

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**CHOPIN WIND, LLC**

**AND**

**PACIFICORP**

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## **POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT (this “Agreement”), is entered into between Chopin Wind, LLC, a Delaware Limited Liability Company (the “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 a wind-powered generating facility known as “Schumann Wind” for the generation of electric energy located in Umatilla County, Oregon, with an expected nameplate capacity rating of eight (8) MW (AC) (the “Facility”); and

B. Seller will operate the Facility as a Qualifying Facility (“QF”); and

C. The Facility is located within five (5) miles of Seller’s existing ten (10) MW QF project known as “Chopin Wind” and, accordingly, Seller is not eligible for standard pricing or a standard contract; and

D. Seller desires to sell, and PacifiCorp agrees to purchase, the Net Output delivered by the Facility in accordance with the terms and conditions of this Agreement; and

E. The rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from QFs; and

F. PacifiCorp intends to designate the Facility as a Network Resource for the 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 term appears, initially capitalized terms used in this Agreement have the following meanings:

“Abandonment” means: (a) the relinquishment of all possession and control of the Facility by Seller; (b) after commencement of the construction of the Facility, but prior to the Commercial Operation Date, the complete cessation of the construction, testing, and inspection 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) through (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.

“AC” means alternating current.



“Affected Party” is defined in Section 14.1.

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

“Agreement” is defined in the Preamble.

“As-built Supplement” is a supplement to Exhibit B of this Agreement, as provided in Section 6.1, which provides the final “as-built” description of the Facility, including the Point of Delivery, and sufficient information describing the final wind turbine generators incorporated into the Facility.

“Business Day” means every day other than a Saturday, Sunday or day which is a legal holiday in Portland, Oregon, 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 are measured in MWs and do not include any Green Tags, 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 Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, and which occurs when all of the following events (a) have occurred, all of which are Seller’s responsibility to receive or obtain, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

(i) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer licensed in the state of Oregon certifying: (1) the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation; and (2) that the 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: (1) all required Interconnection Facilities have been constructed; (2) all required interconnection tests have been completed; and (3) the Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement;

(iii) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer licensed in the state of Oregon 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) PacifiCorp has received a copy of Seller's certificate of insurance;

(vi) PacifiCorp has received from Seller a copy of the final, executed Generation Interconnection Agreement, and in accordance with the Generation Interconnection Agreement, all required interconnection facilities and metering have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system; and

(vii) PacifiCorp has provided notice to Seller that PacifiCorp has received written confirmation from the Transmission Provider authorizing commencement of network transmission service for the Facility.

Seller must provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the documentation described above. 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, the Commercial Operation Date will be the date of PacifiCorp's receipt of such complying notice from Seller. If PacifiCorp informs Seller within such ten (10) Business Day period that PacifiCorp believes the Facility has not achieved Commercial Operation, identifying the specific areas of deficiency, Seller must address the concerns stated in PacifiCorp's deficiency notice to the reasonable satisfaction of PacifiCorp, as applicable; the Commercial Operation Date will then be the date that the matters identified in PacifiCorp's deficiency notice have been addressed to PacifiCorp's reasonable satisfaction.

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

"Commission" means the Oregon Public Utility Commission.

"Conditional DNR Notice" is defined in Section 4.2.2.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under 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 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 and Capacity Rights stated in Section 5.1.2.

“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.

“COVID-19” means the disease designated as COVID-19 or 2019-nCoV acute respiratory disease or the virus designated as SARS-CoV-2, 2019 novel coronavirus or 2019-nCoV.

“Effective Date” is defined in Section 2.1.

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

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

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances 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 federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

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

“Expected Net Output” means 25,900 MWh of Net Output per Contract Year, measured at the Point of Delivery. Seller estimates that the Net Output will be delivered during each Contract Year according to the Expected Monthly Net Output provided in Exhibit A.

“Facility” is defined in the Recitals and is more fully described in attached Exhibit B and includes all equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” is defined in Section 14.1.

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

“Generation Interconnection Agreement” means that Small Generator Interconnection Agreement for a Qualifying Facility, dated as of December 19, 2014, between Seller and Interconnection Provider concerning the Interconnection Facilities, as amended by that (i) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated December 21, 2015, (ii) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated May 23, 2016, (iii) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated October 13, 2016, (iv) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated March 2, 2018, (v) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated February 7, 2019, (vi) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated October 21, 2019 and (vii) Agreement to Amend Standard Small Generator Interconnection Agreement for a Qualifying Facility, dated May 27, 2021; which agreement 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 or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

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

“Green Tag Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

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

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

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

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

“Interconnection Provider” means PacifiCorp Transmission, acting in its interconnection or transmission function capacity.

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

“Lender Estoppel” is defined in Section 8.6.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means (i) DNV GL or (ii) any other 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 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 of the Facility, or (ii) a manufacturer or supplier of any equipment installed in the Facility.

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

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market 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 to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating, as stated in Exhibit A.

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

“MW” means megawatt.

"MWh" means megawatt-hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator. The Nameplate Capacity Rating of the Facility is eight (8.0) MW.

“NERC” means the North American Electric Reliability Corporation.

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

“Network Resource” is defined in the Tariff.

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

“On-Peak Hours” means 6:00am PPT until 10:00pm PPT, Monday through Saturday, excluding NERC holidays.

“Output” means all energy produced by the Facility.

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

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.14.

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



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

“Permits” means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility or occupancy of the Premises.

“Planned Outage” means NERC Event Type PO, as provided in attached 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.

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

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for facilities of similar size and characteristics during the relevant time period, 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 good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, specifications, standards or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods, specifications, standards and acts.

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

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

“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 Net Output to PacifiCorp in accordance with this Agreement and Requirements of Law.

“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).

“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.).

“Scheduled Commercial Operation Date” means November 15, 2022, as such date may be extended, day for day, for each day (i) for which Seller is entitled to Force Majeure relief

under this Agreement and/or (ii) that there is a delay directly caused by PacifiCorp's breach of its obligations under this Agreement (including, but not limited to, PacifiCorp's failure to submit a Completed Application (as such term is defined in the Tariff) to Transmission Provider requesting designation of the Facility as a Network Resource within five (5) Business Days of the Effective Date of the PPA) or is directly caused by the Transmission Provider's failure to comply with the Tariff (including, but not limited to, Transmission Provider's failure to follow the timeframes contained in Section 32.1 of the Tariff); provided that in the case of relief under clause (ii) as a result of the Transmission Provider's failure to comply with its Tariff, such extension shall not exceed a period of 90 days.

"Seller" is defined in the Recitals.

"Seller Indemnitees" is defined in Section 12.1.2.

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

"Study Supported SCOD" has the meaning set forth in Section 2.2(a).

"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 such tariff is revised from time to time.

"Tax Credits" means any state, local and federal production and investment tax credits, tax deductions, or other tax benefits specific to the production of renewable energy or investments in renewable energy facilities.

"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.

"Wind Integration Charge" has the meaning set forth in the Oregon Standard Avoided Cost Rates Tariff on file with the Commission.

"WREGIS" means the Western Renewable Energy Generation Information System.

"WREGIS Certificate" or "Certificate" means "Certificate" as defined by the WREGIS Operating Rules.



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

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Appendices” or “Exhibits” are to articles, sections, schedules, appendices or exhibits of 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 law or statute mean that law or statute as amended from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; (j) the word “or” is not necessarily exclusive; 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.

1.2.3 Headings. The headings used for the sections and articles 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. Seller acknowledges and agrees that PacifiCorp must conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, which requires the functional separation of a utility’s transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider’s transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service.

(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 the Interconnection Provider.

(b) Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement related to the Facility between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default under the Generation Interconnection 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 the Interconnection Provider or between Seller and the Transmission Provider.

(c) Seller acknowledges that, for purposes of this Agreement, the 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 under the Generation Interconnection Agreement.

## **SECTION 2 TERM; MILESTONES**

2.1 Term. This Agreement is effective when executed and delivered by both Parties (the “Effective Date”) and, unless earlier terminated as provided in this Agreement, remains in effect until midnight on May 29, 2036 (the “Term”).

2.2 Milestones. Time is of the essence in the performance of this Agreement, and Seller’s completion of the Facility and delivery of Net Output by the Scheduled Commercial Operation Date is critically important. Therefore, Seller must achieve the milestones provided in (a) through (g) below at the times so indicated.

(a) Reserved.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Seller must provide PacifiCorp with documentation showing that Seller has obtained retail electric service for the Facility before the Commercial Operation Date.

(f) Seller must execute and submit to PacifiCorp, a consent in the form provided in Exhibit H, within ten (10) days of the Effective Date.

(g) Seller must provide a fully executed Qualified Reporting Entity (QRE) Services Agreement in the form provided in Exhibit N, ninety (90) days prior to the Commercial Operation Date, if Seller elects to have PacifiCorp perform QRE services under the Agreement.

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

2.3 Reserved.

2.4 Reserved.

2.5 Reserved.

2.6 PacifiCorp's Right to Monitor. During the Term, Seller will provide quarterly updates to PacifiCorp concerning the progress of Seller regarding the acquisition, design, 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, will have the right to monitor the construction, installation, start-up and testing of the Facility for compliance with this Agreement; provided that PacifiCorp must schedule any visit to the Premises in advance with Seller and PacifiCorp must agree to comply with Seller's reasonable written health, safety and security requirements. Notwithstanding anything to the contrary contained in this Agreement, nothing in this Agreement will be construed to require PacifiCorp to monitor Seller's development of the Facility or to review, comment on, or approve any contract between Seller and a third party, and PacifiCorp will 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 with respect to the Facility or any contractor.

### **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 Oregon.

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.

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.

3.1.4 No Contravention. The execution, 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 organization 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 a valid and legally binding obligation of PacifiCorp, enforceable in accordance with its terms, 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 organized, validly existing and in good standing under the laws of the state of Delaware.

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 (b) has (or will have prior to the Commercial Operation Date) all required regulatory authority to make wholesale sales from the Facility; (c) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (d) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property, or the conduct of its business requires such qualification.

3.2.3 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.

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 its organization 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;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than consents, approvals, filings and registrations which are (i) provided in Exhibit D or (ii) required in connection with the construction or operation of the Facility and reasonably expected to be obtained in due course; or

3.2.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable in accordance with its terms, 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 (a) 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), all Required Facility Documents and (b) thereafter, maintain throughout the remainder of the Term all Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting 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 and that are identified in Exhibit E. Following the Commercial Operation Date, Seller must promptly notify PacifiCorp of any additional Required Facility Documents not listed on Exhibit D. If reasonably requested by PacifiCorp, Seller must provide copies of any or all Required Facility Documents.

3.2.7 Delivery of Energy. Before the Commercial Operation Date and throughout the Term, Seller must hold all legal and contractual rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement.

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 rights 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 must 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 all obligations of Seller under this Agreement. Upon request by PacifiCorp, Seller must provide 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 of its obligations under this Agreement, is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

3.2.11 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. In entering into this Agreement and agreeing to undertake the obligations within, 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 Capacity Rights. Seller has not sold, or entered into any contract or agreement to sell, to any person (other than PacifiCorp under the terms of this Agreement) the Capacity Rights, if any.

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

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 must as soon as practicable provide the other Party with written notice of

the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct to the maximum extent possible.

## **SECTION 4**

### **DELIVERIES OF NET OUTPUT AND CAPACITY**

4.1 Purchase and Sale. Commencing on the Commercial Operation Date and continuing through the Term, Seller will sell and make available to PacifiCorp, and PacifiCorp will purchase and receive (a) the entire Net Output from the Facility at the Point of Delivery, and (b) all Capacity Rights associated with the Output. In addition, prior to the Commercial Operation Date, Seller may sell and make available to PacifiCorp, and PacifiCorp will purchase and receive, all Net Output from the Facility as provided in, and subject to the terms of, Section 5.1.1.

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

4.2.1 Reserved.

4.2.2 If PacifiCorp is notified in writing by the Transmission Provider that designation of the Facility as a Network Resource is contingent on PacifiCorp procuring transmission service from a third-party transmission provider, or will require the construction of transmission system network upgrades or otherwise require potential redispatch of other Network Resources of PacifiCorp (a "Conditional DNR Notice"), PacifiCorp will provide Seller the transmission study or other documentation from Transmission Provider, and the Parties will proceed as follows:

(a) If the Conditional DNR Notice states that designation of the Facility as a Network Resource is contingent on PacifiCorp procuring transmission service from a third-party transmission provider, the Parties will follow the process set forth in Exhibit A to Oregon's Non-Standard Avoided Cost Rates Schedule as in effect on the Effective Date.

(b) If the Conditional DNR Notice states that designation of the Facility as a Network Resource requires the construction of transmission system network upgrades or otherwise requires potential redispatch of other Network Resources of PacifiCorp, and the option provided in Section 4.2.2(a) is not identified in the Conditional DNR Notice, the Parties will promptly meet to determine how such conditions to the Facility's Network Resource designation may impact the Contract Price or other terms and conditions of this Agreement. If, within thirty (30) days following the date of PacifiCorp's receipt of the Conditional DNR Notice, the Parties are unable to reach agreement on any necessary adjustments to ensure the Contract Price reflects an "avoided cost" price as determined by the Commission and PURPA, PacifiCorp will submit the matter to the Commission for a determination on what adjustments, if any, are appropriate as a result of the Conditional DNR Notice. PacifiCorp will submit such filing with



the Commission within sixty (60) days following the date of PacifiCorp's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision

(c) In the event of a Conditional DNR Notice, Seller will have the right to terminate the Agreement upon written notice to PacifiCorp and such termination by Seller will not be an Event of Default and no damages or other liabilities under this Agreement will be owed by one Party to the other Party; provided, however, that Seller's right to terminate the Agreement under this Section 4.2 will cease following (a) any amendment of this Agreement associated with addressing matters covered under this Section 4.2 or (b) PacifiCorp incurring costs at Seller's request in furtherance of addressing matters covered under this Section 4.2.

4.3 No Sales to Third Parties. During the Term, Seller will not sell any Net Output or Capacity Rights from the Facility to any party other than PacifiCorp; provided, however, that this restriction does not apply during periods when PacifiCorp is in default under this Agreement because it has failed to accept or purchase Net Output as required under this Agreement.

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

4.5 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; or (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 (excluding curtailment of purchases for general economic reasons unilaterally directed by the Market Operator or PacifiCorp acting solely in its merchant function capacity), even if and no matter how such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in any way in order to meet its obligations to the Market Operator or Transmission Provider to operate within system limitations, provided that, in each case, the manner in which curtailment is carried out is not inconsistent with such directive; (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System; or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller will reasonably determine the MWh amount of Net Output curtailed under this Section 4.5 based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller must promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 4.5.

4.6 Reserved.

4.7 Ownership of Green Tags.

4.7.1 Title to Green Tags. Seller shall retain title to Green Tags associated with the generation of Output from the Facility.

4.7.2 Documentation. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form similar to that in Exhibit N or elect to act as its own WREGIS-defined Qualified Reporting Entity.

4.7.3 Reserved.

4.7.4 Reserved.

4.8 Purchase and Sale of Capacity Rights. Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller must not report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp.

4.9 Reactive Power Service Compensation. The Parties acknowledge and agree that the compensation that Seller receives from PacifiCorp under this Agreement includes full compensation for Seller's fixed costs for providing reactive power service. Therefore, Seller shall not file a rate schedule at FERC for reactive power compensation payable prior to expiration of the Term or the earlier termination of this Agreement

4.10 Further Assurances. At PacifiCorp's request, Seller must execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Net Output or any Capacity Rights to PacifiCorp.

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

5.1 Contract Price. PacifiCorp will pay Seller the prices stated below ("Contract Price") for all deliveries of Net Output and Capacity Rights, up to the Maximum Delivery Rate.

5.1.1 Deliveries Prior to the Commercial Operation Date. Beginning no earlier than the date the Transmission Provider authorizes commencement of network transmission service for the Facility, PacifiCorp will pay Seller for Net Output and Capacity Rights delivered at the Point of Delivery before the Commercial Operation Date, an amount per MWh as specified in Exhibit K. If Seller desires to deliver Net Output and Capacity Rights at the Point of Delivery before the Commercial Operation Date on an earlier date, PacifiCorp will only be obligated to purchase such Net Output if PacifiCorp is able to modify its network resource designation for the Facility such that the output could be delivered using network transmission service as described in Section 4.2 above at no additional cost or other economic impact to PacifiCorp as a result of such designation.



5.1.2 Commercial Operation. Subject to the terms of Section 5.1.1, for the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp will pay to Seller the Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in Exhibit K.

5.2 Costs and Charges. Seller is responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, transmission line losses, and any operation and maintenance charges imposed by Transmission Provider or Interconnection Provider. Except as provided in Section 4.2, PacifiCorp is responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, is responsible for all costs associated with the modifications to Interconnection Facilities or the System (including System upgrades) caused by or related to the Facility.

5.3 Station Service. Seller is 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 must pay, cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags up to and including the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp must pay, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Net Output, Capacity Rights or Green Tags beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Contract Price 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, exception or give back. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Net Output, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for or receives Tax Credits during the Term. 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 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 is 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 the 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, subject to the limitations set forth in this Section 6.1, the Parties will use to amend Exhibit A, Exhibit B, the Expected Net Output, and any other exhibits, as applicable. 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 Nameplate Capacity Rating, or (b) result in the expected annual 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 unreasonably be withheld, conditioned or delayed), provided that PacifiCorp is not required to approve any modification of the Facility that (i) results in the Facility increasing its Nameplate Capacity Rating beyond that stated in the definition of “Nameplate Capacity Rating,” or (ii) is reasonably likely to result in the expected annual Net Output, as calculated in Exhibit A, to increase by more than ten percent (10%).

### 6.2 Standard of Facility Construction and Operation.

6.2.1 General. Seller will construct and operate all interconnected equipment associated with the Facility within its control in accordance with all applicable Requirements of Law to ensure system safety and reliability of interconnected operations. At Seller’s sole cost and expense, Seller must 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 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) the 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 must 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 to the Facility. Seller must provide PacifiCorp thirty (30) days prior written notice of any change in the operator of the Facility.

### 6.2.3 Fines and Penalties.

(a) Without limiting a Party's rights under Section 6.2.3(b), each Party 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.

(b) If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions of this Agreement, or if the performance of the Indemnified Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party must indemnify, defend and hold harmless the Indemnified Party against any and all Liabilities suffered or incurred by the Indemnified Party as a result thereof, including all fees, damages or penalties imposed on the Indemnified Party by any Governmental Authority or other person, including other utilities.

6.3 Interconnection. Seller is responsible for the costs and expenses associated with obtaining from the Interconnection Provider network resource interconnection service (or interconnection service of a comparable nature available under an Oregon PURPA interconnection agreement) for the Facility at its 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 the 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 each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and may update such Planned Outage schedule as necessary to comply with 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 day light hours in the months of December and July, except (a) as may be required in the Generation Interconnection Agreement or (b) to the extent reasonably required to enable a vendor to satisfy a guarantee requirement.

6.5.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, 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, Prudent Electrical Practices and the Facility equipment manufacturer recommendations (but only to the extent compliance with the Facility equipment manufacturer recommendations could not reasonably have been addressed in a Planned Outage) to not schedule any Maintenance Outage during the months of December and July.

6.5.3 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 impact on Seller. 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 must take all reasonable actions consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.4 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), of any Forced Outage resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the 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.

6.5.5 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any limitations, restrictions, deratings or outages reasonably predicted by Seller to affect more than five percent (5%) of the Nameplate Capacity Rating of the Facility for the following day and will promptly update such notice to the extent of any material changes in this information.

6.5.6 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 must 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 December 1<sup>st</sup> of each Contract Year during the Term (except for the last Contract Year of the Term), provide an annual update to the expected long-term monthly/diurnal mean net energy and net capacity factor estimates (12 X 24 profile). Seller 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 twenty-four (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. At start-up (and at any other time upon at least six (6) months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional wind turbines, upgraded major components, batteries or other similar types of incremental generating units at the Facility. Seller shall be responsible for ensuring that any planned increase in Net Output complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp related to the Facility. Subject to the limitations of this section, PacifiCorp will not purchase any Net Output above the Maximum Delivery Rate.



6.9 Telemetry. Seller must 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 (or cause one of its Affiliates to 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 (4) second intervals, PacifiCorp must also receive the data in four (4) 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.

6.10 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 the Transmission Provider relating to transmission of Output or other matters relating to the Facility without the need for further consent from Seller.

6.11 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.

6.12 Reports and Records.

6.12.1 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 calendar month to which the fault log applies.

6.12.2 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.

6.12.3 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 promptly use commercially reasonable 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 6.12.

6.12.4 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 intervenor or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller must promptly use commercially reasonable 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 subject to the limitation set forth in Section 6.12.3.

6.12.5 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.

6.12.6 Notice of Material Adverse Events. Seller must promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, individually or in the aggregate, which would have a material adverse effect on the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility or perform its obligations hereunder, including any material violation of any Requirements of Law, or the presence of Environmental Contamination at the Facility or on the Premises.

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

6.12.8 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.

6.12.9 Confidential Treatment. The reports and other information provided to PacifiCorp under this Section 6.12 will be treated as confidential if such treatment is requested in writing by Seller at the time the information is provided to PacifiCorp, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.12.3 and 6.12.4, and pursuant to any applicable Requirements of Law. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.13 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 6.13. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.14 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller must provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, and (c) 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 agents or Affiliates.

## **SECTION 7 QUALIFYING FACILITY STATUS**

7.1 Seller's QF Status. Seller must maintain throughout the Term the Facility's status as a QF. Seller must provide PacifiCorp with copies of any QF certification or recertification documentation within ten (10) days of its filing with any Governmental Authority. At any time during the Term, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

## **SECTION 8 SECURITY**

8.1 Reserved.

8.2 Reserved.

8.3 Reserved.

8.4 Reserved.

8.5 Waiver of PacifiCorp Security. Seller 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.

8.6 Senior Lender Protective Provisions. PacifiCorp agrees (i) to provide an estoppel in substantially the form attached hereto as Exhibit M or as otherwise acceptable to PacifiCorp (the “Lender Estoppel”) and a consent to assignment and such other certificates and documents as may be reasonably requested by, or for the benefit of, the Senior Lenders and tax equity investors, in each case, in such form as is acceptable to PacifiCorp (ii) to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; provided, however, that if and to the extent any Senior Lenders request any additional documents from PacifiCorp with regard hereto, then Seller shall reimburse PacifiCorp for its reasonable costs in providing any such additional documents, with such costs to be paid to PacifiCorp at the closing of the financing.

## **SECTION 9 METERING**

9.1 Installation of Metering Equipment. At Seller’s cost and expense, metering equipment must be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement. Seller must 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 location and in the manner specified in Exhibit C, the Generation Interconnection Agreement, and as necessary to perform Seller’s obligations under this Agreement. All quantities of Net Output purchased must reflect the net amount of energy flowing onto the System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp has the right to periodically inspect, test, repair and replace the metering equipment for the Facility that is provided for in the Generation Interconnection Agreement, without PacifiCorp assuming any obligations of Seller under the Generation Interconnection Agreement. If any of the inspections or tests disclose an error exceeding one half of one percent (0.5%), either fast or slow, the necessary corrections based upon the inaccuracy found will be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction will 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 was shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records will be made in the next monthly billing or payment rendered. Such correction, when made, will constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller is responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller’s Facility in accordance with this

Agreement.

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

10.1 Monthly Invoices. On or before the tenth (10<sup>th</sup>) day following the end of each calendar month, Seller must deliver to PacifiCorp an invoice showing Seller's computation of Net Output delivered to the Point of Delivery during such month. When calculating the invoice, Seller must provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours and applying such portions to the Contract Price as set forth in Exhibit K. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp must send to Seller, on or before the later of the twentieth (20<sup>th</sup>) day following receipt of such invoice or the thirtieth (30<sup>th</sup>) day following the end of each month, payment for Seller's deliveries of Net Output and Capacity Rights to PacifiCorp.

10.2 Offsets. Either Party may offset any payment due under this Agreement against amounts owed by the other Party pursuant under 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 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 to be due the other Party, or if the Parties resolve the payment dispute, the amount due must be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, has the right, at its cost and expense upon reasonable notice, during normal business hours, and subject to the prudent safety requirements of the other Party, and Requirements of Law relating to workplace health and safety 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 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. The following events are defaults under this Agreement, and are “Events of Defaults” after the passing of notice and cure periods, as applicable:

### 11.1.1 Defaults by Either Party.

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

(b) A Party (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (iii) has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iv) becomes insolvent; or (v) is unable to pay its debts when due.

(c) A Party breaches a representation or warranty in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default; 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, the defaulting Party will have an additional reasonable time to cure the default, not to exceed ninety (90) days following the date of notice of the default by the non-defaulting Party, if the defaulting Party provides to the non-defaulting Party a remediation plan within fifteen (15) days following the date of notice of the default by the non-defaulting Party, the non-defaulting Party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

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

### 11.1.2 Defaults by Seller.

(a) Reserved.

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

(c) Seller sells Output or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.3.

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

(e) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the Facility and is not able to obtain the necessary Required Facility Documents or Permits within ninety (90) days after the loss of the applicable Required Facility Documents or Permits.

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

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

(h) Reserved.

Notwithstanding the foregoing, Seller shall not be in default under the provisions of this Section 11.1.2 to the extent that Seller's default is due solely to a failure of PacifiCorp, acting in its merchant capacity, to meet its obligation to submit a Complete Application (as such term is defined in the Tariff) to the Transmission Provider under Section 4.2 of this Agreement.

The Parties acknowledge and agree that Seller's failure to cure any default under this Agreement shall not be deemed a default under that Power Purchase Agreement, dated as of May 5, 2014, as amended from time to time, between Seller and PacifiCorp.

#### 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Reserved.

11.2.2 Reserved.

11.2.3 Reserved.

11.3 Termination and Remedies. 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 (and does not have to be a separate notice) provided it complies with the terms of this Section 11.3. 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. 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. Notwithstanding any other provision of this Agreement to the contrary, Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within fifteen (15) days of PacifiCorp's receipt of such notice. Further, from and after the date upon which a defaulting Party fails to remedy a default within the time periods provided in this Agreement, and until the non-defaulting Party has recovered all damages incurred on account of such default by the other Party, the non-defaulting Party may offset its damages against any payment due the defaulting Party. 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 contemplated by this Section 11 are cumulative such that the exercise of one or more rights does not constitute a waiver of any other rights. In the event of a termination of this Agreement:

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

(b) The amounts due under this Section 11.3 must be paid within thirty (30) days after the billing date for such charges and will bear interest at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due 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 Termination of Duty to Buy. In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the termination date. Seller may not seek to limit PacifiCorp's rights under this Section 11.4 through use or establishment of a special purpose entity or other Affiliate.

11.5 Reserved.

11.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance (provided that Seller shall not be required to undertake any mitigation actions that would violate the Generation Interconnection Agreement).

11.7 No Termination. PacifiCorp may not terminate this Agreement due solely to an

exercise of remedies under the financing documents between Seller and Senior Lenders.

11.8 Reserved.

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 PacifiCorp in this Agreement are cumulative and not exclusive of any rights or remedies of PacifiCorp.

## **SECTION 12 INDEMNIFICATION AND LIABILITY**

12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller releases, indemnifies and holds harmless PacifiCorp, its divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “PacifiCorp Indemnitees”) against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys’ fees, both at trial and on appeal, whether or not suit is brought) (collectively, “Liabilities”) actually or allegedly resulting from, arising out of, or in any way connected with, the performance by Seller of its obligations under this Agreement, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, except for Liabilities caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnitees.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp releases, indemnifies and holds harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) against and from any and all Liabilities actually or allegedly resulting from, arising out of, or in any way connected with, the 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 person or entity within the Seller Indemnitees, except for Liabilities caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnitees.

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



12.1.4 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 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 individual or entity.

12.1.5 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.**

### **SECTION 13 INSURANCE**

13.1 Required Policies and Coverages. Without limiting any Liabilities or any other obligations of Seller, on or prior to commencement of construction activities on the Premises, Seller must secure and continuously carry the insurance coverage specified on 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 Effective 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): natural disasters; civil disturbance; sabotage; strikes; lock-outs; work stoppages; action or restraint by court order or Governmental Authority (as long as the Affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint); war (declared or undeclared, including the war in Ukraine, but only to the extent that the specific effect of the war in Ukraine on the performance of the Affected Party or its Affiliates was not known, and could not have reasonably been known, as of the Effective Date), terrorism or other armed conflict; and quarantine, plague, pandemic or epidemic (including COVID-19, but only to the extent that (x) the specific effect of COVID-19 on the performance of the Affected Party or its Affiliates was not known, and could not have reasonably been known, as of the Effective Date and (y) the non-Affected Party can reasonably demonstrate that the non-Affected Party and its agents, while at the Facility, have followed all Requirements of Law relating to workplace health and safety with respect to COVID-19). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or PacifiCorp's ability to purchase, energy, or capacity at a more advantageous price than is provided 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 the 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 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 or failure in its performance under this Agreement, nor will any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused Force Majeure, provided that: (a) the Affected Party, within five (5) days after the Affected Party becomes aware (or should have become aware) of the occurrence of the event of Force Majeure, gives the other Party written notice describing the particulars of the event of Force Majeure and how the event of Force Majeure has impacted the Affected Party's obligations under this Agreement; (b) the suspension of performance of the Affected Party's obligations is of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and (c) the Affected Party uses diligent efforts to remedy its inability to perform.

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

14.4 Strikes. Notwithstanding any other provision of this Agreement, 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 the Party's best interests.

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



## SECTION 15 MISCELLANEOUS PROVISIONS

15.1 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.

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

15.3 Partial Invalidity. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of this Agreement will remain in effect. The Parties agree to use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

15.4 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.

15.5 Governing Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having jurisdiction over either Party or this Agreement.

15.6 Successors and Assigns.

15.6.1 Restriction on Assignments. Except as provided in this Section 15.6, neither Party may assign this Agreement or any of its rights or obligations without the prior written consent of the other Party.

15.6.2 Permitted Assignments. Notwithstanding Section 15.6.1, either Party may, without the need for consent from the other Party (but with prior written notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the related accounts, revenues or proceeds in connection with project financing for the Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement, provided, however, that Seller will not transfer, sell, encumber or assign this Agreement or any interest in this Agreement to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. For any assignment under (b) above, the assignee must agree in writing to be bound by the terms and conditions of this Agreement and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor possessed as of the Effective Date (or, in the case of multiple assignments, the predecessor-assignor who was

an original Party to this Agreement). PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp will be released from liability under this Agreement. The Party seeking to assign or transfer this Agreement is solely responsible for paying all costs of assignment.

15.7 Entire Agreement. 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 modification of this Agreement is effective unless it is in writing and executed by both Parties.

15.8 Notices. All notices, requests, statements or payments must be made to the addresses set out in Exhibit L. In addition, copies of a notice of termination of this Agreement under Section 11.3 must contain the information required by Section 11.3 and must be sent to the then-current President and General Counsel of PacifiCorp. Notices required to be in writing must be delivered by letter, electronic transmission, or other tangible documentary form. Notice by overnight mail or courier will be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery will be deemed to have been given when received or hand delivered. Notice by electronic transmission is effective as of transmission, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by certified or registered mail, return receipt requested, will be deemed to have been given upon receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

15.9 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding this Agreement, Seller must first provide a copy thereof to PacifiCorp for its review. Any use of the name “Berkshire Hathaway,” in any form, requires the prior written consent of PacifiCorp.

#### 15.10 Dispute Resolution.

15.10.1 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 written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen (15) days after such referral, 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 will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement will 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.

15.10.2 Mediation. If the dispute is not resolved under the procedures provided in Section 15.10.1, either Party may request that the matter be submitted to non-binding mediation. 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.

15.10.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement will be brought exclusively in the state and federal courts in Portland, Oregon. By execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions; (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith; (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address 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.

15.10.4 WAIVER OF JURY TRIAL. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

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

CHOPIN WIND, LLC

By:

Name:

Title:

Date:

August 16, 2022

PACIFICORP Paul J.

By:

Name: Paul J. Johnson

Title: Senior Originator

Date: August 16, 2022

Digitally signed by Paul J.  
Johnson  
Date: 2022.08.16 12:52:25  
-07'00'

## EXHIBIT A

### EXPECTED MONTHLY NET OUTPUT<sup>1</sup>

The following is the Expected Monthly Net Output for the Facility. The Expected Energy includes estimated outages as outlined in Section 6.5.5, as well as other losses due to availability, AC-side collection, transformers, substation, and station service, to the extent they reduce Net Output.

EXPECTED MONTHLY NET OUTPUT			
MONTH	ON-PEAK ENERGY (MWh)	OFF-PEAK ENERGY (MWh)	TOTAL ENERGY (MWh)
January	1170	927	2097
February	1051	939	1990
March	1318	1221	2539
April	1199	1230	2429
May	1003	1181	2184
June	1120	1174	2294
July	857	1115	1972
August	871	1067	1938
September	748	852	1600
October	971	896	1867
November	1292	1045	2337
December	1515	1164	2679

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<sup>1</sup> PAC NTD – Prior to executing the Agreement, Seller will be required to provide PacifiCorp information sufficient in detail to allow PacifiCorp to reasonably verify the output estimates stated in Exhibit A.

## **EXHIBIT B**

### **DESCRIPTION OF SELLER'S FACILITY**

The Facility is an 8MW wind energy generation facility, located in Umatilla County, OR and consisting of five (5) turbines manufactured by General Electric, as further described below:

1. Name of Facility: Schumann Wind Farm
  - (a) Location: NE Oregon (Milton-Freewater, Umatilla County)
  - (b) Point of Delivery: Weston Substation
  - (c) Legal Description of the Parcel: See Annex 1 to this Exhibit B, attached below
  - (d) Describe easements secured for physical entrance of permanent and temporary equipment (e.g. driveway and cable/wire easements): All easements secured for physical entrance are listed on Exhibit E
2. Seller: Chopin Wind, LLC
3. Parent: BayWa r.e. Wind, LLC
4. Qualified Operator: Chopin Wind, LLC
5. Equipment: Schumann Wind
  - (a) Type of Generating Facility: Wind
    - (i) Model: GE 1.7-103, GE 1.79-100
    - (ii) Number of Units: Four (4), One (1) respectively
  - (b) Nameplate Capacity: Schumann Wind
    - (i) Nameplate Capacity Rating at Point of Delivery: 9.545 MVA
    - (ii) Total gross output capacity: 8.5 MW
    - (iii) Guaranteed Storage Capacity Rating (MW): Not Applicable
    - (iv) Guaranteed Storage Availability (MWh): Not Applicable
    - (v) Capacity Factor: 0.9
6. Operating Characteristics of Facility: Schumann Wind
  - (a) Rated Power Factor (PF) or reactive load (kVAR): 0.90PF
  - (b) Rated Output (kW): 8305kW
  - (c) Rated Output (kVA): 4021kVAR
  - (d) Rated Voltage (line to line): 69kV
  - (e) Rated Current (A): Stator: 1310 A; Rotor: 589 A
  - (f) Maximum kW Output:
    - Maximum kW Output: 8305kW
  - (g) Maximum kVA Output:
    - Maximum kVA Output: 9227kVA
  - (h) Minimum kW Output:
    - Minimum kW Output: 15kW

- (i) Number of Phases: 3
- (j) Power factor requirements: 0.95PF
- (k) Rated Power Factor (PF) or reactive load (kVAR): 0.90PF
- (l) Controlled Ramp Rate: SCADA controlled



## **ANNEX 1 TO EXHIBIT B**

### **LEGAL DESCRIPTION OF THE PARCEL**

#### **1. FDS Farms, LLC**

- a. Right-of-Way and Crossing Agreement, dated July 26, 2017, by and between FDS Farms, LLC, a Nevada limited liability company and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC), a Delaware limited liability company, recorded as Instrument # 2017-6610294 in the official public records of Umatilla County, Oregon on August 7, 2017. [Sanders Road Dip]

TOWNSHIP 5 NORTH, RANGE 34, E.W.M.

Section 26: Parcel 5N34D0-00-01100 on either side of the Sander's Road dip.

All being East, Willamette Meridian, Umatilla County, in the State of Oregon.

- b. Right-of-Way and Crossing Agreement, dated September 12, 2017, by and between FDS Farms, LLC, a Nevada limited liability company and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC), a Delaware limited liability company, recorded as Instrument # 2017-6630073 in the official public records of Umatilla County, Oregon on September 20, 2017. [Waterman Road to Sanders Road]

TOWNSHIP 5 NORTH, RANGE 34, E.W.M.

Section 26: Parcel 5N34D0-00-01100 specifically in the junction between Waterman Road and Sander's Road.

All being East, Willamette Meridian, Umatilla County, in the State of Oregon.

#### **2. Ferguson Ranch, Inc.**

Easement Agreement, dated August 11, 2017, by and between Ferguson Ranch, Inc., an Oregon corporation and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC), a Delaware limited liability company, recorded as Instrument #2017-6620111 in the official public records of Umatilla County, Oregon on August 28, 2017.

TOWNSHIP 5 NORTH, RANGCE 35, E.W.M.

A strip of land approximately 40 feet wide and 7000 feet long within the following sections:

Section 19: South Half of the Northeast Quarter

Section 20: South Half of the Northwest Quarter; Southwest Quarter

Section 29: West Half

All being East, Willamette Meridian, Umatilla County, in the State of Oregon.  
Excepting therefrom any portion lying within the County Road right of ways.

### **3. Patrick Kelly**

Right-of-Way Easement Agreement, fully executed August 4, 2009, by and between Patrick Kelly and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC), a Delaware limited liability company, recorded as Instrument #2009-5550684 in the official public records of Umatilla County, Oregon on August 27, 2009.

Up to three non-exclusive transmission easement rights up to 150 feet in width located in:

TOWNSHIP 5 NORTH, RANGE 35, E.W.M.

Section 6: Southeast Quarter of the Northwest Quarter; South Half.

Section 7: All

Section 8: West Half of the Northwest Quarter.

Section 17: Southwest Quarter.

Section 18: East Half

North Half of the Northwest Quarter

Southwest Quarter of the Northwest Quarter

Section 19: Northeast Quarter

West Half of the Southeast Quarter

Excepting therefrom a strip of land 100 feet wide described in deed to Ferguson Ranch, Inc., recorded in Book 310, Page 507, Deed Records.

Section 20: North Half of the Northwest Quarter

Northwest Quarter of the Northwest Quarter

All being East, Willamette Meridian, Umatilla County, in the State of Oregon.  
Excepting therefrom any portion lying within the County Road right of ways.  
Consent to Right-of-Way Agreement, dated August 30, 2017, by Euris Combine Hills I, LLC a Delaware limited liability company and Euris Oregon Wind Power Development, LLC, a Delaware limited liability company for the benefit of Chopin

Wind, LLC (as successor-in-interest to Schumann Wind, LLC) recorded as Instrument #2017-6620537 in the official public records of Umatilla County, Oregon on September 8, 2017. [Consent to Patrick Kelly Easement]

Up to 150 feet in width within:

TOWNSHIP 5 NORTH, RANGE 35, E.W.M.

Section 19:            Northeast Quarter  
                 West Half of the Southeast Quarter

All being East, Willamette Meridian, Umatilla County, in the State of Oregon.  
Excepting therefrom any portion lying within the County Road right of ways.

#### **4. A. Brooks Lieuallen**

Real Property Lease, dated August 30, 2016, by and between A. Brooks Lieuallen and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC), a Delaware limited liability company, a memorandum of which was recorded as Instrument #2016-6480473 in the official public records of Umatilla County, Oregon on September 15, 2016.

TOWNSHIP 5 NORTH, RANGE 34, E.W.M.

Section 13:            Southeast Quarter  
Section 24:            Northeast Quarter. East Half of the Northwest Quarter.  
Northwest Quarter of the Northwest Quarter.

TOWNSHIP 5 NORTH, RANGE 35, E.W.M.

Section 18:            South Half of Lot 1 of the Northwest Quarter  
                         South Half of Lot 2 of the Southwest Quarter  
                         Lot 1 of the Southwest Quarter.  
Section 19:            Lots 1 and 2 of the Northwest Quarter aka Northwest Quarter.  
All being East, Willamette Meridian, Umatilla County, in the State of Oregon.  
Excepting therefrom any portion lying within the County Road right of ways.

#### **5. Harrison and Janis Handley Trust**

Setback Waiver, dated April 21, 2017, by the Harrison and Janis Handley Trust, dated March 18, 1998 to and for the benefit of Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC), a Delaware limited liability company, recorded as Instrument #2017-6570181 in the official public records of Umatilla County, Oregon.

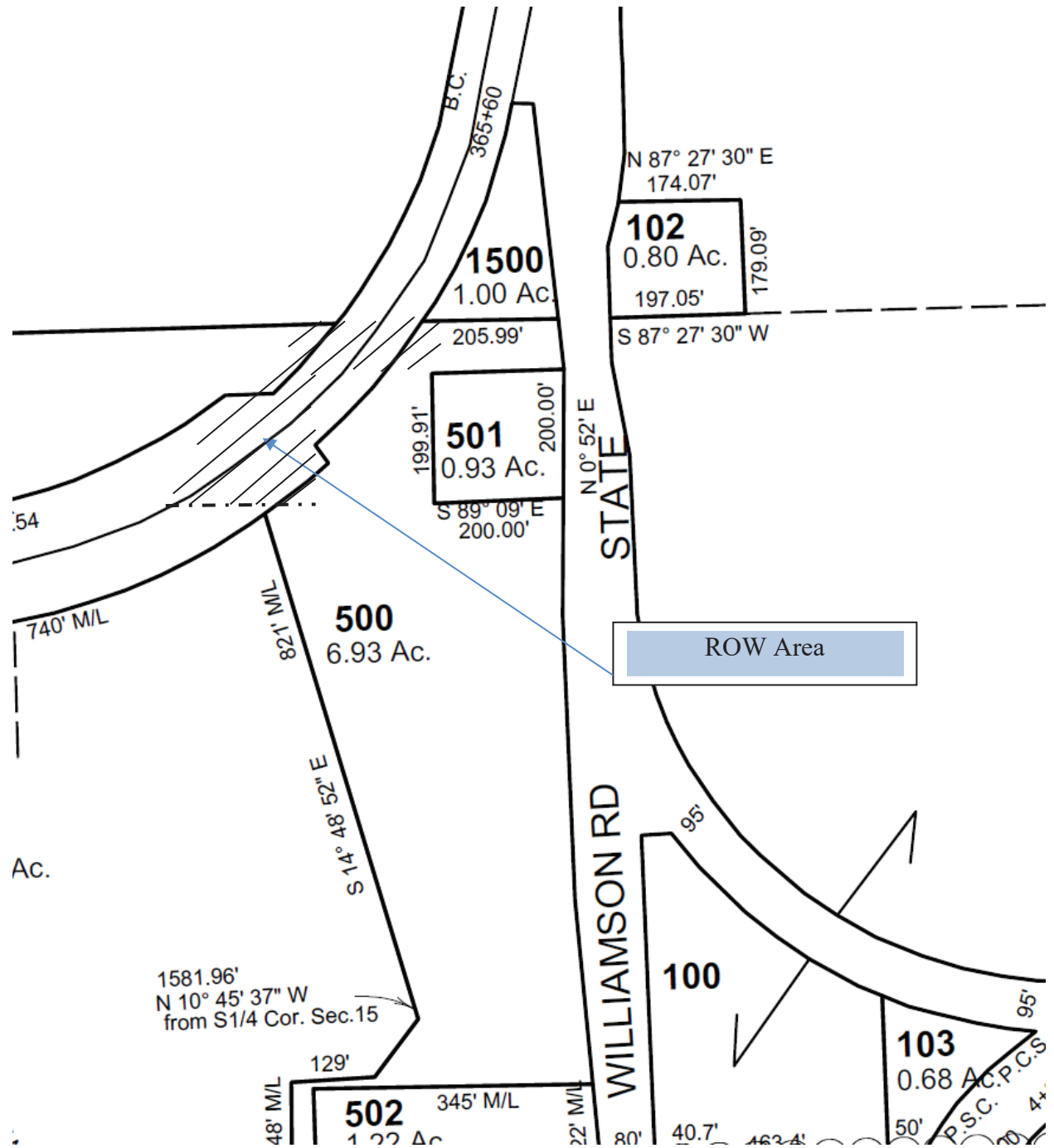
The real property situated in the County of Umatilla, State of Oregon, described as follows:

Commencing at the South one-quarter corner of Section 15, Township 4 North, Range 35, East of the Willamette Meridian, and running thence on a true bearing North 2°12' West 2596.09 feet to a point on the Easterly right of way of the Weston-Elgin Highway, which is the true point of beginning for this description; thence North 2°32'30" West along the said Easterly Weston-Elgin Highway right of way, 71.50 feet; thence continuing Northwesterly along the said highway right of way, along an offset highway spiral 57.69 feet, the long chord of which bears North 2°30'50" West, 57.69 feet; then leaving the said Easterly right of way running North 22°09'50" East 54.92 feet; thence North 87°27'30" East 174.07 feet; thence South 2°32'30" East 179.09 feet; thence South 87°27'30" West 197.05 feet to the point of beginning.

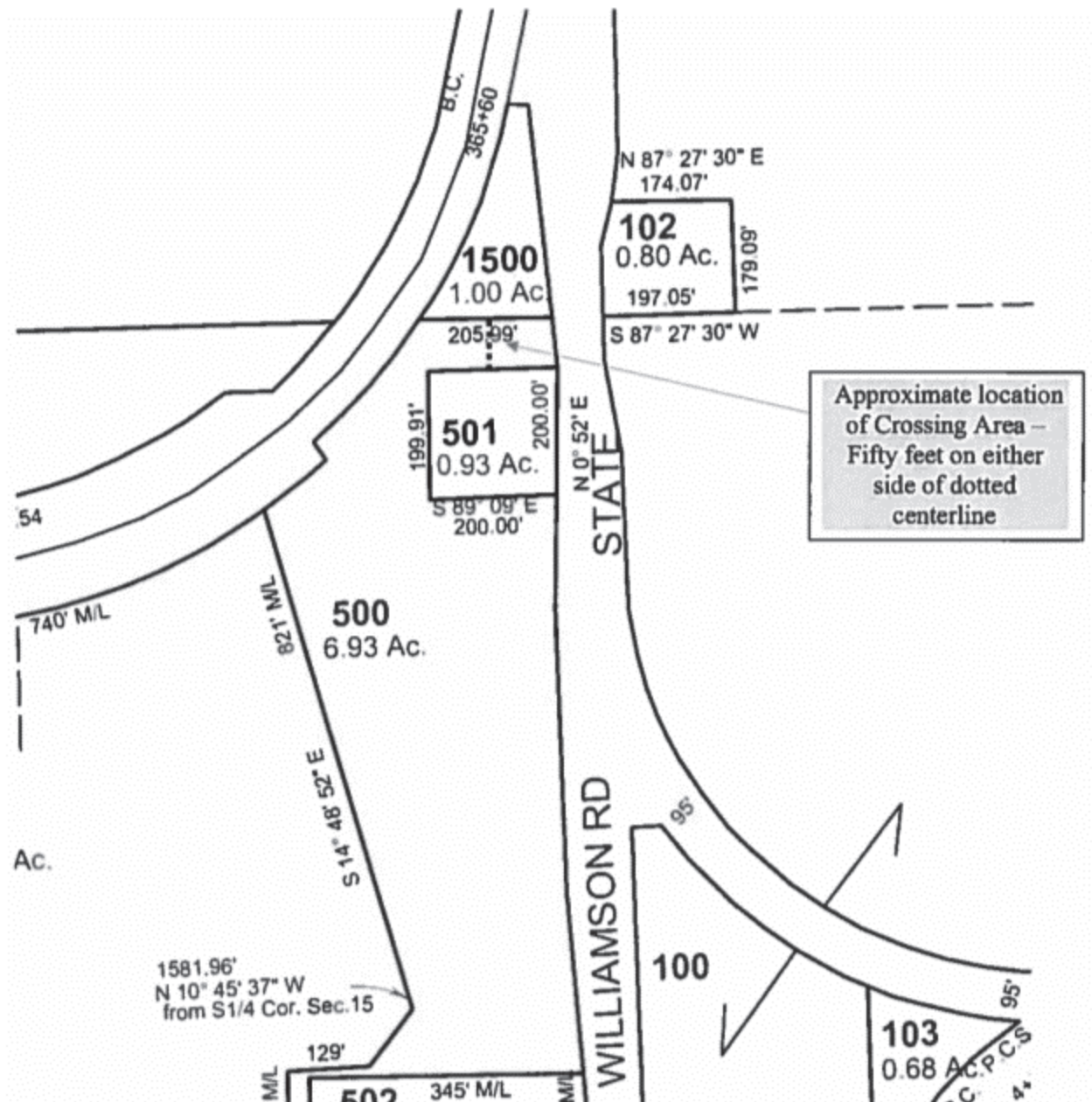
**6. Smith Frozen Foods, Inc.**

- a. Right-of-Way and Crossing Agreement, dated October 8, 2015, by and between Smith Frozen Foods, Inc., an Oregon corporation and Chopin Wind, LLC (as assignee of BW DSG, LLC), recorded on October 22, 2015 in the Official Records of Umatilla County, Oregon as Instrument 2015-6350722.

Depiction of Right of Way Area

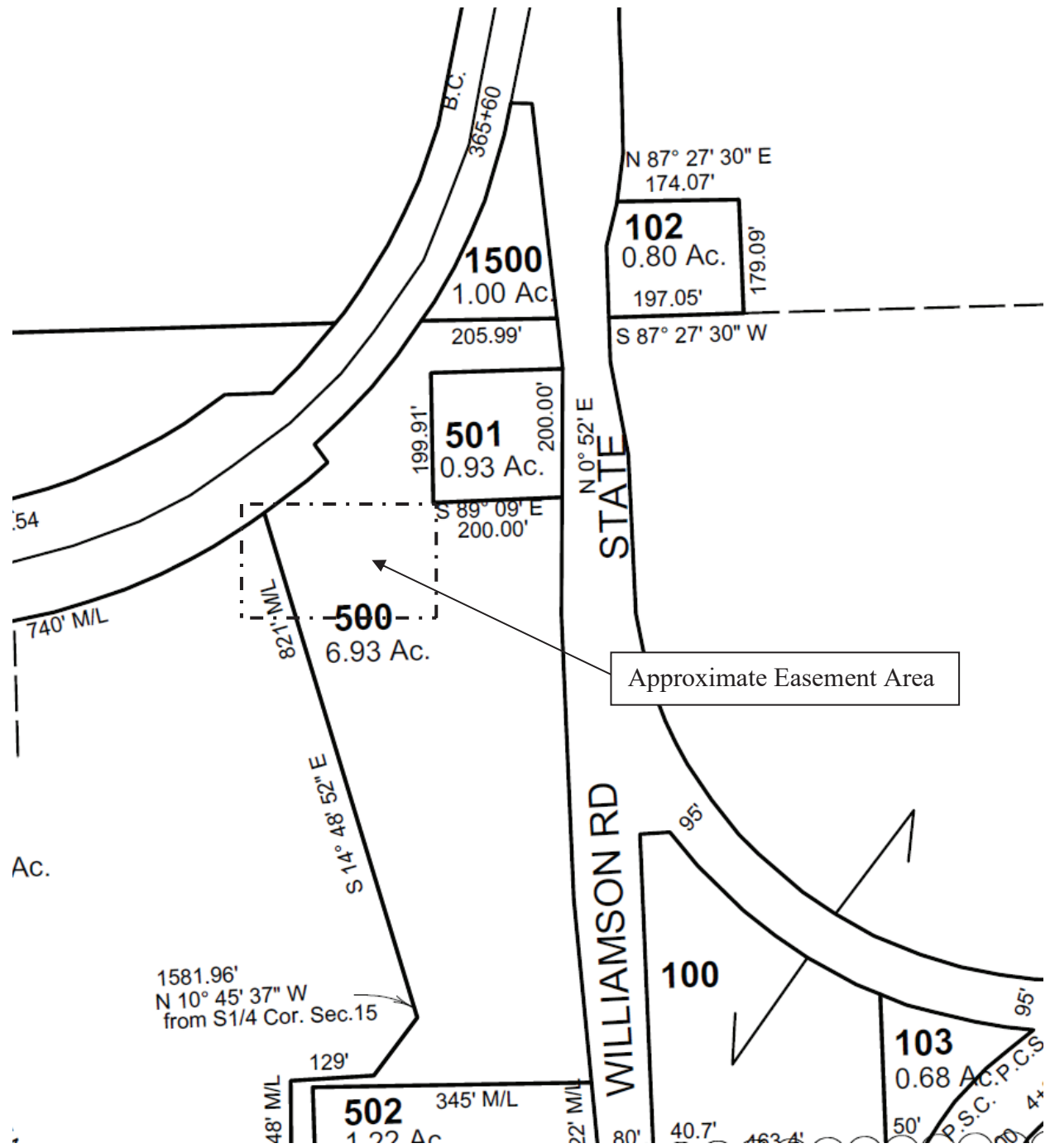


Depiction of Crossing Area



- b. Easement Agreement, dated March 21, 2016, by and between , by and between Smith Frozen Foods, Inc., an Oregon corporation and Chopin Wind, LLC (as assignee of BW DSG, LLC), recorded on April 8, 2016 in the Official Records of Umatilla County, Oregon as Instrument 2016-6420110.

Depiction of the Easement Property





- c. Crossing Agreement, dated June 1, 2016, by and between Smith Frozen Foods, Inc., an Oregon corporation and Chopin Wind, LLC (as assignee of BW DSG, LLC), recorded on June 10, 2016 in the Official Records of Umatilla County, Oregon as Instrument 2016-6440413.

TOWNSHIP 5 NORTH, RANGE 35, E.W.M.

Section 34: West Half

All being East, Willamette Meridian, Umatilla County, in the State of Oregon.

## **7. Chopin Wind, LLC**

General Warranty Deed, dated July 1, 2022 by and between BW DSG, LLC a Delaware limited liability company, and Chopin Wind, LLC, a Delaware limited liability company, recorded on \_\_\_\_\_ in the Official Records of Umatilla County, Oregon as Instrument \_\_\_\_\_.

All that tract or parcel of land being an lying in the Northeast Quarter of Section 15, Township 4 North, Ranch 35 East, County of Umatilla, State of Oregon, and more particularly described as follows:

Commencing at a point being a 5/8 inch rebar with red plastic cap stamped "ORPLS43406LS/WAPL44338", from which a found 5/8 inch rebar with red plastic cap stamped "ORPLS43406LS/WAPL44338" bears North 02°51'06" West a distance of 385.36 feet; thence South 24°39'25" West a distance of 281.75 feet to the point of beginning, thence along the following four courses:

1. South 01°00'35" West 109.58 feet to a point;
2. North 89°04'47" West 80.32 feet to a point;
3. North 00°57'02" East 109.84 feet to a point;
4. South 88°53'40" East 80.43 feet to the point of beginning.

## **EXHIBIT C**

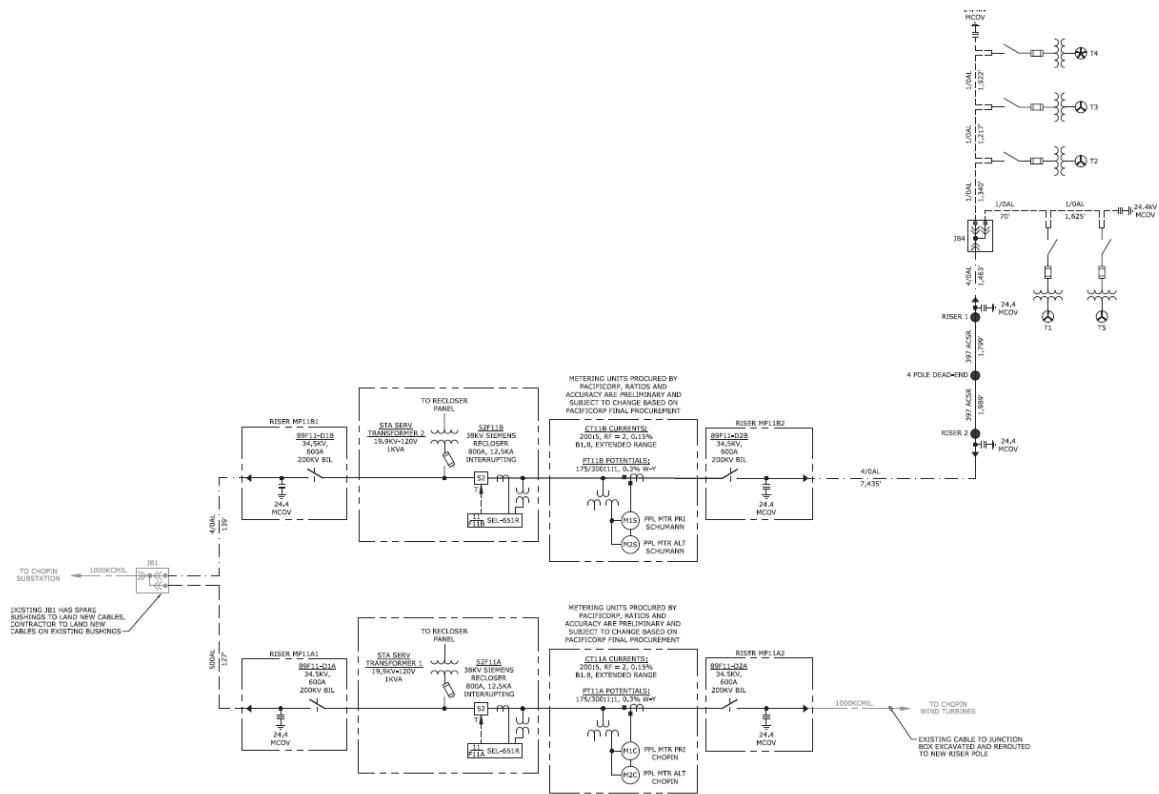
### **SELLER'S INTERCONNECTION FACILITIES**

1. Include description of point of metering, and Point of Interconnection:
  - The point of metering is on the high side of the step-up transformer located at the project substation. The Point of Interconnection (POI) is at PacifiCorp's 69kV Weston Substation
2. Include description of Point of Delivery:
  - The Point of Delivery is at the first structure west of the Weston
3. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Interconnection.
  - A one-line diagram is attached
4. Provide transmission single line drawing of the transmission path from the Point of Interconnection to the Point of Delivery as the path is defined in the Transmission Agreement(s).
  - a. Specify any changes of ownership along the transmission path.
    - The point of Change of Ownership is identified in Attachment 3 of the QFSGIA (as copy of which is provided below).
  - b. Specify the Transmission Agreement(s) governing each segment of Seller's transmission path, from the Point of Interconnection to the Point of Delivery.
    - The Small Generator Interconnection Agreement QFSGIA between PacifiCorp and Chopin Wind, LLC (Q0547)
5. Describe Seller's arrangements for station service to the Facility and show on one-line diagram how station service will be provided and metered.
  - Station Service House Power is fed from the 34.5kV bus and stepped down to 19.9kV to 120/240V consisting of Main Power and Backup Power inputs appropriately metered.
6. Specify the maximum hourly rate (MW) at which Seller is permitted to deliver energy

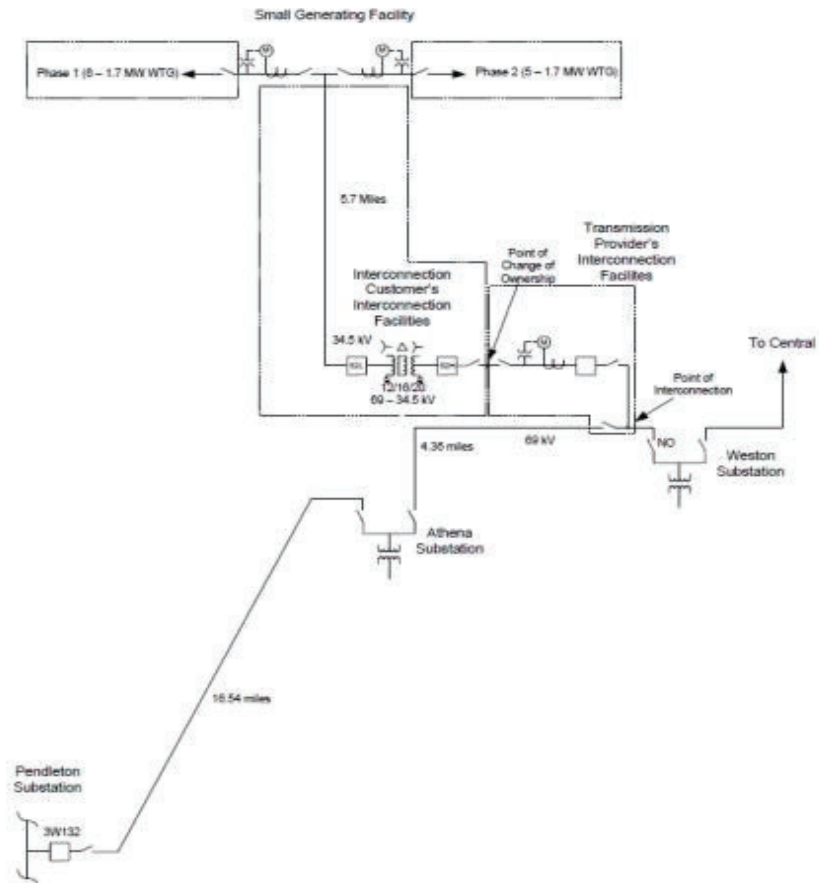
to the Point of Delivery and in compliance with Seller's transmission rights between the Point of Interconnection and the Point of Delivery ("Maximum Transmission Rate"):

→ The project will be curtailed to 8MW by GE's SCADA system at Point of Delivery.

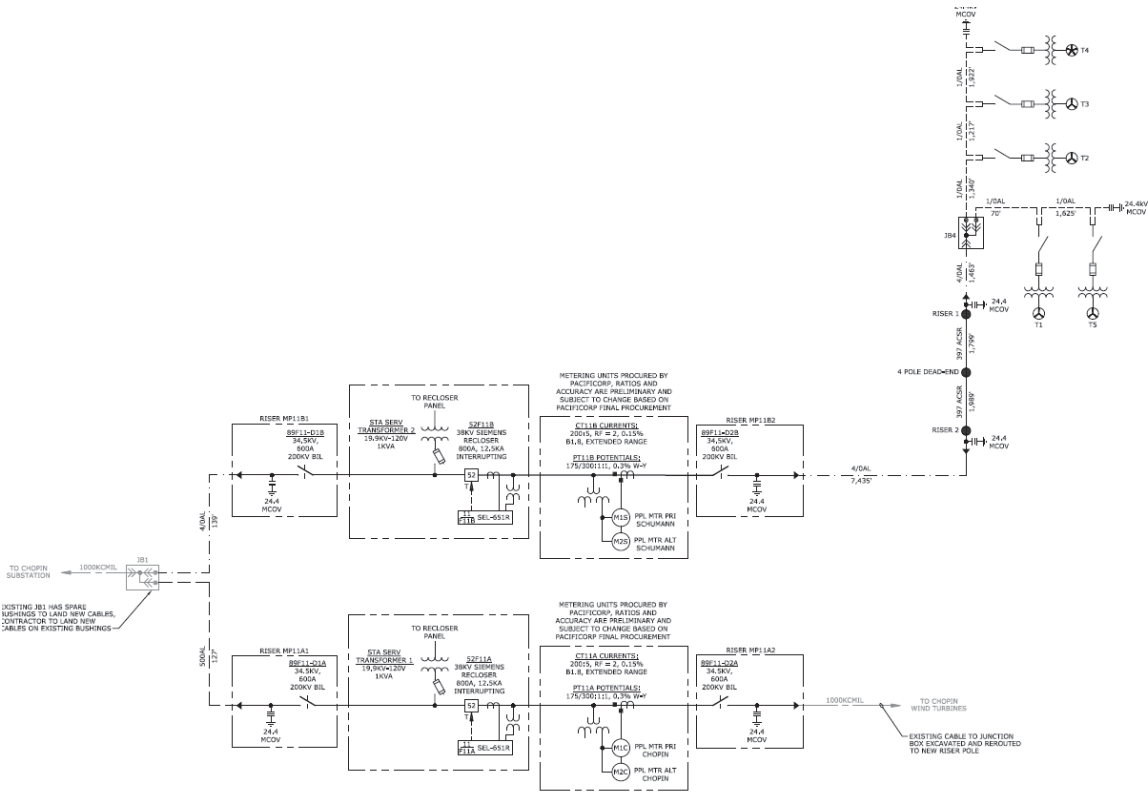
### One-Line Diagram



### Attachment 3 of the QFSGIA



One-Line Diagram (Station Service)



## **EXHIBIT D**

### **REQUIRED FACILITY DOCUMENTS**

QF Certification (i.e., FERC Form 556)

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



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

**1. FDS Farms, LLC**

- a. Right-of-Way and Crossing Agreement, dated July 26, 2017, by and between FDS Farms, LLC, a Nevada limited liability company and Chopin Wind, LLC, a Delaware limited liability company (as successor-in-interest to Schumann Wind, LLC), recorded as Instrument # 2017-6610294 in the official public records of Umatilla County, Oregon on August 7, 2017. [Sanders Road Dip]

Payment Side Letter, dated July 26, 2017, associated with the Right-of-Way and Crossing Agreement dated the same day, between FDS Farms, LLC and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC).

- b. Right-of-Way and Crossing Agreement, dated September 12, 2017, by and between FDS Farms, LLC, a Nevada limited liability company and Chopin Wind, LLC, a Delaware limited liability company (as successor-in-interest to Schumann Wind, LLC), recorded as Instrument # 2017-6630073 in the official public records of Umatilla County, Oregon on September 20, 2017. [Waterman Road to Sanders Road]

Payment Side Letter, dated September 12, 2017, associated with the Right-of-Way and Crossing Agreement dated the same day, between FDS Farms, LLC and Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC).

**2. Ferguson Ranch, Inc.**

Easement Agreement, dated August 11, 2017, by and between Ferguson Ranch, Inc., an Oregon corporation and Chopin Wind, LLC, a Delaware limited liability company (as successor-in-interest to Schumann Wind, LLC), recorded as Instrument #2017-6620111 in the official public records of Umatilla County, Oregon on August 28, 2017.

**3. Patrick Kelly**

Right-of-Way Easement Agreement, fully executed August 4, 2009, by and between Patrick Kelly and Chopin Wind, LLC, a Delaware limited liability company (as successor-in-interest to Schumann Wind, LLC), recorded as Instrument #2009-5550684 in the official public records of Umatilla County, Oregon on August 27, 2009.

Consent to Right-of-Way Agreement, dated August 30, 2017, by Euris Combine Hills I, LLC a Delaware limited liability company and Euris Oregon Wind Power Development, LLC, a Delaware limited liability company for the benefit of Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC) recorded as Instrument #2017-6620537 in the official public records of Umatilla County, Oregon on September 8, 2017. [Consent to Patrick Kelly Easement]

#### **4. A. Brooks Lieuallen**

- a. Affidavit of Option Agreement Expiration, dated June 5, 2017 recorded as Instrument # 2017-6590082 in the official public records of Umatilla County, Oregon on June 12, 2017.
- b. Real Property Lease, dated August 30, 2016, by and between A. Brooks Lieuallen and Chopin Wind, LLC, a Delaware limited liability company (as successor-in-interest to Schumann Wind, LLC), a memorandum of which was recorded as Instrument #2016-6480473 in the official public records of Umatilla County, Oregon on September 15, 2016.

#### **5. Harrison and Janis Handley Trust**

Setback Waiver, dated April 21, 2017, by the Harrison and Janis Handley Trust, dated March 18, 1998 to and for the benefit of Chopin Wind, LLC, a Delaware limited liability company (as successor-in-interest to Schumann Wind, LLC), recorded as Instrument #2017-6570181 in the official public records of Umatilla County, Oregon.

Payment Side Letter, dated April 21, 2017, associated with the Setback Waiver dated the same day from the Harrison and Janis Handley Trust for the benefit of Chopin Wind, LLC (as successor-in-interest to Schumann Wind, LLC).

#### **6. Smith Frozen Foods, Inc.**

- a. Right-of-Way and Crossing Agreement, dated October 8, 2015, by and between Smith Frozen Foods, Inc., an Oregon corporation and Chopin Wind, LLC (as assignee of BW DSG, LLC), recorded on October 22, 2015 in the Official Records of Umatilla County, Oregon as Instrument 2015-6350722.
- b. Easement Agreement, dated March 21, 2016, by and between , by and between Smith Frozen Foods, Inc., an Oregon corporation and Chopin Wind, LLC (as assignee of BW DSG, LLC), recorded on April 8, 2016 in the Official Records of Umatilla County, Oregon as Instrument 2016-6420110.
- c. Crossing Agreement, dated June 1, 2016, by and between Smith Frozen Foods, Inc., an Oregon corporation and Chopin Wind, LLC (as assignee of BW DSG, LLC), recorded on June 10, 2016 in the Official Records of Umatilla County, Oregon as Instrument 2016-6440413.

#### **7. Chopin Wind, LLC**

General Warranty Deed, dated July 1, 2022 by and between BW DSG, LLC a Delaware limited liability company, and Chopin Wind, LLC, a Delaware limited liability company, recorded on \_\_\_\_\_ in the Official Records of Umatilla County, Oregon as Instrument

\_\_\_\_\_.

**EXHIBIT F**

**RESERVED**

**EXHIBIT G**  
**RESERVED**

## EXHIBIT H

### SELLER'S AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP

PacifiCorp  
Attention: Director Generation Interconnection  
825 NE Multnomah Street, Suite 1600  
Portland, OR 97232

Dear PacifiCorp:

Chopin Wind, LLC ("Chopin") hereby voluntarily authorizes PacifiCorp, an Oregon corporation, acting in its interconnection or transmission function capacity, regarding the Schumann Wind Facility (the "Schumann Project"), to share the Schumann Project generator interconnection information and generator meter data with employees of PacifiCorp Energy Supply Management, including, but not limited to those in the PacifiCorp's Market Affiliate group.

Chopin acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.



Florian Zerhusen  
*President & CEO*  
August \_\_\_\_\_, 2022

## EXHIBIT I<sup>2</sup>

### 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:

1.1.1 Workers’ Compensation. Seller shall comply with all applicable laws where Seller performs work relating to the Facility.

1.1.2 Employers’ Liability. Seller shall maintain employers’ liability insurance with minimum limits covering bodily injury for: \$1,000,000 – each accident, \$1,000,000 by disease – each employee, and \$1,000,000 by disease – policy limit.

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

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

1.1.5 Umbrella/excess Liability. Seller shall maintain umbrella or excess liability insurance on an occurrence and following form basis with a minimum limit of \$5,000,000.

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

1.2 Additional Provisions or Endorsements.

1.2.1 Except for workers’ compensation and property insurance, the policies required 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

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<sup>2</sup> BW NTD: Under review.



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 no less than thirty (30) days prior written notice of cancellation or no less than ten (10) days prior written notice of cancellation if cancellation is due to non-payment of insurance premium. 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.

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

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.

## **EXHIBIT K**

### **CONTRACT PRICE**

#### **Before Commercial Operation:**

For all Net Output and Capacity Rights delivered to the Point of Delivery pursuant to Section 5.1.1 on a given day, the Contract Price shall be 85 percent of a blended market index price for day-ahead energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde firm market indices (or other Hubs as established by the Oregon Commission or other applicable agency), as reported by the Intercontinental Exchange, Inc. ("ICE") or a successor entity as reflected in the Standard Avoided Cost Rates approved by the Commission (or, if not reflected in the Standard Avoided Cost Rates, as mutually accepted by the Parties), for the On-Peak and Off-Peak periods, less the Wind Integration Charge. The market blending ratios and Wind Integration Charge will reflect values in the Standard Avoided Cost Rates approved by the Commission and in effect at the time of delivery.

#### **On and after the Commercial Operation Date:**

For all Net Output and Capacity Rights delivered to the Point of Delivery pursuant to Section 5.1.2 on a given day, the Contract Price shall be 93 percent of a blended market index price for day-ahead energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde firm market indices (or other Hubs as established by the Oregon Commission or other applicable agency), as reported by the Intercontinental Exchange, Inc. ("ICE"), or a successor entity as reflected in the Standard Avoided Cost Rates approved by the Commission (or, if not reflected in the Standard Avoided Cost Rates, as mutually accepted by the Parties), for the On-Peak and Off-Peak periods, less the Wind Integration Charge. The market blending ratios and Wind Integration Charge will reflect values in the Standard Avoided Cost Rates approved by the Commission and in effect at the time of delivery.

**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: cntadmin@pacificorp.com	BayWa r.e. Wind, LLC 5901 Priestly Drive, Suite 300 Carlsbad, CA 92008 E-mail: notices@baywa-re.us
<b>All Invoices:</b>	Attn: Back Office, Suite 1900 Email: powerinvoices@pacificorp.com	Bills@baywa-re.us
<b>Scheduling:</b>	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email:	BAM@baywa-re.us (858) 583-2511
<b>Payments:</b>	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826	Chopin Wind, LLC – Schumann Wind Farm Accounting Department 5901 Priestly Drive, Suite 300 Carlsbad, CA 92008
<b>Wire Transfer:</b>	To be provided in separate letter from PacifiCorp to Seller	(See Attached)
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 600 Phone (503) 813-7280	bills@baywa-re.us
<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	BayWa r.e. Wind, LLC 5901 Priestly Drive, Suite 300 Carlsbad, CA 92008 E-mail: notices@baywa-re.us

**EXHIBIT M**  
**FORM OF LENDER ESTOPPEL**  
**ESTOPPEL**  
(POWER PURCHASE AGREEMENT)

To: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Re: Power Purchase Agreement by and between [\_\_\_\_\_] (“Seller”), and PacifiCorp, an Oregon corporation (“PacifiCorp”), dated [\_\_\_\_\_] (the “PPA”)

*[Insert Appropriate Lender Recitals]*

All capitalized terms used but not otherwise defined herein have the meanings set forth in the PPA.

PacifiCorp hereby confirms to Seller and Lender as follows as of the effective date of this Estoppel:

1. As of the execution date set forth below: (a) the PPA is in full force and effect; (b) except as stated in **Exhibit A**, to PacifiCorp's knowledge, no default exists on the part of PacifiCorp or Seller under the PPA, and PacifiCorp has no notice that any circumstance currently exists that, but for the giving of notice or the passage of time, or both, would be such a default that would allow termination of or suspension of obligations under the PPA; (c) except as stated in **Exhibit A**, and except for any and all agreements between Seller and PacifiCorp, acting in its interconnection and transmission function capacity, the PPA constitutes the entire agreement between PacifiCorp and Seller with respect to the Facility as defined therein; (d) except as stated in **Exhibit A**, the PPA has not been amended, modified or supplemented, and has not been superseded. A true and correct copy of the PPA (including all amendments thereto) is attached hereto as **Exhibit B**.
2. All payments, security and deposits required to be paid or posted under the PPA (if any) by the Seller have been so paid or posted.
3. To PacifiCorp’s knowledge, all obligations and conditions of the Seller to be performed under the PPA (if any) as of the date of this Estoppel have been performed by Seller and, to PacifiCorp’s knowledge, there are no facts entitling PacifiCorp to any claim, counterclaim, offset or defense against the Seller in respect of the PPA.

4. To PacifiCorp's knowledge, (i) there are no disputes or proceedings between PacifiCorp on the one hand and the Seller on the other, (ii) there are no events, acts, circumstances or conditions constituting an event of Force Majeure (as defined in the PPA), and (iii) each of PacifiCorp and the Seller does not owe any indemnity payments under the PPA.

Each of Seller and PacifiCorp hereby represents and warrants that it has full right and authority to execute and deliver this certificate and that respective person signing on behalf of each of Seller and PacifiCorp is authorized to do so.

This Estoppel has been executed and is effective [\_\_\_\_\_].

[SELLER]

PACIFICORP

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

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

Exhibit A to Estoppel

[Insert Items, as necessary]

Exhibit B to Estoppel

[Insert PPA]



## **EXHIBIT N**

### **QUALIFIED REPORTING ENTITY (QRE) SERVICES AGREEMENT<sup>3</sup>**

*[Form to be updated, if applicable, prior to Commercial Operation by Purchaser]*

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<sup>3</sup> Pac: This form is not negotiated and is required to be executed in this form in the event Seller would like Pac to perform QRE services.

## QUALIFIED REPORTING ENTITY SERVICES AGREEMENT

Energy Supply Management Master v4.1a; 03122019

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

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

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

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

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

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

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

### I. Definitions; Rules of Construction.

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

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

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

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

1.5 “FERC” means the Federal Energy Regulatory Commission.

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

1.7 “Facility” is defined in the Preamble.

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

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

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

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

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

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

1.14 “PPA” is defined in the Preamble.

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

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

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

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

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

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

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

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

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

1.24 “WECC” means the Western Electricity Coordinating Council.

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

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

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

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

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

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

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

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

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

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

## II. Term and Termination.

2.1 This Agreement shall be effective upon execution by the Parties and shall continue in effect until such time as either Party, upon providing 60 days written notice to the other Party, chooses to terminate. PacifiCorp may initiate any regulatory proceedings it deems appropriate to terminate this Agreement prior to the effectiveness of such termination. Notwithstanding the foregoing, (a) Counterparty may terminate this Agreement upon an event of default by PacifiCorp if PacifiCorp does not cure such event of default within 10 days of written notice, (b) PacifiCorp may terminate this Agreement upon an event of default by Counterparty if Counterparty does not cure such event of default within 10 days of written notice, (c) PacifiCorp may terminate this Agreement if the Facility fails to meet the requirements of Section 3.1 hereof and such failure is not cured within 30 days, and (d) either Party may terminate this Agreement immediately upon notice to the other if Counterparty or the Facility fail to comply with Section 1.29. This Agreement may also be terminated as otherwise set forth herein.

## III. QRE Services.

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

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

The necessary metering is a prerequisite for this service and is not covered in the fees described above.

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

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

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

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

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

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

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

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



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

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

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

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



### 3.10 Measurement.

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

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

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

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

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

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

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

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

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

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

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

#### IV. INDEMNITY.

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

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

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

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

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

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

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

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

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

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

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

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

V. Further Counterparty Obligations.

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

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

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

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

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

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

5.7 Data Request. Counterparty shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any governmental authority. Counterparty shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

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

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

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

## VI. Representations and Warranties.

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

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

## VII. Financial Responsibility.

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



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

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

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

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

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

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

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

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

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

8.1.7 In the case of Counterparty:

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

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

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

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

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

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

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

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

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

## IX. Force Majeure.

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



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

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

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

## X. Miscellaneous.

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

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

10.3 Notices. All notices, requests, statements or payments shall be made to the addresses set out on the Notices Exhibit. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

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

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

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

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

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

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

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

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

*[signature page follows]*

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

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

For Facility enter the following information:

Facility Name and Address or Location

Meter Number (Device ID)

Facility's WREGIS Generator ID

EIA or QF ID#

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

## **NOTICES EXHIBIT**

To Counterparty: [to be provided]

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

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

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