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**POWER PURCHASE AGREEMENT**

**BETWEEN**

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

**AND**

**PACIFICORP**

**DATED [\_\_\_\_\_] , 20[21]**

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## **EXHIBITS**

Exhibit A	Expected Monthly Net Output; Maximum Delivery Rate; Expected Nameplate Capacity Rating
Exhibit B	Description of Seller's Facility
Exhibit C	Seller's Interconnection Facilities
Exhibit D	Required Facility Documents
Exhibit E	Real Estate Documents
Exhibit F	Performance Guarantee
Exhibit G	Form of Parent Guaranty
Exhibit H	Seller Authorization to Release Generation Data to PacifiCorp
Exhibit I	Required Insurance
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Exhibit L	Party Notice Information
Exhibit M	Form of Lender Consent
Exhibit N	Project Milestones
Exhibit O	Potential Net Output

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”) is entered into as of [\_\_\_\_], 20[21] (the “Execution Date”), by and between [COMPANY NAME], a [TYPE OF ORGANIZATIONAL ENTITY AND STATE OF ORGANIZATION] (“Seller”), and PacifiCorp, an Oregon corporation (“PacifiCorp”). Seller and PacifiCorp are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

A. Seller intends to construct, own, operate and maintain the Facility (as such term is defined in Section 1.1)<sup>1</sup> upon the terms and conditions set forth herein; and

B. Seller desires to sell to PacifiCorp, and PacifiCorp desires to purchase from Seller, Product (as such term is defined in Section 1.1) from the Facility, upon the terms and conditions set forth herein; and

C. PacifiCorp intends to include certain Product in its resource planning and to designate this Agreement as a Network Resource for purposes of serving network load.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises 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 capitalized term appears, initially capitalized terms used in this Agreement shall have the following meanings:

“Abandonment” means: (a) the relinquishment of all possession and control of the Facility by Seller; (b) after commencement of construction of the Facility, but prior to the Commercial Operation Date, the complete cessation of the construction, testing and commissioning of the Facility for ninety (90) consecutive days; and (c) after the Commercial Operation Date, the complete cessation of the operation of the Facility for ninety (90) consecutive days; provided, in the case of (a), (b) and (c) above, that such relinquishment or cessation is not caused by or attributable to an Event of Default by PacifiCorp, a written request by PacifiCorp, or an event of Force Majeure.

“Affected Party” is defined in Section 14.1.

“Affiliate” means, with respect to any designated Person, each Person that directly or indirectly controls, is controlled by, or is under common control with, such designated Person, with “control” meaning the possession, directly or indirectly, of the power to direct management

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<sup>1</sup> Note to Bidders: This Agreement contains some provisions which are only applicable to renewable energy resources; these provisions will be deleted, revised or supplemented accordingly where the Facility is a gas-fired Generating Facility.

and policies, whether through the ownership of voting securities or by contract or otherwise; provided, however, that notwithstanding the foregoing, with respect to PacifiCorp, “Affiliate” only includes 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, Interconnection Provider, Transmission Provider or the Market Operator representing the maximum Net Output for the Facility.

“Agreement” is defined in the Preamble.

“As-built Supplement” is a supplement to Exhibit B, as provided in Section 6.1, which provides the final “as-built” description of the Facility, including the Point of Delivery.

“Assign” is defined in Section 20.1.

“Availability” is defined in Exhibit F.

“Business Day” means every day other than a Saturday, Sunday or day which is a legal holiday in [Portland, Oregon][Salt Lake City, Utah]<sup>2</sup> on which banks are not generally open for business.

“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 and any of those services necessary to support the transmission of electric power from Seller to PacifiCorp and to maintain reliable operations of the System, including voltage control, operating reserve, spinning reserve and reactive power. Capacity Rights do not include any Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Commercial Operation” means that the Expected Nameplate Capacity Rating of the Generating Facility is fully operational and reliable at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and the Facility is fully interconnected, fully integrated, and synchronized with the System, which occurs when all of the following events (a) have occurred, all of which are Seller’s responsibility to achieve, receive or obtain, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice pursuant to Section 2.2 that Commercial Operation has occurred:

(i) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer certifying: (A) the Nameplate Capacity Rating of the Generating Facility

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<sup>2</sup> Note to Bidders: Facilities interconnecting or delivering to PacifiCorp’s eastern balancing area will default to Salt Lake City, Utah for purposes of the definition of Business Day, and facilities interconnecting or delivering to PacifiCorp’s western balancing area will default to Portland, Oregon.

at the anticipated time of Commercial Operation, which must be at least equal to or greater than the Required Percentage of the Expected Nameplate Capacity Rating; and (B) that the Generating Facility is able to generate electric energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement;

(ii) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer certifying that, in conformance with the requirements of the Generation Interconnection Agreement: (A) all required Interconnection Facilities have been constructed; (B) all required interconnection tests have been completed; and (C) the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement;

(iii) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer certifying that Seller has obtained or entered into all Required Facility Documents;

(iv) PacifiCorp has received a certificate from an officer of Seller stating that neither Seller nor the Facility are in violation of or subject to any liability under any Requirements of Law;

(v) Seller has satisfied its obligation to pay for any network upgrades or other interconnection costs required under the Generation Interconnection Agreement; and

(vi) If required pursuant to Section 8, PacifiCorp has received the Default Security.

“Commercial Operation Date” means the date that Commercial Operation is achieved for the Facility in accordance with Section 2.2.2 but in no event earlier than thirty (30) days before the Scheduled Commercial Operation Date.

“Commission” means the [\_\_\_\_\_].<sup>3</sup>

“Compensable Curtailment” means Net Output that is curtailed for economic reasons by PacifiCorp (acting in its merchant function capacity) or that PacifiCorp otherwise refuses to take for economic reasons during the Term and that is not Non-Compensable Curtailment.

“Compensable Curtailment Energy” is defined in Section 4.5.2.

“Compensable Curtailment Price” means the applicable price, expressed in \$/MWh, for Compensable Curtailment Energy stated in Exhibit K.

“Confidential Business Information” is defined in Section 23.1.

“Contract Interest Rate” means the lesser of: (a) the highest rate permitted under applicable Requirements of Law; or (b) two hundred (200) basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to

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<sup>3</sup> Note to Bidders: The “Commission” will be the relevant state commission with jurisdiction over the Facility and/or this Agreement.

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 will be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with Ten Billion Dollars (\$10,000,000,000) 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, Capacity Rights and Green Tags stated in Exhibit K.

“Contract Year” means any consecutive twelve (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 twelve (12) month period.

“Controlling Interest” means, with respect to a Person, more than fifty percent (50%) of the outstanding ownership interests of such Person, or the power to vote such percentage of ownership interests.

“Credit Requirements” means: (a) in the case of Seller and a Qualifying Person, Seller or such Qualifying Person has a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of: (i) ‘BBB+’ or greater from S&P; or (ii) ‘Baa1’ or greater from Moody’s; provided that if such ratings are split, the lower of the two ratings must be at least ‘BBB+’ from S&P or ‘Baa1’ from Moody’s; provided further that if (i) or (ii) 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; and (b) in the case of a Qualifying Institution, such Qualifying Institution has a credit rating on its long-term senior unsecured debt of at least ‘A’ from S&P and ‘A2’ from Moody’s.

“Default Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to [ ] per kW of the Nameplate Capacity Rating.

“Defaulting Party” is defined in Section 11.1.

“Delay Damages” for any given day are equal to (a) the Expected Net Output for the Facility, expressed in MWh per year, divided by 365, multiplied by (b) PacifiCorp’s Cost to Cover.

“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 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 associated with the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane, and other greenhouse gases that have been determined by 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) Tax Credits or 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 Requirements of Law, and present a material risk under Requirements of Law that the Facility or the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

“Execution Date” is defined in the Preamble.

“Expansion Energy” is defined in Section 7.1.1.

“Expected Monthly Net Output” means the estimated monthly Net Output as determined in Exhibit A.

“Expected Nameplate Capacity Rating” means the expected maximum instantaneous generation capacity of the Generating Facility, expressed in MW, when operated in compliance with the Generation Interconnection Agreement and consistent with the Generating Facility’s equipment manufacture’s’ operating parameters. The Expected Nameplate Capacity Rating is specified in Exhibit A.

“Expected Net Output” means the estimated Net Output in the first full Contract Year as set forth in Exhibit A.

“Facility” means the Generating Facility.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and 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 Section 2.2.3.

“Firm Market Price Index” means the hourly value calculated based on the average prices reported by the Intercontinental Exchange, Inc. (“ICE”) Day-Ahead [Mid-C][Palo Verde] On-Peak Index and the ICE Day-Ahead [Mid-C][Palo Verde] Off-Peak Index for a given day, weighted by the count of hours for each ICE Index on such day, multiplied by the hourly CAISO day-ahead market locational marginal price for the “[PACW][PACE]. DGAP\_[PACW][PACE]-APND” location, and divided by the average of the same CAISO index over all hours in such day. If any index is not available for a given period, the Firm Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index 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 under this Agreement, during the Term, then the Parties must agree upon a replacement Firm Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the hourly price of electricity for the applicable periods.<sup>4</sup>

“Force Majeure” or an “event of Force Majeure” are defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as described in Exhibit J, and specifically excludes any Maintenance Outage or Planned Outage.

“Generating Facility” means a [\_\_\_\_\_] -powered generating facility for the generation of electric energy located in [\_\_\_\_\_] County, [\_\_\_\_\_] , with an Expected Nameplate Capacity Rating of [\_\_\_\_\_] MW, as more fully described in Exhibit B, including all equipment, devices, associated appurtenances owned, controlled, operated and managed by or on behalf of Seller in connection with, or to facilitate, (a) the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp or (b) to interconnect with the System.

“Generation Interconnection Agreement” means the generator interconnection agreement entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities, as accepted for filing by FERC to the extent required, which shall at all times make available, or allocate, interconnection capacity to the Facility at no less than the Expected Nameplate Capacity Rating.

“Governmental Authority” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp, the Facility 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 Person owned or controlled by any of the foregoing.

“Green Tags” means: (a) the Environmental Attributes associated with all Net Output; and (b) the Green Tag Reporting Rights associated with such 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

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<sup>4</sup> Note to Bidders: This Agreement will adjust the definition of “Firm Market Price Index” appropriately to reflect the location and type of resource.

Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility.

“Green Tags Price Component” means: (a) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three (3) 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 (b) 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 applicable Requirements of Law to applicable Governmental Authorities or other Persons at such purchaser’s discretion, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“Guaranty” means a guaranty issued by a Qualifying Person substantially and in all material respects in the form attached as Exhibit G.

“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 Requirements of Law.

“Indemnified Party” means any of the PacifiCorp Indemnitees or the Seller Indemnitees as the indemnified parties pursuant to Sections 12.1.1, 12.1.2 or 12.1.3, as the case may be.

“Indemnifying Party” means Seller or PacifiCorp as the indemnifying Party pursuant to Sections 12.1.1, 12.1.2 or 12.1.3, as the case may be.

“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.<sup>5</sup>

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as the same may be amended from time to time.

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<sup>5</sup> Note to Bidder: This Agreement assumes the Facility will interconnect directly to PacifiCorp’s transmission system. If a bidder’s Facility intends to interconnect to another transmission provider’s transmission system, then this Agreement will be revised as appropriate.

“KW” means kilowatt.

“Lender” means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, back leverage financing or credit derivative arrangement) to Seller or Seller’s Affiliates for: (a) the construction, term or permanent financing or refinancing of the Facility; (b) working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) 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) the purchase of the Facility and related rights from Seller.

“Lender Consent” is defined in Section 20.3.

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

- (a) is issued by a Qualifying Institution;
- (b) 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 under this Agreement;
- (c) permits PacifiCorp to draw the entire amount available if such letter of credit is not renewed or replaced at least thirty (30) days prior to its stated expiration date with substitute Security in accordance with the requirements of Section 8;
- (d) is transferable by PacifiCorp to any Person to which PacifiCorp may assign this Agreement; and
- (e) remains 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 reasonably acceptable to PacifiCorp who: (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification, evaluation or opinion 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 providing a certification, evaluation or opinion; (c) is not an employee of Seller or any Affiliate of Seller; and (d) is not employed by: (i) an engineer, contractor or designer or otherwise involved in the development, design, engineering or construction of the Facility; or (ii) a manufacturer or supplier of any equipment installed in the Facility.

“Local Time” means [Pacific][Mountain] Standard Time or [Pacific][Mountain] Daylight Time, as applicable, in the state in which the Facility is located on the day in question.<sup>6</sup>

“Maintenance Outage” means NERC Event Type MO, as described in Exhibit J, and specifically includes any outage involving ten percent (10%) of the Net Output of the Facility 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 or any organized day-ahead or intra-hour market.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility at 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.

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

“MW” means megawatt.

“MWh” means megawatt-hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Generating Facility, expressed in MW, when operated in compliance with the Generation Interconnection Agreement and consistent with the Generating Facility’s equipment manufacturers’ operating parameters. The Nameplate Capacity Rating of the Generating Facility shall be the Nameplate Capacity Rating of the Generating Facility specified by Seller in writing to PacifiCorp and accepted or deemed accepted by PacifiCorp, in each case, in accordance with the requirements of the definition of Commercial Operation and Section 2.2.2 or Section 2.2.3, as applicable.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Generating Facility, less station use and transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any, delivered to and received by PacifiCorp at the Point of Delivery. For purposes of calculating payments under this Agreement, Net Output will be the amount of energy flowing through, and delivered at, the Point of Delivery.

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

“Network Resource” is defined in the Tariff.

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<sup>6</sup> Note to Bidders: This Agreement will refer to Mountain or Pacific Prevailing Time based on the physical location of the Facility.

“Network Upgrades Amount” is defined in Section 4.2.2.

“Non-Compensable Curtailment” is defined in Section 4.5.1.

“Non-Compensable Curtailment Energy” is defined in Section 4.5.2.

“Notice” is defined in Section 22.1.

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

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

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

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.12.

“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, stated in \$/MWh, between (a) the time weighted average of the Firm Market Price Index for each day for which the determination is being made and (b) the Contract Price in effect on each such day.

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

“Performance Damages” is defined in Exhibit F.

“Performance Guarantee” is defined in Exhibit F.

“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.

“Person” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

“Planned Outage” means NERC Event Type PO, as described in Exhibit J, 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 C.

“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 determined by Seller utilizing the Facility’s SCADA system and 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 relevant meteorological conditions at the Facility, Facility availability, applicable manufacturer power curves provided by Seller to PacifiCorp in accordance with Exhibit B, 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, all of which shall be in accordance with Exhibit O.

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

“Proceedings” is defined in Section 24.3.

“Product” means all: (a) Net Output; (b) Green Tags; and (c) Capacity Rights, in each case, arising from or relating to the Facility.

“Project Development Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to [ ] per kW of the Expected Nameplate Capacity Rating.

“Project Milestone” means each of the milestones listed in Exhibit N.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry for 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 the same may be amended from time to time.

“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 Ten Billion Dollars (\$10,000,000,000) (net of reserves) and who satisfies the Credit Requirements.

“Qualifying Person” means a Person who satisfies the Credit Requirements.

“Required Facility Documents” means the Permits and other authorizations, rights and agreements necessary for construction, ownership, operation, and maintenance of the Facility, and to deliver the Product to PacifiCorp in accordance with this Agreement and Requirements of Law, including those listed in Exhibit D.

“Required Percentage” means [\_\_\_\_\_] percent ([\_]%).<sup>7</sup>

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

“Restricted Period” is defined in Section 11.4.

“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” means Project Development Security and/or Default Security

“Security Provider” means a Qualifying Person providing a Guaranty or a Qualifying Institution providing a Letter of Credit.

“Seller” is defined in the Preamble.

“Seller Indemnities” is defined in Section 12.1.2.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price (in \$/MWh) and (b) the net proceeds actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required under this Agreement (in \$/MWh).

“SQMD” is defined in Section 9.5.

“System” means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which includes the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as provided in the Generation Interconnection Agreement.

“Tariff” means PacifiCorp’s Open Access Transmission Tariff on file with FERC, as the same may be revised from time to time.

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

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<sup>7</sup> Note to Bidders: The Required Percentage will depend upon, among other things, the type of resource of the Generating Facility.

“Term” is defined in Section 2.1.

“Transmission Provider” means PacifiCorp Transmission, including PacifiCorp’s business unit responsible for the safe and reliable operation of PacifiCorp’s balancing authority areas.

“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 “Sections” or “Exhibits” are to sections of or exhibits to this Agreement; (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 in this Agreement must 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 Requirements of Law mean that Requirements of Law as amended, modified, supplemented or superseded from time to time and includes all rules and regulations promulgated thereunder; (i) the word “or” is not necessarily exclusive; (j) all references to energy and capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (k) reference to “days,” “months” and “years” means calendar days, months and years, respectively, unless expressly stated otherwise in this Agreement.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term in this Agreement must be construed according to its fair meaning and not strictly for or against either Party. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

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

1.2.4 Interpretation with FERC Orders. Each Party conducts 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 Transmission 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.

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

(b) Notwithstanding any other provision in this Agreement to the contrary, 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 breach, default, or event of default under the Generation Interconnection Agreement or any such other agreement, will alter or modify the Parties' rights, duties, and obligations in this Agreement. This Agreement will not be construed to create any rights between Seller and Interconnection Provider or between Seller and Transmission Provider.

(c) Seller acknowledges that, for purposes of this Agreement, Interconnection Provider and Transmission Provider are deemed separate entities and separate contracting parties from PacifiCorp. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser in this Agreement, 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; MILESTONES**

2.1 Term. This Agreement shall be effective when it has been executed and delivered by both Parties and has been filed by PacifiCorp in accordance with applicable Commission rules (the "Effective Date") and, unless earlier terminated as provided in this Agreement, shall remain in effect until [ ] (the "Term").<sup>8</sup>

### 2.2 Milestones.

2.2.1 Project Milestones. Time is of the essence in the performance of this Agreement, and Seller's completion of the Facility and delivery of Product by the Scheduled Commercial Operation Date is critically important. Therefore, Seller must achieve each of the Project Milestones specified in Exhibit N on or before 16:00 hours Local Time on the date specified for each Project Milestone in Exhibit N.

2.2.2 Completion of Commercial Operation. Seller must provide notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation in accordance with the requirements of the definition of Commercial Operation, which notice shall include the Nameplate Capacity Rating of the Generating Facility (which shall not be less than the Required Percentage of the Expected Nameplate Capacity Rating), and the documentation

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<sup>8</sup> Note to Bidders: Depending on the location of the Facility, there may be associated filing or approval requirements with the applicable state public utility commission.

required in the definition of Commercial Operation. PacifiCorp must respond to Seller's notice within ten (10) Business Days of receipt of a notice satisfying the requirements of the preceding sentence. If PacifiCorp does not respond to Seller's complying notice within such time period, then the Commercial Operation Date will be deemed to be the date of PacifiCorp's receipt of such complying notice from Seller. If PacifiCorp informs Seller in writing within such ten (10) Business Day period that PacifiCorp believes the Facility has not achieved Commercial Operation, identifying the specific areas of deficiency, then Seller must address the deficiencies stated in PacifiCorp's notice to the reasonable satisfaction of PacifiCorp. The Commercial Operation Date will be the date on which the matters identified in PacifiCorp's deficiency notice have been addressed to PacifiCorp's reasonable satisfaction, notice of which PacifiCorp shall provide to Seller.

2.2.3 If Commercial Operation is achieved at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating (but at least equal to or greater than the Required Percentage of the Expected Nameplate Capacity Rating) and Seller informs PacifiCorp in writing that Seller intends to bring the Facility to one hundred percent (100%) of the Expected Nameplate Capacity Rating, then 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 at one hundred percent (100%) of the Expected Nameplate Capacity Rating ("Final Completion Schedule"). All items on the Final Completion Schedule must be completed and certified as completed by an authorized officer of Seller, and Seller must provide PacifiCorp with certificates and documentation described in the definition of Commercial Operation, *mutatis mutandis*, with respect to the remaining capacity that is required to bring the Facility to one hundred percent (100%) of the Expected Nameplate Capacity Rating and to demonstrate that the Facility can operate at one hundred percent (100%) of the Expected Nameplate Capacity Rating on or before the sixtieth (60<sup>th</sup>) day after the Commercial Operation Date. If (x) on the sixtieth (60<sup>th</sup>) day after the Commercial Operation Date, not all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller has not provided PacifiCorp with the certificates and documents described above or (y) a Final Completion Schedule is not provided to PacifiCorp within ten (10) Business Days following the Commercial Operation Date, then, in each case, the date of Final Completion shall be the same as the Commercial Operation Date and for all purposes of this Agreement the Facility shall include only the equipment and facilities which were part of the Facility when it achieved Commercial Operation.

2.2.4 Completion of Other Project Milestones. Within thirty (30) days of completion of each Project Milestone (other than Commercial Operation) but not later than the date specified for achievement of each Project Milestone listed in Exhibit N, Seller shall notify PacifiCorp in writing of the achievement of the Project Milestone, including such written documentation as specified in Exhibit N in form and substance reasonably satisfactory to PacifiCorp demonstrating achievement of the Project Milestone. Within fifteen (15) Business Days' of receipt of Seller's written notice and documentation, PacifiCorp shall provide Seller with written acceptance or denial of the Project Milestone. If PacifiCorp does not provide written acceptance or denial of any Project Milestone within such fifteen (15) Business Day period, then such Project Milestone will be deemed to have been achieved on the date of receipt of Seller's notice and documentation. If any Project Milestone (other than Commercial

Operation) is not achieved on or before the date specified in Exhibit N, then Seller shall: (a) inform PacifiCorp of a revised projected date for the achievement of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project Milestone); and (b) provide PacifiCorp with a written report containing Seller's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Seller intends to undertake to ensure the timely achievement of Commercial Operation by the Scheduled Commercial Operation Date. If Seller complies with the preceding sentence, including undertaking any remedial action to ensure the timely achievement of Commercial Operation by the Scheduled Commercial Operation Date, then no failure of Seller to achieve a Project Milestone (other than Commercial Operation) on or before the scheduled date in Exhibit N will constitute an Event of Default.

## 2.3 Delay Damages.

2.3.1 If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, then: (a) Seller shall pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the earlier of: (i) the date this Agreement is terminated in accordance with its terms; and (ii) the date that the Facility achieves Commercial Operation; and (b) PacifiCorp may terminate this Agreement pursuant to Section 11.

2.3.2 Without limiting any of Seller's obligations under this Agreement, none of the following shall excuse in any respect Seller's failure to comply in all respects with the provisions in Section 2.2 and Section 2.3.1, no matter what the cause, source or reason: (a) economic hardship, including lack of money or inability to obtain financing; (b) inability to obtain any supply of any good or service; (c) any breakdown or malfunction of any equipment; (d) costs or taxes; (e) anything relating to any Required Facility Documents; (f) Requirements of Law; (g) anything relating to Transmission Provider, Network Service Provider, Interconnection Provider, or the Generation Interconnection Agreement; or (h) increased cost of electricity, steel, labor, transportation or other goods or services required for the Facility.

2.4 Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's delay in achieving Commercial Operation by the Scheduled Commercial Operation Date are difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Delay Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty.

2.5 Damages Invoicing. By the tenth (10<sup>th</sup>) day following the end of the month in which Delay Damages begin to accrue and continuing on the tenth (10<sup>th</sup>) day of each subsequent month while such Delay Damages continue to accrue, PacifiCorp will deliver to Seller an invoice for the amount of Delay Damages due PacifiCorp. No later than ten (10) days after receiving such an invoice and subject to Section 10.3 and Section 10.4, Seller must pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp, the amount stated in such invoice.

2.6 PacifiCorp's Right to Monitor. Seller will provide monthly updates to PacifiCorp concerning the construction schedule and progress of Seller regarding the acquisition, design, major equipment procurement and site delivery, financing, engineering, construction, installation, start-up and testing of the Facility, including any significant developments or delays in achieving Commercial Operation by the Scheduled Commercial Operation Date. PacifiCorp, at its own expense, shall have the right to monitor the construction, installation, start-up and testing of the Facility for compliance with this Agreement; provided, that PacifiCorp shall schedule any visit to the Premises in advance with Seller and PacifiCorp shall comply with Seller's reasonable written health, safety and security requirements provided to PacifiCorp. Notwithstanding anything to the contrary contained herein, nothing in this Agreement will be construed to require PacifiCorp to monitor Seller's development, design, engineering, construction, installation, start-up and testing of the Facility or to review, comment on, or approve any contract between Seller and another Person, and PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damage, circumstance, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp or its Representatives with respect to the acquisition, design, financing, engineering, construction, installation, start-up and testing of the Facility.

2.7 Tax Credits. 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 Product, shall be effective regardless of whether the sale of Product from the Facility is eligible for, or receives, PTCs, ITCs or other Tax Credits or the Facility qualifies for accelerated depreciation for Seller's accounting, reporting or tax purposes during the Term.

### **SECTION 3 REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp's Representations and Warranties. PacifiCorp represents and warrants to Seller that:

3.1.1 Organization. It is duly incorporated, validly existing and in good standing under the laws of the State of its incorporation. It is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the execution and delivery of this Agreement and performance of its obligations under this Agreement makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to materially and adversely affect its ability to perform its obligations under this Agreement.

3.1.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with 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 of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery of this Agreement and the performance of its obligations in this Agreement does not and will not contravene or result in a violation or breach of or default under any provision of its organizational documents, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which its assets are bound, or any Requirement of Law applicable to it.

3.1.5 Valid and Enforceable Agreement. This Agreement is its valid and legally binding obligation, enforceable in accordance with the terms of this Agreement, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

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

3.2.1 Organization. It is duly [incorporated/organized], validly existing and in good standing under the laws of the State of its [incorporation/organization]. It is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the execution and delivery of this Agreement and performance of its obligations under this Agreement makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to materially and adversely affect its ability to perform its obligations under this Agreement.

3.2.2 Authority. It: (a) has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with the terms hereof; (b) has (or will have prior to the Commercial Operation Date) all required legal authority to make wholesale sales of energy from the Facility; and (c) has the power and authority to own and operate the Facility and be present upon the Premises for the Term.

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

3.2.4 No Contravention. The execution and delivery of this Agreement and the performance of its obligations in this Agreement does not and will not:

(a) contravene or result in a violation or breach of or default under any provision of: (i) its organizational documents; (ii) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which its assets are bound; or (iii) any Requirement of Law applicable to it; or

(b) require the consent or approval of or material filing or registration with any Governmental Authority or Person other than the consents and approvals and filings and registrations which are: (i) provided in Exhibit D; or (ii) required in connection with the

construction or operation of the Facility, administrative in nature, and reasonably expected to be obtained in due course.

3.2.5 Valid and Enforceable Agreement. This Agreement is its valid and legally binding obligation, enforceable in accordance with the terms of this Agreement, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

3.2.6 Required Facility Documents. All Required Facility Documents are listed on Exhibit D. Seller holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other date as may be specified under applicable Requirements of Law), and will maintain throughout the Term all Required Facility Documents. Following the Commercial Operation Date, Seller shall promptly notify PacifiCorp of any additional Required Facility Documents not listed on Exhibit D. If reasonably requested by PacifiCorp, Seller shall provide copies of any or all Required Facility Documents.

3.2.7 Delivery of Product. Before the Commercial Operation Date and throughout the Term, Seller shall hold all legal and contractual rights sufficient to enable Seller to deliver Product to PacifiCorp in accordance with the terms and conditions of this Agreement.

3.2.8 Control of Premises. Seller has all legal and contractual rights necessary for Seller to enter upon and occupy the Premises for the purpose of constructing, owning, operating and maintaining the Facility throughout the Term. All real property agreements, including leases and easements, required for the construction, ownership, operation and maintenance of the Facility or the performance of any obligations of Seller in this Agreement are identified in Exhibit E. Seller shall maintain throughout the Term all such real property agreements, including leases and easements, required for the construction, ownership, operation and maintenance of the Facility or the performance of any obligations of Seller in this Agreement. Upon written request by PacifiCorp, Seller shall provide PacifiCorp copies of all memoranda of real property interests recorded in connection with the development of the Facility.

3.2.9 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate of Seller, with respect to this Agreement, the Facility, or the transactions contemplated in this Agreement. No other litigation, arbitration, investigation or proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate of Seller, the effect of which would materially and adversely affect Seller's performance of its obligations in this Agreement.

3.2.10 Eligible Contract Participant. Seller, and any Guarantor, is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

3.2.11 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations under this Agreement. In entering into this Agreement and agreeing to undertake its obligations hereunder, Seller has investigated and determined that it is capable of performing and has not

relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

3.2.12 Renewable Claims. Seller has at all times complied with the Federal Trade Commission requirements set forth in 16 CFR Part 260, Section 260.15 in any communications concerning the Product 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 Net Output or the Facility as belonging to Seller or any of its Affiliates and is not aware of any such claims made by third parties with respect to the Net Output or the Facility.

3.2.13 No Third Party Sales. Seller has not sold, or entered into any contract or agreement to sell, to any Person (other than PacifiCorp pursuant hereto) all or any portion of the Product.

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

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 provided in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties provided in this Section 3 are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, either Party obtains actual knowledge of any event or information that would have caused any of its representations and warranties in this Agreement to be materially untrue or misleading at the time given, such Party shall as soon as practicable provide the other Party with 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 to the maximum extent possible.

## **SECTION 4 DELIVERIES OF NET OUTPUT**

4.1 Purchase and Sale. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive all rights, title and interest that Seller has in and to the Product. Notwithstanding anything to the contrary contained in this Agreement, PacifiCorp shall be under no obligation: (a) to make any purchase hereunder other than Product; (b) to purchase, receive or pay for Net Output in excess of the Maximum Delivery Rate; and (c) except as provided in Section 4.5.2, to purchase, receive or pay for Net Output that is not delivered to the Point of Delivery. In addition, during the ninety (90)-day period prior to the Scheduled Commercial Operation Date, Seller may 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 Designation as Network Resource; Termination Right.

4.2.1 Within five (5) Business Days following the Effective Date, PacifiCorp will submit an application to the Network Service Provider requesting designation of this Agreement as a Network Resource, thereby authorizing transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Network Service Provider.

4.2.2 Notwithstanding anything to the contrary in this Agreement, PacifiCorp shall have the right to terminate this Agreement if the Network Service Provider confirms through the Tariff study process that network upgrades will be required on the Network Service Provider's transmission system in order to accept PacifiCorp's request to designate this Agreement as a Network Resource, and the estimated cost to PacifiCorp of such network upgrades are in excess of [ ] (the "Network Upgrades Amount"). The termination right under this Section 4.2.2 shall expire as follows: (a) thirty (30) days following PacifiCorp's receipt of written notice from the Network Service Provider that no transmission service study will be necessary in connection with designating this Agreement as a Network Resource; (b) if a transmission service study is required, thirty (30) days following PacifiCorp's receipt of a final transmission service study from the Network Service Provider that confirms the network upgrades costs are estimated to be less than or equal to the Network Upgrades Amount in order to designate this Agreement as a Network Resource; and (c) if a transmission service study is required, thirty (30) days following PacifiCorp's receipt of a final transmission service study from the Network Service Provider that confirms the network upgrades costs are estimated to be greater than the Network Upgrades Amount in order to designate this Agreement as a Network Resource and Seller has not received a notice of termination by PacifiCorp under this Section 4.2.2. If this Agreement is terminated pursuant to this Section 4.2.2, then PacifiCorp shall have no liability to Seller as a result thereof and neither Party will have any liability to the other Party 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 under this Agreement before the effective date of such termination.

4.3 No Sales to Third Parties. One hundred percent (100%) of the Product from the Facility shall be dedicated exclusively to PacifiCorp for so long as this Agreement is in force and effect. Except as provided for in Section 11.7, Seller shall not: (a) sell, divert, grant, transfer or assign Product to any Person other than PacifiCorp or report to any Person that any Product belongs to anyone other than PacifiCorp; (b) provide PacifiCorp with any Product from any source other than the Facility; or (c) divert, redirect or make available the Facility or any resource therefrom to another generating facility or any third party. PacifiCorp may report to any Person that it exclusively owns the Product, including the Capacity Rights, if any, and the Green Tags existing during the Term. The Parties agree that remedies at law may be inadequate in the event of a breach of this Section 4.3, and Seller agrees that PacifiCorp shall be entitled, without proof of actual damages and without necessity of posting bond or other security, to temporary, preliminary and permanent injunctive relief from any Governmental Authority of

competent jurisdiction restraining Seller from committing or continuing any breach of this Section 4.3.

#### 4.4 Delivery Responsibilities.

4.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Seller shall supply and deliver the Product to PacifiCorp at the Point of Delivery.

4.4.2 Title and Risk of Loss of Net Output. Seller warrants that all Product delivered to PacifiCorp shall be free and clear of all liens, claims and encumbrances of any nature or kind. 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 in exclusive control of, and responsible for, any damage or injury caused by, all Output and Discharging Energy up to and at the Point of Delivery. PacifiCorp shall be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

#### 4.5 Curtailment.

4.5.1 Non-Compensable Curtailment. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, Net Output not delivered to the Point of Delivery due to any of the following: (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 or Transmission Provider directs a general curtailment, reduction, or redispatch of generation in the area of the Facility (which would include the Net Output) for any reason; (c) PacifiCorp curtails or otherwise reduces the Net Output in any way in order to meet its obligations to the Market Operator or Transmission Provider to operate within system limitations; (d) the Facility's Output is not received by PacifiCorp at the Point of Delivery because the Facility is not fully integrated or synchronized with the System; or (e) an event of Force Majeure prevents either Party from delivering or receiving Net Output (collectively, "Non-Compensable Curtailment").

4.5.2 Curtailed Amounts. Seller will reasonably determine the MWh amount of Non-Compensable Curtailment ("Non-Compensable Curtailment Energy") and Compensable Curtailment ("Compensable Curtailment Energy") based on the amount of Potential Net Output that could have been but was not generated at the Facility and delivered to PacifiCorp as Net Output because of Non-Compensable Curtailment or Compensable Curtailment. Seller must promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably request to confirm to its reasonable satisfaction the amount of any Non-Compensable Curtailment Energy or Compensable Curtailment Energy. Any disputes between the Parties with respect to the amount or calculation of Compensable Curtailment Energy or Non-Compensable Curtailment Energy will be resolved in accordance with Section 24.

4.6 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, in either its capacity as Transmission Provider or Interconnection Provider.

#### 4.7 Green Tags.

4.7.1 Title. All Green Tags are exclusively dedicated to and vested in PacifiCorp. Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Output at the Generating Facility that gives rise to such Green Tags, including Green Tags associated with station usage.

4.7.2 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. 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 own cost and expense, effectuate the transfer of WREGIS Certificates to PacifiCorp in accordance with the WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form then used by PacifiCorp (a copy of which PacifiCorp will provide to Seller) or elect to act as its own WREGIS-defined Qualified Reporting Entity. Unless the failure to deliver WREGIS Certificates was caused by an 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.

4.7.3 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 maintain registered the Facility by providing copies of all such information as PacifiCorp reasonably requires for such registration.

4.7.4 Renewable Claims. Seller will comply with the Federal Trade Commission requirements set forth in 16 CFR Part 260, Section 260.15 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 Seller or any Seller Affiliate.

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

4.9 Further Assurances. At PacifiCorp's request, Seller shall execute such documents and instruments as may be reasonably required by PacifiCorp to effect recognition and transfer of the Product to PacifiCorp.

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

5.1 Product Payments. PacifiCorp will pay Seller for the Product as stated in this Section 5.1, and Seller shall not be entitled to any compensation over and above the prices stated below for the Product.

5.1.1 Deliveries Prior to the Commercial Operation Date. Beginning no earlier than ninety (90) days before the Scheduled Commercial Operation Date, PacifiCorp will pay Seller for Net Output delivered at the Point of Delivery before the Commercial Operation Date, an amount per MWh equal to the lower of: (a) eighty-five percent (85%) of the Firm Market Price Index for the applicable hour on the applicable day in the applicable month; and (b) eighty-five percent (85%) of the Contract Price; provided, however, that Seller's right to receive payment for energy deliveries under this Section 5.1.1 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.

5.1.2 Deliveries On and After the Commercial Operation Date. For the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp will pay to Seller: (a) the Contract Price per MWh of Net Output delivered at the Point of Delivery; and (b) the Compensable Curtailment Price per MWh of Compensable Curtailment Energy.

5.1.3 Non Compensable Deliveries. PacifiCorp shall not be required to accept from Seller or pay Seller for: (a) any Non-Compensable Curtailment Energy; or (b) Net Output delivered at the Point of Delivery in excess of the Maximum Delivery Rate.

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 (a) transmission costs, transmission line losses and any costs or charges imposed in connection with scheduling and delivery of Net Output up to and at the Point of Delivery and (b) transmission costs, transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider or Transmission Provider in connection with scheduling and delivery of Net Output up to and at the Point of Delivery. Except as provided in Section 4.2, PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output from the Point of Delivery. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall be responsible for all costs and expenses associated with modifications to the Interconnection Facilities or the System (including System upgrades) caused

by or related to the Facility, including all costs and expenses associated with the interconnection of the Facility with the System.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, station service required for 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 Product 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, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Product beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. All Net Output delivered by Seller to PacifiCorp hereunder shall be sales for resale, with PacifiCorp reselling such Net Output. The Contract Price, and Compensable Curtailment Price will 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, exceptions or give backs. In the event any taxes are imposed on a Party for which the other Party is responsible in this Agreement, the Party on which the taxes are imposed must promptly provide the other Party notice and such other information as such other Party reasonably requests with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision of this Agreement 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 of this Agreement; and (b) all taxes and charges (however characterized) now existing or later imposed on or with respect to the Facility and its operation, including any tax or charge (however characterized) payable by a generator of Environmental Attributes.

5.6 Rates Not Subject to Review. The rates for service specified in this Agreement will remain in effect until expiration of the Term, and are not subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party will petition FERC 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 to this Agreement proposed by a Party, a non-party or FERC acting *sua sponte* will be the “public interest” application of the “just and reasonable” standard of review as described 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. No later than thirty (30) days following the Commercial Operation Date, Seller must provide PacifiCorp the As-Built Supplement which will be

incorporated into Exhibit B. The Facility, as reflected in the As-Built Supplement to be provided under this Section, may not: (a) have a Nameplate Capacity Rating that exceeds the Expected Nameplate Capacity Rating; and (b) result in the annual Expected Monthly Net Output, as calculated in Exhibit A, to increase by more than ten percent (10%). Seller may not modify the Facility in a manner that materially alters the As-Built Supplement without PacifiCorp's prior written approval (which approval may not be unreasonably withheld, conditioned or delayed), provided that PacifiCorp shall not be required to approve any modification of the Facility that results or is reasonably likely to result in the Facility violating paragraphs (a), (b) or (c) above.

## 6.2 Standard of Facility Construction and Operation.

6.2.1 General. At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility 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 other Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements of this Agreement; and (f) Prudent Electrical Practice. Seller acknowledges that it has no claim under this Agreement against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) Transmission Provider or Interconnection Provider or with respect to the provision of station service.

6.2.2 Qualified Operator. Seller or an Affiliate of Seller shall operate and maintain the Facility or cause the Facility to be operated and maintained by an entity that has at least two (2) years of experience in the operation and maintenance of similar facilities of comparable size and characteristics to the Facility. Seller must provide PacifiCorp thirty (30) days prior notice of any change in the operator of the Facility.

6.2.3 Fines and Penalties. Without limiting a Party's rights under Section 12.1.3, each Party must pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law as such fines and penalties relate to the subject matter of this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

6.3 Interconnection. Seller is responsible for the costs and expenses associated with obtaining from Interconnection Provider interconnection service for the Facility at its Expected Nameplate Capacity Rating. Seller has no claims under this Agreement 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 Transmission Provider or Interconnection Provider, acting in such capacities, in connection with the Generation Interconnection Agreement or otherwise.

6.4 Coordination with System. Seller's delivery of electricity to PacifiCorp under this Agreement must be at a voltage, phase, power factor, and frequency as reasonably specified by PacifiCorp. Seller will furnish, install, operate, and maintain in good order and repair, and without cost to PacifiCorp, such switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus determined by PacifiCorp to be reasonably necessary for the safe and reliable operation of the Facility in parallel with the

System, or Seller may contract with PacifiCorp to do so at Seller's cost and expense. PacifiCorp must at all times have access to all switching equipment capable of isolating the Facility from the System.

## 6.5 Outages.

6.5.1 Planned Outages. Seller must provide PacifiCorp with an annual forecast of Planned Outages for the Facility for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of each Contract Year, and may update such Planned Outage schedule as necessary to comply with the Generation Interconnection Agreement or Prudent Electrical Practices. Any such update to the Planned Outage schedule must be promptly submitted to PacifiCorp. Seller may not schedule a Planned Outage during any portion of the months of [\_\_\_\_\_] <sup>9</sup>, except to the extent required by the Generation Interconnection Agreement or Prudent Electrical Practices.

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage for the Facility, Seller must notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the Maintenance Outage begins. Seller must take all reasonable measures consistent with the Generation Interconnection Agreement or Prudent Electrical Practices to not schedule any Maintenance Outage during the months of [\_\_\_\_\_]. Notice of a proposed Maintenance Outage by Seller must include the expected start date and time of the Maintenance Outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the Maintenance Outage. PacifiCorp will promptly respond to such notice and may request reasonable modifications in the schedule for the Maintenance Outage. Seller must use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial adverse impact on Seller or the Facility. Once the Maintenance Outage has commenced, Seller must keep PacifiCorp apprised of any changes in the generation capacity available from the Facility during the Maintenance Outage and any changes in the expected Maintenance Outage completion date and time. As soon as practicable, any notifications given orally must be confirmed in writing. Seller shall take all reasonable actions consistent with the Generation Interconnection Agreement or Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3 Forced Outages. Seller must promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp in writing), of any Forced Outage of the Facility resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Generating Facility being unavailable. This report from Seller must 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 must promptly update the report as necessary to advise PacifiCorp of any changed circumstances. As soon as practicable, any oral report must be confirmed in writing to PacifiCorp. Seller shall take all reasonable actions consistent with the Generation

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<sup>9</sup> Note to Bidders: The specific summer and winter months in both Section 6.5.1 and Section 6.5.2 will be identified based on the type of resource and its location in PacifiCorp's west or east balancing authority area.

Interconnection Agreement and Prudent Electrical Practices to avoid and minimize the duration of Forced Outages.

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 in writing), of any limitations, restrictions, deratings or outages reasonably predicted by Seller to affect more than five percent (5%) of the Nameplate Capacity Rating of the Generating Facility for the following day and will promptly update such notice to the extent of any material changes in this information.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the Expected Monthly Net Output provided in 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, (a) Seller must cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party will designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Electric System Authority, as applicable.

6.6.2 Schedule Coordination. If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement due to Seller's lack of standing as a "scheduling coordinator" or other RTO-recognized designation, qualification or otherwise, then Seller shall promptly take all actions necessary to acquire such RTO-recognized standing (or must contract with a third party who has such RTO-recognized standing) so 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. Seller must, by November 1<sup>st</sup> of each year during 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 must prepare such forecasts utilizing a renewable energy resource prediction model or service that is reasonably satisfactory to PacifiCorp and comparable in accuracy to models or services commonly used in the 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 cost and expense, PacifiCorp will solicit and obtain from a qualified renewable 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 must provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility. PacifiCorp will present Seller with an invoice and documentation supporting the costs of obtaining such forecasting data. Seller must 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. If Seller elects to increase 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, then PacifiCorp shall not be required to purchase any Net Output above the Maximum Delivery Rate. Any such replacement, modification or other actions may not materially and adversely impact the ability of either Party to fulfill its obligations under this Agreement, and shall be subject to Section 6.1 in all respects.

6.9 Electronic Communications.

6.9.1 AGC.

(a) Beginning on the Commercial Operation Date, PacifiCorp will dispatch the 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 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's 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 deliveries under this Agreement, Seller must also transmit or otherwise make accessible to PacifiCorp any other data from the Facility that Seller receives on a

real time basis, including Net Output data. Such real time data must be made available to PacifiCorp on the same basis as Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp must also receive the data in four second intervals). If Seller uses a web-based performance monitoring system for the Facility, Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.

6.9.3 Transmission Provider Consent. Within ten (10) days of the Effective Date, Seller must execute and submit to PacifiCorp, a consent in the form provided in Exhibit H or as otherwise required by Transmission Provider, that allows PacifiCorp to read the meter and receive any and all data from 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 must 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 Electronic Fault Log. Seller must maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Effective Date. Seller must provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the month to which the fault log applies.

6.10.2 Other Information to be Provided to PacifiCorp. Following the Effective Date until the Commercial Operation Date, Seller must provide to PacifiCorp a quarterly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior quarter and contemplated for the next quarter.

6.10.3 Information to Governmental Authorities. Seller must, 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 reports to any Governmental Authority or Electric System Authority, along with a statement from an officer of Seller certifying that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller must use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review such information and meet any submission deadlines. PacifiCorp will reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of Five Thousand Dollars (\$5,000) per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.3.

6.10.4 Data Request. Seller must, 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 intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller must use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review such data and meet any submission deadlines.

PacifiCorp will reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of Five Thousand Dollars (\$5,000) per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.4.

6.10.5 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 must promptly provide to PacifiCorp a copy of the same.

6.10.6 Environmental Information. As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental Requirements of Law 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 Facility or 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.

6.10.7 Notice of Material Adverse Events. Seller must promptly notify PacifiCorp of receipt of 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 or otherwise perform its obligations under this Agreement.

6.10.8 Notice of Litigation. Seller must promptly notify PacifiCorp following its receipt of notice or knowledge of the commencement of any action, suit, or proceeding before any Governmental Authority against Seller or any of its Affiliates relating to the Facility or this Agreement, or that could materially and adversely affect Seller's performance of its obligations in this Agreement.

6.10.9 Additional Information. Seller must provide to PacifiCorp such other information as relevant to Seller's performance of its obligations under this Agreement or the Facility as PacifiCorp may, from time to time, reasonably request.

6.10.10 Confidential Treatment. The reports and other information provided to PacifiCorp under this Section 6.10 will be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the reports and other information is provided to PacifiCorp, subject to PacifiCorp's rights to disclose such reports and other information pursuant to Section 6.10.3 and Section 6.10.4, and pursuant to any applicable Requirements of Law. Seller will have the right to seek confidential treatment of any such reports and other information from any Governmental Authority entitled to receive such reports or other information.

6.11 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under (a) the Accounting Standards Codification (ASC) 810, Consolidation of

Variable Interest Entities, and (b) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller 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 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 will 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. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.12 Access Rights. Upon reasonable prior notice and subject to the prudent written safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller must provide PacifiCorp and its employees, agents, inspectors and representatives ("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) as necessary to witness any testing associated with the Facility, including testing with respect to the Performance Guarantee; and (d) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp will 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 such Liabilities are caused by the intentional or negligent act or omission of Seller or its Affiliates or their respective employees, agents and representatives.

6.13 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, conditioned or delayed. Upon PacifiCorp's request and at PacifiCorp's cost and 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 written 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.

6.14 Performance Guarantee. If Seller fails to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit F, then Seller shall be liable to PacifiCorp for the Performance Damages calculated and paid in accordance with Exhibit F. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's failure to satisfy the Performance Guarantee is difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Performance Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty.

## **SECTION 7 RIGHT OF FIRST OFFER**

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

7.1.1 Seller's Duty to Offer Expansion Energy. Subject in all respects to Section 6.1, if, at any time during the Term, Seller or any Affiliate of Seller intends: (a) to install, replace or modify equipment on the Premises which is part of the Facility as of the Commercial Operation Date or, if later, Final Completion, and such installation, replacement or modification is designed to increase the capacity of the Generating Facility to more than the Nameplate Capacity Rating of the Generating Facility; or (b) to install, replace or modify equipment on the Premises which is part of the Facility as of the Commercial Operation Date or, if later, Final Completion, or to otherwise enable the Generating Facility, in each case, to produce more than the Maximum Delivery Rate, then Seller shall first offer (or cause its Affiliate to offer) the excess energy above the Maximum Delivery Rate (the "Expansion Energy"), together with any increased Capacity Rights and Green Tags associated therewith, 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, then Seller (or the applicable Affiliate of Seller) may enter into an agreement to sell the Expansion Energy (together with any increased Capacity Rights and Green Tags associated therewith) to a third party at a price greater than or equal to ninety-five percent (95%) of the price offered to PacifiCorp, provided such sale of Expansion Energy may not in any way adversely impact or alter PacifiCorp's rights or obligations under this Agreement. If Seller (or its Affiliate) wishes to enter into an agreement with a third party at a price that is lower than ninety-five percent (95%) of the price previously offered to PacifiCorp under this Section 7.1.2, then Seller shall first offer (or cause its Affiliate to offer) the lower price to PacifiCorp pursuant to the requirements of this Section 7.

7.1.3 PacifiCorp's Acceptance of Offer. If PacifiCorp accepts an offer made by Seller (or its Affiliate) under Section 7.1.1, then 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 (together with any increased Capacity Rights and Green Tags associated therewith) with provisions proportionally adjusted as appropriate to account for the difference in Net Output, Capacity Rights and Green Tags, but incorporating such changes as are included in the offer made by Seller or its Affiliate and accepted by PacifiCorp.

## **SECTION 8 SECURITY**

8.1 Provision of Security. During the Term, Seller must provide and maintain Security as required by this Section 8. If on the Effective Date, PacifiCorp determines Seller satisfies the Credit Requirements, then Seller must thereafter provide every three (3) months

following the Effective Date all such financial information and records as PacifiCorp may reasonably request in order to verify Seller continues to satisfy the Credit Requirements.

8.2 Project Development Security. If on the Effective Date or at any time thereafter prior to the Commercial Operation Date Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the posting of Project Development Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, Project Development Security. Within five (5) Business Days from receipt of a written request from PacifiCorp at any time prior to the Commercial Operation Date, Seller shall provide to PacifiCorp all such financial information and records as PacifiCorp may reasonably request in order to verify that Seller continues to satisfy the requirements of this Section 8, including that any Project Development Security and the Security Provider continues to satisfy the requirements of this Section 8. If at any time prior to the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Project Development Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, alternate Project Development Security. PacifiCorp shall be entitled to draw upon the Project Development Security for: (A) any Delay Damages due but unpaid to PacifiCorp under this Agreement; (B) damages if this Agreement is terminated under Section 11 because of a Seller Event of Default; and (C) any other amounts owing by Seller to PacifiCorp under this Agreement. Seller shall not be required to maintain the Project Development Security after the Commercial Operation Date if no damages are owed to PacifiCorp under this Agreement and, if applicable, the Default Security has been provided as required under this Agreement.

8.3 Default Security. If on the Commercial Operation Date or at any time thereafter during the Term Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the posting of Default Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, Default Security. Within five (5) Business Days from receipt of a written request from PacifiCorp at any time after the Commercial Operation Date, Seller shall provide to PacifiCorp all such financial information and records as PacifiCorp may reasonably request in order to verify that Seller continues to satisfy the requirements of this Section 8, including that any Default Security and the Security Provider continues to satisfy the requirements of this Section 8. If at any time after the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Default Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, alternate Default Security. PacifiCorp shall be entitled to draw upon the Default Security for: (A) damages if this Agreement is terminated under Section 11 because of a Seller Event of Default; and (B) any other amounts owing by Seller to PacifiCorp under this Agreement. If no obligations or liabilities remain due by Seller to PacifiCorp upon termination of this Agreement, then PacifiCorp must return any remaining Default Security to Seller within sixty (60) days following the termination of this Agreement.

8.4 No Interest on Security. Seller shall not earn or be entitled to any interest on any Security provided pursuant to this Section 8.

8.5 Grant of Security Interest. To secure its obligations under this Agreement, Seller hereby grants to PacifiCorp, as the secured party, a present and continuing security interest in, lien on (and right of setoff against), and assignment of, all Project Development Security or Default Security, as the case may be, posted with PacifiCorp in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PacifiCorp. Seller agrees to take such action as PacifiCorp reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default by Seller, PacifiCorp may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all the Security, including any such rights and remedies under Requirements of Law then in effect; (b) exercise its right of setoff against any and all property of Seller, as the Defaulting Party, in the possession of PacifiCorp or PacifiCorp's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Security then held by or for the benefit of PacifiCorp free from any claim or right of any nature whatsoever by Seller, including any equity or right of purchase or redemption by Seller. PacifiCorp shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to PacifiCorp after such application), subject to PacifiCorp's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.6 Waiver of PacifiCorp Security. Seller hereby waives any and all rights it may have, including under Requirements of Law or otherwise, to require PacifiCorp to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.

8.7 Security is Not a Limit on Seller's Liability. The security contemplated under this Section 8 constitutes security for, but is not a limitation of, Seller's obligations and liabilities under this Agreement and is not PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent PacifiCorp draws on any Security, Seller must, within thirty (30) days following such draw, replenish or reinstate the Security to the full amount then required under this Section 8. If any Security provided by Seller pursuant to this Section 8 will terminate or expire by its terms within thirty (30) days and Seller has not delivered to PacifiCorp replacement Security in such amount and form as is required pursuant to this Section 8, then PacifiCorp shall be entitled to draw the full amount of the Security and to hold such amount as security until such time as Seller delivers to PacifiCorp replacement Security in such amount and form as is required pursuant to this Section 8.

## **SECTION 9 METERING**

9.1 Installation of Metering Equipment. At Seller's cost and expense, Seller shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required by the Generation Interconnection Agreement and this Section 9. Seller shall reasonably cooperate with PacifiCorp in developing any metering protocols necessary for PacifiCorp to comply with the requirements of the Market Operator.

9.2 Metering. Metering must be performed at the locations and in the manner specified in Exhibit C and the Generation Interconnection Agreement, and as otherwise may be necessary to perform Seller's obligations under this Agreement. All quantities of Net Output purchased (other than Compensable Curtailment Energy) must reflect the net amount of energy flowing onto the System at the Point of Delivery.<sup>10</sup>

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment provided for in this Section 9, without PacifiCorp assuming any obligations of Seller under this Section 9. If any of the inspections or tests disclose an error exceeding one half of one percent (0.5%), either fast or slow, then the necessary corrections 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, then the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other Person, 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 be responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Facility. The actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp, unless upon such additional inspection or testing the metering equipment is found to register inaccurately by more than the allowable limits established in Section 9.3, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

9.5 SQMD Plan. Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with PacifiCorp in PacifiCorp's development and submittal to the Market Operator of its Settlement Quality Meter Data ("SQMD") plan for the Facility. The

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<sup>10</sup> Note to Bidders: Depending upon the design of the Facility and the placement of the meters, it may be necessary to include in Exhibit C provisions for determining the amount of Net Output delivered at the Storage Facility Metering Point.

SQMD plan will detail the metering equipment and any calculation or data validation performed as a part of the data submission process to the Market Operator, consistent with the Market Operator's requirements in the then-current version of the "Business Practice Manual for Metering."

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 dedicated to the Facility and only the Facility.

9.7 Meteorological Data. No later than the Commercial Operation Date, Seller shall install, own, inspect, test and maintain during the Term three (3) industry approved remote sensing devices (one of which must at all times be a meteorological data tower) at the Premises in accordance with Prudent Electrical Practice. PacifiCorp shall have the right to periodically inspect and test the meteorological data towers. Seller shall bear all costs relating to performance of its obligations under this Section 9.7, provided that the actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp. Seller shall maintain all data obtained from the meteorological data towers for a period of at least two (2) years and shall make all such data available to PacifiCorp and PacifiCorp Representatives upon written request.

## **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 month during the Term, Seller shall deliver to PacifiCorp an invoice showing the total amount due for all Product delivered or made available to PacifiCorp in such month in accordance with Section 5, including Seller's computation of: (a) the Net Output delivered to the Point of Delivery during such month, including the portion of Net Output that was delivered during On-Peak Hours and Off-Peak Hours, and any Performance Damages during such month; and (b) the Compensable Curtailment Energy, if any, and Non-Compensable Curtailment Energy, if any, during such month. Subject to Section 10.4, PacifiCorp shall pay each invoice on or before the later of (i) the twentieth (20<sup>th</sup>) day following receipt of such invoice or (ii) the thirtieth (30<sup>th</sup>) day following the end of the month to which such invoice applies.

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

10.3 Interest on Late Payments. Any amounts not paid when due under this Agreement will bear interest at the Contract Interest Rate from the date due until but not including the date paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due under an invoice provided under this Agreement, such Party must notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, must pay that portion of the invoice that is undisputed on or before the due date. Any such notice of dispute must 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 in accordance with Section 24 to be due, then the amount due must be paid within five (5) Business Days after such determination, along with interest at the Contract Interest Rate from the date due until but not including the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, has the right, at its cost and expense and 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 under this Agreement or to verify the other Party's performance of its obligations under this Agreement. Upon request, each Party must 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 will be issued and, subject to Section 10.4, any amount due by one Party to the other Party as a result of the corrected statement will be promptly paid including the payment of interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

## **SECTION 11 DEFAULTS AND REMEDIES**

11.1 Defaults. An event of default ("Event of Default") shall occur with respect to a Party (the "Defaulting Party") upon the occurrence of each of the following events and the expiration of any applicable cure period provided for below:

### 11.1.1 Defaults by Either Party.

(a) the Defaulting Party fails to make a payment when due under this Agreement and such failure is not cured within ten (10) Business Days after the Non-Defaulting Party gives notice to the Defaulting Party of such default.

(b) the Defaulting Party fails to perform any material obligation in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not otherwise an identified Event of Default in this Agreement, and such default is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of such default; provided, however, 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 ninety (90) days, then the Defaulting Party will have an additional reasonable period of time to cure such default, not to exceed ninety (90) days following the date of such notice of default, provided that the Defaulting Party provides to the Non-Defaulting Party a remediation plan within fifteen (15) days following the date of such notice of default and the Defaulting Party promptly commences and diligently pursues such remediation plan.

(c) the Defaulting Party breaches one of its representations or warranties in this Agreement and such default is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of such default; provided, however, 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 ninety (90) days, then the Defaulting Party will have an additional reasonable period of time to cure the default, not to exceed ninety (90) days following

the date of such notice of default, provided that the Defaulting Party provides to the Non-Defaulting Party a remediation plan within fifteen (15) days following the date of such notice of default and the Defaulting Party promptly commences and diligently pursues the remediation plan.

(d) the Defaulting 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.

(e) The Defaulting Party fails to comply with the provisions of Section 20 and such failure continues for ten (10) days after the Non-Defaulting Party gives notice to the Defaulting Party of such default.

#### 11.1.2 Defaults by Seller.

(a) Seller fails to deliver, increase or maintain Security as required by Section 8, and such default is not cured within ten (10) days after PacifiCorp gives notice to Seller of such default.

(b) Seller fails to cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date.

(c) Seller sells, delivers or transfers Output or any Product from the Facility to a party other than PacifiCorp in breach of Section 4.3, and Seller does not permanently cease such sale, delivery or transfer within ten (10) days after PacifiCorp gives notice to Seller of such default, 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, and Seller does not permanently cease and correct such public statement or action within ten (10) days after PacifiCorp gives notice to Seller of such default.

(d) Seller fails to sell, deliver or transfer to PacifiCorp all Product from the Facility in accordance with the requirements of this Agreement, and such default is not caused by PacifiCorp's breach of its obligations under this Agreement or otherwise excused under the terms of this Agreement and Seller does not permanently resume the sale, delivery and transfer to PacifiCorp of all Product within ten (10) days after PacifiCorp gives notice to Seller of such default.

(e) After the Commercial Operation Date, Seller fails to obtain or maintain any Required Facility Documents or Permits necessary to own or operate the Facility and such default is not cured within ninety (90) days after PacifiCorp gives notice to Seller of such default.

(f) Seller Abandons construction or operation of the Facility and such Abandonment continues for thirty (30) days after PacifiCorp gives notice to Seller of such default.

(g) Seller fails to obtain or maintain insurance in accordance with the requirements of Section 13 and Exhibit I, and such failure continues for fifteen (15) days after PacifiCorp gives notice to Seller of such default.

(h) Seller fails to comply with the provisions of Section 7 and such failure continues for ten (10) days after PacifiCorp gives notice to Seller of such default.

(i) the Generating Facility fails to satisfy the requirements of the Performance Guarantee for two (2) consecutive Contract Years.

11.1.3 Defaults by PacifiCorp. PacifiCorp fails to receive any Net Output as and when required by this Agreement, and such default is not caused by Seller's breach of its obligations under this Agreement or otherwise excused under the terms of this Agreement and PacifiCorp does not resume receiving Net Output within ten (10) days after Seller gives notice to PacifiCorp of such default.

## 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. If Seller sells, delivers or transfers Output or any Product from the Facility to a party other than PacifiCorp in breach of Section 4.3 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, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c) or Section 11.1.2(d), then Seller shall pay PacifiCorp within five (5) Business Days after receipt of an invoice from PacifiCorp, an amount equal to the sum of (as applicable): (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp or Potential Net Output not delivered to PacifiCorp; provided that any disputes between the Parties with respect to the amount of such Potential Net Output will be resolved in accordance with Section 24, as applicable; (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 determined by PacifiCorp in its sole discretion; (c) damages incurred by PacifiCorp as a result of the failure of Seller to sell and deliver Capacity Rights in accordance with this Agreement, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c) or Section 11.1.2(d); (d) damages incurred by PacifiCorp as a result of the failure of Seller to sell and deliver Green Tags in accordance with this Agreement, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c) or Section 11.1.2(d), which shall be calculated based on the applicable Green Tags Price Component; and (e) any additional cost or expense incurred as a result of Seller's breach of Section 4.3, as reasonably determined by PacifiCorp. PacifiCorp's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.1 shall limit in any respect

PacifiCorp's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 11.3.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to purchase and receive any Net Output as and when required by this Agreement, including upon the occurrence and during the continuation of an Event of Default by PacifiCorp under Section 11.1.3, and such failure is not caused by Seller's breach of its obligations under this Agreement or otherwise excused by Seller's failure to perform under or comply with this Agreement or the terms of this Agreement, then PacifiCorp shall pay Seller within five (5) Business Days after receipt of an invoice from Seller, an amount equal to Seller's Cost to Cover multiplied by the amount of Potential Net Output not purchased and received by PacifiCorp; provided that any disputes between the Parties with respect to the amount of such Potential Net Output will be resolved in accordance with Section 24. Seller's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.2 shall limit in any respect Seller's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 11.3.

### 11.3 Termination and Remedies.

11.3.1 From and during the continuance of an Event of Default, the Non-Defaulting Party will be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the Defaulting Party no less than fifteen (15) days before such termination date. The notice required under this Section 11.3 may be provided in the notice of default delivered pursuant to Section 11.1 (and does not have to be a separate notice), provided it complies with the terms of this Section 11.3.

11.3.2 If PacifiCorp is the Defaulting Party, then:

(a) Seller must provide copies of such termination notice to the notice addresses of the then-current President and General Counsel of PacifiCorp by registered overnight delivery service or by certified or registered mail, return receipt requested; and

(b) Seller's termination notice must state prominently in type font no smaller than 14-point capital letters that "THIS IS A TERMINATION NOTICE UNDER A PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," must state any amount alleged to be owed, and must include wiring instructions for payment.

11.3.3 From and after the date upon which Seller fails to remedy an Event of Default within the cure periods, if any, provided in this Agreement, and until PacifiCorp has recovered all damages incurred on account of such Event of Default by Seller, PacifiCorp may offset its damages against any payment due Seller.

11.3.4 Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, the Non-Defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. The

rights and remedies contemplated by this Section 11 are cumulative such that the exercise of one or more rights or remedies does not constitute a waiver of any other rights or remedies.

11.3.5 In the event of a termination of this Agreement:

(a) Each Party must pay to the other Party all amounts due the other Party under this Agreement for all periods prior to termination, subject to offset by the Non-Defaulting Party against damages incurred by the Non-Defaulting Party.

(b) The amounts due under this Section 11.3 must be paid within thirty (30) days after delivery of an invoice to the Defaulting Party of such amounts and will bear interest at the Contract Interest Rate from the date of termination until but not including the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due under this Agreement.

(c) Without limiting the generality of the foregoing, all provisions of this Agreement that either expressly by their terms survive, or, by their nature are intended to survive or come into or continue in force and effect after the termination or expiration of this Agreement shall remain in effect.

11.4 Right of First Offer for Net Output. If PacifiCorp terminates this Agreement in accordance with Section 11 due to an Event of Default by Seller, then neither Seller nor any Affiliate of Seller may sell, or enter into a contract to sell, any Output, Green Tags or Capacity Rights generated by, associated with or attributable to the Facility or any electric generating facility that from time to time may be constructed by Seller or an Affiliate of Seller on the Premises to a party other than PacifiCorp for a period of three (3) years following the date of such termination of this Agreement (“Restricted Period”). The foregoing prohibition on contracting with and selling to a Person other than PacifiCorp will not apply if, before entering into such contract or making such sale, Seller or Seller’s Affiliate provides PacifiCorp with a written offer to sell the Output, Green Tags and Capacity Rights to PacifiCorp at the rate set forth in this Agreement and otherwise on terms and conditions substantially and in all material respects the same as the terms and conditions in this Agreement and PacifiCorp fails to accept such offer within (a) forty-five (45) days after PacifiCorp’s receipt of such offer if this Agreement had originally been terminated by PacifiCorp after the commencement of construction of the Facility, and (b) one hundred twenty (120) days after PacifiCorp’s receipt of such offer if this Agreement had originally been terminated by PacifiCorp prior to the commencement of construction of the Facility. If PacifiCorp elects to purchase such Output, Green Tags and Capacity Rights, then the Parties shall enter into a binding agreement consistent with the foregoing and otherwise on terms and conditions substantially and in all material respects the same as this Agreement, the same being modified only as necessary to address changes which arise due to the passage of time. Neither Seller nor an Affiliate of Seller may sell or transfer the Facility, or any part thereof, or their land rights or interests in the Premises (including the Generation Interconnection Agreement or interconnection queue position) during the Restricted Period so long as the limitations contained in this Section 11.4 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.4 pursuant to a written agreement approved by PacifiCorp. PacifiCorp shall be permitted to file a notice of the rights

contained in this Section 11.4 with respect to Seller's or any of its Affiliate's interests in the Premises.

11.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Seller, then neither Seller nor an Affiliate of Seller or any successor to Seller's ownership in the Facility or the Premises, may, directly or indirectly, 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 for its full term.

11.6 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, then the Non-Defaulting Party shall be entitled to exercise all rights and remedies provided for in this Agreement or available at law or in equity. Notwithstanding anything to the contrary contained in this Agreement, 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 Event of Default.

11.7 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of its obligations under this Agreement. With respect to Seller, Seller must use commercially reasonable efforts to maximize the price for Net Output 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 not purchased or accepted by PacifiCorp (only after the occurrence and during the continuation of an Event of Default by PacifiCorp), to the extent permitted by Requirements of Law and the Generation Interconnection Agreement. With respect to PacifiCorp, PacifiCorp must use commercially reasonable efforts to minimize the price paid to third parties for energy, Green Tags or Capacity purchased to replace Net Output, Green Tags or Capacity not sold, delivered or transferred by Seller to PacifiCorp as required under this Agreement.

11.8 Security. If this Agreement is terminated because of an Event of Default by Seller, then 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 the amounts that Seller owes PacifiCorp arising from such Event of Default.

11.9 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 the Parties in this Agreement are cumulative and not exclusive of any rights or remedies of the Parties.

## SECTION 12 INDEMNIFICATION AND LIABILITY

### 12.1 Indemnitees.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall indemnify, defend and hold harmless PacifiCorp and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “PacifiCorp Indemnitees”) from and against 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”) resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by Seller of its obligations under this Agreement, or relating to the Facility or the Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person (not Affiliated with PacifiCorp), except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any PacifiCorp Indemnitee. Seller is solely responsible for and will indemnify, defend and hold harmless the PacifiCorp Indemnitees from and against any and all Liabilities resulting from, arising out of, or in any way connected with the breach by Seller 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 indemnify, defend and hold harmless Seller and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) from and against any and all Liabilities resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by PacifiCorp of its obligations under this Agreement for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person (not Affiliated with Seller), except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Seller Indemnitee.

12.1.3 Additional Cross Indemnity. Without limiting Section 12.1.1 and Section 12.1.2, (a) Seller shall indemnify, defend and hold harmless the PacifiCorp Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with (i) the Net Output prior to its delivery by Seller at the Point of Delivery, (ii) any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions of this Agreement, and (iii) PacifiCorp being deemed by an RTO to be financially responsible for Seller’s performance under the Generation Interconnection Agreement pursuant to Section 6.6.2, and (b) PacifiCorp shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with (i) the Net Output at and after its delivery to PacifiCorp at the Point of Delivery in accordance with this Agreement and (ii) any action by any Governmental Authority due to noncompliance by PacifiCorp with any Requirements of Law or the provisions of this Agreement, except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct, or a breach of this Agreement by any PacifiCorp Indemnitee or Seller Indemnitees, respectively.

12.1.4 Indemnification Procedures. Any Indemnified Party seeking indemnification under this Agreement for any Liabilities shall give the Indemnifying Party notice of such Liabilities promptly but in any event on or before thirty (30) days after the Indemnified Party's actual knowledge of the claim or action giving rise to the Liabilities. Such notice shall describe the Liability in reasonable detail, and shall indicate the amount (estimated if necessary) of the Liability that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice. The Indemnifying Party shall assume the defense of the claim or action giving rise to the Liabilities with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. Notwithstanding anything to the contrary contained herein, an Indemnified Party shall in all cases be entitled to control its own defense, at the expense of the Indemnifying Party, in any claim or action if it: (a) may result in injunctions or other equitable remedies with respect to the Indemnified Party; (b) may result in material liabilities which may not be fully indemnified hereunder; or (c) may have a material and adverse effect on the Indemnified Party (including a material and adverse effect on the tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full. If the Indemnifying Party fails to assume the defense of a claim or action, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim or action may be made only with the Indemnifying Party's consent, which consent will not be unreasonably withheld, conditioned or delayed, or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

12.1.5 No Dedication. Nothing in this Agreement will 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 Party under any provision of this Agreement will 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 entity.

12.1.6 Consequential Damages. **NEITHER PARTY WILL 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, INCLUDING DELAY DAMAGES AND PERFORMANCE DAMAGES, , PACIFICORP COST TO COVER DAMAGES AND SELLER COST TO COVER DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL,**

**PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.**

12.2 Survival. The provisions of this Section 12 shall survive the termination or expiration of this Agreement.

**SECTION 13  
INSURANCE**

13.1 Required Policies and Coverages. Without limiting any liabilities or obligations of Seller under this Agreement, Seller must secure and continuously carry the insurance coverage specified on and otherwise perform its obligations under Exhibit I commencing with the start of construction activities at the Premises and continuing thereafter during the Term or such longer period as is specified in Exhibit I.

**SECTION 14  
FORCE MAJEURE**

14.1 Definition of Force Majeure. “Force Majeure” or an “event of Force Majeure” means an event or circumstance that prevents a Party (the “Affected Party”) from performing, in whole or in part, an obligation under this Agreement and that: (a) is not reasonably anticipated by the Affected Party as of the Execution Date; (b) is not within the reasonable control of the Affected Party or its Affiliates; (c) is not the result of the negligence or failure to act by the Affected Party or its Affiliates; and (d) could not be overcome by the use of due diligence by the Affected Party or its Affiliates. Force Majeure includes the following types of events and circumstances (but only to the extent that such events or circumstances satisfy the requirements in the preceding sentence): environmental disasters; civil disturbance; global pandemic; sabotage; strikes; lock-outs; work stoppages; and action or restraint by Governmental Authority; provided that the Affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint. Notwithstanding the foregoing, none of the following shall 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 under this Agreement; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money or the increased cost of electricity, steel, labor, or transportation; (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; (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to an independent event of Force Majeure; (vii) any delay, alleged breach of contract, or failure by Transmission Provider or Interconnection Provider unless due to an independent event of Force Majeure; (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 independent 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 Provider or Interconnection Provider, unless due to an

independent event of Force Majeure; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net Output to any party other than PacifiCorp.

14.2 Suspension of Performance. Neither Party will be liable for any delay in or failure to perform its obligations under this Agreement, nor will any such delay or failure become an Event of Default, to the extent such delay or failure is substantially caused by Force Majeure, provided that the Affected Party: (a) provides prompt (and, in any event, not more than five (5) days') notice of such event of Force Majeure to the other Party, describing the particulars of the event of Force Majeure and giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement; (b) exercises all reasonable efforts to continue to perform its obligations under this Agreement; (c) expeditiously takes action to correct or cure the event of Force Majeure so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event of Force Majeure; provided, however, that nothing herein requires the Affected Party to settle a strike or other labor dispute; (d) exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the event of Force Majeure; and (e) provides prompt notice to the other Party of the cessation of the event of Force Majeure.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before an event of Force Majeure or after an event of Force Majeure that were unaffected by such event of Force Majeure shall be excused by such event of Force Majeure.

14.4 Strikes. Notwithstanding any other provision of this Agreement to the contrary, neither Party will 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 strike, walkout, lockout or other labor dispute, are contrary to its best interests.

14.5 Right to Terminate. If an event of Force Majeure prevents an Affected Party from substantially performing its obligations under this Agreement for a period exceeding one hundred and eighty (180) consecutive days (despite the Affected Party's diligent efforts to remedy its inability to perform), then the other Party may terminate this Agreement by giving ten (10) days prior notice to the Affected Party. Upon such termination, neither Party will have any liability to the other Party 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 under this Agreement before the effective date of such termination.

## **SECTION 15 SEVERAL OBLIGATIONS**

Nothing in this Agreement will 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 will be interpreted and enforced in accordance with the laws of the State of [Utah][Oregon]<sup>11</sup>, without applying any choice of law rules that may direct the application of the laws of another jurisdiction.

## **SECTION 17 PARTIAL INVALIDITY**

If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable terms, provisions or conditions which achieve the purpose intended by the Parties to the greatest extent permitted by law and 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 of this Agreement will be effective unless the waiver is provided in 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 of this Agreement will not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

## **SECTION 19 JURISDICTION OF GOVERNMENTAL AUTHORITIES**

This Agreement is subject to the jurisdiction of those Governmental Authorities having jurisdiction over either Party, the Facility or this Agreement.

## **SECTION 20 SUCCESSORS AND ASSIGNS**

20.1 Restriction on Assignments. Except as provided in this Section 20, neither Party may transfer, sell, pledge, encumber or assign (collectively, "Assign") this Agreement nor any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

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<sup>11</sup> Note to Bidders: Facilities interconnecting or delivering to PacifiCorp's eastern balancing area will be governed by Utah law, and facilities interconnecting or delivering to PacifiCorp's western balancing area will be governed by Oregon law.

20.2 Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with prior notice to the other Party, including the name of the Affiliate), Assign this Agreement to an Affiliate; provided, however, that it shall be a condition precedent to such Assignment that such Affiliate enters into an assignment and assumption agreement pursuant to which such Affiliate assumes all of the assigning Party's obligations under this Agreement and otherwise agrees to be bound by the terms of this Agreement; provided, further that in the case of Assignment by Seller: (a) such Affiliate must possess the same or similar experience and the same or better creditworthiness as Seller as of the Execution Date, as reasonably determined by PacifiCorp; and (b) any Security required pursuant to Section 8 must be replaced or remain in full force and effect. In addition, PacifiCorp may without the need for consent from Seller (but with prior notice to Seller, including the name of the assignee) Assign this Agreement in whole or in part to any Person in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp will be released from all liability under this Agreement; provided, however, that it shall be a condition precedent to such Assignment that such assignee: (i) enters into an assignment and assumption agreement pursuant to which such assignee assumes all of PacifiCorp's obligations under this Agreement and otherwise agrees to be bound by the terms of this Agreement; and (ii) has the same or better credit rating as PacifiCorp as of the Execution Date. Any Party seeking to Assign this Agreement shall be solely responsible for paying all costs and expenses of Assignment, including any costs and expenses incurred by the other Party in connection with the review and/or execution and delivery of the assignment and assumption agreement and any other documents required in connection with the Assignment.

20.3 Project Lender. Seller may, without relieving itself from its obligations and liabilities under this Agreement, Assign this Agreement or the revenues or proceeds thereof, or all or any part of its ownership interest in the Facility, including the Premises, to a Lender in connection with a financing or refinancing of the Facility; provided, however, that it shall be a condition precedent to the effectiveness of any such Assignment that: (a) Seller provides no less than ten (10) Business Day's prior notice thereof to PacifiCorp; and (b) Seller, PacifiCorp and Lender have entered into a consent to collateral assignment agreement, substantially and in all material respects in the form attached hereto as Exhibit M (a "Lender Consent"); provided that Seller shall reimburse PacifiCorp for all reasonable costs and expenses incurred by or on behalf of PacifiCorp in connection with the Lender Consent.

20.4 Controlling Interest. No Controlling Interest in Seller may be directly or indirectly Assigned (whether through a single transaction or a series of transactions over time) without PacifiCorp's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. This Section 20.4 shall not apply or restrict any Assignment of a Controlling Interest in Seller in accordance with the other provisions of this Section 20.

## **SECTION 21**

### **ENTIRE AGREEMENT; AMENDMENTS**

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

## SECTION 22 NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a “Notice”) shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the addressees and addresses set out in Exhibit L, as the same may be modified from time to time by Notice from the respective Party to the other Party. All Notices required by this Agreement shall be sent by regular first class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. Such Notices will be deemed effective and given upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed effective and given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 Local Time, and if transmitted after that time, on the following Business Day, provided that Notices transmitted by electronic mail must be followed up by Notice by other means as provided for in this Section to be effective. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee set out in Exhibit L, as the same may be modified from time to time by Notice from the respective Party to the other Party, and the delivery thereof is refused by such addressee, then such Notice shall be deemed given and effective upon such tender. In addition, Notice of termination of this Agreement under Section 11.3 must contain the information required by Section 11.3 and, where PacifiCorp is the Defaulting Party, must be sent to the then-current President and General Counsel of PacifiCorp as required to by Section 11.3.2.

## 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; and (b) any information delivered by PacifiCorp to Seller prior to the Execution Date relating to the market prices of energy and methodologies for its determination or estimation. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. “Confidential Business Information” shall not include information that: (i) is in or enters the public domain through no fault of the Party receiving such information; or (ii) was in the possession of the receiving Party prior to the Execution Date, other than through delivery thereof as specified in subsections (a) and (b) 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 Governmental Authority; 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). 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 Party, 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 6.13, before either Party issues any news release or publicly distributed promotional material that mentions the Facility (other than project name, technology type, size and location), such Party will first provide a copy thereof to the other Party for its review and approval. Any use of either Party's name in any 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, the Parties must first attempt in good faith to resolve informally all disputes arising out of, related to or in connection with this Agreement. Any Party may give the other Party 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 executives, or if no meeting of such executives has taken place within fifteen (15) days after such referral, then, subject to Section 24.2, either Party may initiate any legal remedies available to the Party. No statements of position or offers of settlement made in the course of the dispute process described in this Section 24.1 will: (a) be offered into evidence for any purpose in any litigation between the Parties; (b) be used in any manner against either Party in any such litigation; or (c) 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, will be promptly returned to the Party providing the same.

24.2 Mediation. If the dispute is not resolved under the procedures provided in Section 24.1, then either Party may request by Notice delivered to the other Party that the matter be submitted to non-binding mediation. If either Party requests non-binding mediation in accordance with the immediately preceding sentence, then the dispute must be submitted to non-binding mediation before the Parties may exercise their rights under Section 24.3. The costs of the mediation, including fees and expenses, will be borne equally by the Parties. All verbal and written communications between the Parties and issued or prepared in connection with the mediation will be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and will be exempt from discovery and production, and will not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

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 this Agreement (“Proceedings”) will be brought exclusively in the state and federal courts in [Portland, Oregon][Salt Lake City, Utah]<sup>12</sup>. By execution and delivery of this Agreement, each Party: (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts over each Party for the purpose of the Proceedings; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts arising out of the Proceedings; (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 of the Proceedings brought in such courts (including any claim that any such Proceeding has been brought in an inconvenient forum) in connection herewith; (d) agrees that service of process in any such Proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address stated in this Agreement; and (e) agrees that nothing in this Agreement affects the right to effect service of process in any other manner permitted by law.

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<sup>12</sup> Note to Bidders: Facilities interconnecting or delivering to PacifiCorp’s eastern balancing area will default to the courts in Salt Lake City, Utah, and facilities interconnecting or delivering to PacifiCorp’s western balancing area will default to the courts in Portland, Oregon.

24.4 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, 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 TO ENTER INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON, OR ARISING OUT OF, UNDER 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, each of the Parties have caused this Agreement to be executed by its duly authorized officer or representative as of the date last written below.

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

PACIFICORP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### EXPECTED MONTHLY NET OUTPUT; MAXIMUM DELIVERY RATE; EXPECTED NAMEPLATE CAPACITY RATING<sup>13</sup>

#### I. Expected Monthly Net Output

Month	On-Peak Energy (MWh)	Off-Peak Energy (MWh)	Total Energy (MWh)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
Expected Net Output			

The energy values above will be reduced [ ] percent ([ ]%) each Contract Year following the first Contract Year.

#### II. Maximum Delivery Rate

The Maximum Delivery Rate: [ ] MWh

#### III. Expected Nameplate Capacity Rating

The Expected Nameplate Capacity Rating: [ ] MW

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<sup>13</sup> Note to Bidders: Prior to executing this Agreement, Seller will be required to provide PacifiCorp information sufficient to allow PacifiCorp to reasonably verify the output estimates stated in Exhibit A.

**EXHIBIT B**  
**DESCRIPTION OF SELLER'S FACILITY**

*[Provide a detailed description of the Facility, including the following, as applicable:]*

Type (synchronous or inductive):

Generating Facility Nameplate Capacity Rating:

Model:

Number of Phases:

Power factor requirements:

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

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: \_\_\_\_ A; Rotor: \_\_\_\_ A

Maximum kW Output: \_\_\_\_ kW

Maximum kVA Output: \_\_\_\_ kVA

Minimum kW Output: \_\_\_\_ kW

Station service requirements, and other loads served by the Facility, if any:

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Location of the Facility: *[Please include city and county, and legal description of parcel]*

## **EXHIBIT C**

### **SELLER'S INTERCONNECTION FACILITIES**

*[Instructions to Seller:*

- 1. Include description of Point of Delivery*
- 2. Provide interconnection single line drawing of the Facility including any transmission facilities on Seller's side of the Point of Delivery.]*

**EXHIBIT D**  
**REQUIRED FACILITY DOCUMENTS**

*[REQUIRED OF ALL FACILITIES:*

*Generation Interconnection Agreement (or list of studies and study agreements  
completed as of the Effective Date)*

*Depending upon the type of Facility and its specific characteristics, additional Required Facility  
Documents may be requested.]*

**EXHIBIT E**  
**REAL ESTATE DOCUMENTS**

## EXHIBIT F<sup>14</sup>

### PERFORMANCE GUARANTEE

#### A. Definitions.

“Excluded Amount” has the meaning set forth in the definition of “Guaranteed Amount” in Section A of this Exhibit F.

“Expected Energy” means, for any Contract Year, the Expected Net Output for such Contract Year as determined in accordance with Exhibit A of this Agreement. If at Final Completion the Facility’s Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating (but at least equal to or greater than the Required Percentage of the Expected Nameplate Capacity Rating), then the Expected Net Output and the Expected Energy in each Contract Year shall be reduced proportionally for each full MW of Nameplate Capacity Rating below the Expected Nameplate Capacity Rating. Seller acknowledges that PacifiCorp will include the Expected Energy in PacifiCorp’s resource planning.

“Expected Energy Amount” has the meaning set forth in the definition of “Guaranteed Amount” in Section A of this Exhibit F.

“Guaranteed Amount” means, for any Contract Year, (i) [ninety percent (90%)] of the Expected Energy of the Facility for such Contract Year (in MWh) (the “Expected Energy Amount”), less (ii) the sum of: (x) the Compensable Curtailment Energy during such Contract Year; (y) the Non-Compensable Curtailment Energy during such Contract Year; and, without duplication, (z) any quantities of Output that were not delivered to the Point of Delivery (or accepted by PacifiCorp at the Point of Delivery) in such Contract Year during periods of Uncontrollable Circumstances (such quantities to be 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) (the sum of (x), (y) and (z), each measured in MWh, the “Excluded Amount”).

“Output Shortfall” has the meaning set forth in Section B(2)(b) of this Exhibit F.

“Performance Guarantee” has the meaning set forth in Section B(1) of this Exhibit F.

“Performance Damages” has the meaning set forth in Section B(2)(c) of this Exhibit F.

“Uncontrollable Circumstances” means, in respect of any Contract Year, any periods during which the Generating 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 or circumstances, each as recorded by Seller’s SCADA and indicated by Seller’s electronic fault log and not caused by Seller’s acts or omissions: (a) an emergency or event of Force Majeure; (b) the System operating outside the voltage or frequency limits defined in the applicable operating manual for the Generating Facility; (c) Planned Outages or Maintenance Outages, but in no event exceeding [ ] ([ ] ) hours per Contract Year; (d) a Weather Event; and (e) a material

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<sup>14</sup> Note to Bidders: The Performance Guaranty for the Generating Facility will be determined based on the Generating Facility’s resource type.

default by PacifiCorp under this Agreement; provided, however, that if any of the events or circumstances described above in (a) through (e) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting.

“Weather Event” means extreme weather conditions which prevent the Generating Facility from operating in accordance with applicable equipment operating manuals and Prudent Electrical Practices; provided that (a) such Weather Event is not attributable to the fault or negligence on 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 Weather Event and the consequences thereof, Seller has been unable to prevent, avoid, mitigate or overcome such event or consequences.<sup>15</sup>

B. Performance Guarantee; Performance Damages.

1. Performance Guarantee. Seller agrees to deliver to PacifiCorp no less than the Guaranteed Amount of Net Output during each Contract Year<sup>16</sup> (the “Performance Guarantee”).

2. Performance Damages.

(a) If the aggregate amount of Net Output delivered to PacifiCorp during any Contract Year is equal to or greater than the Guaranteed Amount for such Contract Year, then Seller shall not be liable to PacifiCorp for any Performance Damages in respect of such Contract Year.

(b) If the aggregate amount of Net Output delivered to PacifiCorp during any Contract Year is less than the Guaranteed Amount for such Contract Year, then Seller shall determine the shortfall amount (the “Output Shortfall”) for such Contract Year (in MWh) in accordance with the following formula (each component determined for such Contract Year):

$$\text{Output Shortfall} = \text{Expected Energy Amount} - \text{Excluded Amount} - \text{Net Output}$$

(c) If the Output Shortfall is a positive number, then Seller shall pay PacifiCorp liquidated damages (“Performance Damages”) in respect of such Contract Year equal to the product of (i) the Output Shortfall for such Contract Year, multiplied by (ii) PacifiCorp’s Cost to Cover for such Contract Year. If the Output Shortfall is a negative number, then Seller shall not be obligated to pay PacifiCorp any Performance Damages in respect of such Contract Year.

3. Invoicing. On the thirtieth (30th) day following the end of each Contract Year, Seller shall deliver to PacifiCorp a report (and reasonable supporting documentation regarding all data and calculations) detailing whether Seller satisfied the Performance Guarantee for such

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<sup>15</sup> Note to Bidders: Weather Event to be further defined by the Parties based on the applicable resource of the Generating Facility.

<sup>16</sup> Not to Bidders: Applicable period for Performance Guarantee subject to discussion by the Parties depending upon the resource of the Generating Facility.

Contract Year. If Seller failed to satisfy the Performance Guarantee for such Contract Year, then Seller shall include in the report the Output Shortfall for such Contract Year, together with reasonable supporting documentation regarding all data and calculations. If there is an Output Shortfall, then thirty (30) days after PacifiCorp receives the report and all reasonable supporting documentation regarding all data and calculations provided for above, then PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of the Performance Damages calculated pursuant to Section B(2)(c) of this Exhibit F. In preparing such invoice, PacifiCorp shall utilize the meter data provided to PacifiCorp for the relevant 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. Within twenty (20) days of receipt of the invoice, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Performance Damages not paid by Seller when due under this Section B(3) will bear interest at the Contract Interest Rate from the date due until but not including the date paid. PacifiCorp reserves its right under Section 10.2 to set off any amounts owed by Seller hereunder against any amounts owed by PacifiCorp to Seller under this Agreement. The provisions of Section 10.5 shall apply with respect to any dispute Seller may have with respect to PacifiCorp's invoice of Performance Damages.

## EXHIBIT G

### FORM OF PARENT GUARANTY

THIS GUARANTY (this "Guaranty"), dated as of [\_\_\_\_], 20[\_\_\_\_], is issued and delivered by [\_\_\_\_], a [\_\_\_\_] ("Guarantor") for the benefit of PacifiCorp, an Oregon corporation ("Beneficiary"), with reference to the following:

WHEREAS, Beneficiary and [\_\_\_\_], a [\_\_\_\_] ("Obligor") entered into that certain Power Purchase Agreement, dated as of [\_\_\_\_], 2020 (the "Agreement"); and Guarantor delivers this Guaranty to Beneficiary as an inducement to Beneficiary to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, 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 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 effective date of the Agreement, through but not including the Commercial Operation Date (as defined in the Agreement), and (b) [\_\_\_\_] 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 Guaranteed 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: (a) apply any sums received to any indebtedness or other obligations for which Obligor is liable, whether or not such indebtedness is an Obligation; (b) 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 Guaranteed 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 Guaranteed Obligations, or any other agreement, or this Guaranty, or otherwise; (c) 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; (d) 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; (e) release or substitute any other guarantor of Obligor's payment or performance; and (f) 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 (a) protest, (b) notice of acceptance of this Guaranty by Beneficiary, (c) demand for payment of any of the Guaranteed Obligations; (d) 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 (i) against Obligor or (ii) acquired from any other party, not affiliated with Guarantor, to which Beneficiary may be liable; and (e) 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 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 Guaranteed 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 Guaranteed 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 Guaranteed Obligations. No payment in respect of any such subordinated debts shall be received by Guarantor. Upon any Guaranteed 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 (a) such time as all the Guaranteed Obligations have been finally and indefeasibly discharged in full,

and (b) [ ] (the “Expiration Date”); provided, however, 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 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 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 GUARANTY. 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 GUARANTY.

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 Guarantor and 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.

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

If to Guarantor, at:

With a copy to:

If to Beneficiary, at:

PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, OR 97232-2315  
Attn: Director, Valuation & Commercial Business

With a copies to:

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

PacifiCorp Legal Department  
825 NE Multnomah, Suite 2000  
Portland, OR 97232-2315  
Attn: Assistant General Counsel

or such other address as Guarantor or Beneficiary shall from time to time specify. Notice shall be deemed given when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail.

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

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

**EXHIBIT H**  
**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 I**

### **REQUIRED INSURANCE**

1.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller must 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:<sup>17</sup>

- 1.1.1 Workers’ Compensation.
- 1.1.2 Employers’ Liability.
- 1.1.3 Commercial General Liability.
- 1.1.4 Business Automobile Liability.
- 1.1.5 Umbrella/excess Liability.
- 1.1.6 Property Insurance.

1.2 Additional Provisions or Endorsements.

1.2.1 Except for workers’ compensation and property insurance, the policies required must 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 under this schedule; and
- (c) cross liability coverage or severability of interest.

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

1.3 Certificates of Insurance. Seller must provide PacifiCorp with certificates of insurance within ten (10) days after the date by which such policies are required to be obtained, in ACORD or similar industry form. The certificates must indicate that the insurer will provide thirty (30) days prior notice of cancellation. If any coverage is written on a “claims-made” basis, the certification accompanying the policy must conspicuously state that the policy is “claims made.”

1.4 Term of Commercial General Liability Coverage. Commercial general liability coverage must 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.

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<sup>17</sup> Note to Bidders: Project-specific insurance requirements will be provided by PacifiCorp to Seller based on the specific details of the proposed Project.

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.

**EXHIBIT J**  
**NERC EVENT TYPES<sup>18</sup>**

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.
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.

<sup>18</sup> Note to Bidders: This table will be adjusted as necessary to conform with NERC requirements as they exist at the time of execution of this Agreement.

**EXHIBIT K**  
**CONTRACT PRICE; COMPENSABLE CURTAILMENT PRICE**

*[To be provided.]*

**EXHIBIT L**  
**PARTY NOTICE INFORMATION**

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices:</b>	PacifiCorp 825 NE Multnomah, Suite 600 Portland, Oregon 97232- 2315 Attn: Contract Administration E-mail: <a href="mailto:cntadmin@pacificorp.com">cntadmin@pacificorp.com</a>	
<b>All Invoices:</b>	Attn: Back Office, Suite 1900 Email: <a href="mailto:powerinvoices@pacificorp.com">powerinvoices@pacificorp.com</a>	
<b>Scheduling:</b>	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email: <a href="mailto:ctpreschd@pacificorp.com">ctpreschd@pacificorp.com</a>	
<b>Payments:</b>	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826	
<b>Wire Transfer:</b>	To be provided in separate letter from PacifiCorp to Seller	
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 600 Phone (503) 813-7280	
<b>Notices of an Event of Default or Potential Event of Default:</b>	PacifiCorp Legal Department 825 NE Multnomah, Suite 2000 Portland, Oregon 97232- 2315 Attn: Assistant General Counsel	

**EXHIBIT M**  
**FORM OF LENDER CONSENT**

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), \_\_\_\_\_, in its capacity as [Administrative Agent] for the Lenders (as hereinafter defined) (together with its successors, assigns and designees in such capacity, “Administrative Agent”), and \_\_\_\_\_, a \_\_\_\_\_ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the PPA (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately \_\_\_\_\_ MW \_\_\_\_\_-powered electric generating facility located in \_\_\_\_\_ County, \_\_\_\_\_ (the “Project”).

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

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

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

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

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT

PacifiCorp acknowledges the collateral assignment by Borrower of, among other things all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

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

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the PPA, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or thirty (30) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the PPA and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, then Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings but not to exceed ninety (90) days. PacifiCorp consents to the transfer of Borrower's interest under the PPA to a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize such Qualified Transferee as the applicable party under the PPA (provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). For purposes of this Consent, "Qualified Transferee" means a Person that is at least as financially and operationally qualified as Borrower

and has (or agrees to contract with an operator who has) at least three (3) years of experience operating a [\_\_\_\_\_] -powered electric generating facility of similar technology and similar size to the Project.

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp will enter into a new contract with a Qualified Transferee. Such new contract shall be on the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, provided, however that such terms shall be modified to the extent PacifiCorp reasonably determines such modifications are necessary to comply with any laws, rules or regulations applicable to Borrower, PacifiCorp or Lender, including any state, and federal constitutions, statutes, rules, regulations, published rates, and orders of governmental authorities and all judicial orders, judgments and decrees (hereinafter “Applicable Law”) in effect at such time. Lenders or Administrative Agent shall cure or cause the cure of any payment defaults then existing under the original PPA prior to PacifiCorp entering into a new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower’s obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties’ interests in the Project, the Project Development Security and Default Security required under the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract.

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

## SECTION 2. REPRESENTATIONS AND WARRANTIES

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to PacifiCorp Transmission, whether as a result of

information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

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

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

(C) this Consent has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

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

(E) the PPA is in full force and effect; and

(F) neither PacifiCorp nor, to PacifiCorp's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder.

### SECTION 3. NOTICES

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

If to PacifiCorp:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_  
Facsimile No.: [\_\_\_\_\_  
Attn: [\_\_\_\_\_]

If to Administrative Agent:

[ ]

[ ]

[ ]

Telephone No.: [ ]

Facsimile No.: [ ]

Attn: [ ]

If to Borrower:

[ ]

[ ]

[ ]

Telephone No.: [ ]

Facsimile No.: [ ]

Attn: [ ]

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

#### SECTION 4. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

PacifiCorp agrees to confirm its continuing obligation hereunder in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

#### SECTION 5. COUNTERPARTS

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

#### SECTION 6. SEVERABILITY

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

## SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

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

## SECTION 8. 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 THIS CONSENT 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.

IN WITNESS WHEREOF, the parties by their officers duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_,

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_,

as Administrative Agent for the Lenders

[Borrower]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT N**  
**PROJECT MILESTONES<sup>19</sup>**

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<sup>19</sup> Note to Bidders: Milestones and dates by which the Milestones are to be achieved to be agreed to by the Parties prior to the Execution Date.

**EXHIBIT O**  
**POTENTIAL NET OUTPUT**