a point having Coordinates of X = 2,314,460 and Y = 123,633; Southwesterly on a straight line to a point having

Coordinates of X = 2,312,762 and Y = 123,581; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,312,204 and Y = 141,813 to a point having Coordinates of X = 2,311,215 and Y = 123,599; Southwesterly on a straight line to a point having Coordinates of X = 2,309,557 and Y = 123,689; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,310,546 and Y = 141,903 to a point having Coordinates of X = 2,308,711 and Y = 123,755; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,300,326 and Y = 139,954 to a point having Coordinates of X = 2,308,388 and Y = 123,592; Southwesterly on a straight line to a point having Coordinates of X = 2,306,600 and Y = 122,711; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,298,538 and Y = 139,073 to a point having Coordinates of X = 2,302,489 and Y = 121,265; Southwesterly on a straight line to a point having Coordinates of X = 2,299,992 and Y = 120,711; Southwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,296,041 and Y = 138,519 to a point having Coordinates of X = 2,295,411 and Y = 120,289; Northwesterly on a straight line to a point having Coordinates of X = 2,294,514 and Y = 120,320; Northwesterly along an arc to the right with a radius of 18,240.60 feet and a center at X = 2,295,514 and Y = 138,550 to a point on the Western line of Said Block 18 and having Coordinates of X = 2,290,338.06 and Y = 120,953.84; Northwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,295,144 and Y = 138,550 to a point having Coordinates of X = 2,288,532 and Y = 121,550; Northwesterly on a straight line to a point having Coordinates of X = 2,287,771 and Y = 121,846; Northwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,294,383 and Y = 138,846 to a point having Coordinates of X = 2,287,412 and Y = 121,990; Northwesterly on a straight line to a point having Coordinates of X = 2,284,138 and Y = 122,399; Northwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,286,402 and Y = 140,499 to a point having Coordinates of X = 2,283,007 and Y = 122,577; Northwesterly on a straight line to a point having Coordinates of X = 2,277,807 and Y = 123,562; Northwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,281,202 and Y = 141,484 to a point having Coordinates of X = 2,276,614 and Y = 123,830; Northwesterly on a straight line to a point having Coordinates of X = 2,270,161 and Y = 125,507; Northwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,274,749 and Y = 143,161 to a point having Coordinates of X = 2,267,618 and Y = 126,372; Northwesterly on a straight line to a point having Coordinates of X = 2,263,074 and Y = 128,302; Northwesterly along an arc to the right having a radius of 18,240.60 feet and a center of X = 2,270,205 and Y = 145,091 to a point having Coordinates of X = 2,262,736 and Y = 128,450; Northwesterly on a straight line to a point having Coordinates of X = 2,256,981 and Y = 131,033; thence North 27 degrees 17 minutes 5 seconds East 3,204.54 feet to a point having Coordinates X = 2,258,450 And Y = 133,881; thence South 67 degrees 18 minutes 51 seconds East 10,166.57 feet to a point having Coordinates X = 2,267,830 And Y = 129,960; thence South 72 degrees 39 minutes 10 seconds East 9,129.26 feet to a point having Coordinates X = 2,276,544 And Y = 127,238; thence South 80 degrees 4 minutes 39 seconds East 14,003.55 feet to the point of beginning, containing approximately 6,162.02 acres, LESS AND EXCEPT that portion thereof, if any, lying seaward of the line three nautical miles from the coast line of Louisiana, as said three mile line has been decreed by the Supreme Court of the United States, as determined by a Special Master appointed therein, in litigation styled United States v. State of Louisiana et al No. 9 Original, in 1975, all as more particularly outlined on a plat on file in the Office of Mineral Resources, Department of Natural Resources, as provided by the applicant. All bearings, distances and coordinates are based on Louisiana Coordinate System of 1927, (North or South Zone).

EXHIBIT B CONTINUED ON THE NEXT PAGE

**EXHIBIT B:**

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