

**AGREEMENT BETWEEN  
U.S. DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF THE NAVY,  
and APEX CLEAN ENERGY, INCORPORATED  
(hereinafter "AGREEMENT")**

Subject: PROPOSED SEARCHLIGHT WIND ENERGY PROJECT (N-084626),  
SEARCHLIGHT, NV

Parties: U.S. Department of Defense (hereinafter "DoD")  
U.S. Department of the Navy (hereinafter "Navy")  
and  
Apex Clean Energy, Incorporated (hereinafter "Apex")

References: (a) Section 358 of Public Law 111-383, as amended by Section 311 of Public Law  
112-329  
(b) 32 CFR Part 211

Attachment: A. Curtailment Communications Protocol

**Section 1 – Preamble and Purpose.** Pursuant to references (a) and (b), it is an objective of the DoD to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial grid may move forward in the United States, while minimizing or mitigating any adverse impact on military operations and readiness. Apex proposes to construct and operate not more than 87 wind turbine generators, as described in Paragraph 2 of the Right-of-Way Lease/Grant issued to Apex (Serial Number N-084626, effective date June 20, 2014) (hereinafter "Wind Project"). In order to mitigate the adverse effect of this Wind Project on the Navy's Research, Development, Acquisition, Test, and Evaluation (RDAT&E) mission conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) at China Lake, California, the Parties have worked together and will continue to work together to meet the goals of protecting the military operations and readiness while supporting renewable energy production. A conflict only exists when the Department of Defense (DoD) is conducting system or sensor testing that would be impacted by spinning wind turbines associated with the Wind Project. The Parties have focused on de-conflicting these activities and agree that the terms below will allow the goals of all the Parties to be met.

**Section 2 – Definitions**

**A. Curtailment**

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1. The terms “curtail” and “curtailment” mean the temporary cessation of wind turbine operations when the wind turbine blades are not spinning and are locked because the Navy has notified Apex that a clean doppler environment is necessary for the purposes of conducting system or sensor testing. The nature of such curtailment requires that all rotor blades be completely precluded from rotation about the rotor hub.
2. Curtailment begins when rotor blade rotation stops and the blades are locked.
3. Curtailment ends 20 minutes after the Navy provides notification to Apex that cessation of operations is no longer required. The Navy and Apex acknowledge and agree that 20 minutes is the approximate amount of time necessary for the Wind Project to “ramp up” operations to a point where power can be generated.
4. Curtailment is measured by hours (or any fraction thereof).

**B. Actual Curtailment Hours.** Actual Curtailment Hours are hours of curtailment beginning when rotor blade rotation stops and the blades are locked. Actual Curtailment Hours are used to determine (1) the apportionment of Curtailment Soft Cap Hours in accordance with subsection 3.C, and (2) the availability of Banked Hours in accordance with subsection 3.D.

**C. Hour**

1. The term “hour” means a clock hour not mega-watt hour.
2. In order to account for fractions of a clock hour, hours will be calculated by rounding up the time measured to the nearest full minute, then dividing that number by 60, and expressing the quotient as a positive number with three decimal places. By way of illustration only, if the measured amount of time were 46 minutes and 20 seconds, the time would be rounded up to 47 minutes, and because 47 divided by 60 equals 0.7833333333, the number of hours would be expressed as 0.783.

**Section 3 – Terms and Provisions**

**A. Curtailment Hours.** The DoD and the Navy agree that curtailment will only be used to protect system or sensor testing that would be impacted by wind turbines. The Navy and Apex agree to manage curtailment hours in accordance with the terms and conditions set forth in subsections 3.B through 3.H. For purposes of the Agreement, curtailment hours

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may be characterized as Actual Curtailment Hours, Banked Hours, Curtailment Soft Cap Hours, or Overload Hours as described in this section. The Navy's tests that will be adversely impacted by the electromagnetic interference caused by the spinning of the turbines at the Wind Project are generally conducted during the workweek and during the hours of 6:00 AM to 10:00 PM and most from 6:00 AM to 12:00 Noon. On an infrequent basis, the Navy conducts these tests outside the hours described above.

**B. Curtailment Requirements.** The annual curtailment requirement is the sum of the Curtailment Soft Cap Hours (300 hours in accordance with subsection 3.C) and available Banked Hours (not to exceed 200 hours as described in subsection 3.D) in any fiscal year. For purposes of this Agreement, a fiscal year begins on October 1<sup>st</sup> and ends on September 30<sup>th</sup> the following year.

**C. Curtailment Soft Cap Hours.** Upon the request of the Navy and in accordance with the attached Curtailment Communications Protocol (Attachment A), Apex agrees to curtail the operations of the wind turbine generators up to 300 hours in any fiscal year. These 300 hours comprise the Curtailment Soft Cap, and will be apportioned in the Navy's sole discretion in any fiscal year in accordance with the following limits:

1. Up to 185 hours\* from 6:00 AM to 12:00 Noon during the workweek;
2. Up to 115 hours\* from 12:01 PM to 10:00 PM during the workweek; and
3. Up to 25 hours\* from 10:01 PM to 5:59 AM during the workweek and at all other times.

\* The total number of hours listed in subsections 3.C.1 through .3 equals 325 hours; however, the Navy agrees that in any fiscal year it may only apportion up to 300 Curtailment Soft Cap Hours under this subsection. As an example, if the Navy completes 25 hours of testing between 10:01 PM and 5:59 AM in any fiscal year, then only 275 Curtailment Soft Cap Hours remain available for curtailment during the other two periods for the remainder of the fiscal year.

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**D. Curtailment Hard Cap and Banked Hours**

1. **Hard Cap.** The Navy may elect, in its sole discretion, to use Banked Hours (as defined in subsection 3.D.2 ) to increase the 300-hour Curtailment Soft Cap to a Curtailment Hard Cap that will not exceed 500 hours in any fiscal year. Upon the request of the Navy and in accordance with the attached Curtailment Communications Protocol (Attachment A), Apex agrees to curtail the operations of the wind turbine generators up to 200 Banked Hours, subject to availability, in addition to the 300-hour Curtailment Soft Cap.
2. **Banked Hours.** Banked Hours from a fiscal year shall be equal to the positive difference, if any, of the Curtailment Soft Cap minus the Actual Curtailment Hours for such fiscal year. Banked Hours are cumulative and may be carried over from fiscal year to fiscal year, provided that the total amount of Banked Hours shall not exceed 300 hours at any point in time. Banked Hours would be used only in the last quarter of the fiscal year (i.e., July 1 through September 30).
3. By way of illustration only, if, during a given fiscal year of the Wind Project's operation, the Actual Curtailment Hours totaled 200, then the number of Banked Hours from such year would be 100 hours (300 Soft Cap Hours minus 200 Actual Curtailment Hours equals 100 Banked Hours). These 100 Banked Hours would then be added to any pre-existing available Banked Hours at the end of the year. If 125 Banked Hours were available at the start of the same fiscal year, then at the end of such year they would increase to 225 Banked Hours (125 previously available Banked Hours plus 100 new Banked Hours equals 225 Banked Hours available for the following fiscal year). If the following fiscal year resulted in an additional 100 Banked Hours, only 75 of those hours would be available for banking and the amount of Banked Hours available at the end of that fiscal year would be capped at 300 hours per this subsection.

E. **Overload Hours.** The Navy may, in its sole discretion, elect to curtail the Wind Project in excess of the hours provided by the Hard Cap by use of Overload Hours. Overload Hours may only be used by the Navy during periods of high demand for system or sensor testing that would be impacted by the Wind Project as follows:

1. Up to an aggregate of 200 hours over the first ten years of this Agreement;
2. Up to an aggregate of 300 hours over each successive ten-year period of time under this Agreement; and

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3. No Overload Hours may be carried over from any ten-year period to the next.
- F. The Navy may, in its sole discretion, apportion available Banked Hours and Overload Hours in any fiscal year to any of the three allotted time periods set forth in subsection 3.C.
- G. **Maximum Curtailment Requirement.** The maximum curtailment requirement is 3,200 hours during the first ten-year period of this Agreement and 3,300 hours during each successive ten-year period. This requirement represents 300 Curtailment Soft Cap Hours per fiscal year plus the applicable aggregate of Overload Hours during the first ten-year period and 3,300 hours (300 Baseline Curtailment hours per year plus an aggregate of 300 Overload Hours) during successive ten-year periods. Use of Overload Hours will require approval by the Assistant Secretary of the Navy for Research, Development and Acquisition, Deputy for Test and Evaluation with the concurrence of the Assistant Secretary of the Navy for Energy, Installations, and Environment and will be limited to the number of hours necessary to meet documented test requirements in a given year. Once approved in accordance with this subsection, NAWCWD will promptly notify Apex of the Navy's intent to use Overload Hours in accordance with the attached Curtailment Communications Protocol (Attachment A). The Navy will exhaust available Banked Hours before using Overload Hours.
- H. **Curtailment for National Security or Defense Purposes.** National security or defense purposes are defined as those emergency circumstances where the President of the United States, the Secretary of Defense, or a combatant commander under 10 U.S.C. § 164 directs a change to the mission of NAWCWD in support of such emergency circumstances. National security or defense purposes do not include directed routine or non-routine service changes to the mission of NAWCWD with regards to testing, manning, training, and equipping. The Navy may request and Apex agrees to immediately curtail wind turbine operations to the extent required to meet national security or defense purposes. Curtailment under this provision is separate from Overload Hours (as defined in subsection 3.E above). Curtailment for national security or defense purposes will be temporary in nature, extend only so long as is necessary and only applicable to wind turbine operations that are necessary to meet the national security or defense purpose, and does not count against the limits in subsection 3.A above. This Agreement in no way precludes Apex or its successors and assigns from seeking any and all legal or equitable remedies for any curtailment not provided for under this Agreement. Any request for curtailment under this paragraph will be communicated between NAWCWD and Apex via the attached Curtailment Communications Protocol

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(Attachment A), and will include the releasable portions of the President's, the Secretary's, or the combatant commander's mission order.

- I. It is a priority for the Navy to protect national defense capabilities and military operations, including military installations; research, development, test, and evaluation activities; and military readiness activities from compromise and exploitation which may occur due to an activity under foreign control operating in the vicinity of those national defense capabilities and military operations:
  1. Apex acknowledges that there may be national security considerations associated with any request by the Navy for curtailment in accordance with the terms of this Agreement and any curtailment resulting therefrom. Apex therefore agrees not to disclose any such request or any curtailment resulting therefrom without the prior consent of the Navy, except as necessary to comply with law or regulation, and except to the extent necessary to comply with Apex's obligations under its interconnection agreement, power purchase agreement or other material contracts. Apex agrees to provide the Navy with a list of any third party with whom it shares such sensitive information in accordance with this paragraph.
  2. Prior to requesting the Notice to Proceed in accordance with Paragraph 5d of the June 20, 2014 Right-of-Way Lease/Grant, Apex agrees to provide advance written notice to the Navy of:
    - a. The business entity name and direct ownership interest of any turbine supply vendor providing wind turbine generators for the Wind Project; and
    - b. The business entity name and direct ownership interest of any material vendor with which Apex executes a contract to perform development, construction, maintenance or operations activities at the location of the Wind Project. Apex shall provide the Navy 15 days to conduct a security review and assess national security impacts.
  3. In any case in which an assessment of risk to national security is identified, the Parties agree to enter into negotiations in order to mitigate any threat to national security that arises as a result of the proximity of a foreign national or foreign owned or controlled business entity to sensitive military activities. Resolution of the national security threat must be resolved prior to allowing access to the site by representatives of a foreign national or foreign owned or controlled business

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entity or the use of wind turbines or other permanent on-site equipment manufactured by a foreign national or foreign owned or controlled business entity.

4. Prior to requesting approval for any proposed assignment or partial assignment in accordance with Paragraph 5j of the June 20, 2014, Right-of-Way Lease/Grant, Apex agrees to provide advance written notice to the Navy of the proposal. If the prospective Assignee is a foreign national or foreign owned or controlled business entity, Apex and the proposed Assignee shall jointly provide notice of the proposed transaction to the Committee on Foreign Investment in the United States (CFIUS) in accordance with the applicable regulations (Subpart D of 31 CFR Part 800) and provide a copy of the notice to the Navy. Nothing in this agreement shall prohibit or limit DoD, on behalf of and in consultation with the Navy, from objecting to the transaction before CFIUS, nor limit communications with CFIUS during national security reviews and investigations, and, should mitigation result, during mitigation, tracking, and post-consummation monitoring and enforcement, pursuant to 50 U.S.C. § 2170. Moreover, this Agreement shall not prevent or limit the DoD or any of its components, to include the Navy, from communicating in any form with any other regulatory body or agency with jurisdiction or possible jurisdiction over matters impacting the NAWCWD test mission at China Lake.
  
- J. The Parties agree and acknowledge that Apex will be subject to and required to comply with the protocols of Nevada Energy and that such protocols will control how quickly Apex can curtail and resume its generation of power.
  
- K. Apex agrees to confine the wind turbines generators to the area described in the June 20, 2014, Right-of-Way Lease/Grant. Apex also agrees not to construct more than 87 wind turbines.
  
- L. The DoD and the Navy agree not to posit any objection to the construction and operation of the Wind Project under the Federal Aviation Administration (FAA) Obstruction Evaluation / Airport Airspace Analysis system or any other federal, state, or local regulatory entity with cognizance over the Wind Project, provided that the Navy and Apex agree to recommend that the terms and conditions of this Agreement are expressly incorporated into the aeronautical study determinations provided by the FAA, the Department of the Interior, Bureau of Land Management (BLM) Right-of-Way Lease/Grant, and/or any other federal, state, or local regulatory permit, certificate, or license to operate. The Phrase "agree not to posit any objection" above does not limit the regulatory authority of the U.S. Army Corps of Engineers to issue, condition, or deny a

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permit for the Wind Project pursuant to the Federal Clean Water Pollution Control Act or the Rivers and Harbors Act of 1899.

- M. This Agreement shall not be binding upon any other Federal agency nor waive required compliance with any other law or regulation. In accordance with Stipulation 46 of the June 20, 2014, Right-of-Way Lease/Grant, Apex will comply with the terms and conditions of this Agreement. Any failure by Apex to comply with any terms, conditions, or stipulations of the June 20, 2104, Right-of-Way Lease/Grant, including Stipulation 46, shall constitute grounds for suspension or termination thereof by BLM as provided for in Paragraph 5a of the Right-of-Way Lease/Grant. Upon execution of this Agreement by the Parties, Apex will provide a signed copy to the BLM authorized officer.
- N. In the case of any inconsistency between this Agreement and the June 20, 2014, Right-of-Way Lease/Grant issued to Apex, it will be resolved in favor of the Right-of-Way Lease/Grant.
- O. Apex agrees that it is responsible for any damage or “wear and tear” to the turbines as a result of curtailment pursuant to this Agreement.
- P. Mitigation Measures**
1. The Navy and Apex agree to pursue mitigation measures that are feasible and affordable in order to mitigate any adverse impact the Wind Project might have on the NAWCWD test mission at China Lake and to minimize risks to national security while allowing the Wind Project to proceed with development and operations (such measures are referred to herein individually as a “mitigation measure,” or collectively as “mitigation measures”).
  2. The Navy agrees to conduct research and development activities related to mitigation measures. If a mitigation measure that could be performed or undertaken by the Navy is identified and determined by the Navy to be feasible and affordable, as determined in the Navy’s sole discretion, the Navy agrees to make a reasonable effort to secure funding and implement the mitigation measure through the DoD planning, programming, budgeting and execution process. The Navy agrees to research mitigation measures that do not adversely impact the NAWCWD test mission at China Lake, including, but not limited to, using test scenarios that would eliminate the need to curtail the Wind Project.



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3. Apex agrees to support Navy research efforts related to mitigation measures by sharing information and providing access to the Wind Project when and as reasonably requested. Apex will seek to identify feasible, effective, and affordable mitigation measures, including through investigation of (i) potential radar-related mitigation measures as may be publicized by the American Wind Energy Association and (ii) potential energy storage capabilities available to the Wind Project. If a mitigation measure that could be performed or undertaken by Apex is identified and determined by Apex to be feasible, effective, and affordable, as determined in sole discretion by Apex, Apex agrees to make a reasonable effort to secure funding and implement the mitigation measure.
  4. In addition to the other obligations set forth in this subsection, the Navy and Apex acknowledge and agree that periodic review discussed in Section 6 will include review of mitigation measures.
  5. In the event that affordable and feasible mitigation options are developed in the future that would reduce or eliminate the need for curtailment, the Navy will no longer require Apex to curtail wind turbine operations to the extent such mitigation has reduced or eliminated the need for curtailment and this Agreement may be modified as mutually agreed to reflect this change in circumstances.
- Q. Analysis of Impact during Wind Project Test Energy Phase.** Following the installation of each wind turbine, Apex will conduct testing of the wind turbine and associated equipment and its ability to generate power and deliver power to the transmission system. This testing and commissioning process will occur for each wind turbine (individually, a "Test Energy Procedure," and collectively, the "Test Energy Phase"). During the Test Energy Phase, Navy and Apex shall remain in close communication, particularly regarding Apex's scheduling of each Test Energy Procedure and the Navy's scheduling of system or sensor testing that would be impacted by wind turbines. Apex and the Navy agree to abide by the intent of the Curtailment Communications Protocol (Attachment A) during the Test Energy Phase. The Navy agrees to conduct analysis regarding any impact on its test and evaluation operations caused by the Test Energy Procedure of each wind turbine, and agrees to share with Apex any results that might indicate curtailment might not be necessary under certain conditions.
- R.** Apex agrees to provide the Navy with the locations of the wind turbines within 30 days of completion of the construction of the Wind Project. Apex also agrees to notify the

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Navy of the electricity generation commencement date, also known as the Commencement of Operations Notice.

S. This Agreement may be shared freely with any person or entity.

**Section 4 – Assignment.** The Right-of-Way Lease/Grant may be assigned as provided for in Paragraph 5j of the June 20, 2014, Right-of-Way Lease/Grant issued to Apex, subject to approval by the BLM authorized officer. The qualifications of all assignees must comply with the requirements of the applicable regulations. Notwithstanding the previous sentence, the obligations of this Agreement to curtail operations must be retained by the actual owner of the Wind Project. Upon such assignment, Apex shall be automatically relieved of any obligations and liability under this Agreement to the extent that the Assignee has assumed in writing such obligations and liabilities and provided that Apex has given written notice of the assignment to the DoD and the Navy.

**Section 5 – Effective Date.** This Agreement will be effective as against all Parties, including any future owner, lessee, operator, transferee, purchaser, assignee, or any successor in interests of the Wind Project, until the later of the duration of the Right-of-Way Lease/Grant, the expiration of all Determinations of No Hazard to Air Navigation issued for the Wind Project in accordance with Subpart D of 14 C.F.R. Part 77, the termination of all submissions of Notices of Proposed Construction or Alteration associated with the Wind Project in accordance with Subpart D of 14 C.F.R. Part 77, or this Agreement is terminated by written mutual agreement of the Parties. This Agreement will be effective upon the date that the final Party signs.

**Section 6 – Review of the Agreement.** The Parties agree to review the terms and conditions of this Agreement annually to determine whether curtailment is still required to protect military operations and readiness.

**Section 7 – Points of Contact.**

- A. The points of contact for NAWCWD and Apex are listed in the attached Curtailment Communication Protocol (Attachment A).
- B. The DoD point of contact is the Executive Director of the DoD Siting Clearinghouse, (571) 372-6745.
- C. The point of contact for communications with the Navy other than those covered by the Curtailment Communications Protocol (Attachment A) is the Head, Sustainability Office, Naval Air Warfare Center, Weapons Division, (805) 989-9209.

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**Section 8 – Breach.** If a Party believes that another Party has breached this Agreement, it must provide notice of the breach to the breaching party and provide an opportunity to cure the breach. If there is a dispute between the involved Parties as to whether breach has occurred, the involved Parties will agree to attempt to resolve the dispute beginning with Apex and representatives of the Navy at NAWCWD. Disputes may be elevated, on the part of the Navy/DoD, to the Director for Energy and Environmental Readiness, Office of the Chief of Naval Operations, and then to the Executive Director of the Defense Siting Clearinghouse, as required. If the breach is not cured or resolved after any attempt at initial dispute resolution, any Party may seek to resolve the dispute through the BLM Authorized Officer for the Right-of-Way Lease/Grant. Each Party specifically reserves any and all rights or causes of action it may have both at law and in equity to require compliance with any provision of this Agreement. Each Party reserves the right to enforce or refrain from enforcing against another Party the terms of this Agreement as it sees fit under applicable state or federal law.

**Section 9 – Amendments.** Any Party to this Agreement may request that it be amended, whereupon the Parties shall consult to consider such amendments. Any amendment to this Agreement shall be effective if executed in writing and signed by Apex, or their successors or assigns, and the DoD and the Navy; however, the joinder of the DoD shall not be required as to any amendment to the attached Curtailment Communications Protocol (Attachment A).

**Section 10 – Signature/Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which shall constitute but one and the same instrument.

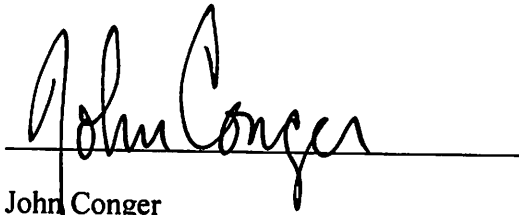
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PAGES 12-14]**

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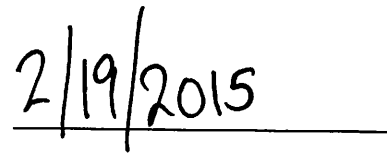
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APEX CLEAN ENERGY, INCORPORATED**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

**U.S. DEPARTMENT OF DEFENSE**

A handwritten signature in black ink that reads "John Conger". The signature is written over a horizontal line.

John Conger  
Performing the Duties of the Assistant Secretary  
Of Defense, Energy, Installations and Environment

A handwritten date "2/19/2015" written in black ink over a horizontal line.


Date

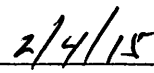
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**U.S. DEPARTMENT OF THE NAVY:**

  
\_\_\_\_\_  
Steven Iselin  
Principal Deputy Assistant Secretary of the Navy  
Energy, Installations and Environment

  
\_\_\_\_\_  
Date

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

**APEX CLEAN ENERGY, INCORPORATED:**



\_\_\_\_\_  
Mark Goodwin  
President, Apex Clean Energy, Inc.

1/26/15  
\_\_\_\_\_  
Date

**Attachment A**  
**Curtailment Communication Protocol**

**1. Purpose and Scope.** This Attachment establishes the protocol for communication between Apex and the Naval Air Warfare Center Weapons Division (NAWCWD) acting on behalf of the U.S. Navy when curtailment of wind turbine operations is required.

**2. Parties Authorized to Request Curtailment and Receive Curtailment Requests (Curtailment Contact)**

a. **NAWCWD:** Members of the NAWCWD China Lake Range Scheduling Office will be the primary NAWCWD points of contact. They report to the Director of the Test Management Branch. These are the only persons authorized to request curtailment for NAWCWD. The members of the Scheduling Office are the primary points of contact for all real-time communications between NAWCWD and Apex.

b. **Apex:** The Apex Remote Operations Center is the only Party authorized to receive a request by NAWCWD for curtailment.

**3. Curtailment Procedures**

a. **Weekly Schedule.** Beginning on Thursday of the week following the Navy's receipt of the Commencement of Operations Notice, and continuing every Thursday thereafter for the life of the Wind Project or until this Agreement is terminated, the NAWCWD Range Scheduling Office shall provide, via email to the Apex Remote Operations Center, a weekly schedule of the tests planned for the upcoming week (hereinafter the "weekly schedule") for which curtailment will be required. The weekly schedule shall set forth the planned start-time and end-time of the curtailment that would be required to avoid any adverse impact the spinning of wind turbine blades might have on a particular test scheduled for the following week. The block of time corresponding to such start-time and end-time shall be referred to herein as the "requested period." The weekly schedule shall set forth a separate requested period for each test, and designate an identifying alpha-numeric code for each such requested period. The Apex Remote Operations Center will confirm receipt of the email. If confirmation is not received within three hours, the requesting official will contact the Apex Remote Operations Center by phone.

b. **Day-Ahead Schedule.** Beginning on the day prior to the date named in the Commencement of Operations Notice, and continuing every day thereafter for the life of the Wind Project or until this Agreement is terminated, for any day for which curtailment will be required, the NAWCWD Range Scheduling Office shall provide, no later than 12:00 pm Pacific Time, to the Apex Remote Operations Center a day-ahead schedule of the tests planned for the following day (hereinafter the "day-ahead schedule"). The day-ahead schedule will set forth the requested period for any particular tests scheduled for the

following day. The day-ahead schedule may be a refinement of the weekly schedule previously delivered, or may present the same information as was included in the weekly schedule. In either case, the Navy is obligated to deliver the day-ahead schedule. The day-ahead schedule shall set forth a separate requested period for each test, and designate an identifying alpha-numeric code for each such Requested Period which shall, as is reasonably practical, correspond with the alpha-numeric code provided in the Weekly Schedule. The Apex Remote Operations Center will confirm receipt of the email. If confirmation is not received within three hours, the requesting official will contact the Apex official by phone.

c. **No Changes from Schedule.** If there are no changes to a requested period as presented in the day-ahead schedule, there will be no further communication. Apex will start shutting down the turbines in advance of the start of each requested period and ensure that curtailment has begun prior to the start of the requested period. At the end of the requested period, the wind turbines will be restarted and, in accordance with the terms of the Agreement, curtailment will end at the time that is 20 minutes after the end of the requested period.

d. **Procedures if Test Is Canceled.** If any test is canceled, the NAWCWD Range Scheduling Office will promptly notify the Apex Remote Operations Center either via phone or via email of such cancellation. Upon receipt of such notice, the Apex Remote Operations Center shall promptly send an email to the NAWCWD Range Scheduling Office confirming receipt of such cancellation notice. In such instance, Apex is authorized to continue operating the Wind Project without interruption until commencement of the next requested period.

e. **Procedures if Test Schedule Is Changed.** If the Navy changes the schedule for a test such that the Navy would require curtailment outside of the applicable requested period, the Navy Curtailment Contact will promptly notify the Apex Remote Operations Center either via phone or via email of such change and will indicate the revised start-time (hereinafter "revised start-time") and revised end-time (hereinafter "revised end-time") of the curtailment necessary for the test. Upon receipt of such notice, the Apex Remote Operations Center shall promptly send an email to the NAWCWD Range Scheduling Office confirming receipt of such notice and to memorialize in writing the revised start-time and the revised end-time. In such instance, Apex is authorized to continue operating the Wind Project without interruption until the revised start-time. If, prior to the revised start-time, the Navy again changes the schedule for the test such that the revised start-time or the revised end-time is no longer correct and must be further revised, then the NAWCWD Range Scheduling Office will again notify the Apex Remote Operations Center according to the procedures outlined in this section. Apex will start shutting down the turbines in advance of the revised start-time (as determined by the latest notice given by the NAWCWD Range Scheduling Office to the Apex Remote Operations Center) and ensure that curtailment has begun prior to such revised start-time. Immediately following the revised end-time (as determined by the latest notice given by the NAWCWD Range Scheduling Office to the Apex Remote Operations Center),



the wind turbines will be restarted and, in accordance with the terms of the Agreement, Curtailment will end at the time that is 20 minutes after such revised end-time.

f. **Procedures if Test Is Completed Early.** If a test either (i) commences according to the day-ahead schedule but is completed before the end of the requested period, or (ii) commences according to the revised start-time but is completed before the revised end-time, then the Navy will make every effort to promptly notify the Apex Remote Operations Center either via phone or via email, in no case longer than 15 minutes after completion of such test. In such instance, curtailment will end at the time that is 20 minutes after such notice is received by the Apex Remote Operations Center. If the Navy tries to reach the Apex Remote Operations Center via phone but the Apex Remote Operations Center cannot be reached, then the Navy shall promptly send such notification via email, and the aforementioned 20-minute time period shall begin running upon the timestamp of such email, but not, for the avoidance of doubt, upon the time of the preceding phone call. If such notification is successfully received by the Apex Remote Operations Center via phone call, then the aforementioned 20-minute time period shall begin tolling upon the completion of such phone call, and the Apex Remote Operations Center shall promptly send an email to the NAWCWD Range Scheduling Office to confirm receipt of such telephonic notice and to memorialize in writing the exact time of the completion of such phone call.

**4. Verification of Curtailment.** The Apex Remote Operations Center shall notify the NAWCWD Range Scheduling Office promptly upon cessation of the spinning of the wind turbine blades to confirm that the wind turbine blades are “locked.” Such notice shall be delivered either via phone or via email. If such notice is delivered via phone, the Apex Remote Operations Center shall promptly thereafter send an email to the NAWCWD Range Scheduling Office to memorialize in writing such notice.

**5. Contact Listing**

a. **NAWCWD:**

- i. **Range Scheduling Office (Primary):** (760) 939-9125
- ii. **Head, Test Management Branch (Secondary):** (760) 939-6033

b. **Apex:**

- i. **Director, Remote Operations (Primary):** (281) 701-7497
- ii. **VP of Asset Management (Secondary):** (434) 282-2119

**6. Reporting.** The operations of the Wind Project will be controlled and monitored using a system known as the Supervisory Control and Data Acquisition (SCADA) system.

a. **Monthly Report.** Apex shall create a monthly report using the SCADA system that will show the precise number of hours the Wind Project was curtailed during each month (hereinafter the “monthly report”). The Apex Curtailment Contact shall deliver each

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monthly report to the NAWCWD Curtailment Contact within 5 business days after the end of each month. Apex and NAWCWD may discuss such monthly reports during periodic review sessions, or at any such time as Apex and NAWCWD mutually agree.

**b. Annual Report.** At the end of each fiscal year, Apex shall create an annual report using the SCADA system (hereinafter the “annual report”) to show: (1) the sum of hours the Wind Project was curtailed during that fiscal year, as recorded by Apex; (2) the number of Banked Hours pertaining to such year, (3) the then-current sum of available Banked Hours; (4) the number of Overload Hours used in such year, (5) the then-current sum of available Overload Hours; and (6) a historical schedule showing Actual Curtailment Hours, the Banked Hours, and the Overload Hours pertaining to all preceding years of the Wind Project’s operation. The Apex Curtailment Contact shall deliver the annual report to the NAWCWD Curtailment Contact within 5 business days after the end of each year. Within 5 business days after receiving the annual report, the NAWCWD Curtailment Contact shall provide to the Apex Curtailment Contact written notice via email that NAWCWD either (i) accepts the annual report as true, or (ii) disagrees with the annual report, in which case NAWCWD and Apex shall enter dispute resolution as described in Section 8 of the Agreement and the outcome of such dispute resolution shall be a revised annual report agreed upon by NAWCWD and Apex and memorialized in writing. The number of hours of curtailment for a given year as agreed upon by NAWCWD and Apex and memorialized in writing in accordance with this subsection shall be the Actual Curtailment Hours.

**7. Process Reviews.** NAWCWD and Apex shall conduct a quarterly review to ensure that proper procedures were followed and to identify any lessons learned.