

## **Appendix E-3 Tolling Agreement Documents**

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### **ENERGY STORAGE AGREEMENT**

**BETWEEN**

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

**AND**

**PACIFICORP**

**DATED [\_\_\_\_\_] , 2022**

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## ENERGY STORAGE AGREEMENT

THIS ENERGY STORAGE AGREEMENT (this “Agreement”) is entered into as of [\_\_\_\_], 2022 (the “Execution Date”), by and between [COMPANY NAME], a [TYPE OF ORGANIZATIONAL ENTITY AND STATE OF ORGANIZATION] (“Seller”), and PacifiCorp, an Oregon corporation (“PacifiCorp”). Seller and PacifiCorp are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

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

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

C. PacifiCorp intends to include certain Storage Product in its resource planning and to designate this Agreement as a Network Resource and Network Load (as such terms are defined in Section 1.1) for purposes of serving network load.

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

### SECTION 1 DEFINITIONS, RULES OF INTERPRETATION

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

“Abandonment” or “Abandons” means: (a) the relinquishment of all possession and control of the Storage Facility by Seller (other than in connection with an Assignment permitted by Section 20); (b) after Start of Construction of the Storage Facility (as identified on Exhibit N), but prior to the Commercial Operation Date, the complete cessation of the construction, testing and commissioning of the Storage Facility for ninety (90) consecutive days that is not consistent with the Project Milestone schedule attached as Exhibit N; and (c) after the Commercial Operation Date, the complete cessation of the operation and maintenance of the Storage Facility for ninety (90) consecutive days; provided, in the case of (a), (b) and (c) above, that such relinquishment or cessation is not caused by or attributable to an Event of Default by PacifiCorp, a written request by PacifiCorp, or an event of Force Majeure.

“AC” means alternating current.

“Affected Party” is defined in Section 14.1.

“Affiliate” means, with respect to any designated Person, each Person that directly or indirectly controls, is controlled by, or is under common control with, such designated Person,



with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise; provided, however, that notwithstanding the foregoing, with respect to PacifiCorp, “Affiliate” only includes Berkshire Hathaway Energy Company and its direct, wholly owned subsidiaries.

“AGC” or “Automatic Generation Control” means the equipment and capability of the Storage Facility to receive AGC Set Points that automatically adjust the amount of Charging Energy, Discharging Energy and Ancillary Services with respect to the Storage Facility and such other operating parameters for which AGC Set Points may be transmitted.

“AGC Set-Point” means an analog or digital signal updated every four (4) seconds sent to the Storage Facility by PacifiCorp, the Interconnection Provider, the Transmission Provider or the Market Operator with respect to the Storage Facility operations using AGC.

“Agreement” is defined in the Preamble.

“Ancillary Services” has the meaning set forth in the Tariff. Ancillary Services do not include any Capacity Rights.

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

“Assign” is defined in Section 20.1.

“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 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 Storage Facility’s capability and ability to charge or discharge power. Capacity Rights do not include any Ancillary Services, Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Storage Facility.

“Charging Energy” means all energy provided by PacifiCorp to Seller at the Point of Delivery that is a result of a Charging Notice given by PacifiCorp. All Charging Energy shall be used for PacifiCorp’s benefit in accordance with Charging Notices and Discharging Notices given by PacifiCorp.

“Charging Notice” means the operating instruction, including AGC Set-Point, and any subsequent updates, given by PacifiCorp to Seller, using AGC or other means provided for herein, directing delivery of Charging Energy to the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage Operating Procedures. The Charging Notice shall specify the hours in which Seller

shall charge the Storage Facility and the Stored Energy Level Seller shall charge the Storage Facility to, by the end of the last hour in which Seller shall charge the Storage Facility.

“Commercial Operation” means that the Storage Facility is fully operational and capable of charging, storing and discharging energy at or greater than the Guaranteed Storage Power Capacity Rating in accordance with the Storage Operating Procedures, all AGC equipment is installed and fully operational in accordance with the requirements of this Agreement, and the Storage Facility is fully interconnected, fully integrated, and synchronized with the System, which occurs when all of the following events (a) have occurred, all of which are Seller’s responsibility to achieve, receive or obtain, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice pursuant to Section 2.2.2 that Commercial Operation has occurred:

(i) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer certifying: (A) the Storage Power Capacity Rating of the Storage Facility at the anticipated time of Commercial Operation, which must be at least equal to or greater than the Guaranteed Storage Power Capacity Rating; (B) the Storage Round Trip Efficiency of the Storage Facility at the anticipated time of Commercial Operation, which must be at least equal to or greater than the Guaranteed Storage Round Trip Efficiency; (C) the Storage Ramp Rate of the Storage Facility at the anticipated time of Commercial Operation, which must satisfy the Storage Ramp Rate criteria specified in Exhibit P; (D) that all AGC equipment is installed and operational in accordance with the requirements of this Agreement; (E) that the warranties from the original equipment manufacturer for the batteries used in the Storage Facility have not been voided during the construction process and remain valid and in full force and effect; and (F) that the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement, including the Storage Operating Procedures;

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

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

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

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

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

“Commercial Operation Date” means the date that Commercial Operation is achieved for the Storage Facility in accordance with Section 2.2.2 but in no event earlier than ninety (90) days before the Scheduled Commercial Operation Date.

[“Commission” means the [\_\_\_\_\_].]<sup>1</sup>

[“Commission Approval” means [\_\_\_\_\_].]

[“Commission Approval Deadline” means [\_\_\_\_\_].]

[“Commission Approval Termination Deadline” is defined in Section 2.1.2.]

“Confidential Business Information” is defined in Section 23.1.

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

“Credit Requirements” means: (a) in the case of Seller and a Qualifying Person, Seller or such Qualifying Person has a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of: (i) ‘BBB+’ or greater from S&P; or (ii) ‘Baa1’ or greater from Moody’s; provided that if Seller or such Qualifying Person is rated by both S&P and Moody’s and such ratings are split, then the lower of the two ratings must be at least ‘BBB+’ from S&P or ‘Baa1’ from Moody’s; provided further that if (i) or (ii) is not available, an equivalent rating as determined by PacifiCorp through an internal review process and utilizing a proprietary credit scoring model developed in conjunction with a third party; and (b) in the case of a Qualifying Institution, such Qualifying Institution has a credit rating on its long-term senior unsecured debt of at least ‘A’ from S&P and ‘A2’ from Moody’s.

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<sup>1</sup> NTD: PacifiCorp to confirm what, if any, filings or approvals will be required by applicable state public utility commissions.

“Default Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to One Hundred Dollars (\$100) per kW of the aggregate amount of the Guaranteed Storage Power Capacity Rating.

“Defaulting Party” is defined in Section 11.1.

“Delay Damages” means, for any given day of delay in a month, the product of (a) the Guaranteed Storage Power Capacity Rating, expressed in MW, multiplied by (b) the applicable amount set forth in Exhibit F.

“Discharging Energy” means all energy discharged by the Storage Facility pursuant to a Discharging Notice, less inverter, transformation and transmission losses, if any, and delivered to the Point of Delivery.

“Discharging Notice” means the operating instruction, including AGC Set-Point, and any subsequent updates, given by PacifiCorp to Seller, using AGC or other means provided for herein, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage Operating Procedures. The Discharging Notice shall specify the hours in which Seller shall discharge the Storage Facility and the energy in each hour Seller shall discharge the Storage Facility.

“DNR Costs” is defined in Section 4.2.2.

“DNR Costs Notice” is defined in Section 4.2.3.

“DNR Cost Threshold” is defined in Section 4.2.2.

“DNR Request” is defined in Section 4.2.1.

“DNR Termination Notice” is defined in Section 4.2.2.

“Effective Date” is defined in [Section 2.1/Section 2.1.1].

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

“Energy Imbalance Market” means the real-time energy imbalance market currently operated by the Market Operator.

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

“Event of Default” is defined in Section 11.1.

“Excluded Months” means the months of January, February, June, July, August, September, October and December.

“Execution Date” is defined in the Preamble.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Storage Facility is fully operational and capable of charging, storing and discharging energy at or greater than the Guaranteed Storage Power Capacity Rating, the AGC equipment is installed and fully operational in accordance with the requirements of this Agreement, and the Storage Facility is fully interconnected, fully integrated, and synchronized with the Transmission Provider’s System, and Seller has sent written notice to PacifiCorp that Final Completion has occurred.

“Firm Market Price Index” means, for each hour the hourly value calculated as the product of (a) the weighted average prices reported by the Intercontinental Exchange, Inc. (“ICE”) Day-Ahead [Mid-C][Palo Verde] On-Peak Index and the ICE Day-Ahead [Mid-C][Palo Verde] Off-Peak Index for the day that includes such hour, weighted by the count of hours for each ICE Index on such day, multiplied by (b) the hourly CAISO day-ahead market locational marginal price for the “[PACW][PACE].DGAP [PACW][PACE]-APND” location for such hour, and divided by the average of the same CAISO index over all hours in the day that includes such hour. If any index is not available for a given period, the Firm Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose under this Agreement, during the Term, then the Parties must agree upon a replacement Firm Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the hourly price of electricity for the applicable periods.<sup>2</sup>

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

“Forced Outage” means the appropriate NERC Event Types, currently U1, U2 and U3, as described in Exhibit J, as such types may be updated from time to time, and specifically excludes any Maintenance Outage or Planned Outage.

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

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<sup>2</sup> NTD: The definition of “Firm Market Price Index” will be adjusted to appropriately reflect the location of the resource.

than the Guaranteed Storage Power Capacity Rating, a copy of which is attached hereto as Exhibit S.<sup>3</sup>

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

“Guaranteed Storage Availability” is defined in Exhibit A.

“Guaranteed Storage Power Capacity Rating” is defined in Exhibit A.

“Guaranteed Storage Round Trip Efficiency” is defined in Exhibit A.

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

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

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

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

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

“Interconnection Provider” means PacifiCorp Transmission.

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

“kW” means kilowatt. Unless otherwise expressly provided for in this Agreement, all references to “kW” mean kilowatts AC.

“Lender” means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, development, construction or back leverage financing or credit derivative arrangement or refinancing) to Seller or Seller’s Affiliates for: (a) the construction, term or permanent financing or refinancing of the

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<sup>3</sup> NTD: Seller to demonstrate Generation Interconnection Agreement is FERC jurisdictional.

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

“Lender Consent” is defined in Section 20.3.

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

- (a) is issued by a Qualifying Institution;
- (b) by its terms, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller under this Agreement;
- (c) permits PacifiCorp to draw the entire amount available if such letter of credit is not renewed or replaced at least thirty (30) days prior to its stated expiration date with substitute Security in accordance with the requirements of Section 8; and
- (d) is transferable by PacifiCorp to any Person to which PacifiCorp may assign this Agreement.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and reasonably acceptable to PacifiCorp who: (a) to the extent mandated by Requirements of Law is licensed to practice engineering in the appropriate engineering discipline for the required certification, evaluation or opinion being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state; (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is providing a certification, evaluation or opinion; (c) is not an employee of Seller or any Affiliate of Seller; and (d) is not employed by: (i) an engineer, contractor or designer or otherwise involved in the development, design, engineering or construction of the Storage Facility; or (ii) a manufacturer or supplier of any equipment installed in the Storage Facility.

“Local Time” means Mountain Standard Time or Mountain Daylight Time, as applicable, in the state in which the Storage Facility is located on the day in question.

“Maintenance Outage” means the appropriate NERC Event Type, currently NERC Event Type MO, as described in Exhibit J, as such types may be updated from time to time, and specifically includes any outage involving ten percent (10%) or more of the Storage Power Capacity Rating of the Storage Facility, that is not a Forced Outage or a Planned Outage.

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market or any organized day-ahead or intra-hour market for a region that includes the System.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MW” means megawatt. Unless otherwise expressly provided for in this Agreement, all references to “MW” mean megawatts AC.

“MWh” means megawatt-hour.

“NERC” means the North American Electric Reliability Corporation.

“Network Integration Transmission Service” is defined in the Tariff.

“Network Load” is defined in the Tariff.

“Network Resource” is defined in the Tariff.

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

“Notice” is defined in Section 22.1.

“OFAC” is defined in Section 3.2.15.

“OFAC Sanctions Lists” is defined in Section 3.2.15.

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.12.

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

[“PacifiCorp’s Cost to Cover” means \_\_\_\_\_.]<sup>4</sup>

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

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<sup>4</sup> NTD: PacifiCorp to propose cost to cover that reflects the cost to PacifiCorp to obtain energy during periods in which Seller does not deliver or make available Discharging Energy to PacifiCorp.



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

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

“Planned Outage” means the appropriate NERC Event Type, currently NERC Event Type PO, as described in Exhibit J, as such types may be updated from time to time, and specifically excludes any Maintenance Outage or Forced Outage.

“Point of Delivery” means the point of interconnection between the Storage 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 Storage Facility is or will be located, as more fully described on Exhibit B.

“Proceedings” is defined in Section 24.3.

“Prohibited Countries” is defined in Section 3.2.16.

“Prohibited Vendors” is defined in Section 3.2.17.

“Project Development Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to Two Hundred Dollars (\$200) per kW of the aggregate amount of the Guaranteed Storage Power Capacity Rating.

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

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry for storage facilities of similar size, characteristics and geographical region, 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, would reasonably 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 is intended to include acceptable practices, methods, and acts generally accepted in the electric power generation industry for storage facilities of similar size, characteristics and geographical region.

“PTCs” means the production tax credits under Section 45 of the Internal Revenue Code, as the same may be amended from time to time.

“Qualifying Institution” means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof

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

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

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

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

“Restricted Period” is defined in Section 11.4.

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

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

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [\_\_\_\_\_], as such date may be extended pursuant to Section 2.2.1.

“Security” means Project Development Security and/or Default Security

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

“Seller” is defined in the Preamble.

“Seller Indemnitees” is defined in Section 12.1.2.

“SQMD” is defined in Section 9.5.

“Storage Availability” is defined in Exhibit U.

“Storage Availability Damages” is defined in Exhibit U.

“Storage Availability Guarantee” is defined in Section 6.15.4.

“Storage Energy Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy in MWh, and any other products that may be

developed or evolve from time to time during the Term that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

“Storage Energy Capacity Test” means the testing procedures, requirements and protocols set forth in Exhibit T.

“Storage Facility” means Seller’s energy storage facility as further described in Exhibit B.

“Storage Facility Metering Point” means the metering point at the Storage Facility, as further described in Exhibit C.

“Storage Operating Procedures” means the procedures and protocols governing operations of the Storage Facility which are set forth in Exhibit P, including (a) minimum and maximum operating parameters, (b) procedures for scheduling and dispatch, and (c) methods of day-to-day communications.

“Storage Power Capacity Damages” is defined in Exhibit T.

“Storage Power Capacity Guarantee” is defined in Exhibit T.

“Storage Power Capacity Rating” means the total capacity (in MW) of the Storage Facility as determined from time to time in accordance with Exhibit T.

“Storage Price” means the applicable price, expressed in \$/MW/month, stated in Exhibit K.

“Storage Product” means: (a) Discharging Energy; (b) Storage Energy Capacity; and (c) Ancillary Services, in each case, arising from or relating to the Storage Facility.

“Storage Ramp Rate Test” means the testing procedures, requirements and protocols set forth in Exhibit W.

“Storage Round Trip Efficiency” is defined in Exhibit V.

“Storage Round Trip Efficiency Damages” is defined in Exhibit V.

“Storage Round Trip Efficiency Guarantee” is defined in Section 6.15.5.

“Storage Round Trip Efficiency Test” means the testing procedures, requirements and protocols set forth in Exhibit V.

“Stored Energy Level” means, at a particular time, the amount of electric energy stored in the Storage Facility, expressed in MWh.

“Supply Chain Audit” means an audit or investigation of the supply chain through which all equipment and materials to be incorporated into the Storage Facility are sourced, including

the mines, factories and other facilities of Seller and its contractors, subcontractors, vendors, suppliers and materialmen, of any tier, and the contracts, policies and procedures, codes of conduct and other documentation relating to the foregoing, for the purpose of validating compliance with the requirements of Section 3.2.17.

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

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

“Tax Credits” means any federal, state or local production tax credits (including the PTC), investment tax credits (including the ITC), tax deductions, payment in lieu of taxes, or other tax benefits for which the Storage Facility is or may be eligible.

“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.

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) references to “Sections” or “Exhibits” are to sections of or exhibits to this Agreement; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined in this Agreement must be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including,” “includes” and “included” mean “including, without limitation” or “including, but not limited to”; (h) all references to a particular Requirements of Law mean that Requirements of Law as amended, modified, supplemented or superseded from time to time and includes all rules and regulations promulgated thereunder; (i) the word “or” is not necessarily exclusive; (j) all references to energy and capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; (k) reference to “days,” “months” and “years” means calendar days, months and years, respectively, unless expressly stated otherwise in this Agreement; and (l) any items required to be delivered on a “day” that is not a Business Day shall be required to be delivered on the next Business Day.

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

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

1.2.4 Interpretation with FERC Orders. Each Party conducts, and shall conduct, its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions to the extent applicable. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service.

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

(b) Notwithstanding any other provision in this Agreement to the contrary, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any breach, default, or event of default under the Generation Interconnection Agreement or any such other agreement, will alter or modify the Parties' rights, duties, and obligations in this Agreement, except as otherwise expressly provided in this Agreement. This Agreement will not be construed to create any rights between Seller and Interconnection Provider or between Seller and Transmission Provider.

(c) Seller acknowledges that, for purposes of this Agreement, Interconnection Provider and Transmission Provider are deemed separate entities and separate contracting parties from PacifiCorp. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser in this Agreement, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

## **SECTION 2 TERM; MILESTONES**

### 2.1 Term.

2.1.1 Effective Date and Term. This Agreement shall be effective when it has been executed and delivered by both Parties [and PacifiCorp has obtained the Commission

Approval, in form and substance satisfactory to PacifiCorp in its sole discretion, before the Commission Approval Deadline] (the “Effective Date”) and, unless earlier terminated as provided in this Agreement, shall remain in effect until [\_\_\_\_\_] ([\_\_]) years after the Commercial Operation Date (the “Term”).<sup>5</sup>

[2.1.2 Commission Approval. Within [\_\_\_\_\_] days after the Execution Date, PacifiCorp shall submit one or more filings to the Commission for the Commission Approval. If (a) the Commission fails to grant the Commission Approval on or before the Commission Approval Deadline or (b) grants the Commission Approval on or before the Commission Approval Deadline, but in form and substance not acceptable to PacifiCorp in its sole discretion, then within thirty (30) days after the Commission Approval Deadline or the date the Commission grants the Commission Approval in form and substance not acceptable to PacifiCorp in its sole discretion, as the case may be (the “Commission Approval Termination Deadline”), PacifiCorp shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Seller, provided that in the case of Section 2.1.2(b), PacifiCorp may extend the Commission Approval Termination Deadline by up to an additional thirty (30) days upon written notice to Seller in order to determine whether it can reach a resolution with the Commission acceptable to PacifiCorp in its sole discretion, which resolution may include one or more amendments to this Agreement, provided any required amendment must be mutually acceptable to the Parties in their sole discretion. If PacifiCorp terminates this Agreement pursuant to this Section 2.1, then all further obligations of the Parties under this Agreement (other than the provisions which by their terms are intended to survive the termination of this Agreement) shall be terminated without further liability of either Party to the other Party. Under no circumstances shall either Party have any liability to the other Party due to the failure of the Commission to grant the Commission Approval by the Commission Approval Deadline or in form and substance not acceptable to PacifiCorp in its sole discretion.]

## 2.2 Milestones.

2.2.1 Project Milestones. Time is of the essence in the performance of this Agreement, and Seller’s completion of the Storage Facility and the delivery and making available of Storage Product by the Scheduled Commercial Operation Date is critically important. Therefore, Seller must achieve each of the Project Milestones specified in Exhibit N on or before 16:00 hours Local Time on the date specified for each Project Milestone in Exhibit N. If Seller is unable to achieve any Project Milestone on or before 16:00 hours Local Time on the date specified for such Project Milestone in Exhibit N solely as the result of Force Majeure, then such date shall be extended on a day-for-day basis for any delay in achieving such Project Milestone caused solely by such Force Majeure; provided, however, in no event shall the Scheduled Commercial Operation Date be extended by Force Majeure more than one hundred eighty (180) days.

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<sup>5</sup> NTD: PacifiCorp to confirm what, if any, filings or approvals will be required by applicable state public utility commissions.

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

2.2.3 [Reserved].

2.2.4 Completion of Other Project Milestones. Within thirty (30) days of completion of each Project Milestone (other than Commercial Operation) but not later than the date specified for achievement of each Project Milestone listed in Exhibit N, Seller shall notify PacifiCorp in writing of the achievement of the Project Milestone, including such written documentation as specified in Exhibit N in form and substance reasonably satisfactory to PacifiCorp demonstrating achievement of the Project Milestone. Within fifteen (15) Business Days' of receipt of Seller's written notice and documentation, PacifiCorp shall provide Seller with written acceptance or denial of the Project Milestone. If PacifiCorp does not provide written acceptance or denial of any Project Milestone within such fifteen (15) Business Day period, then such Project Milestone will be deemed to have been achieved on the date of receipt of Seller's notice and documentation. If any Project Milestone (other than Commercial Operation) is not achieved on or before the date specified in Exhibit N, then Seller shall: (a) inform PacifiCorp of a revised projected date for the achievement of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project Milestone); and (b) provide PacifiCorp with a written report containing Seller's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Seller intends to undertake to ensure the timely achievement of Commercial Operation by the Scheduled Commercial Operation Date. If Seller complies with the preceding sentence, including undertaking any remedial action to ensure the timely achievement of Commercial Operation by the Scheduled Commercial Operation Date, then no failure of Seller to achieve a Project Milestone (other than Commercial Operation) on or before the scheduled date in Exhibit N will constitute an Event of Default.

2.3 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, then Seller shall pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the earlier of: (a)

the date this Agreement is terminated in accordance with its terms; and (b) the date that the Storage Facility achieves Commercial Operation.

2.4 Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's delay in achieving Commercial Operation by the Scheduled Commercial Operation Date are difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Delay Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Except in the case of an Event of Default pursuant to Section 11.1.2(b), Delay Damages shall be PacifiCorp's sole remedy for Seller's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date.

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

2.6 PacifiCorp's Right to Monitor. From the Effective Date until the date that is thirty (30) days after Final Completion, Seller will provide monthly updates to PacifiCorp concerning the construction schedule and progress of Seller regarding the acquisition, design, major equipment procurement and site delivery, financing, engineering, construction, installation, start-up and testing of the Storage Facility, including (a) any significant developments or delays in achieving Commercial Operation by the Scheduled Commercial Operation Date, (b) the percentage completion of the Storage Facility and (c) a brief summary of construction activity during the prior three (3) months and contemplated for the next three (3) months. PacifiCorp, at its own expense, shall have the right to monitor the construction, installation, start-up and testing of the Storage Facility for compliance with this Agreement; provided, that PacifiCorp shall schedule any visit to the Premises in advance with Seller, shall comply with Seller's reasonable written health, safety and security requirements provided to PacifiCorp, and shall not interfere with Seller's construction, installation, start-up and testing of the Storage Facility. Notwithstanding anything to the contrary contained herein, nothing in this Agreement will be construed to require PacifiCorp to monitor Seller's development, design, engineering, construction, installation, start-up and testing of the Storage Facility or to review, comment on, or approve any contract between Seller and another Person, and PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damage, circumstance, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp or its Representatives with respect to the acquisition, design, financing, engineering, construction, installation, start-up and testing of the Storage Facility.

2.7 Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Term associated with Seller's or the Storage Facility's eligibility to receive PTCs, ITCs or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein



regarding the Storage Price to be paid by PacifiCorp and the delivery and making available of Storage Product by Seller, shall be effective regardless of whether the delivery of Storage Product from the Storage Facility is eligible for, or receives, PTCs, ITCs or other Tax Credits or the Storage Facility qualifies for accelerated depreciation for Seller's accounting, reporting or tax purposes during the Term.

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

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

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

3.1.2 Authority. It has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with the terms hereof.

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

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

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

3.1.6 Eligible Contract Participant. PacifiCorp is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act.

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

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

3.2.2 Authority. It: (a) has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with the terms hereof; and (b) has the power and authority to own and operate the Storage Facility and be present upon the Premises for the Term.

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

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

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

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

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

3.2.6 Required Facility Documents. All Required Facility Documents are listed on Exhibit D. Seller holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other date as may be specified under applicable Requirements of Law), and will maintain throughout the Term all Required Facility Documents. Following the Commercial Operation Date, Seller shall promptly notify PacifiCorp of any additional Required Facility Documents not listed on Exhibit D. Attached hereto as Exhibit S is a true, correct and complete copy of the Generation Interconnection Agreement. If at any time after the Execution Date the Generation Interconnection Agreement should be amended and restated, amended, supplemented

or otherwise modified, then Seller shall promptly deliver to PacifiCorp a true, correct and complete copy of the same, which will automatically be deemed incorporated into Exhibit S effective upon receipt by PacifiCorp. If reasonably requested by PacifiCorp, Seller shall provide copies of any or all other Required Facility Documents.

3.2.7 Delivery of Storage Product. Effective as of the first date Seller delivers Storage Product or makes available Storage Product to PacifiCorp and thereafter throughout the Term, Seller shall hold all legal and contractual rights sufficient to enable Seller to deliver and make available Storage Product to PacifiCorp in accordance with the terms and conditions of this Agreement.

3.2.8 Control of Premises. Seller has all legal and contractual rights necessary for Seller to enter upon and occupy the Premises for the purpose of constructing, owning, operating and maintaining the Storage Facility throughout the Term. All real property agreements, including leases and easements, required for the construction, ownership, operation and maintenance of the Storage Facility or the performance of any obligations of Seller in this Agreement are identified in Exhibit D. Seller shall maintain throughout the Term all such real property agreements, including leases and easements, required for the construction, ownership, operation and maintenance of the Storage Facility or the performance of any obligations of Seller in this Agreement. Upon written request by PacifiCorp, Seller shall provide PacifiCorp copies of all memoranda of real property interests recorded in connection with the development of the Storage 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 Storage Facility, or the transactions contemplated in this Agreement. No other litigation, arbitration, investigation or proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate of Seller, the effect of which would materially and adversely affect Seller's performance of its obligations in this Agreement.

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

3.2.11 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations under this Agreement. In entering into this Agreement and agreeing to undertake its obligations hereunder, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

3.2.12 Battery Recycling and Fire Protection Plans. Prior to the Commercial Operation Date, Seller shall deliver to PacifiCorp written copies of its plans for (a) recycling all battery energy storage equipment and (b) fire protection with respect to the Storage Facility, which plans shall be in compliance with all applicable Requirements of Law and otherwise in accordance with Prudent Electrical Practices. Without limiting its other obligations under this

Agreement in any respect, Seller shall operate and maintain the Storage Facility in accordance with such plans.

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

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

3.2.15 OFAC Sanctions Lists. Neither Seller, any Affiliate of Seller, nor, to Seller's reasonable knowledge, any officer, director, employee, agent, lobbyist or representative of Seller or any Affiliate of Seller is on any sanction list maintained and published by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), including the Specially Designated Nationals and Blocked Persons List and Consolidated Sanctions List maintained and published by OFAC and available at <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx> (collectively, the "OFAC Sanctions Lists"). Seller shall not, intentionally or knowingly, either directly or indirectly, involve or engage in any manner any person or entity that is on any of the OFAC Sanctions Lists in the performance of this Agreement, whether as an officer, director, employee, agent, lobbyist, representative, contractor, subcontractor, vendor, consultant, supplier, materialman or any other role or relationship of any kind. Seller shall use commercially reasonable efforts to remain up-to-date with recent actions and updates by OFAC and shall promptly notify PacifiCorp at any time it learns that it is in breach of its covenants in this Section 3.2.15. Seller will reasonably comply and cooperate with PacifiCorp in any inquiry, request or investigation initiated by OFAC arising from or related to Seller's performance under this Agreement. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.15 if any such person or entity that Seller involves or engages in the performance of this Agreement is subsequently placed on the OFAC Sanctions List so long as Seller takes all actions required by Requirements of Law promptly upon learning that such person or entity has been placed on the OFAC Sanctions List.

3.2.16 State- or Government-Owned Enterprises or Companies. Neither Seller nor any Affiliate of Seller shall have fifty percent (50%) or more equity ownership by an entity owned or to the reasonable knowledge of Seller controlled by the countries of Afghanistan, Angola, Yemen, Sudan, Syria, Uganda, Crimea Region of Ukraine Russia, Iran, Chad, China, Congo, Venezuela, Somalia, Iraq, Libya or North Korea or any other country that PacifiCorp may identify by written notice to Seller from time to time based on reasonable concerns of doing business, directly or indirectly, with an entity whose equity is owned fifty percent (50%) or more by a an entity owned or to the reasonable knowledge of Seller controlled by such other country (the "Prohibited Countries"). Seller shall promptly notify PacifiCorp at any time it learns that it is in breach of its covenants in this Section 3.2.16. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.16 if PacifiCorp subsequently identifies a country as a Prohibited Country and at that time Seller or an Affiliate of Seller shall have (50%) or more equity

ownership by an entity owned or to the reasonable knowledge of Seller controlled by such country so long as Seller takes all actions, if any, required by Requirements of Law promptly upon learning of the same.

3.2.17 Prohibited Vendors. Seller shall not knowingly or intentionally use in the procurement and construction of the Facility, directly or indirectly, through contractors, subcontractors, vendors, consultants, suppliers, materialman or any other person or entity with a role or relationship of any kind with the procurement or construction of the Facility, the services, products, component pieces or sub-assemblies: (a) of any entity with fifty percent (50%) or more equity ownership by an entity owned or to the reasonable knowledge of Seller controlled by a Prohibited Country; (b) of any person or entity identified by PacifiCorp or U.S. Government Authorities as a security threat; (c) of any person or entity subject to sanctions by the U.S. government; (d) as produced by slavery, servitude, child labor, or forced or compulsory labor (collectively, the “Prohibited Vendors”), including the entities identified in Exhibit P and by the U.S. Department of Commerce (which are currently posted at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear> and as published in 15 C.F.R. Subchapter C, Part 744, Supplement No. 4). Seller shall use commercially reasonable efforts to be familiar with the Prohibited Vendors, including additional Prohibited Vendors that the U.S. government and/or Governmental Authorities may identify from time to time. Seller shall promptly notify PacifiCorp at any time it learns that it is in breach of its covenants in this Section 3.2.17. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.17 if Seller contracts for services, products, component pieces or sub-assemblies from Prohibited Vendors prior to such person or entity being designated a Prohibited Vendor so long as Seller takes all actions, if any, required by Requirements of Law promptly upon learning that such person or entity has been designated a Prohibited Vendor.

3.2.18 Supply Chain Audit. If requested by PacifiCorp in writing within [ ] days after the Effective Date, Seller shall undergo and deliver a Supply Chain Audit, conducted by a third-party consulting firm of national repute selected by PacifiCorp and identified in its written request. Seller shall use commercially reasonable efforts to complete such Supply Chain Audit and cause the findings of the same to be delivered to PacifiCorp within sixty (60) days of PacifiCorp’s written request. The findings of the Supply Chain Audit shall assess the compliance of Seller with the requirements of Section 3.2.17 and shall otherwise be in form and substance reasonably acceptable to PacifiCorp. Such Supply Chain Audit shall be at the sole cost and expense of PacifiCorp; provided, that if such Supply Chain Audit demonstrates that Seller is not in compliance with the requirements of Section 3.2.17, then Seller shall be responsible for the full cost and expense of such Supply Chain Audit.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties provided in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties provided in this Section 3 are made as of the Effective Date and deemed repeated as of the Commercial Operation Date. If at any time during the Term, either

Party obtains actual knowledge of any event or information that would have caused any of its representations and warranties in this Agreement to be materially untrue or misleading at the time given, such Party shall as soon as practicable provide the other Party with notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct to the maximum extent possible.

#### **SECTION 4 DELIVERY OF STORAGE PRODUCT**

4.1 Delivery of Storage Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall deliver and make available to PacifiCorp, and PacifiCorp shall receive all Storage Product.

4.2 Designation as Network Resource; Termination Right.

4.2.1 Within five (5) Business Days following the Execution Date, PacifiCorp will submit an application to the Network Service Provider requesting designation of this Agreement as a Network Resource under PacifiCorp's Network Integration Transmission Service Agreement with the Network Service Provider with a commencement date for network integration transmission service of [ ] (the "DNR Request"). Within five (5) Business Days of (a) receiving written notice from the Network Service Provider that no transmission service study will be necessary in connection with granting the DNR Request or (b) if a transmission service study is required, receiving a final transmission service study from the Network Service Provider, PacifiCorp shall provide such notice or final transmission service study, as the case may be, to Seller.

4.2.2 If the Network Service Provider determines through the Tariff study process that network upgrades will be required on the Network Service Provider's transmission system in order to grant the DNR Request, and the estimated cost of such network upgrades and any other costs identified by the Network Service Provider (the "DNR Costs") are in excess of One Million Dollars (\$1,000,000) (the "DNR Cost Threshold"), then, subject to the other provisions of this Section 4.2, PacifiCorp shall be entitled to terminate this Agreement upon not less than [thirty (30) days] prior written notice thereof to Seller (the "DNR Termination Notice"). PacifiCorp's termination right under this Section 4.2.2 shall expire if PacifiCorp fails to provide Seller written notice thereof as follows: (a) not more than thirty (30) days following PacifiCorp's receipt of written notice from the Network Service Provider that no transmission service study will be necessary in connection with granting the DNR Request; or (b) if a transmission service study is required, not more than thirty (30) days following PacifiCorp's receipt of a final transmission service study from the Network Service Provider.

4.2.3 If Seller delivers a written notice ("DNR Costs Notice") to PacifiCorp within [ten (10)] days of receipt of the DNR Termination Notice that it is willing to pay or reimburse PacifiCorp for all or a portion of the DNR Costs in excess of the DNR Cost Threshold (the "Excess DNR Costs"), then the Parties shall negotiate in good faith to reach agreement on the method and amount of payment or reimbursement of the Excess DNR Costs. If the Parties

reach agreement on the method and amount of payment or reimbursement of the Excess DNR Costs within [fifteen (15)] days of PacifiCorp's receipt of the DNR Costs Notice, then the Parties shall amend this Agreement consistent with such agreement. If the Parties are unable to reach agreement on the method and amount of payment or reimbursement of the Excess DNR Costs within [fifteen (15)] days of PacifiCorp's receipt of the DNR Costs Notice, then this Agreement shall terminate in accordance with the DNR Termination Notice.

4.2.4 If PacifiCorp terminates this Agreement pursuant to Section 4.2.2, then all further obligations of the Parties under this Agreement (other than the provisions which by their terms are intended to survive the termination of this Agreement) shall be terminated without further liability of either Party to the other Party. Under no circumstances shall either Party have any liability to the other Party due to PacifiCorp exercising its termination right pursuant to Section 4.2.2.

4.3 No Sales to Third Parties. One hundred percent (100%) of the Storage Product from the Storage Facility shall be dedicated exclusively to PacifiCorp for so long as this Agreement is in force and effect. Except as provided for in Section 11.7, Seller shall not: (a) sell, divert, grant, transfer or assign Storage Product to any Person other than PacifiCorp or report to any Person that any Storage Product belongs to anyone other than PacifiCorp; (b) provide PacifiCorp with any Storage Product from any source other than the Storage Facility; or (c) divert, redirect or make available the Storage Facility or any resource therefrom to any third party. PacifiCorp may report to any Person that it exclusively owns the Storage Product through the end of the Term or earlier termination of this Agreement. The Parties agree that remedies at law may be inadequate in the event of a breach of this Section 4.3, and Seller agrees that PacifiCorp shall be entitled, without proof of actual damages and without necessity of posting bond or other security, to temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Seller from committing or continuing any breach of this Section 4.3. Subject to Section 11.7, if and for so long as there is an Event of Default by PacifiCorp pursuant to Section 11.1.1(a), then Seller may sell, divert, grant, transfer or assign Storage Product to any Person and divert, redirect or make available the Storage Facility or any resource therefrom to any Person, and Seller shall receive and be entitled to all revenue therefrom.

#### 4.4 Delivery Responsibilities.

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

4.4.2 Title and Risk of Loss of Discharging Energy. Seller warrants that all Storage Product delivered and made available to PacifiCorp hereunder shall be free and clear of all liens, claims and encumbrances of any nature or kind (other than liens, claims or encumbrances created or granted by PacifiCorp). PacifiCorp shall at all times have title to all Charging Energy and Discharging Energy. Seller shall have risk of loss with respect to all Charging Energy received at the Point of Delivery and all Discharging Energy until delivered to PacifiCorp at the Point of Delivery. PacifiCorp shall have risk of loss with respect to all

Charging Energy prior to the Point of Deliver and all Discharging Energy from and after receipt at the Point of Delivery. Seller shall be in exclusive control of, and responsible for, any damage or injury caused by, all Charging Energy after the Point of Delivery and all Discharging Energy up to and at the Point of Delivery. PacifiCorp shall be in exclusive control of, and responsible for, any damages or injury caused by all Charging Energy prior to the Point of Delivery and all Discharging Energy after the Point of Delivery.

4.5 [Reserved].

4.6 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission, in either its capacity as Transmission Provider or Interconnection Provider.

4.7 [Reserved].

4.8 Capacity Rights; Ancillary Services. For and in consideration of PacifiCorp's payment of the Storage Price to Seller pursuant to Section 5.1, PacifiCorp shall have all right, title, and interest in and to all Capacity Rights and Ancillary Services associated with the Storage Facility existing during the Term. Nothing in this Section 4.8 shall require Seller (i) to make or pay for any physical modifications to the Storage Facility (including the installation of additional equipment) or the design of the Storage Facility, (ii) to make or pay for physical modifications or upgrades to any interconnection and transmission facilities, or (iii) to operate the Storage Facility contrary to the terms and conditions of this Agreement, including the Storage Operating Procedures.

4.9 Further Assurances. At PacifiCorp's request, Seller shall execute such documents and instruments as may be reasonably required by PacifiCorp to effect recognition that PacifiCorp has all, right, title and interest in and to the Storage Product.

## **SECTION 5 STORAGE PRICE; COSTS**

5.1 Payments. PacifiCorp will pay Seller as provided in this Section 5.1, and Seller shall not be entitled to any compensation over and above what is provided for in this Section 5.1, including in respect of all Storage Product delivered or made available by Seller to PacifiCorp in accordance with this Agreement. For the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp will pay to Seller the Storage Price per MW of the Storage Power Capacity Rating.

5.2 Costs and Charges. Except as provided in Section 4.2, PacifiCorp shall be responsible for all costs or charges, including transmission costs, transmission line losses and any costs or charges (including imbalance charges and penalties), if any, imposed in connection with (a) the scheduling and delivery of Charging Energy to the Point of Delivery and (b) the scheduling and delivery of Discharging Energy at and from the Point of Delivery, in each case, other than such costs or charges that are caused by Seller's acts or omissions in breach of this



Agreement. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall be responsible for all costs and expenses associated with modifications to the Interconnection Facilities or the System (including System upgrades) caused by or related to the Storage Facility, including all costs and expenses associated with the interconnection of the Storage Facility with the System.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, station service required for the Storage Facility. Seller shall not use Charging Energy or Discharging Energy to provide station service for the Storage Facility itself, unless and only to the extent such station service is interrupted or not available (other than as a result of the acts or omissions of Seller and its Affiliates).

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Storage Product up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Storage Product beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Storage Price will not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exceptions or give backs. In the event any taxes are imposed on a Party for which the other Party is responsible in this Agreement, the Party on which the taxes are imposed must promptly provide the other Party notice and such other information as such other Party reasonably requests with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision of this Agreement and subject to Section 5.4, Seller shall be solely responsible for paying when due: (a) all costs of owning and operating the Storage 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 Storage Facility and its operation.

5.6 Rates Not Subject to Review. The rates for service specified in this Agreement will remain in effect until expiration of the Term, and are not subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party will petition FERC to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or FERC acting *sua sponte* will be the “public interest” application of the “just and reasonable” standard of review as described in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and clarified by Morgan Stanley Capital Group. Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

5.7 Participation in an RTO. If, after the Effective Date, PacifiCorp joins an RTO, then the Parties shall negotiate in good faith any such amendments to this Agreement that may be necessary as a result of such RTO membership.

## **SECTION 6 OPERATION AND CONTROL**

6.1 As-Built Supplement. No later than thirty (30) days following Final Completion, Seller must provide PacifiCorp the As-Built Supplement, which As-Built Supplement will automatically be deemed incorporated into Exhibit B effective upon receipt by PacifiCorp. The Storage Facility, as reflected in the As-Built Supplement to be provided under this Section, may not have a Storage Power Capacity Rating that is less than the Guaranteed Storage Power Capacity Rating. Seller may not modify the Storage Facility in a manner that materially alters the As-Built Supplement without PacifiCorp's prior written approval (which approval may not be unreasonably withheld, conditioned or delayed), provided that PacifiCorp shall not be required to approve any modification of the Storage Facility that results or is reasonably likely to result in the Storage Facility having a Storage Power Capacity Rating that is less than the Guaranteed Storage Power Capacity Rating.

### 6.2 Standard of Storage Facility Construction and Operation.

6.2.1 General. At Seller's sole cost and expense, Seller shall operate, maintain and repair the Storage Facility in accordance with: (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and other Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements of this Agreement, including the Storage Operating Procedures; and (f) Prudent Electrical Practice. Seller acknowledges that it has no claim under this Agreement against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) Transmission Provider or Interconnection Provider or with respect to the provision of station service.

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

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

6.3 Interconnection. Seller is responsible for the costs and expenses associated with obtaining from Interconnection Provider interconnection service for the Storage Facility at its

Guaranteed Storage Power Capacity Rating. Seller has no claims under this Agreement against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of Transmission Provider or Interconnection Provider, acting in such capacities, in connection with the Generation Interconnection Agreement or otherwise.

6.4 Coordination with System. Seller's delivery of electricity to PacifiCorp under this Agreement must be at a voltage, phase, power factor, and frequency as required under the Generation Interconnection Agreement. 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 as required under the Generation Interconnection Agreement. PacifiCorp must at all times have access to all switching equipment capable of isolating the Storage Facility from the System.

6.5 Outages.

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

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

6.5.3 Forced Outages. Seller must promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp with a backup written confirmation (or other method approved by PacifiCorp in writing), of any Forced Outage of the Storage Facility resulting in more than five percent (5%) of the Storage Power Capacity Rating of the Storage Facility being unavailable. This report from Seller must include the amount of Storage Power Capacity Rating of the Storage Facility that will not be available because of the Forced Outage and the expected return date of such Storage Power Capacity Rating. Seller must promptly update the report as necessary to advise PacifiCorp of any changed circumstances. As soon as practicable, any oral report must be confirmed in writing to PacifiCorp. Seller shall take all reasonable actions consistent with the Generation Interconnection Agreement, Prudent Electrical Practices and Storage Operating Procedures to avoid and minimize the duration of Forced Outages.

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

## 6.6 Scheduling.

6.6.1 Cooperation and Standards. With respect to any and all scheduling requirements, (a) Seller must follow PacifiCorp's dispatch instructions with respect to scheduling Charging Energy and Discharging Energy, 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 either operationally or financially responsible for Seller's performance under the Generation Interconnection Agreement due to Seller's lack of standing as a "scheduling coordinator" or other RTO-recognized designation, qualification or otherwise, then Seller shall promptly take all actions necessary to acquire such RTO-recognized standing (or must contract with a third party who has such RTO-recognized standing) so that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and any costs incurred by PacifiCorp as a result of being deemed responsible for Seller's performance under the Generation Interconnection Agreement shall be reimbursed by Seller.

## 6.7 Forecasting.

### 6.7.1 [Reserved].

6.7.2 Day-Ahead Notice of Outages and Derates. Seller must provide day-ahead notice of any Planned Outage, Maintenance Outage or deratings of the Storage Facility.

Seller must provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Storage Facility.

6.8 Increase in Storage Power Capacity Rating; New Project Expansion or Development. If Seller elects to increase the Storage Power Capacity Rating of the Storage Facility above the Guaranteed Storage Power Capacity Rating through any means, including replacement or modification of Storage Facility equipment or related infrastructure, then PacifiCorp shall not be required to purchase any Storage Energy Capacity above the Guaranteed Storage Power Capacity Rating. Any such replacement, modification or other actions may not materially and adversely impact the ability of either Party to fulfill its obligations under this Agreement, and shall be subject to Section 6.1 in all respects.

6.9 Electronic Communications.

6.9.1 AGC.

(a) Beginning on the Commercial Operation Date, PacifiCorp will dispatch the Storage Facility either: (i) using AGC Set-Points transmitted by the Transmission Provider (at PacifiCorp's request) to the AGC installed by Seller, and Seller shall cause its AGC to comply with the AGC Set-Points so transmitted; (ii) by telephonic communication, and Seller shall promptly comply with PacifiCorp's dispatch instruction; or (iii) as mutually agreed upon by the Parties.

(b) [Reserved.]

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

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

(e) Seller will allow PacifiCorp access to its distributed control system and comply with applicable critical infrastructure protection requirements made known to Seller in writing.

6.9.2 Telemetry. Seller shall during the Term provide telemetry equipment and facilities capable of transmitting the following information concerning the Storage Facility pursuant to the Generation Interconnection Agreement and to PacifiCorp on a real-time basis, and will operate such equipment when requested by PacifiCorp to indicate such information with respect to the Storage Facility as is required pursuant to Exhibit P. Commencing on the date of initial deliveries of Discharging Energy under this Agreement, Seller must also transmit or otherwise make accessible to PacifiCorp any other data from the Storage Facility that Seller receives on a real time basis. Such real time data must be made available to PacifiCorp on the same basis as Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp must also receive the data in four second intervals). If Seller uses a

web-based performance monitoring system for the Storage Facility, Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.

6.9.3 Transmission Provider Consent. Within ten (10) days of the Effective Date, Seller must execute and submit to PacifiCorp, a consent in the form provided in Exhibit H or as otherwise required by Transmission Provider, that allows PacifiCorp to read the meter and receive any and all data from Transmission Provider relating to Charging Energy, Discharging Energy and other matters relating to the Storage Facility without the need for further consent from Seller.

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

#### 6.10 Reports and Records.

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

#### 6.10.2 [Reserved.]

6.10.3 Information to Governmental Authorities. Seller must, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Storage Facility reasonably required for reports to any Governmental Authority or Electric System Authority, along with a statement from an officer of Seller certifying that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller must use 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 6.10.3.

6.10.4 Data Request. Seller must, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Storage 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 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 in excess of Five Thousand Dollars (\$5,000) per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.10.4.

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

6.10.6 Environmental Information. As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental Requirements of Law arising out of the construction or operation of the Storage Facility, or the presence of Environmental Contamination at the Storage Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Storage Facility or the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

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

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

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

6.10.10 Contractor and Workforce Requirements. Seller shall provide to PacifiCorp such information and execute and deliver such reports, documents and certifications, as PacifiCorp may reasonably request, including such information, reports, documents and certifications required in Exhibit R, with respect to the diversity and such other applicable criteria as PacifiCorp may reasonably identify, including such criteria identified in Exhibit R, with respect to the contractors, subcontractors, consultants, service providers and equipment suppliers, contracted by Seller in the course of the development, procurement, construction and operations of the Storage Facility. In the event that a Governmental Authority audits any PacifiCorp report or filing concerning the information, reports, documents or certifications provided by Seller pursuant to this Section 6.10.10, then Seller shall provide PacifiCorp all substantiating documentation to sufficiently support PacifiCorp's report or filing in accordance with Section 6.10.3.

6.10.11 Confidential Treatment. The reports and other information provided to PacifiCorp under this Section 6.10 will be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the reports and other information is provided to PacifiCorp, subject to PacifiCorp's rights to disclose such reports and other information pursuant to Section 6.10.3 and Section 6.10.4 and otherwise as provided in Section 23. Seller will have the right to seek confidential treatment of any such reports and other information from any Governmental Authority entitled to receive such reports or other information.

6.11 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under (a) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (b) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller agrees to provide, upon PacifiCorp's written request, sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If PacifiCorp or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller agrees to provide, upon PacifiCorp's written request, sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. PacifiCorp will reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.11. Seller will have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information.

6.12 Access Rights. Upon reasonable prior notice and subject to the prudent written safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller must provide PacifiCorp and its employees, agents, inspectors and representatives ("PacifiCorp Representatives") with reasonable access to the Storage Facility: (a) for the purpose of reading, inspecting and testing metering equipment and meteorological data towers; (b) as necessary to witness any acceptance tests; (c) as necessary to witness any testing associated with the Storage Facility, including testing with respect to the Storage Availability and Storage Energy Capacity; and (d) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp will release Seller and its employees, agents and representatives from and indemnify Seller and its employees, agents and representatives against any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Storage Facility, except to the extent such Liabilities are caused by the intentional or negligent act or omission of Seller or its Affiliates or their respective employees, agents and representatives.

6.13 Storage Facility Images. PacifiCorp shall be free to use any and all images from or of the Storage Facility for promotional purposes, subject to Seller's consent not to be unreasonably withheld, conditioned or delayed. Upon PacifiCorp's request and at PacifiCorp's cost and expense, Seller shall install imaging equipment at the Storage Facility as PacifiCorp may request, including video and/or web-based imaging equipment subject to the prudent written safety requirements of Seller and Requirements of Law relating to workplace health and safety.



PacifiCorp shall retain full discretion on how such images are presented including associating images of the Storage Facility with a PacifiCorp-designated corporate logo.

6.14 [Reserved].

6.15 Storage Facility Charging, Discharging and Testing.

6.15.1 Operation and Maintenance of the Storage Facility. Seller shall operate, maintain and repair the Storage Facility to be capable to charge or discharge in accordance with PacifiCorp's instruction pursuant to Section 6.15.2, including maintaining, repairing and replacing equipment in Seller's possession or control used to deliver Charging Energy from the Point of Delivery to the Storage Facility, to charge the Storage Facility, and to deliver Discharging Energy from the Storage Facility to the Point of Delivery.

6.15.2 Charging and Discharging Storage Facility.

(a) During the Term, PacifiCorp shall have the exclusive right to schedule or designate the Storage Facility to deliver and make available the Storage Product to PacifiCorp and/or accept Charging Energy, in accordance with the Storage Operating Procedures and the requirements of this Agreement. Subject to the requirements and limitations set forth in this Agreement, including the Storage Operating Procedures, PacifiCorp will have the exclusive right to charge and discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices and Discharging Notices to Seller electronically. Each Charging Notice will be effective unless and until PacifiCorp modifies such Charging Notice by providing Seller with an updated Charging Notice, and each Discharging Notice will be effective unless and until PacifiCorp modifies such Discharging Notice by providing Seller with an updated Discharging Notice. Seller shall charge (from Charging Energy) and discharge the Storage Facility in strict compliance with PacifiCorp's Charging Notices and Discharging Notices.

(b) Seller shall not charge or discharge the Storage Facility during the Term other than pursuant to a Charging Notice, a Discharging Notice, the Storage Operating Procedures, or in connection with a Storage Facility test conducted in accordance with the requirements of this Agreement.

(c) PacifiCorp shall be responsible for delivering to the Point of Delivery all Charging Energy. Notwithstanding any provision to the contrary contained in this Agreement, Seller's obligation to deliver and make available Storage Product to PacifiCorp pursuant to this Agreement shall be contingent upon PacifiCorp delivering to the Point of Delivery Charging Energy in accordance with Charging Notices given by PacifiCorp to Seller. In no event shall Seller be permitted to provide Charging Energy for use in the Storage Facility.

6.15.3 Storage Power Capacity Guarantee. If Seller fails to satisfy the Storage Power Capacity Guarantee in accordance with the requirements set forth in Exhibit T, then Seller shall be liable to PacifiCorp for the Storage Power Capacity Damages calculated and paid in

accordance with Exhibit T. The invoice for such Storage Power Capacity Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Power Capacity Damages in accordance with Exhibit T. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's failure to satisfy the Storage Power Capacity Guarantee is difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Storage Power Capacity Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Except in the case of an Event of Default pursuant to Section 11.1.2(j), Storage Power Capacity Damages and any reduction in the payment to Seller pursuant to Section 5.1.2(c) (based on the Storage Power Capacity Rating being less than the Guaranteed Storage Power Capacity Rating), shall be PacifiCorp's sole remedy for Seller's failure to satisfy the Storage Power Capacity Guarantee in accordance with the requirements set forth in Exhibit T.

6.15.4 Storage Availability Guarantee. During the Term, the Storage Facility shall maintain a Storage Availability during each Contract Year of no less than the Guaranteed Storage Availability (the "Storage Availability Guarantee"). If Seller fails to satisfy the Storage Availability Guarantee in accordance with the requirements set forth in Exhibit U, then Seller shall be liable to PacifiCorp for the Storage Availability Damages calculated and paid in accordance with Exhibit U. The invoice for such Storage Availability Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Availability Damages in accordance with Exhibit U. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's failure to satisfy the Storage Availability Guarantee are difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Storage Availability Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Except in the case of an Event of Default pursuant to Section 11.1.2(k), Storage Availability Damages shall be PacifiCorp's sole remedy for Seller's failure to satisfy the Storage Availability Guarantee in accordance with the requirements set forth in Exhibit U.

6.15.5 Storage Round Trip Efficiency. During the Term, the Storage Facility shall maintain a Storage Round Trip Efficiency during each Contract Year of no less than the Guaranteed Storage Round Trip Efficiency (the "Storage Round Trip Efficiency Guarantee"). If Seller fails to satisfy the Storage Round Trip Efficiency Guarantee in accordance with the requirements set forth in Exhibit V, then Seller shall be liable to PacifiCorp for the Storage Round Trip Efficiency Damages calculated and paid in accordance with Exhibit V. The invoice for such Storage Round Trip Efficiency Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Round Trip Efficiency Damages in accordance with Exhibit V. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's failure to satisfy the Storage Round Trip Efficiency Guarantee are difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Storage Round Trip Efficiency Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Except in the case of an Event of Default pursuant to Section 11.1.2(l), Storage Round Trip Efficiency Damages shall be PacifiCorp's sole remedy for Seller's failure to satisfy the Storage Round Trip Efficiency Guarantee in accordance with the requirements set forth in Exhibit V.

6.15.6 Storage Ramp Rate. During the Term, the Storage Facility shall maintain a Storage Ramp Rate during each Contract Year of no less than the Storage Ramp Rate specified in Exhibit P (the “Storage Ramp Rate Guarantee”). If Seller fails to satisfy the Storage Ramp Rate Guarantee in accordance with the requirements set forth in Exhibit W, then Seller shall be obligated to take such corrective actions as are contemplated in Exhibit W.

## **SECTION 7 RESERVED**

## **SECTION 8 SECURITY**

8.1 Provision of Security. During the Term, Seller must provide and maintain Security as required by this Section 8. If on the Effective Date, PacifiCorp determines Seller satisfies the Credit Requirements, then Seller must thereafter provide every three (3) months following the Effective Date all such financial information and records as PacifiCorp may reasonably request in order to verify Seller continues to satisfy the Credit Requirements.

8.2 Project Development Security. If on the Effective Date or at any time thereafter prior to the Commercial Operation Date Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller’s receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the posting of Project Development Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, Project Development Security; provided, however, that if Seller must provide Project Development Security to PacifiCorp in accordance with this Section 8.2, then Seller shall not be required to provide such Project Development Security to PacifiCorp until ten (10) Business Days after [the later of (y)] the expiration of PacifiCorp’s termination right in Section 4.2.2[ and (z) the Commission Approval Termination Deadline, including any extensions thereto in accordance with Section 2.1.2]. Within five (5) Business Days from receipt of a written request from PacifiCorp at any time prior to the Commercial Operation Date, Seller shall provide to PacifiCorp all such financial information and records as PacifiCorp may reasonably request in order to verify that Seller continues to satisfy the requirements of this Section 8, including that any Project Development Security and the Security Provider continues to satisfy the requirements of this Section 8. If at any time prior to the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller’s receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Project Development Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, alternate Project Development Security. PacifiCorp shall be entitled to draw upon the Project Development Security for: (A) any Delay Damages due but unpaid to PacifiCorp under this Agreement; (B) damages if this Agreement is terminated under Section 11 because of a Seller Event of Default; and (C) any other amounts owing and not timely paid by Seller to PacifiCorp under this Agreement. Seller shall have no obligation to replenish the Project Development Security after any draw thereunder. Seller shall not be required to maintain the Project Development Security after the Commercial Operation Date if no unpaid damages are

owed to PacifiCorp under this Agreement and, if applicable, the Default Security has been provided as required under this Agreement. If after the Commercial Operation Date the Default Security, if required, has been provided to PacifiCorp pursuant to Section 8.3 and no unpaid damages are owed by Seller to PacifiCorp under this Agreement, then, within ten (10) Business Days of receipt of written request by Seller, PacifiCorp shall return to Seller any Project Development Security then held by PacifiCorp.

8.3 Default Security. If on the Commercial Operation Date or at any time thereafter during the Term Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the posting of Default Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, Default Security. Within five (5) Business Days from receipt of a written request from PacifiCorp at any time after the Commercial Operation Date, Seller shall provide to PacifiCorp all such financial information and records as PacifiCorp may reasonably request in order to verify that Seller continues to satisfy the requirements of this Section 8, including that any Default Security and the Security Provider continues to satisfy the requirements of this Section 8. If at any time after the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Default Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, alternate Default Security. PacifiCorp shall be entitled to draw upon the Default Security for: (A) damages if this Agreement is terminated under Section 11 because of a Seller Event of Default; and (B) any other amounts owing and not timely paid by Seller to PacifiCorp under this Agreement. If no obligations or liabilities remain due by Seller to PacifiCorp upon termination of this Agreement, then PacifiCorp must return any remaining Default Security to Seller within sixty (60) days following the termination of this Agreement.

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

8.5 Grant of Security Interest. To secure its obligations under this Agreement, Seller hereby grants to PacifiCorp, as the secured party, a present and continuing security interest in, lien on (and right of setoff against), and assignment of, all Project Development Security or Default Security, as the case may be, posted with PacifiCorp in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PacifiCorp. Seller agrees to take such action as PacifiCorp reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default by Seller, PacifiCorp may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all the Security, including any such rights and remedies under Requirements of Law then in effect; (b) exercise its right of setoff against any and all property of Seller, as the Defaulting Party, in the possession of PacifiCorp or PacifiCorp's agent; (c) draw on

any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Security then held by or for the benefit of PacifiCorp free from any claim or right of any nature whatsoever by Seller, including any equity or right of purchase or redemption by Seller. PacifiCorp shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to PacifiCorp after such application), subject to PacifiCorp's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

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

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

## **SECTION 9 METERING**

9.1 Installation of Metering Equipment. At Seller's cost and expense, Seller shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment as required by the Generation Interconnection Agreement and this Section 9. Seller must use revenue grade metering equipment consistent with American National Standards Institute (ANSI) standards. In the event Market Operator adopts new meter requirements, Seller will, at its cost and expense, reasonably cooperate to upgrade any applicable metering equipment. Seller shall reasonably cooperate with PacifiCorp in developing any metering protocols necessary for PacifiCorp to comply with the requirements of the Market Operator.

9.2 Metering. Metering must be performed at the locations and in the manner specified in Exhibit C and the Generation Interconnection Agreement, and as otherwise may be necessary to perform Seller's obligations under this Agreement. Meters must be capable of recording quantities of Charging Energy and Discharging Energy.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment provided for in this Section 9, without PacifiCorp assuming any obligations of Seller under this Section 9. If any of the inspections or tests disclose an error exceeding one half of one percent (0.5%), either fast or

slow, then the necessary corrections based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, then the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other Person, pursuant to or under the Generation Interconnection Agreement.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall be responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Storage Facility. The actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp, unless upon such additional inspection or testing the metering equipment is found to register inaccurately by more than one percent (1%), in which event the expense of the requested additional inspection or testing shall be borne by Seller.

9.5 SQMD Plan. Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with PacifiCorp in PacifiCorp's development and submittal to the Market Operator of its Settlement Quality Meter Data ("SQMD") plan for the Storage Facility. The SQMD plan will detail the metering equipment and any calculation or data validation performed as a part of the data submission process to the Market Operator, consistent with the Market Operator's requirements in the then-current version of the "Business Practice Manual for Metering."

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

10.1 Monthly Invoices. On or before the tenth (10<sup>th</sup>) Business Day following the end of each month during the Term, Seller shall deliver to PacifiCorp an invoice showing the total amount due in such month in accordance with Section 5, including if applicable in such month, Seller's computation of: (a) the Storage Availability of the Storage Facility and any Storage Availability Damages during such month; (b) the Storage Round Trip Efficiency of the Storage Facility and any Storage Round Trip Efficiency Damages during such month; and (c) the Storage Power Capacity Rating of the Storage Facility and any Storage Power Capacity Damages during such month. Subject to Section 10.4, PacifiCorp shall pay each invoice on or before the later of (x) the twentieth (20<sup>th</sup>) day following receipt of such invoice or (y) the thirtieth (30<sup>th</sup>) day following the end of the month to which such invoice applies.

10.2 Offsets. Either Party may offset any payment due under this Agreement against amounts owed by the other Party pursuant to this Agreement. Either Party's exercise of

recoupment and set off rights will not limit the other remedies available to such Party under this Agreement.

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

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due under an invoice provided under this Agreement, such Party must notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, must pay that portion of the invoice that is undisputed on or before the due date. Any such notice of dispute must be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined in accordance with Section 24 to be due, then the amount due must be paid within five (5) Business Days after such determination, along with interest at the Contract Interest Rate from the date due until but not including the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, has the right, at its cost and expense and upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, statement, charge or computation made under this Agreement or to verify the other Party's performance of its obligations under this Agreement. If any invoice, statement, charge or computation made under this Agreement is found to be inaccurate, a corrected invoice or statement will be issued and, subject to Section 10.4, any amount due by one Party to the other Party as a result of the corrected invoice or statement will be promptly paid including the payment of interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

## **SECTION 11 DEFAULTS AND REMEDIES**

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

### 11.1.1 Defaults by Either Party.

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

(b) The Defaulting Party fails to perform any material obligation in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not otherwise an identified Event of Default in this Agreement, and such non-performance is not cured within thirty (30) days after the other Party gives the Defaulting Party notice of such non-performance; provided, however, that if such non-performance is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within ninety (90) days, then the Defaulting Party will have an additional reasonable period of time to

cure such non-performance, not to exceed ninety (90) days following the date of such notice of non-performance, provided that the Defaulting Party provides to the other Party a remediation plan within fifteen (15) days following the date of such notice of non-performance and the Defaulting Party promptly commences and diligently pursues such remediation plan.

(c) The Defaulting Party breaches one of its representations or warranties in this Agreement and such non-performance is not cured within thirty (30) days after the other Party gives the Defaulting Party notice of such non-performance; provided, however, that if such non-performance is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within ninety (90) days, then the Defaulting Party will have an additional reasonable period of time to cure the non-performance, not to exceed ninety (90) days following the date of such notice of non-performance, provided that the Defaulting Party provides to the other Party a remediation plan within fifteen (15) days following the date of such notice of non-performance and the Defaulting Party promptly commences and diligently pursues the remediation plan.

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

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

#### 11.1.2 Defaults by Seller.

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

(b) Seller fails to cause the Storage Facility to achieve Commercial Operation on or before the date which is one hundred eighty (180) days after the Scheduled Commercial Operation Date.

(c) Seller sells, delivers or transfers any Storage Product from the Storage Facility to a Person other than PacifiCorp in breach of Section 4.3, and Seller does not permanently cease such sale, delivery or transfer within ten (10) days after PacifiCorp gives notice to Seller of such non-performance.

(d) [Reserved].

(e) After the Commercial Operation Date, Seller fails to obtain or maintain any Required Facility Documents necessary to own or operate the Storage Facility and



such non-performance is not cured within ninety (90) days after PacifiCorp gives notice to Seller of such non-performance.

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

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

(h) [Reserved].

(i) [Reserved].

(j) the Storage Power Capacity Rating of the Storage Facility determined pursuant to Exhibit T is less than one hundred percent (100%) of the Guaranteed Storage Power Capacity Rating for two (2) consecutive Contract Years.

(k) the Storage Availability of the Storage Facility determined pursuant to Exhibit U is less than one hundred percent (100%) of the Guaranteed Storage Availability for two (2) consecutive Contract Years.

(l) the Storage Round Trip Efficiency of the Storage Facility determined pursuant to Exhibit V is less than one hundred percent (100%) of the Guaranteed Storage Round Trip Efficiency for two (2) consecutive Contract Years.

11.2 Remedy for Seller's Failure to Deliver. If (a) Seller sells, delivers or transfers any Storage Product from the Storage Facility to a Person other than PacifiCorp in breach of Section 4.3 or (b) Seller fails to deliver and make available to PacifiCorp all Storage Product from the Storage Facility in accordance with the requirements of this Agreement, and such non-performance is not caused by PacifiCorp's breach of its obligations under this Agreement or otherwise excused under the terms of this Agreement, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c) or Section 11.1.2(d), then Seller shall pay PacifiCorp within five (5) Business Days after receipt of an invoice from PacifiCorp, an amount equal to the sum of (as applicable): (i) PacifiCorp's Cost to Cover multiplied by the Discharging Energy sold, delivered or transferred to a Person other than PacifiCorp or not delivered and made available to PacifiCorp, as applicable; (ii) damages incurred by PacifiCorp as a result of the failure of Seller to deliver and make available to PacifiCorp Capacity Rights and Ancillary Services in accordance with this Agreement, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c) or Section 11.1.2(d); and (iii) any additional cost or expense incurred as a result of Seller's breach of Section 4.3, as reasonably determined by PacifiCorp. PacifiCorp's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.1 shall limit in any respect PacifiCorp's right to

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

### 11.3 Termination and Remedies.

11.3.1 Except where a remedy is expressly described herein as a Party's sole or exclusive remedy, from the occurrence 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 non-performance delivered pursuant to Section 11.1 (and does not have to be a separate notice), provided it complies with the terms of this Section 11.3.

11.3.2 If PacifiCorp is the Defaulting Party, then:

(a) Seller must send copies of such termination notice to the attention of the then-current President and General Counsel of PacifiCorp by registered overnight delivery service or by certified or registered mail, return receipt requested, to the applicable address specified on Exhibit L; and

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

11.3.3 From and after the date upon which the Defaulting Party fails to remedy an Event of Default within the cure periods, if any, provided in this Agreement, and until the other Party has recovered all damages incurred on account of such Event of Default (subject to any liability limitations expressly set forth herein), the other Party may offset its damages against any payment due the Defaulting Party under this Agreement.

11.3.4 Notwithstanding anything to the contrary contained in this Agreement, the non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the non-Defaulting Party as a result of the Defaulting Party's Event of Default.

11.3.5 In the event of a termination of this Agreement:

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

(b) The amounts due under this Section 11.3.5 must be paid within thirty (30) days after delivery of an invoice to the Defaulting Party of such amounts and will bear interest at the Contract Interest Rate from the date of termination until but not including the date

paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due under this Agreement.

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

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

11.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Seller, then neither Seller nor an Affiliate of Seller or any successor to Seller’s ownership in the Storage Facility or the Premises, may, directly or indirectly, require or seek to require PacifiCorp to make any purchases from the Storage Facility or any storage facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect for its full term.

11.6 [Reserved].

11.7 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of its obligations under this Agreement. In furtherance of the immediately preceding sentence, (a) with respect to Seller and to the extent permitted by Requirements of Law and the Generation Interconnection Agreement, Seller must use commercially reasonable efforts to maximize the price received from third parties for Storage Product not received by PacifiCorp as required under this Agreement, and (b) with respect to PacifiCorp, PacifiCorp must use commercially reasonable efforts to minimize the price paid to third parties for energy, capacity or Ancillary Services purchased to replace Storage Product not delivered or made available by Seller to PacifiCorp as required under this Agreement.

11.8 Security. If this Agreement is terminated because of an Event of Default by Seller, then PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity (except where otherwise limited herein), proceed against any Security held by PacifiCorp in whatever form to reduce the amounts that Seller owes PacifiCorp arising from such Event of Default.

11.9 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to the Parties in this Agreement are cumulative and not exclusive of any rights or remedies of the Parties, and the exercise of one or more rights or remedies does not constitute a waiver of any other rights or remedies.

## **SECTION 12 INDEMNIFICATION AND LIABILITY**

### 12.1 Indemnitees.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall indemnify, defend and hold harmless PacifiCorp and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnitees") from and against any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by Seller of its obligations or covenants under this Agreement, or relating to the Storage Facility or the Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person (not Affiliated with PacifiCorp), except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any PacifiCorp Indemnitee. Seller is solely responsible for and will indemnify, defend and hold harmless the PacifiCorp Indemnites from and against any and all Liabilities resulting from, arising out of, or in any way connected with the breach by Seller of the Generation Interconnection Agreement.

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

12.1.3 Additional Cross Indemnity. Without limiting Section 12.1.1 and Section 12.1.2, (a) Seller shall indemnify, defend and hold harmless the PacifiCorp Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with (i) the Charging Energy after its delivery by PacifiCorp at the Point of Delivery and the Discharging Energy prior to its delivery to PacifiCorp at the Point of Delivery; (ii) any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions of this Agreement, including the breach by Seller of any of its covenants in Section 3.2.15, Section 3.2.16 or Section 3.2.17; (iii) PacifiCorp being deemed by an RTO to be financially responsible for Seller’s performance under the Generation Interconnection Agreement pursuant to Section 6.6.2; and (iv) Seller’s failure to comply with PacifiCorp’s dispatch instructions in accordance with Section 6.9.1 or charge or discharge instructions in accordance with Section 6.15.2, including Wrongful Delivered Energy, other than as a result of Force Majeure; and (b) PacifiCorp shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with: (i) the Charging Energy prior to its delivery by PacifiCorp at the Point of Delivery and the Discharging Energy at and after its delivery to PacifiCorp at the Point of Delivery in accordance with this Agreement; and (ii) any action by any Governmental Authority due to noncompliance by PacifiCorp with any Requirements of Law or the provisions of this Agreement, except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct, or a breach of this Agreement by any PacifiCorp Indemnitee or Seller Indemnitees, respectively.

12.1.4 Indemnification Procedures. Any Indemnified Party seeking indemnification under this Agreement for any Liabilities shall give the Indemnifying Party notice of such Liabilities promptly but in any event on or before thirty (30) days after the Indemnified Party’s actual knowledge of the claim or action giving rise to the Liabilities. Such notice shall describe the Liability in reasonable detail, and shall indicate the amount (estimated if necessary) of the Liability that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice within such thirty (30) day period, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide timely notice. The Indemnifying Party shall assume the defense of the claim or action giving rise to the Liabilities with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be

legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. Notwithstanding anything to the contrary contained herein, an Indemnified Party shall in all cases be entitled to control its own defense, at the expense of the Indemnifying Party, in any claim or action if it: (a) may result in injunctions or other equitable remedies with respect to the Indemnified Party; (b) may result in material liabilities which may not be fully indemnified hereunder; or (c) may have a material and adverse effect on the Indemnified Party (including a material and adverse effect on the tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full. If the Indemnifying Party fails to assume the defense of a claim or action, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim or action may be made only with the Indemnifying Party's consent, which consent will not be unreasonably withheld, conditioned or delayed, or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

12.1.5 No Dedication. Nothing in this Agreement will be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party (other than the PacifiCorp Indemnitees and Seller Indemnitees). No undertaking by one Party to the other Party under any provision of this Agreement will constitute the dedication of PacifiCorp's facilities or any portion thereof to Seller or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent entity.

12.1.6 Consequential Damages. **EXCEPT AS PROVIDED IN SECTION 12.1.1, SECTION 12.1.2 AND SECTION 12.1.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, INCLUDING DELAY DAMAGES, PERFORMANCE DAMAGES, STORAGE POWER CAPACITY DAMAGES, STORAGE ROUND TRIP EFFICIENCY DAMAGES, AND STORAGE AVAILABILITY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.**

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

## SECTION 13 INSURANCE

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

## SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. “Force Majeure” or an “event of Force Majeure” means an event or circumstance that prevents a Party (the “Affected Party”) from performing, in whole or in part, an obligation under this Agreement and that: (a) is not reasonably anticipated by the Affected Party as of the Execution Date; (b) is not within the reasonable control of the Affected Party or its Affiliates; (c) is not the result of the negligence or fault or the failure to act by the Affected Party or its Affiliates; and (d) could not be overcome or its effects mitigated 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): tornado, hurricane, tsunami, flood, earthquake and other acts of God; fire; explosion; invasion, acts of terrorism, war (declared or undeclared) or other armed conflict; riot, revolution, insurrection or similar civil disturbance; global pandemic (except as excluded below); sabotage; strikes, walkouts, lock-outs, work stoppages, or other labor disputes; and action or restraint by Governmental Authority (except as excluded below); provided that the Affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint. Notwithstanding the foregoing, none of the following shall constitute Force Majeure: (i) Seller’s ability to sell, or PacifiCorp’s ability to purchase, energy, capacity, or ancillary services at a more advantageous price than is provided under this Agreement; (ii) inability to obtain any supply of goods or services, unless due to an independent event of Force Majeure; (iii) economic hardship, including lack of money or the increased cost of electricity, steel, labor, or transportation; (iv) any breakdown or malfunction of the Facility’s equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure; (v) the imposition upon a Party of costs or taxes; (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to an independent event of Force Majeure; (vii) any delay, alleged breach of contract, or failure by Transmission Provider or Interconnection Provider unless due to an independent event of Force Majeure; (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an independent event of Force Majeure); (ix) Seller’s failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to Transmission Provider or Interconnection Provider, unless due to an independent event of Force Majeure; (x) any event attributable to the use of Interconnection Facilities for deliveries of Discharging Energy to any party other than PacifiCorp; (xi) any delays or other problems associated with the issuance, suspension, renewal, administration or

withdrawal of, or any other problem directly or indirectly relating to, any Permit or the applications therefor where such delays or problems are within the Affected Party's reasonable control; (xii) delays in customs clearance, unless due to an independent event of Force Majeure; (xiii) the imposition of tariffs, anti-dumping or countervailing duties that may apply to any products or equipment or any other fines, penalties or other actions as a result of violation of Requirements of Law regarding unfair trade practices; and (xiv) the occurrence after the Execution Date, of an enactment, promulgation, modification or repeal of one or more Requirements of Law, including regulations or national defense requirements that affects the cost or ability of either Party to perform under this Agreement. Each Party acknowledges the effects of COVID-19 as of the Execution Date, and that no delay or failure in performance is expected based on the scope of such effects as of the Execution Date. Force Majeure relief related to COVID-19 and its effects shall be permitted only to the extent of material direct impacts of COVID-19 of which the Party was not aware, and should not reasonably have anticipated, as of the Execution Date, and provided that the criteria in the first sentence of this Section 14.1 are met.

14.2 Suspension of Performance. Neither Party will be liable for any delay in or failure to perform its obligations under this Agreement, nor will any such delay or failure become an Event of Default, to the extent such delay or failure is substantially caused by Force Majeure, provided that the Affected Party: (a) provides prompt (and, in any event, not more than five (5) days') notice of such event of Force Majeure to the other Party, describing the particulars of the event of Force Majeure and giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement; (b) exercises all reasonable efforts to continue to perform its obligations under this Agreement; (c) expeditiously takes action to correct or cure the event of Force Majeure so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event of Force Majeure; (d) exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the event of Force Majeure; and (e) provides prompt notice to the other Party of the cessation of the event of Force Majeure.

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

14.4 Strikes. Notwithstanding any other provision of this Agreement to the contrary, neither Party will be required to settle any strike, walkout, lockout, work stoppage or other labor dispute on terms which, in the sole judgment of the Party involved in the strike, walkout, lockout or other labor dispute, are contrary to its best interests.

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



to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

## **SECTION 15 SEVERAL OBLIGATIONS**

Nothing in this Agreement will be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

## **SECTION 16 CHOICE OF LAW**

This Agreement will be interpreted and enforced in accordance with the laws of the State of Oregon, without applying any choice of law rules that may direct the application of the laws of another jurisdiction.

## **SECTION 17 PARTIAL INVALIDITY**

If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable terms, provisions or conditions which achieve the purpose intended by the Parties to the greatest extent permitted by law and preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

## **SECTION 18 NON-WAIVER**

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

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

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

## SECTION 20 SUCCESSORS AND ASSIGNS

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

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

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

## SECTION 21 ENTIRE AGREEMENT; AMENDMENTS

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

## SECTION 22 NOTICES

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

## SECTION 23 CONFIDENTIALITY

23.1 Confidential Business Information. The following constitutes “Confidential Business Information,” whether oral or written: (a) the Parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date; and (b) the Storage Price and any information delivered by PacifiCorp to Seller prior to the Execution Date relating to the market prices of energy and methodologies for its determination or estimation. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. “Confidential Business Information” shall not include information that: (i) is in or enters the public domain through no fault of the

Party receiving such information; or (ii) was in the possession of the receiving Party prior to the Execution Date, other than through delivery thereof as specified in subsections (a) and (b) above. A Party providing any Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to be treated as Confidential Business Information with the term “Confidential” on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 23, for a period of two (2) years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other Person (other than its Affiliates, accountants, auditors, counsel, consultants, investors or prospective investors (including tax equity investors), lenders or prospective lenders, employees, officers and directors), without the prior written consent of the other Party; provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law or securities exchange requirement; (ii) in order for PacifiCorp to receive regulatory recovery of expenses related to this Agreement; (iii) pursuant to an order of a Governmental Authority; or (iv) in order to enforce this Agreement or to seek approval hereof; and (b) notwithstanding any other provision hereof, PacifiCorp may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Sections 23.1(b). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp’s net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1 or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller.

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

23.5 News Releases and Publicity. Except as otherwise provided in Section 6.13, before either Party issues any news release or publicly distributed promotional material that mentions the Storage Facility (other than project name, technology type, size and location), such Party will first provide a copy thereof to the other Party for its review and approval. Any use of either Party's name in any news release or promotional material must adhere to such Party's publicity guidelines then in effect; any use of Berkshire Hathaway's name requires PacifiCorp's prior written consent.

## **SECTION 24 DISAGREEMENTS**

24.1 Negotiations. Prior to proceeding with formal dispute resolution, the Parties must first attempt in good faith to resolve informally all disputes arising out of, related to or in connection with this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen (15) days after such referral, then, subject to Section 24.2, either Party may initiate any legal remedies available to the Party. No statements of position or offers of settlement made in the course of the dispute process described in this Section 24.1 will: (a) be offered into evidence for any purpose in any litigation between the Parties; (b) be used in any manner against either Party in any such litigation; or (c) constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, will be promptly returned to the Party providing the same.

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

24.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement ("Proceedings") will be brought exclusively in the state and federal courts in Portland, Oregon. By execution and delivery of this Agreement, each Party: (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have

to the exercise of personal jurisdiction by such courts over each Party for the purpose of the Proceedings; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts arising out of the Proceedings; (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any of the Proceedings brought in such courts (including any claim that any such Proceeding has been brought in an inconvenient forum) in connection herewith; (d) agrees that service of process in any such Proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address stated in this Agreement; and (e) agrees that nothing in this Agreement affects the right to effect service of process in any other manner permitted by law.

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

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by its duly authorized officer or representative as of the date first written above.

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

PACIFICORP

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

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

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

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

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

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

## EXHIBIT A

### EXPECTED STORAGE FACILITY PERFORMANCE<sup>6</sup>

#### I. **Guaranteed Storage Power Capacity Rating; Guaranteed Storage Availability; Guaranteed Storage Round Trip Efficiency**

The “Guaranteed Storage Power Capacity Rating,” the “Guaranteed Storage Availability” and the “Guaranteed Storage Round Trip Efficiency” are listed below by Contract Year:

<b>Contract Year<sup>7</sup></b>	<b>Guaranteed Storage Power Capacity Rating (MW)</b>	<b>Guaranteed Storage Availability (%)</b>	<b>Guaranteed Storage Round Trip Efficiency (%)</b>
0			
0-1			
1-2			
2-3			
3-4			
4-5			
5-6			
6-7			
7-8			
8-9			
9-10			
10-11			
11-12			
12-13			
13-14			
14-15			
<b>Average</b>		N/A	

#### II. **Auxiliary Load (Station Service)**

The expected annual auxiliary load for the Storage Facility: [ \_\_\_\_\_ ] MWh.<sup>8</sup>

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<sup>6</sup> NTD: Prior to executing this Agreement, Seller will be required to provide PacifiCorp information sufficient to allow PacifiCorp to reasonably verify the various Storage Facility performance estimates stated in Exhibit A.

<sup>7</sup> NTD: Table to be updated based on Term of the Agreement.

<sup>8</sup> NTD: Seller to confirm station service is being arranged separately and not embedded in Round Trip Efficiency.



**III. Maximum Charges Per Year**

The maximum number of Full Charge (or Equivalent Cycles) per year: [\_\_\_\_].

**IV. Maximum Charges Per Day**

The maximum number of Full Charges (or Equivalent) per day: [\_\_\_\_].

**V. Average Annual State of Charge**

The average annual State of Charge for the Storage Facility must be between [\_\_\_\_] and [\_\_\_\_].



## **EXHIBIT C**

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

*[Instructions to Seller:*

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

## **EXHIBIT D**

### **REQUIRED FACILITY DOCUMENTS**

*[REQUIRED OF ALL FACILITIES:*

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

*Decommissioning plan with respect to the Storage Facility, including the battery storage equipment and facilities.*

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

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

**EXHIBIT F**  
**DELAY DAMAGES**

<b>Month</b>	<b>Daily Delay Damages Amount (in \$/kW)<sup>9</sup></b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

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<sup>9</sup> NTD: Parties discuss amount of Delay Damages.

## EXHIBIT G

### FORM OF PARENT GUARANTY

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

WHEREAS, Beneficiary and [\_\_\_\_], a [\_\_\_\_] (“Obligor”) entered into that certain Energy Storage Agreement, dated as of [\_\_\_\_], (the “Agreement”); and Guarantor delivers this Guaranty to Beneficiary as an inducement to Beneficiary to enter into the Agreement. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Agreement.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

If to Guarantor, at:

With a copy to:

If to Beneficiary, at:

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

With copies to:

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

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

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

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

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

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

[DATE]

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

To Whom it May Concern:

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

\_\_\_\_\_

**EXHIBIT I**  
**REQUIRED INSURANCE**

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

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

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

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

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

1.1.5 Umbrella/excess Liability. Seller shall maintain an occurrence based umbrella or excess liability insurance 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. All sub-limits must be disclosed at each policy renewal. 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 schedule; and
- (c) cross liability coverage or severability of interest.

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

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

1.4 Term of Commercial General Liability Coverage. Commercial general liability coverage must be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

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 Storage Facility at the time PacifiCorp’s review takes place.

**EXHIBIT J**  
**NERC EVENT TYPES<sup>10</sup>**

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

<sup>10</sup> NTD: This table will be adjusted as necessary to conform with NERC requirements as they exist at the time of execution of this Agreement.

**EXHIBIT K**  
**STORAGE PRICE**

1. Storage Price

The “Storage Price” (expressed in \$/MW/Month) shall be as follows:

<b>Contract Year<sup>11</sup></b>	<b>Storage Price (\$/MW/Month)</b>
<b>0-1</b>	
<b>1-2</b>	
<b>2-3</b>	
<b>3-4</b>	
<b>4-5</b>	
<b>5-6</b>	
<b>6-7</b>	
<b>7-8</b>	
<b>8-9</b>	
<b>9-10</b>	
<b>10-11</b>	
<b>11-12</b>	
<b>12-13</b>	
<b>13-14</b>	
<b>14-15</b>	
<b>Weighted Average</b>	

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<sup>11</sup> NTD: Table to be updated based on Term of the Agreement.



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

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

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

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately [\_\_\_] storage facility located in [\_\_\_\_] County, [\_\_\_\_] (the “Project”).

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

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

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

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

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

#### SECTION 1. CONSENT TO ASSIGNMENT

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

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

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

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

such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize such Qualified Transferee as the applicable party under the ESA (provided that such Qualified Transferee assumes the obligations of Borrower under the ESA). For purposes of this Consent, “Qualified Transferee” means a Person that is at least as financially and operationally qualified as Borrower and has (or agrees to contract with an operator who has) at least three (3) years of experience operating a utility scale electric storage facility of similar technology and similar size to the Project.

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

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

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

## SECTION 2. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

## SECTION 3. NOTICES

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

If to PacifiCorp:

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

If to Administrative Agent:

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

If to Borrower:

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

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

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

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

**SECTION 5. COUNTERPARTS**

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

## SECTION 6. SEVERABILITY

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

## SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

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

## SECTION 8. JURY TRIAL WAIVER

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

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

PacifiCorp

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

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

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

\_\_\_\_\_,

a \_\_\_\_\_

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

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

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

\_\_\_\_\_,

as Administrative Agent for the Lenders

[Borrower]

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

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

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



**EXHIBIT N**  
**PROJECT MILESTONES<sup>12</sup>**

Project Milestone	Project Milestone Completion Date
Complete Permitting	
Execute Generation Interconnection Agreement	
Execute Purchase Agreement for Major Equipment	
Execute Engineering, Procurement, Construction (“EPC”) or Balance of Plant (“BOP”) Agreement	
Issue Notice to Proceed	
Start of Construction	
10% of Major Equipment Delivered to Site	
Civil Work and Foundations Complete	
Mechanical Completion	
Interconnection Backfeed	
First Synchronization	
Scheduled Commercial Operation Date	

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<sup>12</sup> NTD: Milestones and dates by which Milestones are to be achieved to be agreed to by the Parties prior to the Execution Date.

**EXHIBIT O**  
**[RESERVED]**

**EXHIBIT P**  
**STORAGE OPERATING PROCEDURES<sup>13</sup>**

I. Storage Facility Operations. Seller shall comply with the following requirements with respect to the operation of the Storage Facility:

A. BESS SCADA, Telemetry, Interoperability and Data Historian.

- 1) BESS SCADA. The entire Storage Facility shall be controlled by a BESS SCADA system and BESS master controller. The Parties shall cooperate to integrate the systems and controls necessary to implement the Storage Operating Procedures.
  1. [The Storage Facility is to operate without on-site operations personnel on a 24 hour a day, 7 day per week basis.]<sup>14</sup> Seller shall ensure design, SCADA and control systems to operate automatically with appropriate industry standards and controls. The Storage Facility must meet all NERC and critical infrastructure protection requirements (CIPs) requirements.
  2. Seller shall provide as part of the Storage Facility a proven and established instrumentation and control system for the Storage Facility. PacifiCorp's control systems will supervise and monitor the BESS SCADA system while Seller's BESS SCADA and master controller will act as the master.
  3. The BESS SCADA System shall be compatible with PacifiCorp's historian database and applicable protocols. The BESS SCADA system shall incorporate an RTU to send data to PacifiCorp's historian.
  4. The monitoring system shall provide energy generation data, historical data, meteorological data, and all other applicable data to record operational history of the Storage Facility. Seller shall design the system so that the data can be retrieved remotely. The monitoring system shall be configured for automatic reporting of generation statistics required by PacifiCorp.
- 2) BESS Telemetry. Seller must provide as part of the Storage Facility telemetry equipment and facilities capable of transmitting the information listed in this Exhibit P, Section II, Storage Facility

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<sup>13</sup> NTD: Exhibit P is a preliminary draft and is subject to change based on project-specific details and further negotiation

<sup>14</sup> NTD: Seller to advise if it contemplates on-site operations personnel.

Operating Parameters concerning the Storage Facility on both a day-ahead and real-time basis.

1. Such real time data must be made available to PacifiCorp on the same basis as Seller receives the data.
2. In the event of loss of communication between PacifiCorp and the BESS SCADA system, the BESS SCADA system must institute PacifiCorp's desired behavior in such circumstance, including maintaining the previously communicated operating behavior, accepting a curtailment command from a local terminal, or a safe and linear shutdown.
- 3) Measurement and Verification. As described above, PacifiCorp will have real-time access to view the Seller's energy management system and data historian that will monitor the Storage Facility's state of health (SOH) metrics as well as usage metrics such as equivalent full cycles to date. PacifiCorp will be able to monitor the amount of cycles that have occurred over the life of the Storage Facility on a real-time basis.

B. The Power Conversion System (PCS).

The PCS is the interface between the DC battery system and the AC system and provides for charging and discharging of the battery and may consist of one or more parallel units.

- 1) The Parties agree to mutually cooperate to ensure the PCS shall be a smart static device (charger and inverter) using solid-state electronic switch arrays in a self-commutated circuit topology. The PCS, in conjunction with the BESS master controller, shall be capable of complete automatic unattended operation, including electrical self-protection, synchronizing and paralleling with the utility, and disconnect functions.
- 2) The control of the PCS shall be integrated with the overall BESS master controller. A proven and established combined instrumentation and control system shall be provided for the BESS SCADA system. Each SCADA system shall feed into a central controller that shall be the primary interface with PacifiCorp's controls and shall be compatible with PacifiCorp's existing SCADA system. The self-protective features shall not allow the PCS to be operated in a manner that may be unsafe or damaging.
- 3) The PCS shall be capable of operating continuously at rated output under the normal voltage and frequency ranges as specified by

equipment manufacturers and as required at the point of interconnection by the Generation Interconnection Agreement and providing full output for the required BESS operation modes specified.

C. Storage Facility Operation Mode.

- 1) The Storage Facility shall be capable of four quadrant (full power circle) operation to provide for various operating modes including peak power limiting operations, potential hybrid renewable energy plant smoothing, charge/discharge operations, VAR support, and other operating modes.

D. Charging and Discharging – Requirements and Limitations.

- 1) Seller shall specify charging and discharging requirements and limitations. Seller shall design the system to ramp up from zero to the maximum capacity and back at a mutually agreed upon, specified range of PacifiCorp selectable ramp rates to avoid shocking the system and allow generation to follow load easily.
- 2) Seller shall ensure that the SCADA or control system has protective feature ensuring that charge and discharge setpoints cannot exceed charge and discharge limits reported by equipment battery management system and PCS SCADA systems.
- 3) The BESS control system shall allow PacifiCorp's dispatcher to initiate remotely Seller-specified/programmed charge and discharge cycles. The maximum demand required by the charging cycle shall be PacifiCorp selectable but shall not exceed Seller specified charge or discharge rate. Seller shall provide data showing how the recharge period varies as maximum demand decreases.
- 4) Seller shall also specify restrictions, if any, on operation of the Storage Facility during any portion of the charge or discharge cycle. Seller shall provide a formula/curve or table and data showing the state of charge ("SoC") of the battery as a function of time, cumulative discharge energy, and other parameters relevant to battery degradation.
- 5) Automatic or programmed charge cycles shall be implemented to prevent SoC going above or below the battery vendor specified SoC limits.
- 6) Seller will indicate any required rest (neither charging nor discharging of the BESS) periods, their duration and what event they must follow or precede.

- 7) PacifiCorp may impose rest intervals, such as charging off-peak and discharging on-peak. If no other tasking is done, this will create a rest period between each half cycle. This shall not adversely affect Storage Facility performance and shall be included in capacity calculations. Provide the maximum rest period allowed (days, weeks, months).
- 8) Seller shall be excused from its obligation to charge the Storage Facility in response to an instruction from PacifiCorp, including a Charging Notice, if and to the extent the Storage Facility is not able to charge because of Force Majeure or a Planned Outage, Maintenance Outage or Forced Outage.
- 9) Seller shall be excused from its obligation to discharge the Storage Facility in response to an instruction from PacifiCorp, including a Discharging Notice, if and to the extent the Storage Facility is not able to discharge because of Force Majeure or a Planned Outage, Maintenance Outage or Forced Outage.
- 10) If another condition requires special action for a string or the battery bank, describe this condition, how often it occurs, what event triggers the need for it, what it takes to correct it, whether the string/BESS remains available during this period to be approved by PacifiCorp on a case-by-case basis. Examples are some type of reconditioning (holding at 100%t DOD) or charge equalization (holding at 100% SoC).

E. Charging and Discharging Notices and Modifications.

- 1) PacifiCorp will provide to Seller, per WECC pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice.
- 2) On the day of operation, to the degree that it is technically feasible, PacifiCorp shall have the right to make adjustments to its Charging Notices and Discharging Notices. To this end, Seller will provide to PacifiCorp real-time software application(s) which allow(s) PacifiCorp to access the Stored Energy Level status of the Storage Facility.
- 3) To make intraday adjustments on the day of operation, PacifiCorp will communicate with Seller through (i) a software application which allows PacifiCorp to directly adjust the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility or (ii) a real-time dispatch signal will be the primary control of the Storage Facility.<sup>15</sup>
- 4) Intraday adjustments will be subject to limitations and a predetermined control system (algorithm).

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<sup>15</sup> The total discharged energy in real-time will automatically be limited to the Stored Energy Level (less any losses to deliver such stored Energy to the Point of Delivery) and to the available power rating of the Generating Facility.

- 5) Seller's systems will automatically communicate with PacifiCorp to confirm PacifiCorp's requested adjustment to the charge or discharge schedule, including the hour(s) requested, as well as the rate of charge or discharge requested.

F. Reports.

Seller will deliver to PacifiCorp

1. a monthly written report highlighting performance from Storage Facility Operating Parameters with respect to the performance of the Storage Facility, including : 1) list of major faults or impacts to physical availability greater than five percent (5%) of capacity; 2) with respect to throughput, average SoC, SOH, physical availability; 3) issues related to the battery management system and PCS; 4) ambient conditions including temperature maximums and minimums; and 5) performance score, if applicable.
2. a written annual report after each Contract Year including a summary of the prior year performance and a summary degradation of the Storage Facility since the Commercial Operation Date.

II. Storage Facility Operating Parameters.

Storage Facility Operating Parameters are comprised of three tables containing lists of parameters Seller must provide and update throughout the Term of this Agreement: (a) Specifications; (b) Day Ahead PCI Table Inputs; and (c) Real Time SCADA Points. All real time data points shall be reported and communicated via SCADA and stored in data historian on a real time basis.

Part 1: Specifications<sup>16</sup>

#	Operating Parameter	Values	Notes
	Charging Source	System	This is for main power. Station Service to feed auxiliary loads to come from separate service.
	Minimum CP-rate for Charging the Storage Facility	_____ to _____	Maximum hourly rate in MW at which energy can be charged. Measured at the

<sup>16</sup> NTD: Other data points to be negotiated by the Parties. Parameters to be communicated to PacifiCorp shall include SoC, actual and contractual Up Reserve and Down Reserve capability when the Storage Facility is responding under its frequency response, status of frequency response, power output in MW, energy output in MWh, available energy capacity in MWh, circuit breaker status, physical availability in percentage, voltage at Point of Delivery, and other telemetered information that PacifiCorp may require for system operations.

	Maximum CP-rate for Charging the Storage Facility		Storage Facility Metering Point Provide Constant Power charge and range (e.g. CP from 0.9 to 1.1)
	Minimum CP-rate for Discharging the Storage Facility  Maximum CP-rate for Discharging the Storage Facility	_____ to _____	Maximum hourly rate in MW at which energy can be discharged. Measured at the Storage Facility Metering Point. Provide Constant Power discharge and range (e.g. CP from 0.5 to 1.2)
	Storage Ramp Rate	_____ milliseconds to reach full Storage Power Capacity Rating	The rate, expressed in MW per millisecond, that the Storage Facility discharges Discharging Energy to the Point of Delivery.
	Rated Apparent Power		The real or reactive power (leading/lagging) that the Storage Facility can provide at the Point of Delivery continuously without exceeding the operating limits of the Storage Facility
	Rated Discharging Energy		Total Discharging Energy the fully-charged Storage Facility can deliver to the Point of Delivery at the rated continuous discharge power without recharging.
	Rest Period	_____ seconds/minutes  _____ seconds/minutes	Between full discharge and charge Between charge and discharge
	Resting SoC of the Storage Facility	___%-___% or as per manufacturer recommendation	When not actively charging or discharging for more than a period of ___ hours, the SoC of the Storage Facility shall be maintained in this range
	Operational SoC Limits	___%-___% or as per manufacturer recommendation	
	Operating Mode		List operating modes Storage Facility is designed and capable of and any limitations, for example Standby Mode

Exhibit P-6



	Additional operating limitations e.g. thermal or seasonal limits		Min/Max temperatures for example

Part 2: Day Ahead Inputs for PCI Table

#	Day Ahead Inputs	Values	Notes
	Min. Charge (MWh)		the minimum physical storage limit (non-negative) of energy the Storage Facility can hold.
	Max SoC Max. Charge (MWh)		the maximum physical storage limit (non-negative) of energy the Storage Facility can hold.
	Hourly Charge Lower Bound (MWh)		the lower economic bound (non-negative) of energy the Storage Facility should have each hour.
	Hourly Charge Upper Bound (MWh)		the upper economic bound (non-negative) of energy the Storage Facility should have each hour.
	Max Discharging Limit (MW)		the maximum hourly rate in MW at which energy can be discharged.
	Max Charging Limit (MW)		the maximum hourly rate in MW at which energy can be charged.
	Discharge Efficiency (MW Output / MW Input)		Type the efficiency ( $0 \leq x \leq 1$ , default = 1) of the battery while in discharge mode. Indicates MWh generated by the Storage Facility for every MWh consumed from the Storage Facility
	Charge Efficiency (MW Output / MW Input)		Type the efficiency ( $0 \leq x \leq 1$ , default = 1) of the battery while in charge mode. Indicates MWh increase in the energy storage for every MWh consumed from the grid.
	Major faults		incurred in the system which will limit market participation for the following day

Part 3: Real Time SCADA POINTS

#	Real Time SCADA POINTS	Values	Notes
	instantaneous MW output		at the Point of Delivery and Storage Facility Metering Point
	Pmax		Guaranteed Storage Power Capacity Rating (MW)
	Pmin		
	SoC		measured in % relative to the Storage Energy Capacity, with fully charged being 100% and fully discharged being 0%.
	Storage Energy Capacity (Max. SoC)		
	percentage of total battery available for discharge		
	Number of equivalent full Depth of Discharge (DOD) cycles used during Contract Year		
	hourly maximum charging rate		
	hourly maximum discharging rate		
	current status and physical ability of the Storage Facility		
	Daily Cycle Limit		Percentage of daily limit met
	State of Health (SoH)		Seller shall specify how SoH is measured
	Operating Mode		
	Current Faults		

## **EXHIBIT Q**

### **PROHIBITED VENDORS**

In addition to the entities identified in lists maintained by the U.S. government and/or Governmental Authorities:

- (i) Products sourced from U.S. Commerce Department Bureau of Industry and Security (BIS) Entity List; and
- (ii) Products sourced from U.S. Department of Labor (DOL) “List of Goods Produced by Child Labor or Forced Labor.”

## **EXHIBIT R**

### **CONTRACTOR AND WORKFORCE REQUIREMENTS**

Seller shall comply with the following Requirements of Law of the State of Washington:

**WAC 480-107-075 Contract finalization.**

(3) Any contract signed by the utility to fill a resource need as a result of an RFP process must require the firm awarded the contract to track and report to the utility its use of diverse businesses including, but not limited to, women, minority, disabled, and veteran-owned businesses, and to track and report to the utility the firm's application of the labor standards in RCW 82.08.962 and 82.12.962.

**EXHIBIT S**  
**GENERATION INTERCONNECTION AGREEMENT**

## EXHIBIT T

### STORAGE ENERGY CAPACITY TESTS; STORAGE POWER CAPACITY GUARANTEE<sup>17</sup>

#### A. Storage Energy Capacity Test.

1. Prior to Commercial Operation Date. Upon no less than ten (10) Business Days prior notice to PacifiCorp, and at any time prior to the Commercial Operation Date, Seller shall complete a Storage Energy Capacity Test to determine the Storage Power Capacity Rating of the Storage Facility for the first Contract Year. Seller shall coordinate with PacifiCorp regarding the specific timing of the Storage Energy Capacity Test which shall be subject to PacifiCorp's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. The Storage Energy Capacity Test shall require Seller to maintain Discharging Energy from the Storage Facility for [DURATION] consecutive hours and the Storage Power Capacity Rating in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the [DURATION] hour test period, as measured at the Point of Delivery, divided by [DURATION] hours.

2. Subsequent Testing. At least once per Contract Year (starting after the first Contract Year) within the first six (6) months of each Contract Year or at such other time during the Contract Year as the Parties may mutually agree, Seller shall complete a Storage Energy Capacity Test. Seller shall coordinate with PacifiCorp regarding the specific timing of the Storage Energy Capacity Test which shall be subject to PacifiCorp's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. In each Contract Year, Seller shall have the right to run up to four (4) retests of the Storage Energy Capacity Test at such times as PacifiCorp may approve, such approval not to be unreasonably withheld, conditioned or delayed. In addition, PacifiCorp shall have the right to require a retest of the Storage Energy Capacity Test at any time upon fifteen (15) days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Power Capacity Rating is less than the Storage Power Capacity Rating determined by the most recent Storage Energy Capacity Test. If Seller runs three (3) retests (whether requested by Seller or PacifiCorp) within a rolling three (3) year period, then promptly after the third retest Seller shall: (i) deliver to PacifiCorp a written plan on the maintenance or improvements that it will undertake with respect to the Storage Facility to ensure that the fourth test is passed at least one percent (1%) above the Guaranteed Storage Power Capacity Rating, which plan shall be subject to PacifiCorp's reasonable approval and (ii) thereafter promptly implement the approved plan.

3. Witnessing Test; Costs and Expenses. PacifiCorp shall have the right to send one or more representative(s) to witness all Storage Energy Capacity Tests. PacifiCorp shall be

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<sup>17</sup> NTD: Exhibit T is a preliminary draft and is subject to change based on project-specific details and further negotiation.

responsible for all costs incurred by PacifiCorp to provide Charging Energy at the Point of Delivery to allow Seller to perform any Storage Energy Capacity Test and all costs and expenses payable or reimbursable to its representative(s) witnessing any Storage Energy Capacity Test. All other costs of any Storage Energy Capacity Test shall be borne by Seller (other than any third party costs incurred by Seller in connection with any retest required by PacifiCorp, unless such retest shall result in the Storage Power Capacity Rating being reduced from the Storage Power Capacity Rating established by the immediately preceding Storage Energy Capacity Test, in which case Seller shall be responsible for such costs).

4. Test Results. No later than five (5) days following any Storage Energy Capacity Test, whether test was successfully passed or failed, Seller shall deliver a testing report to PacifiCorp detailing results and findings of the Storage Energy Capacity Test (the "Storage Energy Capacity Testing Report"), including reasonable supporting data. The Storage Energy Capacity Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. If the actual Storage Power Capacity Rating determined pursuant to a Storage Energy Capacity Test is less than or greater than the then current Storage Power Capacity Rating, then the actual Storage Power Capacity Rating determined pursuant to such Storage Energy Capacity Test shall become the new Storage Power Capacity Rating at the beginning of the day following the completion of such Storage Energy Capacity Test for all purposes under this Agreement until a new Storage Power Capacity Rating is determined pursuant to a subsequent Storage Energy Capacity Test in accordance with the terms of this Agreement, provided in no event shall the Storage Power Capacity Rating be greater than the Guaranteed Storage Power Capacity Rating.

5. Storage Power Capacity Damages. If Storage Power Capacity Rating determined as a result of the Storage Energy Capacity Test is less than Guaranteed Storage Power Capacity Rating, then Seller shall be liable to pay PacifiCorp liquidated damages ("Storage Power Capacity Damages") equal to the product of:

a) 50% of number of months between failed Storage Energy Capacity Test and prior Storage Energy Capacity Test

Multiplied by

b) Storage Power Capacity Guarantee – new Storage Power Capacity Rating

Multiplied by

c) Storage Price.

6. Invoicing. If Storage Power Capacity Rating determined as a result of the Storage Energy Capacity Test is less than Guaranteed Storage Power Capacity Rating, then within thirty (30) days after receipt by PacifiCorp of the Storage Energy Capacity Testing Report, including reasonable supporting data, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of the Storage Power Capacity Damages calculated pursuant to Section A.5 of this

Exhibit T. Within twenty (20) days of receipt of the invoice, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Storage Power Capacity Damages not paid by Seller when due under this Section A.6 will bear interest at the Contract Interest Rate from the date due until but not including the date paid. PacifiCorp reserves its right under Section 10.2 to set off any amounts owed by Seller hereunder against any amounts owed by PacifiCorp to Seller under this Agreement. The provisions of Section 10.4 shall apply with respect to any dispute between the Parties with respect to the Storage Energy Capacity Testing Report or PacifiCorp's invoice of Storage Power Capacity Damages.

B. Storage Energy Capacity Test Procedures:

Seller will perform each Storage Energy Capacity Test in the following manner and utilizing the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Seller to complete any battery balancing activities recommended by equipment supplier prior to commencing step 2;
2. Seller will fully charge the Storage Facility so that it is in a state that it is made commonly and typically available to PacifiCorp as fully charged and dispatchable. Depending on the equipment supplier, this figure may be when the SoC is at or near 100% as indicated by SCADA;
3. Seller shall select the appropriate operating mode on the Storage Facility matching normal, dispatchable operation. Seller shall set the Storage Ramp Rate parameter to the value specified in Exhibit P.
4. Seller will discharge the Storage Facility at the higher of the Guaranteed Storage Power Capacity Rating or the Storage Power Capacity Rating, over a duration of [DURATION] consecutive hours. In the event discharging must be stopped early due to the Storage Power Capacity Rating having been fully discharged or due to any of the following conditions: critically low SoC, power foldbacks or other safety and stability reasons, Seller will have been deemed to fail the test and Seller and PacifiCorp will mutually agree on changes to the test for the purposes of running a re-test;
5. Seller will add the quantity of MWh produced by the Storage Facility during the [DURATION] consecutive hours to produce a sum quantity of MWh for the [DURATION] consecutive hours full discharge of the Storage Facility;
6. Seller will divide the sum quantity of MWh produced over the [DURATION] consecutive hours full discharge of the Storage Facility by a factor of



[DURATION] to produce a value that will become the Storage Power Capacity Rating for the Contract Year.

Example:

Hour 1 Discharge = 25 MWh

Hour 2 Discharge = 25 MWh

Hour 3 Discharge = 25 MWh

Hour 4 Discharge = 25 MWh

Duration = 4 hour discharge

Storage Energy Capacity =  $25 + 25 + 25 + 25 = 100$  MWh

Storage Power Capacity Rating =  $100 \text{ MWh} / 4 \text{ hours} = 25 \text{ MW}$

7. Seller will complete Storage Facility rest period, as applicable according to equipment supplier specifications. If following rest period, Storage Facility will not follow a Charging Notice, Seller will return Storage Facility to minimum SoC specified by equipment supplier for standby operations.

## EXHIBIT U

### STORAGE AVAILABILITY GUARANTEE<sup>18</sup>

A. Calculation of Storage Availability. Within [thirty (30)] days after the end of each Contract Year, Seller shall calculate the Storage Availability of the Storage Facility as follows:

$$\text{Storage Availability} = \frac{8760 - \text{TAF OH} - \text{TAPMOH}}{8760 - \text{TAPMOH}}$$

Where:

“Equivalent Outage Hour” means, for any Forced Outage, Planned Outage or Maintenance Outage, as the case may be, the product of the de-rated condition duration and the proportion of the nominal output range which cannot be achieved during this period.

“Total Annual Forced Outage Hours” or “TAF OH” means the sum of the number of Equivalent Outage Hours during which the Storage Facility has experienced a Forced Outage during the applicable Contract Year.

“Total Annual Planned and Maintenance Outage Hours” or “TAPMOH” means the sum of the number of Equivalent Outage Hours during which the Storage Facility has experienced a Planned Outage or Maintenance Outage during the applicable Contract Year (not to exceed [ ] ([ ]) hours in the aggregate in any Contract Year).

B. Calculation of Storage Availability Damages. If the Storage Availability for any Contract Year is less than the Guaranteed Storage Availability, then Seller shall be liable to pay PacifiCorp liquidated damages (“Storage Availability Damages”) for such Contract Year calculated as follows:

Storage Availability Damages = the product of

- a) The positive difference between the Guaranteed Storage Availability and the actual Storage Availability for the Contract Year

Multiplied by

- b) The Storage Power Capacity Rating

Multiplied by

- c) The Storage Price.

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<sup>18</sup> NTD: Exhibit U is a preliminary draft and is subject to change based on project-specific details and further negotiation.

C. Invoicing. If the Storage Availability for any Contract Year is less than the Guaranteed Storage Availability, then within [ ] days of the end of such Contract Year, Seller shall deliver to PacifiCorp a statement showing Seller's computation of the Storage Availability Damages calculated pursuant to Section B of this Exhibit U. Within twenty (20) days of delivery of the statement, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such statement. Any Storage Availability Damages not paid by Seller when due under this Section C will bear interest at the Contract Interest Rate from the date due until but not including the date paid. PacifiCorp reserves its right under Section 10.2 to set off any amounts owed by Seller hereunder against any amounts owed by PacifiCorp to Seller under this Agreement. The provisions of Section 10.4 shall apply with respect to any dispute between the Parties with respect to Seller's statement of the Storage Availability Damages.

## EXHIBIT V

### GUARANTEED STORAGE ROUND TRIP EFFICIENCY<sup>19</sup>

#### A. Storage Round Trip Efficiency Test.

1. Prior to Commercial Operation Date. Upon no less than ten (10) Business Days prior notice to PacifiCorp, and at any time prior to the Commercial Operation Date, Seller shall complete a Storage Round Trip Efficiency Test to verify that the Storage Facility can satisfy the Guaranteed Storage Round Trip Efficiency. Seller shall coordinate with PacifiCorp regarding the specific timing of the Storage Round Trip Efficiency Test which shall be subject to PacifiCorp's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed.

2. Subsequent Testing. At least once per Contract Year (starting after the first Contract Year) in the month of [\_\_\_\_\_] on a day mutually acceptable to the Parties or at such other time during the Contract Year as the Parties may mutually agree, Seller shall complete a Storage Round Trip Efficiency Test. Seller shall coordinate with PacifiCorp regarding the specific timing of the Storage Round Trip Efficiency Test which shall be subject to PacifiCorp's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. In each Contract Year, Seller shall have the right to run up to four (4) retests of the Storage Round Trip Efficiency at such times as PacifiCorp may approve, such approval not to be unreasonably withheld, conditioned or delayed. In addition, PacifiCorp shall have the right to require a retest of the Storage Round Trip Efficiency at any time upon fifteen (15) business days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Round Trip Efficiency is less than the Storage Round Trip Efficiency determined by the most recent Storage Round Trip Efficiency Test. If Seller runs three (3) retests (whether requested by Seller or PacifiCorp) within a rolling three (3) year period, then promptly after the third retest Seller shall: (i) deliver to PacifiCorp a written plan on the maintenance or improvements that it will make with respect to the Storage Facility to ensure that the fourth test is passed at least one percent (1%) above the Guaranteed Storage Round Trip Efficiency, which plan shall be subject to PacifiCorp's reasonable approval and (ii) thereafter promptly implement the approved plan. Notwithstanding anything to the contrary contained in this Exhibit V, in no event shall Storage Round Trip Efficiency Tests be performed more frequently than monthly.

3. Witnessing Test; Costs and Expenses. PacifiCorp shall have the right to send one or more representative(s) to witness all Storage Round Trip Efficiency Tests. PacifiCorp shall be responsible for all costs incurred by PacifiCorp to provide Charging Energy at the Point of Delivery to allow Seller to perform any Storage Round Trip Efficiency Test and all costs and expenses payable or reimbursable to its representative(s) witnessing any Storage Round Trip Efficiency Test. All other costs of any Storage Round Trip Efficiency Test shall be borne by

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<sup>19</sup> NTD: Seller may propose an alternative round trip efficiency test used by its equipment supplier once selected and PacifiCorp may agree, in its sole discretion, to adopt such test on terms and conditions acceptable to PacifiCorp. If PacifiCorp agrees to adopt such alternative test, then the Parties will amend this Exhibit V to reflect such alternative round trip efficiency test on terms and conditions acceptable to PacifiCorp.

Seller (other than any third party costs incurred by Seller in connection with any retest required by PacifiCorp, unless such retest shall result in the Storage Round Trip Efficiency being less than the Storage Round Trip Efficiency established by the immediately preceding Storage Round Trip Efficiency Test, in which case Seller shall be responsible for such costs).

4. Test Results. No later than ten (10) days following any Storage Round Trip Efficiency Test, whether test was successfully passed or failed, Seller shall deliver a testing report to PacifiCorp detailing results and findings of the Storage Round Trip Efficiency Test (the “Storage Round Trip Efficiency Testing Report”), including screen shots of the Storage Facility’s SCADA Storage Facility Metering Point data showing Charging Energy and Discharging Energy during the Storage Round Trip Efficiency Test and other reasonable supporting data. The Storage Round Trip Efficiency Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility.

5. Storage Round Trip Efficiency Damages. If Storage Round Trip Efficiency determined as a result of the Storage Round Trip Efficiency Test is less than Guaranteed Storage Round Trip Efficiency, then Seller shall be liable to pay PacifiCorp liquidated damages (“Storage Round Trip Efficiency Damages”) equal to the product of:

- (a) the positive difference between Actual RTE – Guaranteed RTE;  
where Actual RTE = EnergyOUT / EnergyIN (both defined below);
- (b) the then applicable Storage Power Capacity Rating;
- (c) the then applicable Storage Price; and
- (d) the number of months that have elapsed since the last Storage Round Trip Efficiency Test.

6. Invoicing. If Storage Round Trip Efficiency determined as a result of the Storage Round Trip Efficiency Test is less than Guaranteed Storage Round Trip Efficiency, then within thirty (30) days after receipt by PacifiCorp of the Storage Round Trip Efficiency Testing Report, including reasonable supporting data, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp’s computation of the Storage Round Trip Efficiency Damages calculated pursuant to Section A.5 of this Exhibit V. Within twenty (20) days of receipt of the invoice, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Storage Round Trip Efficiency Damages not paid by Seller when due under this Section A.6 will bear interest at the Contract Interest Rate from the date due until but not including the date paid. PacifiCorp reserves its right under Section 10.2 to set off any amounts owed by Seller hereunder against any amounts owed by PacifiCorp to Seller under this Agreement. The provisions of Section 10.4 shall apply with respect to any dispute between the Parties with respect to the Storage Round Trip Efficiency Testing Report or PacifiCorp’s invoice of Storage Round Trip Efficiency Damages.

B. Storage Round Trip Efficiency Test Procedures.

Seller will perform each Storage Round Trip Efficiency Test in the following manner and utilizing the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Seller to complete any battery balancing activities recommended by equipment supplier prior to commencing step 2.
2. Seller will fully discharge the Storage Facility to the minimum recommended SoC. This is dependent upon the equipment manufacturer specifications, but typically when the SoC is at 0% as registered in the SCADA.
3. Select appropriate operating mode.
4. Set the Storage Ramp Rate parameter to the value specified in the Storage Operating Procedures in Exhibit P.
5. Charge the Storage Facility to the maximum SoC. This is dependent on the equipment manufacturer specifications but typically when the SoC is at 100% as registered in the SCADA. Complete the specified Storage Facility rest period in accordance with the Storage Operating Procedures in Exhibit P, if applicable, based on equipment manufacturer specifications.
6. Review the Storage Facility Metering Point data, and determine and record the “EnergyIN”, which is the amount of energy used to charge the Storage Facility from minimum SoC to maximum SoC.
7. Discharge the Storage Facility according to the Storage Energy Capacity Test procedures at the higher of the full capacity or the Storage Power Capacity Rating for the full Duration. Do not cease discharging at the Duration, but instead discharge shall be stopped based upon the lower of (a) the minimum SoC specified in the Storage Operating Procedures in Exhibit P and (b) any of the following conditions: a critically low SoC, power foldbacks, or other safety and system stability reasons.
8. Complete the Storage Facility rest period as provided in the Storage Operating Procedures in Exhibit P, if applicable, based on equipment manufacturer specifications.
9. Review the Storage Facility Metering Point data, and determine and record the “EnergyOUT”, which is the amount of energy used to discharge the Storage Facility from maximum SoC to minimum SoC.
10. If the Storage Facility will not follow a Discharging Notice within the rest period as specified in the Storage Operating Procedures in Exhibit P, then Seller shall return the SoC to within the range specified by equipment manufacturer for standby operations.

## EXHIBIT W

### STORAGE RAMP RATE TEST

#### A. Storage Ramp Rate Test.

1. Storage Ramp Rate Testing. Upon no less than ten (10) Business Days prior notice to PacifiCorp, and at any time prior to the Commercial Operation Date, Seller shall complete a Storage Ramp Rate Test to verify that the Storage Facility can satisfy the Storage Ramp Rate criteria specified in Exhibit P. Seller shall coordinate with PacifiCorp regarding the specific timing of the Storage Ramp Rate Test which shall be subject to PacifiCorp's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed.

2. Subsequent Testing. At least once per Contract Year (starting after the first Contract Year) in the month of [\_\_\_\_\_] on a day mutually acceptable to the Parties or at such other time during the Contract Year as the Parties may mutually agree, Seller shall complete a Storage Ramp Rate Test. Seller shall coordinate with PacifiCorp regarding the specific timing of the Storage Ramp Rate Test which shall be subject to PacifiCorp's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. In addition, PacifiCorp shall have the right to require a retest of the Storage Ramp Rate at any time upon five (5) days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Ramp Rate has varied materially from the results of the most recent Storage Ramp Rate Test.

3. Witnessing Test; Costs and Expenses. PacifiCorp shall have the right to send one or more representative(s) to witness all Storage Ramp Rate Tests. PacifiCorp shall be responsible for all costs incurred by PacifiCorp to provide Charging Energy at the Point of Delivery to allow Seller to perform any Storage Ramp Rate Test and all costs and expenses payable or reimbursable to its representative(s) witnessing any Storage Ramp Rate Test. All other costs of any Storage Ramp Rate Test shall be borne by Seller (other than any third party costs incurred by Seller in connection with any retest required by PacifiCorp, unless such retest shall result in the Storage Ramp Rate being less than the Storage Ramp Rate established by the immediately preceding Storage Ramp Rate Test, in which case Seller shall be responsible for such costs).

4. Test Results. No later than ten(10) days following any Storage Ramp Rate Test, whether test was successfully passed or failed, Seller shall deliver a testing report to PacifiCorp detailing results and findings of the Storage Ramp Rate Test (the "Storage Ramp Rate Testing Report"), including screen shots of the Storage Facility's SCADA Storage Facility Metering Point data showing Charging Notice, Discharging Notices, Charging Energy and Discharging Energy during the Storage Ramp Rate Test and other reasonable supporting data. The Storage Ramp Rate Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility.

5. Failed Storage Ramp Rate Test. If actual Storage Ramp Rate is not within +/- two percent (2%) of the Storage Ramp Rate specified in Exhibit P, then Seller shall have thirty (30)

days in which to conduct such maintenance or improvements with respect to the Storage Facility and to conduct another Storage Ramp Rate Test to ensure that it satisfies the Storage Ramp Rate criteria specified in Exhibit P. If Seller fails to demonstrate pursuant to a Storage Ramp Rate Test that the Storage Facility satisfies the criteria specified in Exhibit P within such thirty (30)-day period, then it shall be an Event of Default by Seller.

B. Storage Ramp Rate Test Procedures.

Seller will perform each Storage Ramp Rate Test in the following manner and utilizing the following steps:

1. Seller selects the appropriate operating mode (usually “Manual Mode (Real + Reactive)”) in the Storage Facility SCADA. The Storage Facility will be dispatched in Manual Mode in accordance with the following:
2. Starting Setpoint: 0 MW.
3. Ending Setpoint: Storage Power Capacity Rating.
4. Measure the time elapsed to ramp power output between the Starting Setpoint and the Ending Setpoint.
5. The “Storage Ramp Rate” is determined by dividing the change in power by the time elapsed. The start of the timing shall begin when the Storage Facility Metering Point registers a power change of a certain minimum percentage (typically 1.0-2.0%) of the Starting Setpoint. The timing shall stop when the Storage Facility Metering Point registers a power value within a certain minimum percentage (typically 1.0-2.0%) of the Ending Setpoint value.