



# SAMPLE ANNOTATED

## Land Lease Agreement

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This document is one of a series of reports and guides that are all part of the NYSERDA Wind Energy Tool Kit. Interested parties can find all the components of the kit at: [www.powernaturally.org](http://www.powernaturally.org). All sections are free and downloadable, and we encourage their production in hard copy for distribution to interested parties, for use in public meetings on wind, etc.

Any questions about the tool kit, its use and availability should be directed to: Vicki Colello; [vac@nyserda.org](mailto:vac@nyserda.org); 518-862-1090, ext. 3273.

In addition, other reports and information about Wind Energy can be found at [www.powernaturally.org](http://www.powernaturally.org) in the on-line library under “Large Wind.”

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## Annotated Model Land Lease Agreement

Wind power developers typically obtain access to the land in a two-step process: an option phase and a long-term lease phase. In the option phase, the developer will enter into an Option Agreement with the landowner to gain access to the land for testing and to secure the rights to the land if the project goes forward.

To allow sufficient time to procure testing equipment and test the resource, the option period typically lasts three to five years. If testing reveals a good wind resource and other factors indicate the project is feasible, the developer would normally exercise the option and the long-term lease would be negotiated. If not, the option can expire. It is also possible for a single agreement to cover both the short-term option phase and the long-term lease phase.

This document focuses on the long-term lease phase and contains an annotated model Land Lease Agreement between a landowner and a project developer for the installation and operation of a wind energy project. In each section of the lease, annotations are provided in *italics* following the section heading. The annotations are intended to provide additional explanation of particular clauses, typical variations that are commonly used in the industry, and any other discussion that provides information and guidance for the readers.

Many topics discussed in this document are common to any lease such as price, term of agreement (years), and payment methodology. This document is an example of a royalty type payment structure; other pricing structures are also common for wind energy projects. The lease is based on a lease for a wind power project in the United States. Language that would identify the project has been removed. The document also makes reference to several exhibits; however, because the exhibits are either project specific or not applicable, they are not included in this example.

Leases should be carefully developed to clearly address issues important to the project developer and landowner at the time the lease starts, as well as years later during project operations. In many cases, the people who originally negotiate a lease will not be involved later in the operating period of the project, so it is important that any understanding between the parties be properly addressed in the written agreements to prevent future misunderstandings.

A well-executed lease is an important part of the project development process. Before allowing wind turbines to be purchased and installed, project investors, financing organizations, and power purchasers will want to be sure the lease provides clear, unimpeded rights to use of the land over the expected life of the project.

This model lease is presented as an example only. Readers are urged to consult their own legal counsel to ensure that their objectives will be achieved and their legal interests will be protected before entering into any binding agreement.

# WIND ENERGY LEASE AGREEMENT

This WIND ENERGY LEASE AGREEMENT (“Lease”) is made by and between [Landowner] (“Lessor”) and [Project Company] (“Lessee”).

## 1. Lease.

*This section of the agreement clearly states where wind turbines, roads, construction storage areas, and operations and maintenance areas can be located. This section also defines access to the project, and describes the equipment to be installed, setbacks, and allowed multiple uses of the land. In this model agreement, this information would be included in Exhibits A and B. This initial description provides clarity for understanding other sections of the agreement, calculation of lease payments, and handling any legal issues that may arise.*

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that real property located in [\_\_\_\_\_], and more particularly described in Exhibit A attached hereto (the “Leased Property”). The Leased Property is graphically depicted in the drawings attached hereto as Exhibit B. Lessee shall have the right to use the Leased Property for the operation of a wind-powered electrical generating facility for the conversion of wind energy into electrical energy. In connection with such use, Lessee shall have the right to construct and place on the Leased Property, and to operate, one or more wind turbine generators (each, a “Turbine”), the associated electrical transmission lines and related surface and subsurface equipment, collection and transmission grid, power conditioning equipment, transformers, telecommunications equipment, and other related facilities, equipment and improvements (collectively, the “Wind Power Facilities”). Lessee shall at all times retain title to the Wind Power Facilities. Lessee shall have the right of ingress to and egress from the Wind Power Facilities over and across the Leased Property and, if necessary, over and across any adjacent property owned by Lessor, by means of existing roads or by routes which Lessee or Lessor may construct, whether located on the Leased Property or elsewhere. Lessor, at Lessor’s risk as to loss of crops and compaction by reason of Lessee’s use, may use the Leased Property for purposes of cultivation and other agricultural uses that do not interfere, in Lessee’s sole determination, with Lessee’s use of the Leased Property.

## 2. Construction and Wind Easements.

*This section appends any necessary easements for construction, operation, transmission, and access. The wind power facility needs to be accessible both by road and via electrical cabling. Easements are frequently used for this purpose.<sup>1</sup>*

*The section also defines what is allowed to be built upwind of the project. Developers have an interest in protecting the project site from any future upwind development that could adversely impact the wind resource on the project site. The extent of this potential problem depends on the topography of the land, the wind characteristics, the size of the upwind development, atmospheric conditions, and the distance between the upwind development and the project. Wind easements protect the wind resource on the leased property.*

Lessor shall sign and deliver to Lessee the Construction, Access, and Transmission Easement attached hereto as Exhibit C (the “Construction Easement”) and the Wind Non-Obstruction Easement attached hereto as Exhibit D (the “Wind Easement”), each of which shall be recorded in the [County] Records. If more than one Construction Easement and/or Wind Easement is required in order for Lessee to construct and operate the Wind Power Facilities (either because the property of several different owners is involved, or because separate easements are needed for separate portions of the Wind Power Facilities), as determined by Lessee in its sole discretion, then Lessor shall cooperate with Lessee in obtaining all of such easements. These easements shall be appurtenant to this Lease. Lessee shall pay Lessor a one-time fee of [\_\_\_\_\_] per acre for the Construction Easement and a one-time fee of [\_\_\_\_\_] per acre for the Wind Easement. These one-time fees shall be due and payable on the Commencement Date.

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<sup>1</sup> An easement is an interest in land that only entitles the easement holder to a limited use of the land, such as for crossing the land with vehicles from time to time, or for running a power line over or under the land. An easement does not grant possession of the land to the easement holder.

### 3. Lease Term.

*The Lease Term section defines the beginning and duration of the lease term, as well as rules for terminating or extending the contract. These termination clauses need to be reasonable so that the risk of installing the wind turbine equipment and having the lease terminated is low and manageable. If the risk of termination is deemed too high, it will be difficult for the project developer to obtain financing for the project.*

*Also included in this section are the rules for arbitration in the case of disputes between the lessor and the lessee. Terms and conditions for arbitration, or other forms of dispute resolution, will vary widely depending on the location of the projects.*

*Extension and some termination clauses are also included in this section of the lease. Extension clauses allow for extended operation of the existing project (with any necessary upgrades) or for a second project at the end of the first project's useful life (typically 20-30 years). The ability to "repower" the project (replacing existing equipment before the end of its useful life with newer, more efficient technology) may also be discussed in this section.*

*Although this example discusses a payment on the commencement date of the lease, inclusion of an upfront payment depends on the payment structure of the entire lease.*

*In a combination option/lease agreement, the Lease Term section might also include language that defines the length of the option period (typically three to five years), as well as clauses for terminating or exercising the option of turning the short-term lease into a long-term lease. This, and other option period information, may be moved to its own section instead.*

3.1 Commencement Date. The term of this Lease (the "Term") shall commence on that date (the "Commencement Date") by which the last of the conditions set forth in Section 3.2 shall have been satisfied, and shall end on the twenty-fifth (25<sup>th</sup>) anniversary of the Commencement Date, unless renewed or terminated as provided in this Lease. This Lease shall be effective when executed by all parties. Upon execution of this Lease, Lessee shall pay Lessor the sum of [\_\_\_\_\_].

3.2 Condition Subsequent. Lessee shall have the right to terminate this Lease at any time prior to the satisfactory occurrence, as determined by Lessee, of all of the following:

- (a) Lessee's receipt of consultants' reports confirming that there are no environmental conditions on the Leased Property which would interfere with the Wind Power Facilities or cause Lessee to incur any liability.
- (b) Lessee's receipt of all zoning and land use approvals, and all other permits and approvals, required for the construction and operation of the Wind Power Facilities.
- (c) Lessee's receipt of all easements described in Section 2 above, including, without limitation, a Wind Easement from Lessor and each adjoining property owner, the Construction Easement, and any other easements required in

connection with the installation of the Wind Power Facilities (including, without limitation, any easement required for the construction and operation of, and/or the connection to and use of, an electrical substation).

- (d) Lessee's satisfaction as to the economic viability of individual Turbines.
- (e) Lessee's approval of title to the Leased Property and the legal description and survey of the Leased Property.
- (f) Lessee's receipt of nondisturbance agreements from all holders of liens and other encumbrances affecting the Leased Property, and from all landlords under any master leases or underlying leases.
- (g) Lessor's approval of acceptable areas on the Leased Property where Turbines may be constructed, operated, and maintained.

3.3 Renewals. The Lease shall be automatically renewed for additional, consecutive twenty (20) year terms ("Renewal Terms") unless and until Lessee give written notice of termination, which notice shall be given not more than twelve (12) months nor less than four (4) months prior to the expiration of the then current Term or Renewal Term. Each Renewal Term shall begin on the expiration date of the Term or previous Renewal Term. The same terms and conditions contained in this Lease shall govern the Renewal Terms, except that the rent for each Renewal Term shall be the then-current market rate. If the parties cannot agree on the rent on or before ninety (90) days prior to the commencement of the Renewal Term, then they shall conduct an arbitration pursuant to Section 3.5 below.

3.4 Arbitration Demand. If the parties are unable mutually to agree upon the fair market rent, then the fair market rent initially shall be determined by Lessee by written notice ("Lessee's Notice") given to Lessor promptly following the 90-day deadline set forth in Section 3.3. If Lessor disputes the amount of fair market rent set forth in Lessee's Notice, then, within ten (10) days after the date of Lessee's Notice, Lessor shall send Lessee a written notice ("Lessor's Notice") which clearly (i) disputes the fair market rent set forth in Lessee's Notice, (ii) demands arbitration pursuant to this Section 3.4, and (iii) states the name and address of the person who shall act as arbitrator on Lessor's behalf. Lessor's Notice shall be deemed defective, and not given to Lessee, if it fails strictly to comply with the requirements and time period set forth above. If Lessor does not send Lessor's Notice within ten (10) days after the date of Lessee's Notice, or if Lessor's Notice fails to contain all of the required information, then the fair market rent for the Renewal Term in question shall be the amount specified in Lessee's Notice. If the arbitration is not concluded prior to the commencement of the Renewal Term, then Lessee shall pay rent at 110% of the rate payable immediately prior to the commencement of the Renewal Term. If the fair market rent determined by arbitration differs from that paid by Lessee pending the results of arbitration, then any adjustment required to adjust the amount previously paid shall be made by payment by the appropriate party within ten (10) days after the determination of fair market rent.

3.5 Arbitration Procedure. The arbitration shall be conducted in [\_\_\_\_\_] in accordance with the then-prevailing rules of the [\_\_\_\_\_] Arbitration Association (or its successor) for the arbitration of commercial disputes, except that the procedures mandated by such rules shall be modified as follows:

(1) Each arbitrator must be a real estate appraiser with at least five (5) years of full-time commercial appraisal experience who is familiar with the fair market rent of property leased for the operation of wind-powered electrical generating facilities in [\_\_\_\_\_]. Within ten (10) business days after receipt of Lessor's Notice, Lessee shall notify Lessor of the name and address of the person designated by Lessee to act as arbitrator on Lessee's behalf.

(2) The two arbitrators chosen pursuant to Paragraph 1 above shall meet within ten (10) business days after the second arbitrator is appointed and shall appoint a third arbitrator possessing the qualifications set forth in Paragraph 1 above. If the two arbitrators are unable to agree upon the third arbitrator within five (5) business days after the expiration of such ten (10) business day period, the third arbitrator shall be selected by the parties themselves. The three arbitrators shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in Paragraph 3 below. Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Each party shall pay its own attorneys' fees and cost of witnesses.

(3) The three arbitrators shall determine the fair market rent in accordance with the following procedures. Each of Lessee's arbitrator and Lessor's arbitrator shall state, in writing, his or her determination of the fair market rent, supported by the reasons therefor, and shall make counterpart copies for the other arbitrators. All of the arbitrators shall arrange for a simultaneous exchange of the proposed resolutions within ten (10) business days after appointment of the third arbitrators. If either arbitrator fails to deliver his or her own determination to the other arbitrators within such ten (10) business day period, then the determination of the other arbitrator shall be final and binding upon the parties. The role of the third arbitrator shall be to select which of the two resolutions proposed by the first two arbitrators most closely approximates his or her own determination of the fair market rent.; The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution he or she chooses as that most closely approximating his or her determination of the fair market rent shall constitute the decision of the arbitrators and shall be final and binding upon the parties; provided, however, that if the first two arbitrators independently arrive at the same fair market rent, then such fair market rent shall be the rent for the Renewal Term in question. However, the arbitrator selected by Lessee and the arbitrator selected by Lessor shall not attempt to reach a mutual agreement of the fair market rent; such arbitrators shall independently arrive at their proposed resolutions.

(4) The arbitrators shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of fair market rent, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrators shall render the decision in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her

successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

3.6 Lessee's Right to Terminate. Lessee shall have the right to terminate this Lease as to all or any part of the Leased Property, or as to any Turbine, at any time and from time to time, upon thirty (30) days' prior written notice to Lessor.

#### 4.0 Rent.

*The purpose of this section is to clearly define the lease payment amount, how it is calculated, and when payments are due. Common lease payment structures include royalties (with payments as a defined percentage of gross revenue or based on a price per unit of energy production), royalty plus guaranteed minimum payment, flat or fixed fee, and one-time, lump-sum payment. This model agreement is structured for a royalty payment based on a fixed price per unit of energy production. The model also bases payments to an individual landowner based on the average production of energy by wind turbines at the project. This provides a simpler method for accounting for and calculating landowner payments, and reduces the risk that a particular landowner would be paid less due to a poorly performing wind turbine. The alternative approach, basing payments on meter readings at each individual wind turbine, is more difficult to calculate, harder to audit, and more risky for individual landowners. Due to the variety of methods available to compensate the landowner, a clearly written payment structure is vital.*

*This example also includes a discussion of compensation in the event of crop damage. Normally, wind turbines can operate in productive fields with minimal interference; however, there are situations when crop damage may occur, and the lease addresses how this will be handled. For example, if a wind turbine suffers damage to a blade from lightning during the growing season, it may be necessary to bring a crane in to remove the blades, place them on the ground, and install a new blade. This activity would typically require some crop areas near the turbine to be flattened so the blades could be placed on the ground. A landowner would receive payment from the wind power project for such crop damage based on the definition in the crop damage section of the agreement.*

4.1 Rent. Commencing on the Commencement Date, Lessee shall pay rent for the Leased Property in the amount of [ ]\$/MWh multiplied by the “Net Power Generation” per “Lease Year” multiplied by the number of Turbines installed on the Leased Property divided by the total number of Turbines installed at the Project. As used herein, the term “Lease Year” means the 12-month period commencing on the Commencement Date (including as the first “month” in the first Lease Year any partial calendar month at the beginning of the Term), and each successive 12-month period thereafter during the Term. Lessee shall pay rent for each Lease Year within forty-five (45) days after the end of each Lease Year. Rent shall end on the last day of the Term or upon physical removal of the Wind Power Facilities in accordance with Section 4.3. As used herein, the term “Net Power Generation” means the total MWh of electricity supplied to the power purchaser(s) from the Project during the Lease Year. Lessor agrees that rent includes compensation for any roads constructed by Lessee on the Leased Property.

4.2 Increases in Rent. Rent shall be adjusted (but never decreased) at the beginning of each Lease Year to reflect the increase, if any, in the “CPI” (as defined below). The “Adjustment Dates” shall be the first day of each Lease Year. The “Adjustment Index” shall be the CPI published most recently before the applicable Adjustment Date. The “Comparison Index” for the first CPI adjustment shall be the CPI

published most recently before the applicable Commencement Date; the “Comparison Index” for each subsequent CPI adjustment shall be the Adjustment Index which was used for the immediately preceding CPI adjustment. On each Adjustment Date, the Rent payable immediately prior thereto shall be adjusted by multiplying such Rent by a fraction, the numerator of which is the applicable Adjustment Index and the denominator of which is the applicable Comparison Index. As used herein, the term “CPI” means the Consumer Price Index for the [\_\_\_\_\_] area published by the Bureau of Labor Statistics of the United States Department of Labor. If the Base Year of the CPI is changed, then the foregoing calculation shall be made using the appropriate conversion factor published by the Bureau of Labor Statistics (or successor agency) to correlate to the Base Year of the CPI herein specified.

4.3 Removal of Wind Power Facilities. Lessor shall have no ownership or other interest in any Wind Power Facilities installed on the Leased Property, and Lessee shall have the right, at any time and in its sole discretion, to remove one or more Turbines or other Wind Power Facilities. If Lessee removes a Turbine, then there shall be a corresponding reduction in the rent. Lessor expressly waives any statutory or common law landlord’s lien to which Lessor might be entitled. In the even that Lessee removes any portion of the Wind Power Facilities, that portion shall be removed to a depth of 42 inches below the natural surrounding grade.

4.4 Payment for Crop Damage. On the terms set forth below, Lessee shall pay Lessor for crop damage occurring on the Leased Property in [year] as a direct result of Lessee’s activities on the Leased Property. If Lessee damages Lessor’s crops on the Leased Property in [year Lease is signed], then Lessee shall pay Lessor damages calculated pursuant to the following formula:  $\text{Damages} = \text{Price} \times \text{Yield} \times \text{Percentage of Damage} \times \text{Acreage}$ . The price for a damaged crop shall be the arithmetic average of (1) the [\_\_\_\_\_] Board of Trade’s price for that crop on the most recent previous March 1 and (2) the [\_\_\_\_\_] Board of Trade’s price for that crop on the most recent previous September 1. Yield will be the average of the previous three (3) years’ yields according to the Lessor’s records for the smallest parcel of land which includes the damaged area. If Lessor does not have yield records available, then the parties shall use FSA (*Farm Service Agency*) records or other commonly used yield information available for the area. The parties shall try in good faith to agree on the extent of damage and acreage affected. If they cannot so agree, then the extent of damage and acreage affected shall be determined by an impartial party selected by Lessee, such as a crop insurance adjuster or an extension agent. In no case shall Lessee be required to pay more than a single total crop loss in one year. Lessee shall make payment to Lessor not later than thirty (30) days after determining the amount of the payment due. Lessee shall not be required to pay for crop damage occurring after calendar year [year Lease is signed] unless such damage is a direct result of construction activities of Lessee on the Property. No damages shall be payable for soil compaction, as opposed to crop damage, on the Leased Property in [year Lease is signed] or any other year.

## 5. Taxes.

*This section designates which party is responsible for paying property taxes related to the wind energy project equipment. Since the lessee owns the equipment, they typically are given the responsibility for paying any increase in property taxes associated with the project.<sup>2</sup>*

Lessee shall pay any increase in the real property taxes on the Leased Property which is directly attributable to the installation of the Wind Power Facilities. Lessee shall not be liable for any taxes or assessments of any type levied or assessed against the Leased Property; provided, however, that Lessee shall pay, during the Term, any increase in ad valorem real property taxes attributable to Lessee's installation of the Wind Power Facilities. To receive reimbursement under this Section, Lessor must submit the tax bill to [\_\_\_\_\_], together with documentation showing Lessee's liability for the increase in ad valorem taxes, within thirty (30) days after Lessor receives the bill from the taxing authority and at least ten (10) days prior to the due date. The parties agree to fully cooperate to obtain any available tax refunds or tax abatements.

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<sup>2</sup> Some landowners may also be concerned about the adverse impact of wind turbines on property values. This issue is not commonly addressed in lease agreements. However, for more information please see the Property Values paper of the NYSERDA Wind Energy Toolkit.

## 6. Lessee's Representations, Warranties and Covenants.

*This section has two purposes. First, it covers the relationship between the lessee and the landowner during construction, including rights and responsibilities for excavated and hazardous materials. Second, it covers the potential for claims or legal actions taken against the project and protects the landowner from liens.*

6.1 Construction of Wind Power Facilities. Prior to Lessee's construction of the Wind Power Facilities, Lessee shall consult with Lessor for informational purposes only, but Lessor shall not have the right to approve any portion of the Wind Power Facilities. Lessee will obtain Lessor's approval as to removal of excavated materials from and disposition of excavated materials on the Leased Property. All topsoil will be reserved and replaced on the Leased Property unless otherwise agreed in advance by the parties. Lessor shall not unreasonably withhold or delay any required approvals.

6.2 Insurance and Indemnity. Lessee shall maintain liability insurance insuring Lessee against loss caused by Lessee's use of the Leased Property under this Lease, in an amount not less than [ ] of combined single-limit liability coverage, and shall provide certificates of this insurance coverage to Lessor upon Lessor's written request. Lessee shall indemnify Lessor against liability for injuries and claims for direct physical damage to the extent caused by Lessee's exercise of rights granted in this Lease, the Construction Easement or the Wind Easement. This indemnity does not cover losses of rent, business opportunities, crop production, profits and the like that may result from Lessor's loss of use of the Leased Property. This indemnity also does not extend to, and Lessor expressly waives and releases any claims for: (a) property damage or personal injuries attributable to risks of known and unknown dangers associated with electrical generating facilities, or (b) claims of nuisance based on the construction, operation, maintenance or removal of the Wind Power Facilities.

6.3 Requirements and Governmental Agencies. Lessee shall comply in all material respects with valid laws applicable to the Wind Power Facilities, but shall have the right, in its sole discretion and at its sole expense, in its name or Lessor's name, to contest the validity or applicability to the Leased Property and/or the Wind Power Facilities of any law, ordinance, order, rule or regulation of any governmental agency or entity. Lessee shall control any such contest and Lessor shall cooperate with Lessee in every reasonable way in such contest, at no out-of-pocket expense to Lessor.

6.4. Mechanics' Liens. Lessee shall not permit any mechanics' liens arising out of Lessee's use of the Leased Property pursuant to this Lease to be filed against the Leased Property. If Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security Lessor may reasonably request, or remove such lien from the Leased Property pursuant to applicable law.

6.5 Hazardous Materials. Lessee shall indemnify Lessor against Lessee's material violation on the Leased Property of any applicable law or regulation relating to

any substance, material or waste classified as hazardous or toxic, or which is regulated as waste.

## 7. Lessor's Representations, Warranties and Covenants.

*This section requires the landowner to disclose information that may harm the project's ability to be constructed and/or operated as expected. These clauses protect the project from legal actions made by individuals or entities claiming to have ownership in the land (i.e., another landowner for the leased property; lien, encumbrance, or other exception to the title not shown on the title). The clauses also further define the relationship between the landowner and lessee for facilitating the construction and operation of the project. To protect the project from third-party interference, the landowner indemnifies the lessee and agrees not to enter into additional leases or easements with third parties involved with electrical generation and/or transmission.*

Lessor hereby represents, warrants and covenants as follows:

7.1 Lessor's Authority. Lessor is the sole owner of the Leased Property and has the unrestricted right and authority to sign this Lease and to grant Lessee the rights granted in this Lease. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

7.2 No Interference. Lessor agrees that Lessee shall have the exclusive right to convert all of the wind resources of the Leased Property. Lessor's activities and any grant of rights Lessor makes to any third party, whether located on the Leased Property or elsewhere, shall not, now or in the future, interfere in any way with Lessee's use of the Leased Property, the rights granted under this Lease, the Construction Easement or the Wind Easement. Lessor shall not interfere with the wind speed or wind direction over the Leased Property by engaging in any activity on the Leased Property or elsewhere that might cause a decrease in the output or efficiency of the Wind Power Facilities. Lessor reserves the right to erect buildings for ordinary agricultural use, except that Lessor must consult with and obtain Lessee's prior written approval as to the location and dimensions of all structures. Approval shall be based on whether, in Lessee's sole and absolute discretion, the proposed structures might interfere with wind speed or wind direction over any portion of the Leased Property, or cause a decrease in the output or efficiency of the Turbines, or interfere in any other way with Lessee's operations on the Leased Property.

7.3 Liens and Tenants. Lessor shall provide Lessee with a current abstract of title or preliminary title report for the Leased Property, showing all liens and other exceptions to title to the Leased Property. Lessor shall cooperate with Lessee to obtain a nondisturbance agreement from each lienholder (recorded or unrecorded) which provides that the lienholder shall not disturb Lessee's possession or rights under this Lease or terminate this Lease so long as Lessor is not entitled to terminate this Lease under its terms.

7.4 Requirements of Governmental Agencies. Lessor shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Lessor, in applying for (including signing in Lessor's name, if necessary), complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals

required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Wind Power Facilities.

7.5 Indemnity. Lessor shall indemnify, defend, protect and hold Lessee harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities, injuries and claims arising out of or caused by the operations or activities of Lessor or its invitees, employees, agents, contractors or other tenants.

7.6 Hazardous Materials. Lessor hereby represents and warrants to Lessee that, to the best of Lessor's knowledge: (i) there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Leased Property, (ii) the Leased Property does not contain levels of petroleum or hazardous substances which require remediation; and (iii) the Leased Property is not subject to any judicial or administrative action, investigation or order under any applicable environmental laws or regulations. Lessor warrants that it has done nothing to contaminate the Leased Property with hazardous substances or wastes. Lessor shall indemnify, defend, protect and hold Lessee harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities, injuries and claims resulting from violation of any applicable environmental laws, except those violations resulting from Lessee's activities on the Leased Property.

7.7 Negative Covenant. Lessor shall not grant, convey, assign or provide any easement, license, permit, lease or other right for access across the Leased Property, or for generation or transmission of power on or across the Leased Property, to any third party in connection with the construction or operation of electrical generating or transmission facilities.

## 8. Assignment and Subletting; Easements and Licenses.

*The purpose of this section is to define which party, if any, can assign all or part of the lease agreement to a third party. It typically states that the lessee may assign the agreement without the landowner's consent. This section is important since the project developer may not be the long-term project owner. The developer will need the ability to assign the contract to the project owner at commercial operation, or some other designated time. This section also grants the developer the right to sell, assign, encumber, transfer, or grant easements under the lease without the landowner's consent.*

Lessee may assign this Lease or sublet all or any part of the Leased Property or the Wind Power Facilities without obtaining the consent of Lessor. Without limiting the generality of the foregoing, a foreclosure and sale by a Leasehold Mortgagee pursuant to Section 9 shall be a permitted assignment. In the event of an assignment of Lessee's entire interest in this Lease, Lessee shall be released of all further liability under this Lease. If Lessee shall have subleased all or a portion of the Leased Property or the Wind Power Facilities, no such sublease shall be affected by a cancellation or termination of this Lease, and Lessor shall recognize the rights of the subtenant thereunder, provided only that such subtenant attorn to Lessor upon its request. Lessor shall enter into a nondisturbance and attornment agreement, in form and substance reasonably acceptable to Lessee, upon the request of the subtenant under any sublease. Lessee also shall have the right to grant easements, licenses or similar rights (however denominated) to one or more persons or entities, without obtaining the consent of Lessor.

## 9. Leasehold Financing.

*The purpose of this section is to cover all necessary provisions if the lessee mortgages the wind power facilities and/or the lease. The entity accepting the mortgage (leasehold mortgagee) has certain rights to ensure that the contract remains in effect including the ability to cure any breach of the lease agreement made by the lessee that the lessee does not cure within the specified cure period. If the landowner terminates the contract, the leasehold mortgagee can enter into a new agreement to keep the project operating. These clauses are designed to reasonably ensure the continued operation of the wind power project.*

9.1 Mortgage by Lessee. Lessee may, from time to time, hypothecate, mortgage, pledge or alienate the Wind Power Facilities and/or Lessee’s leasehold estate and rights under this Lease. Each holder of any such lien is hereinafter referred to as a “Leasehold Mortgagee.” A Leasehold Mortgagee or its assigns may enforce such lien and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of and operate the Leased property, performing all obligations performable by Lessee. Upon foreclosure of such lien by power of sale, judicial foreclosure or acquisition of the leasehold estate by deed in lieu of foreclosure, the Leasehold Mortgagee may, upon notice to Lessor, sell and assign the leasehold estate. Notwithstanding anything herein contained to the contrary, the Leasehold Mortgagee and/or any person or entity acquiring the leasehold estate shall be liable to perform the obligations imposed on Lessee by this Lease only to the extent arising during the period during which such person or entity has ownership of the leasehold estate or possession of the Leased Property.

### 9.2 Rights of Leasehold Mortgagees.

(a) The right of a Leasehold Mortgagee to receive notices and to cure Lessee’s defaults pursuant to the provisions of this Section 9.2 shall be available only to those Leasehold Mortgagees which shall have notified Lessor in writing of their name and address, or whose lien is recorded in the official records of the County in which the Leased Property is located, regardless of whether the specific provision in question expressly so states. When giving notice to Lessee of Lessee’s default under this Lease, Lessor shall also serve a copy of such notice upon each Leasehold Mortgagee. No such notice shall be effective against a Leasehold Mortgagee unless and until served on such Leasehold Mortgagee. If Lessee shall default in the performance of any of its obligations under this Lease, then Lessor shall give each Leasehold Mortgagee a second written notice of such default and each Leasehold Mortgagee shall have the right, within thirty (30) days after the expiration of the cure period which this Lease provides to Lessee for curing such default, to cure such default and Lessor shall accept such performance as though the same had been done or performed by Lessee.

(b) In the case of a default by Lessee in the payment of money, Lessor shall take no action to terminate this Lease unless such default shall have continued beyond the cure period which this Lease provides to Lessee for curing such

default, and then only after Lessor shall have given each Leasehold Mortgagee a second written notice of such default and an additional thirty (30) days, in addition to and after the expiration of Lessee's cure period, within which to cure such default.

(c) In the case of a non-mandatory default by Lessee, Lessor shall take no action to terminate this Lease unless such default shall have continued beyond the cure period which this Lease provides to Lessee for curing such default, and then only after Lessor shall have given each Leasehold Mortgagee a second written notice of such default and an additional thirty (30) days, in addition to and after the expiration of Lessee's cure period, within which to elect:

(i) to commence and diligently proceed to cure such default, if such default can be cured by the Leasehold Mortgagee without obtaining possession of the Leased Property; or

(ii) to commence and diligently proceed to obtain possession of the Leased Property (including possession by a receiver) in order to cure such default, in the case of a default which can be cured only after the Leasehold Mortgagee has obtained possession of the Leased Property; or

(iii) to institute and diligently pursue foreclosure proceedings or otherwise proceed to acquire Lessee's interest under this Lease. A Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such notice shall have been cured. A Leasehold Mortgagee shall have no obligation to cure any default in the payment of money which has occurred more than sixty (60) days before its receipt of notice of such default, in order to preserve its interest under its mortgage or to exercise any of the rights granted to it under this Lease. A Leasehold Mortgagee shall have no obligation to cure any default which is not reasonably susceptible of being cured by the Leasehold Mortgagee.

(d) If this Lease is terminated by Lessor on account of any default, or terminates for any other reason, then Lessor shall give prompt written notice thereof to each Leasehold Mortgagee. Each Leasehold Mortgagee, within sixty (60) days after receipt of written notice from Lessor, shall have the right to elect to enter into a new lease of the Leased Property as described below. Within thirty (30) days after receiving a Leasehold Mortgagee's written request therefor, Lessor shall execute and deliver a new lease of the Leased Property to such Leasehold Mortgagee or its nominee or to the purchaser, assignee or transferee, as the case may be, for the remainder of the Term of this Lease, containing the same covenants, agreements, terms, provisions and limitations as are contained in this Lease, provided that the Leasehold Mortgagee shall pay to Lessor, simultaneously with the delivery of such new lease, all unpaid rental due under this lease up to and including the date of the commencement of the term of such new lease and all expenses, including reasonable attorneys' fees, disbursements and court costs,

incurred by Lessor in connection with Lessee's default, the termination of this Lease and the preparation of the new lease. After execution of the new lease, the Leasehold Mortgagee shall commence and diligently proceed to cure all defaults which reasonably can be cured by the Leasehold Mortgagee.

(e) As long as there is a Leasehold Mortgage, neither the bankruptcy nor the insolvency of Lessee shall operate to terminate, nor permit Lessor to terminate, this Lease as long as all rent and other charges payable by Lessee continue to be paid in accordance with the terms of this Lease.

(f) The time available to a Leasehold Mortgagee to initiate foreclosure proceedings as aforesaid shall be extended by the number of days of delay occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond such Leasehold Mortgagee's reasonable control.

(g) During the period that a Leasehold Mortgagee shall be in possession of the Leased Property and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all rent and other charges payable by Lessee which have accrued during said period and are unpaid. Following the acquisition of Lessee's leasehold estate by the Leasehold Mortgagee or its designee, either as a result of foreclosure or acceptance of an assignment in lieu of foreclosure, the Leasehold Mortgagee or party acquiring title to Lessee's leasehold estate shall commence performing all of Lessee's obligations under this Lease thereafter arising, whereon Lessor's right to terminate this Lease based upon the default in question shall be deemed waived. Any default not susceptible of being cured by the Leasehold Mortgagee or party acquiring title to Lessee's leasehold estate shall be, and shall be deemed to have been, waived by Lessor upon completion of the foreclosure proceedings or acquisition of Lessee's interest in this Lease by any purchaser (who may, but need not be, the Leasehold Mortgagee) at the foreclosure sale, or who otherwise acquires Lessee's interest from the Leasehold Mortgagee or by virtue of a Leasehold Mortgagee's exercise of its remedies. No such purchaser, or successor to such purchaser, shall be liable to perform the obligations imposed on Lessee by this Lease incurred or accruing after such purchaser or successor no longer has ownership of the leasehold estate or possession of the Leased Property.

(h) If two or more Leasehold Mortgagees exercise their rights hereunder and there is a conflict which renders it impossible to comply with all such requests, then the Leasehold Mortgagee whose Leasehold Mortgage would be senior in priority if there were a foreclosure shall prevail. If any Leasehold Mortgagee pays any rental or other sums due hereunder which relate to periods other than during its actual ownership of the leasehold estate, such Leasehold Mortgagee shall be subrogated to any and all rights which may be asserted against Lessor with respect to such period of time.

(i) Upon the reasonable request of any Leasehold Mortgagee, Lessor and Lessee shall amend this Lease to include any provision requested by such

Leasehold Mortgagee to implement the protective provisions contained in this Lease for the benefit of such Leasehold Mortgagee or to allow such Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage on the occurrence of a default under this Lease; provided, however, that Lessor shall not be required to amend this Lease in any way which would affect the Term or rental hereunder or otherwise in any material respect adversely affect any rights of Lessor under this Lease.

## 10. Default and Termination.

*This section grants either party the right to terminate the lease for non-performance, and defines the events of non-performance that constitute default, opportunities to remedy in the case of default (i.e., payment, cure period), and any settlement of amounts due at termination. Each party is protected financially and is given the opportunity to remedy any breach so that the project can continue operating and the landowner can continue to receive revenue. Given all the agreements in place between the various parties, it is usually in everyone's best interest to keep the project operating. Also, since most utility-scale wind power projects have multiple lease agreements, having just one landowner terminate an agreement could create significant hardship for the project to continue operating (i.e., meeting energy delivery contractual obligations, accessing project property that requires crossing the terminated leased property, etc.).*

*In a combination option/lease agreement, this section might also contain information on termination and extension of the option portion of the agreement, if not addressed in a separate, option-period section.*

10. Remedies Upon Lessee's Default. Lessee shall be in default under this Lease if: (i) Lessee shall have failed to perform any of Lessee's covenants under this Lease (other than the payment of rent or other charges) and such failure shall have continued for a period of thirty (30) days after written notice from Lessor (or if such failure is not reasonably capable of being cured within thirty (30) days, if Lessee shall not have commenced to cure the same within said 30-day period and/or shall not have diligently prosecuted the same to completion); or (ii) Lessee shall have failed to pay rent or other charges herein required to be paid by Lessee and such failure shall have continued for a period of fifteen (15) days after written notice from Lessor. If Lessee shall be in default after the expiration of the cure period set forth above, then Lessor shall be entitled, at its election, to terminate this Lease, reenter the Leased Property and take possession thereof (subject, however, to the rights of sublessees pursuant to Section 8 and Leasehold Mortgagees pursuant to Section 9) or, so long as Lessor does not terminate Lessee's right to possession of the Leased Property, keep this Lease in full force and effect and collect rent and other charges from Lessee as and when due under this Lease, with Lessor having the obligation to mitigate damages. If Lessor shall elect to terminate this Lease, then all rights and obligations of the parties shall terminate, except that Lessor shall have the right to sue for and collect all rents and other amounts with respect to which Lessee shall then be in default, and all damages to Lessor by reason of such default, Lessor having the obligation to mitigate damages, and Lessee shall surrender the Leased Property to Lessor. Upon the termination of this Lease, Lessee shall (a) upon written request by Lessor, execute and record a quitclaim deed of Lessee's right, title and interest in and to the Leased Property, and (b) as soon as reasonably practicable thereafter, remove all Wind Power Facilities from the Leased Property. If Lessee fails to remove the Wind Power Facilities within twelve (12) months after termination of this Lease, then Lessor may do so, in which case Lessee shall reimburse Lessor for the reasonable costs of removal (less salvage) incurred by Lessor.

10.2 Remedies Upon Lessor's Default. If Lessor shall at any time be in default of any of its covenants under this Lease and such default shall continue for a period of thirty (30) days after written notice to Lessor (or if such default is not reasonably capable of being cured within thirty (30) days, if Lessor has not commenced to cure the same within said 30-day period and/or has not diligently prosecuted the same to completion), then Lessee shall be entitled to exercise concurrently or successively any one or more of the following rights, in addition to all other remedies provided in this Lease or available at law or in equity: (a) to bring suit for the collection of any amounts for which Lessor may be in default, or for the performance of any other covenant or agreement of Lessor, without terminating this Lease; and/or (b) to terminate this Lease upon thirty (30) days' written notice to Lessor, without waiving Lessee's rights to damages for Lessor's failure to perform its obligations hereunder.

## 11. Miscellaneous.

*This section is a catch-all section for terms and clauses that are not already captured in the other main sections. If not in its own section, Force Majeure will be defined here. Force Majeure excuses either party from fault to perform under the agreement due to acts of God or other uncontrollable circumstances. Memorandum assures that the lease will be legally executed and recorded. This model lease includes many other items that are typical in the miscellaneous section. Other clauses that are not included in this particular lease example, but that could be included in this section, are provisions for road maintenance and decommissioning. Each of these potential clauses is discussed below.*

*Road Maintenance: the lease may identify responsibilities for maintenance of existing and new access roads. Generally the wind power developer is responsible for such maintenance.*

*Decommissioning: Leases may include provisions for “decommissioning” the project at the end of its useful life. This includes removing wind turbines, transformers, wiring that penetrates above-ground, the top part of foundations, and returning the land as nearly as is practical to its original condition. The lease may also address the timely removal or disposal of damaged equipment. In practice, this typically means that:*

- *Turbines, blades, towers, transformers, and transformer foundations are removed from the site.*
- *Turbine foundation hardware and protrusions such as anchor bolts and tower levelers will be removed, but foundations will remain completely in place, or be removed to a specified depth (for example, 1 meter) below ground level.*
- *The project substation generally becomes the property of the utility purchasing the power and, therefore, is not removed by the developer.*
- *Underground electrical wiring remains in place because removing it after the project’s life will create more disturbance than leaving it in place.*
- *Access roads are left in place.*

11.1 Force Majeure. If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of “Force Majeure” (as defined below), the affected party, upon giving notice to the other party, shall be excused from such performance (except payment of rent) to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance as soon as such causes are removed. “Force Majeure” means, fire, earthquake, flood, tornado, or other acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; any law, order proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a party.

11.2 Sound Emission Rights. The Lessee has the right to generate and maintain audible sound levels on and above the Leased Property up to sixty-five (65) dB(A) in excess of the ambient sound level measured at ground level at a point five

hundred (500) meters in an upwind direction from the source of the sound, wherever originating, at any or all times of the day or night.

11.3 Confidentiality. Lessor shall maintain in the strictest confidence, for the sole benefit of Lessee, all information pertaining to the terms and conditions of this Lease, including, without limitation, the financial terms of, and payments under, this Lease, Lessee's site design and product design, methods of operation, methods of construction, power production or availability of the Wind Power Facilities, and the like, whether disclosed by Lessee or discovered by Lessor, unless such information is in the public domain by reason of prior publication. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others.

11.4 Successors and Assigns. This Lease shall burden the Leased Property and shall run with the land. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee, and their respective heirs, successors and assigns.

11.5 Memorandum. Lessor and Lessee shall execute in recordable form and Lessee shall record, a memorandum of this Lease satisfactory in form and substance to Lessee and Lessor. Lessor consents to the recordation of the interest of any Leasehold Mortgagee or assignee of Lessee's interest in this Lease.

11.6 Notices. All notices pursuant to this Lease shall be in writing and shall be sent only by the following methods: personal delivery; mail (first-class, certified, return-receipt requested, postage prepaid); or delivery by an overnight courier service which keeps records of deliveries (such as, by way of example but not limitation, Federal Express, United Parcel Service, and DHL). For purposes of giving notice hereunder, the respective addresses of the parties are, until changed as hereinafter provided, the following:

Lessor:  
[address]

Lessee:  
[address]

Any party may change its address at any time by giving written notice of such change to the other party in the manner provided herein. All notices shall be deemed given on the date of personal delivery or, if mailed by certified mail, on the delivery date or attempted delivery date shown on the return-receipt.

11.7 Entire Agreement/Amendments. This Lease and the attached Exhibits constitute the entire agreement between Lessor and Lessee respecting its subject matter, and replace and superseded any prior agreements. This Lease shall not be modified or amended except in a writing signed by both parties or their lawful successors in interest.

11.8 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State in which the Leased Property is located. The parties

agree to first attempt to settle any dispute arising out of or in connection with this Lease by good-faith negotiation. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Lease, then each shall have all remedies available at law or in equity. Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Lease shall be to the Court. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Lease. In any dispute arising out of or in connection with this Lease, a party that obtains an award substantially the same as the award sought therein shall be entitled to payment of its reasonable attorneys' fees in connection with the action. Time is of the essence with regard to the terms and conditions of this Lease.

11.9 Partial Invalidity. Should any provision of this Lease be held, in a final and unappealable decision by a court of competent jurisdiction, to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the parties agree that in no event shall the Term (or a Renewal Term, if applicable), the Construction Easement or the Wind Easement be for longer periods than permitted by applicable law.

11.10 Tax Credits. If under applicable law the holder of a lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Leased Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

11.11 Estoppel Certificates. From time to time, each party, within fifteen (15) days after written request from the other party, shall execute and deliver an estoppel certificate certifying as to the status of this Lease and each party's performance thereunder.

11.12 Quiet Enjoyment. Lessor covenants and warrants that Lessor is the true and lawful owner of the Leased Property, subject only to those matters shown on the title report or abstract provided to Lessee pursuant to Section 7.3 above, and has full right and power to lease the same. Lessor agrees that Lessee shall quietly and peaceably hold, possess and enjoy the Leased Property for the Term of this Lease, and any extension thereof, without any hindrance or molestation. Lessor shall defend title to the Leased Property and the use and occupancy of the same against the claims of all persons, except those claiming by or through Lessee. Lessor shall not enter into or modify any documents, including any declarations, easements, restrictions or other similar instruments, that are or may be recorded against the Lease Property, or otherwise affect the Leased Property, or the rights and/or obligations of Lessee, without first obtaining the prior written consent of Lessee, which consent may be withheld in Lessee's sole and absolute discretion.

11.13 Brokerage Commissions. Each of Lessor and Lessee warrants and represents to the other that there are no brokers' commissions, finders' fees or any other charges due to any broker, agent or other party in connection with the negotiation or execution of this Lease, or on behalf of either of them. Lessor shall pay all brokerage commissions and other amounts owing to Broker and shall indemnify, defend, protect and hold Lessee harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities and claims in connection with such obligation and any claim by Broker for payments. Each party shall indemnify, defend, protect and hold the other party harmless from and against all damages, losses, costs, expenses (including reasonable attorneys' fees), liabilities and claims with respect to any claims made by any other broker or finder based upon such broker's or finder's representation or alleged representation of such indemnifying party.

11.14 Transfer Taxes. Lessor shall pay any transfer tax or other tax payable to any governmental taxing authority, including the County in which the Leased Property is located, by reason of the execution of this Lease and/or the recordation of a memorandum thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the dates set forth below.

Lessee:  
 [ Project  
 Company ]  
 By:  
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Lessor:  
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 Name ]  
 By: \_\_\_\_\_  
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