

FORM VERSION

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POWER PURCHASE AGREEMENT

(WIND QFs GREATER THAN THREE MEGAWATTS)

BETWEEN

WASATCH WIND, LLC

AND

PACIFICORP

NOTE: THIS FORM VERSION OF A UTAH WIND QF CONTRACT COMPLIES WITH THE COMMISSION'S ORDER IN DOCKET NO. 03-035-14 (issued October 31, 2005) APPROVING AVOIDED COST METHODOLOGY FOR QF WIND PROJECTS GREATER THAN THREE MEGAWATTS

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this _____ day of _____, _____, is between Wasatch Wind, LLC, a Utah limited liability company (the “**Seller**”) and PacifiCorp, an Oregon corporation acting in its merchant function capacity (“**PacifiCorp**”). Seller and PacifiCorp are referred to collectively as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. Seller intends to construct, own, operate and maintain a wind-powered Qualifying Facility for the generation of electric energy located in Utah County, Utah, (more fully described in **Exhibit A**) with an Expected Nameplate Capacity Rating of 18.9 MW (the “**Facility**”).

B. Seller desires to sell, and PacifiCorp desires to purchase, all Net Output from the Facility; Seller [desires/does not desire] to sell, and PacifiCorp [desires/does not desire] to buy all associated Renewable Energy Credits from the Facility.

C. Seller expects that the Facility will deliver to PacifiCorp _____ megawatt-hours (MWh) per calendar year of energy and associated Renewable Energy Credits (if applicable). Seller estimates that the Net Output and Renewable Energy Credits will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit B**. Seller acknowledges that PacifiCorp will include this amount of energy and associated Renewable Energy Credits in PacifiCorp’s resource planning.

D. Seller’s Facility is within PacifiCorp’s Integrated Resource Plan target megawatt level of wind resources, and therefore qualifies for avoided cost pricing based upon PacifiCorp’s most recent executed wind contract from its Renewable RFP in accordance with Commission Docket No. 03-035-14.

E. The rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission in Docket No. 03-035-14 for purchases from Qualifying Facilities.

F. For purposes of inter-jurisdictional cost allocation, this Agreement is a “New QF Contract” under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol and, as such, its costs are allocated as a system resource unless any portion of the cost of this Agreement exceeds the cost PacifiCorp would have otherwise incurred acquiring comparable resources, in which case such excess costs shall be assigned on a *situs* basis.

G. PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as “Comparable Resources” in Appendix A to the Inter-Jurisdictional Cost Allocation Protocol.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below and for good and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION 1 DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization) shall have the following meanings:

“Affiliate” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“As-built Supplement” is a supplement to **Exhibit A** and **Exhibit 8.2**, describing the Facility as actually built.

“Availability” means, for any Contract Year, the ratio of (x) the aggregate sum of the turbine-minutes in which each of the wind turbines at the Facility was available to operate during a Contract Year over (y) the product of ____ wind turbines multiplied by the number of minutes in such Contract Year. A wind turbine shall be deemed *not* available to operate during minutes in which the turbine (a) is in an emergency, stop, service mode or pause state; (b) is in “run” status and faulted; (c) is included in a Permitted Outage, Planned Outage, Maintenance Outage or Forced Outage; or (d) is otherwise not operational or capable of delivering energy to the Facility Busbar; *provided, however*, that notwithstanding the preceding sentence, for purposes of determining Availability, a wind turbine shall be deemed to have been available to operate to the extent that it is unavailable due to (i) an event of Force Majeure; (ii) a default by PacifiCorp under this Agreement; (iii) inadequate or excessive wind speed at times when the wind turbine would otherwise be available; (iv) the wind turbine not yet resuming operations because, under such normal operating parameters, the turbine has not yet “cut in” following an event of inadequate or excessive wind speed; or (v) other climatic conditions that exceed such normal operating parameters (including but not limited to blade icing and ambient air temperatures outside of the normal operating parameters).

“Business Day” means any day on which banks in Salt Lake City, Utah are not authorized or required to by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Oregon.

“CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated

with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce energy.

“Commercial Operation” means the Facility is fully operational and reliable, at not less than ninety percent (90%) of the Expected Facility Capacity Rating, and interconnected, integrated, and synchronized with the Transmission Provider's System. In order to meet the requirements for Commercial Operation, all of the following events shall have occurred:

(a) PacifiCorp has received from Seller a certificate from a Licensed Professional Engineer stating that the Facility is able to generate electric power in amounts required by this Agreement and that the Facility has been completed in all material respects (excluding punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with the requirements of this Agreement;

(b) Start-Up Testing of the Facility shall have been completed;

(c) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer or Transmission Provider stating that, in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the System; and

(d) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that Seller has obtained all Required Facility Documents and, if requested by PacifiCorp in writing at least thirty (30) days before the Commercial Operation Date, Seller shall have provided copies of any or all such requested Required Facility Documents.

(e) Seller has provided the required Default Security set forth in Section 7.

Seller shall provide notice to PacifiCorp when Seller believes that the Facility has achieved Commercial Operation. PacifiCorp shall have ten (10) days after receipt of such notice either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity those conditions that PacifiCorp reasonably believes have not been satisfied or have not occurred. If, within such ten (10) day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten (10) day period that PacifiCorp believes the Facility has not achieved Commercial Operation, Seller shall be obligated to address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties, and Commercial Operation shall be deemed to occur on the date of such satisfaction, as specified in a notice from PacifiCorp to Seller. If Commercial Operation is achieved at less than one hundred percent (100%) of the Expected Facility Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to one hundred percent (100%) of the Expected Facility Capacity Rating, Seller shall provide PacifiCorp with a list of all items to be completed in order to achieve Final Completion (**“Final Completion List”**), which items shall be completed within 90 days of the Commercial Operation Date unless extended pursuant to Section 14.2 due to Force Majeure.

“Commercial Operation Date” means the date that Commercial Operation is achieved.

“Contract Price” means the applicable price for Net Output and Renewable Energy Credits (if applicable) stated in Section 5.1.

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last day of the Term.

“**Credit Requirement**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa2” or higher by Moody’s, and (2) “BBB” or higher by S&P.

“**Default Security**” has the meaning set forth in Section 7.2.1.

“**Delay Damages**” are the damages payable by Seller under the circumstances described in Section 2, and are equal to \$_____ per MW of Expected Facility Capacity Rating for each day commencing on the day after the Scheduled Commercial Operation Date and ending on the Commercial Operation Date.

“**Effective Date**” has the meaning given to that term in Section 2.1.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by PacifiCorp. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include production tax credits or other financial incentives existing now or in the future associated with the construction or operation of the Facility.

“**Example**” means an example of certain calculations to be made under this Agreement. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Expected Energy**” means the Seller’s best estimate of annual energy production from the Facility, in MWh per year, based on delivery to the Point of Delivery and the planned total installed capacity of the Facility, and is equal to _____ MWh per year.

“**Expected Facility Capacity Rating**” is Seller’s reasonable expectation of the Facility Capacity Rating on the Commercial Operation Date, as stated in **Recital A**.

“**Facility**” has the meaning given to that term in **Recital A**. The Facility is more fully described in attached **Exhibit A**.

“**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

“**Facility Financing Date**” means the date on which the first financing for the Facility closes.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Final Completion List**” has the meaning given in the definition of “Commercial Operation.”

“Firm Market Price Index” means (i) the _____ Electricity Price Index or its successor (for Monday through Saturday, excluding NERC holidays), and (ii) the _____ Electricity Price Index or its successor (for Sundays and NERC holidays). For reference, a sample day’s report from each of these indexes is attached as **Exhibit C**. If the Firm Market Price Index or the 24-Hour Firm Index or their replacements or any components of those indexes or their replacements cease to be published or available during the Term, PacifiCorp shall select as a replacement Firm Market Price Index or component an index or component acceptable to PacifiCorp that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity (Firm On-peak Index (for Monday through Saturday, excluding NERC designated holidays), Firm Off-peak Index (for Monday through Saturday, excluding NERC designated holidays), and 24 Hour Firm Index (for Sundays and NERC designated holidays)) at Palo Verde for the applicable periods.

“Force Majeure Event” means an event of Force Majeure as defined and described in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit D**.

“Generation Interconnection Agreement” means the generation interconnection agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Interconnection Facilities at the Point of Delivery.

“Governmental Authority” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Guaranteed Availability” has the meaning given to that term in Section 6.11.1.

“Guaranteed Commercial Operation Date” means ninety days after the Scheduled Commercial Operation Date as the same may be extended due to a Force Majeure Event.

“Interconnection Facilities” means all the facilities installed for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“Lender” means any individual or entity or successor in interest thereof lending money or extending credit (including any financing lease) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes, without limitation, a Tax Investor (as defined in the Lender Consent).

“Lender Consent” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit 10.8**.

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder, which letter(s) of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a credit rating on its senior unsecured debt of:

- (a) "A2" or higher from Moody's; or
- (b) "A-" or higher from S&P;

(2) on the terms provided in the letter(s) of credit, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder.

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits PacifiCorp to draw upon the U.S. branch;

(4) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits PacifiCorp to draw the entire amount available thereunder if such letter(s) of credit are not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement under Section 11; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

"Licensed Professional Engineer" means a person acceptable to PacifiCorp in its reasonable judgment who (i) is licensed to practice engineering in the United States (and specifically in the State of Utah, if the person is providing a certification, evaluation or opinion with respect to matters of Requirements of Law specific to the State of Utah), (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, other than previously-rendered services, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, and (v) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller other than having previously rendered services to Seller or a member of Seller.

"Maintenance Outage" means NERC Event Type MO, as set forth in attached **Exhibit D**.

"Maximum Delivery Rate" means the maximum rate of energy delivered from the Facility to the Point of Delivery which can be achieved safely and reliably under the most favorable conditions likely to occur over a period of several years. The Maximum Delivery Rate shall be set forth in **Exhibit A**, and amended from time to time as required to reflect the actual capability of the Facility.

"Moody's" means Moody's Investor Services, Inc. and any successor thereto.

"MW" means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity Rating**” means the nameplated generating capacity of any qualifying small power generating unit supplying all or part of the Facility Net Output, expressed in kW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**NERC**” means the North American Electric Reliability Council.

“**Net Output**” means all energy produced by the Facility, less station use and less transformation and transmission losses to the Point of Delivery, if any.

“**Network Resource**” has the meaning given to that term in the Tariff.

“**Off-Peak Hours**” means all hours not included in On-Peak Hours.

“**On-Peak Hours**” means all hours ending 0700 through 2200, prevailing time at Palo Verde, Monday through Saturday, excluding NERC holidays.

“**Output**” means all energy produced by the Facility.

“**Output Shortfall**” has the meaning set forth in Section 6.11.2.

“**Pacific Prevailing Time**” or “**PPT**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the day in question.

“**PacifiCorp**” has the meaning given to that term in Recitals.

“**PacifiCorp’s Cost to Cover**” means the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and RECs that Seller was otherwise obligated to provide during the period of default. For any days prior to the Commercial Operation Date, the current year Contract Price shall be utilized in calculating PacifiCorp’s Cost to Cover. An example calculation of PacifiCorp’s Cost to Cover is provided in the attached **Exhibit E**.

“**PacifiCorp Transmission**” means PacifiCorp, an Oregon corporation, acting in its transmission function capacity.

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership and operation of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Planned Outage**” means NERC Event Type PO, as set forth in attached **Exhibit D**.

“**Point of Delivery**” means the _____ kV facilities of Seller located at the point of interconnection between the Facility and the System at _____, as specified in the Generation Interconnection Agreement and as further described in **Exhibit 8.2**

“**Premises**” means the real property on which the Facility is or will be located, as more fully described in **Exhibit A**.

“**Prime Rate**” means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

“**Project Development Security**” has the meaning given to that term in Section 7.1.1.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“PTCs” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible.

“PTC Amount” has the meaning given to that term in Section 10.2.2.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, as amended from time to time.

“QF” means “qualifying facility” as that term is defined in the version of 18 C.F.R. Part 292 in effect on the date of this Agreement.

“Renewable Energy Credits”, or **“RECs”** means (i) the Environmental Attributes associated with the energy generated from the Facility, together with (ii) the Renewable Energy Credit Reporting Rights associated with such energy and Environmental Attributes. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh from the Facility.

“Renewable Energy Credit Reporting Right(s)” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and include without limitation reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program.

“Replacement Price” means the price at which PacifiCorp, acting in a commercially reasonable manner, replaces any undelivered energy that Seller is required to deliver under this Agreement plus the price to replace Renewable Energy Credits not delivered, if applicable. The Replacement Price is deemed, for purposes of this Agreement, to equal the Firm Market Price Index during the period of underdelivery (plus \$5/Mwh, if PacifiCorp must replace RECs). If, after the Effective Date, a liquid market for Renewable Energy Credits emerges in a form and location that PacifiCorp reasonably determines states the market value of the Renewable Energy Credits delivered under this Agreement, the replacement price for Renewable Energy Credits shall be the market price, else the replacement price shall be \$5/MWh.

“Required Facility Documents” means all material licenses, permits, authorizations, and agreements necessary for construction, operation, and maintenance of the Facility, including without limitation those set forth in **Exhibit 3.2**.

“Requirements of Law” means any federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“**RTO**” means any person, other than PacifiCorp Transmission, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

“**Sales Taxes**” means all sales, use, excise, *ad valorem*, and any other similar taxes, imposed or levied by any Governmental Authority.

“**Scheduled Commercial Operation Date**” means _____, _____, as the same may be extended due to a Force Majeure Event.

“**Seller**” has the meaning given to that term in Recitals.

“**Seller’s Cost to Cover**” means the positive difference, if any, between (i) the Contract Price specified in **Exhibit 5.1.2** for the period in question, and (ii) the sum of (x) the actual price received by Seller for the sale of any applicable energy plus (y) the actual price received by Seller (whether from PacifiCorp or a third party) for the sale of any Renewable Energy Credits (if applicable) or Capacity Rights associated with the energy in question.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of such construction financing.

“**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit F**.

“**System**” means the electric transmission substation and transmission and/or distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.

“**Tariff**” means the PacifiCorp FERC Electric Tariff Fifth Revised Volume No.11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning given to that term in Section 2.2.

“**Test Energy**” means Net Output delivered to PacifiCorp at the Point of Delivery between the Effective Date and the Commercial Operation Date.

“**Transmission Provider**” means PacifiCorp Transmission or a successor, including any RTO. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto,

as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the words “include,” “includes” or “including” shall mean “including, but not limited to; and (i) unless expressly provided otherwise in this Agreement, (x) where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (y) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term of this Agreement shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles in this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Rounding. For all dollar computations called for by this Agreement, the results shall be rounded to the nearest \$0.01.

1.2.5 PacifiCorp As Purchaser Distinct From Transmission Provider. Seller acknowledges that PacifiCorp, which is acting in its merchant function capacity as purchaser under this Agreement, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider.

SECTION 2

EFFECTIVE DATE; TERM; FACILITY DEVELOPMENT

2.1 Effective Date. This Agreement shall become effective after execution by both Parties and after approval by the Commission is no longer subject to judicial review (the “**Effective Date**”); *provided, however*, this Agreement shall not become effective until the Commission has determined that the prices to be paid for Net Output and Renewable Energy Credits (if applicable) are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of Net Output, Capacity Rights, and Renewable Energy Credits (if applicable) from Seller are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Utah in the event other jurisdictions deny recovery of their proportionate share of said expenses.

2.2 Term. Unless earlier terminated as provided herein, this Agreement shall remain in effect until the _____ [up to twenty years] anniversary of the Commercial Operation Date (the “**Term**”).

2.3 Milestones. Time is of the essence of this Agreement, and Seller’s ability to meet certain milestones is critically important. Therefore, Seller shall achieve the following milestones at the times indicated:

(a) On or before the twelfth (12th) month preceding the Scheduled Commercial Operation Date, Seller shall provide Project Development Security in the amount described in Section 7.1.1;

(b) By the Commercial Operation Date, Seller shall provide Default Security required under Section 7.2 and Levelized Contract Price Security under Section 7.3, if applicable; and

(c) Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

2.4 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to PacifiCorp Delay Damages for each day in the period from the Scheduled Commercial Operation Date through the date that the Facility achieves Commercial Operation. Seller's total liability to PacifiCorp for any failure to achieve or any delay in achieving the Commercial Operation Date shall not exceed, including any draws on the Project Development Security, the amount of \$_____. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to Seller's delay in achieving Commercial Operation would be difficult or impossible to predict with certainty, and (b) that it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages are a fair and reasonable calculation of such damages.

2.5 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Scheduled Commercial Operation Date, and continuing on the tenth (10th) day of each calendar month during the period that Delay Damages are due, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of such damages and any amount due PacifiCorp in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.6 Termination. If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, including any extension pursuant to Section 14.2 due to Force Majeure, PacifiCorp may terminate, without any compensation to Seller, this Agreement pursuant to Section 10.1.2(b).

2.7 Seller's Construction Progress Report. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide PacifiCorp with a progress report briefly summarizing construction activity during the prior month and construction activity planned for the current and subsequent month.

2.8 Seller's Duty to Notify PacifiCorp prior to Testing. Seller shall notify PacifiCorp at least five (5) Business Days prior to the commencement of the Start-up testing of the Facility.

2.9 PacifiCorp's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit PacifiCorp and its advisors and consultants to perform such examinations, inspections, and quality surveillance as, in PacifiCorp's reasonable judgment, are appropriate and advisable to determine that, each wind turbine has been properly commissioned and the Commercial Operation Date has been achieved. The Parties acknowledge and agree that PacifiCorp is under no obligation to perform any of these monitoring rights, and PacifiCorp acknowledges that Seller shall not be required to postpone or delay any test so long as Seller has provided prior notice to PacifiCorp of the test in accordance with Section 2.8. Any such monitoring shall occur subject to reasonable rules

developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and PacifiCorp shall have no liability to Seller for failing to advise it of associated activities or omissions, including any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp with respect to the Facility.

2.10 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement showing the Facility in its constructed state, reviewed and certified by a Licensed Professional Engineer. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when PacifiCorp has reviewed it.

2.11 PTCs. Seller shall bear all risks, financial and otherwise, associated with Seller's or the Facility's eligibility to receive PTCs. The Parties agree that the obligations of the Parties under this Agreement, including those obligations set forth in Section 5.1 regarding the purchase price for Net Output and the associated Renewable Energy Credits (if applicable), shall be effective regardless of whether the sale of energy from the Facility is eligible for, or receives, PTCs during the Term.

SECTION 3 REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp's Representations and Warranties. PacifiCorp makes the following representations and warranties to Seller, each of which is true and correct on the Effective Date:

3.1.1 Organization. PacifiCorp is duly organized and validly existing under the laws of the State of Oregon and duly qualified to do business in Utah.

3.1.2 Authority. PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 Corporate Actions. PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any security indenture, mortgage, or other material agreement binding on PacifiCorp, or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject;

3.1.5 Valid and Enforceable Agreement. Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller's Representations and Warranties. Seller makes the following representations and warranties to PacifiCorp, each of which is true and correct on the Effective Date:

3.2.1 Organization. Seller is a _____ duly organized and validly existing under the laws of _____.

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and (iii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, including as a foreign _____ in Utah.

3.2.3 Actions. Seller has taken all actions required by a _____ organized in _____ to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. Subject to Commission approval, the execution, delivery, performance and observance by Seller of its obligations under this Agreement does not and will not:

- (a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to Seller;
- (b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in **Exhibit 3.2** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;
- (c) result in a breach of or constitute a default under any any provision of any security issued by Seller or by any of Seller's members, or under any material agreement, instrument or undertaking to which either Seller or any of Seller's members is a party or by which the property of Seller or any of Seller's members is bound, which breach or default could reasonably be anticipated to have a material adverse effect on Seller or the Project.

3.2.5 Valid and Enforceable Agreement. Subject to Commission approval, this Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Capacity Rights. Seller warrants that it has not sold, assigned, or encumbered any interest it has in Capacity Rights associated with the Facility.

3.2.8 Renewable Energy Credits [Applies only if Seller is selling the Facility's RECs to PacifiCorp] Seller warrants that it has not sold, assigned, or encumbered any interest it has in Renewable Energy Credits associated with the Facility.

3.2.9 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to PacifiCorp in connection with this Agreement or the negotiation or execution of this Agreement on or after _____, _____ contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.10 Required Facility Documents. **Exhibit 3.2** contains a complete and accurate list of the Required Facility Documents. Pursuant to the Required Facility Documents listed in Part 1 of **Exhibit 3.2**, Seller holds all material rights and entitlements necessary to construct, own and operate the Project other than the rights and entitlements listed in Part 2 of **Exhibit 3.2**. Seller expects to receive in due course the rights and entitlements that are listed in Part 2 of **Exhibit 3.2**. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the site on which the Facility will be located and all Requirements of Law.

3.2.11 Seller's Interest. Seller owns all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

3.2.12 QF Status. The Facility is and shall for the term of this Agreement continue to be a "qualifying facility" ("**QF**") as that term is defined for a plant meeting the Facility's qualifying criteria in the version of 18 C.F.R. Part 292 in effect on the date of Seller's filing of self-certification of QF status with the Federal Energy Regulatory Commission ("**FERC**"). If based on a good faith belief that Seller's circumstances have changed, (i) PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion stating that the Facility is a QF and (ii) Seller will provide PacifiCorp with such reasonable information as PacifiCorp requests regarding the Facility.

3.2.13 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

3.2.14 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the Party obtains actual knowledge of the occurrence of each such event.

SECTION 4 DELIVERIES OF ENERGY AND RENEWABLE ENERGY CREDITS

4.5 Capacity Rights. Without any further or future consideration, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, associated with the PacifiCorp's right to purchase Net Output and Renewable Energy Credits (if applicable) under this Agreement. Seller further quit claims in favor of PacifiCorp any interest it may acquire in Capacity Rights during the Term. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to PacifiCorp.

4.6 Network Resource Designation. PacifiCorp shall designate the Facility as a Network Resource under Section 30.2 of the Tariff and take all action during the Term necessary on PacifiCorp's part to obtain Network Integration Transmission Service under the Tariff for the full amount of the Expected Facility Capacity Rating.

SECTION 5 PURCHASE PRICE; COSTS

5.1 Purchase Price. PacifiCorp shall pay Seller the prices stated below for all deliveries of Net Output, and associated Renewable Energy Credits (if applicable), up to the Maximum Delivery Rate.

5.1.1 Prior to Commercial Operation. For all Test Energy, PacifiCorp shall pay Seller seventy-five percent (75%) of the Contract Price specified for the first Contract Year.

5.1.2 Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp shall pay to Seller the On-Peak and Off-Peak 2006 Contract Price per MWh times the Annual Multiplier specified for a given Contract Year in **Exhibit 5.1.2**. All Seller deliveries to PacifiCorp made during the On-Peak Hours will receive the applicable On-Peak Hour Contract Price for that month times the appropriate Annual Multiplier. All Seller deliveries to PacifiCorp made during the Off-Peak Hours will receive the applicable Off-Peak Hour Contract Price for that month times the appropriate Annual Multiplier.

5.2 Delivery Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including but not limited to transmission costs and transmission line losses. Seller shall bear all costs associated with the modifications to Interconnection Facilities or Transmission Provider's System (including but not limited to system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's System and (b) any increase in generating capacity of the Facility. This Section 5.2 shall not affect Seller's rights to receive transmission credits or other payments from Transmission Provider required under the Generation Interconnection Agreement or otherwise under Requirements of Law, nor shall this Section 5.2 be construed to modify any allocation of Sales Taxes between Seller and PacifiCorp provided in Section 5.4.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself. Such station use, if any, shall be subtracted from the Facility's gross output to compute Net Output.

5.4 Taxes. Seller shall pay when due or reimburse PacifiCorp for all existing Sales Taxes on the sale of Net Output and Renewable Energy Credits (if applicable) to PacifiCorp under this Agreement, regardless of whether such taxes are payable by PacifiCorp or Seller under Requirements of Law. In no event, however, shall PacifiCorp be required to pay or otherwise be responsible for any tax measured by the income to Seller attributable to sales of Net Output or Renewable Energy Credits under this Agreement.

5.5 Costs of Ownership and Operation. Subject to Section 5.2 and Section 5.4, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions of this Agreement, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including but not limited to any such tax or charge (however characterized) to the extent payable by a purchaser of such energy or environmental attributes.

SECTION 6 OPERATION AND CONTROL

6.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Permits and Required Facility Documents; (iii) the Generation Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement and (vi) Prudent Electrical Practice. Seller acknowledges that it shall have no claims under this Agreement against PacifiCorp with respect to any requirements imposed by or damages caused by Transmission Provider, in connection with the Generation Interconnection Agreement or otherwise.

6.2 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery, including the costs of any System upgrades beyond the Point of Delivery necessary to interconnect the Facility with System and to allow the delivery of Output to the Point of Delivery. This Section 6.2 shall not affect Seller's rights to receive transmission credits or other payments from Transmission Provider required under the Generation Interconnection Agreement or otherwise under Requirements of Law.

6.3 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility with the System, and shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

6.4 Outages.

6.4.1 Planned Outages and Maintenance Outages. Seller shall provide PacifiCorp with a Maintenance Outage schedule for the Facility for the first Contract Year at least sixty (60) days prior to the Commercial Operation Date. Thereafter, Seller shall submit to PacifiCorp an annual Maintenance Outage schedule at least one month, but no more than three months, in advance of each Contract Year. Seller shall furnish PacifiCorp with reasonable advance notice of any Planned Outage and any change in the annual Maintenance Outage schedule. Seller shall use commercially reasonable efforts to coordinate scheduled maintenance (including Planned Outages or Maintenance Outages) with PacifiCorp and to accommodate PacifiCorp's reasonable requests to modify the times of scheduled maintenance. Seller shall not schedule any Outage requiring curtailment of more than _____percent (%) of the Facility Capacity Rating during the months of September, November, December, January, February, June, July or August without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.4.2 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility curtailing more than _____percent (%) of the Facility Capacity Rating. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than _____ percent (%) of the Facility Capacity Rating being unavailable, the oral report shall be confirmed in writing by notice given under Section 16. Seller shall take all commercially reasonable measures and exercise all commercially reasonable efforts to avoid Forced Outages and to minimize their duration.

6.4.3 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp, of any major limitations, restrictions, deratings or outages known to Seller at the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than _____ turbines or _____ percent (%) of Facility Capacity Rating.

6.5 Scheduling.

6.5.1 Cooperation and Standards. To the extent that scheduling is required now or in the future, (a) Seller will reasonably cooperate with PacifiCorp with respect to the scheduling of Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party shall comply with the applicable standards and criteria of FERC, NERC, and or any regional or subregional reliability council.

6.5.2 Schedule Coordination. If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's

performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Seller's performance or failure to perform under the Generation Interconnection Agreement.

6.6 Forecasting.

6.6.1 Long-Range Forecasts. For PacifiCorp's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide a forecast of each month's average-day energy production from the Facility, by hour, for the following calendar year. This forecast (a) shall include an expected range of uncertainty based on historical operating experience, and (b) shall be updated on a monthly basis by notice given to PacifiCorp at least six Business Days before the first Business Day of each month.

6.6.2 Day-Ahead Forecasts and Updates. By 0600 PPT on the Business Day immediately preceding the day on which energy from the Facility is to be delivered, Seller shall provide PacifiCorp with an hourly forecast of deliveries for each hour of the next day; *provided, however,* that a forecast provided on a day before any non-Business Day shall include forecasts for each day to and including the next Business Day. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of Net Output from the then current forecast; *provided, however,* that Seller shall not be required to update such forecasts more frequently than once per hour. To the extent commercially reasonable, the Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.6.2 in an efficient manner, including, but not limited to, electronic mail or other such media as determined by PacifiCorp (which, at PacifiCorp's discretion, may be in lieu of or in addition to notice from PacifiCorp under Section 16). Upon request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility.

6.6.3 Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only, and shall be substantially in the form reasonably requested by PacifiCorp. Seller shall prepare such forecasts and updates by utilizing a wind speed and direction prediction model or service that is (a) commercially available or proprietary to Seller or an Affiliate of Seller, and (b) comparable in accuracy to models or services commonly used in the wind energy industry and that reflect turbine availability, so long as such model or service is available at a commercially reasonable cost and is satisfactory to PacifiCorp in the exercise of its reasonable discretion. On or prior to May 1 during each Contract Year of the Term, Seller shall determine in good faith which such model or service to utilize after consultation with PacifiCorp. In the event such model or service is not available at a commercially reasonable cost, Seller shall internally develop a forecasting process and present such process to PacifiCorp for acceptance, which shall not be unreasonably withheld.

6.7 Increase in Facility Capacity. If Seller elects to increase, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including, but not limited to, replacement or modification of turbines or related infrastructure, PacifiCorp shall not be required to purchase any Net Output above the Maximum Delivery Rate.

6.8 New Project Expansion or Development. If Seller (or his Affiliate or successor) elects to build an expansion or additional wind project in the geographic vicinity of the Facility, Seller shall have no rights pursuant to this Agreement to require PacifiCorp to purchase (and

PacifiCorp shall have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility. Any such expansion or additional facility shall not adversely affect the ability of either Party to fulfill its obligations pursuant to this Agreement or the priority of deliveries of energy to PacifiCorp at the Point of Delivery.

6.9 Electronic Communications.

6.9.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to PacifiCorp on a real-time basis and will operate such equipment when requested by PacifiCorp to indicate:

- (a) instantaneous MW output at the Point of Delivery;
- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real time basis (including but not limited to meteorological data, wind speed data, wind direction data and output data). Seller shall provide such real time data to PacifiCorp on the same basis as the basis on which Seller receives the data (*e.g.*, if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals).

6.9.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between PacifiCorp and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.10 Further Cooperation.

6.10.1 Data Request. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any state or federal agency intervener or any other party achieving intervener status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to PacifiCorp soon enough so that PacifiCorp has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.2 Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents.

6.10.3 Notice of Default. Seller shall promptly notify PacifiCorp of receipt of written notice or actual knowledge of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement.

6.10.4 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, materially and adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to PacifiCorp of the same.

6.10.5 Additional Information. Seller shall provide to PacifiCorp such other information respecting the condition or operations of Seller and the Facility as PacifiCorp may, from time to time, reasonably request.

6.11 Performance Guaranty.

6.11.1 Guaranteed Availability. Seller guarantees that the annual Availability of the Facility (the “**Guaranteed Availability**”) for (i) the first Contract Year shall be no less than 0.70, and (ii) for the second Contract Year shall be no less than 0.80. Beginning with the third Contract Year and for each Contract Year thereafter, the Guaranteed Availability for each Contract Year shall be 0.875, with such annual Availability to be calculated for purposes of this Section 6.11.1 for each Contract Year.

6.11.2 Liquidated Damages for Output Shortfall. If the Availability in any given Contract Year falls below the Guaranteed Availability for that Contract Year, the resulting shortfall shall be expressed in MWh as the “**Output Shortfall.**” The Output Shortfall shall be calculated in accordance with the following formula:

$$\text{Output Shortfall} = (\text{Guaranteed Availability} - \text{Availability}) \times \text{_____ MWh}$$

If an Output Shortfall occurs in any given Contract Year, Seller shall pay PacifiCorp liquidated damages equal to the product of (i) the Output Shortfall for that Contract Year, multiplied by (ii) PacifiCorp’s Cost to Cover for that Contract Year; *provided, however,* that if the Commercial Operation Date occurs in the first or last Contract Year, the Output Shortfall shall be prorated on the basis of the number of days in that Contract Year. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility’s failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages, and (c) the required payment by Seller of such liquidated damages shall be PacifiCorp’s sole remedy for such deficiency in Net Output. An Example calculation of liquidated damages for an Output Shortfall is included in **Exhibit 6.11.2.**

6.11.3 Annual Invoicing. Beginning on the first January 31 occurring after the Commercial Operation Date, and continuing on January 31 of each Contract Year thereafter, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp’s computation of Net Output and Output Shortfall, if any, for the prior Contract Year and any amount due PacifiCorp for liquidated damages pursuant to 6.11.2 in respect thereof. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing, the amount set forth as due in such invoice.

6.12 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests associated with the Facility,

(c) in connection with the operation and maintenance of the Interconnection Facilities (d) for purposes of implementing Section 9.5; and (e) for other reasonable purposes at the reasonable request of PacifiCorp.

6.13 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes. Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install equipment as PacifiCorp may request including, but not limited to, video and or web-based imaging equipment. PacifiCorp shall retain full discretion on how images from or of the Facility are presented by PacifiCorp including, but not limited to, associating images of the Facility with a PacifiCorp designated corporate logo but not the corporate logo of Seller.

SECTION 7 SECURITY

7.1 Project Development Security. Project Development Security is not required if Seller meets or exceeds the Credit Requirement.

7.1.1 Form and Amount of Project Development Security. If Seller does not satisfy the Credit Requirement, then on or before the date specified in Section 2.3(a), Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from a party that satisfies the Credit Requirement, in a form acceptable to PacifiCorp in its reasonable discretion, or (b) a Letter of Credit in favor of PacifiCorp, equal in each case to [180 times the Delay Damages, but not less than _____] (the "**Project Development Security**").

7.1.2 Use of Project Development Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 2.5, PacifiCorp shall be entitled to and shall draw upon the Project Development Security an amount equal to the Delay Damages until such time as the Project Development Security is exhausted. PacifiCorp shall also be entitled to draw upon the Project Development Security for other damages if this Agreement is terminated under Section 10 because of Seller's default.

7.1.3 Termination of Project Development Security. Seller shall no longer be required to maintain the Project Development Security (or the remaining balance thereof) after the Commercial Operation Date, if at such time no damages are owed to PacifiCorp under this Agreement. However, as of the Commercial Operation Date, Seller may elect to apply the Project Development Security toward the Default Security required by Section 7.2, including by the automatic continuation (as opposed to the replacement) thereof.

7.2 Default Security.

7.2.1 Duty to Post Default Security. Beginning on the Commercial Operation Date, at any time during the Term when Seller does not satisfy the Credit Requirement, Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from an entity that satisfies the Credit Requirement, in a form acceptable to PacifiCorp in its reasonable discretion, or (b) a Letter of Credit (the "**Default Security**"), as provided in this Section 7.2. In the event Seller posts Default Security and thereafter satisfies the Credit Requirement, as demonstrated to the reasonable satisfaction of PacifiCorp, then Seller shall be entitled to a release by PacifiCorp of the Default Security for so long as Seller continues to satisfy the Credit Requirement.

7.2.2 Amount of Default Security. The amount of the Default Security required by Section 7.2.1 shall be sufficient to provide replacement power and corresponding Renewable Energy Credits under this Agreement for the next eighteen (18) calendar months. This amount shall be deemed equal to the positive difference between (a) the forward power prices at Palo Verde (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source) for the next eighteen (18) calendar months (or, if the remaining Term is less than eighteen (18) calendar months), then for the remainder of the Term) plus \$5 per MWh, minus (b) the Contract Price, multiplied by the MWhs that would be delivered for such period under this Agreement (assuming Net Output based on the total of the estimated monthly output set forth on **Exhibit B** for that period); *provided, however*, that the Default Security shall be no less than _____ and shall not exceed _____. An Example illustrating the calculation of this amount under certain stated conditions is included in **Exhibit 7.2.2**.

7.2.3 Adjustments to Default Security. On or before January 1 of each year during the Term, Seller shall (a) adjust the Default Security by increasing or decreasing the Default Security to correspond to the amount reasonably determined by PacifiCorp under Section 7.2.2 and (b) deliver such adjusted Default Security to PacifiCorp. PacifiCorp shall notify Seller of the determination of such amount on or before the preceding December 1.

7.2.4 Use of Default Security to Pay Amounts Due to PacifiCorp. If Seller fails to pay any amount due to PacifiCorp within the time provided for payment under this Agreement, PacifiCorp shall be entitled to and shall draw upon the Default Security, from time to time, an amount equal to the amount unpaid. PacifiCorp shall also be entitled to draw upon the Default Security for damages arising if this Agreement is terminated under Section 10 because of Seller's default.

7.2.5 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PacifiCorp draws on the Project Development Security or the Default Security, Seller shall, within ten (10) Business Days, replenish or reinstate the drawn security to the full amount then required by this Section 7. In the event that any entity providing Default Security in the form of a guaranty no longer satisfies the Credit Requirement, Seller shall cause such guaranty to be replaced by alternate Default Security meeting the requirements of Section 7.2 within ten (10) Business Days after the earlier of (i) Seller's receipt of notice from any source that the guarantor no longer satisfies the Credit Requirement or (ii) Seller's receipt of written notice from PacifiCorp requesting the posting of alternate Default Security.

7.2.6 [In the event PacifiCorp reasonably determines that the Security provisions, above, are inadequate, PacifiCorp reserves the right to require other methods of security including, but not limited to, step-in rights and or a subordinated lien].

7.3 Levelized Contract Price Security. [This Section to be negotiated on a case-by-case basis where Seller opts to receive levelized pricing. This Section is not applicable if Seller elects to receive non-levelized pricing.]

7.4 Annual and Quarterly Financial Statements. Upon request by PacifiCorp, and in any event no less frequently than annually and no more frequently than quarterly, Seller shall

provide to PacifiCorp a certificate certifying that Seller's financial statements have been prepared in accordance with generally accepted accounting principles.

SECTION 8 METERING

8.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced pursuant to the Generation Interconnection Agreement; *provided, however*, that PacifiCorp, acting in its merchant function capacity under this Agreement, shall not be obligated to bear any expense as a result of such metering equipment. Seller shall have the right to provide and install such equipment as is necessary for Seller to receive pulses from the metering equipment at the Point of Delivery, in order to perform its own verification of metered Output.

8.2 Metering. Metering shall be performed at the location and in the manner specified in the Generation Interconnection Agreement and as set forth in **Exhibit 8.2**. All quantities of energy purchased under this Agreement shall reflect the net amount of energy flowing into the System at the Point of Delivery (less any station service supplied by other than output from the Facility).

8.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests discloses an error exceeding one-half of one percent (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment.

8.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including PacifiCorp's costs) relating to all metering equipment installed to accommodate Seller's Facility.

8.5 Meter Data. Upon written request by PacifiCorp, Seller shall promptly request the Transmission Provider in writing to provide any and all meter or other data associated with the Facility and Net Output directly to PacifiCorp. Notwithstanding any other provision of this Agreement, PacifiCorp shall have the right to provide such meter data to any RTO or generation tracking service including, but not limited to, the Western Renewable Energy Generation Information System.

SECTION 9 BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each calendar month, Seller shall deliver to PacifiCorp a proper invoice showing Seller's computation

of Net Output delivered to PacifiCorp during such month. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the thirtieth (30th) day following the end of each month, payment for Seller's deliveries of Net Output and associated Renewable Energy Credits to PacifiCorp.

9.2 Offsets. PacifiCorp may offset any payment due under this Agreement against amounts owing from Seller to PacifiCorp pursuant to this Agreement or any other agreement between the Parties.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; *provided, however*, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Agreement, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days after such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of energy measured and delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due will be promptly paid and shall bear interest calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10 DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults under this Agreement:

10.1.1 Defaults by Either Party.

(a) A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes an assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of

creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(d) A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; *provided, however*, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

10.1.2 Defaults by Seller.

(a) Seller's failure to post, increase, maintain or replenish the Project Development Security or Default Security by the applicable dates set forth in Sections 2.3, 7.1, or 7.2.

(b) Seller's failure to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

(c) Seller's sale of energy or Renewable Energy Credits (if applicable) from the Facility to a Party other than PacifiCorp in breach of this Agreement if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

(d) After the Commercial Operation Date, Seller's failure to maintain material permits, land rights, or other material rights (other than interconnection rights, which are covered by Section 10.1.2(e) below) necessary to operate the Facility (after the expiration of applicable notice, cure and waiver periods), which failure could reasonably be expected to have a material adverse effect on PacifiCorp's rights and obligations under this Agreement, taken as a whole; provided, that if (i) any such failure has not in fact resulted in any such material adverse effect, (ii) Seller has provided assurances reasonably acceptable to PacifiCorp that Seller will hold PacifiCorp harmless from any claims or liabilities that may arise as a result of any such failure, (iii) Seller demonstrates to PacifiCorp's reasonable satisfaction that the potential adverse effect of any such failure is capable of being remedied by Seller within a reasonable period of time, (iv) Seller is diligently pursuing such actions in good faith as may be necessary to remedy such potential adverse effect, and (v) Seller's pursuit of such actions could not reasonably be expected to subject PacifiCorp to any increased exposure of liability or adverse impact on PacifiCorp's rights and obligations under this Agreement, then in such case, Seller shall have a reasonable period of time to remedy such potential adverse effect on PacifiCorp's rights and obligations under this Agreement, and during such period, Seller shall not be deemed to be in default under this Agreement.

(e) Seller's failure to cure any default under the Generation Interconnection Agreement, within the time required under such agreement (after the expiration of applicable notice, cure and waiver periods), which default results in (i) the termination of the Generation Interconnection Agreement by the Transmission Provider or (ii) the exercise of other remedies for default under such agreement, which exercise could reasonably be expected to have a material adverse effect on PacifiCorp's rights and obligations under this Agreement, taken as a whole.

10.2 Remedies for Failure to Deliver/Receive.

10.2.1 Remedy for Seller's Failure to Deliver. If (a) Seller fails to deliver all or part of the energy (and associated Renewable Energy Credits) required to be delivered as Net Output pursuant to this Agreement, (b) such failure is not excused under the terms of this Agreement or by PacifiCorp's failure to perform, and (c) such failure is not attributable solely to deficiencies in actual output from the Facility (which deficiencies are governed exclusively by the provision of Section 6.11 and not this Section 10.2.1), then Seller shall pay PacifiCorp within five (5) Business Days after invoice receipt, an amount for such deficiency in Net Output equal to (i) PacifiCorp's Cost to Cover multiplied by the Net Output not delivered, (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery, and (iii) any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. In the event PacifiCorp draws on the Default Security pursuant to Section 7.2.4 for any such delivery failure, the delivery failure shall be deemed cured to the extent of the amounts drawn down by PacifiCorp.

10.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the energy (and associated Renewable Energy Credits) required to be purchased and accepted as Net Output pursuant to this Agreement and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount for such deficiency equal to (i) Seller's Cost to Cover multiplied by the amount of energy that would have been generated by the Facility and delivered by Seller as Net Output, based on the average number of MWh's expected to have been generated according to Seller's latest available forecasts under Section 6.6.2, for the period not purchased and received by PacifiCorp, and (ii) the costs reasonably incurred by Seller (including transmission charges, if any) in selling such energy and/or Renewable Energy Credits. In addition, PacifiCorp shall be obligated to pay Seller an amount (the "**PTC Amount**") equal to the sum of (a) the value of the PTCs, if applicable, associated the amount of such energy not purchased by PacifiCorp (and not excused under the terms of this Agreement or by Seller's failure to perform), plus (b) an amount in respect of any taxes on the PTC Amount required to be paid by Seller to any taxation authority, to the extent that Seller is not eligible to receive the PTC value associated with such Net Output as a result of Seller's inability to sell such Net Output to a substitute buyer and provided that Seller has used all commercially reasonable efforts to mitigate its damages (as provided in Section 10.6) to avoid the loss of PTC eligibility for such amounts. The invoice for

amounts payable by PacifiCorp pursuant to this Section 10.2.2 shall include a written statement explaining in reasonable detail the calculation of all such amounts.

10.3 Termination and Remedies. If a default occurs under this Agreement (after the expiration of applicable notice and cure periods), the non-defaulting Party may in its sole discretion terminate this Agreement by delivering notice of termination to the defaulting Party; *provided, however,* that termination under Section 10.1.1(b) shall occur automatically and without notice, unless the Parties otherwise agree in writing. Upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. The rights contemplated by this Section 10 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination of this Agreement:

(a) Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 10.3(a) shall be paid within thirty (30) days after the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.4 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not thereafter require or seek to require PacifiCorp to purchase energy from the Facility under PURPA (or any other Requirements of Law) for any periods that would have been within the Term had this Agreement remained in effect. Seller hereby waives its rights to require PacifiCorp to do so. This Section 10.4 shall survive the termination of this Agreement.

10.5 Termination Damages. Except as provided in this Section 10.5 with respect to any termination of this Agreement by PacifiCorp as a result of a default by Seller under Section 10.1.2(b), if this Agreement is terminated as a result of a default by one of the Parties, termination damages shall be determined. The Parties agree that the non-defaulting Party shall calculate the amount of termination damages within a reasonable period after termination of the Agreement. Amounts owed pursuant to this Section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default. PacifiCorp's remedies in the event of any default by Seller under Section 10.1.2(b) are limited to (i) collection from Seller of Delay Damages, (ii) enforcement of its remedies under the Project Development Security and, if in force at the time, the Default Security, (iii) exercise of its step in rights [if provided herein], (iv) enforcement of its liens [if applicable], and (v) termination of this Agreement. PacifiCorp's rights with respect to a default by Seller under Section 10.1.2(b) are cumulative, such that the exercise of one or more rights shall not constitute a waiver of any other rights.

10.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement

10.7 Default Security. If this Agreement is terminated because of Seller's default, PacifiCorp may proceed against any Default Security provided pursuant to Section 7.2 to reduce any amounts that Seller owes PacifiCorp arising from such default.

10.8 Lender Protective Provisions. PacifiCorp agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent attached hereto as **Exhibit 10.8** for the benefit of Seller's Lenders, and to reasonably cooperate with the reasonable requests of such Lenders in conjunction with any financing of the Facility; *provided, however*, that in no event shall PacifiCorp be required to agree to any modification of this Agreement; *and provided further, however*, that if and to the extent such Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from PacifiCorp with regard to this Agreement, then Seller shall reimburse PacifiCorp for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to PacifiCorp at the closing of the financing as a condition to the effectiveness of PacifiCorp's consents and opinions.

SECTION 11 SUCCESSORS AND ASSIGNS

11.1 Restriction on Assignments. Except as expressly provided in this Section 11, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

11.2 Permitted Assignments. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the name(s) of the assignee(s)), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller); *provided, however*, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest in this Agreement to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. PacifiCorp may assign this Agreement without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity. In each and every assignment of this Agreement, the assignee shall (x) agree in writing to be bound by the terms and conditions of this Agreement, (y) possess the same or similar experience, and possess the same or better creditworthiness, as the assignor; and (z) the assignor shall remain liable for its obligations hereunder. The party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

SECTION 12
INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy and Renewable Energy Credits delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy and Renewable Energy Credits delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 **CONSEQUENTIAL DAMAGES.** EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THAT THIS AGREEMENT EXPRESSLY PROVIDES FOR PAYMENT TO COMPENSATE SELLER FOR LOST PTCs, INCLUDING TAXES ON ANY SUCH PAYMENT, SUCH COMPENSATION SHALL NOT BE DEEMED TO BE SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

SECTION 13
INSURANCE

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than “A-” by the A.M. Best Company (or with a company or companies listed on **Exhibit 13.1**) the insurance coverage specified on **Exhibit 13.1** during the periods specified on **Exhibit 13.1**.

13.2 Certificates and Certified Copies of Policies. Seller shall provide PacifiCorp with certificates of insurance evidencing the policies contemplated by **Exhibit 13.1** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit 13.1**), and with a certified “true and correct” copy of the insurance policies, provisions and endorsements within sixty (60) days after the date by which such policies are required to be maintained (as set forth in **Exhibit 13.1**). If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 14
FORCE MAJEURE

14.1 Definition of Force Majeure. As used in this Agreement, “**Force Majeure**”, or “an event of Force Majeure” means any cause beyond the reasonable control of a Party that, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, terrorism, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction by or on behalf of a public authority which is in each case (i) beyond the reasonable control of such a Party, (ii) by the exercise of reasonable foresight, such Party could not reasonably have been expected to avoid, and (iii) by the exercise of due diligence, such Party shall be unable to overcome, except that nothing contained herein shall effect the obligation to pay amounts incurred prior to the occurrence of the event of Force Majeure. Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller’s ability to sell, or PacifiCorp’s ability to purchase, energy or Renewable Energy Credits (if applicable) at a more advantageous price than is provided under this Agreement; (ii) the availability of wind to operate the Facility; (iii) economic hardship, including lack of money; or (iv) any breakdown or malfunction of Facility wind turbines or other equipment that is not directly caused by any acts of God, fire, explosion, civil disturbance or sabotage.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

14.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

14.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

14.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision of this Agreement, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the cause of the Force Majeure with all reasonable dispatch), then the Party not affected by the event of Force Majeure, with respect to its obligations under this Agreement, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to period following the effective date of such termination; *provided, however,* that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

SECTION 15 CONTRACT INTERPRETATION AND ENFORCEMENT

15.1 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

15.2 Partial Invalidity. The Parties do not intend to violate any laws governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

15.3 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

15.4 Choice of Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Utah, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

15.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement, but this Agreement is not contingent upon PacifiCorp's receipt of rate recovery or approvals of any Governmental Authority. Seller shall submit to PacifiCorp before the Commercial Operation Date and maintain thereafter copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

15.6 Several Obligations

Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

SECTION 16
NOTICES

All notices, requests, statements or payments shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

To Seller: <<Seller's Name & Address>>

Attn: _____

To PacifiCorp: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with a copy to:

With a copy to:

SECTION 17
DISPUTES

17.1 Notice of Dispute. If the Parties are unable to resolve a dispute involving this Agreement, either Party shall, prior to seeking administrative or judicial relief, send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) Days after the meeting notice is received by the Party to whom it is directed (or such longer period as the Parties may agree), then either Party may pursue any remedies available at law or equity.

17.2 Settlement Discussions. The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

17.3 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

<<SELLER'S NAME HERE>>

By: _____

Name: _____

Title: _____

PACIFICORP

By: _____

Name: _____

Title:

EXHIBIT A. DESCRIPTION OF SELLER'S FACILITY

[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

A. Manufacturer's Nameplate Data (provide for each generating unit):

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: ____ A; Rotor: ____ A

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

B. Seller's Estimate of Facility Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output: _____ kW "Maximum Delivery Rate"

Maximum kVA Output: _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:

Facility Capacity Rating: _____ kW at _____

Identify the maximum output of the generator(s) and describe any differences between that output and the Facility Capacity Rating:

Station service requirements, and other loads served by the Facility, if any, are described as follows:

_____.

C: Location of the Facility: The Facility is to be constructed in the vicinity of _____ in _____ County, _____. The location is more particularly described as follows:

[legal description of parcel]

EXHIBIT B. EXPECTED MONTHLY FACILITY NET OUTPUT

EXHIBIT C. SAMPLE REPORT FROM FIRM MARKET PRICE INDEX

EXHIBIT D. NERC EVENT TYPES

The outages in the following table are arranged in order of priority—from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Outages
U1 ^γ	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 ^γ	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 ^γ	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF ^γ	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

^γ These event types are all contributors to the FOR & EFOR calculations in the reports section.

The deratings in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Deratings - Restrictions
D1 ^φ	<u>Unplanned (Forced) Derating—Immediate</u> – A derating that requires an immediate reduction in capacity.
D2 ^φ	<u>Unplanned (Forced) Derating—Delayed</u> – A derating that does not require an immediate reduction in capacity but requires a reduction in capacity within six (6) hours.
D3 ^φ	<u>Unplanned (Forced) Derating—Postponed</u> – A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.
D4	<u>Maintenance Derating</u> – A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.
PD	<u>Planned Derating</u> – A derating that is scheduled well in advance and is of a predetermined duration. (Periodic derating for tests, such as weekly turbine valve tests, should not be reported as PD's. Report deratings for these types as Maintenance Deratings (D4).

The other reportable events listed in the table below are in no particular order. Although these events are reportable, they have no reducing impact on the Equivalent Availability Factor.

Event Type	Description of Other Reportable Events
RS	<u>Reserve Shutdown</u> – An event that exists whenever a unit is available for load but is not synchronized due to lack of demand. This type of event is sometimes referred to as an economy outage or economy shutdown. If a unit is shut down due to any equipment-related problems, whether or not the unit was needed by the system, report an Unplanned (Forced) Outage, Maintenance Outage, or Planned Outage, <u>not</u> a Reserve Shutdown.
NC	<u>Noncurtailing Event</u> – An event that exists whenever equipment or major components are removed for maintenance, testing, or other purposes that does not result in a unit outage or derating.
	<u>Noncurtailing Event</u> – An event that exists whenever a unit is being intentionally dispatched at a level less than its full capacity, when the designated capacity would otherwise be at full capacity, because of lack of demand on the system.

^φ These event types are all contributors to the EFOR calculations in the reports section.

EXHIBIT E. EXAMPLE CALCULATION OF PACIFICORP'S COST TO COVER

Note—Determining Liquidated Damages for Output Shortfall would necessitate a full year of Cost to Cover calculations analogous to the above table.

EXHIBIT F. START-UP TESTING

EXHIBIT 3.2--REQUIRED FACILITY DOCUMENTS

EXHIBIT 4.4—FORM BILL OF SALE FOR RECS

EXHIBIT 5.1.2 CONTRACT PRICE

NOTE: THE PRICING BELOW IS ONLY APPLICABLE IF PACIFICORP OWNS THE RENEWABLE ENERGY CREDITS

Month	2006 Contract Price	
	On-Peak Hours	Off-Peak Hours
January	\$62.61	\$48.27
February	\$60.07	\$47.09
March	\$56.09	\$46.00
April	\$51.05	\$43.37
May	\$55.46	\$40.69
June	\$64.77	\$42.26
July	\$77.49	\$48.91
August	\$79.59	\$49.19
September	\$67.80	\$45.77
October	\$57.69	\$44.55
November	\$56.33	\$46.42
December	\$59.13	\$49.01

Contract Year	Annual Multiplier
2006	1.000
2007	1.009
2008	1.018
2009	1.028
2010	1.038
2011	1.048
2012	1.058
2013	1.069
2014	1.080
2015	1.092
2016	1.104
2017	1.116
2018	1.128
2019	1.141
2020	1.154
2021	1.168
2022	1.182
2023	1.197
2024	1.212
2025	1.227

EXHIBIT 6.11.2—EXAMPLE CALCULATION OF LIQUIDATED DAMAGES FOR OUTPUT SHORTFALL

Damages would be calculated as the product of the Output Shortfall and PacifiCorp's Cost to Cover for each year in which an Output Shortfall occurs.

EXHIBIT 7.2.2—EXAMPLE CALCULATION OF DEFAULT SECURITY

EXHIBIT 8.2 POINT OF DELIVERY/INTERCONNECTION FACILITIES

EXHIBIT 10.8 FORM OF LENDER CONSENT

EXHIBIT 13.1
REQUIRED INSURANCE