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POWER PURCHASE AGREEMENT

(RENEWABLE ENERGY)

BETWEEN

[_____]

**AND
PACIFICORP**

[Project]

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**POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY) (this “**Agreement**”), entered into this ___ day of ___, 200_, is between _____, a _____ (the “**Seller**”) and PacifiCorp, an Oregon corporation acting in its merchant function capacity (“**PacifiCorp**”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**.”

WHEREAS, Seller intends to construct, own, operate and maintain a wind-powered generation facility for the generation of electric energy located in _____ with an expected nameplate capacity rating of ____ (the “**Facility**”).

WHEREAS, Seller expects that the Facility will deliver to PacifiCorp [____] megawatt-hours (MWh) per calendar year of energy and associated green tags. Seller estimates that the energy and green tags will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit A**. Seller acknowledges that PacifiCorp will include this amount of energy and associated green tags in PacifiCorp’s resource planning.

WHEREAS, Seller desires to sell, and PacifiCorp desires to purchase, the energy expected to be delivered by the Facility and all associated green tags in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for 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, initially capitalized terms used herein shall have the following meanings:

“**AAA**” is defined in Section 24.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to PacifiCorp, Affiliate shall only include MidAmerican Energy Holdings Company and its direct, wholly owned subsidiaries.

“**As-built Supplement**” is a supplement to be added to **Exhibit 6.1** that describes the Facility as actually built, pursuant to Section 6.1 and includes an American Land Title Association survey of the Premises.

“**Availability**” means, for any Contract Year, the ratio, expressed as a percentage, 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 the number of Wind Turbines that comprise the Nameplate Capacity Rating as of Final Completion multiplied by the number of minutes in such Contract Year. A Wind Turbine shall be deemed not available to operate during minutes in which it is (a) in an emergency, stop, service mode or pause state; (b) in “run” status and faulted; (c) included in a Planned Outage, Maintenance Outage or Forced Outage; or (d) otherwise not operational or capable of delivering energy to the Point of Delivery; unless if unavailable due solely to (i) Force Majeure; (ii) a default by PacifiCorp; (iii) a curtailment in accordance with Section 4.4.1(b) or (c) or Section 4.4.2.

“Business Day” means any day on which banks in Portland, Oregon are not authorized or required 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 Green Tags.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same 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. Capacity Rights are measured in MW and do not include PTCs or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Commercial Operation” means that not less than the Required Percentage of the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller’s responsibility to receive or obtain, and which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

(1) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer (a) stating the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation, of at least the Required Percentage of the Expected Nameplate Capacity Rating, and (b) stating that the Facility is able to generate electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof;

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

(3) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer 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 in conformance with the Generation Interconnection

Agreement and able to deliver energy consistent with the terms of this Agreement, [(d) the Facility is fully integrated and synchronized with the System].

(4) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, and, with respect to legal matters, an opinion from counsel acceptable to PacifiCorp in the reasonable exercise of its discretion, stating that Seller has obtained or entered into all Required Facility Documents and (ii) copies of any or all such requested Required Facility Documents; *provided, however,* that Seller may redact or omit confidential or commercial terms from non-public Required Facility Documents.

Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates described above. PacifiCorp shall have ten days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten 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 day period that PacifiCorp believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties, and Commercial Operation shall 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 Nameplate Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall provide PacifiCorp with a list of all items to be completed in order to achieve Final Completion ("Final Completion Punch List").

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility.

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means 200 basis points per annum plus 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 as its "prime rate". 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 is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh for Net Output, Green Tags and Capacity Rights 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.

“**Covered Facility**” is defined in Section 11.9.

“**Covered Facility Right of First Offer**” is defined in Section 11.9.

“**Credit Matrix**” means the credit matrix attached hereto as Exhibit 14.

“**Credit Rating**” means, as of any date, a senior, unsecured long-term debt rating (or corporate rating if a such debt rating is not available) of (x) BBB- or greater from S&P, or (y) Baa3 or greater from Moody’s, provided if (x) or (y) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

“**Credit Support**” means the amount of Credit Support Security, if any, and subject to Section 8.1, that is required pursuant to the Credit Matrix.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 8.1.

“**Curtailment Energy**” is defined in Section 4.4.2.

“**Deficit Damages**” means a one time payment equal to (x) the difference between (a) Expected Nameplate Capacity Rating and (b) the Nameplate Capacity Rating of the Facility on the 120th day after the Guaranteed Commercial Operation Date, stated in MWs, multiplied by (y) _____ dollars (\$_____) per MW of difference. Seller’s total liability for Deficit Damages shall not exceed _____ dollars (\$_____).

“**Delay Damages**” are equal to (a) the Expected Energy, expressed in MWhs per year, divided by 365, multiplied by (b) PacifiCorp’s Cost to Cover. An Example illustrating the calculation of Delay Damages under certain stated assumptions is set forth in **Exhibit C**.

“**Effective Date**” is defined in Section 2.1.

“**Electric System Authority**” means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.

“**Environmental Attributes**” means any and all claims, 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 PTCs or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the

Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

“EWG” means an “exempt wholesale generator,” as defined under PUHCA.

“Example” means an example of certain calculations to be made hereunder. 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.

“Expansion Energy” is defined in Section 20.4.

“Expected Energy” means ___ MWh of Net Output per year measured at the Point of Delivery, which is the Seller’s best estimate of the projected long-term average annual Net Output production based upon average wind conditions from the Facility, delivery to the Point of Delivery and the Expected Nameplate Capacity Rating. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit A**. If at Final Completion the Facility’s Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Expected Energy shall be reduced by ___ MWh per year for each full MW of Nameplate Capacity Rating below the Expected Nameplate Capacity Rating. Seller acknowledges that PacifiCorp will include Expected Energy in PacifiCorp’s resource planning. PacifiCorp acknowledges that wind is a variable resource and that the Facility’s actual annual output of Net Output and Green Tags in the ordinary course in any given year will be subject to variation caused by differences in the actual wind resource at the Facility from year to year.

“Expected Nameplate Capacity Rating” means __ MW, the expected maximum instantaneous generation capacity of the Facility.

“Facility” is defined in the Recitals and is more fully described in attached **Exhibit 6.1**.

“Facility Financing Date” means the closing date for the first transaction between Seller and a Lender relating to financing of the Facility.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and interconnected, integrated, and synchronized with the Transmission Provider’s System, as evidenced (to the reasonable satisfaction of PacifiCorp) by the completion of all items set forth on the Final Completion Punch List, modified if necessary to reflect the Nameplate Capacity Rating, and that the completed Facility has been fully interconnected, fully integrated, and synchronized with the Transmission Provider’s System.

“Final Completion Punch List” is defined in the definition of “Commercial Operation.”

“Firm Market Price Index” means (i) 93% of the IntercontinentalExchange (ICE) [dependent upon resource location] Index, for On-Peak Hours, and (ii) 93% of the IntercontinentalExchange (ICE) [dependent upon resource location] Index for Off-Peak Hours.

For reference, a sample day's report from each of these indexes is attached as **Exhibit F**. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose hereunder, 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 for the applicable periods.

"Force Majeure" 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**, and specifically excludes any Maintenance Outage or Planned Outage.

"Generation Interconnection Agreement" means the agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

"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 or body 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.

"Green Tags" means (1) the Environmental Attributes associated with all Output, together with (2) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility.

"Green Tags Price Component" means five dollars (\$5) per MWh; provided that if after the Effective Date a liquid market for Green Tags emerges in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder, PacifiCorp may in its discretion replace such \$5 per MWh with such designated market price reports for Green Tags, effective as of the time specified by PacifiCorp.

"Green Tag Reporting Rights" 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 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 or renewable portfolio standard.

"Guaranteed Availability" is defined in Section 6.12.1.

“Guaranteed Commercial Operation Date” means that date which is 90 days after the Scheduled Commercial Operation Date.

“Interconnection Facilities” means all the facilities installed, or to be 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.

“Interconnection Provider” means _____.

“Lender” means any entity lending money or extending credit (including any financing lease, monetization of tax benefits, backleverage financing or credit derivative arrangement) 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 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 8.6**.

“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:

- (1) issued by a Qualifying Institution;
- (2) by its terms, 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 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 letters of credit are not increased, replaced or replenished as and when provided in Section 8; and
- (6) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement.
- (7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and acceptable to PacifiCorp in its reasonable judgment who (1) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (2) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (3) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of PacifiCorp, services previously or currently being rendered to Seller or its members or Affiliates, and (4) 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. The engineers and engineering firms listed on **Exhibit G** are acceptable to PacifiCorp as “Licensed Professional Engineers” if they meet the requirements above.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached **Exhibit D**, and includes any outage involving 10% of the Facility's Wind Turbines that is not a Forced Outage or a Planned Outage.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

“Mediation Notice” is defined in Section 24.2(a).

“Mediation Procedures” is defined in Section 24.2.

“Moody’s” means Moody’s Investor Services, Inc.

“MW” means megawatt.

“MWh” means megawatt hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW, when operated in compliance with the Generation Interconnection Agreement and consistent with the Wind Turbine manufacturer’s recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent notice from Seller to PacifiCorp as required for Final Completion. The Nameplate Capacity Rating of the Facility shall not exceed __ MW.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy produced by the Facility and delivered at the Point of Delivery.

“**Network Resource**” is defined in the Tariff.

“**Network Service Provider**” means PacifiCorp acting in its regulated transmission function, as a provider of network service to PacifiCorp under the Tariff.

“**Off-Peak Hours**” means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, Pacific Prevailing Time, Monday through Saturday and hours ending 01:00:00 through 24:00:00, Pacific Prevailing Time, on Sundays and NERC designated holidays.

“**On-Peak Hours**” means all hours ending 07:00:00 through 22:00:00 Pacific Prevailing Time, Monday through Saturday, excluding NERC designated holidays.

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

“**Output Shortfall**” is defined in Section 6.12.2.

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

“**PacifiCorp**” is defined in the Recitals, and explicitly excludes PacifiCorp Transmission.

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

“**PacifiCorp’s Cost to Cover**” means the positive difference, if any, between (1) the sum of (i) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, plus (ii) the Green Tags Price Component, minus (2) the Contract Price specified in Exhibit 5.1 in effect on such days, stated as an amount per MWh. If the difference between (1) minus (2) referenced above is zero or negative, then PacifiCorp’s Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 6.12.2 or Section 11.2.1. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (2). An Example illustrating the calculation of PacifiCorp’s Cost to Cover under certain stated assumptions is set forth in **Exhibit E**.

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

“**Planned Outage**” means NERC Event Type PO, as set forth in attached **Exhibit D**, and specifically excludes any Maintenance Outage or Forced Outage.

“**Pledge Interest**” is defined in Section 8.2.2.

“**Point of Delivery**” means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in

Exhibit 9.2.

“Premises” means the real property on which the Facility is or will be located, as more fully described on Exhibit 6.1.

“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 hereof 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” is defined in Section 11.2.2.

“PUHCA” means the Public Utility Holding Company Act of 2005.

“PURPA” means the Public Utility Regulatory Policies Act of 1978.

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

“Qualifying Institution” means the United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, or a foreign bank, with a net worth of at least \$1,000,000,000 and a credit rating on its long-term senior unsecured debt of at least “A” by S&P or “A2” by Moody’s.

“Reporting Month” is defined in Section 6.10.1.

“Required Facility Documents” means all Permits, authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Facility, including those set forth in **Exhibit 3.2.6**. Nothing set forth in **Exhibit 3.2.6** limits the obligations of Seller to obtain the Permits set forth in Exhibit H or otherwise required hereunder.

“Required Percentage” means 90%.

“Requirements of Law” means any applicable 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 entity 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.).

“**Scheduled Commercial Operation Date**” means _____.

“**Security Interests**” is defined in Section 8.2.1.

“**Seller**” is defined in the Recitals.

“**Seller Indemnitees**” is defined in Section 12.1.2.

“**Seller’s Cost to Cover**” means the positive difference, if any, between (1) the Contract Price per MWh specified in **Exhibit 5.1**, and (2) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output and Green Tags not purchased by PacifiCorp as required hereunder. If the difference between (1) minus (2) referenced above is zero or negative, then Seller’s Cost to Cover shall be zero dollars (\$0), and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 11.2.2.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of the costs of development and construction, as described in the definition of “Lenders”, other than Affiliates of Seller.

“**Start-Up Testing**” means the start-up tests for the Facility as set forth in **Exhibit I**.

“**System**” means the electric transmission substation and transmission 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.

“**Tax Investor**” is defined in the Lender Consent.

“**Term**” is defined in Section 2.1.

“**Test Energy**” means any Output during periods prior to the Commercial Operation Date, and all associated Green Tags and Capacity Rights.

“**Transmission Provider**” means _____.

“**Transmission Service**” means, if applicable, the transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

“**Wind Leases**” means the wind leases that are required to operate the Facility, which Seller represents are truly and fully described on **Exhibit 3.2.8**, as the same may be supplemented, amended, extended, restated or replaced from time to time.

“Wind Turbine” means a [description of intended wind turbine model]. At its full Nameplate Capacity Rating, the Facility is expected to consist of ___ Wind Turbines.

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means the Western Renewable Energy Generation Information System.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

1.2 Rules of Interpretation.

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof 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 hereof 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 hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5. Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider’s transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties

recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider.

(a) The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract and that the terms hereof are not binding upon the Interconnection Provider.

(b) Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between the Seller and the Transmission Provider.

(c) Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

SECTION 2

TERM; FACILITY DEVELOPMENT

2.1 Term. This Agreement shall become effective when it is executed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided herein, shall remain in effect until the ____ (__) anniversary of the date of Final Completion (the "**Term**").

2.2 Milestones. Time is of the essence in the performance hereof, and Seller's completion of the Facility and delivery of Net Output and Green Tags by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones at the times indicated:

(a) Credit Support shall be posted according to the schedule set forth in Appendix D to RFP 2008R-1;

(b) Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date; and

(c) If Commercial Operation of the Facility is achieved based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, then Seller shall cause the Facility to achieve Final Completion on or before the 90th day after the Commercial Operation Date.

2.3 Project Construction and Delay Damages and Deficit Damages. Seller shall further perform as follows:

(a) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to PacifiCorp Delay Damages for each day from and after the Scheduled Commercial Operation Date through the date that the Facility achieves Commercial Operation.

(b) If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, PacifiCorp may terminate this Agreement pursuant to Section 11.

(c) If the Facility achieves Final Completion based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall pay to PacifiCorp Deficit Damages. If the Facility achieves Commercial Operation with a Nameplate Capacity Rating of less than 75% of Expected Nameplate Capacity Rating, in addition to all of PacifiCorp's other rights and remedies hereunder, PacifiCorp may terminate this Agreement with respect to all further obligations of PacifiCorp hereunder and retain all Credit Support Security.

(d) After the date of Final Completion, any partially completed Wind Turbines shall not be part of the Facility, and Seller shall not undertake to add those turbines or output from such turbines to the Facility without the prior written consent of PacifiCorp. Any output of such turbines and any Green Tags associated with such output shall be subject to Section 20.4.

2.4 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to Seller's delay in achieving Commercial Operation or Final Completion or failure to reach Final Completion based on one hundred percent (100%) of the Expected Nameplate Capacity Rating 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 and Deficit Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Section 2.4 shall not limit the amount of damages payable to PacifiCorp if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.5 Damages Invoicing. By the tenth (10th) day following the end of the calendar month in which the Scheduled Commercial Operation Date, Final Completion or other applicable event or condition under this Section Two occurs, and continuing on the tenth (10th) day of each calendar month during the period in which Delay Damages or Deficit Damages accrue (and the following months if applicable), 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 and subject to Sections 10.3 and 10.4, 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 PacifiCorp's Right to Monitor. During the Term, Seller shall permit PacifiCorp and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility. Between the Effective Date and thirty (30) days following the date of Final Completion, Seller shall, on or before the tenth (10th) day of each calendar month, provide PacifiCorp with a brief monthly status report for the preceding month.

(b) Monitor the status of the acquisition, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment, turbines, and warranties, (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between the Seller and manufacturer of the Facility's Wind Turbines and any other material items of Facility equipment that require testing for warranty agreements to be effective. Seller shall provide PacifiCorp with at least five (5) Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient wind or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient wind or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date. Seller does not herein grant PacifiCorp the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require PacifiCorp to review, comment on, or approve of any contract between Seller and a third party.

(d) Witness initial performance tests and other tests and review the results thereof; with Seller to make best effort to provide PacifiCorp five Business Days advance notice of each such major test.

(e) 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 Commercial Operation and Final Completion have been achieved.

With respect to PacifiCorp's right to monitor under this Section 2.6, (a) PacifiCorp is under no obligation to perform any of these monitoring rights, (b) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (c) that PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by PacifiCorp hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. PacifiCorp shall maintain

one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.6, which representatives shall have authority to act for PacifiCorp in all technical matters under this Section 2.6 but not to amend or modify any provision hereof. PacifiCorp's initial representatives and their contact information are listed in Exhibit 2.6. PacifiCorp may, by written notice to Seller, change its representatives or their contact information.

2.7 PTCs. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Net Output and Green Tags, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, PTCs during the Term.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1. Organization. It is duly organized and validly existing under the laws of the State its state of organization.

3.1.2. Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

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

3.1.4. No Contravention. The execution and delivery hereof do not contravene any provision of, or constitute a default under, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other body having authority to which it is subject.

3.1.5. Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to PacifiCorp that:

3.2.1. Organization. Seller is a limited liability company duly organized and validly existing under the laws of Delaware.

3.2.2. Authority. Seller has all required regulatory authority to make wholesale sales from the Facility; (i) 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 (ii) 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.

3.2.3. No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

(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 3.2.6** or (ii) without limiting Seller's obligations under Section 3.2.6 required in connection with the construction 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 provision of any security issued by any of Seller's members or any Affiliates of Seller's members or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound.

3.2.4. Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against any of Seller, its members, or any Affiliate with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened against Seller, its members, or any Affiliate.

3.2.5. Accuracy of Information. No exhibit, contract, report or document furnished by Seller to PacifiCorp in connection with this Agreement, or the negotiation or execution hereof 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.

3.2.6. Required Facility Documents. All Required Facility Documents are listed on **Exhibit 3.2.6**. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver Net Output to PacifiCorp in accordance with this Agreement. No unusually burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents and the anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. Seller shall notify PacifiCorp of any material consent or approval that (a) Seller determines is required for the construction, ownership or operation of the Facility, and (b) is not already listed in Exhibit 3.2.6.

3.2.7 Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Output at the Expected Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.8 Wind Leases. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit 3.2.8 as Wind Leases. Seller shall not amend any Wind Lease without PacifiCorp's consent, which PacifiCorp shall not unreasonably withhold. On or before the Commercial Operation Date, and continuing thereafter throughout the Term, Seller shall cause all Wind Leases to (i) be for remaining terms of no less than the Term, with options for renewal at the end of such periods for a further _____ years commencing no earlier than the end of the Term and (ii) contain a clause providing that should PacifiCorp exercise the option provided it in Section 5.6 to purchase the Facility, PacifiCorp's rent shall be for a fixed dollar per kilowatt hour set forth in such Wind Lease.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto 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 hereof.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Section 3 to be materially untrue or misleading, 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 occurrence of each such event.

SECTION 4 **DELIVERIES OF NET OUTPUT AND GREEN TAGS**

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, (a) the entire Net Output from the Facility at the Point of Delivery, and (b) all Green Tags associated with Output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source). PacifiCorp shall be under no obligation to make any purchase hereunder other than Net Output and associated Green Tags. PacifiCorp shall not be obligated to purchase, receive or pay for energy (or associated Green Tags) that is not delivered to the Point of Delivery. In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, all Net Output and associated Green Tags from the Facility as Test Energy at the price specified in Section 5.1.1.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, Green Tags or Capacity Rights from the Facility to any party other than PacifiCorp; *provided, however,* that this restriction shall not apply during periods when PacifiCorp is in default hereof because it has, without excuse, failed to accept or purchase that Net Output or Green Tags if required to hereunder.

4.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output and associated Green Tags free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Net Output shall transfer from Seller to PacifiCorp upon its delivery to PacifiCorp at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery. PacifiCorp shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output from the Point of Delivery.

4.4 Curtailment.

4.4.1. Required Curtailment. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output (or associated Green Tags) that is not delivered to the Point of Delivery during times and to the extent that such Net Output (and associated Green Tags) are not delivered to the Point of Delivery because (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, pursuant to the terms of the Generation Interconnection Agreement, (b) the Network Service Provider or Transmission Provider Curtails (as defined in the Tariff) Net Output, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. The MWh amount of Net Output curtailed pursuant to this Section 4.4.1 shall be reasonably determined by Seller after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) wind conditions recorded at the Facility during the period of curtailment and the tested and verified power curve for the wind turbines at the Facility. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 4.4.1.

4.4.2. Voluntary Curtailment by PacifiCorp. Seller shall curtail deliveries of Net Output and associated Green Tags at any time, in whole or in part, and for any duration specified by PacifiCorp with no less than ten (10) minutes (or such lesser time as may be provided for, as between Seller and Interconnection Provider, in the Generation Interconnection Agreement) prior notice (which may be given by telephone) from PacifiCorp to Seller. PacifiCorp shall take reasonable steps to confirm Seller's receipt of such notice. The MWh amount of Net Output curtailed pursuant to this Section 4.4.2 ("**Curtailment Energy**") shall be reasonably determined by Seller after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output at the Point of Delivery but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of Curtailment Energy based on (1) the time and duration of the curtailment period and (2) the number of MWhs that would have been generated based on the wind velocities recorded at the Facility

during the period of curtailment and the tested and verified power curve for the wind turbines at the Facility. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of Curtailment Energy that was not generated or delivered because of a curtailment pursuant to this Section 4.4.2. PacifiCorp shall be obligated to pay Seller for the Curtailment Energy at the then applicable Contract Price. Notwithstanding any other provision hereof, during any period of curtailment pursuant to this Section 4.4.2, Seller shall not generate Net Output to the extent curtailed by PacifiCorp, or sell any portion of the Facility's energy to any third party. An example setting forth a calculation of payment due for Curtailment Energy under certain stated assumptions is set forth in **Exhibit 4.4.2**. Notwithstanding the foregoing, PacifiCorp's obligation to pay for Curtailment Energy pursuant to this Section 4.4.2 shall not apply during any times Seller would otherwise have been required to curtail pursuant to Section 4.4.1.

4.5 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the energy at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the tenth (10th) day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit 4.5** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. PacifiCorp shall be entitled to a refund of the Green Tag Price Component of any Net Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tag back to Seller. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under § 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers. Seller shall at its expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e program throughout the Term.

4.6 Capacity Rights.

4.6.1. Purchase and Sale of Capacity Rights. For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output and Green Tags on the terms and conditions set forth herein, 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, existing during the Term.

4.6.2. Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp. PacifiCorp may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

4.6.3. Further Assurances. 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.

SECTION 5 **CONTRACT PRICE; COSTS**

5.1 Contract Price; Includes Green Tags and Capacity Rights. PacifiCorp shall pay Seller the prices stated below for all deliveries of Net Output, and including associated Green Tags and Capacity Rights, up to the Maximum Delivery Rate. The Contract Price provided for in Section 5.1.2 and the price for Test Energy provided for in Section 5.1.1 include the consideration to be paid by PacifiCorp to Seller for all Green Tags and Capacity Rights associated with all Output, Net Output and Test Energy, respectively, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the Green Tags or Capacity Rights associated therewith.

5.1.1. Test Energy. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to PacifiCorp all Test Energy. PacifiCorp shall pay Seller (a) for Test Energy delivered at the Point of Delivery during On-Peak Hours, an amount per MWh equal to 75% of the Firm Market Price Index for On-Peak Hours and (b) for Test Energy delivered at the Point of Delivery during Off-Peak Hours, an amount per MWh equal to 75% of the Firm Market Price Index for Off-Peak Hours; *provided, however*, that (1) the amount to be paid by PacifiCorp for each MWh of such Test Energy shall in no event exceed 75% of the Contract Price specified for the first Contract Year, and (2) Seller's right to receive payment for such Test Energy is subject to PacifiCorp's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller pursuant to Section 2.3.

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 Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in **Exhibit 5.1**.

5.2 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 transmission costs, Transmission Service, and

transmission line losses, and any operation and maintenance charges imposed by Transmission Owner or the Transmission Provider for the Interconnection Facilities. PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller shall bear all costs associated with the modifications to Interconnection Facilities or the System (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System and (b) any increase in generating capacity of the Facility.

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.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority up to and including, but not beyond, the Point of Delivery, on the generation of Net Output or Green Tags or on the sale of Net Output or Green Tags from Seller to PacifiCorp hereunder, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due all such taxes levied at or beyond the Point of Delivery upon a purchaser of power or Green Tags, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, 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 hereof, 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 any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental attributes.

5.6 Purchase Option. On the last day of the Term, PacifiCorp shall have the option to purchase the Facility and all rights of Seller therein or relating thereto, for the sum of \$1.00. Such option shall be exercised by notice from PacifiCorp to Seller provided no less than 30 days prior to the last day of the Term. Seller covenants that in the event PacifiCorp provides such notice of its exercise of this purchase option, that Seller shall sell, transfer, assign and convey to PacifiCorp all of the Facility and all rights of Seller therein or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others arising through Seller on the last day of the Term, including good and valid title to the Facility and Seller's rights in the Premises. In connection with such sale, transfer, assignment and conveyance, Seller shall (a) assign or otherwise make available, to the extent permitted by Requirements of Law and not already assigned or otherwise transferred to PacifiCorp, Seller's interest in all material Required Facility Documents and licenses, permits approvals and consents of any Governmental Authorities or other Persons that are then in effect and that are utilized for the operation or maintenance of the Facility; (b) cooperate with all reasonable requests of PacifiCorp for purposes of obtaining or making, or enabling PacifiCorp to obtain or make, any and all material Permits and licenses, permits, approvals and consents of any Governmental Authorities or other persons that are or will be required to

be obtained by PacifiCorp in connection with the use, occupancy, operation or maintenance of the Facility or the Premises in compliance with Requirements of Law; (c) provide PacifiCorp copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Facility, as shall be in the Seller's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility. Seller shall not take any action during the Term that would inhibit Seller's ability to comply with this provision.

5.7 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide PacifiCorp the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit 6.1** when it has been reviewed and approved by PacifiCorp. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, PacifiCorp may within fifteen days after receiving the proposed As-built Supplement give Seller a notice describing that PacifiCorp wishes to correct. If PacifiCorp does not give Seller such a notice within the fifteen (15) day period, the As-built Supplement shall be deemed approved. If PacifiCorp provides a timely notice requiring corrections, Seller shall in good faith cooperate with PacifiCorp to revise the As-built Supplement to address PacifiCorp's concerns. Notwithstanding the foregoing, PacifiCorp shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

6.2 Standard of Facility Operation.

6.2.1. 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 applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority 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 hereof and (vi) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Owner or the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

6.2.2. Qualified Operator. From and after the Commercial Operation Date, Seller shall itself operate the Facility or cause the Facility to be operated by an entity that has at least two years of experience in operation of wind energy facilities of comparable size to the Facility and approved by PacifiCorp.

6.2.3. Fines and Penalties.

(a) Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings and Seller has (i) set aside and funded adequate reserves to cover such fines, penalties or legal costs in the event of an adverse determination, or (ii) posted security to PacifiCorp or Seller's Senior Lenders adequate to ensure Seller's ability to cover such fines, penalties or legal costs in the event of an adverse determination.

(b) If fines, penalties, or legal costs are assessed against or incurred by PacifiCorp on account of any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions hereof, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless PacifiCorp against any and all losses, liabilities, damages, and claims suffered or incurred by PacifiCorp as a result. Without limiting the generality of the foregoing, Seller shall reimburse PacifiCorp for all fees, damages, or penalties imposed on PacifiCorp by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default by Seller or a failure of performance by Seller hereunder.

(c) Seller shall reimburse PacifiCorp for all fees, damages, or penalties imposed on PacifiCorp by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default or a failure of performance by Seller hereunder.

6.3 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 as a Network Resource, including the costs of any System upgrades beyond the Point of Delivery necessary to interconnect the Facility with the System and to allow the delivery of all Output to the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Owner, the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. 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.

6.4 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities 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. In the event there are unanticipated changes in FERC or Electric System Authority rules sufficiently significant to change the benefits, risks and burdens held by the Parties, the Parties shall meet in good faith to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

6.5 Outages.

6.5.1. Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of [November, December, January, February, June, July, and August], except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.5.2. Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp; *provided, however,* that Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: [November, December, January, February, June 15 through June 30, July, August, and September 1 through September 15]. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3. 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.

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 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 15% of the Nameplate Capacity Rating of the Facility being unavailable, the oral report shall be confirmed in writing by notice. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4. 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 affecting 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 five percent (5%) of the Nameplate Capacity Rating of the Facility.

6.5.5. Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly net output set forth on **Exhibit A** takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility, and that such outages are not expected to substantially reduce the Facility's average estimated monthly output as set forth in **Exhibit A**.

6.6 Scheduling.

6.6.1. Daily Scheduling. [provide if applicable]

6.6.2. Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall 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 hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.6.3. Schedule Coordination. If, as a result hereof, 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 standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then (a) Seller shall 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.

6.7 Forecasting.

6.7.1. 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 Contract Year. This forecast shall include an expected range of uncertainty based on

historical operating experience. Seller shall update the forecast for each month by notice to PacifiCorp at least six Business Days before the first Business Day of such month.

6.7.2. Day-Ahead Forecasts and Updates. By 0600 PPT on the Business Day immediately preceding the day on which Net Output 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 notwithstanding the foregoing, Seller shall provide to PacifiCorp any forecasting updates it provides to the Transmission Provider as soon as they are provided to the Transmission Provider. The Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.7.2 in an efficient manner, including 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 to PacifiCorp). 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.

6.7.3. Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only. 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 calendar year in 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.

6.7.4 PacifiCorp Right to Arrange Forecasting Services. PacifiCorp shall have the right from time to time during the Term to enter into contracts with wind forecast service providers for the provision of forecasts respecting the Facility. In such event, PacifiCorp shall provide Seller reasonable advance written notice sufficient to enable Seller to terminate its agreements with the Facility's existing forecast service providers without paying damages. Upon the termination date of such agreements, the wind forecaster selected by PacifiCorp shall during the term of such arrangement assume and discharge Seller's obligations under the remainder of this Section 6.7. The wind forecaster selected by PacifiCorp shall agree with PacifiCorp to render such forecasts in good faith and in accordance with Prudent Electrical Practices. During such periods, Seller shall pay to PacifiCorp as reimbursement an amount equal to the current market costs of the wind forecasting services for the Facility or the Facility's pro rata share of the costs of the forecasting services arranged by PacifiCorp. PacifiCorp shall timely share with Seller the forecasts generated by the wind forecasting services for which PacifiCorp contracts under this Section 6.7.4.

6.8 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting any restrictions herein on Nameplate Capacity Rating, if Seller elects to in-

crease, 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 replacement or modification of turbines or related infrastructure, PacifiCorp shall not be required to purchase any Net Output or Green Tags above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion or additional wind project in the geographic vicinity of the Facility, Seller shall have no rights pursuant hereto to require PacifiCorp to purchase (and PacifiCorp shall have no obligation to purchase pursuant hereto) the output of any such expansion or additional facility. Any such expansion or additional facility may not adversely impact the ability of either Party to fulfill its obligations pursuant hereto and shall be subject to Section 20.4.

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 meteorological data, wind speed data, wind direction data and Output data. Seller shall provide such real time data to PacifiCorp on the same 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). PacifiCorp shall have the right from time to time to require Seller to provide additional telemetry equipment and facilities to the extent necessary and reasonable.

6.9.2. Transmission Provider Consent. Seller shall execute a consent, in the form required by Transmission Provider, to provide that PacifiCorp can read the meter and receive any and all data from the Transmission Provider relating to transmission of Output or other matters relating to the Facility without the need for further consent from Seller.

6.9.3. 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 Reports and Records.

6.10.1. Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a "**Reporting Month**"), Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's wind and output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the

Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that PacifiCorp may from time to time reasonably request (including historical wind data for the Facility).

6.10.2. Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.10.3. Other Information to be Provided to PacifiCorp. Seller shall provide to PacifiCorp the following information concerning the Facility:

(a) Upon the request of PacifiCorp, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

(b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;

(c) Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;

(d) Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next Month;

(e) From and after the Commercial Operation Date, a monthly report detailing the Availability of the Facility; and

(f) At any time from the Effective Date, one year's advance notice of the termination or expiration of any agreement, including Wind Leases, pursuant to which the Facility or any equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any Wind Lease.

6.10.4. Information to Governmental Authorities. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data collected by Seller related to the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or Electric System Authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.5. Data Request. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any

Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

6.10.6. Documents to Governmental Authorities. After the sending or filing any statement, application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to PacifiCorp a copy of the same.

6.10.7. 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. Seller shall further provide PacifiCorp with all environmental impact mitigation measures it is taking in connection with the Facility's construction of operation, as well as copies of all agreements between Seller and federal, state or local environmental agencies.

6.10.8. Operational Reports. Seller shall provide PacifiCorp monthly operational reports in a form and substance acceptable to PacifiCorp and Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all operational data requested by PacifiCorp with respect to the performance of the Facility and delivery of energy, Green Tags or Capacity Rights therefrom.

6.10.9. Notice of Material Adverse Events. Seller shall promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates 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 herein.

6.10.10. 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. In addition, following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding against the Seller before any court or Governmental Authority, Seller shall promptly give notice to PacifiCorp of the same.

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

6.10.12. Confidential Treatment. The monthly reports and other information provided to PacifiCorp under this Section 6.10 shall be treated as Confidential Business Information, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 9.5, 22.3, and pursuant to any applicable Requirements of Law. Seller shall have

the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

6.11 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("**FIN 46**"), it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under FIN 46. If PacifiCorp or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by FIN 46. PacifiCorp shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.11.

6.12 Availability Guaranty.

6.12.1. Guaranteed Availability. Seller guarantees that the annual Availability of the Facility (the "**Guaranteed Availability**") shall be that set forth in **Exhibit B**. In no event shall the required Guaranteed Availability for any period be subject to any adjustment in the event that Seller achieves Final Completion at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating.

6.12.2. 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:

$$\text{Output Shortfall} = (\text{Guaranteed Availability} - \text{Availability}) \times \text{Expected Energy}.$$

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*, for the first calendar year in which Commercial Operation occurs the Output Shortfall shall be prorated on the basis of the number of days in the period from the Commercial Operation Date through to the end of such calendar 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 and (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages. An Example calculation of liquidated damages for an Output Shortfall is included in **Exhibit 6.12.2**.

6.12.3. Annual Invoicing. On January 31 of each Contract Year, 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 6.12.2 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 from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Seller within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements 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, (c) in connection with the operation and maintenance of the Interconnection Facilities, (d) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than 12 times per year), (e) for purposes of implementing Sections 2.6 or 10.5, and (f) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release the Seller against and from any and all Liabilities resulting from actions or omissions by any person or entity within the PacifiCorp Indemnitees in connection with their access to the Facility Site, except to the extent that such damages are caused or exacerbated by the intentional or gross negligent act or omission of any Seller Indemnitee.

6.14 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 imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

SECTION 7

QUALIFYING FACILITY OR

EXEMPT WHOLESALE GENERATOR STATUS

7.1 Seller's Election. Seller covenants that, during the Term and before delivering Net Output and associated Green Tags to PacifiCorp hereunder, Seller shall, to the extent required to prevent Seller from being regulated as a "Public Utility" pursuant to PUHCA or otherwise, either (a) cause the Facility to be a QF, or (b) cause Seller to be an EWG.

7.2 QF Facility. If the Facility is a QF, Seller shall provide PacifiCorp with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. At any time during the Term, for cause, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing with recognized expertise in FERC matters and who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data that PacifiCorp may request) demonstrating that Seller has maintained and will continue to

maintain the Facility as a QF. During the Term, Seller shall, to the extent required to prevent Seller from being regulated as a “Public Utility” pursuant to PUHCA or otherwise, maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF.

7.3 EWG. If Seller is an EWG, Seller shall provide PacifiCorp with copies of Seller’s applications to FERC for EWG status and for authority to sell energy hereunder before Commercial Operation and within ten (10) days after filing such applications. During the Term, Seller shall maintain its EWG status (to the extent it is required by law to do so) and its authority to sell power hereunder.

SECTION 8

SECURITY AND CREDIT SUPPORT

8.1 Credit Support. At any time during the Term, PacifiCorp may require Seller to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its’ Credit Rating or that of the entity providing credit assurances as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody’s, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing credit assurances as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer’s proprietary credit scoring model developed in conjunction with a third party, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall provide the Credit Support in the form of: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow.

8.1.1. Use of Credit Support Security to Pay Amounts Due to PacifiCorp. If Seller fails to pay any amount due to PacifiCorp within the time provided for payment hereunder, PacifiCorp shall be entitled to and shall draw upon the Credit Support Security from time to time in an amount equal to the amount unpaid, and Seller shall be required to replenish or reinstate the Credit Support Security up to the amount specified in Credit Matrix. Without limiting its other remedies hereunder, PacifiCorp shall also be entitled to draw upon the Credit Support Security for damages arising if this Agreement is terminated under Section 11 because of Seller’s default.

8.2 Subordinated Security Interests (SECTION 8.2 IS APPLICABLE ONLY FOR AGREEMENTS BACKED BY AN ASSET).

8.2.1. Security Interests. On or before the Effective Date, and simultaneously with the acquisition by Seller after the Effective Date of any additional real property in connection with the Facility, Seller shall execute, file and record such agreements, documents, instruments, mortgages, deeds of trust and other writings as PacifiCorp may reasonably request, all in form and substance reasonably satisfactory to PacifiCorp, to give PacifiCorp a perfected security interest in and lien on the Facility, the Premises, all present and future real property, personal property and fixtures therein and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Facility, as security for

Seller's performance and any amounts owed by Seller to PacifiCorp pursuant hereto (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to (i) the interests of the Senior Lenders, and (ii) to the extent provided by applicable law, any workers', mechanics', suppliers' or similar liens arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within five (5) Business Days of the commencement of any proceeding to foreclose the lien.

8.2.2. Pledge of Ownership Interests. On or before the Effective Date, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as PacifiCorp may request, all in form and substance satisfactory to PacifiCorp, to give PacifiCorp a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to PacifiCorp pursuant hereto (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the Senior Lenders.

8.2.3. Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by PacifiCorp to confirm and continue the validity, priority, and perfection of the Security Interests and the Pledge Interest. The granting of the Security Interests and the Pledge Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to PacifiCorp by reason of any breach or default by Seller hereunder or the termination hereof prior to the expiration of the Term.

8.2.4. Transfer of Required Facility Documents. The Security Interests shall provide that if PacifiCorp acts to obtain title to the Facility pursuant to the Security Interests, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to PacifiCorp, and shall diligently prosecute and cooperate in such transfers.

8.2.5. Debt-to-Equity Ratio Seller shall at all times during the Term maintain a debt-to-equity ratio of no less than 30% equity and annually provide to PacifiCorp by March 1 of each Contract Year a certificate of Seller's Chief Financial Officer attesting to the maintenance of such debt-to-equity ratio. Seller shall not grant a security interest to any third party in the Facility or any of its assets to support the obligations of any entity other than Seller, or any obligations of Seller other than obligations that relate directly to the Facility.

8.3 Annual and Quarterly Financial Statements. If requested by PacifiCorp from time to time, Seller shall, within thirty (30) days provide PacifiCorp with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

8.4 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8: (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder, 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 any credit security, Seller shall,

within five (5) Business Days, replenish or reinstate the drawn security to the full amount then required by this Section 8. At any time the Seller or its credit support provider(s), if applicable, must maintain Credit Ratings such that the amount of Credit Support required in Section 8.1 is maintained during the Term.

8.5 Senior 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 8.6** for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however,* that except as provided in the form of the Lender Consent, in no event shall PacifiCorp be required to agree to any modification hereof; and provided further, however, that if and to the extent any 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 hereto, 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, documents and opinions.

SECTION 9 **METERING**

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; *provided, however,* that PacifiCorp acting in its merchant function capacity shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment.

9.2 Metering. Metering shall be performed at the location and in the manner specified in **Exhibit 9.2**, the Generation Interconnection Agreement and as necessary to perform Section 4.5 and Seller's other obligations hereunder. All quantities of energy purchased hereunder shall reflect the net amount of energy flowing into the System at the Point of Delivery.

9.3 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 disclose 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.

9.4 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.

9.5 Meter Data. Upon written request by PacifiCorp, Seller shall promptly request the Interconnection Provider or Transmission Provider in writing to provide any and all meter or other data associated with the Facility or Net Output directly to PacifiCorp. Notwithstanding any other provision hereof, PacifiCorp shall have the right to provide such data to any Electric System Authority.

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Seller shall be the WREGIS Qualified Reporting Entity, provided that PacifiCorp may at its option, without being obligated to do so, elect to perform the Qualified Reporting Entity functions for the Facility.

SECTION 10

BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 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. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of each month, payment for Seller's deliveries of Net Output and associated Green Tags to PacifiCorp

10.2 Offsets. PacifiCorp may offset any payment due hereunder against amounts owing from Seller to PacifiCorp pursuant hereto or any other agreement between the Parties. PacifiCorp's exercise of recoupment and set off rights shall not limit the other remedies available to PacifiCorp hereunder, under such other agreements, or otherwise.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid; *provided, however,* that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, 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. Except with respect to invoices provided under Section 6.12.3, 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 at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice 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 delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, 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 11 **DEFAULTS AND REMEDIES**

11.1 Defaults. The following events are defaults hereunder:

11.1.1. Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder 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 breaches a representation or warranty made by it herein 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 hereunder if the failure is not cured within 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 30 day period shall be extended by an additional 60 days if (a) the failure cannot reasonably be cured within the 30 day period despite diligent efforts, (b) the default is capable of being cured within the additional 60 day period, and (c) the defaulting Party commences the cure within the original 30 day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.1.2. Defaults by Seller.

(a) Seller fails to post, increase, maintain or replenish any Credit Support Security as required in Section 8.

(b) Seller fails to (i) cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Punch List by 120 days after the Commercial Operation Date.

(c) Seller sells energy, Green Tags or Capacity Rights from the Facility to a Party other than PacifiCorp in breach hereof 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) Seller defaults under any material agreement with third parties relating to the ownership, interconnection, operation, transmission from, maintenance or repair of the Facility, and fails to cure such default within the time required under such agreement, after the expiration of applicable notice, cure and waiver periods.

(e) PacifiCorp receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten days.

(f) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents, Permits, land rights, interconnection rights or other material rights necessary to own or operate the Facility, after the expiration of applicable notice, cure and waiver periods.

11.2 Remedies for Failure to Deliver/Receive.

11.2.1. Remedy for Seller's Failure to Deliver. If Seller fails to deliver all or part of the energy (and associated Green Tags) required to be delivered as Net Output pursuant hereto, and such failure is not excused under the terms hereof or by PacifiCorp's failure to perform, then Seller shall pay PacifiCorp within five (5) Business Days after invoice receipt, an amount 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 moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, 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.

11.2.2. Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output and associated Green Tags required to be purchased pursuant hereto and such failure is not excused under the terms hereof 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 equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased. In addition, to the extent Seller is unable to sell the Net Output to third parties, 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, that would have been earned by Seller associated with the amount of such Net Output not purchased by PacifiCorp (and not excused under the terms hereof or by Seller's failure to perform) at no more than \$19.00 MWh adjusted annually for inflation, 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 11.6) to avoid the loss of PTC eligibility for such amounts. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3. Remedy for Seller's Failure to Sell/Deliver Capacity Rights. Seller shall be liable for PacifiCorp's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights to PacifiCorp.

11.3 Termination and Remedies. Upon the occurrence of, and during the continuation of, an event of default hereunder, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such termination date. Further, during the continuation of default by Seller, and until it has recovered all damages incurred on account of such default by Seller, without exercising its termination right, PacifiCorp may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6). The rights contemplated by this Section 11 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 hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder 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 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid.

(c) Before and after upon the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6).

(d) The provisions of Sections 4.5, 5.4, 6.10.4, 6.10.5, 8.2, 9.5, 10.3, 10.4, 10.5, 11.4, 11.5, 11.9, 12, 20.3 and 23 shall survive the termination hereof.

11.4 Termination of Duty to Buy; Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require PacifiCorp to purchase energy from the Facility under PURPA (on account of its

status as a QF), or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PacifiCorp to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the Counties in which the Facility or Premises are situated, and of the U.S. Bureau of Land Management or other federal agency as applicable, a memorandum in the form of **Exhibit 11.4** to provide constructive notice to third parties of Seller's agreements under this Section 11.4 and under PacifiCorp's Covered Facility Right of First Offer and Section 8.2 hereof with respect to PacifiCorp's subordinated lien rights.

11.5 Termination Damages. If this Agreement is terminated as a result of a default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party 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.

11.6 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 hereof. "Commercially reasonable efforts" by Seller shall require Seller to (i) use commercially reasonable efforts to maximize the price for energy received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such energy (and associated Green Tags) not purchased or accepted by PacifiCorp, and (ii) offering to sell to PacifiCorp (prior to selling to any third party) the Green Tags associated with such energy at the price then applicable to Green Tags hereunder.

11.7 Credit Support Security. If this Agreement is terminated because of Seller's default, PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any Credit Support Security or security held by PacifiCorp in whatever form to reduce any amounts that the Seller owes PacifiCorp arising from such default.

11.8 Step-In Rights. (SECTION 11.8 IS APPLICABLE ONLY FOR AGREEMENTS BACKED BY AN ASSET).

11.8.1 Failure to Achieve Commercial Operation. If Seller fails to achieve Commercial Operation of the Facility by the Guaranteed Commercial Operation Date, PacifiCorp shall have the right to enter the Facility and do all such things as PacifiCorp may consider necessary or desirable to complete the Facility and cause Commercial Operation to occur. PacifiCorp may at its option following Commercial Operation Date (a) return the Facility to Seller upon execution of an indemnity and release by Seller of all claims arising out of the period of PacifiCorp's entry on the Facility in a form reasonable acceptable to PacifiCorp or (b) failing the execution of such release or indemnity, (i) operate the Facility for the Term pursuant to Section 11.8.2 or (ii) terminate this Agreement without payment of any damages. Seller shall indemnify and hold PacifiCorp harmless from and against all losses, costs, charges and expenses

incurred by PacifiCorp in connection with exercise of its rights under this Section 11.8.1, whether to third parties or otherwise, other than due to the gross negligence or willful misconduct of PacifiCorp.

11.8.2. License to Operate Facility. Seller hereby irrevocably grants to PacifiCorp the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations hereunder for the Term during the continuance of a an Event of Default by Seller. PacifiCorp may, but shall not be obligated to, exercise its rights as licensee under this Section in lieu of termination. During any period in which PacifiCorp is operating the Facility pursuant to the license granted in this Section, Seller shall, upon request from PacifiCorp, reimburse PacifiCorp for all reasonable costs and expenses incurred by PacifiCorp to operate and maintain the Facility.

11.8.3. Records and Access. Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon PacifiCorp's notice of its intent to exercise Step-In Rights pursuant to Section 11.8.1 or 11.8.2, PacifiCorp, its employees, contractors, or designated third parties shall have the right to enter the Site and the Facility for the purpose of constructing or operating the Facility. Upon the exercise by PacifiCorp of the Step-In Rights, the Seller shall cause the Facility operator (and any Person within the control of the Seller) to give PacifiCorp access to and control of the operation and maintenance of the Facility to the extent reasonably necessary to enable PacifiCorp to exercise the Step-In Rights in respect of the part of the Facility so to be operated by PacifiCorp, and shall provide reasonable assistance and cooperation to PacifiCorp to effect safely the transfer of operational responsibility as may be requested by PacifiCorp. The Seller shall execute such documents and take such other action as may be necessary for PacifiCorp to effectuate its rights under this Section.

11.8.4. Return. PacifiCorp may, at any time, terminate its exercise of the Step-In Rights whether or not the applicable event has been cured. If at any time after exercising its Step-In Rights, PacifiCorp elects to return such possession to Seller, PacifiCorp shall provide Seller with at least ten (10) Days advance notice of the date PacifiCorp intends to return such possession, and upon receipt of such notice Seller shall take all measures necessary to resume possession of the Facility on such date.

11.8.5. No Assumption. PacifiCorp's exercise of its Step-In Rights shall not be deemed an assumption by PacifiCorp of any liability of the Seller due and owing prior to the exercise of such rights. PacifiCorp shall not assume any liability of the Seller for the period during which PacifiCorp exercises such Step-In Rights pursuant to this Section 11.8. During any period that PacifiCorp is exercising its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and all of its other property and its revenues. When exercising its Step-In Rights, PacifiCorp shall assume possession, operation, and control of the Facility solely as agent for Seller. In no event shall PacifiCorp's election to exercise the Step-In Rights be deemed to constitute a transfer of ownership of or title to the Facility or any assets of Seller.

11.8.6. Costs and Expenses. Seller shall indemnify and hold harmless PacifiCorp from and against all losses, costs, charges and expenses incurred by PacifiCorp in connection

with exercise of its rights under this Section 11.8 other than due to the gross negligence or willful misconduct of PacifiCorp. In connection with its exercise of rights under this Section 11.8, PacifiCorp shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by PacifiCorp hereunder. PacifiCorp's exercise of such recoupment and set off rights shall not limit the other remedies available to PacifiCorp hereunder or otherwise.

11.9 Right of First Offer for Facility Output. In the event of any termination hereof by PacifiCorp pursuant to Section 11.1.2, in addition to PacifiCorp's rights to collect Delay Damages and its remedies under the Credit Support Security, PacifiCorp shall have a right of first offer (the "**Covered Facility Right of First Offer**") on the output of any wind-powered generation facility (a "**Covered Facility**") that from time to time may be constructed by Seller or any Affiliate of Seller on the Premises, up to (but not to exceed) an amount equal to the Expected Energy at the Contract Price. The Covered Facility Right of First Offer shall be exercisable by PacifiCorp through the fifth (5th) anniversary date of PacifiCorp's notice of termination. Seller shall provide PacifiCorp with no less than fifteen (15) days' (but no more than twelve (12) months') prior written notice of the anticipated commercial operation date for any wind turbines constituting part of a Covered Facility and not previously subject to PacifiCorp's Covered Facility Right of First Offer. PacifiCorp shall notify Seller within sixty (60) days as to whether PacifiCorp elects to purchase the output of such portions of the Covered Facility. If PacifiCorp elects to purchase the output of such portions of the Covered Facility, such output (along with associated Green Tags) shall be sold to PacifiCorp for the contract price that would have applied to energy and associated Green Tags purchased by PacifiCorp hereunder had this Agreement remained in effect, at the rates and for the periods indicated in **Exhibit 5.1**. PacifiCorp shall not have a Covered Facility Right of First Offer (a) with respect to the output of any turbines constituting a portion of the Covered Facility that has been offered to PacifiCorp pursuant to this Section 11.9 on an earlier occasion and not been accepted by PacifiCorp, or (b) with respect to any output that would cause the total output purchased by PacifiCorp pursuant to its Covered Facility Right of First Offer to exceed the amount of the Expected Energy.

11.10 Cumulative Remedies. The rights and remedies provided to PacifiCorp hereunder are cumulative and not exclusive of any rights or remedies of PacifiCorp.

SECTION 12

INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1. Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall release, indemnify and hold harmless PacifiCorp, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnities**") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney's fees, both at trial and on appeal, whether or not suit is brought) (collectively, "**Liabilities**") resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or

economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Buyer Indemnities.

12.1.2. Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “**Seller Indemnities**”) against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance by PacifiCorp of its obligations hereunder for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity within the Buyer Indemnities, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnities.

12.1.3. Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, Seller shall release, indemnify and hold harmless the PacifiCorp Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnities from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the PacifiCorp Indemnities or the Seller Indemnities, respectively, seeking indemnification hereunder.

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

12.1.5. Consequential Damages. **EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES, DELAY DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, PTC LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, 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.**

SECTION 13 **INSURANCE**

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than “A-” by the A.M. Best Company the insurance coverage specified on **Exhibit 13** during the periods specified on **Exhibit 13**.

13.2 Certificates and Certified Copies of Policies. Seller shall provide PacifiCorp with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit 13** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit 13**). The certificate (a) shall not include the legend “certificate is not evidence of coverage” or any statement with similar effect, (b) the insurer shall have a firm obligation to provide PacifiCorp with thirty (30) days prior written notice of coverage modifications (not merely an obligation to “endeavor” or words of similar effect), and (c) shall be endorsed by a person who has authority to bind the insurer. Within thirty (30) days after the date by which such policies are required to be obtained, Seller shall provide PacifiCorp with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit 13**. 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. “**Force Majeure**” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party’s negligence or failure to act, and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller’s ability to sell, or PacifiCorp’s ability to purchase, energy or Green Tags at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of Facility Wind Turbines or other equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure, (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5, (vi) delay or failure of Seller to obtain or perform any Required Facility Document, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection provider (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a direct result of an event of Force Majeure); (ix) Seller’s failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to Transmission Owner, Transmission Provider or Interconnection Provider; or (x) any event attributable to the use of Transmission Owner Interconnection Facilities for deliveries of Output to any party other than PacifiCorp. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder 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 five (5) days 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 to remedy the effect of 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 hereof, 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 hereunder for a period exceeding 180 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the event of Force Majeure, with respect to its obligations hereunder, 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 hereunder before the effective date of such termination.

SECTION 15 **SEVERAL OBLIGATIONS**

Nothing contained herein 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 **CHOICE OF LAW**

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

SECTION 17 **PARTIAL INVALIDITY**

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof 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 hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 18
NON-WAIVER

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed 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 hereof shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

SECTION 19
GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

SECTION 20
SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 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 names of the assignees), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) subject to Section 20.3, 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 herein to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. Except with respect to collateral assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, the assignee shall (x) agree in writing to be bound by the terms and conditions hereof, (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. PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp shall be released from liability hereunder if its assignee meets the requirements of

clauses (x) and (y) in the immediately preceding sentence and the requirement of clause (z) in the immediately preceding sentence shall not apply to such assignment. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

20.3 Right of First Offer of Sale of the Facility.

20.3.1. Offered Assets. If Seller intends to sell the Facility or any part of the Facility or to sell (individually or in the aggregate) a controlling interest in Seller or the Facility (the “Offered Assets”), it shall first offer the Offered Assets to PacifiCorp. Seller’s offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that PacifiCorp may have concerning the offered terms and conditions and shall meet with PacifiCorp to discuss the offer. The provisions of this Agreement will bind any successor or transferee of Seller as if such successor or transferee were the Seller.

20.3.2. PacifiCorp’s Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within 30 days after receiving Seller’s offer, Seller may enter into an agreement to sell the Offered Assets to a third party on terms and conditions no more favorable in the aggregate to the third party than those offered to PacifiCorp. If Seller wishes to enter into an agreement with a third party on terms more favorable to the third party than those previously offered to PacifiCorp under this Section, Seller shall first offer the revised terms and conditions to PacifiCorp under this Section.

20.3.3. PacifiCorp’s Acceptance of Offer. If PacifiCorp accepts an offer made by Seller under this Section, the Parties shall within a further 60 days enter an acquisition agreement that incorporates the terms and conditions of Seller’s offer.

20.4 Right of First Offer on Facility Expansion.

20.4.1. Seller’s Duty to Offer Expansion Energy. If, at any time during the Term, Seller or any Affiliate of Seller intends (a) to install equipment on the Premises in addition to the equipment included in the original Facility, and such installation is designed to increase the capacity of the Facility to more than Facility Nameplate Capacity Rating at Final Completion, or (b) to otherwise enable the Facility or any expansion thereof to produce more than the Maximum Delivery Rate, Seller shall first offer (or cause its Affiliate to offer) the excess above the Maximum Delivery Rate (the “**Expansion Energy**”) to PacifiCorp. Such offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that PacifiCorp may have concerning the offered terms and conditions and shall meet with PacifiCorp to discuss the offer.

20.4.2. PacifiCorp’s Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within thirty (30) days after receiving Seller’s offer, Seller (or the applicable Affiliate of Seller) may enter into an agreement to sell the Expansion Energy to a third party on terms and conditions no more favorable to the third party than those offered to PacifiCorp. If Seller (or its Affiliate) wishes to enter into an agreement with a third party on terms more favorable to PacifiCorp than those previously offered to PacifiCorp under this Section, Seller shall first offer (or cause its Affiliate to offer) the revised terms and conditions to PacifiCorp under this Section.

20.4.3. PacifiCorp's Acceptance of Offer. If PacifiCorp accepts an offer made by Seller (or its Affiliate) under this Section, the parties shall within a further sixty (60) days enter into a power purchase agreement in substantially the same form as this Agreement for the purchase and sale of such Expansion Energy (with the security and energy and Green Tags delivery requirements set forth in Section 8 to be adjusted on a pro rata basis to account for the size of the proposed expansion relative to the Nameplate Capacity Rating of the Facility), but incorporating such changes as are expressly identified in the terms and conditions offered by Seller (or its Affiliate).

SECTION 21
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

SECTION 22
NOTICES

22.1 Addresses and Delivery Methods. 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: [to be provided]

To PacifiCorp: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232- 2315
Attn: Sr. Vice President, Commercial & Trading
Telefacsimile (503) 813-6260

with a copy to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Director of Contract Administration, C&T
Telefacsimile (503) 813-6291

with copies to: PacifiCorp Energy Legal Department
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Assistant General Counsel
Telefacsimile (503) 813-6761

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

22.3 Notices to Senior Lenders. The requirements concerning notice by PacifiCorp to Senior Lenders, if any, are set forth in the Lender Consent, if any.

SECTION 23 **CONFIDENTIALITY**

23.1 Confidential Business Information. The following constitutes “**Confidential Business Information,**” whether oral or written: (a) the parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the date hereof, (b) the terms hereof, (c) information provided under Section 6.10.1, (d) the actual charges billed to PacifiCorp hereunder, and (e) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation, and (f) information provided by one Party to the other pursuant to the terms of this Agreement. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement hereof and for no other purpose.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law, (ii) in order for PacifiCorp to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, PacifiCorp may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Section 23.1 (d) or 23.1(e). In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that could embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp’s net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource

planning reports, reports to entities such as the North American Electric Reliability Council, Western Electricity Coordinating Council, Pacific Northwest Utility Coordinating Committee, Western Regional Generation Information System, or similar or successor organizations, or similar or successor forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller if PacifiCorp has obtained in such proceedings a protective order covering such Confidential Business information.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, Seller shall first provide a copy thereof to PacifiCorp for its review and approval. Any use of PacifiCorp's name in such news release or promotional material must adhere to PacifiCorp's publicity guidelines then in effect; any use of Berkshire Hathaway's name requires PacifiCorp's prior written consent.

SECTION 24 **DISAGREEMENTS**

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 24.2 below. All negotiations pursuant to this clause are confidential.

24.2 Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the "AAA"), as amended and effective on July 1, 2003 (the "Mediation Procedures"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

(a) The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“Mediation Notice”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in Portland, Oregon.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days after receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2(c), and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2(f). The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

(e) All verbal and written communications between the parties and issued or prepared in connection with this Section 24.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 24.2 may be extended by mutual agreement.

24.3 Place of Contract Formation; Choice of Forum. Seller and PacifiCorp acknowledge and agree that this Agreement has been made and entered into as of the date first set forth above in the City of Portland, Oregon. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Oregon, Portland Division, or if such court does not have jurisdiction, in the Circuit Court for Multnomah County, Oregon. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, and), (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

24.4 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 between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. 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. 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.

24.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY 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 HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR 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.

24.6 Specific Performance. Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of the other Party hereunder. The Parties agree that specific performance (including temporary and preliminary

relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other party hereunder, and that any liability limits contained herein shall not operate to limit the exercise of PacifiCorp's remedies in equity to cause Seller to perform its obligations hereunder. Seller agrees that it will not assert as a defense to PacifiCorp's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets and Required Facility Documents relating to the Facility to the extent necessary to prevent a material adverse effect on PacifiCorp's right to specific performance or injunctive relief.

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

[SELLER]

By: _____
Name: _____
Title: _____

PACIFICORP

By: _____
Name: _____
Title: _____

EXHIBIT A

ESTIMATED MONTHLY OUTPUT

	On-Peak Hours	Off-Peak Hours	Total
January	___MWh	___MWh	___MWh
February	___MWh	___MWh	___MWh
March	___MWh	___MWh	___MWh
April	___MWh	___MWh	___MWh
May	___MWh	___MWh	___MWh
June	___MWh	___MWh	___MWh
July	___MWh	___MWh	___MWh
August	___MWh	___MWh	___MWh
September	___MWh	___MWh	___MWh
October	___MWh	___MWh	___MWh
November	___MWh	___MWh	___MWh
December	___MWh	___MWh	___MWh
Total	___MWh	___MWh	___MWh

EXHIBIT B

GUARANTEED AVAILABILITY

<u>Contract Year</u>	<u>Guaranteed Availability</u>
1	70.0%
2	80.0%
3 - end of Term	87.5%

EXHIBIT C

EXAMPLE OF CALCULATION OF DELAY DAMAGES

For the purposes of this example only, assume the following:

(Note: These assumptions are illustrative only. Actual terms are as defined in this Agreement)

Expected Energy = 185,000 MWhs

PacifiCorp's Cost to Cover = as set forth in the table below

Scheduled Commercial Operation Date: December 31, 2009

Actual Commercial Operation Date: January 15, 2010

DATE	A PacifiCorp's Cost to Cover	B Delay Damages (A X 185,000 / 365)
Thursday, January 14, 2010	\$14.15	\$7,171.92
Wednesday, January 13, 2010	\$20.90	\$10,593.15
Tuesday, January 12, 2010	\$13.90	\$7,045.21
Monday, January 11, 2010	\$16.15	\$8,185.62
Sunday, January 10, 2010	\$16.15	\$8,185.62
Saturday, January 09, 2010	\$14.90	\$7,552.05
Friday, January 08, 2010	\$17.15	\$8,692.47
Thursday, January 07, 2010	\$23.15	\$11,733.56
Wednesday, January 06, 2010	\$19.90	\$10,086.30
Tuesday, January 05, 2010	\$11.90	\$6,031.51
Monday, January 04, 2010	\$12.90	\$6,538.36
Sunday, January 03, 2010	\$12.90	\$6,538.36
Saturday, January 02, 2010	\$20.90	\$10,593.15
Friday, January 01, 2010	\$20.40	\$10,339.73

Total Delay Damages \$119,286.99

EXHIBIT D

NERC EVENT TYPES

Event Type	Description of Outages
U1 ¹	<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 ¹	<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 ¹	<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 ¹	<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.

¹ These event types are all contributors to the FOR & EFOR calculations in the reports section.

EXHIBIT F

SAMPLE REPORT FROM FIRM MARKET PRICE INDEX

[Note to Bidders: A sample report will be provided during the final negotiation process]

EXHIBIT G

APPROVED LICENSED PROFESSIONAL ENGINEERS

[Note to Bidders: A list of approved licensed professional engineers will be provided during the final negotiation process]

EXHIBIT H

PERMITS

[Note to Bidders: To be adapted to conform to proposed resource.]

EXHIBIT I

START-UP TESTING

[Note to Bidders: To be adapted to conform to proposed resource.]

EXHIBIT 2.6

PACIFICORP'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives.

PacifiCorp: Senior Vice President- Commercial & Trading
PacifiCorp Energy
825 NE Multnomah St., Suite 600
Portland, OR 97232-2315
Fax 503-813-6271

With a copy to: Director, Marketing and Trading Contracts
PacifiCorp Commercial and Trading
825 NE Multnomah St., Suite 600
Portland, OR 97232-2315
Fax 503-813-6271

EXHIBIT 3.2.6

REQUIRED FACILITY DOCUMENTS

1. Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

Construction and Operations and Maintenance:

Land Rights:

Wind Leases:

See Exhibit 3.2.8

2. To Be Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

Construction Agreements:

Operations and Maintenance Agreements:

[should also include easements (overhang, noise, ROW), crossing agreements, subordination agreements (i.e., agricultural leases), estoppels, non-interference, or wind indemnity agreements; such further documents as internal review further requires.

EXHIBIT 3.2.8

WIND LEASES

[description of wind leases to be provided]

EXHIBIT 4.4.2

EXAMPLE OF CALCULATION OF PAYMENT DUE FOR CURTAILMENT ENERGY

For the purposes of this example only, assume the following:

(Note: These assumptions are illustrative only. Actual terms are as defined in this Agreement)

- The Facility is curtailed pursuant to Section 4.4.2 from 12:00 August 15, 2008 through 17:00 August 15, 2008
- Contract Price in 2008 during the hours of the curtailment is \$55.10/MWh
- Production Tax Credit in 2008 is \$19/MWh
- Curtailment Energy as agreed to by the parties pursuant to Section 4.4.2 is as shown in the table below

Hour Ending	A Curtailed Energy (MWhs)	B = A X (55.10 + 19) Curtailment Payment
8/15/08 20:00	0	\$0.00
8/15/08 19:00	0	\$0.00
8/15/08 18:00	0	\$0.00
8/15/08 17:00	60	\$4,446.00
8/15/08 16:00	35	\$2,593.50
8/15/08 15:00	37	\$2,741.70
8/15/08 14:00	42	\$3,112.20
8/15/08 13:00	56	\$4,149.60
8/15/08 12:00	65	\$4,816.50
8/15/08 11:00	0	\$0.00
8/15/08 10:00	0	\$0.00
8/15/08 9:00	0	\$0.00
8/15/08 8:00	0	\$0.00
Total Curtailment Payment		\$21,859.50

EXHIBIT 4.5

GREEN TAG ATTESTATION AND BILL OF SALE

[_____] (“Seller”) hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Environmental Attributes and Green Tag Reporting Rights) associated with the generation and delivery of energy to PacifiCorp under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [_____] (the “PPA”), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: _____ Fuel Type: _____

Capacity (MW): _____ Operational Date: _____

Energy Admin. ID no.: _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated above pursuant to the PPA; and
- iv) to the best of Seller’s knowledge, each of the Green Tags and Environmental Attributes associated with the generation of energy for delivery under the PPA have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller’s right, title and interest in and to the Green Tags (including Green Tag Reporting Rights and Environmental Attributes) associated with the generation of the energy from the Facility under the PPA as set forth above.

Seller's Contact Person: [_____]

WITNESS MY HAND,

[SELLER],

a [_____] [_____]

By _____

Its _____

Date: _____

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

EXHIBIT 5.1

CONTRACT PRICE

[Note to Bidders: List Contract Prices by year and broken out in each year into On-Peak Hours and Off-Peak Hours prices]

EXHIBIT 6.1

DESCRIPTION OF FACILITY

[To be provided by bidder]

EXHIBIT 6.12.2

**EXAMPLE CALCULATION OF LIQUIDATED DAMAGES
FOR AN OUTPUT SHORTFALL**

[Example to be developed based upon actual Expected Energy]

EXHIBIT 8.4.1

FORM OF SUBORDINATED MORTGAGE

[Note to Bidders: This will be provided by PacifiCorp and will vary based upon the jurisdictions in which the Facility is located.]

EXHIBIT 8.6

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW wind-powered electric generating facility located _____, known as the _____ Wind Generation Project (the “Project”).

WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

WHEREAS, Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project.

WHEREAS, PacifiCorp and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).

WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of

which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT

PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the PPA from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA, or (iii) amend or modify the PPA in any manner materially adverse to the interest of the Lenders in the PPA as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the PPA, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the PPA, Section 11.1.2(c) of the PPA is not being breached, and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the PPA to the Lenders or Administrative Agent or their designees or assignees or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon

such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designees or assignees or any of them or other purchaser or grantee as the applicable party under the PPA (provided that such Lenders or Administrative Agent or their designees or assignees or purchaser or grantee assume the obligations of Borrower under the PPA, including satisfaction and compliance with all requirements of Article 8 of the PPA, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any such transfer of Borrower's interest under the PPA).

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designees or assignees will enter into a new contract. Such new contract shall be on the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designees or assignees to cure any payment defaults then existing under the original PPA.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower's obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties' interests in the Project, the credit support required under Article 8 of the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract. Nothing herein abrogates PacifiCorp's Covered Facility Right of First Offer as that term is defined in the PPA.

(F) In the event Administrative Agent, the Lenders or their designees or assignees succeed to Borrower's interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured and do not impair PacifiCorp's rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign all or a pro rata interest in the PPA or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding

the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the PPA have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the PPA is in full force and effect;

(D) each of this Consent and the PPA has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the PPA;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the PPA and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the PPA, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp’s actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the PPA and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the PPA; and

(I) the PPA and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project.

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

If to Administrative Agent:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

If to Borrower:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including

without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the PPA to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the PPA not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against PacifiCorp on account of this Consent.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized,

have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

EXHIBIT 9.2

POINT OF DELIVERY/INTERCONNECTION FACILITIES

[To be provided by bidder]

EXHIBIT 11.4

FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

PACIFICORP
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Director of Contract Administration

MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT (“Memorandum”), dated as of _____, 200__, is made by and between _____, a _____ limited liability company (“Seller”), and PACIFICORP, an Oregon corporation acting in its merchant function capacity (“PacifiCorp”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Seller and PacifiCorp have entered into that certain Power Purchase Agreement on the ___ day of _____, 200__ (the “Agreement”), pursuant to which Seller has agreed to construct, own, operate and maintain a wind-powered generation facility for the generation of electric energy to be located in _____ (as more particularly defined in the Agreement, the “Project”), and upon completion of said Project, to sell to PacifiCorp the electric energy to be produced by the Project as well as all associated “Green Tags” (as that term is defined in the Agreement), all on the terms and conditions set forth in the Agreement. The real property on which the Project is to be constructed (the “Premises”) is more particularly described in the attached Exhibit “A”.

B. Seller and PacifiCorp desire to provide record notice of (i) certain terms and conditions of the Agreement pertaining to the Parties’ respective rights and obligations under the Agreement in the event the Agreement is terminated due to a default by Seller, and (ii) Seller’s obligation under the Agreement to grant to PacifiCorp a subordinated lien on the Project and Premises, as security for Seller’s obligations under the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in the Agreement and this Memorandum, Seller and PacifiCorp agree as follows:

TERMS

1. The Premises. Seller acknowledges and agrees that the real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Project, is and will be owned by the Seller and shall hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the provisions of Sections 8.3 and 11.4 and 11.8 of the Agreement and this Memorandum.

2. Covenants Running with the Land. The provisions of Section 11.4 and 11.8 of the Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Seller and PacifiCorp and their respective successors and assigns, including without limitation any person acquiring or owning an interest in the Premises or the Project, and their respective heirs, executors, successors, assigns, administrators, devisees and representatives.

3. Notice.

a. Termination for Default. If the Agreement is terminated due to a default by Seller, neither Seller nor any successor to Seller with respect to the ownership of the Project may thereafter require or seek to require PacifiCorp to purchase energy from the Project under the Public Utility Regulatory Policies Act of 1978, as amended from time to time (“PURPA”), or any other “Requirements of Law” on account of its status as a “QF” or “qualifying facility” (as those terms are defined in the Agreement), for any periods that would have been within the “Term” (as defined in the Agreement), had the Agreement remained in effect. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself and its successors, waived its rights to require PacifiCorp to so purchase such energy from the Project in the event of such termination.

b. Survival. The terms and provisions of Section 11.4 of the Agreement shall survive the termination of the Agreement.

4. Notice of Agreement to Grant Subordinated Lien. Pursuant to Section 8 of the Agreement, Seller has agreed to grant PacifiCorp, concurrently with the execution of the Agreement and simultaneously with the acquisition by Seller after the effective date of the Agreement of any additional real property in connection with the Project, a subordinated lien on the Project and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Project (which lien shall be subordinate to the interests of the “Senior Lenders”, as defined in the Agreement), as security for the obligations of Seller to PacifiCorp under the Agreement.

5. Effect of Memorandum. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Agreement. The Agreement is hereby incorporated by reference as if fully set forth herein.

6. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument.

7. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from PacifiCorp at 825 NE Multnomah, Suite 2000, Portland, Oregon 97232-2315, Attn: Sr. Vice President, Commercial & Trading. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to PacifiCorp in its sole and absolute discretion.

IN WITNESS WHEREOF, Seller and PacifiCorp have executed and acknowledged this Memorandum as of the day and year first above written.

_____,
a _____ limited liability company

PACIFICORP,
a Oregon corporation

By _____
Name _____
Title _____

By _____
Name _____
Title _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005 by _____, the _____ of _____, a _____ limited liability company.

NOTARY PUBLIC

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of PACIFICORP, an Oregon corporation.

NOTARY PUBLIC

Exhibit "A"

Legal Description of the Premises

EXHIBIT 13

REQUIRED INSURANCE

[Note to Bidders: A description of required insurance will be provided during the final negotiation process]

EXHIBIT 14

CREDIT MATRIX

[Note to Bidders: The credit matrix is provided in Appendix D of RFP 2008R-1]