

# ***Form Agreement***

*This working draft is provided pursuant to Rocky Mountain Power Utah tariff schedule 32. This working draft does not constitute a binding offer, shall not form the basis for an agreement by estoppel or otherwise, and is conditioned upon satisfaction of all requirements of schedule 38 (including but not limited to each party's receipt of all required management approvals (including final credit and legal approval)) and all other necessary regulatory approvals. Any actions taken by a party in reliance on the terms (including but not limited to pricing) set forth in this working draft or on statements made during negotiations pursuant to this working draft shall be at that party's own risk. Until this agreement is negotiated, approved by management, signed, delivered and approved by all required regulatory bodies, no party shall have any other legal obligations, expressed or implied, or arising in any other manner under this working draft or in the course of negotiations.*

<b>ADDENDUM A to Renewable Energy Contract</b>
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**NON-FIRM QUALIFYING FACILITY**

**POWER PURCHASE AGREEMENT**

**FOR**

**UTAH SCHEDULE 32**

**BETWEEN**

---

**AND**

**PACIFICORP**

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## **EXHIBITS**

- Exhibit A Estimated Monthly Output
- Exhibit B NERC Event Types
- Exhibit 2.7 PacifiCorp's Initial Designated Representatives
- Exhibit 3.2.3 Required Facility Documents
- Exhibit 3.2.6 Leases
- Exhibit 5.1 Contract Price
- Exhibit 6.1 Description of Renewable Energy Facility and Premises
- Exhibit 9.2 Point of Interconnection/Interconnection Facilities
- Exhibit 9.5 Seller Authorization to Release Generation Data to PacifiCorp
- Exhibit 13 Required Insurance

**NON-FIRM POWER PURCHASE AGREEMENT FOR SCHEDULE 32  
(RENEWABLE ENERGY)**

THIS NON-FIRM POWER PURCHASE AGREEMENT FOR SCHEDULE 32 (RENEWABLE ENERGY) (this “Agreement”), is entered into between \_\_\_\_\_ a \_\_\_\_\_ (“Seller”) and PacifiCorp, an Oregon corporation acting in its merchant function capacity and doing business in Utah as Rocky Mountain Power (“PacifiCorp”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

**RECITALS**

WHEREAS, Seller intends to construct, own, operate and maintain a \_\_\_\_\_ generation facility for the generation of electric energy located in \_\_\_\_\_ County, Utah with an expected nameplate capacity rating of \_\_\_\_\_ megawatt (“MW”) (AC) (the “Renewable Energy Facility”).

WHEREAS, Seller has a separate contract with a Rocky Mountain Power retail Customer to sell renewable power and energy from Seller’s Renewable Energy Facility for delivery to one or more Customer’s Facilities as allowed under Senate Bill 12 (“SB 12”) and provided for in Rocky Mountain Power Electric Service Schedule 32, Service from Renewable Energy Facilities,

WHEREAS, Rocky Mountain Power shall purchase the Delivered Renewable Energy from the Renewable Energy Facility and deliver such renewable power and energy to each Customer Facility under a Renewable Energy Contract,

WHEREAS, in any hour, the Net Output from Seller’s Renewable Energy Facility may exceed the aggregate Demand of Customer’s Facilities,

WHEREAS, Seller desires to sell, and PacifiCorp desires to purchase, the Excess Renewable Power delivered by the Renewable Energy Facility in accordance with the terms and conditions hereof.

WHEREAS, Seller expects that the Renewable Energy Facility will deliver to PacifiCorp \_\_\_\_\_ MWh of Excess Renewable Power per calendar year. Seller estimates that the Excess Renewable Power 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 in PacifiCorp’s resource planning.

WHEREAS, Seller intends to operate the Renewable Energy Facility as a Qualifying Facility (“QF”) and the rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from Qualifying Facilities.

WHEREAS, the rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission under Schedule 37 and Schedule 38 for purchases from Qualifying Facilities.

WHEREAS, PacifiCorp intends to designate Seller's Renewable Energy Facility as a Network Resource for the purposes of serving network load.

NOW, THEREFORE, the Parties mutually agree as follows:

## **A G R E E M E N T**

### **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” means the American Arbitration Association.

“AC” means alternating current.

“Agreement” is defined in the Recitals.

“Business Day” means any day on which banks in Salt Lake City, Utah 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 Utah.

“Commission” means the Utah Public Service Commission.

“Contract Interest Rate” means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 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, New York, selected by the Party to whom interest is being paid.

“Contract Price” means the non-firm energy price using Schedule 37 or Schedule 38 as applicable for the Renewable Energy Facility based on Nameplate Capacity Rating and expressed in \$/MWh for Excess Renewable Energy stated in Section 5.1.

“Contract Year” means any consecutive 12-month period during the Term, commencing at 00:00 hours on the Initial Delivery Date or any of its anniversaries and ending at 24:00 hours on the last day of such 12-month period.

“Delivered Renewable Energy” means, in any hour, the amount of Net Output that PacifiCorp delivers to the aggregate of the Customer's Facilities as provided for in Rocky Mountain Power Electric Service Schedule 32, Service from Renewable Energy Facilities.

“Effective Date” is defined in Section 2.1.

“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. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 (i) ITCs or any Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Renewable Energy Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

“Event of Default” is defined in Section 11.1.

“Excess Renewable Energy” means, in any hour, the amount of Net Output from the Renewable Energy Facility delivered to the Point of Interconnection in excess of the Delivered Renewable Energy.

“Expected Excess Renewable Energy” means \_\_\_\_\_MWh of Excess Renewable Energy per year measured at the Point of Interconnection, which is Seller’s best estimate of the projected first-year Excess Renewable Energy.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” is defined in Section 14.1.

“Generation Interconnection Agreement” means the generator interconnection agreement to be entered into separately between Seller and PacifiCorp Transmission 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 (a) the Environmental Attributes associated with all Output, together with (b) 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 Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Renewable Energy Facility.

“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.

“Indemnified Party” is defined in Section 6.2.3(b).

“Initial Delivery Date” means the earliest date Seller may deliver Net Output under this Agreement, as set forth in Recital B.

"Initial Delivery" means that the Renewable Energy Facility is fully operational and reliable and the Renewable Energy 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 (a) have occurred, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Initial Delivery has occurred:

- (i) 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.
- (ii) Seller shall provide copies of any or all Required Facility Documents requested by PacifiCorp.
- (iii) PacifiCorp has received confirmation from the PacifiCorp Transmission that the Renewable Energy Facility has been designated as a Network Resource and PacifiCorp has received confirmation from PacifiCorp Transmission that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Delivery Rate
- (iv) Seller has satisfied its obligation to pay for any required Network Upgrades as a Network Resource pursuant to the Generation Interconnection Agreement (as terms are defined in the Generation Interconnection Agreement).

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

“KW” means kilowatt.

“kWh” means kilowatt hour.

“Liabilities” is defined in Section 12.1.1.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached Exhibit B, and includes any outage involving 10 percent of the Renewable Energy Facility’s Net Output 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 Renewable Energy Facility to the Point of Interconnection, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the Nameplate Capacity Rating.

“Mountain Prevailing Time” or “MPT” means Mountain Standard Time or Mountain Daylight Time, as applicable in Utah on the day in question.

“MW” means megawatt.

“MWh” means megawatt hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the Renewable Energy Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement. The Nameplate Capacity Rating of the Renewable Energy Facility shall not exceed 80 MW.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Renewable Energy Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output equals the sum of Delivered Renewable Energy and Excess Renewable Energy as measured at the Point of Interconnection.

“Network Resource” is defined in the Tariff.

“Network Service Provider” means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

“On-Peak” means the hours as defined in the Electric Service Schedule.

“Off-Peak” means those hours that are not On-Peak hours.

“Output” means all energy produced by the Renewable Energy Facility.

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.13.

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

“Party” and “Parties” are defined in the Recitals.

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

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

“Point of Interconnection” means the point of interconnection between the Renewable Energy 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 Renewable Energy 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 independent electric power generation industry for solar facilities of similar size and characteristics 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 generally accepted in the industry.

“On-Peak” means the hours as defined in the Electric Service Schedule and described in Exhibit 5.1.

“Off-Peak” means those hours that are not On-Peak hours.

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

“QF” means “Qualifying Facility,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

“Renewable Energy Contract” means a contract between Rocky Mountain Power and Customer for the sale and delivery of electricity from one or more Renewable Energy Facilities to a Customer requiring the use of Rocky Mountain Power’s transmission or distribution system to deliver the electricity from a Renewable Energy Facility to the delivery location(s) under the Customer Agreement(s).

“Required Facility Documents” means the Permits and other authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of

the Renewable Energy Facility. Seller shall set forth all the Required Facility Documents in Exhibit 3.2.3.

“Requirements of Law” means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, action, order, 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 (including, but not limited to an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

“Schedule 37” means Rocky Mountain Power Electric Service Schedule No. 37, in effect at the time of execution by both Parties, and as approved by the Commission.

“Schedule 38” means Rocky Mountain Power Electric Service Schedule No. 38, in effect at the time of execution by both Parties, and as approved by the Commission.

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 12.1.2.

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

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

“Term” is defined in Section 2.1.

“WECC” means the Western Electricity Coordinating Council.

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

## 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,” “Recitals,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, recitals, 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; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word “or” is not necessarily exclusive. Reference to “days” shall be calendar days, unless expressly stated otherwise herein.

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 PacifiCorp’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 PacifiCorp Transmission.

(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 PacifiCorp Transmission.

(b) Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller and PacifiCorp Transmission, 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 PacifiCorp Transmission.

(c) Seller expressly recognizes that, for purposes hereof, PacifiCorp Transmission 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 PacifiCorp Transmission or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over PacifiCorp Transmission, and is not liable for any breach of agreement or duty by PacifiCorp Transmission.

## SECTION 2 TERM; FACILITY DEVELOPMENT

2.1 Term; Inter-jurisdictional Cost Allocation. This Agreement shall become effective when it is executed and delivered by both Parties and has been approved by the Commission (the “Effective Date”), and, unless earlier terminated as provided herein, shall remain in effect until the earlier of the termination of the Renewable Energy Contract or the \_\_\_\_\_ anniversary of the Initial Delivery Date (the “Term”). In the event that the Commission order approving this Agreement requires any change in this Agreement or imposes any requirement or condition not anticipated by the Parties that may reasonably be expected to make either Party’s performance under this Agreement commercially impracticable, the Parties may negotiate an amendment to this Agreement in an attempt to restore the Parties to the extent possible, to the commercial position prior to such order. If the Parties are unable to enter into such an amendment within thirty (30) days of the entry of the Commission’s order, the Party adversely impacted by such change or condition may terminate this Agreement by providing the other Party notice within thirty (30) days of the entry of the Commission’s order.

2.2 Adverse Order. For purposes of inter-jurisdictional cost allocation, this Agreement constitutes a “New QF Contract” under the PacifiCorp Inter-Jurisdictional Cost Allocation 2010 Protocol (“2010 Protocol”) and, as such, the costs of those QF provisions are allocated as a system resource unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the 2010 Protocol assigns those excess costs on a situs basis to the State of Utah. The rates, terms and conditions in this Agreement are in accordance with the rates, terms and conditions approved by the Commission for purchases from qualifying facilities. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as “Comparable Resources” in Appendix A to the 2010 Protocol.

2.3 Milestones. Time is of the essence in the performance hereof, and Seller’s completion of the Renewable Energy Facility and delivery of Net Output by the Initial Delivery Date is critically important. Therefore, Seller shall achieve the following milestones at the times indicated:

(a) On or before \_\_\_\_\_ Seller shall provide PacifiCorp with a fully executed Generation Interconnection Agreement;

(b) Seller shall provide PacifiCorp with documentation showing that Seller has obtained retail electric service for the Renewable Energy Facility prior to the Initial Delivery Date;

2.4 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller’s or the Renewable Energy Facility’s eligibility to receive ITCs or other Tax Credits, or to 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, shall be

effective regardless of whether the sale of Output or Net Output from the Renewable Energy Facility is eligible for, or receives, ITCs, or other Tax Credits 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 of its 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 does 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 Governmental Authority 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.

3.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of either Party's knowledge, threatened in writing against either Party or its members, with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against a Party, its members, or any Affiliate, the effect of which would materially and adversely affect the Party's performance of its obligations hereunder.

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

3.2.1 Authority. Seller (a) has (or will have prior to the Initial Delivery Date) all required regulatory authority to make wholesale sales from the Renewable Energy Facility; (b) has the power and authority to own and operate the Renewable Energy Facility and be present upon the Premises for the Term; and (c) 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.

3.2.2 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 3.2.3 or (ii) required in connection with the construction or operation of the Renewable Energy 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 managers, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder, 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, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder.

3.2.3 Required Facility Documents. All Required Facility Documents are listed on Exhibit 3.2.3. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Initial Delivery Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents (including, but not limited to, all material authorizations, rights and entitlements) necessary to construct, own and operate the Renewable Energy Facility and to deliver Net Output to PacifiCorp in accordance with this Agreement. The anticipated use of the Renewable Energy Facility complies with all applicable restrictive covenants affecting the Premises. Following the Initial Delivery Date, Seller shall notify PacifiCorp of any additional material consent or approval that is required for the operation and maintenance of the Renewable Energy Facility promptly after Seller makes any such determination.

3.2.4 Delivery of Energy. On or before the Initial Delivery Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Renewable Energy Facility to the Point of Interconnection pursuant to this Agreement throughout the Term.

3.2.5 Control of Premises. Seller has all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Renewable Energy Facility for the Term. All leases of real property required for the operation of the Renewable Energy Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit 3.2.6. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Renewable Energy Facility as valid for the Term. Upon request by PacifiCorp, Seller shall provide copies of the memoranda of lease recorded in connection with the development of the Renewable Energy Facility to PacifiCorp.

3.2.6 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.7 Verification. All information relating to the Renewable Energy Facility, its operation and output provided to PacifiCorp and contained in this Agreement has been verified by Seller and is true and accurate.

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 repeated as of the Initial Delivery Date. If at any time during the Term, any Party obtains actual knowledge of any event or information that would have caused any of the representations and warranties in Section 3 to be materially untrue or misleading at the time given, 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. If at any time the Seller obtains actual knowledge that the representations and warranties in Sections 3.2.1, 3.2.2(a), 3.2.3, 3.2.4 or 3.2.5 are not true, Seller shall provide written notice to PacifiCorp. 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**

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Initial Delivery Date and continuing through the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive the Net Output from the Renewable Energy Facility at the Point of Interconnection. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output that is not delivered to the Point of Interconnection

4.2 Excess Renewable Energy. Commencing on the Initial Delivery Date, Seller shall have the option, but not the obligation, to provide and deliver all or a portion of the Net Output to PacifiCorp at the Point of Interconnection. The portion of Net Output in excess of the Delivered Renewable Energy that Seller actually delivers to PacifiCorp at the Point of Interconnection shall be referred to herein as the "Excess Renewable Energy". Seller shall not deliver energy at a rate exceeding the Nameplate Capacity Rating on an hour average basis when operated in compliance with the Generation Interconnection Agreement. PacifiCorp may accept energy delivered at a rate exceeding the Nameplate Capacity Rating, but shall not pay for it. Seller shall have no minimum delivery obligation, however Seller shall not sell Net Output to any entity other than PacifiCorp prior to the termination date specified in Section 2.1.

4.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output to the Point of Interconnection 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 Interconnection. 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 Interconnection. PacifiCorp shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Interconnection.

4.4 Curtailement. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output if such Net Output is not delivered to the System or Point of Interconnection due to any of the following: (a) the interconnection between the Renewable Energy Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the PacifiCorp Transmission or Network Service Provider to operate within system limitations (excluding curtailment of purchases for general economic reasons unilaterally directed by PacifiCorp acting solely in its merchant function capacity and not otherwise directed as provided herein), (c) the Renewable Energy Facility's Output is not received because the Renewable Energy 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 Parties acknowledge that Section 4.4(b) is intended to be interpreted and applied in a manner that does not alter the curtailment and purchasing rights and responsibilities established in 18 C.F.R. § 292.307(b)(1) (2013) and 18 C.F.R. § 292.101(b)(4) (2013).

4.5 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor to PacifiCorp Transmission.

4.6 Title to Green Tags. As a result of the Commission order in Docket No. 12-035-100 dated August 16, 2013, PacifiCorp waives any claim to Seller's ownership of Green Tags under this Agreement.

4.6.1 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 Net Output, if any, to PacifiCorp.

## **SECTION 5 CONTRACT PRICE; COSTS**

5.1 Contract Price. PacifiCorp shall pay Seller the prices stated below under the applicable Electric Service Schedule for Qualifying Facilities for all deliveries of Excess Renewable Energy to the Point of Interconnection. The Contract Price provided for in Section 5.2 include the consideration to be paid by PacifiCorp to Seller, respectively, and Seller shall not be entitled to any compensation over and above the Contract Price.

5.2 Applicable QF Schedule. PacifiCorp shall pay Seller the non-firm energy as established under the applicable Electric Service Schedule for Qualifying Facilities based on Nameplate Capacity Rating of the Renewable Energy Facility:

\_\_\_\_\_ Schedule 37

\_\_\_\_\_ Schedule 38

5.2.1 Excess Renewable Energy After The Initial Delivery Date . For the period beginning on the Initial Delivery Date and thereafter during the Term, PacifiCorp shall pay to Seller the Contract Price per MWh of Excess Renewable Energy delivered to the Point of Interconnection, as specified in Exhibit 5.1.

5.2.2 Delivered Renewable Energy After The Initial Delivery Date . For the period beginning on the Initial Delivery Date and thereafter during the Term, compensation to the Seller for the Delivered Renewable Energy delivered to the Point of Interconnection shall be under the Renewable Energy Contract.

5.3 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 Interconnection, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by PacifiCorp Transmission 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 Interconnection, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, 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 Renewable Energy Facility with the System and (b) any increase in generating capacity of the Renewable Energy Facility.

5.4 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Renewable Energy Facility that is not provided by the Renewable Energy Facility itself.

5.5 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output, or Green Tags (if owned by PacifiCorp as provided in Section 4.6) up to and including, but not beyond, the Point of Interconnection, 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 imposed or levied by any Governmental Authority on the Net Output, or Green Tags (if owned by PacifiCorp as provided in Section 4.6) beyond the Point of Interconnection, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible

hereunder, the Party on which the taxes are imposed shall promptly provide the other Party notice thereof and such other information as such Party may reasonably request with respect to any such taxes.

5.6 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof and subject to Section 5.4, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Renewable Energy 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 Renewable Energy Facility, its operation, or on or with respect to emissions or other environmental impacts of the Renewable Energy Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental attributes.

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 an agreement in writing of the other Party. Further, absent an agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or FERC acting sua sponte shall be the “public interest” application of the “just and reasonable” 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

## **SECTION 6 OPERATION AND CONTROL**

6.1 As-Built Supplement. Within ninety (90) days after the Initial Delivery Date, Seller shall provide PacifiCorp the As-built Supplement, if any. 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, which approval shall not be unreasonably withheld or delayed. If the proposed As-built Supplement does not accurately describe the Renewable Energy Facility as actually built or is otherwise defective as to form in any material respect, PacifiCorp may within fifteen (15) days after receiving the proposed As-built Supplement give Seller a notice describing what PacifiCorp wishes to correct. If PacifiCorp does not give Seller such a notice within the 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 Renewable Energy Facility as actually built.

## 6.2 Standard of Renewable Energy Facility Operation.

6.2.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Renewable Energy Facility and the Interconnection Facilities in accordance with (a) 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; (b) the Permits and Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements hereof; and (f) Prudent Electrical Practices. 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) PacifiCorp Transmission. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

### 6.2.2 Fines and Penalties.

(a) Without limiting a Party's rights under Section 6.2.3(b), each Party shall pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law in respect to this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

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

6.3 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Renewable Energy Facility at its Nameplate Capacity Rating at the Point of Interconnection. 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 PacifiCorp Transmission, in connection with the Generation Interconnection Agreement or otherwise.

6.4 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Renewable Energy Facility and the Interconnection Facilities with the System.

### 6.5 Outages.

6.5.1 Planned and Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Planned or 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 consistent with Prudent Electrical Practices). 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 consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the day light hours of 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 Renewable Energy 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 reasonably 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.

6.5.2 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any Forced Outage resulting in more than 10 percent of the Nameplate Capacity Rating of the Renewable Energy Facility being unavailable. This report shall include the amount of the generation capacity of the Renewable Energy 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, the oral report shall be confirmed in writing by notice to PacifiCorp. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.3 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 Renewable Energy Facility.

## 6.6 Scheduling.

6.6.1 Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall cooperate with PacifiCorp with respect to scheduling 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.

6.6.2 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 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 or RTO requirement.

## 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 an annual update to the expected Excess Renewable Energy in Exhibit A.

6.7.2 Short-term Forecasts and Updates. For each month commencing on the Initial Delivery Date, Seller shall provide PacifiCorp estimates of Excess Renewable Energy to be delivered. Seller shall provide such estimates, and any changes thereto, to PacifiCorp on the first business day of the month preceding the month of the estimated delivery, or as soon thereafter as practicable. Seller shall provide such estimates and changes thereto to PacifiCorp's scheduling personnel per Section 22. Such estimates shall be based on the best information available. PacifiCorp may at its cost and without the prior consent of Seller add the Renewable Energy Facility to PacifiCorp's existing forecasting vendor contract.

6.7.3 Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only, and PacifiCorp expressly releases and holds harmless Seller from any liability for forecasting errors.

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 increase, at its own expense, the ability of the Renewable Energy Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Renewable Energy Facility equipment or related infrastructure, PacifiCorp shall not be required to purchase any Net Output above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion within one mile of the Renewable Energy Facility (measured from the nearest generation equipment at both locations), Seller shall have no rights pursuant to this Agreement to require PacifiCorp to purchase (and PacifiCorp shall have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility. Any such expansion or additional facility may not materially and adversely impact the ability of either Party to fulfill its obligations pursuant hereto.

## 6.9 Electronic Communications.

6.9.1 Telemetry. Seller shall during the Term provide telemetry equipment and facilities capable of transmitting the following information concerning the Renewable Energy 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 Interconnection;
- (b) Net Output; and
- (c) the Renewable Energy Facility's total instantaneous generation capacity.

Seller shall also transmit or cause to be transmitted to or make accessible to PacifiCorp any other data from the Renewable Energy Facility that Seller receives on a real time basis, including meteorological data, solar exposure data and Net Output data. Such real time data shall be provided to or be made accessible 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).

6.9.2 PacifiCorp Transmission Consent. Seller shall execute a consent, in the form required by PacifiCorp Transmission, to provide that PacifiCorp can read the meter and receive any and all data from the PacifiCorp Transmission relating to transmission of Output or other matters relating to the Renewable Energy 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 Renewable Energy Facility's control room or such other communication equipment as the Parties may agree.

#### 6.10 Reports and Records.

6.10.1 Information to Governmental Authorities. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Renewable Energy 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 Renewable Energy 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. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$10,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.1.

6.10.2 Data Request. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Renewable Energy Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor 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. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$10,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.2.

6.10.3 Documents to Governmental Authorities. After 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 Renewable Energy Facility, Seller shall promptly provide to PacifiCorp a copy of the same.

6.10.4 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 information relating to environmental impact mitigation measures it is taking in connection with the Renewable Energy Facility's construction or operation that are required by any Governmental Authority. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$10,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for the foregoing information under this Section 6.10.7. As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Renewable Energy Facility, or the presence of Environmental Contamination at the Renewable Energy Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

6.10.5 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 Renewable Energy Facility or Seller's ability to develop, construct, operate, maintain or own the Renewable Energy Facility as provided herein.

6.10.6 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, or proceeding before any court or Governmental Authority against Seller or its members with respect to this Agreement or the transactions contemplated hereunder, Seller shall promptly give notice to PacifiCorp of the same. Following its receipt of written notice or actual knowledge of the commencement of any action, suit or proceeding before any court or Governmental Authority against Seller, its members or any Affiliate, the effect of which would materially and adversely affect Seller's performance of its obligations hereunder, Seller shall promptly give notice to PacifiCorp of the same.

6.10.7 Additional Information. Seller shall provide to PacifiCorp such other information respecting the condition or operations of Seller, as such pertains to Seller's performance of its obligations hereunder, or the Renewable Energy Facility as PacifiCorp may, from time to time, reasonably request.

6.10.8 Confidential Treatment. The periodic reports and other information provided to PacifiCorp under this Section 6.10 shall be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the information is

provided to PacifiCorp, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 6.10.7, 9.5, 9.6, 23.2 and 23.3, 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 (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PacifiCorp's written request, sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If PacifiCorp or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PacifiCorp's written request, 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 ASC 810 and Requirements of Law. 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. The information provided to PacifiCorp under this Section 6.11 shall be treated as Confidential Business Information if at the time the Seller provides such information to PacifiCorp the Seller provides written notice that the information is Confidential Business Information. Seller shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section is subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 6.10.7, 9.5, 9.6, 23.2 and 23.3, and pursuant to any applicable Requirements of Law.

## **SECTION 7 QUALIFYING FACILITY STATUS**

7.1 Seller's QF Status. Seller covenants that, during the Term and before delivering Net Output to PacifiCorp hereunder, Seller shall cause the Renewable Energy Facility to be a QF.

7.2 QF Facility. 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. 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. At any time during the Term, PacifiCorp may require Seller, at Seller's sole cost, to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Renewable Energy Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Renewable Energy Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing before a state bar in the United States, and (b) has no economic relationship, association or nexus with the Seller or the Renewable Energy Facility, stating that the Renewable Energy Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Renewable Energy Facility as a QF.

## **SECTION 8 SECURITY AND CREDIT SUPPORT**

RESERVED

## **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 Seller's obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into the System at the Point of Interconnection.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment that are provided for in the Generation Interconnection Agreement, without PacifiCorp assuming any obligations thereunder. If any of the inspections or tests disclose an error exceeding 0.5 percent, 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. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

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 Renewable Energy Facility.

9.5 Meter Data. Within ten (10) days of the Effective Date, Seller may request the PacifiCorp Transmission in writing in a form similar to that found in Exhibit 9.5 to provide any and all meter or other data associated with the Renewable Energy Facility or Net Output directly to PacifiCorp. Should Seller refuse to provide a release similar to that found in Exhibit 9.5,

Seller shall establish a mechanism at its expense that allows PacifiCorp, in its merchant function, to obtain all necessary meter and other data to fully perform and verify Seller's performance under this Agreement. 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 Renewable Energy 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 Renewable Energy Facility and only the Renewable Energy Facility.

## **SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 Monthly Invoices. On or before the 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 the Point of Interconnection 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 20th day following receipt of such invoice or the 30th day following the end of each month, payment for Seller's deliveries of Net Output to PacifiCorp.

10.2 Offsets. Either Party may offset any payment due hereunder against amounts owed by the other Party pursuant hereto. Either Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder.

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.

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 Net Output delivered at the Point of Interconnection. 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 (each a “default” before the passing of applicable notice and cure periods, and an “Event of Default” thereafter) 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 a general 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) Subject to the limitations set forth in Section 3.4, 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; provided, however, that, upon written notice from the defaulting Party, this 30-day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the 30-day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60-day period, and (iii) 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.

(d) A Party otherwise fails to perform any material obligation hereunder if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the defaulting Party, the 30-day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the 30-day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60-day period, and (iii) 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 sells Output from the Renewable Energy Facility to a party other than PacifiCorp in breach of Section 4.2, 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.

(b) PacifiCorp receives notice of foreclosure of the Renewable Energy 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 (10) days of the date of the notice received by PacifiCorp.

(c) After the Initial Delivery Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the Renewable Energy Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp; provided, however, that, upon written notice from Seller, the 30-day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the 30-day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60-day period, and (iii) Seller commences the cure within the original 30-day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(d) Seller fails to maintain insurance as required by this Agreement and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from PacifiCorp.

11.2 Termination and Remedies. From and during the continuance of an Event of Default, 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 fifteen (15) Business Days before such termination date. The notice required by this Section 11.3 may be provided in the notice of default (and does not have to be a separate notice) so long as it complies with all other terms of this Section 11.3. As a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of then-current President and General Counsel of PacifiCorp set forth in Section 22. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested. In addition, Seller's termination notice shall state prominently therein in typefont no smaller than 14-point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A UTAH SCHEDULE 32 QF PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within fifteen (15) Business Days of receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default within the time periods provided in Section 11.1, and until PacifiCorp 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 24.5). 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. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due hereunder.

(c) Before and after 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) Without limiting the generality of the foregoing, the provisions of Sections 4.5, 5.4, 5.5, 6.10.4, 6.10.5, 6.10.7, 10.3, 10.4, 10.5, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, and Section 12, Section 13, Section 23, and Section 24 shall survive the termination hereof to the extent necessary to comply with or verify compliance by the Parties with the requirements of this Agreement.

11.3 Termination of Duty to Buy. If this Agreement is terminated following the Initial Delivery Date because of a default by Seller, neither Seller (or any Affiliate), nor any successor to Seller with respect to the ownership of the Renewable Energy Facility or Premises, may thereafter require or seek to require PacifiCorp to enter into a power purchase agreement or otherwise purchase energy or capacity from the Renewable Energy Facility or any facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect; provided, however, that such prohibition on seeking or requiring PacifiCorp to enter into a power purchase agreement or otherwise purchase energy or capacity as described above shall not apply in the event that any proposed replacement agreement incorporates the Contract Price attached hereto as Exhibit 5.1.

11.4 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, 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 divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") actually or allegedly resulting from, or arising out of,

or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Renewable Energy Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or 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 PacifiCorp Indemnites or by Seller's compliance with Requirements of Law. Seller 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.

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 Indemnites") against and from any and all Liabilities actually or allegedly 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 (a) injury, bodily or otherwise, to, or death of, or (b) for damage to, or destruction or economic loss of property of, any person or entity within the Seller Indemnites, 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 Indemnites.

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 Indemnites from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Interconnection, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnites from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Interconnection 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 Indemnites or the Seller Indemnites, 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. 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, SECTION 11.2.3 CAPACITY RIGHTS 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 the insurance coverage specified on Exhibit 13 during the Term or longer period if specified in Exhibit 13.

## **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; civil disturbance; sabotage; strikes; lock-outs; work stoppages; 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 capacity at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Renewable Energy Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the Renewable Energy Facility’s equipment (including any serial equipment defect) that is not 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 Renewable Energy Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the PacifiCorp Transmission, Network Service Provider or PacifiCorp Transmission unless due to a Force Majeure event, (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a 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, PacifiCorp Transmission or PacifiCorp Transmission, unless due to a Force Majeure event; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net 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. Neither Party shall be liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, for the same number of days that the event of Force Majeure has prevailed, provided that:

(a) 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

(b) 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

(c) 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 one hundred eighty (180) consecutive days prior to the Initial Delivery Date or, after the Initial Delivery Date, for a period exceeding two hundred ten (210) 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 Force Majeure event, 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 the 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 Utah, applying 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 hereof 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 Renewable Energy 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, which shall not be unreasonably withheld.

20.2 Permitted Assignments. Notwithstanding Section 20.1, 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 project financing for the Renewable Energy Facility; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller); provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. Except with respect to collateral assignments for financing purposes in every assignment

permitted under this Section 20.2, the assignee must agree in writing to be bound by the terms and conditions hereof and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. 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 upon approval of PacifiCorp ceasing to be a load-serving entity by the Commission. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

## **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. In addition, copies of a notice of termination of this Agreement under Section 11.3 shall contain the information required by Section 11.3 and shall be sent to the then-current President and General Counsel of PacifiCorp. Notices required to be in writing shall be delivered by letter, facsimile or other tangible documentary form. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by facsimile is effective as of transmission to each and all of the telefacsimile numbers provided below for a Party, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by overnight mail shall be deemed to have been given the Business Day after it is sent, if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express or UPS). Notice by certified or registered mail, return receipt requested, shall be deemed to have been given upon receipt.

To Seller:

with a copy to:

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: Manager 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

and termination notices to PacifiCorp: PacifiCorp Energy  
1407 West North Temple, Suite 320  
Salt Lake City, Utah 84116  
Attn: President

and to: PacifiCorp Energy  
1407 West North Temple, Suite 320  
Salt Lake City, Utah 84116  
Attn: General Counsel

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, shall be set forth in an applicable Lender Consent.

## **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 Effective Date, (b) the actual charges billed to PacifiCorp hereunder, (c) information provided by Seller contained in periodic reports, including but not limited to those described in Section 6.10.1 and 6.11, and (d) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy and methodologies for their determination or estimation. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential, except as otherwise

expressly provided in this Agreement. “Confidential Business Information” shall not include information that (i) is in or enters the public domain through no fault of the Party receiving such information, or (ii) was in the possession of a Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a) and (c) above. A Party providing any Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to be treated as Confidential Business information with the term “Confidential” on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 23, for a period of two (2) years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, accountants, auditors, counsel, consultants, lenders, prospective lenders, employees, officers and directors), 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 Sections 23.1(b) or 23.1(c). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that is or could otherwise 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 NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, 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 so long as PacifiCorp treats such Confidential Business Information consistent with its normal treatment of confidential customer 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. Except as otherwise provided in Section 6.14, before either Party issues any news release or publicly distributed promotional material regarding the Renewable Energy Facility that mentions the Renewable Energy Facility, such Party shall first provide a copy thereof to the other Party for its review and approval. Any use of either Party's name in such news release or promotional material must adhere to such Party'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. All negotiations pursuant to this clause are confidential.

24.2 Arbitration. If any dispute cannot be resolved by negotiations as set forth in Section 24.1 above, 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, the Parties may elect to pursue arbitration pursuant to the rules of the American Arbitration Association, or any other method chosen by the Parties, subject to the express written agreement of both Parties. Such written agreement shall include all guidelines to be followed by the Parties in such arbitration. Neither party shall be obligated to pursue arbitration over any other method of dispute resolution.

24.3 Additional Legal Remedies. In the event the Parties are unable to satisfactorily resolve the dispute within sixty (60) days from the receipt of notice of the dispute, and the Parties have not elected to pursue arbitration as described herein, subject to any extensions of time as may be mutually agreed upon in writing, or any arbitration agreement, either Party may initiate any legal remedies available to the Party.

24.4 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 executed by both Parties in Salt Lake City, Utah. 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 this Agreement shall be brought exclusively in the United States District Court for the District of Utah in Salt Lake City, Utah, or if such court does not have jurisdiction, in the 3<sup>rd</sup> Judicial District (Salt Lake County) Court of the state of Utah. 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.

24.5 Settlement Discussions. 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.

24.6 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, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

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

Seller Legal Name	PACIFICORP
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## EXHIBIT A

### ESTIMATED MONTHLY OUTPUT

Seller to provide one (1) electronic and hard copy of the Renewable Energy Facility performance estimate including, at a minimum, estimated hourly MW generation output in MWh for the Renewable Energy Facility.

<b>Month</b>	<b>Monthly Output (MW)</b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
<b>Total</b>	

## EXHIBIT B

### NERC EVENT TYPES

Event Type	Description of Outages
U1 <sup>19</sup>	<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.
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.)
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, Solar Array replacement or inspections are typical planned outages.)

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<sup>19</sup> These event types are all contributors to the FOR & EFOR calculations in the reports section.

**EXHIBIT 2.7**

**PACIFICORP'S INITIAL DESIGNATED REPRESENTATIVES**

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

## EXHIBIT 3.2.3

### REQUIRED FACILITY DOCUMENTS

Qualifying Renewable Energy Facility Number from FERC: Will be self-certified

1. **Obtained Required Facility Documents:**
2. **To Be Obtained (Prior to Commercial Operation) Required Facility Documents:**

Licenses, Permits and Authorizations:

Construction and Operations and Maintenance:

Generator Interconnection Agreement – Interconnection Agreement with PacifiCorp to be obtained.

Retail Electric Service Agreement – Service request will be submitted upon execution of PPA.

Proof of Insurance – Certificates of Insurance to be provided prior to activity, construction or operations.

**SUCH LIST MAY BE UPDATED PURSUANT TO SECTION 3.2.3**

**EXHIBIT 5.1**

**CONTRACT PRICE**

“On-Peak” means the following from Schedule 32:

October through April inclusive

7:00 a.m. to 11:00 p.m., Monday thru Friday, except holidays.

May through September inclusive

1:00 p.m. to 9:00 p.m., Monday thru Friday, except holidays.

Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be considered a holiday and consequently Off-Peak.

“Off-Peak” means those hours that are not On-Peak hours.

Prices shown in \$ per MWh.

Month	On-Peak Prices	Off-Peak Prices
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

## EXHIBIT 6.1

### Description of Seller's Renewable Energy Facility

Seller's Renewable Energy Facility consists of. More specifically, the Renewable Energy Facility includes:

A. Manufacturer's Nameplate Data:

Total land required: approximately 650 acres

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): PF= 0.9

Leading: 0.9      Lagging: 0.9

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

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Project Description

Location

Location of the Renewable Energy Facility: \_\_\_\_\_, Utah in the \_\_\_\_quarter of the \_\_\_\_  
quarter of S\_\_, T\_\_ S, R\_\_W,

The site is an approximately acre site located near the Town of \_\_\_\_\_, Utah.

WRITTEN DESCRIPTION OF THE RENEWABLE ENERGY FACILITY

**Seller Confirmation:** \_\_\_\_\_[Seller's signature] Seller confirms that the  
information in this Exhibit 6.1 is correct as of \_\_\_\_\_[date]

**EXHIBIT 6.1 — Attachments**

**Exhibit 6.1.**

**Substation Metering – One-Line Diagram**

**(See Attached)**

**Exhibit 6.1**

**Site plan**

**(See Attached)**

## **EXHIBIT 9.2**

### **POINT OF DELIVERY/INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Interconnection.
2. Include description of Point of Interconnection.
3. Provide interconnection single line drawing of Renewable Energy Facility including any transmission facilities on Seller's side of the Point of Interconnection.

Provided as Exhibit 6.1, Attachment 1 is the Renewable Energy Facility single line diagram.

4. Provide transmission single line drawing of the transmission path from the Point of Interconnection to the Point of Interconnection as the path is defined in the Transmission Agreement(s). Specify any changes of ownership along the transmission path. Specify the Transmission Agreement(s) governing each segment of Seller's transmission path, from the Renewable Energy Facility to the Point of Interconnection.
5. Describe Seller's arrangements for station service to the facility and show on one-line diagram how station service will be provided and metered.
6. Specify the maximum hourly rate (MW) at which Seller is permitted to deliver energy to the Point of Interconnection and in compliance with Seller's transmission rights between the Renewable Energy Facility and the Point of Interconnection ("Maximum Transmission Rate"):

\_\_\_\_\_MW.

## EXHIBIT B – Attachments

1. Substation Metering One-Line Diagram (See Exhibit 6.1, Attachment 1)

**EXHIBIT 9.5**

**SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP**

## 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: Sr. Vice President, Commercial Trading and Manager of Contract Administration

#### MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT ("Memorandum"), dated as of \_\_\_\_\_, 20\_\_, is made by and between Utah Red Hills Renewable Park, LLC a Delaware 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 \_\_\_\_\_, 20\_\_ (the "Agreement"), pursuant to which Seller has agreed to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy to be located in Iron County, in the State of Utah (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, 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 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.

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 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 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 permitted assigns, including without limitation any person acquiring or owning an interest in the

Premises or the Project, and their respective heirs, executors, successors, permitted assigns, administrators, devisees and representatives.

3. Notice.

a. Termination for Default. If this Agreement is terminated following the Initial Delivery Date because of a default by Seller, neither Seller (or any Affiliate), nor any successor to Seller with respect to the ownership of the Renewable Energy Facility or Premises, may thereafter require or seek to require PacifiCorp to enter into a power purchase agreement or otherwise purchase energy or capacity from the Renewable Energy Facility or any facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect; provided, however, that such prohibition on seeking or requiring PacifiCorp to enter into a power purchase agreement or otherwise purchase energy or capacity as described above shall not apply in the event that any proposed replacement agreement incorporates the Contract Price attached hereto as Exhibit 5.1. If this Agreement is terminated prior to the Initial Delivery Date because of a default by Seller, for a period of two (2) years following the date of such termination, neither Seller (or any Affiliate), nor any successor to Seller with respect to the ownership of the Renewable Energy Facility or Premises, may thereafter require or seek to require PacifiCorp to enter into a power purchase agreement or otherwise purchase energy or capacity from the Renewable Energy Facility or any facility constructed on the Premises under PURPA or any other Requirements of Law using any Contract Price other than that provided in Exhibit 5.1 attached hereto. Following this two year period, Seller, Affiliate or successor to Seller may seek a new power purchase agreement with PacifiCorp for the Renewable Energy Facility or for a facility to be constructed on the Premises, though PacifiCorp shall not be obligated to provide in such power purchase agreement avoided cost prices that are higher than the avoided cost prices contained in this Agreement for any sales of energy or capacity to PacifiCorp under that power purchase agreement prior to the expiration of five (5) years from the date this Agreement is terminated as a result of Seller's default. The parties agree that a termination of the Agreement due to the failure of the Seller to obtain a governmental approval or authorization for the Renewable Energy Facility or Premises or a legal challenge brought by a third party to a governmental approval or authorization that has been granted for the Renewable Energy Facility or Premises that causes prospective Lenders to refuse to provide financing for the construction of the Renewable Energy Facility shall not be considered to be a default of the Seller for purposes of this Section 11.4 only. Terms not defined herein shall have the meaning ascribed to such terms in the Agreement.

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

4. 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.

5. 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.

6. 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,



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Exhibit "A"

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Legal Description of the Premises

## EXHIBIT 13

### REQUIRED INSURANCE

1.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than “A-/VII” by the A.M. Best Company the insurance coverage specified below:

1.1.1 Workers’ Compensation. Seller shall comply with any applicable laws or statutes, state or federal jurisdiction, where Seller performs work.

1.1.2 Employers’ Liability. Seller shall maintain employers’ liability insurance with minimum limits covering bodily injury for: \$500,000 – each accident, \$500,000 by disease – each employee, and \$500,000 by disease – policy limit.

1.1.3 Commercial General Liability. Seller shall maintain insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

1.1.4 Business Automobile Liability. Seller shall secure and continuously carry business automobile liability insurance with a minimum single limit of \$1,000,000 each accident covering bodily injury and property damage with respect to Seller’s vehicles whether owned, hired or non-owned.

1.1.5 Umbrella/excess Liability. Seller shall maintain umbrella or excess liability insurance on an occurrence and following form basis with a minimum limits as follows:

- (a) Renewable Energy Facility Capacity Rating under 200 KW - \$1,000,000
- (b) Renewable Energy Facility Capacity Rating at or above 200 KW - \$5,000,000

1.1.6 Property Insurance. Seller shall maintain property insurance covering equipment and structures in an amount at least equal to the full replacement value for “all risks” of physical loss or damage, including coverage for earth movement, flood, boiler and machinery, and business interruption. The policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. Property insurance will be maintained in accordance with terms available in the insurance market for similar facilities.

1.2 Additional Provisions or Endorsements:

1.2.1 Except for workers’ compensation and property insurance, the policies required herein shall include provisions or endorsements as follows:

- (a) naming PacifiCorp, parent, divisions, officers, directors and employees as additional insureds;
- (b) include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and
- (c) cross liability coverage or severability of interest.

1.2.2 Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

1.3 **Certificates.** Prior to connection of the Renewable Energy Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) confirming Seller's compliance with the insurance requirements hereunder. Insurance certificate confirming compliance shall be provided to PacifiCorp by Seller at least annually and each time a new insurance policy is issued or becomes effective.

1.4 **Commercial General Liability** coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Seller shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

1.5 **Periodic Review.** PacifiCorp may review this schedule of insurance as often as once every two (2) years. PacifiCorp may in its discretion require Seller to make reasonable changes to the policies and coverages described in this Exhibit to the extent reasonably necessary to cause such policies and coverages to conform to the insurance policies and coverages typically obtained or required for power generation facilities comparable to the Renewable Energy Facility at the time PacifiCorp's review takes place.