

**GREEN TAG ATTESTATION AND BILL OF SALE**

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

Facility name and location: \_\_\_\_\_

Fuel Type: Wind

Capacity (MW): \_\_\_\_\_

Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates	MWh generated
_____	_____

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

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

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

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

Seller's Contact Person: [\_\_\_\_\_]

WITNESS MY HAND,

[SELLER], a [\_\_\_\_\_] [\_\_\_\_\_]

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

## QUALIFIED REPORTING ENTITY SERVICES AGREEMENT

Energy Supply Management Master v4.1b; 05102017

This Qualified Reporting Entity Services Agreement (this “Agreement”) is entered into by and between PacifiCorp (“PacifiCorp”) and \_\_\_\_\_ (“Counterparty”; PacifiCorp and Counterparty may be referred to individually herein as “Party” and collectively as “Parties”) as of the date signed by both Parties with reference to the following:

WHEREAS, Counterparty represents to PacifiCorp that it owns or otherwise has the rights to all or part of the non-energy attributes of the generation from that certain electric generation facility as more particularly described in Exhibit A (the “Facility”) as such rights are defined in that power purchase agreement between PacifiCorp and Counterparty (the “PPA”), or other rights respecting the Facility itself enabling it to lawfully enter hereinto; and

WHEREAS, the Western Renewable Electricity Generation Information System (“WREGIS”) is a system tracking quantities of renewable energy generation generated by electric generating facilities in the nature of the Facility, as a Facility pursuant to WREGIS Terms of Use (“TOU”); and

WHEREAS, WREGIS requires that each Facility have a designated Qualified Reporting Entity; and

WHEREAS, Counterparty is an Account Holder in WREGIS and wishes to register the Facility with WREGIS; and

WHEREAS, Counterparty wishes to retain PacifiCorp to act as its WREGIS-defined Qualified Reporting Entity (“QRE”) for the Facility;

NOW THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

### I. Definitions; Rules of Construction.

1.1 Initially capitalized terms used and not otherwise defined herein are defined in the in the WREGIS Operating Rules or in Attachment 1 *Definitions* of the WREGIS TOU.

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

1.3 “Business Day” means a day of the week other than Saturday, Sunday, or a federal holiday.

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

1.5 “FERC” means the Federal Energy Regulatory Commission.

1.6 “Generation Interconnection Agreement” means the agreement entered into separately between Counterparty and Interconnection Provider concerning the Interconnection Facilities.

1.7 “Facility” is defined in the Preamble.

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

1.9 “Interconnection Provider” means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for interconnection to the electric transmission grid; in the event Interconnection Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto.

1.10 “Metering External Webpage” means a website owned and operated by PacifiCorp that PacifiCorp may at its option, but without being obligated to do so, make available and operate for the display of all data that will be included in the Monthly Generation Extract File.

1.11 “Monthly Generation Extract File” means a data file that contains generation data from Counterparty’s Points of Metering and conforms to the characteristics and requirements set forth in the WREGIS Interface Control Document.

1.12 “NERC” means the North American Electric Reliability Corporation.

1.13 “Points of Metering” means the points at which electric generation is measured.

1.14 “PPA” is defined in the Preamble.

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

1.16 “QRE” means a WREGIS-defined Qualified Reporting Entity.

1.17 “Renewable” is defined in section 2 of the WREGIS Operating Rules.

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

1.19 “Settlement Estimation Procedures” means a calculation based on standard utility estimation rules using algorithms developed and approved by PacifiCorp’s billing department.

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

1.21 “Tariff” means the PacifiCorp FERC Electric Tariff Fifth Revised Volume No. 11 Open Access Transmission Tariff, or such updated volume as posted on PacifiCorp’s Open Access Same-Time Information System on the effective date of this Agreement.

1.22 “Transmission Provider” means the FERC-regulated or United States Department of Energy entity with whom the Facility has contracted for electric transmission at and away from the Facility to any point on, or interconnection with, the electric transmission grid; in the event Transmission Provider is PacifiCorp, PacifiCorp would be the Interconnection Provider operating in its regulated transmission function, and not as the party hereto.

1.23 “Wholesale Generation Also Serving On-Site Loads” is defined in section 2 of the WREGIS Operating Rules.

1.24 “WECC” means the Western Electricity Coordinating Council.

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

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

1.27 “WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, including the TOU.

1.28 General Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles,

sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular law or statute mean that law or statute as amended from time to time; and (i) the word "or" is not necessarily exclusive.

1.29 Interpretation with FERC Orders. Counterparty acknowledges and agrees that PacifiCorp must conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, which requires the functional separation of a utility's transmission and merchant functions. Moreover, the Parties acknowledge that each of Transmission Provider's and Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. Counterparty agrees to conduct itself and operate the Facility in accordance with all Requirements of Law, all requirements of all applicable Electric System Authorities, and all requirements of the Interconnection Agreement.

1.29.1 Counterparty agrees to enter into the Generation Interconnection Agreement with the Interconnection Provider. The Generation Interconnection Agreement shall be a separate and free standing contract and the terms hereof are not binding upon the Interconnection Provider or Transmission Provider, although both are express third party beneficiaries hereof.

1.29.2 Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Counterparty on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. Likewise, nothing herein or connected with the performance by PacifiCorp hereof shall affect or impair the rights of Interconnection Provider or Transmission Provider, under the Interconnection Agreement or otherwise. This Agreement shall not be construed to create any rights between Counterparty and the Interconnection Provider or between Counterparty and the Transmission Provider.

1.29.3 Counterparty expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an affiliate thereof. Counterparty acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider. Nothing in this Agreement shall operate to diminish, nor shall this Agreement extend to, Interconnection Provider or Transmission Provider's use, retention, or disclosure of Counterparty or Facility information (including information within the scope of this Agreement)

in connection with PacifiCorp operating in its transmission function, including its carrying out of its obligations and business practices as a Balancing Authority or activities undertaken pursuant to the Tariff.

## II. Term and Termination.

2.1 This Agreement shall be effective upon execution by the Parties and shall continue in effect until such time as either Party, upon providing 60 days written notice to the other Party, chooses to terminate. PacifiCorp may initiate any regulatory proceedings it deems appropriate to terminate this Agreement prior to the effectiveness of such termination. Notwithstanding the foregoing, (a) Counterparty may terminate this Agreement upon an event of default by PacifiCorp if PacifiCorp does not cure such event of default within 10 days of written notice, (b) PacifiCorp may terminate this Agreement upon an event of default by Counterparty if Counterparty does not cure such event of default within 10 days of written notice, (c) PacifiCorp may terminate this Agreement if the Facility fails to meet the requirements of Section 3.1 hereof and such failure is not cured within 30 days, and (d) either Party may terminate this Agreement immediately upon notice to the other if Counterparty or the Facility fail to comply with Section 1.28. This Agreement may also be terminated as otherwise set forth herein.

## III. QRE Services.

3.1 QRE Services. PacifiCorp will, on the terms set forth herein, serve as a QRE for the Facility so long as (a) the Facility meets the definition of Renewable, (b) is within the metered boundaries of both PacifiCorp's Balancing Authority, (c) is equipped with either: (1) Transmission Provider or Interconnection Provider (as applicable) owned and operated meters; or (2) meters that meet the Interconnection Provider's requirements and (d) meet all applicable WREGIS requirements.

3.2 Compensation to PacifiCorp. PacifiCorp may assess fees to Counterparty in exchange for the services performed by PacifiCorp hereunder. When directed by PacifiCorp, Counterparty shall pay PacifiCorp as follows: Counterparty shall pay PacifiCorp a one-time initial setup fee of \$280, which PacifiCorp may at its option deduct from payments due to Counterparty under the PPA and otherwise shall be payable within ten days of demand by invoice following execution of this Agreement. PacifiCorp shall charge Counterparty a monthly reporting fee of \$50 per generating unit for which PacifiCorp reports output to WREGIS, provided that PacifiCorp may, in its discretion, assess and bill for all fees due hereunder on an annual, rather than monthly, basis. PacifiCorp may at its option deduct from payments due to Counterparty under the PPA all other fees due hereunder, which shall otherwise be due within ten days of PacifiCorp's issuance of an invoice for such fees. PacifiCorp will review costs associated with this service on an annual basis, and may make necessary adjustments to the monthly reporting fee charged herein. Any change in the monthly reporting fee will become effective only after a minimum thirty (30) days prior written notice to Counterparty. In the event WREGIS, WECC, or any other entity with the ability or jurisdiction to modify the QRE reporting process requires a change that materially increases the costs to PacifiCorp of providing QRE services, PacifiCorp may pass those costs to the Counterparty by increasing the monthly reporting fee. PacifiCorp will use best efforts to provide Counterparty with prior notice before billing Counterparty for such increased costs. The fees set forth herein relate to PacifiCorp

serving as a QRE for Counterparty pursuant to the terms of this Agreement. The necessary metering is a prerequisite for this service and is not covered in the fees described above.

3.3 Points of Metering. The Points of Metering that PacifiCorp will use are set forth in Exhibit A. Counterparty certifies that all Points of Metering listed in Exhibit A measure data only from Facility that meet the definition of Renewable. Counterparty shall notify PacifiCorp at least thirty (30) Business Days prior to making any proposed material changes to the Points of Metering. Following such notification, the Parties will decide whether such changes are mutually acceptable. If such changes are not acceptable to PacifiCorp, PacifiCorp may terminate this Agreement.

3.4 Expenses. Except as otherwise provided in the Interconnection Agreement (and in such case, only vis-à-vis Interconnection Provider), Counterparty shall bear all costs and expenses, including those incurred by PacifiCorp, relating to all metering or other equipment installed to accommodate Counterparty's Facility.

3.5 Reporting. Counterparty hereby grants to PacifiCorp sole and exclusive permission and authority to report Data and Output to WREGIS and warrants and represents that neither Counterparty nor any other person or entity acting on behalf of Counterparty has granted, or will hereafter grant during the term hereof any similar data reporting authority or permission to any other QRE or WREGIS Account Holder or to any other party or Agent for use in WREGIS, or any other energy tracking system, for the Facility. As a precondition for PacifiCorp to be able to perform hereunder, Counterparty shall submit Counterparty's Output data to PacifiCorp by allowing PacifiCorp to collect such data, at the Points of Metering, and report such data in the manner set forth herein.

3.5.1 Monthly Generation Extract File. PacifiCorp shall submit a Monthly Generation Extract File to WREGIS on Counterparty's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document.

3.5.2 Reporting Cycle. PacifiCorp shall submit the Monthly Generation Extract File to WREGIS no later than sixty days following the end date of the output being reported.

3.5.3 Verification. Should PacifiCorp choose at its option to operate and make available a Metering External Webpage, PacifiCorp may in its reasonably exercised discretion grant Counterparty access for Counterparty to verify such information as prescribed by PacifiCorp from time to time, and to timely notify PacifiCorp in writing of any errors Counterparty detects.

3.5.4 Adjustments. After PacifiCorp submits the Monthly Generation Extract File to WREGIS, any information contained in the Monthly Generation Extract File shall be final for purposes of WREGIS reporting, subject only to the adjustment procedures set forth in the WREGIS Operating Rules, which shall be Counterparty's responsibility to implement if necessary.

3.6 Obligations of Counterparty. Counterparty shall report and provide to PacifiCorp accurate and complete generation Data and Output information for the Facility. Counterparty



shall send the Data and other Output Information in a format and in compliance with any protocols which PacifiCorp may specify to Counterparty. Counterparty has a continuing duty to immediately notify PacifiCorp, if and when any generation Data or Output information has been sent in error or ceases to be truthful, accurate, or complete and to supply the corrected data as soon as practical, but not later than five (5) Business Days from the date Counterparty discovers that discrepancy in the Data or Output information.

3.7 WREGIS Fees. Counterparty is solely responsible for the payment directly to WREGIS of any and all WREGIS fees and costs that are required to register Counterparty's Facility and, to the extent the Generator Owner is a WREGIS Account Holder, Counterparty is responsible for the payment directly to WREGIS of all other WREGIS fees incident to the reporting of Generator Data and Output to WREGIS. Counterparty acknowledges and agrees that PacifiCorp shall have no obligation to advance or make payment of WREGIS fees or costs on Counterparty's behalf. Upon request by PacifiCorp made if PacifiCorp has received such a request from WREGIS or any regulator or third party, Counterparty shall provide PacifiCorp with evidence of payment of WREGIS fees and costs; failure to provide such information to PacifiCorp, upon request, shall constitute an event of default under this Agreement.

3.8 WREGIS Accounts. Counterparty will be solely responsible to make arrangements and registrations and for entering into any such agreements that are necessary to establish transfer of Certificates directly to proper Accounts or Subaccounts of Counterparty. Counterparty agrees that such arrangements shall preclude the need for PacifiCorp to act as custodian of such Certificates or to be responsible in any way to hold such Certificates in any Account or Subaccount of PacifiCorp or bear any responsibility, possession, obligation, or risk of loss with respect to Certificates created, held, or owned, with respect to the Facility. Counterparty acknowledges that, pursuant to section 11 of the WREGIS TOU, any generation data that PacifiCorp, acting as a QRE, provides to WREGIS shall reside in WREGIS and Counterparty will have no control over such data's use other than that provided for under the WREGIS TOU.

3.9 Obligations of PacifiCorp. PacifiCorp shall specify for Counterparty the protocols, reporting frequency, data file formats, and communication protocols for reporting generating Data, or Output, as necessary. PacifiCorp shall timely report to WREGIS Counterparty Data and/or Output information as specified in the most current WREGIS Interface Control Document (ICD). PacifiCorp shall not use or disclose Counterparty generation Data for any other purpose than reporting the Data to WREGIS, except as may be required by law, the Public Utility Commission of Oregon, any other state, federal, municipal or other regulator or governmental authority with jurisdiction over PacifiCorp or any of its assets, or a court of competent jurisdiction or as required under the terms of an existing agreement between the Parties. PacifiCorp shall not use Generator Owner generation Data for any other purpose. Notwithstanding the foregoing, PacifiCorp shall not be responsible for handling, account administration, transfer, evidence of, or any determination of Counterparty Certificate ownership or any other obligations for Certificates of Counterparty with regard to Certificates; and Counterparty shall bear all responsibility for such handling, account administration, evidence of, or any determination of Counterparty Certificate ownership and all other obligations pertaining to creation and ownership of such Certificates.

### 3.10 Measurement.

3.10.1 Meter Data. Counterparty authorizes PacifiCorp's metering services organization to provide Counterparty's meter data directly to WREGIS in the form of the Monthly Generation Extract File. Counterparty authorizes PacifiCorp to gather data from the Points of Metering listed in Exhibit A. All such data is considered data which Counterparty has created and submitted to PacifiCorp, notwithstanding that PacifiCorp, rather than Counterparty will gather it.

3.10.2 Wholesale Generation Also Serving On-Site Loads. If Counterparty has any Wholesale Generation Also Serving On-Site Loads (as defined in Article One above), such Facility will need to have the on-site load generation metered (and registered) separately from the generation that is supplied to the grid, in accordance with the WREGIS Operating Rules. Otherwise, PacifiCorp will not report any data from such Facility. If such Facility exist, they must be specified in Exhibit A.

3.10.3 Estimates. When meter readings are not available due to meter hardware failure or data that is determined to be invalid due to meter malfunction or calibration or configuration error, to the extent deemed by PacifiCorp to be appropriate and permitted pursuant to WREGIS TOU, PacifiCorp will, if possible, rely on readings from redundant meters whether such meters are PacifiCorp owned or not. If readings from redundant meters are not possible, PacifiCorp will estimate and report meter data according to PacifiCorp's Settlement Estimation Procedures.

3.10.4 Responsibility. Counterparty is solely responsible for the data created and submitted to PacifiCorp, acting as a QRE, to forward to WREGIS.

3.11 Regulatory Requirements. PacifiCorp may release information provided by Counterparty hereunder, or gathered by PacifiCorp in connection herewith, to comply with any regulatory requirements applicable to PacifiCorp or if requested by a PacifiCorp regulator or if required by any other federal law or court order. Counterparty waives all applicable provisions of the Tariff which require PacifiCorp to hold confidential information with respect to the Generator Owner and the Facility, to the extent necessary for PacifiCorp to report, as a QRE, generation Data and Output regarding the Generation Unit(s) and to carry out PacifiCorp's obligations under this Agreement. This provision shall survive any termination of this Agreement.

3.12 Grant by Counterparty. Counterparty hereby grants to, permits, and authorizes PacifiCorp the following:

3.12.1 PacifiCorp is hereby authorized to communicate and transact with WREGIS as Counterparty's sole and exclusive reporting source of generation data for the Facility, and WREGIS is hereby authorized to communicate and transact directly with PacifiCorp regarding any generation data issues for the Facility. PacifiCorp is hereby authorized

to act on behalf of Counterparty, but only to the extent that PacifiCorp has lawful, contractual access to WREGIS.

3.12.2 PacifiCorp is hereby authorized to provide WREGIS with all generation data for the Facility that WREGIS requires, including, but not limited to, data required for preparation of required reports and billing.

3.12.3 PacifiCorp is authorized to undertake all actions which are reasonable and necessary to carry out the obligations set forth in the subsections above.

3.12.4 Counterparty retains all other rights and responsibilities and all other obligations to WREGIS.

#### IV. INDEMNITY.

4.1 INDEMNITY. TO THE EXTENT PERMITTED BY REQUIREMENTS OF LAW, COUNTERPARTY HEREBY INDEMNIFIES AND AGREES TO HOLD PACIFICORP, ITS AFFILIATES, AND EACH OF ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, THE "PACIFICORP INDEMNITEES") HARMLESS AGAINST ANY AND ALL LOSSES, FINES, PENALTIES, CLAIMS (INCLUDING THIRD PARTY CLAIMS), DEMANDS, DAMAGES, LIABILITIES, ACTIONS OR SUITS OF ANY NATURE WHATSOEVER (INCLUDING LEGAL COSTS AND ATTORNEY'S FEES, BOTH AT TRIAL AND ON APPEAL, WHETHER OR NOT SUIT IS BROUGHT) (COLLECTIVELY, "LIABILITIES") THAT ARE IN ANY WAY ASSOCIATED WITH PACIFICORP'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER. THIS INCLUDES LIABILITY ARISING FROM: THE DATA CONTAINED IN THE MONTHLY GENERATION EXTRACT FILE, OR ANY OTHER FINANCIAL INJURY, OR DAMAGE TO PERSONS OR PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

4.2 WAIVER OF CAUSES OF ACTION AND CLAIMS FOR DAMAGES. WITHOUT LIMITING THE GENERALITY OF SECTION 4.1 ABOVE, COUNTERPARTY HEREBY WAIVES ANY AND ALL CAUSES OF ACTION ARISING UNDER OR IN RESPECT TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY (INCLUDING STRICT LIABILITY) AGAINST PACIFICORP OR ANY PACIFICORP INDEMNITEE. IN NO EVENT SHALL PACIFICORP OR ANY PACIFICORP INDEMNITEE BE LIABLE TO COUNTERPARTY ITS BOARD OF DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES FOR ANY DEMANDS, DIRECT COSTS, LOST OR PROSPECTIVE PROFITS OR ANY OTHER LIABILITIES OR EXPENSES, WHETHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT IN NATURE, THAT ARE IN ANY WAY ASSOCIATED WITH PACIFICORP'S PERFORMANCE OF THE QRE FUNCTION OR OTHERWISE UNDER OR IN RESPECT OF THIS AGREEMENT.

**4.3 INDEMNITY FOR COUNTERPARTY ACTIONS. WITHOUT LIMITING THE GENERALITY OF SECTION 4.1 ABOVE, COUNTERPARTY SHALL RELEASE, INDEMNIFY AND HOLD PACIFICORP AND ALL PACIFICORP INDEMNITEES HARMLESS AGAINST AND FROM ANY AND ALL LIABILITIES RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE PERFORMANCE BY COUNTERPARTY OF ITS OBLIGATIONS HEREUNDER, OR RELATING TO THE FACILITY, FOR OR ON ACCOUNT OF (I) INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF, OR (II) FOR DAMAGE TO, OR DESTRUCTION OR ECONOMIC LOSS OF PROPERTY OF, ANY PERSON OR ENTITY, EXCEPTING ONLY TO THE EXTENT SUCH LIABILITIES AS MAY BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PACIFICORP INDEMNITEE.**

**4.4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, COUNTERPARTY ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM (1) THE FAILURE TO SEND DATA IN A FORMAT SPECIFIED BY PACIFICORP, (2) THE FAILURE TO USE PROTOCOLS SPECIFIED BY PACIFICORP OR (3) THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE, AND/OR INCOMPLETE GENERATING DATA TO PACIFICORP OR THE SENDING OF ERRONEOUS, UNTRUTHFUL, INACCURATE, AND/OR INCOMPLETE DATA BY PACIFICORP TO WREGIS. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR OTHER INDIRECT LOSS OR DAMAGES RESULTING FROM ANY BREACH OF THIS AGREEMENT, WHETHER CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTIONS OF PACIFICORP (AND/OR ITS CONTRACTORS, AGENTS, AND EMPLOYEES), REGARDLESS OF WHETHER SUCH CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL PACIFICORP BE LIABLE FOR ANY LOSS OR HARM SUFFERED BY COUNTERPARTY OR ANY THIRD PARTY DUE TO ANY ACTION OR INACTION BY PACIFICORP TAKEN HEREUNDER THAT CAUSES A FACILITY TO LOSE ANY CREDENTIALS, REGISTRATION OR QUALIFICATION UNDER THE RENEWABLE PORTFOLIO STANDARD OR SIMILAR LAW OF ANY STATE OR OTHER JURISDICTION.**

**4.5 PACIFICORP WILL NOT BE RESPONSIBLE FOR ANY DAMAGES RESULTING FROM ECONOMIC LOSS, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OF PRODUCTION TAX CREDITS, LOSS OF SAVINGS OR REVENUE, LOSS OF GOODWILL, THE CLAIMS OF THIRD PARTIES (INCLUDING CUSTOMERS AND SHAREHOLDERS OR OTHER EQUITY OWNERS), PERSONAL INJURIES OR PROPERTY DAMAGES SUSTAINED BY THE COUNTERPARTY OR ANY THIRD PARTIES, EVEN IF PACIFICORP HAS BEEN NOTIFIED BY COUNTERPARTY (OR BY ANY THIRD PARTY) OF SUCH DAMAGES.**

**4.6 PACIFICORP DISCLAIMS ANY LIABILITY FOR AND COUNTERPARTY WAIVES ANY CLAIM FOR LOSS OR DAMAGE RESULTING**

**FROM ERRORS, OMISSIONS, OR OTHER INACCURACIES IN ANY PART OF WREGIS OR THE REPORTS, CERTIFICATES OR OTHER INFORMATION COMPILED OR PRODUCED BY AND FROM OR INPUT INTO WREGIS USING COUNTERPARTY-SUPPLIED GENERATION DATA, WHETHER OR NOT SUCH ERRORS, OMISSIONS OR INACCURACIES ARE DUE TO ERRONEOUS, UNTRUTHFUL, INCOMPLETE, OR INACCURATE INFORMATION INPUT BY PACIFICORP INTO WREGIS.**

**4.7 COUNTERPARTY HEREBY RELEASES PACIFICORP AND PACIFICORP INDEMNITEES FROM ANY AND ALL LIABILITY WITH RESPECT TO DAMAGES OR INJURIES INCURRED BY GENERATOR OWNER AS RELATES TO THE FOREGOING, EXCLUDING ANY ARISING AS A RESULT OF TORTIOUS AND INTENTIONALLY KNOWING OR RECKLESS CONDUCT BY PACIFICORP.**

**4.8 COUNTERPARTY ACKNOWLEDGES AND AGREES THAT, IN THE EVENT OF BREACH OF THIS CONTRACT OR ANY OTHER ACTION RESULTING IN LOSS OR POTENTIAL LOSS OR DAMAGE TO COUNTERPARTY, COUNTERPARTY'S SOLE RECOURSE IS TERMINATION OF THIS AGREEMENT.**

**4.9 WITHOUT LIMITING THE GENERALITY OF SECTION 4.1 ABOVE, COUNTERPARTY AGREES TO DEFEND, INDEMNIFY, AND HOLD PACIFICORP AND PACIFICORP INDEMNITEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS (INCLUDING THIRD-PARTY CLAIMS); CAUSES OF ACTION, WHETHER IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY); COSTS AND EXPENSES AND OTHER LIABILITIES OF ANY NATURE WHATSOEVER, WHENEVER ARISING, ARISING OUT OF, RESULTING FROM, ATTRIBUTABLE TO, OR RELATED TO COUNTERPARTY GENERATION DATA OR OUTPUT, INCLUDING: ANY INACCURACY, ERROR, OR DELAY IN OR OMISSION OF (I) ANY DATA, INFORMATION, OR SERVICE, OR (II) THE TRANSMISSION OR DELIVERY OF ANY DATA, INFORMATION, OR SERVICE; ANY INTERRUPTION OF ANY SUCH DATA, OUTPUT, INFORMATION, OR SERVICE (WHETHER OR NOT CAUSED BY PACIFICORP); OR ANY FINANCIAL, BUSINESS, COMMERCIAL, OR OTHER JUDGMENT, DECISION, ACT, OR OMISSION MADE BY ANY PERSON OR ENTITY BASED UPON OR RELATED TO THE DATA, OUTPUT, INFORMATION OR SERVICE.**

4.10 Interconnection. Counterparty shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Counterparty shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Counterparty's performance or failure to perform under the Generation Interconnection Agreement. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.

4.11 This Article IV shall survive any termination of this Agreement, whether such termination is by PacifiCorp or Counterparty, and whether or not such termination is on account of a default.

V. Further Counterparty Obligations.

5.1 No Sale. Nothing herein constitutes a sale or purchase of energy or renewable energy certificates to or by PacifiCorp.

5.2 Tax Benefits. Counterparty shall bear all risks, financial and otherwise throughout the Term, associated with Counterparty's or the Facility's eligibility to receive any tax benefits, including production or investment tax credits or accelerated depreciation.

5.3 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect the essential intent and purposes hereof.

5.4 Station Service. Counterparty shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Counterparty shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or renewable energy certificates.

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

5.7 Data Request. Counterparty shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data 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. Counterparty shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

5.8 Additional Information. Counterparty shall provide to PacifiCorp such other information respecting Counterparty or the Facility as PacifiCorp may, from time to time, reasonably request.

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

5.10 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Counterparty hereunder, Counterparty shall secure and continuously carry with an insurance company or companies the insurance coverage specified in the Generation Interconnection Agreement.

## VI. Representations and Warranties.

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization; (ii) it has the corporate, governmental and other legal capacity and authority to enter hereinto and to perform its obligations hereunder; (iii) such execution and performance do not violate or conflict with any law, order or agreement applicable to it; (iv) it has all governmental and other authorizations that are required to have been obtained or submitted by it with respect hereto, and they are in full force and effect; (v) its obligations hereunder are valid, binding and enforceable in accordance with their terms (subject to bankruptcy or similar laws affecting creditors' rights generally); and (vi) no Event of Default, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing or would occur as a result of its entering into or performing its obligations hereunder.

6.2 Representations and Warranties of Counterparty. Counterparty hereby represents and warrants to PacifiCorp: (i) it is not relying upon any representations of PacifiCorp other than those expressly set forth herein; (ii) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; (iii) it has made its trading and investment decisions based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by PacifiCorp; (iv) it has not received from PacifiCorp any assurances or promises regarding any financial results or benefits hereunder; (v) service hereunder is not a utility service within the meaning of Section 466 of the United States Bankruptcy Code; and (vi) Counterparty holds legal title to the Facility or otherwise holds the legal right to cause the Facility to enter into this Agreement.

## VII. Financial Responsibility.

7.1 Adequate Assurances. Without limiting PacifiCorp's rights under Article VIII hereof, if Counterparty has failed to make a timely payment hereunder, and PacifiCorp has reasonable grounds for insecurity regarding the performance of any obligation of Counterparty hereunder (whether or not then due), PacifiCorp may demand Adequate Assurances of Performance. "Adequate Assurances of Performance" means sufficient security in the form, amount, by an issuer or guarantor, and for the term reasonably acceptable to PacifiCorp,

including, but not limited to, cash, a standby irrevocable letter of credit, a prepayment, a security interest in government securities, an asset or a performance bond or guaranty. Such Adequate Assurances of Performance shall be provided within three business days after a written demand is made by PacifiCorp.

#### VIII. Events of Default; Remedies.

8.1 Event of Default. "Event of Default" means, with respect to a Party (the "Defaulting Party"):

8.1.1 the failure to render when due any payment or performance hereunder, if such failure is not remedied within five days after written notice;

8.1.2 the failure to timely provide adequate assurances required pursuant to Article VII hereof;

8.1.3 any such Party's representation or warranty proves to have been incorrect or misleading in any material respect when made;

8.1.4 the failure to perform any other covenant set forth herein if such failure is not remedied within five days after written notice;

8.1.5 its bankruptcy, if adequate assurances acceptable to PacifiCorp and approved by the Bankruptcy Court are not provided;

8.1.6 the expiration or termination of any credit support of Counterparty's obligations hereunder (other than in accordance with its terms) prior to the satisfaction of all obligations of Counterparty without the written consent of PacifiCorp; or

8.1.7 In the case of Counterparty:

8.1.7.1 Counterparty fails to report generation Data or Output information to PacifiCorp for the Facility or Counterparty fails to send the data in a format and use the protocols specified by PacifiCorp as determined by PacifiCorp to be required to meet the requirements of the WREGIS Operating Rules;

8.1.7.2 Counterparty is delinquent in payment to WREGIS of any WREGIS fees for registration or maintenance of Accounts or Subaccounts, which payment impairs the ability of PacifiCorp to report Generator Data, Output, or other information to WREGIS regarding the Facility, which delinquency continues for a period of thirty (30) days;

8.1.7.3 Counterparty fails to comply with a request by PacifiCorp to provide evidence of payment of WREGIS fees pertaining to the Facility; or

8.1.7.4 Counterparty knowingly or intentionally falsifies or misrepresents any Data, Output information, or other information required by WREGIS.



8.2 Remedies Upon Event of Default. In the Event of Default by a Party and for so long as the Event of Default is continuing, the non-defaulting Party (the "Performing Party") shall have the right to do any or all of the following: (1) upon two business days' written notice to the Defaulting Party, terminate this Agreement; (2) withhold any payments or performance due in respect of this Agreement; and (3) exercise such other remedies as may be available at law or in equity or as otherwise provided for herein, to the extent such remedies have not been otherwise waived or limited pursuant to the terms hereof.

8.3 Setoff. If an Event of Default occurs, the Performing Party may, at its election, set off any or all amounts which the Defaulting Party owes to it or any Affiliate of the Performing Party (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it or any Affiliate of the Performing Party owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due).

8.4 Payment of Damages. Any amounts due on account of default shall be paid by the close of business on the next business day following the Defaulting Party's receipt of the Performing Party's written termination notice setting forth the termination payment due.

8.5 Limitation of Liability. **THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. LIABILITY THAT HAS NOT BEEN OTHERWISE EXCLUDED PURSUANT TO THE TERMS HEREOF SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.**

8.6 Survival. This Article survives the expiration or termination hereof.

## IX. Force Majeure.

9.1 Except with regard to a Party's obligation to make payments hereunder, in the event either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect hereto, then upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing or by facsimile to the other Party, then the obligations of the Claiming Party shall, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party shall not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure shall have until the end of the Business Day following such receipt to

notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not anticipated, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Counterparty's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not a Force Majeure.

9.2 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.

9.3 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.

## X. Miscellaneous.

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

10.2 Restriction on Assignments. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment in violation hereof shall be void ab initio. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

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

10.4 Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by telefacsimile transmission, each of which is an original and all of which taken together constitute one and the same original instrument. This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination

shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

10.5 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.

10.6 Jurisdiction. Any judicial action arising out of, resulting from or in any way relating to this Agreement shall be brought only in a state or federal court of Multnomah County, Oregon. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and attorneys' fees incurred in connection with such proceedings.

10.7 Jury Trial Waiver. **THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING HERETO, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

10.8 No Third Party Beneficiaries. With the exception of Transmission Provider and Interconnection Provider, who are express third party beneficiaries hereof, this Agreement confers no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

10.9 Relationship of the Parties. Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

10.10 Survival. This Article survives the expiration or termination hereof.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date last below written.

<p>PacifiCorp</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p>&lt;COUNTERPARTY&gt;</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
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**Exhibit A**  
**Facility and Generation Data**

For Facility enter the following information:

Facility Name and Address or Location

Meter Number (Device ID)

Facility's WREGIS Generator ID

EIA or QF ID#

One-line diagram that includes description of meter locations at the facility – voltage and location

**NOTICES EXHIBIT**

To Counterparty: [to be provided]

To PacifiCorp: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Director, Origination  
Telefacsimile (503) 813-6271

with a copy to: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Contract Administration  
Telefacsimile (503) 813-6291  
E-mail: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

With a copy to: PacifiCorp Legal Department  
825 NE Multnomah, Suite 1800  
Portland, Oregon 97232- 2315  
Attn: Assistant General Counsel  
Telefacsimile (503) 813-6761

**FORM OF SUBORDINATED MORTGAGE**

*[THIS FORM IS SUBJECT TO CHANGE BASED ON  
WYOMING MORTGAGE OR DEED OF TRUST REQUIREMENTS]*

**When Recorded Mail To:**

[Trustee Contact Information]

**THIS INSTRUMENT SECURES AN OBLIGATION THAT  
MAY INCREASE AND DECREASE FROM TIME TO TIME**

THIS DEED OF TRUST, LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS AND PROFITS, FINANCING STATEMENT AND FIXTURE FILING (hereinafter referred to as "Deed of Trust") made and entered into as of [\_\_\_\_\_], 20\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ limited liability company ("Grantor"), and \_\_\_\_\_ as Trustees, (collectively, the "Trustees") and PacifiCorp, an Oregon corporation (the "Secured Party").

W I T N E S S E T H:

WHEREAS, the Secured Party and Grantor have entered into that certain Power Purchase Agreement, dated [\_\_\_\_\_], 20\_\_ (as such agreement may be further amended, the "PPA");

WHEREAS, Grantor will develop, construct, own, operate and maintain an approximately \_\_\_\_\_ MW wind-powered generation facility for the generation of electric energy located in \_\_\_\_\_ County, Wyoming, (such wind-powered generation facility, together with all associated structures, equipment, step-up transformers, electric energy collection network, interconnection facilities, protective relaying and associated equipment and additions thereto and replacements thereof, and certain other related property, the "Facility").

WHEREAS, Grantor is the owner of leasehold and/or easement interests in and to the Property (as hereinafter defined); and

WHEREAS, Grantor desires to enter into this Deed of Trust to secure (and this Deed of Trust shall secure) the payment of all amounts owed by Grantor to the Secured Party under the PPA upon the termination of the PPA due to a default (as described in Section 11 of the PPA) of Grantor thereunder (the "Obligations");

WHEREAS, this Deed of Trust is to be subordinate in right of payment, priority, and remedies to the interests of the Senior Lenders (as hereinafter defined).

NOW, THEREFORE, in order further to secure the payment of the Obligations and in consideration of the premises and the further sum of Ten Dollars (\$10.00) to Grantor in hand well and truly paid by the Secured Party at and before the delivery hereof, the receipt whereof is hereby acknowledged, the parties agree as set forth below:

## SECTION 1 GRANT

1.1 Grant. Grantor has granted, bargained and sold, mortgaged, conveyed, aligned, released, confirmed, assigned, transferred and set over, and by these presents does grant, bargain and sell, mortgage, convey, alien, release, confirm, assign, transfer and set over unto Trustees, their successors and assigns, in trust, with power of sale, Grantor's estate, right, title and interest, whether as lessor or lessee or as beneficial owner of easement rights and whether vested or contingent, in and to all of the following, to the extent permitted by applicable law and subject, however, to the terms and conditions of the Agreements (as hereinafter defined):

1.1.1 The leasehold and easement interests (including all present and future options of any kind, rights of first refusal, privileges and other benefits) granted to Grantor as tenant or grantee in and to the real property as legally described in Part 2 of each of Exhibit A and Exhibit B attached hereto and incorporated herein by reference (subject to (i) the last sentence of Section 2.2 and (ii) Section 2.3, the "Land"), now owned or hereafter acquired, including all of Grantor's right, title, estate and interest arising under the agreements listed in Part 1 of each of Exhibit A and Exhibit B and any other agreements pursuant to which Grantor hereafter obtains any right, title, estate or interest (including leases, easements, rights-of-way, licenses and rights used or granted in connection therewith or as a means of access thereto) in, to and under the Land (as such agreements may be amended, supplemented or otherwise modified from time to time, collectively, but subject to (i) the last sentence of Section 2.2 and (ii) Section 2.3, the "Agreements") together with all rights, privileges, franchises and powers related thereto which are appurtenant to said Agreements or Grantor's interest therein;

1.1.2 All buildings, structures, tenant improvements and other improvements of every kind and description now or hereafter located in or on the Land, including without limitation the Facility, that are owned by Grantor, including, but not limited to, all structures, improvements, foundation pads, towers, substations, water, roads, driveways, walks and other site improvements of every kind and description now or hereafter erected or placed on the Land, together with all additions thereto and all renewals, alterations, substitutions and replacements thereof (collectively, the "Improvements");

1.1.3 All fixtures, wind turbines, attachments, appliances, equipment, machinery, building materials and supplies, and other tangible personal property, now or hereafter attached to said Improvements or now or at any time hereafter located on the Land and/or Improvements, including, but not limited to all other equipment and machinery, appliances, fittings and fixtures of every kind located in or used in the operation of the Improvements located on the Land, together with all additions thereto and all renewals, alterations, substitutions and replacements thereof (hereinafter sometimes collectively referred to as the "Equipment");

1.1.4 All surface rights, appurtenant rights, and easements, rights of way, and other rights and interests appurtenant to the use and enjoyment of or used in connection with the Land and/or the Improvements;

1.1.5 All contract rights of Grantor to use interconnection, utility or other



common facilities that are used in connection with the Land, Improvement and Equipment under agreements relating thereto (the "Common Facilities Agreements"); and

1.1.6 All streets, roads and public places (whether open or proposed) now or hereafter adjoining or otherwise providing access to the Land, the land lying in the bed of such streets, roads and public places, and all other sidewalks, alleys, ways, passages, vaults, water courses, strips and gores of land now or hereafter adjoining or used or intended to be used in connection with all or any part of the Land and/or the Improvements.

The preceding grant shall be subject to the Permitted Liens (as set forth in ) and the provisions of Sections 2.2 and 2.3.

All of Grantor's right, title and interest in and to the foregoing estates, rights, properties and interests hereby conveyed to the Secured Party (subject to (i) the last sentence of Section 2.2 and (ii) Section 2.3) are sometimes referred to collectively herein as the "Property".

1.2 Conveyance in Trust. This Conveyance is intended as a deed of trust to secure the payment of the Obligations. Without limiting any of the other provisions of this Deed of Trust, Grantor expressly grants unto the Secured Party, a security interest in all those portions of the Property which may be subject to the Uniform Commercial Code (as hereinafter defined) provisions applicable to secured transactions under the laws of the state of Wyoming and this Deed of Trust shall constitute a Security Agreement under the Uniform Commercial Code.

1.3 Grantor hereby covenants and agrees, on behalf of itself and its successors and assigns, to warrant and defend the Property unto the Secured Party, its successors and assigns against the claims of all Persons and parties whatsoever, provided, however, that until the occurrence of an Event of Default and subject to any provisions hereof to the contrary, Grantor shall have the sole right to remain in peaceful possession of the Property, and to collect, receive and retain the rents, revenues, profits, proceeds, income and royalties therefrom, provided, however, that if the Obligations shall have been paid in cash and performed in full, then, in such case the Secured Party shall release this Deed of Trust (without recourse and without any representations or warranties) and the estate, right, title and interest of the Secured Party in the Property shall cease, and upon payment to the Secured Party of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, the Secured Party shall release this Deed of Trust and the lien hereof by proper instrument.

1.4 Capitalized terms used herein and not defined shall have the meaning ascribed to such terms in the PPA.

1.5 Notice of other liens may be given to the Secured Party in the manner required by statute and at the address set forth in Section 6.3. The beneficial owner of the Obligations is the Secured Party and the principal place of business of said beneficial owner and the Secured Party is as follows:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232-2315  
Attn: Contract Administrator

SECTION 2  
REPRESENTATIONS, WARRANTIES, COVENANTS  
AND AGREEMENTS OF GRANTOR

2.1 Title to the Property. The Grantor represents and warrants: (a) it has full power and authority to encumber the Property in the manner set forth herein subject to Permitted Liens (and subject to (i) the last sentence of Section 2.2 and (ii) Section 2.3); and (b) there are no defenses or offsets to this Deed of Trust or to the Obligations which it secures.

2.2 Future Property and Agreements. If, during any month, Grantor obtains and records the agreements or any right, title, estate or interest in the real property listed in Exhibit B attached hereto, then, on or before the 15th day of the following month, Grantor shall execute and deliver to the Secured Party an addendum to this Deed of Trust, in substantially the form attached hereto as Exhibit C (an "Addendum"), with respect to such real property interests. Each Addendum shall set forth a description of such real property interests. Upon the Secured Party's receipt of each Addendum executed by Grantor (but not before), the Secured Party shall be authorized to record and/or file such Addendum and any other instruments necessary to perfect the interests granted hereunder with respect to the real property interests listed in such Addendum. Upon Grantor's execution of an Addendum, the real property interests described in such Addendum shall constitute part of the Property, the associated real property agreement shall be an Agreement and each shall be subject to the terms and conditions of this Deed of Trust. Prior to Grantor's execution of an Addendum, the real property listed in Part 2 of Exhibit B attached hereto shall not be part of the Property and the associated real property agreements listed in Part 1 of Exhibit B shall not be Agreements.

2.3 Scope of Property. Notwithstanding anything to the contrary: (a) this Deed of Trust shall not constitute a mortgage, grant, bargain, sale, conveyance, transfer, assignment or set-over (a "mortgage") of, or grant of security interest in, any agreement or interest if an assignment thereof, or grant of security interest therein, without obtaining a consent (a "Consent"), would (i) constitute an enforceable breach thereof or (ii) result in a modification of the obligations or rights (including real estate rights) of Grantor or a counterparty under such agreement (including the imposition of any additional obligations on, or the reduction or elimination or waiver of any rights of, Grantor or the reduction or elimination or waiver of any obligations of, or any increase in the rights of, such counterparty), except any modifications that in the aggregate are not material in the context of such agreement, and (b) no breach of this Deed of Trust shall have occurred by virtue of such non-mortgage or non-grant under the circumstances described in the preceding clause (i). Any mortgage to the Secured Party of, or grant to the Secured Party of a security interest in, any such agreement or interest is made subject to such Consent being obtained and such agreement (including any leasehold estate, easement, licenses and other right, title, estate and interest arising thereunder) shall not be an Agreement or part of the Property until such Consent is obtained.

2.4 Representations and Warranties of the Secured Party. The Secured Party hereby represents and warrants to Grantor that it has full power and authority to enter into this Deed of Trust.

### SECTION 3 SECURITY AGREEMENT

3.1 Grant of Security: Incorporation by Reference. In addition to constituting a mortgage lien on those portions of the Property classified as real property (including fixtures to the extent they are real property), this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code under the laws of Wyoming (the "Uniform Commercial Code") or within the meaning of the common law with respect to those parts of the Property classified as personal property (including fixtures to the extent they are personal property). To the extent permitted by applicable law, Grantor hereby grants to the Secured Party a security interest in and to those parts of the Property classified as personal property (including fixtures to the extent they are personal property, personal property and fixtures that are leased by Grantor, but only to the extent Grantor can grant to the Secured Party a security interest therein without breaching the terms of any Agreement), and all contract rights under the Common Facilities Agreements, (collectively, the "Secured Property") for the benefit of the Secured Party to further secure the payment and performance of the Obligations. The Property includes all Secured Property.

3.2 Fixture Filing and Financing Statements. This Deed of Trust constitutes a Security Agreement, Fixture Filing and Financing Statement as those terms are used in the Uniform Commercial Code. For purposes of this Section 3.2, this Deed of Trust is to be filed and recorded in, among other places, the real estate records of the County in which the Property is located or where required by Wyoming law and the following information is included: Grantor shall be deemed the "Debtor" with the address set forth for Grantor on the first page of this Deed of Trust which Grantor certifies is accurate; the Secured Party shall be deemed to be the "Secured Party" with the address set forth for the Secured Party on the first page of this Deed of Trust and shall have all of the rights of a secured party under the Uniform Commercial Code; this Deed of Trust covers goods which are or are to become fixtures on the Land; the names of the record owners of the land are as set forth on Exhibit A; the organizational identification number of the Debtor is [\_\_\_\_\_]; the Debtor is a [\_\_\_\_\_], organized under the laws of [\_\_\_\_\_]; and the legal name of the Debtor is [\_\_\_\_\_]. The Debtor hereby authorizes the Secured Party to file any financing statements and terminations thereof or amendments or modifications thereto without the signature of the Debtor where permitted by law.

### SECTION 4 EVENTS OF DEFAULT AND REMEDIES

4.1 Events of Default. The occurrence of the termination of the PPA due to a default of Grantor thereunder shall constitute an event of default (an "Event of Default") hereunder.

4.2 Remedies Upon Default. Upon the occurrence of an Event of Default, the

Secured Party may, subject in all respects to Section 7 but otherwise in the Secured Party's sole discretion, either itself or by or through one or more trustees, agents, nominees, assignees or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights and remedies individually, collectively or cumulatively:

4.2.1 either in person or by its agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, (i) enter upon and take possession of the Property or any part thereof and of all books, records and accounts relating thereto or located thereon, in its own name or in the name of Grantor, and do or cause to be done any acts which it deems necessary or desirable to preserve the value of the Property or any part thereof or interest therein, increase the income therefrom or protect the security hereof, (ii) with or without taking possession of the Property make such repairs, alterations, additions and improvements as the Secured Party deems necessary or desirable and do any and all acts and perform any and all work which the Secured Party deems necessary or desirable to complete any unfinished construction on the Property, (iii) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Secured Party, and (iv) pay, purchase, contest or compromise any encumbrance, charge or Lien on the Property.

4.2.2 commence and maintain one or more actions at law or in equity or by any other appropriate remedy (i) to protect and enforce the Secured Party's rights hereunder, including for the specific performance of any covenant or agreement herein contained (which covenants and agreements Grantor agrees shall be specifically enforceable by injunctive or other appropriate equitable remedy), (ii) to collect any sum then due hereunder, (iii) to aid in the execution of any power herein granted, or (iv) to foreclose this Deed of Trust in accordance with Section 4.3 hereof;

4.2.3 exercise any or all of the remedies available to a secured party under the Uniform Commercial Code;

4.2.4 by notice to Grantor (to the extent such notice is required to be given under the PPA), but without formal demand, presentment, notice of intention to accelerate or of acceleration, protest or notice of protest, all of which are hereby waived by Grantor, declare all of the Obligations immediately due and payable, and upon such declaration all of such Obligations shall become and be immediately due and payable, anything in this Deed of Trust or the PPA to the contrary notwithstanding; and

4.2.5 exercise any other right or remedy available to the Secured Party under the PPA.

#### 4.3 Right of Foreclosure; Trustees' Sale.

4.3.1 Subject in all respects to the provisions of Section 7, upon the occurrence and continuation of an Event of Default, the Trustees, upon the written request of the Secured Party, shall pursuant to Wyoming Statute \_\_\_\_\_, foreclose upon and sell the Property, or so much thereof as may be necessary, to satisfy the Obligations.

4.3.2 The sale of the Property shall be by public auction. Notice that this Deed

of Trust will be foreclosed by a sale of the Property, or some part thereof, shall be given by publishing the notice for four (4) consecutive weeks, at least once in each week, in a newspaper printed in \_\_\_\_\_ County, Wyoming.

4.3.3 Prior to the first date of publication, a copy of the notice shall be served by certified mail with return receipt requested upon Grantor, the record owner, the person in possession of the Property, and all holders of recorded mortgages and liens subordinate to this Deed of Trust, which appear of record in the real estate records of each of \_\_\_\_\_ County, at least twenty-five (25) days before the scheduled foreclosure sale.

4.3.4 The notice shall be sent to the last known address for the addressee, which shall be the address set forth in mortgage or lien filed of record unless another address has been recorded in the real estate records of each of \_\_\_\_\_ County or has been provided to the Secured Party.

4.3.5 Proof of compliance with subparts (b), (c), (d) of this Section shall be made by the affidavit of an authorized representative of Secured Party, which shall be filed in the real estate records of \_\_\_\_\_ County within ten (10) days of the date of the sale.

4.3.6 Notice of sale shall show the following particulars:

- (a) The time and place of sale;
- (b) The names of the parties to the deed under which it will be made;
- (c) The date of the deed;
- (d) The office and book in which it is recorded in the real estate records of each of Converse Counties;
- (e) The quantity and description of the land or other property, or both, conveyed thereby;
- (f) The names of the persons secured or indemnified thereby;
- (g) The amount secured and the time when payable;
- (h) The amount of credits, if any, to which the same is subject;
- (i) The amount of the principal and interest claimed to be due and unpaid, and for which the sale will be made.

4.4 Appointment of Receiver. Upon the occurrence and during the continuance of an Event of Default, the Secured Party as a matter of strict right and without notice to the Grantor or anyone claiming under the Grantor, and without regard to the adequacy or the then value of the Property or the interest of the Grantor therein or the solvency of any party bound for payment of the Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and the Grantor hereby irrevocably

consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual rights, powers and duties of receivers in like or similar cases and all the rights, powers and duties of the Secured Party in case of entry as provided in Section 4.2 hereof, including, but not limited to, the full power to rent, maintain and otherwise operate the Property upon such terms as are approved by the court and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated. Grantor agrees that this Deed of Trust gives to the Secured Party the right to possession before sale and termination of the right of redemption, pledges, rents and profits, creates in favor of the Secured Party a lien upon and interest in the right of possession given by Wyoming Statute, and upon the revenue which arises from it, and waives the right to challenge the appointment of a receiver.

4.5 Exercise of Rights and Remedies. The entering upon and taking possession of the Property, and the exercise of any of the other rights contained in this Section 4, shall not, alone, cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Property, the Secured Party shall be entitled to exercise every right provided for herein or in the PPA, or at law or in equity upon the occurrence of any Event of Default.

4.6 Remedies Not Exclusive. Subject in all respects to the provisions of Section 7, the Secured Party shall be entitled to enforce payment and performance of the Obligations and to exercise all rights and powers under this Deed of Trust or any other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, security deed, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the powers herein contained, shall prejudice or in any manner affect the Secured Party's right to realize upon or enforce any other security now or hereafter held by the Secured Party, it being agreed that the Secured Party shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Secured Party in such order and manner as it may in its absolute and sole discretion and election determine. No remedy herein conferred upon or reserved to the Secured Party is intended to be exclusive of any other remedy herein or in any of the other PPA or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy to which the Secured Party is entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Secured Party, and the Secured Party may pursue inconsistent remedies. No delay or omission of the Secured Party to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed as a waiver of any Event of Default or any acquiescence therein. If the Secured Party shall have proceeded to invoke any right or remedy hereunder or under the PPA and shall thereafter elect to discontinue or abandon it for any reason, the Secured Party shall have the unqualified right to do so and, in such an event, the rights and remedies of the Secured Party shall continue as if such right or remedy had never been invoked and no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of the Secured Party thereafter to exercise any right or remedy under the PPA for such Event of Default.

4.7 Provisions Regarding Sale. (a) Grantor agrees that any sale made hereunder may be adjourned from time to time without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjourned sale, and (b) Grantor agrees that any sale of real property or interest in real property hereunder shall be made in accordance with the laws of the State of Wyoming relating to sales under deeds of trust.

4.8 Continued Lien of Deed of Trust. No recovery of any judgment by the Secured Party and no levy of an execution under any judgment upon the Property or upon any other property of Grantor shall affect in any manner or to any extent, the lien of this Deed of Trust upon the Property or any part thereof, or any liens, rights, powers or remedies of the Secured Party hereunder, but such liens, rights, powers and remedies of the Secured Party shall continue unimpaired as before.

4.9 Subordination of Landlords' Rights Under Agreements. In the event that Trustees shall have the right to foreclose this Deed of Trust, Grantor authorizes Trustees at their option to foreclose this Deed of Trust, subject to the rights of any landlords of the Property if Trustees or the Secured Party elect that this Deed of Trust shall be subordinate to rights of landlords, and the failure to make any such landlords defendants to any such foreclosure proceeding and to foreclose their rights will not be asserted by Grantor as a defense to any proceeding instituted by Trustees or the Secured Party to collect the Obligations or any deficiency remaining unpaid after the foreclosure sale of the Property.

4.10 Discontinuance of Proceedings; Position of Parties Restored. If Trustees or the Secured Party shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry or otherwise, any such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Trustees or the Secured Party, then in every such case Grantor and Trustees or the Secured Party, shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Secured Party shall continue as if no such proceeding had occurred or had been taken.

4.11 WAIVER OF REDEMPTION, NOTICE, MARSHALLING, ETC. NOT WITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, TO THE EXTENT PERMITTED BY LAW, GRANTOR: (a) ACKNOWLEDGING THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS HEREUNDER, WILL NOT (i) AT ANY TIME INSIST UPON, OR PLEAD, OR IN ANY MANNER WHATSOEVER, CLAIM OR TAKE ANY BENEFIT OR ADVANTAGE OF ANY STAY OR EXTENSION OR MORATORIUM LAW, PRESENT OR FUTURE STATUTE OF LIMITATIONS, ANY LAW RELATING TO THE ADMINISTRATION OF ESTATES OF DECEDENTS, APPRAISEMENT, VALUATION, REDEMPTION, STATUTORY RIGHT OF REDEMPTION, OR THE MATURING OR DECLARING DUE OF THE WHOLE OR ANY PART OF THE OBLIGATIONS, NOTICE OF INTENTION OF SUCH MATURING OR DECLARING DUE, OTHER NOTICE (WHETHER OF DEFAULTS, ADVANCES, THE CREATION, EXISTENCE, EXTENSION OR RENEWAL OF ANY OF THE OBLIGATIONS OR OTHERWISE, EXCEPT FOR RIGHTS TO NOTICES EXPRESSLY GRANTED HEREIN OR IN THE PPA), SUBROGATION, ANY SET-OFF RIGHTS, HOMESTEAD OR ANY OTHER EXEMPTIONS FROM EXECUTION

OR SALE OF THE PROPERTY OR ANY PART THEREOF, WHEREVER ENACTED, NOW OR AT ANY TIME HEREAFTER IN FORCE, WHICH MAY AFFECT THE COVENANTS AND TERMS OF PERFORMANCE OF THIS DEED OF TRUST, OR (ii) CLAIM, TAKE OR INSIST UPON ANY BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR THE VALUATION OR APPRAISAL OF THE PROPERTY OR ANY PART THEREOF, PRIOR TO ANY SALE OR SALES THEREOF WHICH MAY BE MADE PURSUANT TO ANY PROVISION HEREOF, OR PURSUANT TO THE DECREE, JUDGMENT OR ORDER OF ANY COURT OF COMPETENT JURISDICTION; OR (iii) AFTER ANY SUCH SALE OR SALES, CLAIM OR EXERCISE ANY RIGHT UNDER ANY STATUTE HERETOFORE OR HEREAFTER ENACTED TO REDEEM THE PROPERTY SO SOLD OR ANY PART THEREOF; AND (b) COVENANTS NOT TO HINDER, DELAY OR IMPEDE THE EXECUTION OF ANY POWER HEREIN GRANTED OR DELEGATED TO THE SECURED PARTY, BUT TO SUFFER AND PERMIT THE EXECUTION OF EVERY POWER AS THOUGH NO SUCH LAW OR LAWS HAD BEEN MADE OR ENACTED. GRANTOR, FOR ITSELF AND ALL WHO MAY CLAIM UNDER IT, WAIVES, TO THE EXTENT THAT IT LAWFULLY MAY, ALL RIGHT TO HAVE THE PROPERTY MARSHALLED UPON ANY FORECLOSURE HEREOF.

4.12 Expenses of Enforcement. In connection with any action to enforce any remedy of the Secured Party under this Deed of Trust, Grantor agrees to pay all reasonable costs and expenses which may be paid or incurred by or on behalf of the Secured Party, including, without limitation, reasonable attorneys' fees, receiver's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title and value as the Secured Party may deem necessary or desirable, and neither the Secured Party nor any other Person shall be required to accept tender of any portion of the Obligations unless the same be accompanied by a tender of all such expenses, costs and commissions. All of the reasonable costs and expenses described in this Section, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the Lien of this Deed of Trust, including the fees of any attorney employed by the Secured Party in any litigation or proceeding, including appellate proceedings, affecting this Deed of Trust or the Property (including, without limitation, the occupancy thereof or any construction work performed thereon), including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding whether or not an action is actually commenced, shall be immediately due and payable by Grantor.

4.13 Application of Proceeds of Foreclosure. Trustees or the Secured Party shall apply, subject in all respects to Section 7, the proceeds of any foreclosure sale of or other disposition or realization upon, or rents or profits from, the Property as follows:

4.13.1 First to payment of expenses attending the execution of the trust to the payment or reimbursement of all reasonable advances, expenses and reimbursements of Trustees and the Secured Party (including, without limitation, the reasonable fees and costs of their counsel and agents) and including a commission to the Trustees of five percent (5%) on the first \$300.00 and two percent (2%) of the residue of the proceeds;



4.13.2 Second, in satisfaction of the Obligations, whether for principal or interest in such order as Trustees or the Secured Party shall designate; and

4.13.3 Third, the balance, if any, to be distributed to Grantor.

If the proceeds from any such sale of or other disposition or realization upon the Property are insufficient to pay the Obligations, Grantor shall remain liable for such deficiency.

4.14 Trustees.

4.14.1 Removal. It is hereby expressly covenanted and agreed that the Secured Party may, at any time and from time to time hereafter, upon notice to Trustees and Grantor, but without any other notice, appoint and substitute another Trustee, corporation or person, in place of either or both of the Trustees herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said substituted Trustee or Trustees by the Trustees herein named, or by any other substituted Trustee in case the said right of appointment is exercised more than once, the new and substituted Trustee in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Trustee herein named; and such new and substituted Trustee shall be considered the successor and assign of the Trustee in his place and stead. Each appointment and substitution shall be evidenced by an instrument in writing, which instrument, executed and acknowledged by the Secured Party and recorded in the Office of the County Clerk of Converse Counties, wherein said property is situated, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest. The Trustees, or either of them or the survivor thereof, may act in the execution of this trust and in the event either of the Trustees shall act alone, the authority and power of the Trustees so acting shall be as full and complete as if the powers and authority granted to the Trustees herein jointly had been granted to such Trustee alone. Either or both of the Trustees are hereby authorized to act by agent or attorney in the execution of this trust.

4.14.2 Fees. In the event foreclosure proceedings instituted under the terms and provisions of this Deed of Trust are not completed, Trustees shall be entitled to receive and forthwith be paid the necessary costs and expenses incurred by them.

4.14.3 Action. The Trustees herein may act by agent or attorney appointed by them in the execution of this Deed of Trust and the Trustees shall not be required to be present in person.

## SECTION 5 ADDITIONAL COLLATERAL

5.1 Additional Collateral.

Grantor acknowledges and agrees that the Obligations are secured by the Property and other security furnished under the PPA, including the Default Security and Project Development Security. Accordingly, Grantor acknowledges that it is in Grantor's contemplation that the other collateral pledged to secure the Obligations may be pursued by the Secured Party

in separate proceedings. It is the further intent and understanding of the parties that the Secured Party, following an Event of Default, may pursue all of its collateral with respect to the Obligations remaining outstanding and in full force and effect notwithstanding any judgment of foreclosure or any other judgment which the Secured Party may obtain.

SECTION 6  
MISCELLANEOUS

6.1 Governing Law. The provisions of this Deed of Trust shall be governed by and construed under the laws of the State of Wyoming.

6.2 Limitation on Interest. It is the intent of Grantor and the Secured Party in the execution of this Deed of Trust and all other instruments evidencing or securing the Obligations to contract in strict compliance with applicable usury laws. In furtherance thereof, the Secured Party and Grantor stipulate and agree that none of the terms and provisions contained in this Deed of Trust shall ever be construed to create a contract for the use, forbearance or retention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by relevant law. If this Deed of Trust or any other instrument evidencing or securing the Obligations violates any applicable usury law, then the interest rate payable in respect of the Obligations shall be the highest rate permissible by law.

6.3 Notices. All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Deed of Trust must be in writing (including telexed or telecopied communication) unless otherwise expressly permitted under this Deed of Trust+ and must be sent by first class or first class express mail, private overnight or next Business Day courier or by telex or telecopy with confirmation in writing mailed first class, in all cases with charges prepaid, and any such properly given notice will be effective when received. All notices will be sent to the applicable party at the addresses stated below or in accordance with the last unrevoked written direction from such party to the other parties. A copy of any notice of Trustee's sale under this Deed of Trust shall be served on Grantor by certified mail, return receipt requested, directed to the address stated below.

If to Grantor:

With a copy to:

To PacifiCorp:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Director, Valuation & Commercial Business  
Telefacsimile (503) 813-6260

with a copy to:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Contract Administration  
Telefacsimile (503) 813-6291  
Email: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

with a copy to:

PacifiCorp Legal Department  
825 NE Multnomah, Suite 1800  
Portland, Oregon 97232- 2315  
Attn: Assistant General Counsel  
Telefacsimile: (503) 813-6761

6.4 Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties hereto and are not a part of this Deed of Trust.

6.5 Amendment. None of the terms and conditions of this Deed of Trust may be changed, waived, modified or varied in any manner whatsoever without the consent of Grantor and the Secured Party.

6.6 Obligations Absolute. The obligations of Grantor hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of Grantor; (ii) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Deed of Trust; or (iii) any amendment to or modification of the PPA or any security for any of the Obligations; whether or not Grantor shall have notice or knowledge of any of the foregoing.

6.7 Further Assurances.

6.7.1 Grantor shall, upon the request of the Secured Party and at the expense of Grantor: (i) promptly correct any defect, error or omission which may be discovered in this Deed of Trust or any Uniform Commercial Code financing statements filed in connection herewith; (ii) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and to subject to the liens and security interests hereof any property intended by the terms hereof to be encumbered hereby, including, but not limited to, any renewals, additions, substitutions, replacements or appurtenances to the Property; and (iii) promptly execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by the Secured Party to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third Persons.

6.7.2 Grantor shall, upon the request of the Secured Party and at the expense of Grantor, execute, acknowledge, deliver and authorize, within a reasonable period of time, the recording or filing of such further instruments (including, without limitation, amendments, addendums, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of leases) as may be reasonably required to subject the Property to this Deed of Trust. Grantor shall execute and deliver Addendums in

accordance with Section 2.2.

6.8 Partial Invalidity. If any of the provisions of this Deed of Trust or the application thereof to any person, party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such provision or provisions to persons, parties or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

6.9 Partial Releases. No release from the Lien of this Deed of Trust of any part of the Property by the Secured Party shall in any way alter, vary or diminish the force or effect of this Deed of Trust on the balance of the Property or the priority of the Lien of this Deed of Trust on the balance of the Property.

6.10 Priority. Except as otherwise stated in Section 7, this Deed of Trust is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

6.11 Covenants Running with the Land. As used herein, the "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Property. All persons who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of this Deed of Trust provided, however, that no such party shall be entitled to any rights thereunder without prior written consent of the Secured Party.

6.12 Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of the Secured Party and Grantor and their respective successors and assigns.

6.13 No Joint Venture or Partnership. The Secured Party does not owe any fiduciary or special obligation to Grantor and/or any of Grantor's officers, partners, agents, or representatives. Nothing herein or in the PPA is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between Grantor and the Secured Party.

6.14 Acknowledgment of Receipt. Grantor hereby acknowledges receipt of a true copy of this Deed of Trust and all other agreements relating to the Obligations to which Grantor is a party.

6.15 Release. Following the Termination Date (as hereinafter defined), the Secured Party, at the request of Grantor, will promptly execute and deliver to Grantor, without recourse and without representation or warranty, a proper instrument or instruments, which comply with Wyoming statutory requirements, acknowledging the satisfaction and termination of this Deed of Trust and any financing statements filed in connection herewith; provided, however, that all indemnities set forth herein shall survive such termination. As used herein, the "Termination Date" shall mean the earlier of the date upon which the Obligations have been paid in full and all commitments in respect thereof have been terminated, or the date on which this Deed of Trust is required to be terminated under the PPA.

6.15.1 Upon Grantor's request, the Secured Party and Trustees shall release from the liens and security interests created hereby any of the Property or other assets of Grantor that Grantor sells, transfers or disposes of to the extent that Grantor determines that such Property or assets are not required for the operation of the Facility or the performance of its obligations under the PPA, whether due to obsolescence, utility, economic value or other criteria; or Grantor releases or to which it terminates its rights, through a modification, termination or change of the Common Facilities Agreements, the Agreements or other real property interests based upon Grantor's determination that such release, change or termination is in its best interests and will not materially impair its ability to perform its obligations under the PPA; provided that the Secured Party shall not be required to grant such releases if Grantor's action are explicitly prohibited by the PPA. Upon request of Grantor, the Secured Party shall within a reasonable period of time execute such documents as Grantor may reasonably request evidencing the release of the Lien created hereby upon the property of Grantor which is sold, transferred or otherwise disposed of (a release under this Section 6.15.1 is referred to herein as a "Permitted Release"). As a condition of such Permitted Release, Grantor shall deliver to the Secured Party a certificate (the "Officer's Certificate") executed by an officer of Grantor stating that the sale, transfer or other disposition of the Property and the related release of such Property from the Lien created hereunder is permitted under Section 7 or this Section, as applicable. Upon receipt by the Secured Party of the Officer's Certificate, the Secured Party shall, at the expense of Grantor, promptly execute and deliver to Grantor (without recourse and without representation or warranty) a proper instrument or instruments evidencing the Permitted Release.

6.15.2 The Secured Party shall have no liability whatsoever to any other Person as a result of any release of all or any portion of the Property by it in accordance with (or which the Secured Party, in the absence of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision) believes to be in accordance with) this Section 6.15.

6.16 Time of the Essence. Time is of the essence with respect to the obligations of Grantor under this Deed of Trust.

6.17 The Secured Party's Powers. Without affecting the liability of any other Person liable for the payment and performance of the Obligations and without affecting the Lien of this Deed of Trust in any way, the Secured Party may, from time to time, regardless of consideration and without notice to or consent by the holder of any subordinate Lien, right, title or interest in or to the Property, (i) release any Persons liable for the Obligations; (ii) extend the maturity of, increase or otherwise alter any of the terms of the Obligations; (iii) modify the interest rate payable on the principal balance of the Obligations; (iv) release or reconvey, or cause to be released or reconveyed all or any portion of the Property; or (v) take or release any other or additional security for the Obligations.

6.18 Rules of Usage. The following rules of usage shall apply to this Deed of Trust unless otherwise required by the context:

6.18.1 Singular words shall connote the plural as well as the singular, and vice versa, as may be appropriate.

6.18.2 The words "herein," "hereof" and "hereunder" and words of similar import appearing in this Deed of Trust shall be construed to refer to such document as a whole and not to any particular section, paragraph or other subpart thereof unless expressly so stated.

6.18.3 References to any Person shall include such Person and its successors and permitted assigns.

6.18.4 Each of the parties hereto and their counsel have reviewed and revised, or requested revisions to, this Deed of Trust, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construction and interpretation of such documents and any amendments or exhibits thereto.

6.18.5 Unless an express provision requires otherwise, each reference to "the Property" shall be deemed a reference to "the Property or any part thereof", and each reference to "Secured Property" shall be deemed a reference to "the Secured Property or any part thereof".

6.18.6 References to Articles, Section or Exhibits shall be deemed references to Articles or Section of, or Exhibits to, this Deed of Trust, respectively.

6.19 Consent to Jurisdiction and Service of Process: Waiver of Jury Trial.

6.19.1 ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GRANTOR ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, OR ANY OBLIGATIONS HEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN WYOMING. BY EXECUTING AND DELIVERING THIS DEED OF TRUST, GRANTOR, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (ii) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO GRANTOR AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 6.3 HEREOF; (iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER GRANTOR IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (v) AGREES THAT THE SECURED PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST GRANTOR IN THE COURTS OF ANY OTHER JURISDICTION; AND (vi) AGREES THAT THE PROVISIONS OF THIS SECTION 6.19.1 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

6.19.2 GRANTOR AND THE SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS DEED OF TRUST. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE

SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

SECTION 7  
SUBORDINATION TO SENIOR SECURED PARTIES

7.1 Definitions. The following terms shall have the meanings set forth with respect to such terms:

7.1.1 "Affiliate" shall mean, with respect to any entity, each entity that directly or indirectly controls or is controlled by or is under common control with such designated entity. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or be contract or otherwise. Without in any way limiting the foregoing, each of the Affiliates of an entity controlling Grantor will be deemed, for purposes hereof, to be Affiliates of Grantor. Notwithstanding the foregoing, with respect to Secured Party, Affiliate shall only include Berkshire Hathaway Energy Company and its direct, wholly owned subsidiaries.

7.1.2 "Agent" means the agent of any Senior Secured Party.

7.1.3 "Credit Agreement" shall mean any loan agreement, credit agreement, lease financing agreement or related agreement among Grantor or an Affiliate thereof, any Senior Secured Party, the Agent, and any other person, directly or indirectly, in whole or in part, providing debt or equity financing secured in whole or in part by the Facility, entered into by Grantor or an Affiliate thereof for the purpose, at least in part, of financing or refinancing the debt or equity financing of the costs of development, construction, ownership, leasing, operation or maintenance of the Facility and/or the Property, entered into by Grantor or an Affiliate thereof for the purpose of a financing or refinancing, as any such agreement may be amended, modified, renewed, extended, refunded, replaced or refinanced from time to time, but no other additional agreement.

7.1.4 "Loan Documents" shall mean any Credit Agreement, any Senior Security Agreements, any note, letter of credit, security agreement, pledge agreement, mortgage, deed of trust, assignment, consent, guaranty, funding agreement, fee letter, interest rate protection agreement, or any other type of instrument or document evidencing, securing or relating to any loan or other extension of credit made to Grantor or an Affiliate thereof by any Senior Secured Party or any other person providing such loan or extension of credit under or pursuant to the terms of any Credit Agreement.

7.1.5 "Security Fund" shall mean, as in effect from time to time, the "Project Development Security" and the "Default Security" that Grantor is required to establish and maintain pursuant to the PPA, as security for its performance to the Secured Party under the PPA.

7.1.6 "Senior Security Agreements" shall mean any deed of trust, assignment of

leases, security agreement and/or fixture filing entered into by Grantor or any Affiliate thereof to secure the Senior Indebtedness, as any of the same may be amended, modified, restated or replaced from time to time, together with any other deeds of trust, mortgages, security agreements and other documents and instruments of every type and description evidencing and securing the lien on the Facility to secure the Senior Indebtedness, whether now existing or hereafter entered into, and including any rights to enforce claims against the property covered thereby.

7.1.7 "Senior Indebtedness" shall mean, collectively, all obligations and liabilities of Grantor or its Affiliates in respect of: (i) the principal of and interest on all loans or other extensions of credit (including any letters of credit) made (or issued) under and pursuant to the terms of any Credit Agreement and the other Loan Documents (whether as a direct obligor or guarantor thereof); (ii) all other amounts due and to become due in connection with any such loans or other extensions of credit (including any letters of credit) to be made to Grantor or an Affiliate thereof under any Loan Document, including, without limitation, the expenses, indemnities and interest which would accrue on any of the foregoing but for the commencement of a case by or against Grantor under the Federal Bankruptcy Code; (iii) the performance and observance of all of the covenants and agreements made by Grantor under and in connection with any Loan Document; and (iv) all amounts payable by Grantor under any swap, cap, collar or other interest rate protection agreement (whether as a direct obligor or guarantor thereof) entered into by Grantor or an Affiliate thereof in connection with the financing contemplated by any Credit Agreement. The parties acknowledge that the Senior Indebtedness may be incurred by an Affiliate of Grantor, all or a portion of which is to be used by Grantor with respect to the Facility, and in such case Grantor will be a guarantor of such Senior Indebtedness with the Senior Security Agreements securing such guaranty obligations.

7.1.8 "Senior Secured Party" shall mean any Senior Lender.

7.2 Subordination. Notwithstanding anything to the contrary set forth in this Deed of Trust, and for so long as any Senior Indebtedness is outstanding, this Deed of Trust and the liens created hereunder shall at all such times remain subject, subordinate and inferior to any and all Permitted Liens and be subject, subordinate and inferior in all respects to the rights of any Senior Secured Party under Senior Security Agreements from and after the date such Senior Security Agreements are executed by Grantor or any Affiliate thereof until the Senior Indebtedness shall have been indefeasibly paid and performed in full and all Senior Security Agreements shall have been finally released and discharged. The priority of any and all Senior Security Agreements over this Deed of Trust shall be effective without reference to the time, order or method of attachment of the liens of either any Senior Security Agreements or this Deed of Trust on any property. In the event that Grantor or its affiliates enter into financings or refinancings with Senior Secured Parties, the Secured Party shall and hereby covenants that it will enter into such amendments to this Deed of Trust as may be required by the Senior Secured Parties to subordinate the Liens granted hereunder to the rights of the Senior Secured Parties. The subordination provisions set forth in this Section 7.2 are for the benefit of, and enforceable by, any holders from time to time of Senior Indebtedness from time to time outstanding and their representatives. If the Secured Party or any affiliate thereof shall at any time receive any payment that is not permitted under this Section 7.2, such payment shall be held by the Secured Party or such affiliate thereof in trust for the benefit of, and shall be promptly paid over and



delivered to, in the form received but with any necessary endorsements, the Trustees so long as the Loan Documents are in effect (or any other holder of Senior Indebtedness, for so long as such Senior Indebtedness are in effect), for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in cash in accordance with its terms.

7.2.1 Notwithstanding any other provision of this Deed of Trust, all or part of the Property may be transferred, sold or disposed of to any Person and shall remain subject to the security interest granted hereby.

7.2.2 The management and control of Grantor over the Property and collateral secured by this Deed of Trust shall not be transferred by this Deed of Trust and neither the Secured Party nor the Trustees shall have rights to control the management of Grantor's assets except pursuant to the remedies granted hereunder after an Event of Default has occurred and is continuing.

7.3 Limitations on the Secured Party's Right to Foreclosure. Notwithstanding anything to the contrary set forth in this Deed of Trust, unless and until the Senior Indebtedness shall have been indefeasibly paid and performed in full and all Senior Security Agreements shall have been finally released and discharged, neither the Secured Party nor its Trustees, designee or assignee shall have the right to commence a foreclosure action or exercise any other remedies to enforce this Deed of Trust unless (i) the Secured Party shall have provided Agent with a notice of an Event of Default of Grantor in accordance with any and all consents, and any Senior Secured Party's right to cure as provided in any consent shall have expired; (ii) the Secured Party shall have made a proper demand (where required) to post the Security Fund, and a proper demand for payment under the Security Fund and shall have applied any proceeds received to the obligations of Grantor under the PPA, and there shall remain unsatisfied any performance obligations or damages owed by Grantor to the Secured Party under the PPA; and (iii) the Secured Party or the Trustees shall have provided Agent sixty (60) days' written notice of its intention to foreclose or otherwise exercise remedies under this Deed of Trust; provided, however, that if prior to the Secured Party's and/or Trustees' commencement of a foreclosure action or exercise of other remedies to enforce this Deed of Trust, Agent or Senior Secured Party has provided the Secured Party with notice of an "Event of Default" by Grantor or an Affiliate under any Credit Agreement, and so long as Agent or Senior Secured Party is in good faith still evaluating its legal and commercial rights or options with respect to, or pursuing a resolution of such Event of Default, the Secured Party's (and the Trustees') right to commence a foreclosure action or to exercise any other remedies to enforce this Deed of Trust shall be suspended for a period of ninety (90) days after the date of the "Event of Default" identified in Agent's notice to the Secured Party.

7.4 Other Rights. In the event that a Senior Secured Party should exercise any right to foreclose on the lien of any Senior Security Agreements, then the Secured Party shall have the right to bid to purchase the Facility at any foreclosure sale.

7.5 Perfection. If after application of any foreclosure or other proceeds, the Senior Indebtedness shall have been indefeasibly paid and performed in full and any and all Senior Security Agreements shall have been finally released and discharged, the Agent or a

Senior Secured Party shall remit to the Secured Party any cash or other proceeds of the Facility but only to the extent that the Secured Party's lien thereon shall lawfully attach thereto and the Secured Party shall be lawfully entitled thereto (and if competing claims exist, the Agent and any Senior Secured Parties shall, unless the Secured Party shall have indemnified the Agent and/or Senior Secured Parties in a manner reasonably acceptable to the Agent and the Senior Secured Parties, be entitled to seek declaratory relief with respect thereto or to interplead such funds for a judicial determination of rights to such proceeds), and to the extent that the Secured Party shall be obligated to notify the Agent and/or Senior Secured Parties of its lien in the same (or the Agent and the Senior Secured Parties shall be required to acknowledge such lien), such notice obligation shall be deemed satisfied hereby to the fullest extent permitted by applicable law.

7.6 Liquidation; Dissolution; Bankruptcy. Upon any payment or distribution of assets or securities of Grantor of any kind or character (including, without limitation, insurance proceeds or condemnation awards), whether in cash, securities or other property, to creditors of Grantor in a liquidation (total or partial), reorganization, winding-up or dissolution of Grantor, whether voluntary or involuntary, or in a bankruptcy, reorganization, insolvency, receivership, assignment for the benefit of creditors, marshalling of assets or similar proceeding relating to Grantor or its property or creditors:

7.6.1 the holders of Senior Indebtedness shall be entitled to receive payment and performance in full, in cash or cash equivalents, of such Senior Indebtedness before the Secured Party, the Trustees or any other holder of the Obligations shall be entitled to receive, for or on account of this Deed of Trust, any payment with respect to, any Obligations or on account of any purchase or other acquisition of any Obligations by Grantor;

7.6.2 until the Senior Indebtedness is indefeasibly paid and performed in full, in cash or cash equivalents, any payment or distribution of assets or securities of Grantor of any kind or character, whether in cash or other property, to which the holders of the Senior Indebtedness would be entitled on account of Section 7.6(a) shall be made by Grantor or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment of distribution directly to the holders of Senior Indebtedness (or the Agent on their behalf) to the extent necessary to pay all such Senior Indebtedness in full in cash or cash equivalents; and

7.6.3 at the request of the Agent, the Secured Party and Trustees will vote its claims in such proceeding in the manner reasonably requested by the Agent and any Senior Secured Parties so long as such vote is consistent with the terms hereof, of the PPA and of the consents, and does not result in (i) the modification of the PPA in a manner which shall be adverse to the interests of the Secured Party, (ii) the termination of the PPA, or (iii) any other impairment of any Secured Party's rights other than with regard to the Secured Party's rights granted solely under this Deed of Trust and other than as specifically provided herein and in the consents.

No provisions of this Section 7 shall apply to, or limit the Secured Party's rights with respect to or collection under, the Security Fund or the proceeds thereof (including the proceeds of any action or proceeding brought to collect such proceeds).

7.7 Any notice by the Secured Party of an Event of Default by Grantor shall

be given contemporaneously to the Agent and/or Senior Secured Party at its address or facsimile number set forth in the consent.

7.8 No Waiver of Provisions. Except as otherwise provided herein or in any consent, no right of the Agent or any holder of Senior Indebtedness shall in any way be impaired by any act or failure to act on the part of Grantor or on the part of Agent or any such holder or by any noncompliance by Grantor with the terms of this Deed of Trust, whether or not Agent or any such holder has knowledge of such noncompliance and nothing herein shall be deemed to limit in any way the Senior Secured Party's rights to exercise any remedy at any time under the Senior Indebtedness. Without limiting the generality of the foregoing, and subject to the other terms hereof and to any consent, Agent and such holders may, without notice to or consent from the Secured Party or the Trustees, do any of the following (each of the following actions being expressly and unconditionally consented to by the Secured Party):

7.8.1 enter into, amend, modify, supplement, renew, replace, or extend the terms of all of any part of the Senior Indebtedness or any Credit Agreement or any other security or financing document executed in connection with any Credit Agreement in any respect whatsoever (including increasing the principal amount of the loan funded or to be funded pursuant to the Loan Documents or advance additional amounts);

7.8.2 after notice to the Secured Party, to the extent involving any of the Property, sell or otherwise transfer, release, realize upon or enforce or otherwise deal with, all or any part of the Senior Indebtedness or any Credit Agreement or any other security or financing document or any collateral securing or guaranty supporting all or any part of the Senior Indebtedness;

7.8.3 settle or compromise all or any part of the Senior Indebtedness or any other liability of Grantor or any Affiliate thereof or any other person to Agent or any such holder and apply any sums received to the Senior Indebtedness or any such liability in such manner and order as Agent or any such holder may determine; and

7.8.4 fail to take or to perfect, for any reason or for no reason, any lien securing all or any part of the Senior Indebtedness, exercise or delay in or refrain or forbear from exercising any remedy against Grantor or any Affiliate thereof or any other person or any security or guarantor for all or any part of the Senior Indebtedness, or make any election of remedies or otherwise deal freely with respect to all or any part of the Senior Indebtedness or any security or guaranty for all or any part of the Senior Indebtedness.

7.9 Payments in Violation of this Agreement. Should any payment on account of foreclosure of this Deed of Trust be received by the Secured Party or its Trustees in violation of this Deed of Trust and Section 7 in particular, such payment or collateral shall be delivered forthwith to Agent by the Secured Party for application to the Obligations in the form received. Until so delivered, any such payment or collateral shall be held by the Secured Party or its Trustees in trust for the Senior Secured Parties and shall not be commingled with other funds or property of the Secured Party or its Trustees.

7.10 Further Assurances. The Secured Party and the Trustees agree to

promptly execute and deliver to Grantor and any Senior Secured Parties, the Agent or their respective designee, all such further instruments and documents, including any amendments or modifications hereto and to any financing statements filed pursuant to Section 3.2 hereof, and to take all such action, including any additional filings or recordings, as and when reasonably requested by Agent on behalf of any Senior Secured Parties to effectuate the purposes of this Section 7 and any other provision of this Deed of Trust benefiting, or intended to benefit, Agent and any Senior Secured Parties and/or to protect and maintain the senior priority of the Senior Secured Parties liens on and security interests in the Facility.

[SIGNATURE APPEARS ON FOLLOWING PAGE]



## **EXHIBIT A**

Part 1 –Agreements

[Fill]

Part 2 – Property Legal Descriptions

[Fill]

**EXHIBIT B**

**PROPERTY NOT PRESENTLY SUBJECT TO THE DEED OF TRUST  
BUT INTENDED TO BE SUBJECT TO THE DEED OF TRUST UPON  
RECORDING OF ADDENDUM TO THIS DEED OF TRUST**

The following real property interests are not currently part of the Property but are intended to become part of the Property upon recording of an Addendum to this Deed of Trust after (but only after) Grantor obtains and records any right, title, estate or interest in such real property interests, subject to Section 2.3 of the Deed of Trust:

Part 1 – Agreement

[Fill]

Part 2 – Property Description

[Fill]

**EXHIBIT C**

**ADDENDUM TO DEED OF TRUST**

This Addendum to Deed of Trust is executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by [\_\_\_\_], a [\_\_\_\_], as Trustor ("Grantor");

WHEREAS, Grantor executed a Deed of Trust, Leasehold Deed of Trust, Security Agreement, Assignment Of Leases, Rents And Profits, Financing Statement and Fixture Filing (the "Deed of Trust") in favor of PacifiCorp, an Oregon corporation, as Beneficiary ("Secured Party") on \_\_\_\_\_, 20\_\_, which was recorded in \_\_\_\_\_ County, Wyoming, on \_\_\_\_\_, 20\_\_;

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the Deed of Trust;

WHEREAS, the Deed of Trust contemplates additional real property being added to the Property as rights or interests in such additional real property are received and recorded in the real property records; and

WHEREAS, such rights or interests have been received and recorded for the real property described on the attached Annex A.

NOW, THEREFORE, Grantor hereby adds to the Property, Grantor's right, title, estate and interest in, to and under the property located in the County of \_\_\_\_\_, State of Wyoming further described in Part 2 of Annex A of this Exhibit C attached hereto and incorporated herein by reference, including all of Grantor's right, title, estate and interest arising under the agreement listed in Part 1 of Annex A of this Exhibit C, BUT SUBJECT TO Permitted Liens (as defined in the Deed of Trust), and does hereby mortgage, grant, bargain, sell, convey, transfer, assign and set over to the Secured Party, all of Grantor's right, title, estate and interest in, to and under such property and agrees its interest in such property shall be subject to the Deed of Trust. Except for the addition of such property, the Deed of Trust shall remain unchanged and in full force and effect.

Executed on the date stated above.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:



## **ANNEX A**

Part 1 – Agreement

[Fill]

Part 2 – Property Legal Description

[Fill]

## FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

PACIFICORP  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232-2315  
Attn: Director, Valuation & Commercial Business

### MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT ("Memorandum"), dated as of \_\_\_\_\_, 20\_\_, is made by and between \_\_\_\_\_ a \_\_\_\_\_ limited liability company ("Seller"), and PACIFICORP, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party".

### RECITALS

A. Seller and PacifiCorp have entered into that certain Power Purchase Agreement on the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement"), pursuant to which Seller has agreed to construct, own, operate and maintain a wind-powered generation facility for the generation of electric energy to be located in \_\_\_\_\_ County, in the State of Wyoming (as more particularly defined in the Agreement, the "Project"), and upon completion of said Project, to sell to PacifiCorp the electric energy and capacity to be produced by the Project as well as all associated "Green Tags" (as that term is defined in the Agreement), all on the terms and conditions set forth in the Agreement. The real property on which the Project is to be constructed (the "Premises") is more particularly described in the attached Exhibit A.

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

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

### TERMS

1. The Premises. Seller acknowledges and agrees that the real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Project, is and will be owned by Seller and shall hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the provisions of Sections 8.4, 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 the Agreement is terminated because of a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Project or Premises (for whom Seller acts herein as agent), may thereafter require or seek to require PacifiCorp to purchase energy or capacity from the Project or any facility constructed on the Premise under the Public Utility Regulatory Policy Act ("PURPA"), or any other Requirements of Law, for any periods that would have been within the Term had the Agreement remained in effect. Seller, on behalf of itself and on behalf of any present or future affiliate, hereby waives its and such affiliate's rights to require PacifiCorp to do so. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself and its successors and affiliates, as agent for any present or future successor and affiliate, waived its rights to require PacifiCorp to so purchase such energy from the Project or a facility constructed on the Premise in the event of such termination. Terms not defined herein are defined in the Agreement.

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

4. Notice of Agreement to Grant Subordinated Lien. Pursuant to Section 8.4.1 of the Agreement, Seller has agreed to grant PacifiCorp, on or before the earlier of the "Commercial Operation Date" and the "Facility Financing Date" (as each such term is defined in the Agreement) and simultaneously with the acquisition by Seller after the Effective Date of the Agreement of any additional real property in connection with the Project, a subordinated lien on the Project and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Project (which lien shall be subordinate to the interests of the "Senior Lenders", as defined in the Agreement), as security for the obligations of Seller to PacifiCorp under the Agreement.

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

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

7. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from PacifiCorp at 825 NE Multnomah, Suite

600, Portland, Oregon 97232-2315, Attn: Director, Valuation & Commercial Business. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to PacifiCorp in its sole and absolute discretion.

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

PACIFICORP,  
an Oregon corporation

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Name:  
Title: Title:

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_ by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_ by \_\_\_\_\_, the \_\_\_\_\_ of PACIFICORP, an Oregon corporation.

\_\_\_\_\_  
NOTARY PUBLIC

## **EXHIBIT A**

Legal Description of the Premises

## FORM OF PARENT GUARANTY

THIS GUARANTY (this "Guaranty"), dated as of \_\_\_\_\_, 2017, is issued and delivered by \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Guarantor") for the benefit of PacifiCorp, an Oregon corporation (the "Beneficiary"), with reference to the following:

WHEREAS, the Beneficiary and \_\_\_\_\_, a \_\_\_\_\_ limited liability company (the "Obligor") entered into that certain Power Purchase Agreement, dated as of \_\_\_\_\_, 2017 (the "Agreement"); and Guarantor delivers to the Beneficiary this Guaranty as an inducement to Beneficiary to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guarantor absolutely and unconditionally guarantees, as an independent obligation of Guarantor, the prompt and complete payment when due of the Obligor's obligations and liabilities under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed Expenses as defined in Section 10, plus (a) \_\_\_\_\_ U.S. Dollars (U.S. \$ \_\_\_\_\_) for the period from the date that is ten (10) days after the effective date of the Agreement, through but not including the date that is three (3) months after the effective date of the Agreement, (b) \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_) for the period from the date that is three (3) months after the effective date of the Agreement through but not including the Commercial Operation Date (as defined in the Agreement), and (c) \_\_\_\_\_ U.S. Dollars (U.S. \$ \_\_\_\_\_) for the period from the Commercial Operation Date (as defined in the Agreement) through the Expiration Date.

2. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of any Obligations may be or become barred by any statute of limitations, discharged, or uncollectible due to any change in law or regulation or in any bankruptcy, insolvency or other proceeding, or otherwise be unenforceable. All sums payable by Guarantor hereunder shall be made in immediately available funds without any setoff, deduction, counterclaim or withholding for taxes unless required by applicable law, in which case Guarantor shall pay, in addition to the payment to which Beneficiary is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by Beneficiary (free and clear of any setoff, deduction, counterclaim or withholding for taxes) will equal the full amount which Beneficiary would have received had no such setoff, deduction, counterclaim or withholding been required.

3. Beneficiary may at any time, whether before or after termination of this Guaranty, and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (1) apply any sums received to any indebtedness or other obligations for which Obligor is liable, whether or not such indebtedness is an Obligation; (2) modify, compromise, release, subordinate, substitute, exercise, alter, enforce or fail or refuse to exercise or enforce any claims, rights or remedies of any kind which Beneficiary may have, at any time against Obligor or Guarantor, endorser, or other party liable for the Obligations or any part or term thereof, or with respect to collateral or security of any kind

Beneficiary may have, at any time, whether under the Obligations, or any other agreement, or this Guaranty, or otherwise; (3) release, substitute, or surrender and to enforce, collect or liquidate or to fail or refuse to enforce, collect or liquidate, any collateral or security of any kind Beneficiary may have, at any time, whether under this Guaranty or otherwise; (4) take and hold security for the payment and performance of the obligations guaranteed hereby, and exchange, enforce, waive, and release or apply such security and direct the order or manner of sale thereof as Beneficiary in its discretion may determine; (5) release or substitute any other Guarantor of Obligor's payment or performance; and (6) assign this Guaranty in whole or in part or Beneficiary's rights hereunder to anyone at any time. Guarantor hereby consents to each and all of the foregoing acts, events and/or occurrences.

4. Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, (iii) demand for payment of any of the Guaranteed Obligations; (iv) any right to assert against Beneficiary any defense (legal or equitable), counter-claim, set-off, cross-claim or other claim that Guarantor may now or at any time hereafter have (a) against Obligor or (b) acquired from any other party, not affiliated with Guarantor, to which Beneficiary may be liable; and (v) any defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Obligor for reimbursement, or any other rights of the Guarantor to proceed against Obligor or against any other person, property or security.

5. This Guaranty shall continue in full force and effect with respect to all Obligations arising prior to its termination. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. The failure of Beneficiary to enforce any of the provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce the same. All remedies of Beneficiary shall be cumulative. The terms and provisions hereof may not be waived, altered, modified, or amended except in a writing executed by Guarantor and a duly authorized officer of Beneficiary.

6. Until all Obligations are indefeasibly paid in full, Guarantor hereby waives all rights of subrogation, reimbursement, contribution, and indemnity from Obligor and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations. No payment in respect of any such subordinated debts shall be received by Guarantor. Upon any Obligation becoming due, Obligor or its assignee, trustee in bankruptcy, receiver, or any other person having custody or control over any or all of Obligor's property is authorized and directed to pay to Beneficiary the entire unpaid balance of the debt before making any payments to Guarantor, and for that purpose. Any amounts received by Guarantor in violation of the foregoing shall be received as trustee for the benefit of Beneficiary and shall forthwith be paid over to Beneficiary.

7. Guarantor warrants and represents that it is an "eligible contract participant" within the meaning of Section 1a(18) of the Commodity Exchange Act.

8. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been finally and indefeasibly discharged in full, and (ii) \_\_\_\_\_ (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

9. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of Oregon. Guarantor and Beneficiary agree to the exclusive jurisdiction of the state and federal courts located in the state of Oregon over any disputes arising or relating to this Guaranty.

10. Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts ("Expenses").

11. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

12. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. Each provision hereof shall be severable from every other provision when determining its legal enforceability such that this Guaranty may be enforced to the maximum extent permitted under applicable law. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary. There are no intended third party beneficiaries of this Guaranty.

13. Guarantor may not assign its rights nor delegate its obligations under this Guaranty in whole or part, without written consent of Beneficiary, and any purported assignment or delegation absent such consent is void. Guarantor agrees to properly execute, or cause to be executed, all documents reasonably required by Beneficiary in connection herewith in order to fulfill the intent and purposes hereof and of the Transaction.

14. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by facsimile to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

With a copy to:



If to the Beneficiary, at:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, OR 97232-2315  
Attn: Director, Valuation & Commercial Business  
Fax (503) 813-6260

With a copies to:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, OR 97232-2315  
Attn: Contract Administration  
Fax (503) 813-6291  
email: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

PacifiCorp Legal Department  
825 NE Multnomah, Suite 1800  
Portland, OR 97232-2315  
Attn: Assistant General Counsel  
Fax (503) 813-6761

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by transmission confirmation report, if sent by facsimile and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by transmission confirmation report, if sent by facsimile and received after 4 pm local time of recipient.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the day and year first above written.

By: \_\_\_\_\_  
Name:  
Title:

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 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, CONDITIONS OR PRICES 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.

**POWER PURCHASE AGREEMENT**

**(RENEWABLE ENERGY – SOLAR)**

**BETWEEN**

[ \_\_\_\_\_ ]

**AND**

**PACIFICORP**

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**POWER PURCHASE AGREEMENT  
(RENEWABLE ENERGY)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY) (this “Agreement”), is entered into between [\_\_\_\_], a [\_\_\_\_] [\_\_\_\_] (the “Seller”) and PacifiCorp, an Oregon corporation (“PacifiCorp”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the "Parties" and individually as a “Party.”

WHEREAS, Seller intends to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy located in [\_\_\_\_] County, [STATE] with an expected nameplate capacity rating of [\_\_] MW (AC) (the “Facility”).

WHEREAS, Seller expects that the Facility will deliver to PacifiCorp [\_\_\_\_] MWh of Net Output in the first year of operation. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in Exhibit A. Seller acknowledges that PacifiCorp will include this amount of energy in PacifiCorp's resource planning.

WHEREAS, Seller desires to sell, and PacifiCorp desires to purchase, the Net Output delivered by the Facility in accordance with the terms and conditions hereof.

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

**SECTION 1  
DEFINITIONS, RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

“AAA” means the American Arbitration Association.

“AC” means alternating current.

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default by PacifiCorp, a request by PacifiCorp, or an event of Force Majeure.



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

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric generation facility to automatically adjust the generation quantity.

“AGC Set-Point” means the analog or digital signal sent to the Facility by PacifiCorp, the Interconnection Provider, the Transmission Provider or the Market Operator representing the maximum Net Output for the Facility.

“Agreement” is defined in the Recitals.

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

“Book Value” means cost minus accumulated depreciation, and not deducting for debt or other encumbrances, calculated in accordance with generally accepted accounting principles consistently applied.

“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.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Commercial Operation” means that not less than the Required Percentage of the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and without limiting Seller's other obligations under this Agreement, 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 Commercial Operation has occurred:

(i) PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer that is licensed in the state of [INSERT STATE OF

LOCATION OF PROJECT] stating: (1) the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation, which must be at least the Required Percentage of the Expected Nameplate Capacity Rating; (2) that the Facility is able to generate electric energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; (3) Start-Up Testing of the Facility has been completed; and (4) all AGC equipment is installed and operational.

(ii) PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, in conformance with the requirements of the Generation Interconnection Agreement: (1) all required Interconnection Facilities have been constructed; (2) all required interconnection tests have been completed; and (3) 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.

(iii) PacifiCorp has received a certificate from a Licensed Professional Engineer licensed in the state of [INSERT STATE OF LOCATION OF PROJECT] addressed to PacifiCorp stating that Seller has obtained or entered into all Permits and Required Facility Documents. Seller must provide copies of any or all Required Facility Documents requested by PacifiCorp.

(iv) PacifiCorp has received an opinion from a law firm or attorney registered or licensed in the State of [INSERT STATE OF LOCATION OF PROJECT] stating, after all appropriate and reasonable inquiry (1) Seller has obtained or entered into all Required Facility Documents; (2) neither Seller nor the Facility are in violation of or subject to any liability under any Requirements of Law; and (3) Seller has duly filed and had recorded all of the agreements, documents, instruments, mortgages, deeds of trust and other writings described in Section 8.4.1.

(v) PacifiCorp has received a certificate addressed to PacifiCorp from an authorized officer of Seller (i) stating that Seller has completed all of its obligations that would permit PacifiCorp to designate the Facility as a Network Resource and receive firm transmission service from the Transmission Provider in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate; and (ii) that includes a document from the Transmission Provider confirming each of the items to which the Seller certifies in (i) above.

(vi) 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).

(vii) PacifiCorp has received the Default Security, as applicable.

With respect to (i) through (iv) above, the certificate or opinion provided to PacifiCorp must come from a Licensed Professional Engineer or, in the case of (iv) above, an attorney that is not an employee of Seller (or any Affiliate) and has no financial interest in the Facility. Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates and

opinions described above. PacifiCorp shall have ten (10) Business Days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten (10) Business Day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten (10) Business Day period that PacifiCorp reasonably believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in PacifiCorp's notice to the satisfaction of PacifiCorp. In the event PacifiCorp provides notice of deficiency with regards to the information submitted to establish the Commercial Operation Date, then the Commercial Operation Date will be the date upon which Seller has addressed the concerns stated in PacifiCorp's notice to PacifiCorp's reasonable satisfaction. If Commercial Operation is achieved at less than 100 percent of the Expected Nameplate Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to 100 percent of the Expected Nameplate Capacity Rating, Seller shall provide PacifiCorp, no later than ten (10) Business Days after the Commercial Operation Date, with a list of all items to be completed in order to achieve Final Completion ("Final Completion Schedule"). All items on the Final Completion Schedule must be completed on or before the ninetieth (90<sup>th</sup>) day after the Commercial Operation Date. If a Final Completion Schedule is not provided to PacifiCorp within ten (10) Business Days following the Commercial Operation Date, then the date of Final Completion shall be the same as the Commercial Operation Date.

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility but in no event earlier than thirty (30) days before the Scheduled Commercial Operation Date.

"Commission" means the [INSERT APPLICABLE STATE PUBLIC UTILITY COMMISSIONS WHICH WILL ULTIMATELY BE REQUIRED TO APPROVE OR ACKNOWLEDGE THE AGREEMENT].

"Compensable Curtailment Energy" has the meaning as described in Section 5.1.3.

"Compensable Curtailment Price" has the meaning as defined in Section 5.1.3(b).

"Confidential Business Information" is defined in Section 23.1.

"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, N.Y., selected by the Party to whom interest is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh for Net Output,

Green Tags and Capacity Rights stated in Section 5.1.

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

Credit Requirements” means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB+ or greater from S&P, or (b) Baa1 or greater from Moody's, and if such ratings are split, the lower of the two ratings must be at least ‘BBB+’ or ‘Baa1’ from S&P or Moody’s, respectively; provided that if (a) or (b) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

“Default Security” is defined in Section 8.2.1.

“Delay Damages” for any given day are equal to (a) the Expected Energy, expressed in MWhs per year, divided by 365, multiplied by (b) PacifiCorp's Cost to Cover.

“Deficit Damages” means a one-time payment equal to (a) the difference between (i) Expected Nameplate Capacity Rating and (ii) the Nameplate Capacity Rating of the Facility on the 120th day after the Guaranteed Commercial Operation Date, stated in MWs, multiplied by (b) \$25,000.

“Effective Date” is defined in Section 2.1.

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

“Energy Imbalance Market” means generation facilities electrically located within PacifiCorp's balancing authority areas that are, from time to time, bid in to or otherwise subject to dispatch instructions issued or originating from the Market Operator.

“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 (SOx), nitrogen oxides (NOx), 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 or any Governmental Authority 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) the ITC or any other Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of

liability, or (iii) adverse wildlife or environmental impacts.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

“Expansion Energy” is defined in Section 7.1.1.

“Expected Energy” means [\_\_\_\_\_] MWh of Net Output in the first full Contract Year, reduced by an annual degradation factor of [\_\_\_] per Contract Year, measured at the Point of Delivery, which is Seller's best estimate of the projected long-term average annual Net Output production, based upon typical solar conditions at the Facility as determined by a Solar Performance Modeling Program, delivered to the Point of Delivery and the Expected Nameplate Capacity Rating. Seller estimates that the Net Output will be delivered during each Contract Year according to the estimates of monthly Net Output set forth in Exhibit A. If at Final Completion the Facility's Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Expected Energy shall be reduced proportionally per year for each full MW of Nameplate Capacity Rating below the Expected Nameplate Capacity Rating. Seller acknowledges that PacifiCorp will include Expected Energy in PacifiCorp's resource planning. PacifiCorp acknowledges that solar insolation is variable and that the Facility's actual annual output of Net Output in the ordinary course in any given year will be subject to variation caused by differences in the actual solar insolation at the Facility from year to year.

“Expected Nameplate Capacity Rating” means [\_\_\_] MW (AC), the expected maximum instantaneous generation capacity of the Facility.

“Facility” is defined in the Recitals and is more fully described in attached Exhibit 6.1 and includes the photovoltaic power generating equipment, including panels, arrays, tracking system (if applicable), inverters, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

“Facility Equity” is defined in Section 8.5.

“Facility Financing Date” means the closing date for the construction financing for the Facility between Seller or Seller's Affiliates and a Lender.

“Fair Market Value” means the fair market value of the Facility as determined pursuant to Section 7.2.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and fully interconnected, fully integrated, and synchronized with the Transmission Provider’s System, modified if necessary to reflect the Nameplate Capacity Rating and, if applicable, through completion of all the items set forth on the Final Completion Schedule.

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

“Firm Market Price Index” means (a) the average price reported by Intercontinental Exchange, Inc. (“ICE”) Day-Ahead [Palo Verde]<sup>1</sup> On-Peak Index, for On-Peak Hours, and (b) the average price reported on the ICE Day-Ahead [Palo Verde] Off-Peak Index, for Off-Peak Hours. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose hereunder, during the Term, the Parties shall agree upon a replacement Firm Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity for the applicable periods.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit B, and specifically excludes any Maintenance Outage or Planned Outage.

“Generation Interconnection Agreement” means the large generator interconnection agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

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

“Green Tags” means (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

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<sup>1</sup> Note to Bidders – Palo Verde will be the reference hub for a facility proposed in Utah, Wyoming or Idaho. The reference hub will be Mid-C for a facility proposed in Oregon or Washington.

Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Facility.

“Green Tags Price Component” means: (1) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three nationally recognized independent Green Tag brokers selected by PacifiCorp pursuant to which PacifiCorp could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (2) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from the established liquid market for Green Tags in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder.

“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, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

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

“Hazardous Materials” means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

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

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

“Interconnection Provider” means PacifiCorp Transmission.

“Inverter” means the equipment installed at the Facility to convert direct current from the Solar Panels to alternating current, as described in Exhibit 6.1.

“ITC” means the investment tax credit established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

“KW” means kilowatt.

“KWh” means kilowatt hour.

“Leases” means the memoranda of lease and redacted leases recorded in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

“Lender” means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, backleverage financing or credit derivative arrangement) to Seller or Seller's Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency, weather, or Environmental Attributes in connection with the development, construction or operation of the Facility; or (d) for the purchase of the Facility and related rights from Seller.

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

- (1) is issued by a Qualifying Institution;
- (2) by its terms, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;
- (3) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;
- (4) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not increased or replaced as and when provided in Section 8;
- (5) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement; and
- (6) shall remain in effect for at least ninety (90) days after the end of the Term.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and acceptable to PacifiCorp in its reasonable judgment who (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller and is



not an employee of its members or Affiliates, other than with the prior written consent of PacifiCorp, for services previously or currently being rendered to Seller or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or a representative of a manufacturer or supplier of any equipment installed in the Facility.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached Exhibit B, and includes any outage involving ten percent (10%) of the Facility’s Net Output that is not a Forced Outage or a Planned Outage.

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market.

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

“Mediation Notice” is defined in Section 24.2.1.

“Mediation Procedures” is defined in Section 24.2.1(a).

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

“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 completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the Solar Panels and Inverters, as set forth in a notice from Seller to PacifiCorp delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent notice from Seller to PacifiCorp as required for Final Completion. The Nameplate Capacity Rating of the Facility shall not exceed [ ] MW (AC).

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the 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 of energy shall be the amount of energy flowing through the Point of Delivery.

“Network Resource” is defined in the Tariff.

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

“Non-Compensable Curtailment” has the meaning set forth in Section 4.4.1.

“Off-Peak Hours” or “LLH” means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, MPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, MPT, on Sundays and NERC designated holidays.

“On-Peak Hours” or “HLH” means all hours ending 07:00:00 through 22:00:00 MPT, Monday through Saturday, excluding NERC designated holidays.

“Option Confirmation Notice” is defined in Section 7.2.4.

“Output” means all energy produced by the Facility.

“Output Shortfall” is defined in Section 6.12.2.

“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.

“PacifiCorp's Cost to Cover” means the positive difference, if any, between (a) the sum of (i) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, plus (ii) the Green Tags Price Component, and (b) the Contract Price specified in Exhibit 5.1 in effect on such days, stated as an amount per MWh. If on a given day (or Contract Year in the case of calculating Output Shortfall) the difference between (a) minus (b) referenced above is zero or negative, then PacifiCorp's Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 6.12.2 or Section 11.2.1 with respect to such day (or Contract Year in the case of calculating Output Shortfall). For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (b).

“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 or operation of the Facility or 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 Delivery” means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit 9.2.

“Potential Net Output” means the quantity of Net Output that Seller is capable of delivering at the Point of Delivery at any specific time. Potential Net Output will be calculated as the aggregate energy available for delivery at the Point of Delivery using the best available data obtained through commercially reasonable methods, and shall be dependent on solar insolation data at the Facility, cloud cover forecast models, Facility equipment availability, Solar Panels and Inverter performance guaranties provided by Seller to PacifiCorp in accordance with Exhibit 6.1, derates and transmission line losses, and any other adjustments necessary to accurately reflect the Facility’s capability to produce and deliver energy at the Point of Delivery.

“Preliminary Interest Notice” is defined in Section 7.2.1.

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

“Project Development Security” is defined in Section 8.1.1.

“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.

“Qualifying Institution” means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least \$10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least “A” from S&P and “A2” from Moody's.

“Reporting Month” is defined in Section 6.10.1.

“Required Facility Documents” means the Permits and other authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Net Output to PacifiCorp in accordance with this Agreement and Requirements of Law, including those set forth in Exhibit 3.2.3.

“Required Percentage” means 93 percent.

“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 wildlife protection and occupational safety and health).

“Rolling Period” is defined in Section 6.12.1.

“RTO” means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

“S&P” means Standard & Poor's Rating Group (a division of S&P Global, Inc.).

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [\_\_\_\_\_].

“Security Interests” is defined in Section 8.4.1.

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 12.1.2.

“Seller's Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh specified in Exhibit 5.1, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

“Senior Lenders” means Lenders being granted senior security interests on the Facility or its assets, or Seller or its equity, other than Affiliates of Seller.

“Seller Uncontrollable Minutes” means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to PacifiCorp (or during which PacifiCorp failed to accept such delivery) due to one or more of the following events, each as recorded by Seller's SCADA and indicated by Seller's electronic fault log: (a) an emergency or Force Majeure event; (b) to the extent not caused by Seller's actions or omissions, a Non-Compensable Curtailment in accordance with Section 4.4(b); (c) the System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; (d) Planned Outages, but in no event exceeding thirty six (36) hours per Contract Year consistent with such operating manual; (e) Compensable Curtailment as provided in Section 5.1.3; (f) a default by PacifiCorp;

provided, however, that if any of the events described above in items (a) through (f) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“Solar Array” means one or more Solar Panels connected to the same Inverter.

“Solar Panels” means the photovoltaic energy generating panels installed at the Facility, as described in Exhibit 6.1.

“Solar Performance Modeling Program” means a commercially available computer modeling program that is generally accepted in the solar energy industry capable of modeling the Expected Energy and other similar outputs. Solar Performance Modeling Program includes, but is not limited to, the PVSYST program. If Seller elects a Solar Performance Modeling Program to which PacifiCorp does not have access, Seller, at its cost, shall provide PacifiCorp access to the Solar Performance Modeling Program in order for PacifiCorp to fully analyze all modeling provided by Seller under this Agreement.

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

“Step-In Rights” means PacifiCorp’s rights under Section 11.8.

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

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

“Tax Credits” means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit (including the ITC) specific to the production of renewable energy and/or investments in renewable energy facilities.

“Technical Expert” is defined in Section 24.2.2.

“Technical Dispute Notice” is defined in Section 24.2.2(a).

“Term” is defined in Section 2.1.

“Test Energy” means any Net Output during periods prior to the Commercial Operation Date and related Capacity Rights.

“Transmission Provider” means PacifiCorp Transmission, including the Grid Operations business unit.

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

“WECC” means the Western Electricity Coordinating Council.

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

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

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

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (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 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. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider.

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

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

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

## **SECTION 2 TERM; FACILITY DEVELOPMENT**

2.1 Term. This Agreement shall become effective when it is executed and delivered by both Parties and, if necessary by any rules or guidance of a Commission, has been filed, acknowledged or approved, as applicable, by each such Commission ("Effective Date"). Unless earlier terminated as provided herein, this Agreement shall remain in effect until the [INSERT TERM LENGTH] (\_\_\_\_th) anniversary of the Commercial Operation Date (the "Term").

2.2 [Reserved].

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

(a) On or before the thirtieth (30<sup>th</sup>) day following the Effective Date, Seller shall post the Project Development Security in the amount described in Section 8.1;

(b) On or before the Commercial Operation Date, Seller shall provide Default Security required under Section 8.2;

(c) Seller shall provide PacifiCorp with documentation showing that Seller has obtained retail electric service for the Facility prior to the Commercial Operation Date;

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

(e) If Commercial Operation of the Facility is achieved based on less than 100 percent of the Expected Nameplate Capacity Rating, then Seller may inform PacifiCorp, by written notice received no later than ten (10) Business Days after the Commercial Operation Date, that Seller intends to bring the Facility above the Required Percentage up to but not exceeding 100 percent of the Expected Nameplate Capacity Rating. Such notice from Seller shall include a Final Completion Schedule. After providing that notice, Seller shall cause the Facility to achieve Final Completion on or before the ninetieth (90<sup>th</sup>) day after the Commercial Operation Date.

Notwithstanding the foregoing, the date for achieving each of the foregoing milestones shall be extended on a day for day basis for any delay due solely to PacifiCorp's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement.

Without limiting Seller's obligations under this Agreement, none of the following shall excuse in any respect Seller's failure to comply in all respects with any and all provisions in this Section 2.3 and Section 2.4, no matter what the source or reason: (i) any event of Force Majeure, actual or alleged; (ii) economic hardship, including lack of money or inability to obtain financing; (iii) inability to obtain any supply of any good or service, (iv) any breakdown or malfunction of any equipment; (v) costs or taxes; (vi) anything relating to any Required Facility Document; (vii) Requirements of Law; (viii) anything relating to the Transmission Provider, Network Service Provider, Interconnection Provider, or Generation Interconnection Agreement; or (ix) increased cost of electricity, steel, labor, or transportation.

#### 2.4 Project Construction, Delay Damages and Deficit Damages.

(a) On or before the later of: (i) the Facility Financing Date or (ii) excavation of the first foundation for the photovoltaic panels, Seller shall provide to PacifiCorp a certificate from a Licensed Professional Engineer confirming that the Required Facility Documents including the material permits, consents and agreements necessary to operate and maintain the



Facility have been obtained by Seller.

(b) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation.

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

(d) If the Facility achieves Final Completion based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall pay to PacifiCorp Deficit Damages.

(e) After the date of Final Completion, any partially completed Solar Array shall not be part of the Facility, and Seller shall not undertake to add any such partially completed Solar Array or output from such partially completed Solar Array to the Facility without the prior written consent of PacifiCorp. Any output of such Solar Array or Capacity Rights associated with such output shall be treated as Net Output above the Maximum Delivery Rate and is subject to Section 6.8.

2.5 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to Seller's delay in achieving Commercial Operation or failure to reach Final Completion based on 100 percent of the Expected Nameplate Capacity Rating would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages and Deficit Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. The Parties agree that Delay Damages and Deficit Damages shall be PacifiCorp's exclusive remedy for a delay in achieving Commercial Operation or failure to reach Final Completion based on 100 percent of the Expected Nameplate Capacity Rating and believe that Delay Damages and Deficit Damages fairly represent actual damages. Subject to the foregoing sentence, this Section 2.5 shall not limit the amount of damages payable to PacifiCorp if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.6 Damages Invoicing. By the tenth (10<sup>th</sup>) day following the end of the calendar month in which Delay Damages begin to accrue or Deficit Damages are incurred, as applicable, and continuing on the tenth (10<sup>th</sup>) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of such damages and any amount due PacifiCorp in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Sections 10.3 and 10.4, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.7 PacifiCorp's Right to Monitor. During the Term, Seller shall permit PacifiCorp and its advisors and consultants to:

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

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

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment, and warranties, and (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between Seller and a manufacturer of the Facility's Solar Panels and Inverters and any other material items of Facility equipment that require testing for warranty agreements to be effective. Seller shall provide PacifiCorp with at least two (2) Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient solar insolation or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient solar insolation or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date. Seller does not herein grant PacifiCorp the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require PacifiCorp to review, comment on, or approve of any contract between Seller and a third party.

(d) Witness initial performance tests and other tests and review the results thereof; with Seller to make best efforts to provide PacifiCorp five (5) Business Days' advance notice of each such major test.

(e) Perform such examinations, inspections, and quality surveillance as, in PacifiCorp's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation and Final Completion have been achieved.

With respect to PacifiCorp's right to monitor under this Section 2.7, (i) PacifiCorp is under no obligation to exercise any of these monitoring rights, (ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (iii) PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by PacifiCorp hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. PacifiCorp shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.7, which representatives shall have authority to act for PacifiCorp in all technical matters under this Section 2.7 as authorized by PacifiCorp but not to amend or modify any provision hereof. PacifiCorp's initial representatives and their contact information are listed in Exhibit 2.7. PacifiCorp may, by written notice to Seller, change its representatives or their contact information.

2.8 Tax Credits. Seller shall notify PacifiCorp whether Seller has elected to claim the ITC within thirty (30) days following the date that Seller (or Seller's Affiliate, on a consolidated basis) files its first tax return after the Commercial Operation Date. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive the ITC 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 Facility is eligible for, or receives, the ITC 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 this Agreement 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.

3.1.7 Eligible Contract Participant. It, and any guarantor of its obligations under this Agreement, is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

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 Commercial Operation Date) all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the 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 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 Commercial Operation Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises. Following the Commercial Operation Date, Seller shall promptly notify PacifiCorp of any additional Required Facility Documents.

3.2.4 Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery 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 Facility for the Term. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit 3.2.5. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the 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 Facility.

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 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. In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

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

3.2.8 Renewable Claims. Seller has at all times complied with the Federal Trade

Commission requirements set forth in 16 CFR Part 260 in any communications concerning the Output, the Facility and the Green Tags that have or may be generated from the Facility. Seller has not claimed the Green Tags, Environmental Attributes or other “renewable energy,” “green energy,” “clean energy” or similar attributes of the Output or the Facility as belonging to the Seller or any Seller Affiliate and is not aware of any such claims made by third parties with respect to the Facility or the Output.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter 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 Commercial Operation Date. If at any time during the Term, the Seller 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 this Section 3 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 AND GREEN TAGS**

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

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, Green Tags or Capacity Rights from the Facility to any party other than PacifiCorp; provided, however, that this restriction shall not apply during periods when PacifiCorp is in default hereof because it has failed to accept or purchase that Net Output or Green Tags as required hereunder.

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

#### 4.4 Curtailement.

4.4.1 Non-Compensable Curtailement. Except for Compensable Curtailement in accordance with Section 5.1.3, 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 Delivery for any of the following reasons: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Market Operator, Transmission Provider or Network Service Provider directs a general curtailement, reduction, or redispatch of generation in the area, (which would include the Net Output) for any reason (excluding curtailement of purchases for general economic reasons unilaterally directed by the Market Operator or PacifiCorp acting solely in its merchant function capacity), even if and no matter how such curtailement or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in any way in order to meet its obligations to the Market Operator, Transmission Provider or Network Service Provider to operate within system limitations or otherwise, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output (“Non-Compensable Curtailement”).

4.4.2 Curtailed Amount. Seller will calculate the quantity of Non-Compensable Curtailement by determining the quantity of Net Output that would have been produced by the Facility and delivered to the Point of Delivery had its generation not been so curtailed under this Section 4.4. Seller shall determine the quantity of such curtailed energy based on (a) the time and duration of the Non-Compensable Curtailement and (b) solar conditions recorded at the Facility during the period of Non-Compensable Curtailement and the production estimate based on the Solar Panels and Inverter performance guaranties provided by Seller to PacifiCorp in accordance with Exhibit 6.1. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a Non-Compensable Curtailement.

4.4.3 Compensable Curtailement. PacifiCorp shall pay Seller for Compensable Curtailement Energy as set forth in Section 5.1.3.

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 Transmission Provider.

4.6 Green Tags.

4.6.1 Title. Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Output at the Facility that gives rise to such Green Tags.

4.6.2 Documentation. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller must, on or before the tenth (10th) day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale, in the form attached in Exhibit 4.6(1), for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e Program (or such successor program). Seller must, at its own cost and expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e Program (or such successor program) throughout the Term. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, effectuate the transfer of WREGIS Certificates to PacifiCorp in accordance with WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form similar to that in Exhibit 4.6(2) or elect to act as its own WREGIS-defined Qualified Reporting Entity. Unless the failure to deliver WREGIS Certificates was caused by action of PacifiCorp not acting in its capacity as Qualified Reporting Entity under the Qualified Reporting Entity Services Agreement, PacifiCorp shall be entitled to a refund of the Green Tags Price Component of Green Tags associated with any Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tags back to Seller, provided that Seller shall have thirty (30) days to correct any error and deliver such WREGIS Certificates to PacifiCorp or provide such refund payment. Seller shall promptly provide PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by a Governmental Authority, upon notification by such Governmental Authority that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded.

4.6.3 Publicity. Seller shall not make any public statement or report under any program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintained registered the Facility by providing copies of all such information as PacifiCorp reasonably requires for such registration.

4.6.4 Renewable Claims. Seller will comply with the Federal Trade



Commission requirements set forth in 16 CFR Part 260 in any communications concerning the Output, the Facility and the Green Tags that are or may be generated from the Facility. Seller will not claim the Green Tags, Environmental Attributes or other “renewable energy,” “green energy,” “clean energy” or similar attributes of the Output or the Facility as belonging to the Seller or any Seller Affiliate.

4.7 Purchase and Sale of Capacity Rights. For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output and Green Tags on the terms and conditions set forth herein, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

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

4.9 Authority to Make Sales. Seller covenants that during the Term it will maintain all required regulatory authority to make wholesale sales from the Facility.

4.10 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 or Capacity Rights, if any, to PacifiCorp.

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

5.1 Contract Price; Includes Green Tags and Capacity Rights. PacifiCorp shall pay Seller the prices stated below for all deliveries of Net Output, Green Tags and Capacity Rights, up to the Maximum Delivery Rate. The price provided for Test Energy in Section 5.1.1, the Contract Price provided for in Section 5.1.2, and the Compensable Curtailment Price provided for in Section 5.1.3 include the consideration to be paid by PacifiCorp to Seller for all Net Output, Green Tags, Capacity Rights and Test Energy, respectively, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the Green Tags and Capacity Rights associated therewith.

5.1.1 Test Energy and Net Output Before Later of Commercial Operation Date and Scheduled Operation Date. Between the Effective Date and the later to occur of the (i) Commercial Operation Date or (ii) the Scheduled Commercial Operation Date, Seller shall sell and deliver to PacifiCorp all Test Energy and Net Output. PacifiCorp shall pay Seller for such Test Energy and Net Output delivered at the Point of Delivery, an amount per MWh equal to seventy five percent (75%) of the Firm Market Price Index for the applicable hour on the applicable day in the applicable month, provided, however, that Seller's right to receive payment for such Test Energy and Net Output is subject to PacifiCorp's right of offset under Section 10.2

for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller pursuant to Section 2.4.

5.1.2 Net Output After The Later of Commercial Operation Date and Scheduled Commercial Operation Date. For the period beginning on the later of (i) the Commercial Operation Date or (ii) the Scheduled Commercial Operation Date and thereafter during the Term, PacifiCorp shall pay to Seller the Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in Exhibit 5.1.

5.1.3 Compensable Curtailment. If, during the period beginning on the later of (i) the Commercial Operation Date or (ii) the Scheduled Commercial Operation Date and thereafter during the Term, Net Output is curtailed by PacifiCorp and such curtailment is not included as a Non-Compensable Curtailment (“Compensable Curtailment Energy”), then PacifiCorp shall pay to Seller the Compensable Curtailment Price for the Compensable Curtailment Energy, as determined below.

(a) The Parties will calculate the quantity of Compensable Curtailment Energy by determining the Potential Net Output (A) during those periods of time when the Facility is on AGC and the AGC Set-Point is set at a level that will not allow the entire Nameplate Capacity Rating to be deliverable by determining the difference between Potential Net Output and the delivered Net Output, and (B) during those periods of time when the Facility is not on AGC or the AGC Set-Point is set at a level that will allow the Nameplate Capacity Rating to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed. Compensable Curtailment Energy shall equal the number of MWh represented by the Potential Net Output less the Net Output actually delivered to the Point of Delivery.

(b) PacifiCorp will pay Seller the Contract Price for each MWh of Compensable Curtailment Energy, net of any Non-Compensable Curtailments (the “Compensable Curtailment Price”).

(c) For purposes of determining Compensable Curtailment Energy, the amount of Potential Net Output at any given time will be calculated using PacifiCorp’s solar forecasting vendor.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider and Transmission Provider for the Interconnection Facilities. PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, 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 Facility with the System and (b) any increase in generating capacity of the Facility.

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

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags up to and including, but not beyond, the Point of Delivery, 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, Capacity Rights or Green Tags beyond the Point of Delivery, 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. Seller shall be responsible for any and all sun and light severance taxes.

5.5 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 Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or Environmental Attributes.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the “public interest” 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 thirty (30) days of completion of construction of the Facility, Seller shall provide PacifiCorp the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to Exhibit 6.1 when it has been reviewed and approved by PacifiCorp, which approval shall not be unreasonably withheld or delayed. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, PacifiCorp may within fifteen (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 fifteen (15) day period, the As-built Supplement shall be deemed approved. If PacifiCorp provides a timely notice requiring corrections, Seller shall in good faith cooperate with PacifiCorp to revise the As-built Supplement to address PacifiCorp's concerns. Notwithstanding the foregoing, PacifiCorp shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

### 6.2 Standard of Facility Operation.

6.2.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (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 Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

6.2.2 Qualified Operator. From and after the Commercial Operation Date, Seller or an Affiliate of Seller shall itself operate and maintain the Facility or cause the Facility

to be operated and maintained by an entity, approved by PacifiCorp (such approval not to be unreasonably withheld, conditioned or delayed), that has at least two years of experience in operation and maintenance of solar energy facilities of comparable size to the Facility. Seller shall provide PacifiCorp thirty (30) days prior written notice of any proposed change in the operator of the Facility.

#### 6.2.3 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 obtaining from the Transmission Provider network resource interconnection service for the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, 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 Facility and the Interconnection Facilities with the System.

#### 6.5 Outages.

6.5.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during daylight hours (sun up to sunset) during any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement. Seller shall provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one month, but no more than three months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it, only to the extent that

Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval shall not be unreasonably withheld or delayed.

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then-existing solar conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the daylight 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 Facility that will not be available, and the expected completion date and time of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages. Notwithstanding anything in this Section 6.5.2 to the contrary, Seller may schedule a Maintenance Outage at any time and without the requirement to notify PacifiCorp in advance during conditions of low solar insolation.

6.5.3 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 ten (10) percent of the Nameplate Capacity Rating of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, 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.

6.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day (except curtailments pursuant to Section 4.4(b)) and will promptly update Seller's notice to the extent of any material changes in this information,

with “major” defined as affecting more than five (5) percent of the Nameplate Capacity Rating of the Facility.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly net output set forth on Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

## 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 long-term monthly/diurnal mean net energy and net capacity factor estimates (12 X 24 profile). Seller shall prepare such forecasts by utilizing a solar prediction model or service that is satisfactory to PacifiCorp in the exercise of its reasonable discretion and comparable in accuracy to models or services commonly used in the solar industry. The forecasts provided by Seller must comply with all applicable Electric System Authority tariff procedures, protocols, rules and testing as necessary and as may be modified from time to time.

6.7.2 Day-Ahead Forecasts and Updates. At Seller's expense, PacifiCorp shall solicit and obtain from a qualified solar energy production forecasting vendor forecast data and information with respect to the Facility, including day-ahead and real-time forecasting services and provision of real-time meteorological data necessary for compliance with applicable Electric System Authority procedures, protocols, rules and testing. Upon request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility. PacifiCorp shall present Seller with an invoice and documentation supporting the costs of obtaining such forecasting data. Seller shall pay the amount stated on the invoice within fifteen (15) days of receipt. PacifiCorp reserves the right to change the forecasting vendor in its sole discretion during the Term.

6.8 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting Section 7.1.1 or any restrictions herein on Nameplate Capacity Rating, if Seller elects to increase, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, PacifiCorp shall not be required to purchase any Net Output or Green Tags above the Maximum Delivery Rate. 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 AGC.

(a) Beginning on the Commercial Operation Date, PacifiCorp will dispatch Facility through its AGC system installed by Seller.

(b) PacifiCorp may notify Seller, by telephonic communication or through use of the AGC Set-Point, to curtail the delivery of Net Output to PacifiCorp from the Facility and to the Point of Delivery, for any reason and in its sole discretion and Seller shall promptly comply with such notification.

(c) The AGC Set-Point is calculated by the Transmission Provider and communicated electronically through the SCADA system. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set-Points within the margin of error specified in the Facility control system manufacturer's set point margin of error.

(d) Unless otherwise directed by PacifiCorp, Seller shall ensure that the Facility AGC is in "Remote" set-point control during normal operations.

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

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

Commencing on the date of initial delivery of Test Energy, Seller shall also transmit or cause to be transmitted to or make accessible to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including meteorological data, solar insolation 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). Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.



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

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

6.10 Reports and Records.

6.10.1 Monthly Reports. Commencing on the Commercial Operation Date, within thirty (30) days after the end of each calendar month during the Term (each, a "Reporting Month"), Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's solar insolation and actual and predicted output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that PacifiCorp may from time to time reasonably request (including historical solar insolation data for the Facility).

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

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

- (a) Upon the request of PacifiCorp, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;
- (b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;
- (c) Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;
- (d) Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next calendar month;
- (e) From and after the Commercial Operation Date, a monthly report detailing the availability of the Facility; and

(f) At any time from the Effective Date, one year's advance notice of the termination or expiration of any material agreement, including Leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to PacifiCorp within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.

6.10.4 Information to Governmental Authorities. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or Electric System Authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$10,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.4.

6.10.5 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 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, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.5.

6.10.6 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 Facility, Seller shall, within five (5) Business Days of such submission or filing, provide to PacifiCorp a copy of the same.

6.10.7 Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents. Seller shall further provide PacifiCorp with information relating to environmental impact mitigation measures it is taking in connection with the 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, 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 Facility, or the presence of Environmental Contamination at the 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.

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

6.10.9 Notice of Material Adverse Events. Seller shall promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.10.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, 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, within ten (10) days of such notice or knowledge, 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, within ten (10) days of such notice or knowledge, give notice to PacifiCorp of the same.

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

6.10.12 Confidential Treatment. The monthly reports and other information provided to PacifiCorp under this Section 6.10 shall be treated as Confidential Business Information 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.

6.12 Output Guarantee.

6.12.1 Output Guarantee. Seller is obligated to deliver a quantity of Net Output during each Rolling Period which is equal to the Output Guarantee. For purposes of this Agreement, "Output Guarantee" for any Rolling Period means the sum of (i) 90% of the Expected Energy of the Facility for such Rolling Period, less (ii) any quantities of Output that were not delivered to the Point of Delivery (or accepted by PacifiCorp) in such Rolling Period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the actual Nameplate Capacity Rating). For purposes of this Agreement, "Rolling Period" means any two consecutive Contract Years occurring during the Term.

6.12.2 Liquidated Damages for Output Shortfall.

(a) If the quantity of Net Output delivered by the Facility during any Rolling Period is equal to or greater than the Output Guarantee for such Rolling Period, Seller's delivery obligation for such Rolling Period shall be deemed satisfied for such Rolling Period.

(b) If the quantity of Net Output delivered by the Facility during any Rolling Period is less than the Output Guarantee for such Rolling Period, the Seller shall determine the resulting shortfall, if any, for the first Contract Year occurring during such Rolling Period (the "Output Shortfall"). The Output Shortfall shall be expressed in MWh and calculated in accordance with the following formula:

Output Shortfall = (90% of the Expected Energy for the Contract Year).

*less*

Any quantities of Output that were not delivered to the Point of Delivery (or accepted by PacifiCorp) in such Contract Year during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered

in an hour at an average rate equivalent to the actual Nameplate Capacity Rating),

*less*

The Net Output for the Contract Year

(c) If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a positive number, Seller shall pay PacifiCorp liquidated damages equal to the product of (i) the Output Shortfall for that Contract Year, multiplied by (ii) PacifiCorp's Cost to Cover for that Contract Year. If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a negative number, Seller shall not be obligated to pay PacifiCorp liquidated damages for such Contract Year.

(d) Each Party agrees and acknowledges that (i) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Output Guarantee would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

6.12.3 Annual Invoicing. On the thirtieth (30<sup>th</sup>) day following the end of each Rolling Period, Seller shall deliver to PacifiCorp a report (and supporting data) detailing whether Seller achieved the Output Guarantee for the most recently completed Rolling Period. In the case of the Seller failing to achieve the Output Guarantee in the prior Rolling Period, Seller shall also provide a report (and supporting data) to PacifiCorp detailing the Output Shortfall for the first Contract Year occurring during such Rolling Period. Seller shall provide documentation to support all data and calculations used in each report to calculate the percent Expected Energy. Thirty (30) days after PacifiCorp has received the report and all support data, if there is an Output Shortfall, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of liquidated damages calculated pursuant to Section 6.12.2. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Seller within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors (“PacifiCorp Representatives”) with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than twelve (12) times per year), (d) for purposes of implementing Sections 2.7 or 10.5, and (e) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller from any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such Liabilities are caused-by the intentional or negligent act or omission of Seller or its agents or Affiliates.

6.14 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent (not to be unreasonably withheld or delayed, and which consent may consider Requirements of Law relating to Premises security, obligations to outside vendors (including any confidentiality obligations), and the corporate policies of Seller's Affiliates). Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

## **SECTION 7 RIGHT OF FIRST OFFER AND PURCHASE OPTION**

### 7.1 Right of First Offer on Facility Expansion.

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

7.1.2 PacifiCorp's Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within thirty (30) days after receiving Seller's offer, Seller (or the applicable Affiliate of Seller) may enter into an agreement to sell the Expansion Energy to a third party on terms and conditions no more favorable to the third party than those offered to PacifiCorp, provided such sale of Expansion Energy may not in any way impact or alter PacifiCorp's rights, obligations or entitlements under this Agreement. If Seller (or its Affiliate) wishes to enter into an agreement with a third party on terms more favorable to PacifiCorp than those previously offered to PacifiCorp under this section, Seller shall first offer

(or cause its Affiliate to offer) the revised terms and conditions to PacifiCorp under this section.

7.1.3 PacifiCorp's Acceptance of Offer. If PacifiCorp accepts an offer made by Seller (or its Affiliate) under this section, the parties shall within sixty (60) days following such acceptance enter into a power purchase agreement in substantially the same form as this Agreement for the purchase and sale of such Expansion Energy (with appropriate provisions proportionally adjusted to account for the size of the proposed expansion relative to the Nameplate Capacity Rating of the Facility), but incorporating such changes as are expressly identified in the terms and conditions offered by Seller (or its Affiliate).

## 7.2 Purchase Option.<sup>2</sup>

7.2.1 Purchase Option. On the last day of the Term,<sup>3</sup> PacifiCorp shall have the option to purchase the Facility and all rights of Seller therein or relating thereto, for the Fair Market Value of the Facility, in accordance with the provisions set forth herein. PacifiCorp shall indicate its preliminary interest with respect to the option, if at all, by delivering to Seller a preliminary notice of its interest no less than two years prior to the last day of the Term (the "Preliminary Interest Notice"). If PacifiCorp fails to deliver such notice by such date, PacifiCorp's option shall terminate.

7.2.2 Determination of Fair Market Value of the Facility. Promptly following delivery of the Preliminary Interest Notice, the Parties shall mutually agree to the fair market value of the Facility. If PacifiCorp and Seller cannot mutually agree to a fair market value of the Facility within thirty (30) days of delivery of the Preliminary Interest Notice, then each of PacifiCorp and Seller shall select and retain, at each Party's own cost and expense, a nationally recognized independent appraiser with experience and expertise in appraising solar generation facilities to determine separately the value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in a form reasonably acceptable to Seller, Seller shall provide both appraisers access to the Facility and its books and records during business hours and upon prior written notice. The appraisers shall act reasonably and in good faith to determine the fair market value of the Facility and the Parties shall use their best efforts to cause the appraisers to complete such determination no later than sixty (60) days following delivery of the Preliminary Interest Notice. If for any reason (other than failure by Seller to provide access hereunder to PacifiCorp's appraiser), one of the appraisals is not completed within ninety (90) days following delivery of the Preliminary Interest Notice, the results of the other completed appraisal shall be deemed the Fair Market Value of the Facility. Each Party may provide to both appraisers a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals, consistent with industry standards prevailing at such time for appraising solar power generation facilities. Any information provided to an appraiser by a Party shall be provided to the other appraiser and the other Party at the same time, it being the intent of the Parties that the appraisers have access to the same information. PacifiCorp and Seller shall deliver the results of their respective appraisal to the other Party

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<sup>2</sup> Note To Bidders – Providing a purchase option in favor of PacifiCorp is not a required condition to submitting a bid, nor will inclusion or failure to include a purchase option impact the overall scoring of a bid.

<sup>3</sup> Note To Bidders – PacifiCorp will entertain a mid-Term purchase option (or more than one mid-Term purchase option).

when completed. If so requested by either Party, the appraisals shall be exchanged simultaneously. After both appraisals are completed and exchanged, the Parties and their appraisers promptly shall confer and attempt to agree upon the Fair Market Value of the Facility.

7.2.3 Disagreement as to Value. If, within thirty (30) days after completion of both appraisals, the Parties cannot agree on the fair market value of the Facility, and the values of the appraisals are within ten percent (10%) of each other, the Fair Market Value of the Facility shall be the simple average of the two appraisals. If the values of the two appraisals differ by ten percent (10%) or more, the first two appraisers shall choose a third independent appraiser experienced in appraising solar power generation assets, or, if the first two appraisers fail to agree upon a third appraiser within ten (10) days after the expiration of the thirty (30) day period following completion of both appraisals, such appointment shall be made by the AAA upon application of either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third appraiser shall have access to the same information as was available to the two other appraisers. The Parties shall direct the third appraiser to determine the fair market value of the Facility within sixty (60) days following his retention. The costs and expenses of such third appraiser shall be shared equally by the Parties. Upon completion of the fair market value of the Facility by such appraiser, the Fair Market Value of the Facility will be the simple average of the three appraisal values completed in accordance with this Section 7.2.

7.2.4 Exercise of Purchase Option. Within ninety (90) days following the determination of the Fair Market Value of the Facility pursuant to this Section 7.2, but in no event later than eighteen (18) months following delivery of a Preliminary Interest Notice, PacifiCorp shall notify Seller if PacifiCorp elects to exercise its option (an "Option Confirmation Notice").

7.2.5 Purchase and Sale. If PacifiCorp delivers a valid and timely Option Confirmation Notice, Seller shall sell, transfer, assign and convey to PacifiCorp all of the Facility and all rights of Seller therein or relating thereto, on an "AS IS, WHERE IS" basis, free and clear of all liens, claims, encumbrances, or rights of others arising through Seller on the last day of the Term, including good and valid title to the Facility and Seller's rights in the Premises. In connection with such sale, transfer, assignment and conveyance, Seller shall (a) assign or otherwise make available, to the extent permitted by Requirements of Law and not already assigned or otherwise transferred to PacifiCorp, Seller's interest in all applicable Required Facility Documents; (b) cooperate with all reasonable requests of PacifiCorp for purposes of enabling PacifiCorp to obtain any and all applicable Permits that are or will be required to be obtained by PacifiCorp in connection with the use, occupancy, operation or maintenance of the Facility or the Premises in compliance with Requirements of Law; (c) provide PacifiCorp copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Facility, as shall be in Seller's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility.

## SECTION 8



## SECURITY AND CREDIT SUPPORT

8.1 Project Development Security. Seller shall provide within five (5) Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm Seller satisfies the Credit Requirements.

8.1.1 Form and Amount of Project Development Security. On or before the date specified in Section 2.3(a), Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from a party that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit D, or (b) a Letter of Credit in favor of PacifiCorp, in a form acceptable to PacifiCorp in its reasonable discretion, equal in each case to two hundred dollars (\$200) per kW of Expected Nameplate Capacity Rating (the "Project Development Security"). Seller and any entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm the guarantor satisfies the Credit Requirements.

8.1.2 Use of Project Development Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 2.5, PacifiCorp shall be entitled to and shall draw upon the Project Development Security an amount equal to the Delay Damages until such time as the Project Development Security is exhausted. PacifiCorp shall also be entitled to draw upon the Project Development Security for other damages if this Agreement is terminated under Section 11 because of Seller's default.

8.1.3 Termination of Project Development Security. Seller shall no longer be required to maintain the Project Development Security after the Commercial Operation Date, if at such time no damages are owed to PacifiCorp under this Agreement. However, as of the Commercial Operation Date, Seller may elect to apply the Project Development Security toward the Default Security required by Section 8.2, including by the automatic continuation (as opposed to the replacement) thereof.

### 8.2 Default Security.

8.2.1 Duty to Post Default Security. On the date specified in Section 2.3(b), Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from an entity that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit D, or (b) a Letter of Credit, each in the amount specified in Section 8.2.1 (the "Default Security"), as provided in this Section 8.2. Seller and any entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm the guarantor satisfies the Credit Requirements.

8.2.2 Amount of Default Security. The amount of the Default Security required by Section 8.2.1 shall be one hundred dollars (\$100) per kW of Expected Nameplate Capacity Rating and will be held until the agreement expires.

8.3 [Reserved].

8.4 Subordinated Security Interests.

8.4.1 Security Interests. On or before the Effective Date, and simultaneously with the acquisition by Seller after the Effective Date of any additional real property in connection with the Facility, Seller shall execute, file and record such agreements, documents, instruments, mortgages, deeds of trust and other writings as PacifiCorp may reasonably request, all in the form attached hereto as Exhibit 8.4.1, to give PacifiCorp a perfected security interest in and lien on the Facility, the Premises, all present and future real property, personal property and fixtures therein and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Facility, as security for Seller's performance and any amounts owed by Seller to PacifiCorp pursuant hereto (collectively the "Security Interests"). The Security Interests shall be subordinate in right of payment, priority and remedies only to (a) the interests of the Senior Lenders in any credit arrangements described in the definition of "Lenders," and (b) to the extent provided by applicable law, any workers', mechanics', suppliers', tax or similar liens arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within five (5) Business Days of the commencement of any proceeding to foreclose the lien.

8.4.2 Maintenance of Security Interests. Seller hereby authorizes the filing and recording of financing statements in the name of Seller as debtor thereunder and shall take such further action and execute such further instruments and other writings as shall be required by PacifiCorp to confirm and continue the validity, priority, and perfection of the Security Interests. The granting of the Security Interests shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to PacifiCorp by reason of any breach or default by Seller hereunder or the termination hereof prior to the expiration of the Term.

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

8.5 Debt-to-Equity Ratio; Annual and Quarterly Financial Statements. Seller shall at all times during the Term, following the Commercial Operation Date, maintain the percentage of Facility Equity (as defined below) at no less than thirty percent (30%). Annually on March 1<sup>st</sup>, commencing after the Commercial Operation Date, Seller shall provide to PacifiCorp a certificate of Seller's Chief Financial Officer attesting to the maintenance of such Facility Equity percentage and the Facility's then-current Book Value. If requested by PacifiCorp from time to time, Seller shall within thirty (30) days provide PacifiCorp with copies of its most recent annual and quarterly financial statements and statement of the Facility's then-current Book Value. If, as of any such reporting date, the Facility Equity percentage is less than thirty (30) percent, then within sixty (60) days after such reporting date, Seller, in its discretion, will either (a) take the necessary action to cause the percentage of Facility Equity to be no less than thirty percent (30%) or (b) increase the amount of the Default Security by an amount equal to one percent (1%) (or pro rata portion thereof) of the then-current Book Value of the Facility for each percentage (or pro rata portion thereof) that Facility Equity falls below thirty percent (30%). PacifiCorp, in its sole discretion, may require that any required increase to the Default Security be provided in a form of Letter of Credit or cash, by providing written notice to Seller. For purposes of this section, "Facility Equity" means the aggregate amount, as of the Commercial Operation Date, of equity investment in the Facility by any owner, investor, or other party. The phrases "percentage of Facility Equity" or "Facility Equity percentage" means the ratio, expressed as a percentage, of the Facility Equity to the sum of (x) all indebtedness outstanding to third parties and (y) the amount of Facility Equity. Seller shall not grant a security interest to any third party in the Facility or any of its assets to support the obligations of any entity other than Seller or its Affiliates, or any obligations of Seller or its Affiliates other than obligations that relate directly to the Facility or Seller's or its Affiliates' other solar energy facilities. Without limiting the foregoing, Seller agrees to cause the contribution of Facility Equity whenever such contribution is required under Seller's and Seller's Affiliates agreements with Lenders.

8.6 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8 (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. Seller shall maintain security as required by Sections 8.1, 8.2 and 8.3, as applicable per this Agreement. To the extent that PacifiCorp draws on any security, Seller shall, on or before the first day of the Contract Year following such draw, replenish or reinstate the security to the full amount then required under this Section 8. If at any time the Seller or Seller's credit support provider(s) fails to meet the Credit Requirements, then Seller shall provide replacement security meeting the requirements set forth in Section 8 within ten (10) Business Days after the earlier of (x) Seller's receipt of notice from any source that Seller or the credit support provider(s), as applicable, no longer meets the Credit Requirements or (y) Seller's receipt of written notice from PacifiCorp requesting the posting of alternate security.

## **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 Delivery.

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 (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three 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 Facility.

9.5 Meter Data. Within ten (10) days of the Effective Date, Seller may request the Interconnection Provider or Transmission Provider 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 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 Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

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

10.1 Monthly Invoices. On or before the tenth (10<sup>th</sup>) 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 Delivery during such month. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the later of the twentieth (20<sup>th</sup>) day following receipt of such invoice or the thirtieth (30<sup>th</sup>) day following the end of each month, payment for Seller's deliveries of Net Output and associated Green Tags 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) Business 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 Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

## **SECTION 11 DEFAULTS AND REMEDIES**

11.1 Defaults. The following events are defaults (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) Business 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) 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 that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

(d) A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period

but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

#### 11.1.2 Defaults by Seller.

(a) Seller fails to post, increase, or maintain the Project Development Security or Default Security as required under, and by the applicable dates set forth in, Section 2 and Section 8 and such failure is not cured within ten (10) Business Days after PacifiCorp gives Seller notice of default.

(b) Seller fails to (i) cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Schedule within ninety (90) days after the Commercial Operation Date.

(c) Seller sells Output, Green Tags or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.2, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

(d) PacifiCorp receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by PacifiCorp.

(e) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the 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 thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(f) Seller's Abandonment of construction or operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp.

(g) Seller fails to maintain insurance as required by the Agreement and

such failure continues for ten (10) days after Seller's receipt of written notice thereof from PacifiCorp.

(h) Seller fails to meet the Output Guarantee for two (2) consecutive years.

## 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 11.1.2(c), Seller shall pay PacifiCorp within five (5) Business Days after invoice receipt, an amount equal to the sum of (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp, (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, and (c) any additional cost or expense incurred as a result of Seller's default under Section 11.1.2(c), as determined by PacifiCorp in a commercially reasonable manner. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output and Green Tags required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall first satisfy its obligations under Section 11.7 and then PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased, less amounts received by Seller pursuant to Section 11.7. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

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



11.3 Termination and Remedies. 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 one (1) Business Day 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 the then-current President and General Counsel of PacifiCorp. 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 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. Notwithstanding any other provision of this Agreement to the contrary, 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 PacifiCorp's 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. 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.

(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, 11.5, 11.6, 11.7, 11.8, 11.9 and Section 12, Section 13, Section 23, and Section 24 shall survive the termination hereof.

11.4 Intentionally Omitted.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. Amounts owed pursuant to this section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

11.6 Senior Lender Foreclosure. An exercise of remedies under the financing documents between Seller and Senior Lenders, in and of itself, is not an Event of Default under Section 11.1.2(d).

11.7 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to use commercially reasonable efforts to maximize the price for Net Output and associated Green Tags received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output and associated Green Tags not purchased or accepted by PacifiCorp (only during a period PacifiCorp is in default), in each case only to the extent any of the foregoing actions are permitted under Requirements of Law and the Interconnection Agreement; and (b) by PacifiCorp shall include requiring PacifiCorp to use commercially reasonable efforts to minimize the price paid to third parties for energy and Green Tags purchased to replace Net Output and Green Tags not delivered by Seller as required hereunder.

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

11.9 Step-In Rights.

11.9.1 Failure to Achieve Commercial Operation. If Seller fails to achieve Commercial Operation of the Facility by the Guaranteed Commercial Operation Date, PacifiCorp shall have the right to enter the Facility and do all such things as PacifiCorp may consider necessary or desirable to complete the Facility and cause Commercial Operation to occur. PacifiCorp shall, following the Commercial Operation Date (a) return the Facility to Seller upon execution of an indemnity and release by Seller of all claims arising out of the period of PacifiCorp's entry on the Facility in a form reasonably acceptable to PacifiCorp or (b) failing the execution of such release or indemnity, operate the Facility for the Term pursuant to Section 11.9.2. PacifiCorp shall likewise return the Facility to Seller upon a showing by Seller that it is immediately ready, willing and able to achieve Commercial Operation of the Facility within a commercially and technically reasonable period of time.

11.9.2 License to Operate Facility. Seller hereby irrevocably grants to PacifiCorp the right, license, and authority to enter the Premises, operate and maintain the Facility, and to perform Seller's obligations hereunder for the Term during the continuance of an Event of Default by Seller under Sections 11.1.2(b), 11.1.2(c), 11.1.2(e), 11.1.2(f), or 11.1.2(h) (such rights along with those rights set forth in Section 11.9.1, "Step-In Rights"). PacifiCorp may, but shall not be obligated to, exercise its rights as licensee under this section in lieu of termination. During any period in which PacifiCorp is operating and maintaining the Facility pursuant to the license granted in this Section, Seller shall, upon request from PacifiCorp, reimburse PacifiCorp for all reasonable costs and expenses incurred by PacifiCorp to operate and maintain the Facility.

11.9.3 Indemnification; Standard of Care. Seller shall indemnify and hold PacifiCorp harmless from and against all losses, costs, charges and expenses reasonably incurred by PacifiCorp in connection with exercise of its rights under Section 11.9.1 or 11.9.2 whether to third parties or otherwise, other than losses, costs, charges and expenses attributable to the gross negligence or willful misconduct of PacifiCorp. During such time as PacifiCorp has custody of the Premises and Facility pursuant to this Section 11.9, it shall conduct all of its activities pursuant to Prudent Electrical Practices.

11.9.4 Records and Access. Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon PacifiCorp's notice of its intent to exercise Step-In Rights, PacifiCorp, its employees, contractors, or designated third parties shall have the right to enter the Premises and the Facility for the purpose of constructing or operating the Facility. Upon the exercise by PacifiCorp of the Step-In Rights, Seller shall cause the Facility operator (and any Person within the control of Seller) to give PacifiCorp access to and control of the operation and maintenance of the Facility to the extent reasonably necessary to enable PacifiCorp to exercise the Step-In Rights in respect of the part of the Facility so to be operated by PacifiCorp, and shall provide reasonable assistance and cooperation to PacifiCorp to effect safely the transfer of operational responsibility as may be requested by PacifiCorp. Seller shall execute such documents and take such other action as may be necessary for PacifiCorp to effectuate its rights under this Section 11.9.

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

11.9.6 No Assumption. PacifiCorp's exercise of its Step-In Rights shall not be deemed an assumption by PacifiCorp of any liability of Seller due and owing prior to the exercise of such rights. PacifiCorp shall not assume any liability of Seller for the period during which PacifiCorp exercises such Step-In Rights. During any period that PacifiCorp is exercising its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and all of its

other property and its revenues. When exercising its Step-In Rights, PacifiCorp shall assume possession, operation, and control of the Facility solely as agent for Seller. In no event shall PacifiCorp's election to exercise the Step-In Rights be deemed to constitute a transfer of ownership of or title to the Facility or any assets of Seller.

11.9.7 Costs and Expenses. Seller shall indemnify and hold harmless PacifiCorp from and against all losses, costs, charges and expenses incurred by PacifiCorp in connection with exercise of its Step-In Rights other than all losses, costs, charges and expenses attributable to the gross negligence or willful misconduct of PacifiCorp. In connection with its exercise of Step-In Rights, PacifiCorp shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by PacifiCorp hereunder. PacifiCorp's exercise of such recoupment and set off rights shall not limit the other remedies available to PacifiCorp hereunder or otherwise.

11.10 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 Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to or destruction 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 Indemnitees. 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 Indemnitees") 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 of property of, any person or entity within the Seller Indemnitees, 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 Indemnitees.

12.1.3 Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, Seller shall release, indemnify and hold harmless the PacifiCorp Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the PacifiCorp Indemnitees or the Seller Indemnitees, 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. **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. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.**

## **SECTION 13 INSURANCE**

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller 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.

13.2 Certificates of Insurance. Seller shall provide PacifiCorp with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained (as set forth in Exhibit 13). Seller shall provide a certificate of insurance (in ACORD or similar industry form) to PacifiCorp within ten (10) days of the effective date of any insurance policy required under this Agreement. The certificates shall indicate that the insurer shall provide thirty (30) days prior written notice of cancellation. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

## SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. “Force Majeure” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; and action or restraint by court order or public or Governmental 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, capacity or Green Tags at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the 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 Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection Provider 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, Transmission Provider or Interconnection Provider, 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. After the Commercial Operation Date, but not before, 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. No obligation of Seller arising before the Commercial Operation Date may be excused by Force Majeure.

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

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding 180 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the 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 [\_\_\_\_],<sup>4</sup> 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

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<sup>4</sup> Note to Bidders – The laws of the state in which the facility is located will apply, provided it is a state in which PacifiCorp is engaged in utility operations (e.g., Wyoming, Utah, Washington, Oregon and Idaho).

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 under this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

## **SECTION 18 NON-WAIVER**

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

## **SECTION 19 GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

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

## **SECTION 20 SUCCESSORS AND ASSIGNS**

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

20.2 Permitted Assignments. Notwithstanding 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 Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement; 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 600  
Portland, Oregon 97232- 2315  
Attn: Director, Valuation & Commercial Business  
Telefacsimile (503) 813-6260

with a copy to: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315

Attn: Contract Administration  
Telefacsimile (503) 813-6291  
Email: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

with copies to:

PacifiCorp Legal Department  
825 NE Multnomah, Suite 1800  
Portland, Oregon 97232- 2315  
Attn: Assistant General Counsel  
Telefacsimile (503) 813-6761

and termination notices to PacifiCorp: PacifiCorp

1407 West North Temple  
Suite 320  
Salt Lake City, Utah 84116  
Attn: President

and to:

PacifiCorp  
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.

## **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, and (c) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation. 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 (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) 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 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.

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 Facility that mentions the 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. Prior to proceeding with formal dispute resolution procedures as provided below in this Section 24, the Parties must first 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 those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

#### 24.2 Mediation; Technical Expert.

24.2.1 Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to non-binding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party requests mediation, and except as modified in this Section 24 (the "Mediation Procedures").

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

(b) The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's arbitration administrator shall send a list and resumes of three (3) available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2.1, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, non-binding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2.1(f). The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

(e) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

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

(g) All deadlines specified in this Section 24.2.1 may be extended by mutual agreement.

24.2.2 Technical Expert. If the dispute regards (a) whether or not Commercial Operation has been achieved, or (b) the disputed amount of any invoice, the Parties may, in lieu of mediation, have such dispute resolved pursuant to this Section 24.2.2. Any such dispute will be determined by an independent technical expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Technical Expert"), which determination shall be (x) except as otherwise provided in this Section 24.2.2, made in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party provides notice of its intent to submit the dispute to a technical expert, and (y) binding upon the Parties.

(a) Either Party may commence the technical dispute process with AAA by notifying AAA and the other Party in writing ("Technical Dispute Notice") of such Party's desire that the dispute be resolved through a determination by a technical expert.

(b) The determination shall be conducted by a sole Technical Expert. The Parties may select any mutually acceptable Technical Expert. If the Parties cannot agree on a Technical Expert within five (5) days after the date of the Technical Dispute Notice, then the AAA's arbitration administrator shall send a list and resumes of three (3) available technical experts meeting the qualifications set forth in Section 24.2.2 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Technical Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's

arbitration administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the Technical Expert from the remaining names. If the designated Technical Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute technical expert shall be appointed in accordance with the selection procedure described above, and such substitute Technical Expert shall have all such powers as if he or she has been originally appointed herein.

(c) Within thirty (30) days of the appointment of the Technical Expert pursuant to the foregoing sub-section, each Party shall submit to the Technical Expert a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation and calculations. Discovery shall be limited to Facility documentation relating to the disputed matter. Within sixty (60) days from receipt of such submissions, the Technical Expert shall select one or the other Party's position with respect to the dispute, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the determination by the Technical Expert of any dispute, including fees and expenses, shall be borne by the Party whose position was not selected by the Technical Expert. If the Technical Expert fails to render a decision within ninety (90) days from receipt of each Party's submissions, either Party may initiate litigation in accordance with the provisions herein.

(d) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.2.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(e) All deadlines specified in this Section 24.2.2 may be extended by mutual agreement of the Parties.

24.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the [United States District Court for the District of 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].<sup>5</sup> 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, (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.

23.4 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.

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

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<sup>5</sup> Note to Bidders – Choice of forum to be revised based on the proposed location of the project.

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

[SELLER]

PACIFICORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT A**

**ESTIMATED MONTHLY OUTPUT**

<b>EXPECTED ENERGY - FIRST FULL CONTRACT YEAR</b>			
<b>PERIOD</b>	<b>ON-PEAK (MWh)</b>	<b>OFF-PEAK (MWh)</b>	<b>TOTAL (MWh)</b>
<b>January</b>			
<b>February</b>			
<b>March</b>			
<b>April</b>			
<b>May</b>			
<b>June</b>			
<b>July</b>			
<b>August</b>			
<b>September</b>			
<b>October</b>			
<b>November</b>			
<b>December</b>			
<b>First Year Total</b>			

<b>EXPECTED ENERGY - ANNUAL REDUCTION</b>	
<b>PERIOD</b>	<b>EXPECTED ENERGY (MWh)</b>
<b>Year 0-1</b>	
<b>Year 1-2</b>	
<b>Year 2-3</b>	
<b>Year 3-4</b>	
<b>Year 4-5</b>	
<b>Year 5-6</b>	
<b>Year 6-7</b>	
<b>Year 7-8</b>	
<b>Year 8-9</b>	
<b>Year 9-10</b>	
<b>Year 10-11</b>	
<b>Year 11-12</b>	
<b>Year 12-13</b>	
<b>Year 13-14</b>	
<b>Year 14-15</b>	
<b>Year 15-16</b>	
<b>Year 16-17</b>	
<b>Year 17-18</b>	
<b>Year 18-19</b>	
<b>Year 19-20</b>	
<b>Year 20-21</b>	
<b>Year 21-22</b>	
<b>Year 22-23</b>	
<b>Year 23-24</b>	
<b>Year 24-25</b>	

Under separate cover, Seller will also provide PacifiCorp one (1) electronic and hard copy of the solar plant performance estimation report using a Solar Performance Modeling Program no later than ninety (90) days prior to the start of construction. This report will include, at a minimum, estimated hourly MW generation output in MWh/h for the site and Facility, and shall set forth additional losses related to availability, AC-side collection, transformers, substation and no-load/overnight losses. On or prior to the Commercial Operation Date, Seller shall provide an updated Exhibit A and solar plant performance estimation report based on completed construction.

Upon the date of Final Completion, if different than the Commercial Operation Date, Seller shall provide an updated Exhibit A and solar plant performance estimation report based on the final completed construction.

## EXHIBIT B

### NERC EVENT TYPES

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

**EXHIBIT C**  
**START-UP TESTING<sup>6</sup>**

*[To be completed]*

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<sup>6</sup> Note to Bidders – Initial start-up testing procedures to be provided by Seller for PacifiCorp’s review before PPA is finalized.

**EXHIBIT D**

**FORM OF GUARANTY — CREDIT SUPPORT OBLIGATION**

## EXHIBIT 2.7

### PACIFICORP'S INITIAL DESIGNATED REPRESENTATIVES

Authorized Representatives:

PacifiCorp: Director, Valuation & Commercial Business  
PacifiCorp  
825 NE Multnomah St., Suite 600  
Portland, OR 97232-2315  
Fax 503-813-6260

With a copy to: Contract Administration  
PacifiCorp Energy Supply Management  
825 NE Multnomah St., Suite 600  
Portland, OR 97232-2315  
Fax 503-813-6291  
Email: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

## EXHIBIT 3.2.3

### REQUIRED FACILITY DOCUMENTS

**1. Obtained Required Facility Documents:**

Permits:

Land Rights:

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

Licenses, Permits and Authorizations:

Evidence of market-based rate authority under Section 205 of the Federal Power Act or evidence of qualifying facility certification under the Public Utility Regulatory Policies Act

Access road easement

Electrical Permit

Land Use Permit

Environmental Permit

Building Permit

Interconnection approval

Utility easement

Construction and Operations and Maintenance:

Contract for the Sale of Power Generation Equipment and Related Services between \_\_\_\_\_ and Seller

Generator Interconnection Agreement

Retail Electric Service Agreement

Proof of Insurance

Construction Agreements:

Balance of Plant/Construction Services Agreement

Operations and Maintenance Agreements:

Warranty, Service and Maintenance Agreement

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

**EXHIBIT 3.2.5**

**LEASES**



**EXHIBIT 4.6(1)**

**GREEN TAG ATTESTATION AND BILL OF SALE**

**EXHIBIT 4.6(2)**

**QUALIFIED REPORTING ENTITY SERVICES AGREEMENT**

**EXHIBIT 5.1**  
**CONTRACT PRICE**

**EXHIBIT 6.1**

**Description of Seller's Facility**

*[To be populated based on the information provided by Bidder in response to RFP.]*

## **EXHIBIT 6.1 — Attachments**

1. \_\_\_\_\_ Site Map
2. As-Builts
3. Manufacturer's performance warranties
5. [Other]

**EXHIBIT 8.4.1**

**FORM OF SUBORDINATED MORTGAGE**

## EXHIBIT 9.2

### POINT OF DELIVERY/INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

Instructions to Seller:

1. Include description of point of metering, and Point of Interconnection
2. Include description of Point of Delivery
3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.
4. Provide transmission single line drawing of the transmission path from the Point of Interconnection to the Point of Delivery 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 Point of Interconnection to the Point of Delivery.
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 Delivery and in compliance with Seller's transmission rights between the Point of Interconnection and the Point of Delivery ("Maximum Transmission Rate"):

\_\_\_\_\_ MW.

## EXHIBIT 9.2 – Attachments

1. Substation Metering One-Line Diagram



**EXHIBIT 9.5**

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

[DATE]

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

To Whom it May Concern:

\_\_\_\_\_ (“Seller”) hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Seller's interconnection information with marketing function employees of PacifiCorp, including but not limited to those in Energy Supply Management. Seller acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_

## 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: \$1,000,000 – each accident, \$1,000,000 by disease – each employee, and \$1,000,000 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) Facility Capacity Rating under 200 KW - \$1,000,000
- (b) 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 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 Facility at the time PacifiCorp's review takes place.

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 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, CONDITIONS OR PRICES 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.

**POWER PURCHASE AGREEMENT**

**(RENEWABLE ENERGY – WIND)**

**BETWEEN**

[ \_\_\_\_\_ ]

**AND**

**PACIFICORP**

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**POWER PURCHASE AGREEMENT  
(RENEWABLE ENERGY)**

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

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

WHEREAS, Seller expects that the Facility will deliver to PacifiCorp [\_\_\_\_] MWh of Net Output in the first year of operation. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in Exhibit A. Seller acknowledges that PacifiCorp will include this amount of energy in PacifiCorp's resource planning.

WHEREAS, Seller desires to sell, and PacifiCorp desires to purchase, the Net Output delivered by the Facility in accordance with the terms and conditions hereof.

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

**SECTION 1  
DEFINITIONS, RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

“AAA” means the American Arbitration Association.

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default by PacifiCorp, a request by PacifiCorp, or an event of Force Majeure.

“Affiliate” means, with respect to any entity, each entity that directly or indirectly

controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to PacifiCorp, Affiliate shall only include Berkshire Hathaway Energy Company and its direct, wholly owned subsidiaries.

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric generation facility to automatically adjust the generation quantity.

“AGC Set-Point” means the analog or digital signal sent to the Facility by PacifiCorp, the Interconnection Provider, the Transmission Provider or the Market Operator representing the maximum Net Output for the Facility.

“Agreement” is defined in the Recitals.

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

“Availability” means, for any Contract Year, the ratio, expressed as a percentage, of (a) the aggregate sum of the turbine-minutes in which each of the Wind Turbines was available to operate during such period over (b) the product of the number of Wind Turbines at the Facility multiplied by the number of minutes in such Contract Year.

“Book Value” means cost minus accumulated depreciation, and not deducting for debt or other encumbrances, calculated in accordance with generally accepted accounting principles consistently applied.

“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.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Commercial Operation” means that not less than the Required Percentage of the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and without limiting Seller's other obligations under this Agreement, 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 Commercial Operation has occurred:

(i) PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer that is licensed in the state of Utah stating: (1) the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation, which must be at least the Required Percentage of the Expected Nameplate Capacity Rating; (2) that the Facility is able to generate electric energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; (3) Start-Up Testing of the Facility has been completed; and (4) all AGC equipment is installed and operational.

(ii) PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, in conformance with the requirements of the Generation Interconnection Agreement: (1) all required Interconnection Facilities have been constructed; (2) all required interconnection tests have been completed; and (3) 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.

(iii) PacifiCorp has received a certificate from a Licensed Professional Engineer licensed in the state of Utah addressed to PacifiCorp stating that Seller has obtained or entered into all Permits and Required Facility Documents. Seller must provide copies of any or all Required Facility Documents requested by PacifiCorp.

(iv) PacifiCorp has received an opinion from a law firm or attorney registered or licensed in the State of Utah stating, after all appropriate and reasonable inquiry (1) Seller has obtained or entered into all Required Facility Documents; (2) neither Seller nor the Facility are in violation of or subject to any liability under any Requirements of Law; and (3) Seller has duly filed and had recorded all of the agreements, documents, instruments, mortgages, deeds of trust and other writings described in Section 8.4.1.

(v) PacifiCorp has received a certificate addressed to PacifiCorp from an authorized officer of Seller (i) stating that Seller has completed all of its obligations that would permit PacifiCorp to designate the Facility as a Network Resource and receive firm transmission service from the Transmission Provider in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate; and (ii) that includes a document from the Transmission Provider confirming each of the items to which the Seller certifies in (i) above.

(vi) 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).

(vii) PacifiCorp has received the Default Security, as applicable.

With respect to (i) through (iv) above, the certificate or opinion provided to PacifiCorp must come from a Licensed Professional Engineer or, in the case of (iv) above, an attorney that is not an employee of Seller (or any Affiliate) and has no financial interest in the Facility. Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved

Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates and opinions described above. PacifiCorp shall have ten (10) Business Days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten (10) Business Day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten (10) Business Day period that PacifiCorp reasonably believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in PacifiCorp's notice to the satisfaction of PacifiCorp. In the event PacifiCorp provides notice of deficiency with regards to the information submitted to establish the Commercial Operation Date, then the Commercial Operation Date will be the date upon which Seller has addressed the concerns stated in PacifiCorp's notice to PacifiCorp's reasonable satisfaction. If Commercial Operation is achieved at less than 100 percent of the Expected Nameplate Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to 100 percent of the Expected Nameplate Capacity Rating, Seller shall provide PacifiCorp, no later than ten (10) Business Days after the Commercial Operation Date, with a list of all items to be completed in order to achieve Final Completion ("Final Completion Schedule"). All items on the Final Completion Schedule must be completed on or before the ninetieth (90<sup>th</sup>) day after the Commercial Operation Date. If a Final Completion Schedule is not provided to PacifiCorp within ten (10) Business Days following the Commercial Operation Date, then the date of Final Completion shall be the same as the Commercial Operation Date.

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility but in no event earlier than thirty (30) days before the Scheduled Commercial Operation Date.

"Commission" means the Utah Public Service Commission.

"Compensable Curtailment Energy" has the meaning as described in Section 5.1.3.

"Compensable Curtailment Price" has the meaning as defined in Section 5.1.3(b).

"Confidential Business Information" is defined in Section 23.1.

"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, N.Y., selected by the Party to whom interest is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh for Net Output and Capacity Rights stated in Section 5.1.

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

Credit Requirements” means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB+ or greater from S&P, or (b) Baa1 or greater from Moody's, and if such ratings are split, the lower of the two ratings must be at least ‘BBB+’ or ‘Baa1’ from S&P or Moody’s, respectively; provided that if (a) or (b) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

“Default Security” is defined in Section 8.2.1.

“Delay Damages” for any given day are equal to (a) the Expected Energy, expressed in MWhs per year, divided by 365, multiplied by (b) PacifiCorp's Cost to Cover.

“Deficit Damages” means a one-time payment equal to (a) the difference between (i) Expected Nameplate Capacity Rating and (ii) the Nameplate Capacity Rating of the Facility on the 120th day after the Guaranteed Commercial Operation Date, stated in MWs, multiplied by (b) \$25,000.

“Effective Date” is defined in Section 2.1.

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

“Energy Imbalance Market” means generation facilities electrically located within PacifiCorp's balancing authority areas that are, from time to time, bid in to or otherwise subject to dispatch instructions issued or originating from the Market Operator.

“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 (SOx), nitrogen oxides (NOx), 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 or any Governmental Authority 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) PTCs, ITCs or any other Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

“Expansion Energy” is defined in Section 5.7.1.

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

“Expected Nameplate Capacity Rating” means [\_\_\_] MW (AC), the expected maximum instantaneous generation capacity of the Facility.

“Facility” is defined in the Recitals and is more fully described in attached Exhibit 6.1 and includes the blades, rotor, generator, gearbox, nacelle, tower, down-tower assemblies, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

“Facility Equity” is defined in Section 8.5.

“Facility Financing Date” means the closing date for the construction financing for the Facility between Seller or Seller's Affiliates and a Lender.

“Fair Market Value” means the fair market value of the Facility as determined pursuant to Section 7.2.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Facility is fully operational and reliable, at or

greater than the Required Percentage of the Expected Nameplate Capacity Rating, and fully interconnected, fully integrated, and synchronized with the Transmission Provider's System, modified if necessary to reflect the Nameplate Capacity Rating and, if applicable, through completion of all the items set forth on the Final Completion Schedule.

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

“Firm Market Price Index” means (a) the average price reported by Intercontinental Exchange, Inc. (“ICE”) Day-Ahead Palo Verde On-Peak Index, for On-Peak Hours, and (b) the average price reported on the ICE Day-Ahead Palo Verde Off-Peak Index, for Off-Peak Hours. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose hereunder, during the Term, the Parties shall agree upon a replacement Firm Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity for the applicable periods.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit B, and specifically excludes any Maintenance Outage or Planned Outage.

“Generation Interconnection Agreement” means the large generator interconnection agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

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

“Green Tags” means (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 Facility.

“Green Tags Price Component” means: (1) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three nationally recognized independent



Green Tag brokers selected by PacifiCorp pursuant to which PacifiCorp could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (2) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from the established liquid market for Green Tags in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder.

“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, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“Guaranteed Availability” is defined in Section 6.12.1.

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

“Hazardous Materials” means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

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

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

“Interconnection Provider” means PacifiCorp Transmission.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

“KW” means kilowatt.

“KWh” means kilowatt hour.

“Leases” means the memoranda of lease and redacted leases recorded in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

“Lender” means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, backleverage

financing or credit derivative arrangement) to Seller or Seller's Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency, weather, or Environmental Attributes in connection with the development, construction or operation of the Facility; or (d) for the purchase of the Facility and related rights from Seller.

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

- (1) is issued by a Qualifying Institution;
- (2) by its terms, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;
- (3) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;
- (4) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not increased or replaced as and when provided in Section 8;
- (5) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement; and
- (6) shall remain in effect for at least ninety (90) days after the end of the Term.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and acceptable to PacifiCorp in its reasonable judgment who (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller and is not an employee of its members or Affiliates, other than with the prior written consent of PacifiCorp, for services previously or currently being rendered to Seller or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or a representative of a manufacturer or supplier of any equipment installed in the Facility.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached Exhibit B, and includes any outage involving ten percent (10%) of the Facility’s Net Output that is not a Forced Outage or a Planned Outage.

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market.

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

“Mediation Notice” is defined in Section 24.2.1.

“Mediation Procedures” is defined in Section 24.2.1(a).

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

“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 completed Facility, expressed in MW, when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer, as set forth in a notice from Seller to PacifiCorp delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent notice from Seller to PacifiCorp as required for Final Completion. The Nameplate Capacity Rating of the Facility shall not exceed [ ] MW.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the 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 of energy shall be the amount of energy flowing through the Point of Delivery.

“Network Resource” is defined in the Tariff.

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

“Non-Compensable Curtailment” has the meaning set forth in Section 4.4.1.

“Off-Peak Hours” or “LLH” means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, MPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, MPT, on Sundays and NERC designated holidays.

“On-Peak Hours” or “HLH” means all hours ending 07:00:00 through 22:00:00 MPT, Monday through Saturday, excluding NERC designated holidays.

“Option Confirmation Notice” is defined in Section 7.2.4.

“Output” means all energy produced by the Facility.

“Output Shortfall” is defined in Section 6.12.2.

“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.

“PacifiCorp's Cost to Cover” means the positive difference, if any, between (a) the sum of (i) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, plus (ii) the Green Tags Price Component, and (b) the Contract Price specified in Exhibit 5.1 in effect on such days, stated as an amount per MWh. If on a given day (or Contract Year in the case of calculating Output Shortfall) the difference between (a) minus (b) referenced above is zero or negative, then PacifiCorp's Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 6.12.2 or Section 11.2.1 with respect to such day (or Contract Year in the case of calculating Output Shortfall). For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (b).

“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 or operation of the Facility or 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 Delivery” means the point of interconnection between the Facility and

the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit 9.2.

“Potential Net Output” means the quantity of Net Output that Seller is capable of delivering at the Point of Delivery at any specific time. Potential Net Output will be calculated as the aggregate energy available for delivery at the Point of Delivery using the best available data obtained through commercially reasonable methods, and shall be dependent on wind speed and air density data at the Facility, Wind Turbine Availability, power curve specified for the wind turbines as shown in the manufacturer's power curve provided by Seller to PacifiCorp in accordance with Exhibit 6.1, derates and transmission line losses, and any other adjustments necessary to accurately reflect the Facility's capability to produce and deliver energy at the Point of Delivery.

“Preliminary Interest Notice” is defined in Section 7.2.1.

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

“Project Development Security” is defined in Section 8.1.1.

“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 wind 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.

“PTCs” means the production tax credits under Section 45 of the Internal Revenue Code, as such law may be amended or superseded.

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

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

“Qualifying Institution” means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least \$10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least “A” from S&P and “A2” from Moody's.

“Reporting Month” is defined in Section 6.10.1.

“Required Facility Documents” means the Permits and other authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Net Output to PacifiCorp in accordance with this Agreement and Requirements of Law, including those set forth in Exhibit 3.2.3.

“Required Percentage” means 93 percent.

“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 wildlife protection and occupational safety and health).

“Rolling Period” is defined in Section 6.12.1.

“RTO” means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

“S&P” means Standard & Poor's Rating Group (a division of S&P Global, Inc.).

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [\_\_\_\_\_].

“Security Interests” is defined in Section 8.4.1.

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 12.1.2.

“Seller's Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh specified in Exhibit 5.1, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

“Senior Lenders” means Lenders being granted senior security interests on the Facility or its assets, or Seller or its equity, other than Affiliates of Seller.

“Seller Uncontrollable Minutes” means, for each Wind Turbine in any Contract Year, the total number of minutes during such Contract Year during which such Wind Turbine was unable to deliver Net Output to PacifiCorp (or during which PacifiCorp failed to accept such delivery) due to one or more of the following events, each as recorded by Seller's SCADA and indicated by Seller's electronic fault log: (a) an emergency or Force Majeure event; (b) to the extent not caused by Seller's actions or omissions, a Non-Compensable Curtailment in accordance with Section 4.4(b); (c) the System operating outside the voltage or frequency limits defined in the applicable operating manual for such Wind Turbine; (d) Planned Outages, but in no event exceeding thirty six (36) hours per Contract Year consistent with such operating

manual; (e) Compensable Curtailment as provided in Section 5.1.3; (f) a Weather Event; and (g) a default by PacifiCorp; provided, however, that if any of the events described above in items (a) through (g) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Wind Turbine was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) such Wind Turbine was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

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

“Step-In Rights” means PacifiCorp’s rights under Section 11.8.

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

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

“Tax Credits” means any state, local and/or federal production tax credit (including the PTC), tax deduction, and/or investment tax credit (including the ITC) specific to the production of renewable energy and/or investments in renewable energy facilities.

“Technical Expert” is defined in Section 24.2.2.

“Technical Dispute Notice” is defined in Section 24.2.2(a).

“Term” is defined in Section 2.1.

“Test Energy” means any Net Output during periods prior to the Commercial Operation Date and related Capacity Rights.

“Transmission Provider” means PacifiCorp Transmission, including the Grid Operations business unit.

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

“Weather Event” means conditions causing icing on Wind Turbine blades such that the Wind Turbine does not synchronize properly, lightning strikes to any portion of the Facility that did not ground properly, excessive wind speeds in excess of the cut out speed for the Wind Turbine (as specified in the operating manual provided by the turbine manufacturer for such Wind Turbine) or in excess of speeds at which maintenance and repair may safely be

conducted (provided that, at the time of determination, such maintenance or repair is required for operation of the Wind Turbine), or any period during which the National Weather Service has issued a hail warning for any area within a 50-miles radius of the Facility, provided that (a) such Weather Event is not attributable to fault or negligence on the part of Seller, (b) such Weather Event is caused by factors beyond Seller's reasonable control, and (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, including the purchase of a cold weather package for such Wind Turbine from the turbine manufacturer, as applicable, Seller has been unable to prevent, avoid, mitigate or overcome such event or consequences.

“WECC” means the Western Electricity Coordinating Council.

“Wind Turbine” means [\_\_\_\_\_].

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

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

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

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (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 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. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider.

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

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

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

## **SECTION 2 TERM; FACILITY DEVELOPMENT**

2.1 Term. This Agreement shall become effective when it is executed and delivered by both Parties and has been filed by PacifiCorp with the Commission pursuant to Commission Rules and Regulations, Chapter 3, Section 35 and W.S. Section 37-3-111, and the Commission has acknowledged that the Agreement has been filed ("Effective Date"). Unless earlier terminated as provided herein, this Agreement shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date[; provided, however, that if Buyer at its sole option and discretion gives Seller written notice so stating on or before the eighteenth (18th) anniversary of the Commercial Operation Date, this Agreement shall remain in effect until the thirtieth (30th) anniversary of the Commercial Operation Date] (the "Term").

2.2 [Reserved].

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

(a) On or before the thirtieth (30<sup>th</sup>) day following the Effective Date, Seller shall post the Project Development Security in the amount described in Section 8.1;

(b) On or before the Commercial Operation Date, Seller shall provide Default Security required under Section 8.2;

(c) Seller shall provide PacifiCorp with documentation showing that Seller has obtained retail electric service for the Facility prior to the Commercial Operation Date;

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

(e) If Commercial Operation of the Facility is achieved based on less than 100 percent of the Expected Nameplate Capacity Rating, then Seller may inform PacifiCorp, by written notice received no later than ten (10) Business Days after the Commercial Operation Date, that Seller intends to bring the Facility above the Required Percentage up to but not exceeding 100 percent of the Expected Nameplate Capacity Rating. Such notice from Seller shall include a Final Completion Schedule. After providing that notice, Seller shall cause the Facility to achieve Final Completion on or before the ninetieth (90<sup>th</sup>) day after the Commercial Operation Date.

Notwithstanding the foregoing, the date for achieving each of the foregoing milestones shall be extended on a day for day basis for any delay due solely to PacifiCorp's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement.

Without limiting Seller's obligations under this Agreement, none of the following shall excuse in any respect Seller's failure to comply in all respects with any and all provisions in this Section 2.3 and Section 2.4, no matter what the source or reason: (i) any event of Force Majeure, actual or alleged; (ii) economic hardship, including lack of money or inability to obtain financing; (iii)

inability to obtain any supply of any good or service, (iv) any breakdown or malfunction of any equipment; (v) costs or taxes; (vi) anything relating to any Required Facility Document; (vii) Requirements of Law; (viii) anything relating to the Transmission Provider, Network Service Provider, Interconnection Provider, or Generation Interconnection Agreement; or (ix) increased cost of electricity, steel, labor, or transportation.

#### 2.4 Project Construction, Delay Damages and Deficit Damages.

(a) On or before the later of: (i) the Facility Financing Date or (ii) excavation of the first tower foundation for the first Wind Turbine, Seller shall provide to PacifiCorp a certificate from a Licensed Professional Engineer confirming that the Required Facility Documents including the material permits, consents and agreements necessary to operate and maintain the Facility have been obtained by Seller.

(b) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation.

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

(d) If the Facility achieves Final Completion based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall pay to PacifiCorp Deficit Damages.

(e) After the date of Final Completion, any partially completed Wind Turbine shall not be part of the Facility, and Seller shall not undertake to add such Wind Turbine to the Facility without the prior written consent of PacifiCorp. Any output of such Wind Turbine or Capacity Rights associated with such output shall be treated as Net Output above the Maximum Delivery Rate and is subject to Section 5.7.

2.5 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to Seller's delay in achieving Commercial Operation or failure to reach Final Completion based on 100 percent of the Expected Nameplate Capacity Rating would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages and Deficit Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. The Parties agree that Delay Damages and Deficit Damages shall be PacifiCorp's exclusive remedy for a delay in achieving Commercial Operation or failure to reach Final Completion based on 100 percent of the Expected Nameplate Capacity Rating and believe that Delay Damages and Deficit Damages fairly represent actual damages. Subject to the foregoing sentence, this Section 2.5 shall not limit the amount of damages payable to PacifiCorp if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.6 Damages Invoicing. By the tenth (10<sup>th</sup>) day following the end of the calendar month in which Delay Damages begin to accrue or Deficit Damages are incurred, as applicable, and continuing on the tenth (10<sup>th</sup>) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of such damages and any amount due PacifiCorp in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Sections 10.3 and 10.4, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.7 PacifiCorp's Right to Monitor. During the Term, Seller shall permit PacifiCorp and its advisors and consultants to:

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

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

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment, and warranties, and (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between Seller and a manufacturer of the Wind Turbines and any other material items of Facility equipment that require testing for warranty agreements to be effective.

Seller shall provide PacifiCorp with at least two (2) Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient wind or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient wind or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date. Seller does not herein grant PacifiCorp the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require PacifiCorp to review, comment on, or approve of any contract between Seller and a third party.

(d) Witness initial performance tests and other tests and review the results thereof; with Seller to make best efforts to provide PacifiCorp five (5) Business Days' advance notice of each such major test.

(e) Perform such examinations, inspections, and quality surveillance as, in PacifiCorp's reasonable judgment, are appropriate and advisable to determine that each Wind Turbine has been properly commissioned and Commercial Operation and Final Completion have been achieved.

With respect to PacifiCorp's right to monitor under this Section 2.7, (i) PacifiCorp is under no obligation to exercise any of these monitoring rights, (ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (iii) PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by PacifiCorp hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. PacifiCorp shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.7, which representatives shall have authority to act for PacifiCorp in all technical matters under this Section 2.7 as authorized by PacifiCorp but not to amend or modify any provision hereof. PacifiCorp's initial representatives and their contact information are listed in Exhibit 2.7. PacifiCorp may, by written notice to Seller, change its representatives or their contact information.

2.8 Tax Credits. Seller shall notify PacifiCorp whether Seller has elected to claim PTC or ITCs, as applicable, within thirty (30) days following the date that Seller (or Seller's Affiliate, on a consolidated basis) files its first tax return after the Commercial Operation Date. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, 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 Facility is eligible for, or receives, PTCs, 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 this Agreement 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.

3.1.7 Eligible Contract Participant. It, and any guarantor of its obligations under this Agreement, is an “eligible contract participant” as that term is defined in the United States Commodity Exchange Act.

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 Commercial Operation Date) all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the 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 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 Commercial Operation Date (or such other later date as may be specified under Requirements of Law), and will maintain for the Term all Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises. Following the Commercial Operation Date, Seller shall promptly notify PacifiCorp of any additional Required Facility Documents.

3.2.4 Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery 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 Facility for the Term. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit 3.2.5. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the 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 Facility.

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 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. In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

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

3.2.8 Renewable Claims. Seller has at all times complied with the Federal Trade Commission requirements set forth in 16 CFR Part 260 in any communications concerning the Output, the Facility and the Green Tags that have or may be generated from the Facility. Seller has not claimed the Green Tags, Environmental Attributes or other “renewable energy,” “green energy,” “clean energy” or similar attributes of the Output or the Facility as belonging to the Seller or any Seller Affiliate and is not aware of any such claims made by third parties with respect to the Facility or the Output.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter 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 Commercial Operation Date. If at any time during the Term, the Seller 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 this Section 3 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 AND GREEN TAGS**

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

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, Green Tags or Capacity Rights from the Facility to any party other than PacifiCorp; provided, however, that this restriction shall not apply during periods when PacifiCorp is in default hereof because it has failed to accept or purchase that Net Output or Green Tags as required hereunder.

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

4.4 Curtailment.

4.4.1 Non-Compensable Curtailment. Except for Compensable Curtailment in accordance with Section 5.1.3, 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 Delivery for any of the following reasons: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Market Operator, Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area, (which would include the Net Output) for any reason (excluding curtailment of purchases for general economic reasons unilaterally directed by the Market Operator or PacifiCorp acting solely in its merchant function capacity), even if and no matter how such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in any way in order to meet its obligations to the Market Operator, Transmission Provider or Network Service Provider to operate within system limitations or otherwise, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output (“Non-Compensable Curtailment”).

4.4.2 Curtailed Amount. Seller will calculate the quantity of Non-Compensable Curtailment by determining the quantity of Net Output that would have been produced by the Facility and delivered to the Point of Delivery had its generation not been so curtailed under this Section 4.4. Seller shall determine the quantity of such curtailed energy based on (a) the time and duration of the Non-Compensable Curtailment and (b) wind conditions recorded at the Facility during the period of Non-Compensable Curtailment and the power curve specified for the Wind Turbines as shown in the manufacturer's power curve provided by Seller to PacifiCorp in accordance with Exhibit 6.1. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a Non-Compensable Curtailment.

4.4.3 Compensable Curtailment. PacifiCorp shall pay Seller for Compensable Curtailment Energy as set forth in Section 5.1.3.

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 Transmission Provider.

4.6 Green Tags.

4.6.1 Title. Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Output at the Facility that gives rise to such Green Tags.

4.6.2 Documentation. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller must, on or before the tenth (10th) day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale, in the form attached in Exhibit 4.6(1), for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current

with the Center for Resource Solution's Green-e Program (or such successor program). Seller must, at its own cost and expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e Program (or such successor program) throughout the Term. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, effectuate the transfer of WREGIS Certificates to PacifiCorp in accordance with WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form similar to that in Exhibit 4.6(2) or elect to act as its own WREGIS-defined Qualified Reporting Entity. Unless the failure to deliver WREGIS Certificates was caused by action of PacifiCorp not acting in its capacity as Qualified Reporting Entity under the Qualified Reporting Entity Services Agreement, PacifiCorp shall be entitled to a refund of the Green Tags Price Component of Green Tags associated with any Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tags back to Seller, provided that Seller shall have thirty (30) days to correct any error and deliver such WREGIS Certificates to PacifiCorp or provide such refund payment. Seller shall promptly provide PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by a Governmental Authority, upon notification by such Governmental Authority that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded.

4.6.3 Publicity. Seller shall not make any public statement or report under any program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintained registered the Facility by providing copies of all such information as PacifiCorp reasonably requires for such registration.

4.6.4 Renewable Claims. Seller will comply with the Federal Trade Commission requirements set forth in 16 CFR Part 260 in any communications concerning the Output, the Facility and the Green Tags that are or may be generated from the Facility. Seller will not claim the Green Tags, Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes of the Output or the Facility as belonging to the Seller or any Seller Affiliate.

4.7 Purchase and Sale of Capacity Rights. For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output and Green Tags on the terms and conditions set forth herein, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

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

4.9 Authority to Make Sales. Seller covenants that during the Term it will maintain all required regulatory authority to make wholesale sales from the Facility.

4.10 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 or Capacity Rights, if any, to PacifiCorp.

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

5.1 Contract Price; Includes Green Tags and Capacity Rights. PacifiCorp shall pay Seller the prices stated below for all deliveries of Net Output, Green Tags and Capacity Rights, up to the Maximum Delivery Rate. The price provided for Test Energy in Section 5.1.1, the Contract Price provided for in Section 5.1.2, and the Compensable Curtailment Price provided for in Section 5.1.3 include the consideration to be paid by PacifiCorp to Seller for all Net Output, Green Tags, Capacity Rights and Test Energy, respectively, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the Green Tags and Capacity Rights associated therewith.

5.1.1 Test Energy and Net Output Before Later of Commercial Operation Date and Scheduled Operation Date. Between the Effective Date and the later to occur of the (i) Commercial Operation Date or (ii) the Scheduled Commercial Operation Date, Seller shall sell and deliver to PacifiCorp all Test Energy and Net Output. PacifiCorp shall pay Seller for such Test Energy and Net Output delivered at the Point of Delivery, an amount per MWh equal to seventy five percent (75%) of the Firm Market Price Index for the applicable hour on the applicable day in the applicable month, provided, however, that Seller's right to receive payment for such Test Energy and Net Output is subject to PacifiCorp's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller pursuant to Section 2.4.

5.1.2 Net Output After The Later of Commercial Operation Date and Scheduled Commercial Operation Date. For the period beginning on the later of (i) the Commercial Operation Date or (ii) the Scheduled Commercial Operation Date and thereafter during the Term, PacifiCorp shall pay to Seller the Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in Exhibit 5.1.

5.1.3 Compensable Curtailment. If, during the period beginning on the later of (i) the Commercial Operation Date or (ii) the Scheduled Commercial Operation Date and thereafter during the Term, Net Output is curtailed by PacifiCorp and such curtailment is not

included as a Non-Compensable Curtailment (“Compensable Curtailment Energy”), then PacifiCorp shall pay to Seller the Compensable Curtailment Price for the Compensable Curtailment Energy, as determined below.

(a) The Parties will calculate the quantity of Compensable Curtailment Energy by determining the Potential Net Output (A) during those periods of time when the Facility is on AGC and the AGC Set-Point is set at a level that will not allow the entire Nameplate Capacity Rating to be deliverable by determining the difference between Potential Net Output and the delivered Net Output, and (B) during those periods of time when the Facility is not on AGC or the AGC Set-Point is set at a level that will allow the Nameplate Capacity Rating to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed. Compensable Curtailment Energy shall equal the number of MWh represented by the Potential Net Output less the Net Output actually delivered to the Point of Delivery.

(b) PacifiCorp will pay Seller the Contract Price for each MWh of Compensable Curtailment Energy, net of any Non-Compensable Curtailments (the “Compensable Curtailment Price”).

(c) For purposes of determining Compensable Curtailment Energy, the amount of Potential Net Output at any given time will be calculated using PacifiCorp’s wind forecasting vendor.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider and Transmission Provider for the Interconnection Facilities. PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, 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 Facility with the System and (b) any increase in generating capacity of the Facility.

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

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags up to and including, but not beyond, the Point of Delivery, 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, Capacity Rights or Green Tags beyond the Point of Delivery, 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. Seller shall be responsible for any and all sun and light severance taxes.

5.5 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 Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or Environmental Attributes.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the “public interest” 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 thirty (30) days of completion of construction of the Facility, Seller shall provide PacifiCorp the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to Exhibit 6.1 when it has been reviewed and approved by PacifiCorp, which approval shall not be unreasonably withheld or delayed. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, PacifiCorp may within fifteen (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 fifteen (15) day period, the As-built Supplement shall be deemed approved. If PacifiCorp provides a timely notice requiring corrections, Seller shall in good faith cooperate with PacifiCorp to revise the As-built Supplement to address PacifiCorp's concerns. Notwithstanding the foregoing, PacifiCorp shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

6.2 Standard of Facility Operation.

6.2.1 General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (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 Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

6.2.2 Qualified Operator. From and after the Commercial Operation Date, Seller or an Affiliate of Seller shall itself operate and maintain the Facility or cause the Facility to be operated and maintained by an entity, approved by PacifiCorp (such approval not to be unreasonably withheld, conditioned or delayed), that has at least two years of experience in operation and maintenance of wind energy facilities of comparable size to the Facility. Seller shall provide PacifiCorp thirty (30) days prior written notice of any proposed change in the operator of the Facility.

6.2.3 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 obtaining from the Transmission Provider network resource interconnection service for the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, 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 Facility and the Interconnection Facilities with the System.

6.5 Outages.

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

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then-existing wind conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: November, December, January, February, June 15 through June 30, July, August, and September 1 through September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after Seller determines that



the Maintenance Outage is necessary. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages. Notwithstanding anything in this Section 6.5.2 to the contrary, Seller may schedule a Maintenance Outage at any time and without the requirement to notify PacifiCorp in advance during conditions of sustained low wind speeds.

6.5.3 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 ten (10) percent of the Nameplate Capacity Rating of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, 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.

6.5.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day (except curtailments pursuant to Section 4.4(b)) and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five (5) percent of the Nameplate Capacity Rating of the Facility.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly net output set forth on Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

## 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 long-term monthly/diurnal mean net energy and net capacity factor estimates (12 X 24 profile). Seller shall prepare such forecasts by utilizing a wind speed and direction prediction model or service that is satisfactory to PacifiCorp in the exercise of its reasonable discretion and comparable in accuracy to models or services commonly used in the wind energy industry and that reflect turbine availability. The forecasts provided by Seller must comply with all applicable Electric System Authority tariff procedures, protocols, rules and testing as necessary and as may be modified from time to time.

6.7.2 Day-Ahead Forecasts and Updates. At Seller's expense, PacifiCorp shall solicit and obtain from a qualified wind energy production forecasting vendor forecast data and information with respect to the Facility, including day-ahead and real-time forecasting services and provision of real-time meteorological data necessary for compliance with applicable Electric System Authority procedures, protocols, rules and testing. Upon request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility. PacifiCorp shall present Seller with an invoice and documentation supporting the costs of obtaining such forecasting data. Seller shall pay the amount stated on the invoice within fifteen (15) days of receipt. PacifiCorp reserves the right to change the forecasting vendor in its sole discretion during the Term.

6.8 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting Section 5.7 or any restrictions herein on Nameplate Capacity Rating, if Seller elects to increase, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, PacifiCorp shall not be required to purchase any Net Output or Green Tags above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion or additional wind project within five miles of the Facility (measured from the nearest generation equipment at both locations), neither Seller nor any Affiliate will have the ability 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. Seller covenants that it will take all actions necessary to ensure that the immediately preceding sentence (i) applies to Seller's direct and indirect parent affiliates, and (ii) will not be avoided through use or establishment of a special purpose entity or other Affiliate. 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 AGC.

(a) Beginning on the Commercial Operation Date, PacifiCorp will dispatch Facility through its AGC system installed by Seller.

(b) PacifiCorp may notify Seller, by telephonic communication or through use of the AGC Set-Point, to curtail the delivery of Net Output to PacifiCorp from the Facility and to the Point of Delivery, for any reason and in its sole discretion and Seller shall promptly comply with such notification.

(c) The AGC Set-Point is calculated by the Transmission Provider and communicated electronically through the SCADA system. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set-Points within the margin of error specified in the Facility control system manufacturer's set point margin of error.

(d) Unless otherwise directed by PacifiCorp, Seller shall ensure that the Facility AGC is in "Remote" set-point control during normal operations.

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

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

Commencing on the date of initial delivery of Test Energy, Seller shall also transmit or cause to be transmitted to or make accessible to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including meteorological data, wind speed and air density 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). Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.

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

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

6.10 Reports and Records.

6.10.1 Monthly Reports. Commencing on the Commercial Operation Date, within thirty (30) days after the end of each calendar month during the Term (each, a “Reporting Month”), Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's wind speed and air density data and actual and predicted output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that PacifiCorp may from time to time reasonably request (including historical wind speed and air density data for the Facility).

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

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

- (a) Upon the request of PacifiCorp, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;
- (b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;
- (c) Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;
- (d) Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next calendar month;
- (e) From and after the Commercial Operation Date, a monthly report detailing the Availability of the Facility; and
- (f) At any time from the Effective Date, one year's advance notice of the termination or expiration of any material agreement, including Leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to PacifiCorp within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.

6.10.4 Information to Governmental Authorities. Seller shall, promptly upon

written request from PacifiCorp, provide PacifiCorp with all data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or Electric System Authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$10,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.4.

6.10.5 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 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, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.5.

6.10.6 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 Facility, Seller shall, within five (5) Business Days of such submission or filing, provide to PacifiCorp a copy of the same.

6.10.7 Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents. Seller shall further provide PacifiCorp with information relating to environmental impact mitigation measures it is taking in connection with the 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, 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 Facility, or the presence of Environmental Contamination at the 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.

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

6.10.9 Notice of Material Adverse Events. Seller shall promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.10.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, 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, within ten (10) days of such notice or knowledge, 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, within ten (10) days of such notice or knowledge, give notice to PacifiCorp of the same.

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

6.10.12 Confidential Treatment. The monthly reports and other information provided to PacifiCorp under this Section 6.10 shall be treated as Confidential Business Information 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.

6.12 Availability Guarantee.

6.12.1 Guaranteed Availability. Seller guarantees that the annual Availability of the Facility shall be at least ninety five percent (95%) of the calculated Availability (the "Guaranteed Availability"). In no event shall the required Guaranteed Availability for any period be subject to any adjustment in the event that Seller achieves Final Completion at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating.

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

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

If an Output Shortfall occurs in any given Contract Year, Seller shall pay PacifiCorp liquidated damages equal to the product of (a) the Output Shortfall for that Contract Year, multiplied by (b) PacifiCorp's Cost to Cover for that Contract Year. Each Party agrees and acknowledges that (i) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

6.12.3 Annual Invoicing. On the thirtieth (30<sup>th</sup>) day following the end of each Contract Year, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of Net Output and Output Shortfall, if any, for the prior Contract Year and any amount due PacifiCorp for liquidated damages pursuant to this Section 6.12. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an

account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Seller within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors (“PacifiCorp Representatives”) with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than twelve (12) times per year), (d) for purposes of implementing Sections 2.7 or 10.5, and (e) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller from any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such Liabilities are caused-by the intentional or negligent act or omission of Seller or its agents or Affiliates.

6.14 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent (not to be unreasonably withheld or delayed, and which consent may consider Requirements of Law relating to Premises security, obligations to outside vendors (including any confidentiality obligations), and the corporate policies of Seller's Affiliates). Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

## **SECTION 7 RIGHT OF FIRST OFFER AND PURCHASE OPTION**

### 7.1 Right of First Offer on Facility Expansion.

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

7.1.2 PacifiCorp's Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within thirty (30) days after receiving Seller's offer,



Seller (or the applicable Affiliate of Seller) may enter into an agreement to sell the Expansion Energy to a third party on terms and conditions no more favorable to the third party than those offered to PacifiCorp, provided such sale of Expansion Energy may not in any way impact or alter PacifiCorp's rights, obligations or entitlements under this Agreement. If Seller (or its Affiliate) wishes to enter into an agreement with a third party on terms more favorable to PacifiCorp than those previously offered to PacifiCorp under this section, Seller shall first offer (or cause its Affiliate to offer) the revised terms and conditions to PacifiCorp under this section.

7.1.3 PacifiCorp's Acceptance of Offer. If PacifiCorp accepts an offer made by Seller (or its Affiliate) under this section, the parties shall within sixty (60) days following such acceptance enter into a power purchase agreement in substantially the same form as this Agreement for the purchase and sale of such Expansion Energy (with appropriate provisions proportionally adjusted to account for the size of the proposed expansion relative to the Nameplate Capacity Rating of the Facility), but incorporating such changes as are expressly identified in the terms and conditions offered by Seller (or its Affiliate).

## 7.2 Purchase Option.<sup>1</sup>

7.2.1 Purchase Option. On the last day of the Term,<sup>2</sup> PacifiCorp shall have the option to purchase the Facility and all rights of Seller therein or relating thereto, for the Fair Market Value of the Facility, in accordance with the provisions set forth herein. PacifiCorp shall indicate its preliminary interest with respect to the option, if at all, by delivering to Seller a preliminary notice of its interest no less than two years prior to the last day of the Term (the "Preliminary Interest Notice"). If PacifiCorp fails to deliver such notice by such date, PacifiCorp's option shall terminate.

7.2.2 Determination of Fair Market Value of the Facility. Promptly following delivery of the Preliminary Interest Notice, the Parties shall mutually agree to the fair market value of the Facility. If PacifiCorp and Seller cannot mutually agree to a fair market value of the Facility within thirty (30) days of delivery of the Preliminary Interest Notice, then each of PacifiCorp and Seller shall select and retain, at each Party's own cost and expense, a nationally recognized independent appraiser with experience and expertise in appraising wind power generation facilities to determine separately the value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in a form reasonably acceptable to Seller, Seller shall provide both appraisers access to the Facility and its books and records during business hours and upon prior written notice. The appraisers shall act reasonably and in good faith to determine the fair market value of the Facility and the Parties shall use their best efforts to cause the appraisers to complete such determination no later than sixty (60) days following delivery of the Preliminary Interest Notice. If for any reason (other than failure by Seller to provide access hereunder to PacifiCorp's appraiser), one of the appraisals is not completed within ninety (90) days following delivery of the Preliminary Interest Notice, the results of the other completed appraisal shall be deemed the Fair Market Value of the Facility.

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<sup>1</sup> Note To Bidders – Providing a purchase option in favor of PacifiCorp is not a required condition to submitting a bid, nor will inclusion or failure to include a purchase option impact the overall scoring of a bid.

<sup>2</sup> Note To Bidders – PacifiCorp will entertain a mid-Term purchase option (or more than one mid-Term purchase option).

Each Party may provide to both appraisers a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals, consistent with industry standards prevailing at such time for appraising wind power generation facilities. Any information provided to an appraiser by a Party shall be provided to the other appraiser and the other Party at the same time, it being the intent of the Parties that the appraisers have access to the same information. PacifiCorp and Seller shall deliver the results of their respective appraisal to the other Party when completed. If so requested by either Party, the appraisals shall be exchanged simultaneously. After both appraisals are completed and exchanged, the Parties and their appraisers promptly shall confer and attempt to agree upon the Fair Market Value of the Facility.

7.2.3 Disagreement as to Value. If, within thirty (30) days after completion of both appraisals, the Parties cannot agree on the fair market value of the Facility, and the values of the appraisals are within ten percent (10%) of each other, the Fair Market Value of the Facility shall be the simple average of the two appraisals. If the values of the two appraisals differ by ten percent (10%) or more, the first two appraisers shall choose a third independent appraiser experienced in appraising wind power generation assets, or, if the first two appraisers fail to agree upon a third appraiser within ten (10) days after the expiration of the thirty (30) day period following completion of both appraisals, such appointment shall be made by the AAA upon application of either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third appraiser shall have access to the same information as was available to the two other appraisers. The Parties shall direct the third appraiser to determine the fair market value of the Facility within sixty (60) days following his retention. The costs and expenses of such third appraiser shall be shared equally by the Parties. Upon completion of the fair market value of the Facility by such appraiser, the Fair Market Value of the Facility will be the simple average of the three appraisal values completed in accordance with this Section 7.2.

7.2.4 Exercise of Purchase Option. Within ninety (90) days following the determination of the Fair Market Value of the Facility pursuant to this Section 7.2, but in no event later than eighteen (18) months following delivery of a Preliminary Interest Notice, PacifiCorp shall notify Seller if PacifiCorp elects to exercise its option (an "Option Confirmation Notice").

7.2.5 Purchase and Sale. If PacifiCorp delivers a valid and timely Option Confirmation Notice, Seller shall sell, transfer, assign and convey to PacifiCorp all of the Facility and all rights of Seller therein or relating thereto, on an "AS IS, WHERE IS" basis, free and clear of all liens, claims, encumbrances, or rights of others arising through Seller on the last day of the Term, including good and valid title to the Facility and Seller's rights in the Premises. In connection with such sale, transfer, assignment and conveyance, Seller shall (a) assign or otherwise make available, to the extent permitted by Requirements of Law and not already assigned or otherwise transferred to PacifiCorp, Seller's interest in all applicable Required Facility Documents; (b) cooperate with all reasonable requests of PacifiCorp for purposes of enabling PacifiCorp to obtain any and all applicable Permits that are or will be required to be obtained by PacifiCorp in connection with the use, occupancy, operation or maintenance of the Facility or the Premises in compliance with Requirements of Law; (c) provide PacifiCorp copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other

documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Facility, as shall be in Seller's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility.

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

8.1 Project Development Security. Seller shall provide within five (5) Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm Seller satisfies the Credit Requirements.

8.1.1 Form and Amount of Project Development Security. On or before the date specified in Section 2.3(a), Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from a party that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit D, or (b) a Letter of Credit in favor of PacifiCorp, in a form acceptable to PacifiCorp in its reasonable discretion, equal in each case to two hundred dollars (\$200) per kW of Expected Nameplate Capacity Rating (the "Project Development Security"). Seller and any entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm the guarantor satisfies the Credit Requirements.

8.1.2 Use of Project Development Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 2.5, PacifiCorp shall be entitled to and shall draw upon the Project Development Security an amount equal to the Delay Damages until such time as the Project Development Security is exhausted. PacifiCorp shall also be entitled to draw upon the Project Development Security for other damages if this Agreement is terminated under Section 11 because of Seller's default.

8.1.3 Termination of Project Development Security. Seller shall no longer be required to maintain the Project Development Security after the Commercial Operation Date, if at such time no damages are owed to PacifiCorp under this Agreement. However, as of the Commercial Operation Date, Seller may elect to apply the Project Development Security toward the Default Security required by Section 8.2, including by the automatic continuation (as opposed to the replacement) thereof.

8.2 Default Security.

8.2.1 Duty to Post Default Security. On the date specified in Section 2.3(b), Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from an entity that satisfies the Credit Requirements, in substantially the form attached hereto as Exhibit D, or (b) a Letter of Credit, each in the amount specified in Section 8.2.1 (the "Default Security"), as provided in this Section 8.2. Seller and any entity providing a guaranty shall provide within five (5) Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm the guarantor satisfies the Credit Requirements.

8.2.2 Amount of Default Security. The amount of the Default Security required by Section 8.2.1 shall be one hundred dollars (\$100) per kW of Expected Nameplate Capacity Rating and will be held until the agreement expires.

8.3 [Reserved].

8.4 Subordinated Security Interests.

8.4.1 Security Interests. On or before the Effective Date, and simultaneously with the acquisition by Seller after the Effective Date of any additional real property in connection with the Facility, Seller shall execute, file and record such agreements, documents, instruments, mortgages, deeds of trust and other writings as PacifiCorp may reasonably request, all in the form attached hereto as Exhibit 8.4.1, to give PacifiCorp a perfected security interest in and lien on the Facility, the Premises, all present and future real property, personal property and fixtures therein and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Facility, as security for Seller's performance and any amounts owed by Seller to PacifiCorp pursuant hereto (collectively the "Security Interests"). The Security Interests shall be subordinate in right of payment, priority and remedies only to (a) the interests of the Senior Lenders in any credit arrangements described in the definition of "Lenders," and (b) to the extent provided by applicable law, any workers', mechanics', suppliers', tax or similar liens arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within five (5) Business Days of the commencement of any proceeding to foreclose the lien.

8.4.2 Maintenance of Security Interests. Seller hereby authorizes the filing and recording of financing statements in the name of Seller as debtor thereunder and shall take such further action and execute such further instruments and other writings as shall be required by PacifiCorp to confirm and continue the validity, priority, and perfection of the Security Interests. The granting of the Security Interests shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to PacifiCorp by reason of any breach or default by Seller hereunder or the termination hereof prior to the expiration of the Term.

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

8.5 Debt-to-Equity Ratio; Annual and Quarterly Financial Statements. Seller shall at all times during the Term, following the Commercial Operation Date, maintain the percentage of Facility Equity (as defined below) at no less than thirty percent (30%). Annually on March 1<sup>st</sup>, commencing after the Commercial Operation Date, Seller shall provide to PacifiCorp a certificate of Seller's Chief Financial Officer attesting to the maintenance of such Facility Equity percentage and the Facility's then-current Book Value. If requested by PacifiCorp from time to time, Seller shall within thirty (30) days provide PacifiCorp with copies of its most recent annual and quarterly financial statements and statement of the Facility's then-current Book Value. If, as of any such reporting date, the Facility Equity percentage is less than thirty (30) percent, then within sixty (60) days after such reporting date, Seller, in its discretion, will either (a) take the necessary action to cause the percentage of Facility Equity to be no less than thirty percent (30%) or (b) increase the amount of the Default Security by an amount equal to one percent (1%) (or pro rata portion thereof) of the then-current Book Value of the Facility for each percentage (or pro rata portion thereof) that Facility Equity falls below thirty percent (30%). PacifiCorp, in its sole discretion, may require that any required increase to the Default Security be provided in a form of Letter of Credit or cash, by providing written notice to Seller. For purposes of this section, "Facility Equity" means the aggregate amount, as of the Commercial Operation Date, of equity investment in the Facility by any owner, investor, or other party. The phrases "percentage of Facility Equity" or "Facility Equity percentage" means the ratio, expressed as a percentage, of the Facility Equity to the sum of (x) all indebtedness outstanding to third parties and (y) the amount of Facility Equity. Seller shall not grant a security interest to any third party in the Facility or any of its assets to support the obligations of any entity other than Seller or its Affiliates, or any obligations of Seller or its Affiliates other than obligations that relate directly to the Facility or Seller's or its Affiliates' other wind energy facilities. Without limiting the foregoing, Seller agrees to cause the contribution of Facility Equity whenever such contribution is required under Seller's and Seller's Affiliates agreements with Lenders.

8.6 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8 (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. Seller shall maintain security as required by Sections 8.1, 8.2 and 8.3, as applicable per this Agreement. To the extent that PacifiCorp draws on any security, Seller shall, on or before the first day of the Contract Year following such draw, replenish or reinstate the security to the full amount then required under this Section 8. If at any time the Seller or Seller's credit support provider(s) fails to meet the Credit Requirements, then Seller shall provide replacement security meeting the requirements set forth in Section 8 within ten (10) Business Days after the earlier of (x) Seller's receipt of notice from any source that Seller or the credit support provider(s), as applicable, no longer meets the Credit Requirements or (y) Seller's receipt of written notice from PacifiCorp requesting the posting of alternate security.

## **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 Delivery.

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 (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three 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 Facility.

9.5 Meter Data. Within ten (10) days of the Effective Date, Seller may request the Interconnection Provider or Transmission Provider 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 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 Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

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

10.1 Monthly Invoices. On or before the tenth (10<sup>th</sup>) 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 Delivery during such month. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the later of the twentieth (20<sup>th</sup>) day following receipt of such invoice or the thirtieth (30<sup>th</sup>) day following the end of each month, payment for Seller's deliveries of Net Output and associated Green Tags 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) Business 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 Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

## **SECTION 11 DEFAULTS AND REMEDIES**

11.1 Defaults. The following events are defaults (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) Business 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) 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 that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

(d) A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period



but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

#### 11.1.2 Defaults by Seller.

(a) Seller fails to post, increase, or maintain the Project Development Security or Default Security as required under, and by the applicable dates set forth in, Section 2 and Section 8 and such failure is not cured within ten (10) Business Days after PacifiCorp gives Seller notice of default.

(b) Seller fails to (i) cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Schedule within ninety (90) days after the Commercial Operation Date.

(c) Seller sells Output, Green Tags or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.2, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

(d) PacifiCorp receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by PacifiCorp.

(e) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the 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 thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(f) Seller's Abandonment of construction or operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp.

(g) Seller fails to maintain insurance as required by the Agreement and

such failure continues for ten (10) days after Seller's receipt of written notice thereof from PacifiCorp.

(h) Seller fails to meet the Guaranteed Availability for two (2) consecutive years.

#### 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 11.1.2(c), Seller shall pay PacifiCorp within five (5) Business Days after invoice receipt, an amount equal to the sum of (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp, (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, and (c) any additional cost or expense incurred as a result of Seller's default under Section 11.1.2(c), as determined by PacifiCorp in a commercially reasonable manner. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output and Green Tags required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall first satisfy its obligations under Section 11.7 and then PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased, less amounts received by Seller pursuant to Section 11.7. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

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

11.3 Termination and Remedies. 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 one (1) Business Day 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 the then-current President and General Counsel of PacifiCorp. 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 WIND 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. Notwithstanding any other provision of this Agreement to the contrary, 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 PacifiCorp's 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. 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.

(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, 11.9 and Section 12, Section 13, Section 23, and Section 24 shall survive the termination hereof.

11.4 Termination of Duty to Buy; Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Premises, on whose behalf Seller acts as agent, may thereafter require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation 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. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PacifiCorp to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the counties in which the Facility or Premises is situated, and any federal agency as applicable, a memorandum in the form of Exhibit 11.4 to provide constructive notice to third parties of Seller's agreements under this Section 11.4.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. Amounts owed pursuant to this section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

11.6 Senior Lender Foreclosure. An exercise of remedies under the financing documents between Seller and Senior Lenders, in and of itself, is not an Event of Default under Section 11.1.2(d).

11.7 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to use commercially reasonable efforts to maximize the price for Net Output and associated Green Tags received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output and associated Green Tags not purchased or accepted by PacifiCorp (only during a period PacifiCorp is in default), in each case only to the extent any of the foregoing actions are permitted under Requirements of Law and the Interconnection Agreement; and (b) by PacifiCorp shall include requiring PacifiCorp to use commercially reasonable efforts to minimize the price paid to third parties for energy and Green Tags purchased to replace Net Output and Green Tags not delivered by Seller as required hereunder.

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

## 11.9 Step-In Rights.

11.9.1 Failure to Achieve Commercial Operation. If Seller fails to achieve Commercial Operation of the Facility by the Guaranteed Commercial Operation Date, PacifiCorp shall have the right to enter the Facility and do all such things as PacifiCorp may consider necessary or desirable to complete the Facility and cause Commercial Operation to occur. PacifiCorp shall, following the Commercial Operation Date (a) return the Facility to Seller upon execution of an indemnity and release by Seller of all claims arising out of the period of PacifiCorp's entry on the Facility in a form reasonably acceptable to PacifiCorp or (b) failing the execution of such release or indemnity, operate the Facility for the Term pursuant to Section 11.9.2. PacifiCorp shall likewise return the Facility to Seller upon a showing by Seller that it is immediately ready, willing and able to achieve Commercial Operation of the Facility within a commercially and technically reasonable period of time.

11.9.2 License to Operate Facility. Seller hereby irrevocably grants to PacifiCorp the right, license, and authority to enter the Premises, operate and maintain the Facility, and to perform Seller's obligations hereunder for the Term during the continuance of an Event of Default by Seller under Sections 11.1.2(b), 11.1.2(c), 11.1.2(e), 11.1.2(f), or 11.1.2(h) (such rights along with those rights set forth in Section 11.9.1, "Step-In Rights"). PacifiCorp may, but shall not be obligated to, exercise its rights as licensee under this section in lieu of termination. During any period in which PacifiCorp is operating and maintaining the Facility pursuant to the license granted in this Section, Seller shall, upon request from PacifiCorp, reimburse PacifiCorp for all reasonable costs and expenses incurred by PacifiCorp to operate and maintain the Facility.

11.9.3 Indemnification; Standard of Care. Seller shall indemnify and hold PacifiCorp harmless from and against all losses, costs, charges and expenses reasonably incurred by PacifiCorp in connection with exercise of its rights under Section 11.9.1 or 11.9.2 whether to third parties or otherwise, other than losses, costs, charges and expenses attributable to the gross negligence or willful misconduct of PacifiCorp. During such time as PacifiCorp has custody of the Premises and Facility pursuant to this Section 11.9, it shall conduct all of its activities pursuant to Prudent Electrical Practices.

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

under this Section 11.9.

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

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

11.9.7 Costs and Expenses. Seller shall indemnify and hold harmless PacifiCorp from and against all losses, costs, charges and expenses incurred by PacifiCorp in connection with exercise of its Step-In Rights other than all losses, costs, charges and expenses attributable to the gross negligence or willful misconduct of PacifiCorp. In connection with its exercise of Step-In Rights, PacifiCorp shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by PacifiCorp hereunder. PacifiCorp's exercise of such recoupment and set off rights shall not limit the other remedies available to PacifiCorp hereunder or otherwise.

11.10 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 Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or

damage to or destruction 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 Indemnitees. 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 Indemnitees") 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 of property of, any person or entity within the Seller Indemnitees, 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 Indemnitees.

12.1.3 Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, Seller shall release, indemnify and hold harmless the PacifiCorp Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the PacifiCorp Indemnitees or the Seller Indemnitees, 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. **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. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.**

## **SECTION 13 INSURANCE**

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller 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.

13.2 Certificates of Insurance. Seller shall provide PacifiCorp with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained (as set forth in Exhibit 13). Seller shall provide a certificate of insurance (in ACORD or similar industry form) to PacifiCorp within ten (10) days of the effective date of any insurance policy required under this Agreement. The certificates shall indicate that the insurer shall provide thirty (30) days prior written notice of cancellation. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."



## SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. “Force Majeure” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; and action or restraint by court order or public or Governmental 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, capacity or Green Tags at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the Facility's Wind Turbines or other 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 Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection Provider 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, Transmission Provider or Interconnection Provider, 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. After the Commercial Operation Date, but not before, 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. No obligation of Seller arising before the Commercial Operation Date may be excused by Force Majeure.

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

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding 180 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the 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 under this Agreement, and (c)

preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

## **SECTION 18 NON-WAIVER**

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

## **SECTION 19 GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

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

## **SECTION 20 SUCCESSORS AND ASSIGNS**

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

20.2 Permitted Assignments. Notwithstanding 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 Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement; 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 600  
Portland, Oregon 97232- 2315  
Attn: Director, Valuation & Commercial Business  
Telefacsimile (503) 813-6260

with a copy to: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232- 2315  
Attn: Contract Administration

Telefacsimile (503) 813-6291  
Email: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

with copies to:

PacifiCorp Legal Department  
825 NE Multnomah, Suite 1800  
Portland, Oregon 97232- 2315  
Attn: Assistant General Counsel  
Telefacsimile (503) 813-6761

and termination notices to PacifiCorp: PacifiCorp

1407 West North Temple  
Suite 320  
Salt Lake City, Utah 84116  
Attn: President

and to:

PacifiCorp  
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.

## **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, and (c) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation. 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 (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) 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 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.

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 Facility that mentions the 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. Prior to proceeding with formal dispute resolution procedures as provided below in this Section 24, the Parties must first 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 those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

### 24.2 Mediation; Technical Expert.

24.2.1 Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to non-binding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party requests mediation, and except as modified in this Section 24 (the "Mediation Procedures").

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

(b) The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's arbitration administrator shall send a list and resumes of three (3) available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or

proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2.1, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, non-binding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2.1(f). The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

(e) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

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

(g) All deadlines specified in this Section 24.2.1 may be extended by mutual agreement.

24.2.2 Technical Expert. If the dispute regards (a) whether or not Commercial Operation has been achieved, or (b) the disputed amount of any invoice, the Parties may, in lieu of mediation, have such dispute resolved pursuant to this Section 24.2.2. Any such dispute will be determined by an independent technical expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Technical Expert"), which determination shall be (x) except as otherwise provided in this Section 24.2.2, made in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on the date a Party provides notice of its intent to submit the dispute to a technical expert, and (y) binding upon the Parties.

(a) Either Party may commence the technical dispute process with AAA by notifying AAA and the other Party in writing ("Technical Dispute Notice") of such Party's desire that the dispute be resolved through a determination by a technical expert.

(b) The determination shall be conducted by a sole Technical Expert. The Parties may select any mutually acceptable Technical Expert. If the Parties cannot agree on a Technical Expert within five (5) days after the date of the Technical Dispute Notice, then the



AAA's arbitration administrator shall send a list and resumes of three (3) available technical experts meeting the qualifications set forth in Section 24.2.2 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Technical Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the Technical Expert from the remaining names. If the designated Technical Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute technical expert shall be appointed in accordance with the selection procedure described above, and such substitute Technical Expert shall have all such powers as if he or she has been originally appointed herein.

(c) Within thirty (30) days of the appointment of the Technical Expert pursuant to the foregoing sub-section, each Party shall submit to the Technical Expert a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation and calculations. Discovery shall be limited to Facility documentation relating to the disputed matter. Within sixty (60) days from receipt of such submissions, the Technical Expert shall select one or the other Party's position with respect to the dispute, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the determination by the Technical Expert of any dispute, including fees and expenses, shall be borne by the Party whose position was not selected by the Technical Expert. If the Technical Expert fails to render a decision within ninety (90) days from receipt of each Party's submissions, either Party may initiate litigation in accordance with the provisions herein.

(d) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.2.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(e) All deadlines specified in this Section 24.2.2 may be extended by mutual agreement of the Parties.

24.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of 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, (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.

23.4 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.

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

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

[SELLER]

PACIFICORP

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**ESTIMATED MONTHLY OUTPUT**

<b>EXPECTED ENERGY - FIRST FULL CONTRACT YEAR</b>			
<b>PERIOD</b>	<b>ON-PEAK (MWh)</b>	<b>OFF-PEAK (MWh)</b>	<b>TOTAL (MWh)</b>
<b>January</b>			
<b>February</b>			
<b>March</b>			
<b>April</b>			
<b>May</b>			
<b>June</b>			
<b>July</b>			
<b>August</b>			
<b>September</b>			
<b>October</b>			
<b>November</b>			
<b>December</b>			
<b>First Year Total</b>			

Under separate cover, Seller will also provide PacifiCorp one (1) electronic and hard copy of the wind plant performance estimation report no later than ninety (90) days prior to the start of construction. This report will include, at a minimum, estimated hourly MW generation output in MWh/h for the site and Facility, and shall set forth additional losses related to Availability, transformers, substation and no-load losses. On or prior to the Commercial Operation Date, Seller shall provide an updated Exhibit A and wind plant performance estimation report based on completed construction.

Upon the date of Final Completion, if different than the Commercial Operation Date, Seller shall provide an updated Exhibit A and wind plant performance estimation report based on the final completed construction.

## EXHIBIT B

### NERC EVENT TYPES

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

## EXHIBIT C

### START-UP TESTING

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to:

1. Test of mechanical and electrical equipment;
2. Calibration of all monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Point-to-point continuity tests;
6. Bench tests of protective devices; and
7. Tests required by manufacturer(s) and designer(s) of equipment.

Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to:

1. Turbine/generator mechanical runs and functionality;
2. System operation tests;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Excitation and voltage regulation operation tests;
7. Auto stop/start sequence;
8. Completion of any state and federal environmental testing requirements;
9. Tests required by manufacturer(s) and designer(s) of equipment; and
10. Tests required by the Generation Interconnection Agreement.

For wind projects only, the following Wind Turbine Generator Installation Checklists are required documents to be signed off by Manufacturer or Subcontract Category Commissioning Personnel as part of the Commissioning and startup testing:

Turbine Installation  
Foundation Inspection (by Owner's independent inspector)  
Controller Assembly  
Power Cables

Cable Installation Checklists including:      Controller  
Top Deck / Yaw Deck  
Tower Top Section / Saddle  
Mid Section Cables or buss bars  
Base Section

Tower Base Section  
Tower Lights and Outlets  
Tower Mid Section  
Tower Top Section  
Nacelle  
Rotor

**EXHIBIT D**

**FORM OF GUARANTY — CREDIT SUPPORT OBLIGATION**



## EXHIBIT 2.7

### PACIFICORP'S INITIAL DESIGNATED REPRESENTATIVES

Authorized Representatives:

PacifiCorp: Director, Valuation & Commercial Business  
PacifiCorp  
825 NE Multnomah St., Suite 600  
Portland, OR 97232-2315  
Fax 503-813-6260

With a copy to: Contract Administration  
PacifiCorp Energy Supply Management  
825 NE Multnomah St., Suite 600  
Portland, OR 97232-2315  
Fax 503-813-6291  
Email: [cntadmin@pacificorp.com](mailto:cntadmin@pacificorp.com)

## EXHIBIT 3.2.3

### REQUIRED FACILITY DOCUMENTS

**1. Obtained Required Facility Documents:**

Permits:

Land Rights:

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

Licenses, Permits and Authorizations:

Evidence of market-based rate authority under Section 205 of the Federal Power Act or evidence of qualifying facility certification under the Public Utility Regulatory Policies Act

Access road easement

Electrical Permit

Land Use Permit

Environmental Permit

Building Permit

Interconnection approval

Utility easement

Construction and Operations and Maintenance:

Contract for the Sale of Power Generation Equipment and Related Services between \_\_\_\_\_ and Seller

Generator Interconnection Agreement

Retail Electric Service Agreement

Proof of Insurance

Construction Agreements:

Balance of Plant/Construction Services Agreement

Operations and Maintenance Agreements:

Warranty, Service and Maintenance Agreement

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

**EXHIBIT 3.2.5**

**LEASES**

**EXHIBIT 4.6(1)**

**GREEN TAG ATTESTATION AND BILL OF SALE**

**EXHIBIT 4.6(2)**

**QUALIFIED REPORTING ENTITY SERVICES AGREEMENT**

**EXHIBIT 5.1**  
**CONTRACT PRICE**

*[Bidders offering Buyer option to extend term to 30 years to include pricing for that period.]*

**EXHIBIT 6.1**

**Description of Seller's Facility**

*[To be populated based on the information provided by Bidder in response to RFP.]*

## **EXHIBIT 6.1 — Attachments**

1. \_\_\_\_\_ Site Map
2. Distance Between Wind Turbines of Adjacent Qualifying Facilities, if applicable
3. As-Builts
4. Wind Turbine manufacturer's power curve
5. [Other]



**EXHIBIT 8.4.1**

**FORM OF SUBORDINATED MORTGAGE**

## EXHIBIT 9.2

### POINT OF DELIVERY/INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

Instructions to Seller:

1. Include description of point of metering, and Point of Interconnection
2. Include description of Point of Delivery
3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.
4. Provide transmission single line drawing of the transmission path from the Point of Interconnection to the Point of Delivery 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 Point of Interconnection to the Point of Delivery.
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 Delivery and in compliance with Seller's transmission rights between the Point of Interconnection and the Point of Delivery ("Maximum Transmission Rate"):

\_\_\_\_\_ MW.

## EXHIBIT 9.2 – Attachments

1. Substation Metering One-Line Diagram

**EXHIBIT 9.5**

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

[DATE]

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

To Whom it May Concern:

\_\_\_\_\_ ("Seller") hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Seller's interconnection information with marketing function employees of PacifiCorp, including but not limited to those in Energy Supply Management. Seller acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_

**EXHIBIT 11.4**

**FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT**

## 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: \$1,000,000 – each accident, \$1,000,000 by disease – each employee, and \$1,000,000 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) Facility Capacity Rating under 200 KW - \$1,000,000
- (b) 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 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 Facility at the time PacifiCorp's review takes place.