

IMPLEMENTING AGREEMENT

by and between

BEECH RIDGE ENERGY LLC,

BEECH RIDGE ENERGY II LLC

and the

U.S. FISH AND WILDLIFE SERVICE

This IMPLEMENTING AGREEMENT (“IA”), which implements the Beech Ridge Wind Energy Project Habitat Conservation Plan (“Plan”), is entered into as of the date of last signature below by the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America (“USFWS”), and BEECH RIDGE ENERGY LLC and BEECH RIDGE ENERGY II LLC (“BRE Entity or BRE Entities; jointly “BRE”), hereinafter collectively called the “Parties” and individually, a “Party.”

1.0 RECITALS

The Parties have entered into this IA in consideration of the following facts:

The USFWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and their habitats under various federal laws, including the Endangered Species Act (“ESA”) (16 U.S.C. § 1531 *et seq.*), the Migratory Bird Treaty Act (“MBTA”) (16 U.S.C. § 701 *et seq.*), the Bald and Golden Eagle Protection Act (“BGEPA”) (16 U.S.C. § 668 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) *et seq.*).

The ESA prohibits the “take” of species listed as endangered or threatened under the ESA. Under Section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)), the USFWS may issue permits authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit (“ITP”), the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate the maximum extent practicable the impact of such take. BRE submitted its application for an ITP to the USFWS on June 30, 2011, amended the application in response to comments from the USFWS on August 31, 2011; and, amended the application to include both BRE Entities as co-applicants for an ITP on August 28, 2013.

The Beech Ridge Wind Energy Project (“the Project”) is located in Greenbrier County and Nicholas County, West Virginia, as more fully described in Exhibit A. Beech Ridge Energy LLC will operate the Phase I of the Project (67 wind turbines) pursuant to a siting certificate issued by the State of West Virginia. Beech Ridge Energy II LLC will construct, own and operate Phase II of the Project (33 wind turbines) pursuant to a separate siting certificate issued by the State of West Virginia.

BRE leases the Covered Lands upon which the Project is located. BRE has acquired the necessary legal rights to construct and operate the Project and its associated facilities from the underlying land owners;

BRE, with technical assistance from the USFWS, has prepared a Habitat Conservation Plan ("Plan") and related documents covering certain listed "Covered Species" under the jurisdiction of USFWS (as further defined below);

BRE has developed a series of conservation measures to conserve listed species and to meet other applicable requirements of the ESA to support issuance of ITP by USFWS pursuant to Section 10(a)(1)(B) of the ESA for the permit term described in Section 6.0 herein;

BRE has developed the Plan, which is designed to substantively address effects to Covered Species and benefit their local and regional populations; the Plan causes BRE to, among other things, (a) engage in certain habitat enhancement actions for certain Covered Species; (b) adjust Project operations consistent with the siting certificate to implement certain conservation actions; and (c) provide information on the implementation of these conservation actions;

BRE and USFWS intend the ITP to be issued to both BRE Entities as co-permittees, jointly responsible for Plan implementation and ITP compliance;

The IA defines the Parties' roles and responsibilities and provides a common understanding of actions that will be undertaken under the Plan and ITP; and

Adequate consideration supports this Agreement. BRE is agreeing to substantial commitments of financial resources, human resources, and other assets to conserve and manage the Covered Species and their habitats in accordance with the Plan and ITP, in exchange for the assurances provided by the USFWS in the ITP and this Agreement.

THEREFORE, the Parties hereto hereby agree as follows:

2.0 TERMS USED

Terms defined and used in this IA shall have the same meaning as those terms are defined in the Plan, the ESA, and USFWS' implementing regulations, except where specifically noted in Section 3.0. herein.

3.0 DEFINITIONS

The following terms shall have the following meanings for all purposes of this IA:

"IA" means this Implementing Agreement as the same may be amended from time to time.

"Covered Activities" means those activities specified in Section 2 of the Plan: for which BRE has committed to avoidance, minimization and mitigation measures; from which impacts to ESA-listed species and the human environment have been evaluated pursuant to the ESA and the

National Environmental Policy Act, respectively; and, of which only turbine operations at Phases I and Phase II are likely to cause incidental take, to be authorized through the ITP.

“Covered Lands” means the geographic area described in Section 1.4 of the Plan in which Covered Activities will occur and is synonymous with the property as described on Appendix A, Figure A-1 to the Plan, as it may be modified from time to time in accordance with the terms hereof.

“Covered Species” means Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*); the list of covered species may be modified from time to time in accordance with the terms of Sections 8.2.3 and 8.4 of the Plan, the USFWS’ implementing regulations and this IA.

“ESA” means the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, as the same may be amended or reauthorized from time to time and any successor statute or statutes.

“ITP” means the incidental take permit to be issued by the USFWS to BRE as provided in this IA as the same may be amended or assigned from time to time in accordance with the terms hereof.

“Plan” means the certain Habitat Conservation Plan prepared by BRE, described above in Section 1.0, and any amendments and errata.

“Project” means the Beech Ridge Wind Energy Project.

4.0 RELATIONSHIP BETWEEN THE PLAN AND THE IA

The Plan and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this IA and the Plan, the terms of this IA will control only for the purposes of interpreting this IA. The provisions of the Plan, ITP, and this IA shall be interpreted to be consistent with and complementary to each other. This IA is not intended to negate or nullify any provision of the ITP and/or the Plan.

5.0 PURPOSES

The purposes of this IA are:

5.1 To ensure implementation of the terms of the Plan and ITP;

5.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the Plan, ITP and IA; and

5.3 Provide assurances to BRE in the case of changed or unforeseen circumstances that, as long as the terms of the Plan and the ITP issued pursuant to the Plan and this IA are fully and faithfully performed, no additional mitigation will be required with respect to Covered Species except as provided for in the Plan, ITP, this IA, or as otherwise required by law (see 50 C.F.R. § 17.22(b)(5)).

6.0 TERM

6.1 ITP Term. This IA shall become operative on the effective date. The USFWS signed- and issued-ITP shall become effective on the date that this IA has been executed by all Parties. The term of the ITP is twenty-five (25) years.

6.2 Permit Renewal. Upon agreement of the Parties and compliance with all applicable laws, the ITP may be renewed to extend beyond its initial term in accordance with USFWS regulations in force on the date of BRE's submission of its application for renewal (see 50 C.F.R. § 13.22) and, to the extent applicable, in accordance with Section 8.4. of the Plan (Amendment Process). If BRE desires to renew the ITP, it will so notify USFWS at least one hundred eighty (180) days before the expiration date of the ITP. BRE shall be required, however, to submit a written application for renewal to the USFWS within the time period set forth in the USFWS' regulations then in force. Renewal of the ITP shall constitute an extension of the Plan, and this IA may be amended and renewed for the same period of time as the amended and renewed ITP.

7.0 FUNDING

7.1 In General. BRE warrants that it has, and shall expend, such funds as may be necessary to fulfill its obligations under the ITP, the Plan, and this IA. BRE shall promptly notify USFWS of any material change in BRE's financial ability to fulfill its obligations under the Plan, ITP, and this IA.

7.2 Financial Assurance for Monitoring. To ensure full performance of the monitoring obligations contained in Section 5 of the Plan and the financial assurance obligations contained in Section 6.0 of the Plan, BRE shall post a Letter of Credit or equivalent financial security in a form substantially similar to Exhibit A to this IA. BRE shall maintain the Letter of Credit for the term of the ITP as described in Section 6.0 of the Plan.

7.3 Financial Assurance for Off-site Mitigation. BRE shall ensure full performance of off-site mitigation obligations in accordance with Section 5.3 and 6.0 of the Plan. BRE shall, within ninety (90) days of issuance of the ITP, deposit \$785,500 into a segregated conservation fund administered by a third party selected by BRE and USFWS. USFWS shall approve any release of money from the conservation fund for appropriate conservation projects that meet the biological goals, objectives and criteria of the Plan.

(a) Expenditure of Money from Conservation Fund. In the event of a legal challenge to the final ITP by any third party that results in the entry of preliminary or permanent injunctive relief that precludes Project operations according to the ITP's and Plan's terms, expenditures of money from the mitigation fund may be stayed until the final resolution of such legal challenges, including any administrative or judicial appeals by any party. Upon exhaustion of appeals to such challenges, money in the conservation fund may be spent and obligated so long as the permit is not terminated, relinquished, or revoked.

(b) Refund of Unspent and Unobligated Money from the Conservation Fund. In the event the ITP is terminated, relinquished, or revoked in accordance with the terms of this IA prior to the expenditure of all money from the conservation fund, then the balance of all unspent

and unobligated money shall promptly be refunded to BRE in accordance with Section 13 of this IA. Upon such an event, BRE will notify both the third party fund administrator and USFWS, and the third party fund administrator shall promptly refund all unspent and unobligated money to BRE.

8.0 RESPONSIBILITIES OF THE PARTIES

8.1 BRE's Responsibilities. In consideration of the issuance of an ITP authorizing any incidental take which may result from activities conducted in accordance with the Plan, and in consideration of the assurances provided by the ITP, the USFWS regulations and IA, the BRE Entities agree, as joint, co-permittees to:

(a) Fully and faithfully perform all obligations in the Plan, the ITP and this IA, including, but not limited to, all the conservation management and monitoring measures, as well as those measures deemed necessary for Adaptive Management or to respond Changed Circumstances as identified through processes described in the Plan.

(b) Fully fund all costs needed to perform its affirmative obligations under the ITP and the Plan.

(c) Promptly notify USFWS if, for any reason (including, but not limited to, court rulings or lack of sufficient funds), BRE has or is likely to become unable to fulfill any obligation required by the Plan, the ITP or IA.

(d) Promptly respond to all notices from USFWS in accordance with the Plan, ITP or IA, and inquiries from USFWS regarding the same.

(e) Promptly notify USFWS of any lawsuits filed against BRE or written notices or letters expressing intent to file suit challenging the issuance of or compliance with the ITP.

(f) Notify USFWS in writing within ten (10) days of the occurrence of any of the following: (1) any change in the registered name of either of the BRE Entities; (2) the dissolution of either of the BRE Entities; (3) the sale or conveyance of either of the BRE Entities; (4) bankruptcy proceedings by either of the BRE Entities as well as whether either of the BRE Entities is in receivership; (5) when either of the BRE Entities will no longer perform the Covered Activities on the Covered Lands; (6) the revocation or suspension of either of the BRE Entities' corporate authorization to do business in the state or states in which it is registered to do business and, (7) either of the BRE Entities is disqualified from performing Covered Activities under the ITP for either of the disqualifying factors circumstances listed in 50 C.F.R. § 13.21(c) and (d), as may be amended, or under any future USFWS regulation.

8.2 USFWS' Responsibilities. USFWS agrees pursuant to its authorities to:

(a) Fully and faithfully perform all obligations required under this IA, the Plan and ITP; in particular, upon execution of the IA, and satisfaction of all other applicable legal requirements, issue an ITP to both BRE Entities as co-permittees, jointly responsible for implementation and compliance, and authorizing specified incidental take of Covered Species which may result from activities conducted in accordance with the Plan. The ITP will include

the no surprises assurances set forth in 50 C.F.R. § 17.22(b)(5) and articulated in the Plan at Section 8.

(b) As of the effective date of the ITP, and provided there are no conditions in the ITP that must be satisfied prior to BRE engaging in an authorized take, BRE may take the Covered Species while carrying out Covered Activities on the Covered Lands, as authorized by and subject to the conditions of the ITP and the Plan.

(c) Cooperate with and provide technical assistance to BRE as well as attend meetings requested by BRE to consider matters relevant to the Project, the Plan, and the ITP, or any of the operations or other activities contemplated there-under; promptly respond to all notices received from BRE in accordance with the Plan, ITP and IA.

(d) Promptly notify BRE if, for any reason (court ruling or lack of appropriated funds), USFWS is unable to fulfill any obligation associated with the Plan, ITP or this IA.

(e) Promptly notify BRE of any lawsuits filed against USFWS, requests for disclosures of documents received under the Freedom of Information Act pertaining to the ITP, or written notices or letters expressing an intent to file suit against USFWS challenging the issuance of, or BRE's compliance with, the ITP or any federal law relating to the ITP.

9.0 CHANGED CIRCUMSTANCES AND ADAPTIVE MANAGEMENT

9.1 Changed Circumstances and Adaptive Management Provided for in the Plan. Section 8.2 of the Plan contains the complete list of Changed Circumstances and describes those specific conservation and mitigation measures that BRE agrees to implement where, pursuant to the Plan, they are deemed necessary to respond to the Changed Circumstances. The RMAMP, which is part of the Plan, contains the adaptive management strategy to respond to new information produced by required monitoring. Any revisions or amendments to the Plan or ITP will be determined in accordance with Amendment Process in Section 8.4 of the Plan (repeated verbatim in Section 16 of this IA), and consistent with the USFWS regulations.

9.2 Changed Circumstances Not Provided for in the Plan. If additional conservation and mitigation measures beyond those provided for in the Plan are deemed necessary to respond to Changed Circumstances, USFWS may not require any such additional conservation and mitigation measures without BRE's consent, provided that the Plan is being properly implemented.

9.3 Compliance with Changed Circumstances. Take of Covered Species occurring during the implementation of conservation and mitigation pursuant to Changed Circumstances provided under the Plan shall be covered take under the ITP so long as BRE remains in compliance with the provisions of the Plan and the ITP. USFWS reserves the right under 50 CFR § 17.22(b)(8) to revoke the permit in the event the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

10.0 REPORTING, INSPECTIONS AND MONITORING

10.1 Reporting. BRE will provide USFWS with the reports described in Section 5.2 of the Plan and Appendix C of the Plan at the notice address then in effect for USFWS, and will provide any available information reasonably requested by USFWS to verify the information contained in such reports. BRE will provide USFWS, within thirty (30) calendar days, any additional information requested to determine whether BRE is in compliance with the ITP, Plan and IA.

10.2 Certification of Reports. All reports shall include the following certification by a responsible company official who supervised or directed preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

10.3 Inspections. USFWS may inspect the Covered Lands in accordance with its applicable regulations and law. Except where USFWS has reason to believe that BRE may be acting in violation of applicable laws or regulations or in breach of the ITP or this IA, USFWS will provide reasonable advance notice of its inspection and will allow BRE's representatives to accompany USFWS' representatives making such inspection. USFWS shall ensure that any individual conducting an inspection of the Project on its behalf performs such inspection in compliance with all regulations and statutes applicable to USFWS, and the requirement of this section for advance notice, where applicable. Any representative of USFWS inspecting the Project shall use reasonable efforts to promptly brief BRE on the information learned during any such inspection. For the purpose of this paragraph, USFWS is intended to mean agency employees, contractors and law enforcement agents.

10.4 Annual Meetings. BRE and USFWS shall conduct annual meetings during the month of March following the Effective Date to discuss Plan implementation and selection of habitat enhancement projects under 5.3 of the Plan. Nothing in the ITP, Plan or this IA shall prevent the Parties from meeting more frequently.

11.0 LAND TRANSACTIONS

11.1 In General. Nothing in this IA, the ITP, or the Plan shall limit BRE's rights to acquire any interest in additional lands in and around the Project or elsewhere. Nothing in this IA, the ITP or the Plan shall require BRE to include in the Project or to add to the ITP's Covered Lands any additional lands it may acquire. Unless such lands are added to the Project in the manner provided below, however, any such lands as may be acquired by purchase, exchange or otherwise will not be Covered Lands. If the USFWS approves ITP and Plan amendments, any newly acquired lands, shall thereafter constitute a portion of the Project and all references to the Project shall be deemed to include a reference to such acquired lands.

11.2 Inclusion of Additional Property as Covered Lands. If BRE acquires any additional mitigation lands, BRE may elect to include such lands in the ITP in accordance with the amendment process contained in Section 8.4 of the Plan and Section 16 of this IA. Upon such election, BRE shall provide notice to the USFWS of its desire to include additional lands,

along with a specific description of the location, legal description, and conditions of such additional property.

11.3 Removal of Property from Covered Lands. BRE may not sell any lands included in Covered Lands, or exchange any portion thereof with, to any new party during the term of this IA unless (a) the ITP and Plan are modified to delete such lands; or (b) the lands are transferred to a third party who has agreed to be bound by the terms of the Plan. In responding to any request to remove lands from Covered Lands, the USFWS shall consent to such proposed removal unless it finds that the proposed removal of land would materially compromise the effectiveness of the Plan. In such a case, the USFWS shall notify BRE in writing of this determination, and the Parties shall promptly meet to discuss potential modifications to the ITP or Plan to address the USFWS' concerns. If BRE sells or exchanges any of the Covered Lands, upon sale or exchange such lands shall not be deemed a portion of the Covered Lands.

12.0 SUSPENSION OF THE ITP

In accordance with the process contained in applicable regulations, USFWS may suspend the ITP in whole or in part if either of the co-permittees is not in compliance with the conditions of the ITP, Plan or IA, or with any applicable laws or regulations governing the conduct of the permitted activity., or any other basis for suspension expressly provided for in a USFWS regulation. The USFWS permit suspension regulation is currently 50 C.F.R. § 13.27. The procedures for requesting reconsideration of the USFWS' decision to suspend an ITP are currently 50 C.F.R. § 13.29.

13.0 RIGHTS TO TERMINATE, RELINQUISH, AND REVOKE THE ITP

13.1 Rights of BRE to Terminate the ITP. BRE reserves the right to relinquish the ITP prior to expiration by providing thirty (30) days advance written notice to the USFWS as provided by 50 C.F.R. § 13.24, or whatever successor regulations exist at the time BRE elects to terminate. BRE may surrender the ITP by returning it to the USFWS along with a written statement of its intent to surrender and cancel the ITP. The ITP shall be deemed void and canceled upon receipt of the permit and notice by the USFWS. Except as provided in Section 7.0 above, no refund of any fees paid for issuance of the ITP or of any other fees or costs associated with the Covered Activities shall be made when the ITP is surrendered for cancellation for any reason prior to the expiration date stated on the face of the ITP. Except as provided in Section 7.0 above, notwithstanding any surrender of the ITP, BRE shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such monitoring, or other measures as may be required pursuant the Plan, or the ITP. The ITP shall be deemed canceled only upon a determination by the USFWS that any outstanding monitoring, minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP. Surrender of the ITP does not relieve BRE of its obligation to comply with the ESA.

13.2 Rights of USFWS to revoke the ITP. The ITP may be revoked by USFWS only in accordance with 50 C.F.R. §§ 13.28 and 17.22(c)(8). In accordance with 50 C.F.R. § 13.28, USFWS may revoke the ITP in whole or in part if BRE willfully violates any Federal or State

statute or regulation, Indian tribal law or regulation, or any law or regulation of a foreign country that involves a violation of the conditions of the ITP or of the laws or regulations governing the Covered Activities. The ITP also may be revoked if BRE fails within sixty (60) days to correct deficiencies that were the cause of suspension of the ITP unless USFWS determines and notifies BRE in writing that a longer period of time is necessary to correct the deficiencies; becomes disqualified under 50 C.F.R. § 13.21(c); or a change occurs in the statute or regulation authorizing the ITP that prohibits continuation of the ITP. Pursuant to 50 C.F.R. §§17.22(b)(8) and 17.32(b)(8), the ITP also may be revoked if continuation of the Covered Activities would be inconsistent with the criterion set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

When USFWS believes there are valid grounds for revoking the ITP, it will notify BRE in writing of the proposed revocation by certified or registered mail. The notice, which may be amended by USFWS at any time, will identify the ITP, whether the revocation is as to part or all of the ITP, the Covered Activities and Covered Species as to which the revocation applies, the reason(s) for the revocation, the proposed disposition of the wildlife, if any. The notice also shall inform BRE of its right to object to the proposed revocation. Upon receipt of the proposed notice, BRE may file a written objection to the proposed action within forty-five (45) calendar days of the date of the notice providing its reasons for objecting to the proposed revocation as well as any supporting documentation.

USFWS will issue a written decision on the revocation within forty-five (45) days after the end of the objection period. The written decision will include USFWS' decision and its reasons for such as well as information concerning BRE's right to request reconsideration of the decision under 50 C.F.R. § 13.29 and the procedures for doing so. Upon notification that the ITP has been revoked and after all appeal procedures have been exhausted, BRE may be required to surrender the ITP to USFWS. Notwithstanding revocation, BRE shall remain obligated for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP and such monitoring or other required by the Plan, or the ITP. The ITP shall be deemed canceled only upon a determination by USFWS that such minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP.

13.3 Effect of Suspension, Termination, and Revocation. Any termination, relinquishment, or revocation of an ITP automatically terminates the Plan and this IA as between BRE and USFWS. Activities thereafter conducted on the Project will be subject to all applicable provisions of the ESA and related regulations as if the ITP had never been issued. A suspension, termination or revocation by USFWS limited to one or more species but less than all of the species then provided for in the ITP shall apply only to the affected species. The ITP and this IA shall continue in full force and effect as to all other Covered Species.

13.4 Post-Termination Mitigation. The Parties acknowledge that BRE's compliance with the ITP, the Plan and this IA will result in BRE having fully mitigated for any incidental take of any Covered Species *provided that* (a) BRE has fully funded the conservation fund in accordance with Section 7 of this IA, and money in this fund has been spent or obligated; or (b) BRE has fully funded the conservation fund in accordance with Section 7 of this IA, money in this fund remains unspent or unobligated, but no take of Covered Species has occurred as of the

date of termination, relinquishment, or revocation. In such a case, if BRE is in compliance with the terms of this IA, upon termination, relinquishment, or revocation of the ITP, BRE shall have no further obligations hereunder or under the ESA with regard to Covered Species or Covered Lands. In the event that BRE has fully funded the conservation fund in accordance with Section 7 of this IA, money in this fund remains unspent or unobligated, but take of Covered Species has occurred as of the date of termination, relinquishment, or revocation, then BRE and USFWS will meet and confer over the amount of money to be refunded to BRE, if any, on a pro rata basis based upon the amount of take that has occurred as of the date of termination, relinquishment, or revocation.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1 In General. Except as set forth below, each Party shall have all remedies otherwise available (including specific performance and injunctive relief) to enforce the terms of this IA, the ITP, and the Plan.

14.2 No Monetary Damages. No Party shall be liable in damages to any other Party for any breach of this IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this IA or any other cause of action arising from this IA.

14.3 Enforcement Authority of the United States. Nothing contained in this IA is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

14.4 Dispute Resolution. The parties recognize that disputes concerning implementation of, or compliance with, this IA, the Plan or the ITP may arise from time to time. In particular, the adaptive management and changed circumstances provisions of the Plan (sections 4.1.5.1, 5.1, and 8.2) establish procedures that call for dispute resolution. The parties agree to work together in good faith to resolve such disputes, using the following dispute resolution processes.

14.4.1 Dispute Resolution Process For Implementation. Unless the parties agree in writing upon another dispute resolution process, or unless a party has initiated administrative proceedings or suit in federal court, the parties may use the following informal process to attempt to resolve disputes:

Step 1

- (a) The party wishing to institute dispute resolution will notify the other party in writing of the dispute and its desire to institute the processes called for in this section. Notification during Step 1 shall be addressed to and from the Supervisor, West Virginia Field Office, USFWS and Asset Manager, Beech Ridge Energy LLC, representing the BRE Entities.
- (b) The party claiming a dispute shall identify in its notice the specific objection that it claims, the basis for the objection, and a proposed remedy to address the objection.
- (c) The party receiving the notice of dispute shall respond in writing to the notice within thirty (30) days, or at such other time as may be mutually agreed in writing by both parties. In doing so, the responding party shall either propose a remedy to resolve the objection

or, alternatively, explain why the objection is unfounded. During this time the responding party may seek clarification of the information provided in the initial notice from the objecting party. The objecting party will use its best efforts to provide any information then available to it that may be responsive within ten (10) days from receipt of such a request for clarification.

Step 2

(a) If the response to an objection resolves the issue to the satisfaction of the objecting party, then the objecting party shall so notify the responding party in writing, and the responding party shall implement the agreed remedy, if any.

(b) If the response to an objection does not resolve the issue to the satisfaction of the objecting party, then the objecting party shall so notify the other party in writing, describing the reasons why the response does not resolve the objection. Thereafter, both parties shall meet and attempt to resolve the dispute. This meeting between the Supervisor, West Virginia Field Office, USFWS, and Asset Manager, Beech Ridge Energy LLC, representing the BRE Entities, shall occur within thirty (30) days after the responding party receives the objecting party's response, or at such other time as may be mutually agreed in writing by both parties.

Step 3

(a) If the parties are unable to resolve a dispute through Steps 1 and 2 above, then an objecting party may elevate the dispute to be handled through a meeting of the chief executives of both parties. For purposes of this provision, "chief executive" shall mean the Vice President, Beech Ridge Energy LLC, representing the BRE Entities, and the Assistant Regional Director of Ecological Services, Northeast Region, USFWS. Each party shall be represented in person by its chief executive at the meeting, and the meeting shall occur within forty five (45) days of the notice of an objecting party following completion of Step 2 above.

(b) If the dispute cannot be resolved through these elevated negotiations, the parties may seek non-binding mediation or other alternative dispute resolution processes.

If at any time either party determines that circumstances so warrant, it may seek any available remedy without waiting to complete the informal dispute resolution process.

14.4.2 Dispute Resolution Process For Permit Violations. If USFWS has reason to believe that BRE may have violated the ITP, the Plan or this IA with respect to any Covered Species, it will notify BRE in writing of the specific provisions which may have been violated, the reasons USFWS believes BRE may have violated the provision, and the remedy the USFWS proposes to resolve the alleged violation. BRE will then have sixty (60) days, or such longer time as may be mutually acceptable to both parties, to respond in writing to the allegation. During this time BRE may seek clarification of the information provided in the notice from the USFWS, and the USFWS will use its best efforts to respond to the request for clarification. If the dispute cannot be resolved within thirty (30) days after BRE's response is due, or such longer time as may be mutually agreed in writing by both parties, the parties may consider non-binding mediation or other alternative dispute resolution processes to resolve the dispute.

14.4.3 The parties reserve their right, at any time without completing informal dispute resolution, to use whatever enforcement powers and remedies are available by law or regulation, including but not limited to, in the case of the USFWS, suspension or revocation of the ITP and civil or criminal penalties, or in the case of BRE, relinquishment of the ITP, or review of USFWS action by a court of competent jurisdiction.

15.0 LIMITATIONS AND EXTENT OF ENFORCEABILITY

15.1 No Surprises Assurances. Pursuant to Section 8.2(a), herein, USFWS is obligated to issue the ITP with the regulatory assurances described more fully in Section 8 of the Plan (the Federal "No Surprises" Rule, 63 Fed. Reg. 8859 (Feb. 23, 1998) (codified at 50 C.F.R. §§ 17.3, 17.22(b)(5), 17.32(b)(5))). As further detailed in the rule, so long as BRE is properly implementing the Plan, the IA, and the ITP, no additional commitment of land, water, or financial compensation will be required with respect to Covered Species, and no restrictions on the use of land, water, or other natural resources will be imposed beyond those specified in the Plan without the consent of the BRE. Application of the rule to changed circumstances is described herein at Section 9.2. With respect to unforeseen circumstances, USFWS bears the burden of demonstrating that they exist using the best available scientific and commercial data available while considering certain factors. (50 C.F.R. §§ 17.22(b)(5)(iii)(C)).

In negotiating unforeseen circumstances, the USFWS will not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources beyond the level otherwise agreed upon for the species covered by the Plan without the consent of BRE. (50 C.F.R. §§ 17.22(b)(5)(iii)(A)). If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, USFWS may require additional measures of BRE where the Plan is being properly implemented only if such measures are limited to modifications within conserved habitat areas, if any, or to the Plan's operating conservation program for the affected species, and maintain the original terms of the plan to the maximum extent possible. (50 C.F.R. §§ 17.22(b)(5)(iii)(B)). Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of BRE.

Notwithstanding these assurances, nothing in the No Surprises Rule will be construed to limit or constrain the USFWS, any Federal agency, or a private entity, from taking additional actions, at its own expense, to protect or conserve a species included in a conservation plan. (50 C.F.R. §§ 17.22(b)(6)).

15.2 Property Rights and Legal Authorities Unaffected. The Parties agree that BRE has entered into the ITP, Plan and this IA on a voluntary basis. Except as otherwise specifically provided herein, nothing in this IA shall be deemed to restrict the rights of BRE to operate the Project, or use or develop Covered Lands; provided, that nothing in this IA shall absolve BRE from such other limitations as may apply to such activities, lands, or interests in land, under the ESA or other laws, of the United States, and the laws of West Virginia.

15.3 Property Rights Retained. The Parties recognize that Covered Lands and Covered Activities may provide multiple benefits beyond conservation of Covered Species, including, but not limited to, renewable energy benefits, pollution benefits, tax benefits, environmental benefits, carbon benefits, clean water benefits, and open space benefits (“Additional Benefits”). Nothing in this IA is intended to limit BRE’s rights to participate in any program or enter into any agreement to recognize the full financial value of these Additional Benefits, provided that BRE complies with the ITP.

16.0 MODIFICATIONS AND AMENDMENTS

16.1 Modifications to this IA. This IA may be amended only with the written consent of each of the Parties hereto. Either Party may object to any amendment proposed by the other upon any reasonable basis.

16.2 Amendment or Modification of the Plan. The Plan may be amended or modified with the written consent of each of the Parties hereto. The USFWS also may amend the ITP at any time for just cause, and upon a written finding of necessity, during the permit term in accordance with 50 C.F.R. § 13.23(b). Either Party may object to any amendment proposed by the other upon any reasonable basis. The categories of modifications are administrative changes, minor amendments, and major amendments.

(a) Administrative Changes. Administrative changes are internal changes or corrections to the HCP that may be made by BRE, at its own initiative, or approved by BRE in response to a written request submitted by the USFWS. Requests from the USFWS shall include an explanation of the reason for the change as well as any supporting documentation. Administrative changes on BRE’s initiative do not require preauthorization or concurrence from the USFWS. Administrative changes are those that will not (a) result in effects on a HCP species that are new or different than those analyzed in the HCP, EIS, or the USFWS’s BO, (b) result in take beyond that authorized by the ITP, (c) negatively alter the effectiveness of the HCP, or (d) have consequences to aspects of the human environment that have not been evaluated. BRE will document each administrative change in writing and provide the USFWS with a summary of all changes, as part of its annual report, along with any replacement pages, maps, and other relevant documents for insertion in the revised document. Administrative changes include, but are not limited to, corrections of typographical, grammatical, and similar editing errors that do not change intended meanings; corrections of any maps or exhibits to correct minor errors in mapping; and corrections of any maps, tables, or appendices in the HCP to reflect approved amendments, as provided below, to the HCP, IA, or ITP.

(b) Minor Amendments. Minor amendments are changes to the HCP the effects of which on HCP species, the conservation strategy, and BRE’s ability to achieve the biological goals and objectives of the HCP are either beneficial or not significantly different than those described in this HCP. Such amendments also will not increase impacts to species, their habitats, and the environment beyond those analyzed in the HCP, EIS, and the BO or increase the levels of take beyond that authorized by the ITP. Minor amendments may require an amendment to the ITP or the IA. A proposed minor amendment must be approved in writing by the USFWS and BRE before it may be implemented. A proposed minor amendment will become effective on the date of the joint written approval.

BRE or the USFWS may propose minor amendments by providing written notice to the other party. The party responding to the proposed minor amendment shall respond within thirty (30) days of receiving notice of such a proposed modification. Such notice shall satisfy the provisions of 50 C.F.R. § 13.23 as well as include a description of the proposed minor amendment; the reasons for the proposed amendment; an analysis of the environmental effects, if any, from the proposed amendment, including the effects on HCP species and an assessment of the amount of take of the species; an explanation of the reason(s) the effects of the proposed amendment conform to and are not different from those described in this HCP; and any other information required by law. When BRE proposes a minor amendment to the HCP, the USFWS may approve or disapprove such amendment, or recommend that the amendment be processed as a major amendment as provided below. The USFWS will provide BRE with a written explanation for its decision. When the USFWS proposes a minor amendment to the HCP, BRE may agree to adopt such amendment or choose not to adopt the amendment. BRE will provide the USFWS with a written explanation for its decision. The USFWS retains its authority to amend the ITP, however, consistent with 50 C.F.R. § 13.23.

Provided a proposed amendment is consistent in all respects with the criteria in the first paragraph of this section, minor amendments include, but are not limited to, the following: updates to the land cover map or to take species occurrence data; decreasing the scope of the Covered Lands in the HCP; minor changes to the biological goals or objectives; modification of monitoring protocols for HCP effectiveness not in response to changes in standardized monitoring protocols from the USFWS; modification of existing, or adoption of new, incidental take avoidance measures; modification of existing, or adoption of additional, minimization and mitigation measures that improve the likelihood of achieving HCP species objectives; discontinuance of implementation of conservation measures if they prove ineffective; modification of existing or adoption of new performance indicators or standards if results of monitoring and research, or new information developed by others, indicate that the initial performance indicators or standards are inappropriate measures of success of the applicable conservation measures; modification of existing or the adoption of additional habitat objectives for HCP species, where such changes are consistent with achieving HCP species and habitat goals as well as the overall goals of the HCP; minor changes to survey or monitoring protocols that are not proposed in response to adaptive management and that do not adversely affect the data gathered from those surveys; day-to-day implementation decisions, such as maintenance of erosion and sediment control devices; modifying the design of existing research or implementing new research; conducting monitoring surveys in addition to those required by the HCP and ITP; modifying HCP monitoring protocols to align with any future modifications to the protocols by the USFWS; adopting new monitoring protocols that may be promulgated by the USFWS in the future; updating construction windows for Covered Species in the event that standard construction windows established for such species are revised by the USFWS and agreed to by BRE; and minor changes to the reporting protocol.

(c) Major Amendments. A major amendment is any proposed change or modification that does not satisfy the criteria for an administrative change or minor amendment. Major amendments to the HCP and ITP are required if BRE desires, among other things, to modify the projects and activities described in the HCP such that they may affect the impact analysis or conservation strategy of the HCP, affect other environmental resources or other aspects of the human environment in a manner not already analyzed, or result in a change for

which public review is required. Major amendments must comply with applicable permitting requirements, including the need to comply with NEPA, the NHPA, and Section 7 of the ESA.

In addition to the provisions of 50 C.F.R. § 13.23(b), which authorize the USFWS to amend an ITP at any time for just cause and upon a finding of necessity during the permit term, the HCP and ITP may be modified by a major amendment upon BRE's submission of a formal permit amendment application and the required application fee to the USFWS, which shall be processed in the same manner as the original permit application. Such application generally will require submittal of a revised Habitat Conservation Plan, a revised IA, and preparation of an environmental review document in accordance with NEPA. The specific document requirements for the application may vary, however, based on the substance of the amendment. For instance, if the amendment involves an action that was not addressed in the original HCP, IA, or NEPA analysis, the documents may need to be revised or new versions prepared addressing the proposed amendment. If circumstances necessitating the amendment were adequately addressed in the original documents, an amendment of the ITP might be all that would be required.

Upon submission of a complete application package, the USFWS will publish a notice of the receipt of the application in the Federal Register, initiating the NEPA and HCP public comment process. After the close of the public comment period, the USFWS may approve or deny the proposed amendment application. BRE may, in its sole discretion, reject any major amendment proposed by the USFWS. Changes that would require a major amendment to the HCP and/or ITP include, but are not limited to, revisions to the covered lands or activities that do not qualify as a minor amendment; increases in the amount of take allowed for covered activities; and a renewal or extension of the permit term beyond the initial 25 years, where such request for renewal is in accordance with 50 C.F.R. § 13.22.

(d) Treatment of Changes Resulting from Adaptive Management, or Changed Circumstances. Unless explicitly provided in Sections 8.2, 8.5 or Appendix C of the HCP, the need for and type of amendment to deal with Adaptive Management or Changed Circumstances will be determined by the USFWS, in coordination with BRE, at the time such responses are triggered.

16.3 Amendment or Modification of the ITP. The ITP may be amended in accordance with Section 8.4 of the Plan, 50 C.F.R. § 13.23, the provisions of the ITP, and all applicable legal requirements, including but not limited to the ESA, NEPA, and the USFWS's implementing regulations.

17.0 MISCELLANEOUS PROVISIONS

17.1 No Partnership. Neither this IA nor the Plan shall make or be deemed to make any Party to this IA the agent or partner of another Party.

17.2 Severability. If any provision of this IA or the Plan is found invalid or unenforceable, such provision shall be enforced to the maximum extent possible and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provisions.

17.3 Successors, Assigns and Transfers. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the ITP shall be governed by the federal regulations located at 50 C.F.R. Part 13.

(a) Transfer of ITP by BRE. In accordance with 50 C.F.R. § 13.25, the Parties agree that the ITP may be transferred in whole or in part to a new party through a joint submission by BRE and the new party to the USFWS field office responsible for administering the ITP.

(b) Approval of Transfer by USFWS. USFWS may approve a proposed transfer of the ITP in whole or in part to a new party, which approval shall not be unreasonably withheld or delayed, provided that the USFWS finds that the proposed transfer complies with the requirements of 50 C.F.R. § 13.25..

17.4 Notice. Any notice permitted or required by this IA shall be in writing, delivered personally to the persons listed below, or shall be deemed to be given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail, and such notices shall thereafter be deemed effective upon receipt.

BRE: Vice President
Beech Ridge Energy LLC
Beech Ridge Energy II LLC
One South Wacker Dr., Suite 1900
Chicago, Illinois 60606
Telephone: 312-224-1400
Fax: 312-224-1444

USFWS: Regional Administrator
U.S. Fish & Wildlife USFWS
300 Westgate Center Drive
Hadley, MA 01035-9589

Telephone: (413) 253-8200
Fax: (413) 253-8308

17.5 Elected Officials not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this IA, or to any benefit that may arise from it.

17.6 Availability of Funds. Implementation of this IA by USFWS is subject to the requirements of the Anti Deficiency Act (31 U.S.C. § 1341) and the availability of appropriated funds. Nothing in this IA shall be construed by the Parties to require the obligation, appropriation or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the USFWS shall not be required under this IA to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

17.7 No Third Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this IA shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this IA to maintain a suit for personal injuries or damages pursuant to the provisions of this IA. The duties, obligations, and responsibilities of the Parties to this IA with respect to third parties shall remain as imposed under existing law.

17.8 Relationship to the ESA and Other Authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this IA is intended to limit the authority of USFWS to seek civil or criminal penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this IA is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the federal government. Nothing in this IA shall limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of BRE under the Plan, ITP, and this IA shall be considered in any consultation concerning BRE's use of the Covered Lands.

17.9 References to Regulations. Any reference in this IA, the Plan or the ITP to any regulation or rule of the USFWS shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken, except that BRE may rely on federal regulations in effect at the time this IA became effective to protect its rights under this IA.

17.10 Applicable Laws. All activities undertaken pursuant to this IA, the Plan or the ITP must be in compliance with all applicable state and federal laws and regulations.

17.11 Terms Do Not Run With the Land. The terms hereof are not intended to run with the land and will not bind the existing owners of Covered Lands or subsequent purchasers of the Project or Covered Lands unless such parties agree in writing to become bound by the Plan, ITP and this IA in accordance with Section 17.3 of this IA. Such parties that are not bound the ITP shall not benefit from USFWS' authorization of incidental take coverage or assurances.

17.12 Entire Agreement. This IA, together with the Plan and the ITP, constitute the entire agreement among the Parties. Excepting the Plan and ITP, the terms contained in this IA supersede any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

17.13 Counterparts. This IA may be executed in counterparts. This IA shall become operative as soon as one counterpart has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

17.14 Authorized Parties. Each Party warrants that the signatory below is authorized to execute this Agreement on behalf of that Party.

IN WITNESS WHEREOF the Parties hereto have caused this IA to be executed as of the date of last signature below.

U.S. FISH AND WILDLIFE SERVICE

By Paul R. [Signature]

Its ARD - ES

Date: 12/5/13

BEECH RIDGE ENERGY LLC
BEECH RIDGE ENERGY II LLC

By [Signature]

Their VICE PRESIDENT

Date: 12/5/13