

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF INTERWIND CORP.**

Applicant

**SECOND SUPPLEMENTARY  
MOTION RECORD  
(returnable December 21, 2009)**

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3. Order Amending Approval and Vesting Order re: Fermeuse Transaction

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF INTERWIND CORP.**

Applicant

**NOTICE OF MOTION  
(Returnable December 21, 2009)**

Interwind Corp. (formerly SkyPower Corp.) (the "**Applicant**") will make a motion to a judge presiding over the Commercial List on Monday, December 21, 2009, at 10:00 a.m. or as soon after that time as the motion can be heard at the Courthouse, 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, *inter alia*:
  - (a) amending the Approval and Vesting Order granted by this Honourable Court in respect of the proposed sale to Elemental Energy Inc. ("**Elemental**") of, *inter alia*, all of the issued and outstanding shares in the capital of Fermeuse Wind Power Corp., as described more fully in the purchase agreement attached as

Exhibit “A” to the Second Supplemental Affidavit of David Bacon sworn December 17, 2009 (the “**Fermeuse Purchase Agreement**”), to reflect certain amendments proposed to be made to the Fermeuse Purchase Agreement; and

- (b) such further and other relief as the Applicant may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION** are as follows:

2. By Approval and Vesting Order dated November 20, 2009 (the “**November 20 Order**”), this Honourable Court approved the sale to Elemental of, *inter alia*, Interwind’s shares in Fermeuse Wind Power Corp. (the “**Fermeuse Transaction**”);
3. One of the conditions to the closing of the Fermeuse Transaction is the receipt by Elemental of the consent of West LB AG, Toronto Branch (“**West LB**”) (the project lender for the Fermeuse Wind Power Project) to the Fermeuse Transaction;
4. As a result of an agreement reached with West LB, which has resulted in an increased cost to Elemental unanticipated at the time that the Fermeuse Purchase Agreement was negotiated, Elemental is requesting a reduction in the purchase price contemplated in the Fermeuse Purchase Agreement;
5. Interwind believes that the proposed amendments are reasonable and appropriate in the circumstances;
6. The Monitor and Interwind’s secured lenders support the amendments to the Fermeuse Agreement and the corresponding amendments required to the November 20 Order;

7. the provisions of the CCAA;
8. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario); and
9. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Motion Record in connection with the within motion, filed;
2. the Sixth Report of the Monitor, filed; and
3. such further and other evidence as counsel may submit and this Honourable Court may admit.

Date: December 18, 2009

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INTERWIND CORP.

Court File No.: 09-8321-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(returnable December 21, 2009)**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF INTERWIND CORP.**

**SECOND SUPPLEMENTAL AFFIDAVIT OF DAVID BACON  
(sworn December 17, 2009)**

I, **DAVID BACON**, of the City of Toronto, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Chief Financial Officer of Interwind Corp. (formerly SkyPower Corp.) (“**Interwind**” or the “**Company**”). As such, I have personal knowledge of the matters to which I depose in this Affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, I believe it to be true.
2. This Affidavit is sworn in support of the motion by Interwind returnable December 21, 2009, for an order amending the Approval and Vesting Order granted by this Honourable Court in respect of the proposed sale to Elemental Energy Inc. (“**Elemental**”) of all of the issued and outstanding shares in the capital of Fermeuse Wind Power Corp. and all of Interwind’s rights, title and interests under the administrative services agreement between Interwind and

Fermeuse Wind Power Corp. dated June 30, 2009, as described more fully in the purchase agreement attached as Exhibit “A” hereto (the “**Fermeuse Purchase Agreement**”), to reflect certain amendments made to the Fermeuse Purchase Agreement, as described more fully below.

A. **OVERVIEW**

3. An overview of the status of Interwind’s proceedings pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) was detailed in my Affidavit sworn December 15, 2009, that was also filed and served in connection with the December 21 motion.

B. **FERMEUSE TRANSACTION**

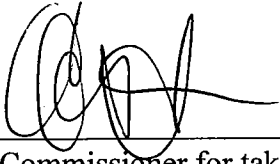
4. By Approval and Vesting Order dated November 20, 2009 (the “**November 20 Order**”), this Honourable Court approved the sale to Elemental of, *inter alia*, Interwind’s shares Fermeuse Wind Power Corp. (the “**Fermeuse Transaction**”). A copy of the November 20 Order is attached as Exhibit “B” hereto.
5. Fermeuse Wind Power Corp. is a wholly-owned subsidiary of Interwind that owns the wind power project known as the Fermeuse Wind Power Project. The Fermeuse Wind Power Project achieved commercial operation on June 30, 2009 and consists of nine 3.0 MW, V90 Vestas wind turbines that are currently delivering power to the grid operated by Newfoundland Power.
6. A copy of the Fermeuse Purchase Agreement is attached as Exhibit “A” hereto.

7. One of the conditions to the closing of the Fermeuse Transaction is the receipt by Elemental of the consent of West LB AG, Toronto Branch (“**West LB**”) (the project lender for the Fermeuse Wind Power Project) to the Fermeuse Transaction. In an effort to satisfy this closing condition, Elemental and West LB have engaged in discussions regarding the basis upon which West LB would be prepared to provide its consent.
8. I understand that Elemental has agreed to provide certain security in favour of West LB and that the parties have agreed to certain amendments to the project financing arrangements currently in place with Interwind which are to be assumed by Elemental. On this basis, I understand that West LB is prepared to consent to the Fermeuse Transaction.
9. As a result of the agreement reached with West LB, which has resulted in an increased cost to Elemental unanticipated at the time that the Fermeuse Purchase Agreement was negotiated, Elemental is requesting a reduction in the purchase price contemplated in the Fermeuse Purchase Agreement. Attached as Exhibit “C” is the proposed amendment to the Fermeuse Purchase Agreement contemplating the proposed purchase price reduction (the “**Amendment**”).
10. As the purchase price contemplated in the Fermeuse Purchase Agreement was subject to a sealing Order of this Honourable Court, Interwind likewise requests that the proposed amended purchase price be sealed pending further Order of this Court.

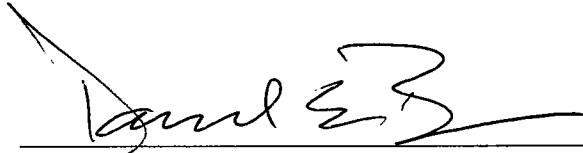
11. The Amendment necessitates a corresponding amendment to the November 20 Order such that any reference in the November 20 Order to the Fermeuse Purchase Agreement incorporates the Amendment.
  
12. I believe that the Amendment is reasonable and appropriate in the circumstances and understand that the Monitor and Interwind's secured lenders support the Amendment.

**[REST OF PAGE INTENTIONALLY LEFT BLANK]**

SWORN before me at the City of  
Toronto in the Province of Ontario on  
December 17, 2009.



A Commissioner for taking affidavits



David Bacon  
Chief Financial Officer

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INTERWIND CORP.

Court File No: 09-837

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**PURCHASE AGREEMENT**

**SKYPOWER CORP.**

as Seller

- and -

**ELEMENTAL ENERGY INC.**

as Buyer

Made as of November 6, 2009

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## PURCHASE AGREEMENT

THIS AGREEMENT is made as of November 6, 2009

### BETWEEN:

**SKYPOWER CORP.**, a corporation incorporated under the laws of Canada

(the "Seller")

- and -

**ELEMENTAL ENERGY INC.**, a corporation incorporated under the laws of British Columbia.

(the "Buyer")

### RECITALS:

A. The Seller is a renewable energy development company headquartered in Toronto, Canada with a portfolio of wind and solar energy projects at varying stages of development throughout Canada.

B. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "CCAA Court") dated August 12, 2009 (the "Initial CCAA Order"), the Seller was granted protection pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA").

C. Pursuant to an Order of the CCAA Court dated August 25, 2009, the Seller was authorized to conduct a sale process with respect to its assets, property and undertaking.

D. The Seller wishes to sell, and the Buyer wishes to purchase, the Purchased Assets (as defined in this Agreement), and Buyer further wishes to assume certain liabilities in connection therewith, subject to the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

### ARTICLE 1 - INTERPRETATION

#### 1.1 Definitions

In this Agreement,

- (a) "Administrative Services Agreement" means the administrative services agreement between the Seller and Fermeuse Wind Power Corp. dated June 30, 2009;

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- (b) **“affiliate”** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and **“control”** and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose;
- (c) **“Agreement”** means this Purchase Agreement and all attached Schedules, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and all attached Schedules and unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement;
- (d) **“Applicable Law”** means any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer or any of the Purchased Assets;
- (e) **“Approval and Vesting Order”** means an order granted by the CCAA Court substantially in the form attached hereto as Schedule 1.1(e), together with such amendments, modifications and variations thereto and including all schedules and appendices thereto, the final form of which shall be in such form as is satisfactory to the Buyer, acting reasonably, and which order and schedules or appendices thereto shall each be redacted or sealed in respect of the Purchase Price, on notice to a service list acceptable to the Buyer, acting reasonably, which will, among other things:
- (i) authorize this Agreement and authorize and direct the execution and delivery thereof by the Seller;
  - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement;
  - (iii) provide for the vesting of title to the Purchased Assets in the Buyer in accordance with the terms and conditions of this Agreement, free and clear of all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances, save for Permitted Encumbrances, upon the delivery of a certificate by the Monitor to the Buyer indicating that all matters to be completed prior to the

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consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible);

- (iv) provide that the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets; and
  - (v) declare that all requirements of applicable bulk sales legislation have been complied with, or exempt the transactions contemplated by this Agreement from compliance with such legislation and dispense with any notice requirements thereunder.
- (f) “**Assumed Liabilities**” has the meaning given to such term in Section 2.2;
  - (g) “**Business Day**” means any day, other than a Saturday or Sunday, on which banks in Toronto are open for commercial banking business during normal banking hours;
  - (h) “**Buyer**” has the meaning given to such term in the preamble to this Agreement;
  - (i) “**CCAA**” has the meaning given to such term in the recitals to this Agreement;
  - (j) “**CCAA Court**” has the meaning given to such term in the recitals to this Agreement;
  - (k) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Seller pursuant to the Initial CCAA Order;
  - (l) “**Closing**” means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets;
  - (m) “**Closing Date**” means the second Business Day following the first date by which the conditions in Section 6.1 (other than the condition prescribed in Section 6.1(b)) have been satisfied or waived, or such other date as may be agreed upon by the Parties hereto;
  - (n) “**Closing Documents**” means all contracts, agreements and instruments required by this Agreement to be delivered at or before the Closing;
  - (o) “**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place;
  - (p) “**Commissioner**” means the Commissioner of Competition appointed under the Competition Act;
  - (q) “**Competition Act**” means the *Competition Act* (Canada) and the Notifiable Transactions Regulations to the Competition Act;

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- (r) **“Confidential Information”** means non-public, confidential, personal or proprietary information concerning a Party and its affiliates and its and their respective businesses and affairs that is or has been disclosed by the Disclosing Party to the Recipient in connection with any transaction contemplated by this Agreement, including the existence of, the terms and conditions of, the status of the transaction contemplated by, or any other facts pertaining to, this Agreement, any information about identifiable individuals or any other information relating to the Seller and its affiliates or any customer or supplier of the Seller, but in each case does not include information that: (A) is or becomes generally available to the public other than as a result of disclosure by the Recipient or its affiliates or representatives; (B) is received by the Recipient or its affiliates or representatives from an independent third party (or the Monitor) that obtained it lawfully and was under no duty of confidentiality; (C) the Recipient can establish, by documented evidence, was in its possession or the possession of its affiliates or representatives prior to the disclosure of such information by the Disclosing Party; (D) was independently developed by the Recipient or its affiliates or representatives; or (E) is necessary or appropriate in connection with any litigation or other proceedings to which the Recipient or any of its affiliates or representatives is a party or otherwise in connection with the enforcement of the Recipient’s or its affiliates’ or representatives’ rights, except in each case to the extent that applicable privacy laws do not exclude such information from the definition of personal information);
- (s) **“Contracts”** means contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller or the Purchased Business is a party or by which the Seller or the Purchased Business is bound or under which the Seller or the Purchased Business has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied);
- (t) **“Court Approval”** means the issuance of the Approval and Vesting Order by the CCAA Court;
- (u) **“Deposit”** means a sum equal to five percent (5%) of the Purchase Price, which has been paid by the Buyer to the Seller’s solicitors in trust as of the date hereof;
- (v) **“DIP Facility”** means the debtor-in-possession credit facility entered into by the DIP Lender and the Seller on August 12, 2009 and approved by the Initial CCAA Order providing for advances aggregating a principal amount of USD\$15 Million;
- (w) **“DIP Lender”** means CIM Group;
- (x) **“Disclosing Party”** has the meaning given to such term in Section 11.1(a);
- (y) **“Encumbrance”** means any security interest, lien, prior claim, charge, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, mortgage or adverse claim of any nature or kind other than licenses of intellectual property,

including but not limited to, those security interests held by the Secured Lenders and any charges granted by the CCAA Court;

- (z) **“Estimated Working Capital”** has the meaning given to such term in Section 3.3(a);
- (aa) **“Final”** with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and the Seller) or vacated, and all time periods within which such order could at law be appealed shall have expired;
- (bb) **“Financial Statements”** means the audited financial statements of the Purchased Business for the fiscal year ended December 31, 2008 and the unaudited interim financial statements for the fiscal period ended September 30, 2009;
- (cc) **“Governmental Authority”** means any government, regulatory authority, governmental department, agency, commission, bureau, court, judicial body, arbitral body or other law, rule or regulation-making entity:
  - (i) having jurisdiction over the Seller, the Buyer, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality or other geographical or political subdivision thereof; or
  - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power;
- (dd) **“Governmental Authorizations”** means authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licences, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority;
- (ee) **“GST”** means goods and services tax payable under the GST Legislation;
- (ff) **“GST Legislation”** means Part IX of the *Excise Tax Act* (Canada);
- (gg) **“HST”** means harmonized sales tax payable in the Province of Newfoundland and Labrador;
- (hh) **“HST Legislation”** means Applicable Laws in the Province of Newfoundland and Labrador giving rise to the requirement to pay harmonized sales tax;
- (ii) **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”;
- (jj) **“Initial CCAA Order”** has the meaning given to such term in the recitals to this Agreement;

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- (kk) **“Leases”** means the Real Property Leases and the Personal Property Leases collectively;
- (ll) **“Materially Adverse”** means a fact, circumstance, change, effect, event or occurrence that, individually or in the aggregate with all other facts, circumstances, changes, effects, events or occurrences, (a) is, or could reasonably be expected to be, material and adverse to the business, affairs, results of operations, assets, properties, capital, capitalization, condition (financial or otherwise), rights, liabilities or obligations (whether absolute, accrued, conditional or otherwise), whether contractual or otherwise, of that Person or (b) could reasonably be expected to materially impair or delay the ability of such Person to perform its obligations hereunder (provided that the pendency of any litigation seeking to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated by this Agreement will be disregarded for the purposes of this clause (b)), whether temporary or not, in each case, but other than any fact, circumstance, change, effect, event or occurrence resulting from (i) the execution of this Agreement or the transactions contemplated hereby or the performance of any obligation hereunder (including, without limitation, the termination or attrition of customers or employees) or the announcement thereof, (ii) changes in the American and Canadian economies, the industries and markets in which the Seller operates or to which the Purchased Business relates, or the securities or currency markets in general, (iii) commencement, occurrence or continuation of any war, armed hostilities or acts of terrorism, (iv) the pendency of the CCAA Proceeding or any action approved by, or motion made before, the CCAA Court; (v) any change in Applicable Laws or regulations or in generally accepted accounting principles in the United States or Canada, as the case may be, (vi) any natural disaster or (vii) any action taken by the Seller at the request or with the written consent of the Buyer, except in the case of clauses (ii), (iii), (v) and (vi) to the extent any such fact, circumstance, change, effect, event or occurrence has had a materially disproportionate effect on such Person as compared to other Persons in the same industry in the United States or Canada, as the case may be;
- (mm) **“Monitor”** means KPMG Inc., the monitor appointed by the CCAA Court under the Initial CCAA Order;
- (nn) **“Parties”** means the Seller and the Buyer collectively, and **“Party”** means either the Seller or the Buyer;
- (oo) **“Permitted Encumbrances”** means:
- (i) Encumbrances in favour of the lenders referred to in Schedule 1.1(yy);
  - (ii) Encumbrances given by the Seller or the Purchased Business as security to a public utility or any Governmental Authority when required in the ordinary course of the business but only insofar as they relate to any obligations or amounts not due as at the Closing Date;

- (iii) reservations, limitations, provisos and conditions, if any, expressed in any original grants of land by a Governmental Authority and any statutory limitations, exceptions, reservations and qualifications on real property;
- (iv) statutory liens for current Taxes, assessments or other governmental charges not yet due and payable or those being contested in good faith;
- (v) discrepancies in the legal description of the Real Property or any adjoining real or immovable property which would be disclosed in an up-to-date survey which do not Materially Adversely affect the use or value of Real Property used by the Purchased Business (based on the current use of such affected property) affected thereby, and any registered servitudes, easements, restrictions or covenants that run with the Real Property;
- (vi) applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing agreements, cost sharing reciprocal agreements and building and zoning restrictions and other similar agreements which do not materially impair the use of Real Property used by the Purchased Business (based on the current use of such affected property) affected thereby and provided the same are complied with in all material respects to the Closing Date including the posting of any required security for performance of obligations thereunder,
- (vii) any easements, servitudes, rights-of-way, licenses, agreements, restrictions that run with the land and other Encumbrances (including easements, rights-of-way and agreements for railways, sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables) which do not materially impair the use, the operation or the marketability of Real Property used by the Purchased Business (based on the current use of such affected property) affected thereby and provided the same are complied with in all material respects up to the Closing Date;
- (viii) defects or irregularities in title to Real Property used by the Purchased Business which are of a minor nature and do not in the aggregate materially impair or are not anticipated to materially impair in the future the use of the Real Property (based on the current use of such affected property) affected thereby;
- (ix) Encumbrances of mechanics, labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or repair operations which have either been registered or filed pursuant to Applicable Laws against the Seller or the Purchased Business, or not yet registered or filed and which, in any such case, relate to obligations not due and payable or which are being contested in good faith by appropriate proceedings diligently conducted; and
- (x) any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is

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required under Contracts of the Purchased Business so long as the payment of or the performance of such other obligation or act is not delinquent and provided that such Encumbrances or privileges do not materially affect the use or the operation of the assets affected thereby.

- (pp) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
- (qq) **“Personal Property Leases”** means leases of personal or moveable property including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof;
- (rr) **“Purchase and Sale of Power and Energy Agreement”** means the agreement for the purchase and sale of power and energy, as amended and assigned to the Seller pursuant to an assignment, novation and acknowledgement agreement dated November 30, 2007, between, *inter alia*, the Seller and Newfoundland and Labrador Hydro, as further amended and assigned to the Purchased Business pursuant to an assignment, novation and acknowledgement agreement dated September 3, 2008, between the Seller, the Purchased Business and Newfoundland and Labrador Hydro;
- (ss) **“Purchase Price”** has the meaning given to such term in Section 3.2;
- (tt) **“Purchased Assets”** means all of the issued and outstanding shares in the capital of the Purchased Business and all of the rights, title and interests of the Seller under the Administrative Services Agreement;
- (uu) **“Purchased Business”** means Fermeuse Wind Power Corp.;
- (vv) **“Real Property”** means all real or immovable property and all plants, buildings, structures, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) thereon, forming part thereof or benefiting such real or immovable property;
- (ww) **“Real Property Leases”** means leases or options over Real Property (whether such options provide for the right to purchase or lease), including all benefits and rights pursuant to such leases or options and including, all leasehold improvements forming part of any Real Property;
- (xx) **“Recipient”** has the meaning ascribed to that term in Section 11.4(b);
- (yy) **“Required Consents”** means the consents relating to the Purchased Assets or the sale of the Purchased Business set forth on Schedule 1.1(yy);

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- (zz) “RST” means all taxes payable under the RST Legislation;
- (aaa) “RST Legislation” means the *Retail Sales Tax Act* (Ontario);
- (bbb) “Secured Debt” means all indebtedness, liabilities and obligations owing by the Seller to the DIP Lender (and any security or other documents or instruments granted or entered into in favour of the DIP Lender), together with all accrued and accruing interest, fees, costs and expenses;
- (ccc) “Secured Lenders” means collectively, Lehman Brothers Holdings Inc. and HSH Nordbank AG, New York Branch, as administrative agent and collateral agent on behalf of itself, Bayerische Landesbank, New York Branch and Union Bank of California, Canada Branch (n/k/a Union Bank, Canada Branch);
- (ddd) “Seller” has the meaning given to such term in the preamble to this Agreement;
- (eee) “Seller Parties” has the meaning given to such term in Section 11.10;
- (fff) “Sunset Date” has the meaning given to such term in Section 9.1(b);
- (ggg) “Tax” and “Taxes” includes:
  - (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada and other government pension plan premiums or contributions; and
  - (ii) any liability in respect of any items described in clause (i) payable by reason of Contract, assumption, transferee liability, operation of law, United States Income Tax Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under law) or otherwise;
- (hhh) “Taxing Authority” means any Governmental Authority, domestic or foreign, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax;
- (iii) “Transfer Taxes” has the meaning given to such term in Section 7.5(c);

- (ijj) “Vestas” means Vestas-Canadian Wind Technology Inc.;
- (kkk) “Vestas Service and Maintenance Agreement” means the service and maintenance agreement between the Seller and Vestas dated November 30, 2007, as amended and assigned to the Purchased Business pursuant to an assignment, novation and acknowledgement agreement dated September 3, 2008, between the Seller, the Purchased Business and Vestas;
- (lll) “Vestas Turbine Sale Agreement” means the wind turbine supply agreement between the Seller and Vestas dated November 30, 2007, as amended and assigned to the Purchased Business pursuant to an assignment, novation and acknowledgement agreement dated September 3, 2008, between the Seller, the Purchased Business and Vestas;
- (mmm) “WestLB” means WestLB AG, Toronto Branch;
- (nnn) “WestLB Loan Agreement” means the loan agreement between the Purchased Business and WestLB dated September 3, 2008;
- (ooo) “Working Capital” means, on any date, the current assets of the Purchased Business less the current liabilities of the Purchased Business, all calculated in accordance with generally accepted accounting principles consistently applied at the close of business on such date, *provided* that current liabilities shall exclude the current portion of long-term debt, but *provided further* that current liabilities shall include: (A) the prorated amount of principal and interest of long-term debt for the period from the start of the fiscal quarter within which such date falls to such date; and (B) any amount drawn on the Working Capital/Letter of Credit Facility under the WestLB Loan Agreement that has been used to pay either debt service obligations and/or operation and maintenance costs and expenses; and
- (ppp) “Working Capital Statement” has the meaning given to such term in Section 3.3(b).

## 1.2 Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(e)	Form of Approval and Vesting Order
Schedule 1.1(yy)	Required Consents
Schedule 3.3(a)	Unaudited interim financial statements of the Purchased Business for the fiscal period ended September 30, 2009
Schedule 4.5	Assets of Purchased Business

## 1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

**1.4 Headings and Table of Contents**

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

**1.5 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

**1.6 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

**1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

**1.8 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

**1.9 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by each of the Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

**1.10 Governing Law, Jurisdiction and Venue**

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall in all respects be

governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.14 shall be deemed effective service of process on such Party.

Notwithstanding the foregoing, any and all documents or orders that may be filed, made or entered in the CCAA Proceedings, and the rights and obligations of the Parties thereunder, including all matters of construction, validity and performance thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with the CCAA, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes, regardless of whether such disputes arose under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.14 shall be deemed effective service of process on such Party.

## **ARTICLE 2 - PURCHASE AND SALE**

### **2.1 Agreement to Purchase and Sell Purchased Assets**

Subject to the terms and conditions of this Agreement, at the Closing the Seller shall sell and the Buyer shall purchase, free and clear of all Encumbrances other than Permitted Encumbrances, all of the Seller's right, title and interest in, to and under, or relating to, the Purchased Assets.

### **2.2 Assumption of Liabilities**

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, all liabilities and obligations of any kind relating to the Administrative Services Agreement arising after the Closing Time (collectively, the "Assumed Liabilities").

### **2.3 No Recourse and Limitations on Representations and Warranties**

THE BUYER ACKNOWLEDGES AND AGREES THAT THE PURCHASED ASSETS ARE SOLD WITHOUT ANY RECOURSE TO ANY OF THE SELLER'S DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR FRAUD. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Seller in this Agreement or in any instrument furnished in connection with this Agreement, as to outstanding liens, description, condition, quality, value,

assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded.

**ARTICLE 3 - PURCHASE PRICE AND RELATED MATTERS**

**3.1 Deposit**

The Parties acknowledge that the Buyer has delivered the Deposit to the Seller's solicitors in trust contemporaneously with the execution and delivery of this Agreement. The Deposit shall be placed in an interest bearing account with a Canadian chartered bank and, upon Closing, the Deposit plus accrued interest earned thereon shall be credited to the Buyer on account of the Purchase Price. If the Closing is not completed at the fault of the Buyer, the Deposit plus accrued interest shall be forfeited by the Buyer and be retained by and become the property of the Seller but without prejudice to any rights the Seller may have to be compensated in full for damages which it may have suffered. If the Closing is not completed at the fault of the Seller, the Deposit plus accrued interest earned thereon shall be returned to the Buyer but without prejudice to any rights the Buyer may have to be compensated in full for damages which it may have suffered. If the Closing is not completed for a reason which is not the fault of either party, the Deposit plus accrued interest earned thereon shall be returned to the Buyer.

For the purposes of this Section 3.1, a Party shall not be, nor deemed to be, at fault for the Closing not being completed due to the refusal or failure of a third party to provide its consent or written confirmation in accordance with Article 6, where such Party has: (A) used commercially reasonable efforts to obtain and facilitate such consents or confirmations; and (B) otherwise complied in all material respects with the terms and provisions of this Agreement.

**3.2 Purchase Price**

The purchase price payable to the Seller for the Purchased Assets (the "Purchase Price") shall be ~~XXXXXXXXXX~~, subject to adjustment in accordance with Section 3.3. The Buyer shall satisfy the Purchase Price at the Closing Time by the payment of the Purchase Price, less the Deposit and interest earned thereon in full by wire transfer of such amount in immediately available funds.

**3.3 Working Capital Adjustment**

- (a) The Purchase Price has been determined on the basis that the Purchased Business will have Working Capital of \$11,727 (the "Estimated Working Capital") on the Closing Date. The Estimated Working Capital is the Working Capital of the Purchased Business as at September 30, 2009 calculated based on the unaudited interim financial statements of the Purchased Business for the fiscal period ended September 30, 2009 attached hereto as Schedule 3.3(a).
- (b) Within 10 Business Days after the Closing Date, the Seller will prepare and deliver to the Buyer an unaudited statement setting out (by separate line-item) the Working Capital for the Purchased Business as at the Closing Date (the "Working Capital Statement") with the assets included therein valued in

accordance with generally accepted accounting principles. If requested by the Buyer, the Seller will permit the Buyer and its auditors or other representatives to review the working papers and other documentation used or prepared in connection with the preparation of, or which otherwise form the basis of, the Working Capital Statement.

- (c) If the Buyer gives written notice to the Seller that it disputes the Working Capital Statement within 10 Business Days after the Working Capital Statement is given to the Buyer and the Parties cannot reach agreement on the Working Capital Statement within 10 Business Days after such notice of dispute is given, the dispute will be referred for determination by arbitration to a senior audit partner at the Vancouver office of PriceWaterhouseCoopers chosen by the managing partner of such office. The determination by such arbitrator will be made within 20 Business Days of such referral and will be final and binding on both Parties. The costs of the arbitrator will be borne by the Party losing the majority of the amount at issue in the arbitration.
- (d) If the Working Capital as determined by the Parties or the arbitrator, as the case may be, exceeds the Estimated Working Capital, the Buyer will pay the amount of the difference, on a dollar-for-dollar basis, to the Seller by wire transfer of immediately available funds to an account specified by the Seller within two Business Days after the determination and the Purchase Price will be adjusted accordingly. If the Working Capital as so determined is less than the Estimated Working Capital, the Seller will pay the amount of the difference, on a dollar-for-dollar basis, to the Buyer by wire transfer of immediately available funds to an account specified by the Buyer within two Business Days after the determination and the Purchase Price will be adjusted accordingly. Notwithstanding anything else contained in Article 3, no such difference shall result in any payment to any Party or any adjustment of the Purchase Price if and to the extent the absolute amount of the difference between the Estimated Working Capital and the Working Capital is less than \$25,000.

#### **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES BY THE SELLER**

The Seller represents and warrants to the Buyer and acknowledges that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets the matters set out below:

##### **4.1 Corporate Power**

The Seller is a corporation validly existing under the laws of its jurisdiction of incorporation.

##### **4.2 Residence of the Seller**

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

#### **4.3 Due Authorization and Enforceability of Obligations**

Subject to Court Approval being obtained and the Approval and Vesting Order being issued and entered, the Seller has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action of the Seller. This Agreement constitutes a valid and binding obligation of the Seller enforceable against it in accordance with its terms, except:

- (a) as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally; and
- (b) as such enforceability may be limited by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

#### **4.4 CCAA Proceedings**

- (a) The Seller has provided the Buyer true and complete copies of all orders issued by the CCAA Court in connection with the CCAA Proceedings.
- (b) The Approval and Vesting Order is in a form satisfactory to the Monitor.

#### **4.5 Purchased Assets**

- (a) The issued and outstanding share capital of the Purchased Business consists of 19,224,223 class A common shares. The Seller is the legal and beneficial owner of record of such shares and has good and valid title to such shares, free and clear of all Encumbrances other than Permitted Encumbrances and other than Encumbrances in favour of the Secured Lenders.
- (b) The Purchased Business does not have any employees and has not engaged any Persons that may reasonably be considered employees pursuant to Applicable Law.
- (c) The material assets of the Purchased Business are set forth in Schedule 4.5 and the Purchased Business' interests therein are free of any Encumbrances, except for Permitted Encumbrances.

#### **4.6 Financial**

- (a) The Financial Statements, true copies of which have been provided to the Buyer, fairly present, in all material respects, the financial position of the Purchased Business as of the dates thereof and other than in respect of or in relation to the CCAA Proceedings, there has been no Materially Adverse change in the financial position of the Purchased Business since the date of the most recent Financial Statements and no events or circumstances which have occurred which have or

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may reasonably be expected to have a Materially Adverse effect on the financial condition or results of operations of the Purchased Business that are required by generally accepted accounting principles to be, and are not, reflected in the Financial Statements.

- (b) There are no material liabilities, obligations or commitments of the Purchased Business that are required by generally accepted accounting principles to be, and are not, disclosed in the Financial Statements.

#### **ARTICLE 5- REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with their sale of the Purchased Assets:

##### **5.1 Corporate Power**

The Buyer is a corporation existing under the laws of British Columbia.

##### **5.2 Residence of the Buyer**

The Buyer is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and is a "Canadian" for the purposes of the *Investment Canada Act* (Canada).

##### **5.3 Absence of Conflicts**

The Buyer is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Governmental Authorizations that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on Buyer's ability to perform its obligations hereunder in a timely manner.

##### **5.4 Due Authorization and Enforceability of Obligations**

The Buyer has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action of the Buyer. This Agreement constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except:

- (a) as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally; and

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- (b) as such enforceability may be limited by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

#### **5.5 Approvals and Consents**

Except for: (a) Court Approval; and (b) any consent that may be required in connection with the transfer of the Purchased Assets, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices that would not have a material adverse effect on the Buyer's ability to perform its obligations under this Agreement in a timely manner.

#### **5.6 GST and HST Registration**

Prior to Closing, the Buyer will be registered for purposes of GST Legislation and HST Legislation and will provide its registration numbers to the Seller.

#### **5.7 Informed and Sophisticated Purchaser**

The Buyer is an informed and sophisticated purchaser, and has engaged expert advisors or is experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. The Buyer has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

#### **5.8 Diligence**

The Buyer acknowledges and agrees that: (a) it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets, the Purchased Business and the Assumed Liabilities prior to the execution of this Agreement; (b) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or the Purchased Business and/or the Assumed Liabilities; (c) except as expressly set forth in this Agreement or in other documents delivered to Buyer on Closing pursuant to the terms of this Agreement, it is not relying upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Purchased Business or Assumed Liabilities; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence.

#### **5.9 No Other Representations and Warranties.**

Except for the representations and warranties contained in this Agreement, neither the Buyer nor any other Person makes any representation or warranty, express or implied, on behalf of the Buyer with respect to the transactions contemplated herein.

**ARTICLE 6- CONDITIONS****6.1 Conditions for the Benefit of the Buyer and the Seller**

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect;
- (b) the Seller shall have assigned to the Buyer, and the Buyer shall have assumed from the Seller, all of the Seller's rights, title, interests, obligations and liabilities under the Administrative Services Agreement as at and from the Closing Time;
- (c) all Required Consents shall have been obtained; and
- (d) the Approval and Vesting Order shall have been made and shall be Final.

**6.2 Conditions for the Benefit of the Buyer**

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver in writing by the Buyer of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) the covenants contained in this Agreement to be performed by the Seller at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) the Buyer shall have received evidence, in a form satisfactory to the Buyer, acting reasonably, of the authorization of the board of directors of Purchased Business for the Buyer's purchase of the Purchased Assets;
- (c) each director of the Purchased Business shall have delivered to the Buyer a written resignation from the board of directors of the Purchased Business to take effect at the Closing Time;
- (d) the Seller shall have delivered to the Buyer the following:
  - (i) in respect of the Vestas Turbine Sale Agreement, written confirmation from Vestas to the Seller and the Buyer that:
    - (A) the Vestas Turbine Sale Agreement is in good standing and continues to be in full force and effect; and
    - (B) Vestas consents to and approves the Assignment (as such term is defined in the Vestas Turbine Sale Agreement) of the Vestas

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Turbine Sale Agreement pursuant to the transactions contemplated hereby;

- (ii) in respect of the Vestas Service and Maintenance Agreement, written confirmation from Vestas to the Seller and Buyer that:
  - (A) there are no amounts that are due and payable to Vestas that are outstanding pursuant to the Vestas Service and Maintenance Agreement and that such agreement remains in full force and effect; and
  - (B) Vestas consents to and approves the Assignment (as such term is defined in the Vestas Service and Maintenance Agreement) of the Vestas Service and Maintenance Agreement pursuant to the transactions contemplated hereby; and
- (iii) in respect of the Purchase and Sale of Power and Energy Agreement, written confirmation from Newfoundland and Labrador Hydro of confirmation that there are no liquidated damages currently payable to Newfoundland and Labrador Hydro pursuant to the Purchase and Sale of Power and Energy Agreement and that such agreement is in good standing and continues to be in full force and effect;
- (e) no event or circumstance shall have occurred since September 30, 2009 which has or could reasonably be expected to have a Materially Adverse effect on the Purchased Assets or the material assets of the Purchased Business, taken as a whole;
- (f) the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a), 6.2(e) and 6.2(g), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Person reasonably acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer; and
- (g) the representations and warranties of the Seller set forth in this Agreement shall be true and correct at the Closing Time with the same force and effect as if made at and as of such time.

### **6.3 Conditions for the Benefit of the Seller**

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver in writing where applicable, by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) the representations and warranties of the Buyer set forth in this Agreement shall be true and correct in all material respects at the Closing Time with the same force and effect as if made at and as of such time;

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- (b) the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) the Seller shall not have lost its ability to convey the Purchased Assets or any part thereof due to the appointment of a receiver or a receiver manager, an order of the CCAA Court or otherwise pursuant to the CCAA Proceedings provided such order or other action pursuant to the CCAA Proceedings is not at the voluntary initiative of the Seller; and
- (d) the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) and 6.3(b) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer or other Person reasonably acceptable to the Seller, in each case in form and substance reasonably satisfactory to the Seller.

## **ARTICLE 7 - ADDITIONAL AGREEMENTS OF THE PARTIES**

### **7.1 Access to Information**

Until the Closing Time, the Seller shall give to the Buyer's personnel engaged in this transaction and their accountants, legal advisers, consultants and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Purchased Assets and the Assumed Liabilities and to members of the Seller's senior management, and shall furnish them with all such information relating to the Purchased Assets and the Assumed Liabilities as the Buyer may reasonably request in connection with the transactions contemplated by this Agreement. Notwithstanding anything in this Section 7.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the possible sale thereof or of any of the assets of the Seller (other than the Purchased Assets) to any other Person. The Buyer acknowledges having had a sufficient opportunity to conduct its due diligence and acknowledges that access to information pursuant to this Section 7.1 is not intended to provide for an extended period of due diligence inquiry.

### **7.2 Conduct of Business Until Closing Time**

Except: (1) as expressly provided in this Agreement; (2) with the prior written consent of the Buyer (not to be unreasonably withheld or delayed); (3) as necessary in connection with the CCAA Proceedings; or (4) as otherwise provided in the Court Orders, prior to the Closing Time, to the extent reasonably practicable having regard to the CCAA Proceedings, the Seller shall or shall cause the Purchased Business to, as applicable:

- (a) (i) use, hold or operate the Purchased Assets and the Purchased Business only in the ordinary course in all material respects; (ii) use commercially reasonable efforts to preserve the business organization of the Purchased Business, including the Purchased Business' business relationships and goodwill with customers, suppliers and others having business dealings with the Purchased Business;

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- (iii) pay and discharge the debts authorized by the CCAA Court under the CCAA Proceedings; (iv) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Purchased Assets or the Purchased Business; and (v) seek to collect the receivables of the Purchased Business' business in the ordinary course of business and in the same manner as previously collected; and
- (b) except in the ordinary course of business, not: (i) transfer, lease, license, sell, create any Encumbrance on or otherwise dispose of any of the Purchased Assets or assets of the Purchased Business; (ii) waive or release any claims held by it related to the Purchased Business; (iii)(A) amend, terminate or assign any material Contract, Personal Property Lease or Real Property Lease of the Purchased Business or (B) waive, release, permit the lapse of, relinquish or assign any material Contract, or material rights under any Personal Property Lease or Real Property Lease, of the Purchased Business, or (C) enter into any material lease, contract or agreement, licence or other commitment binding on the Purchased Business; (iv) accelerate the delivery or sale of services or products relating to the Purchased Business, or offer discounts or price protection on the sale of services or products relating to the Purchased Business or premiums on the purchase of raw materials relating to the Purchased Business; (v) issue any shares or ownership interests of the Purchased Business or securities convertible or exchangeable for shares or ownership interests of the Purchased Business; (vi) incur any additional indebtedness other than as permitted in the Initial CCAA Order; (vii) make or rescind any election related to Taxes relating to the Purchased Assets or the Purchased Business; (viii) acquire any businesses or assets; and (ix) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

Notwithstanding the foregoing, the Seller shall be entitled to make expenditures in accordance with the cash flows approved by the CCAA Court.

### **7.3 Approvals and Consents**

The Seller and the Buyer shall as soon as reasonably possible following the date hereof, make all such filings and seek all such consents, approvals, permits and authorizations with any other Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement and the Buyer will request any expedited processing available.

### **7.4 Further Assurances**

Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use commercially reasonable efforts to implement to their full extent the provisions of this Agreement and to ensure an orderly transition of the Purchased Business from the Seller to the Buyer. Upon and subject to the terms and conditions of this Agreement and

subject to the directions of any applicable courts to the Seller, the Parties shall use their commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the transactions contemplated by this Agreement, including using commercially reasonable efforts to satisfy or waive the conditions precedent to the obligations of the Parties hereto.

**7.5 Tax Matters**

- (a) The Buyer and the Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and, to the extent applicable, the Seller, agree to report the transactions contemplated in this Agreement in a manner consistent with the Purchase Price set forth herein. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (c) All amounts payable by the Buyer to the Seller pursuant to this Agreement are exclusive of any GST, HST, RST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "Transfer Taxes"). All Transfer Taxes are the responsibility of and for the account of the Party required to pay such taxes under Applicable Laws. The Buyer and the Seller agree to cooperate to determine the amount of Transfer Taxes payable in connection with the transactions contemplated under this Agreement. If the Seller is required by Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer shall pay such amounts to the Seller concurrent with the payment of any consideration payable pursuant to this Agreement, and Seller shall pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (d) The Buyer hereby waives compliance by the Seller with Section 6 of the RST Legislation and with any similar provision contained in any other Applicable Law in respect of Transfer Taxes.

## 7.6 Damage or Destruction

The Purchased Assets and the material assets of the Purchased Business shall be and remain at the risk of the Seller up to and including the Closing Time and thereafter shall be at the risk of the Buyer.

If, prior to the Closing Time, all or any part of the material assets of the Purchased Business are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated or seized by governmental or other lawful authority, the Buyer shall have the option, exercisable by notice in writing given no later than 10 Business Days after the Buyer receives notice in writing from the Seller of such destruction, damage, appropriation, expropriation or seizure:

- (a) to reduce the Purchase Price by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair or appropriated, expropriated or seized, by an amount equal to the replacement cost of the assets forming part of the material assets of the Purchased Business so destroyed, damaged, appropriated, expropriated or seized, and to complete the purchase; or
- (b) to complete the purchase without reduction of the Purchase Price in which event all proceeds of insurance payable in respect of such damage or destruction, or any compensation or award payable in respect of such appropriation, expropriation or seizure shall be paid to the Buyer and all right and claim of the Seller to any such proceeds and amounts not paid to the Buyer by the Closing Time shall be assigned by the Seller to the Buyer at the Closing Time by way of assignment in a form acceptable to the Buyer; or
- (c) to terminate its obligations under this Agreement without further liability to the Seller if the value of the material assets of the Purchased Business destroyed, damaged, appropriated, expropriated or seized exceeds 10% of the Purchase Price.

## 7.7 Additional Documentation

The Buyer shall, if requested by the lenders and counterparties listed in Schedule 1.1(yy) or referenced in Section 6.2(d) in connection with the granting of the Required Consents and delivery of written confirmations and other evidence, respectively, of such lenders and counterparties, execute all such limited recourse guarantees, security documentation and other assurances or documentation as the Seller has granted to or as may be reasonably requested or required by such lenders and counterparties, provided that, if applicable, such limited recourse guarantee, documentation or other assurance is similar to the limited recourse guarantee, documentation and other assurance currently in effect between the Seller and such lenders or counterparties.

## ARTICLE 8 - COURT ORDERS

### 8.1 Approval and Vesting Order

- (a) As promptly as practicable after the execution of this Agreement, the Seller shall: (i) file a motion for the issuance of the Approval and Vesting Order; and (ii) serve such parties as the CCAA Court and the Buyer may reasonably require for the motion seeking the issuance of the Approval and Vesting Order.
- (b) The Buyer shall cooperate with the Seller, acting reasonably, as may be necessary, in obtaining the Approval and Vesting Order.

## ARTICLE 9 - TERMINATION

### 9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) subject to any approvals required from the CCAA Court pursuant to the CCAA Proceedings, by mutual written consent of the Seller and the Buyer;
- (b) by either the Seller or the Buyer if the Closing has not occurred on or before December 31, 2009 (the "Sunset Date");
- (c) by the Seller, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.3 by the Sunset Date and such violation or breach has not been waived by the Seller or cured within fifteen (15) days after written notice thereof from the Seller, unless the Seller is in material breach of their obligations under this Agreement; and
- (d) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 6.2 by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within fifteen (15) days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

### 9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force and effect. Nothing in this Section 9.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

## ARTICLE 10 - CLOSING

### 10.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the Toronto, Ontario offices of Goodmans LLP, 250 Yonge Street, Suite 2400, Toronto, Ontario, Canada, M5B 2M6, or at such other location as may be agreed upon by the Parties hereto.

### 10.2 Closing Deliveries

- (a) At the Closing, the Seller shall deliver to the Buyer the documents required to be delivered by the Seller pursuant to Section 6.2.
- (b) At the Closing, the Buyer shall deliver to the Seller:
  - (i) an instrument of assumption of liabilities with respect to the Assumed Liabilities in a form satisfactory to the Seller, acting reasonably; and
  - (ii) the documents required to be delivered by the Buyer pursuant to Section 6.3.

## ARTICLE 11 - GENERAL MATTERS

### 11.1 Confidentiality

- (a) Each Party agrees that it shall not disclose to any third party and shall hold in strict confidence, and agrees to instruct its affiliates and representatives not to disclose to any third party and to hold in strict confidence all Confidential Information, without the prior written consent of the Party disclosing the Confidential Information or to which the Confidential Information relates (the “**Disclosing Party**”). Notwithstanding the foregoing, the Vendor may disclose to the Monitor any Confidential Information and the Monitor is not prohibited from applying to the Court for directions regarding disclosure of information that may be redacted or sealed pursuant to the Approval and Vesting Order, provided that if Seller has actual prior knowledge of any such application by the Monitor and as otherwise permitted by such Court, the CCAA Court and Applicable Laws, the Seller shall provide the Purchaser with prior written notice of such disclosures.
- (b) Notwithstanding Section 11.1(a), a Party receiving the Confidential Information or to which the Confidential Information has been provided or otherwise disclosed (the “**Recipient**”) shall be entitled to disclose Confidential Information to its affiliates or representatives who have a need to know for the purpose of the transaction contemplated hereunder and to third parties, including regulatory authorities, to the extent compelled to do so by the CCAA Proceedings or Applicable Law.
- (c) Without limitation to any rights or remedies of the Disclosing Party against any of the Recipient’s representatives, the Recipient shall be liable for any and all

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breaches of the terms of Sections 11.1 to 11.3 (inclusive) by its affiliates or representatives. In the event of a breach of the terms of Sections 11.1 to 11.3 (inclusive), the Recipient shall indemnify, defend and hold harmless the Disclosing Party and each of its affiliates for any and all losses, claims, liabilities, related obligations, damages, and expenses whatsoever incurred by the Disclosing Party or its affiliates as a result of such breach.

- (d) No Confidential Information shall be copied, reproduced in any form, or stored in a retrieval system or database by the Recipient or its affiliates or representatives without the prior written consent of the Disclosing Party, except for such copies and storage as may reasonably be required internally by the foregoing for the purposes herein described. In the event that the Recipient becomes aware that it or any of its affiliates or representatives has disclosed Confidential Information contrary to Sections 11.1 to 11.3 (inclusive), the Recipient shall forthwith advise the Disclosing Party in writing.

## **11.2 Rights and Use¶**

All right, title and interest in and to Confidential Information shall remain the exclusive property of the Disclosing Party (save and except for any internal materials containing Confidential Information, including credit requests, models, and analyses, prepared by the Recipient or its affiliates or representatives, which internal materials shall remain the exclusive property of the Recipient or its affiliates or representatives but shall remain subject to the terms of this Agreement). No interest, licence or any right respecting the Confidential Information, other than as expressly set out in Sections 11.1 to 11.3 (inclusive), is granted to the Recipient under this Agreement by implication or otherwise. The Recipient shall not use Confidential Information in any manner except to consider and provide to its affiliates and representatives as hereby permitted.

## **11.3 Return and Destruction of Confidential Information**

If Closing does not occur by the Closing Date (as the Closing Date may be expanded by this Agreement) or such earlier date of termination if this Agreement is terminated in accordance with the provisions hereof, upon written request of the Disclosing Party, the Recipient shall return to the Disclosing Party or, at the Disclosing Party's option, destroy all Confidential Information in its possession or control and shall be liable for ensuring that each of the Recipient's affiliates and representatives either return to the Disclosing Party or, at the Disclosing Party's option, destroy the Confidential Information in their respective control, and shall delete all Confidential Information from any retrieval system or database in its possession or control and shall be liable for ensuring that each of the Recipient's affiliates and representatives delete all Confidential Information from any retrieval system or database with their respective control, provided however that:

- (a) the Recipient shall not be required to expunge from its records internally generated documents (including electronic copies) containing any Confidential Information;

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- (b) the Recipient shall be permitted to maintain one copy of the Confidential Information for audit and enforcement purposes;
- (c) the Recipient is not required to alter its normal record retention policies; and
- (d) legal counsel of the Recipient will be permitted to retain one copy of the Confidential Information,

provided that in each of the cases in Sections 11.3(a) through 11.3(d), such Confidential Information shall be kept on a confidential basis and continue to be subject to terms and conditions contained in this Agreement.

#### **11.4 Survival and Vesting**

- (a) The provisions of Sections 11.1 to 11.3 (inclusive) shall continue notwithstanding Closing, any failure of Closing for any reason whatsoever, or any termination of this Agreement prior to Closing, for a period of two years from the date of this Agreement.
- (b) Immediately upon Closing, all of the Seller's Interest, if any, in any Confidential Information relating exclusively to the Purchased Business and any and all rights of the Seller from and upon Closing as a Disclosing Party under Sections 11.1 to 11.3 (inclusive) in respect of such Confidential Information (only) shall automatically, without further action or notice by or on behalf of any Party, vest in and be conveyed to the Purchaser absolutely.

#### **11.5 Irreparable Harm by Disclosure¶**

Notwithstanding Section 11.1(c), the Parties agree that monetary damages may not alone be sufficient to remedy any breach by a Recipient or its affiliates or representatives of Sections 11.1 to 11.3 (inclusive) of this Agreement and that the Disclosing Party shall also be entitled to seek equitable relief upon proof to a court of competent jurisdiction, including the ability to sue for damages, seek injunctive relief or specific performance, without the necessity of posting bond or security in connection therewith, in addition to any other remedy available pursuant to this Agreement or at law or in equity in the event of any threatened or actual breach of the provisions of Sections 11.1 to 11.3 (inclusive) by a Recipient or its affiliates or representatives.

#### **11.6 Disclosure of Agreement¶**

Without limitation to Sections 11.1 to 11.3 (inclusive), the Parties agree that this Agreement shall not be (other than being filed in the CCAA Proceedings or otherwise filed in the CCAA Court) publicly disclosed unless in the redacted form filed with the Approval and Vesting Order and approved by the Buyer, acting reasonably. Notwithstanding the foregoing, the Parties hereto agree and acknowledge that the Seller may file a copy of this Agreement with applicable Governmental Authorities but only after the Approval and Vesting Order have been obtained, only in compliance with the requirements of the Approval and Vesting Order, or as the Court

may otherwise order, and only to the extent such filing is required by Applicable Law; and provided that, to the extent such filing is required, the Seller shall prior to filing implement all redactions of this Agreement required by Purchaser so long as such redactions requested by Purchaser do not cause the Seller to be in breach of Applicable Law. The Parties hereto further agree that notwithstanding the provisions of Sections 11.1 to 11.3 (inclusive) or this Section 11.6, the Monitor shall not be prohibited from applying to the Court for direction regarding disclosure of this Agreement or any Confidential Information, provided that no Confidential Information shall be disclosed directly or indirectly in any of the motions or application materials including any notices, affidavits or pleadings, prior to obtaining such direction from the Court.

#### **11.7 Public Notices**

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller or by the Buyer without the prior consent of the other (such consent not to be unreasonably withheld) provided, however, that subject to the last sentence of this Section 11.7, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings) or by any insolvency or other court or securities commission or other similar regulatory authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court; and (ii) the transactions contemplated in this Agreement may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by applicable laws and rules. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Seller and its professional advisors may prepare and file such reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations to the CCAA Court.

The Parties shall issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them.

#### **11.8 Monitor's Capacity**

The Monitor is acting in its capacity as Monitor of the Seller in the CCAA Proceedings and shall have no personal or corporate liability in connection with this Agreement.

**11.9 Survival**

None of the representations, warranties, covenants (except the covenants in Sections 2.2, 3.3, 7.5, 7.6, 9.2 and Article 11 (inclusive) to the extent they are to be performed after the Closing) of either of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by either of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing, including, without limitation, the release and certificates to be delivered pursuant to Sections 6.2(f), 6.3(d) and 11.10) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive Closing.

**11.10 Environmental Release**

Notwithstanding any other provisions of this Agreement, Buyer does hereby forever release and discharge Seller and its respective present and former shareholders, officers, directors and employees (collectively, the "Seller Parties") of and from any and all claims, demands, complaints, actions, losses, liabilities, judgments, settlements, damages, penalties, consequential damages, exemplary damages, fines, Encumbrances, liens, remediation, abatement, costs and expenses of investigation, remediation or cleanup in defence of or resulting from any claim, action or suit, demand or administrative proceeding or any requirement of any Governmental Authority, whether known or unknown, and whether in law or in equity, whether direct or consequential, compensatory, exemplary, liquidated or unliquidated, which Buyer or its respective legal representatives, successors, assigns, heirs, executors or administrators has, shall have or may ever have against any Seller Parties with respect to any environmental condition, investigation or remediation with respect to the Real Property and the Leased Real Property forming part of the Purchased Assets or related to the Purchased Business.

**11.11 Expenses**

Except as otherwise specifically provided herein, and subject to the terms of the agreements creating or relating to the Secured Debt, each of the Seller and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation and settlement of this Agreement and the completion of the transactions contemplated hereby.

**11.12 Non-Recourse**

No past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or representative of the respective Parties hereto, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

**11.13 Assignment, Binding Effect**

No Party may assign its right or benefits under this Agreement without the consent of the other Party hereto and the Monitor, except that without such consent the Buyer

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may: (i) assign any or all of its rights and obligations hereunder to one or more of its subsidiaries or affiliates, subject to Seller's and the Monitor's prior approval of the form of such assignment, acting reasonably; or (ii) direct that title to the Purchased Assets be transferred to and the Assumed Liabilities be assumed by one or more of its subsidiaries or affiliates, provided that no such assignment or direction shall relieve the Buyer of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns.

#### 11.14 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by facsimile, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested. All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

If to the Buyer at:

Elemental Energy Inc.  
Suite 3260 – 666 Burrard  
Vancouver, BC V6C 2X8

Attention: Ron Hankewich  
Telephone: (604) 648-6609  
Facsimile: (604) 648-6605

with a copy (which shall  
not in itself constitute  
notice) to:

McCarthy Tétrault LLP  
1300 – 777 Dunsmuir Street  
Vancouver, BC V7Y 1K2

Attention: Cameron Belsher and  
Genevieve Pinto  
Telephone: (604) 643-7100  
Facsimile: (604) 622-5739

(a) If to the Seller at:

SkyPower Corp.  
250 Yonge Street, 16<sup>th</sup> Floor  
Toronto, ON M5B 2L7

Attention: Kerry Adler  
Telephone: (416) 979-4625  
Facsimile: (416) 981-8686

