

APPENDIX B-1

Notice of Intent to Bid Instructions

Bidders who intend to bid into the 2022AS RFP process are requested to complete and return the following by the requested deadline below:

1. **Appendix B-1 – Notice of Intent to Bid Form** (as executed pdf), **Appendix B-1.1 NOI Excel Spreadsheet** (as excel spreadsheet) and **Appendix B-1.2 Bid Fee Calculator Worksheet** (as excel spreadsheet),
2. **Appendix D - Bidder’s Credit Information**, and
3. **Appendix G-1 - Confidentiality Agreement**, as set forth below.
4. **Appendix S-1 – Berkshire Hathaway Energy Cyber Security Attestation (to be provided on PacifiCorp’s website)**

Bidders are requested to submit electronic copies of **Appendix B-1, Appendix B-1.1, Appendix D, Appendix G-1, and Appendix S-1** to the following PacifiCorp and IE’s email addresses, no later than **5:00 p.m. Pacific Prevailing Time on Thursday, November 17, 2022.**

If multiple facilities are being bid, please provide one signed Notice of Intent to Bid form for each expected facility to be bid as well as the NOI Excel Spreadsheet with a completed column for each unique bid that will be made for the facility. Additionally, please provide a completed Bid Calculator Worksheet. A facility may have multiple bid alternatives (i.e., different Bid Attributes) subject to payment of the applicable bid fee.

Email:

PacifiCorp	RFPAllSource@PacifiCorp.com
Utah IE – Merrimack Energy	MerrimackIE@merrimackenergy.com
Oregon IE – PA Consulting	2022as_ie@paconsulting.com
Washington IE – Bates White, LLC	frank.mossburg@bateswhite.com

Appendix B-1.1 Notice of Intent to Bid Form and NOI Excel Spreadsheet

[INCLUDED AS A SEPARATE EXCEL FILE ATTACHMENT]

2022 All-Source Request for Proposals (2022AS RFP)

This is to declare that the undersigned intends to respond to PacifiCorp’s 2022 All-Source Request for Supply-Side Proposals, (2022AS RFP). Bidders are requested to provide an executed version in Pdf format and also the excel spreadsheet.

Facility 1	Bid 1	Bid 2 (Insert more columns as needed)
Project / Facility Name		
Bidder Company (legal entity of intended signatory to a contract)		
Company Ownership (direct and indirect owners of Company; include organizational chart)		
Contact Person		
Mailing Address		
Website		
Email		
Phone(s)		
GPS coordinates		
Resource location (City, County, State)		
POD and/or POI Location		
Transmission Service Provider		
Interconnection queue or cluster study #, if any		
Interconnection agreement, study, or study request size (MW)		
Resource - Bid Attributes		
Storage type, if included		
Transaction structure type: BTA, PPA, PPA with a Battery, Tolling Agreement, Professional Services Agreement		
Pricing structure: Fixed, escalating, etc.		
If a PPA or Tolling Agreement, indicate term in years		
Size of each generating asset in MW capacity (nameplate)		
Size of each storage asset, if any: --Storage Facility Power Capacity Rating (MW) --Storage Facility Energy Capacity (MWh)		
Duration of storage (hours), if any		
Estimated Commercial Operation Date (month/year)		
Diversity Strategy (free bid alternative)		

Authorized Signature

Print Name

Title

Date

Appendix B-1.2 Bid Fee Calculator Worksheet

[INCLUDED AS A SEPARATE EXCEL FILE ATTACHMENT]

To be provided twice. First submit your expected bids as part of the Notice of Intent to Bid. Second, submit final Appendix B-1.2 as part of final bid package consistent with amount of bid fees provided.

APPENDIX B-2

Bid Proposal Instructions and Required Information

This **Appendix B-2** describes PacifiCorp’s expectations and requirements for the 2022AS RFP bids. In general, PacifiCorp expects bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. **Appendix E-1 - PPA and Tolling Agreement Instructions to Bidders** and **Appendix F-1 – BTA Instructions to Bidders** provide additional detail on bid document deliverables. Due to submittal requirement differences for PPAs and Tolling Agreement bids as compared to BTA bids, bidders should pay strict attention to instructions to ensure bids are in compliance with the instructions as outlined. Certain items in **Appendix F-1 and Appendix F-2** will only apply to BTA proposals (as explained in the instruction document).

Bid Checklist

Each bidder must provide complete information as requested. Applicable appendices, forms and attachments are outlined in the Bid Checklist table below that are required in the bid submittal. Specific appendices to include in the bid submittal are shown in Column C for the applicable bid structure type in Column D (PPA and Tolling Agreement Bidders), Column E (BTA Bidders) and Column F (demand side bidders). Additional requirements for Demand-side bidders are separately included as **Appendix Q - 2021 Demand Response RFP – Requirements for Demand-side Bids**.

Bid Checklist Table:

A	B	C	D	E	F	G
	2022AS RFP Bid Applicability	Bid must include completed Appendix	Applicable to			
Appendix A	Resource Technical Specifications		PPA/ Tolling	BTA	Bench- mark	Demand- side
<i>Appendix A-2</i>	<i>Interconnection Studies and Agreements</i>	X	X	X	X	See App Q
<i>Appendix A-3</i>	<i>Permit-Matrix</i>	X	X	X	X	See App Q
<i>Appendix A-5</i>	<i>Project One-Line Drawing and Layout</i>	X	X	X	X	See App Q
<i>Appendix A-6</i>	<i>Division of Responsibility</i>	X		X		
<i>Appendix A-7</i>	<i>Owner Standards and Specification</i>	List of Exceptions		X	X	
<i>Appendix A-8</i>	<i>Real Estate Specifications</i>	X		X	X	
<i>Appendix A-9</i>	<i>Product Data-Equipment Supply Matrix</i>	X	X	X	X	See App Q
<i>Appendix A-10</i>	<i>Plant Performance Guarantee/Warranties</i>	X		X		
Appendix B-1 (B-1.1 and B-1.2)	Intent to Bid Form and Bid Fee Calculator Worksheet	X	X	X	X	X

A	B	C	D	E	F	G
Appendix B-2	Information Required in Bid Proposal / Bid Proposal		X	X	X	See App Q
Appendix C-1	Bid Summary and Pricing Input Sheet Instructions				X	
Appendix C-2	Bid Summary and Pricing Input Sheet	X	X	X	X	See App Q
Appendix C-3	Energy Performance Report	X	X	X	X	See App Q
Appendix D	Bidder's Credit Information	X	X	X		X
Appendix E-1	PPA and Tolling Agreement Instructions to Bidders		X			
Appendix E-2.1 or E-2.2	Redline to PPA and exhibits (PPA for generating resource only or PPA w/ collocated battery storage)	X	X			
Appendix E-3	Redline to Tolling Agreement	X	X			
Appendix F-1	BTA Instructions to Bidders			X		
Appendix F-2	Redline to BTA Term Sheet	X		X		
Appendix G-1	Confidentiality Agreement	X	X	X		X
Appendix J	PacifiCorp Transmission Waiver	X	X	X		
Appendix K	Operations and Maintenance Services	X		X		
Appendix L	Non-Price Scoring Matrix	X	X	X	X	X
Appendix P	Equity Questionnaire	X	X	X	X	X
Appendix Q	2021 Demand Response RFP – Document Requirements	X				X
Appendix Q-1	Redline to Professional Service Contract and Exhibits	X				X
Appendix Q-1.01	Redline to Contract Exhibit A – Scope of Work ¹	X				X
Appendix Q-1.02	Redline to Contract Exhibit B – Pricing and Performance Template	X				X

¹ Embedded in 2021 Demand Response RFP (Exhibit A to Professional Services Contract)

A	B	C	D	E	F	G
Appendix S-1	Berkshire Hathaway Energy – Cyber Security Attestation	X	X	X		X

PROPOSAL FORMAT

PacifiCorp requests bidders conform to the following format for presenting their bid information:

Section 1 – Cover Letter and Executive Summary of Proposal – Bids must include a signed cover letter including the required statements as provided in the RFP main document, **Section 3.E**. Cover letters must be signed by an executive of the project company. Bids shall include an executive summary including a brief description of the proposal and its key benefits and advantages to PacifiCorp. The executive summary should include a general description of the technology, location, and business arrangement for the bid including a pricing summary for the bid. Bidder must confirm the terms and conditions of their proposal will remain effective through November 21, 2023. Failure of a bidder to honor the terms and conditions of its proposal for the period stated in its executive summary may result in the bidder being disqualified as a bidder in future RFPs.

Section 2 – Resource Description – This section should provide a description of the resource. The **Appendix B-2** narrative should describe the technology including:

- i. A summary of the bid including location, technology, megawatt (MW) nameplate capacity, contractual term and price. Generating resource bids should include a summary of the expected net output² (production profile independent of storage), capacity factors, and degradation schedule, if any. Storage bids should summarize storage capacity, duration, round-trip efficiency and degradation schedule, if any.
- ii. A summary of the site, including GSP coordinates, a description of topology, geology, climate and resource studies completed and data available.
- iii. A summary of site control for the primary site and any necessary right-of-way or easements for transmission, roads, or access to the site.
- iv. A description of site layout including proximity to interconnection points, ingress and egress, local communities, and environmental features. The proposed site(s) must clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.
- v. A summary of critical issues analysis including key findings, studies completed and outstanding, and any other material considerations impacting the site suitability, potential schedule risk, or overall project viability.
- vi. A development status, including remaining permits and approvals and a milestone schedule summarizing estimated completion dates for key development, procurement, construction and interconnection milestone.
- vii. A summary of interconnection and transmission locations, available studies, agreements and plans for interconnection. Off-system bidders shall summarize the transmission provider, control area, point of delivery, completed studies, transmission availability and status of transmission service agreement.
- viii. A summary of the generating resource and/or storage technology type, including expected usable life, site suitability and decommissioning plans. BTA bids shall confirm conformance to the Technical Specifications in Exhibit A and include a list of exceptions, if any. Bids utilizing

² See contract definition of Expected Net Output in pro forma contracts.

previously owned/operated equipment shall include a summary of hours of operation and major maintenance performed.

- ix. A summary of the resource performance analysis, prepared by an independent third-party engineering firm or established in-house service provider (subject to validation by PacifiCorp), including expected capacity factors, annual energy production, storage cycles, and annual degradation. Bidder shall also summarize expected and guaranteed annual energy production, estimated annual availability, any guaranteed minimum annual availability, any operating limits, and any limits on the number of hours the resource may be operated per year or unit of time.
- x. A procurement sourcing, supply chain, engineering and construction strategy, including summary of key equipment and manufacturers as well as any tax considerations.
- xi. Summary of construction and project financing strategy.
- xii. Summary of operations and maintenance plan and service, including any warranty terms and/or guarantees on major equipment.
- xiii. A summary of key responses to the equity questionnaire such as supplier, contractor and workforce diversity, community and environmental benefits and burdens of the projects. Washington-state located resources should summarize how they will increase energy benefits and/or reduce burdens to highly impacted communities and vulnerable populations.
- xiv. The **Appendix B-2** narrative shall reference, summarize and otherwise emphasize the detailed supporting documents provided in the required appendices:
 - i. **Appendix A-2 Interconnection Studies and Agreements,**
 - ii. **Appendix A-3 Permit Matrix,**
 - iii. **Appendix A-5 Project One-Line Drawing and Layout,**
 - iv. **Appendix A-9 Product Data-Equipment Supply Matrix,**
 - v. **Appendix C-2 - Bid Summary and Pricing Input Sheet,**
 - vi. **Appendix C-3 Energy Performance Report**
 - vii. **Appendix D Bidder's Credit Information**
 - viii. **Appendix L Non-Price Scoring Matrix**
 - ix. **Appendix P Equity Questionnaire**
 - x. **Appendix Q 2021 Demand Response RFP – Requirements for Demand-side Bids**

BTA bidders shall also reference, summarize and otherwise emphasize the detailed supporting documents provided in the required BTA-specific appendices:

- i. **Appendix A Technical Specifications**
- ii. **Appendix A-6 Division of Responsibility**
- iii. **Appendix A-7 Owners Standards and Specifications**
- iv. **Appendix A-8 Real Estate Specifications**
- v. **Appendix A-10 Plant Performance Guarantee/Warranty**
- vi. **Appendix K Operations and Maintenance Services**

Section 3 - Bidder's Qualifications – Information in this section should be consistent with information provided in **Appendix D – Bidder's Credit Information** in the Intent to Bid submittal. This section should include, but not be limited to, the following information:

- Corporate structure and primary and secondary businesses including all legal entity names.
- Location of offices.
- Biographies of key officers.
- Summary of comparable experience developing, financing, constructing and operating generating and/or storage resources.

- Description of developer projects and independent power supply ventures participated in the last three to five years.
- Professional references including at least one primary contact and one back-up contact (name, telephone number and e-mail address) for each project or power supply venture referenced in the bidder's proposal.
- Description of any current or previous contract dispute(s) involving similar projects in which the bidder is or was involved during the last five years.
- Separate descriptions, as appropriate, for each member of a consortium or partnership of two or more firms and the relationship between the firms for this proposal.

Section 4 - Financial Information – Bidder shall reference, summarize and otherwise emphasize the detailed supporting documents provided **Appendix D – Bidder's Credit Information** in the Intent to Bid submittal.

Section 5 - Pricing Proposal and Project Financing Strategy, including tax equity strategy – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Bidders shall complete **Appendix C-2 – Bid Summary and Pricing Input Sheet**, summarize their offered pricing and describe underlying assumptions in the bid narrative. Bidders shall further describe their project financing strategy, including construction financing and whether bidder has or plans to use third-party tax equity. The bidder shall describe whether third-party tax equity commitments have already been established for the project, and bidder shall otherwise describe how it intends to conform and be eligible for production or investment tax credits and other available tax incentives for the project.

Section 6 – Interconnection & Transmission Service – Bidder shall include a detailed description of the location of its proposed interconnection facilities, distribution or transmission facilities, including proposed delivery points consistent with information provided in **Appendix A –Technical Specifications and Required Submittals, Appendix A-2 – Interconnection Studies and Agreements** and **Appendix A-5 - Project One-Line Drawing and Layout**. Bidders should be aware of any transmission requirements or specifications that could affect their equipment selection and costs and take those specifications into consideration in preparing their bid submittal. Bidders should review and understand the North America Electric Reliability Corporation (NERC) guidelines regarding technical requirements and modeling for renewables.³

Bids with projects directly interconnected to PacifiCorp's system. For proposed new resources, PacifiCorp requests that bidders request that their interconnection requests be studied for both Energy Resource Interconnection Service (ERIS) and Network Resource Interconnection Service (NRIS). Bidders shall summarize the cost for any direct assigned and network upgrades resulting from a completed interconnection study by PacifiCorp. Prospective bidders are responsible for having worked with PacifiCorp Transmission, as necessary, to ensure that all cluster study requirements included in the Open Access Transmission Tariff (OATT) were met by May 15, 2022 when, according to the current OATT as of the date of this issuance, the Cluster Request Window will have closed. Bidders shall confirm that their bids are consistent with completed interconnection studies and/or executed LGIAs provided as part of their **Appendix A-2 - Interconnection Studies and Agreements** bid submittal or otherwise demonstrate that the interconnection/transmission provider will not require a material modification.

Bids not directly interconnected to PacifiCorp's system. For proposed new resources, PacifiCorp requests that bidders request that their interconnection requests be studied for both ERIS and NRIS. Off-system bidders shall summarize the interconnection studies included in their **Appendix A-2 - Interconnection Studies and Agreements**, including the interconnection cost and milestones demonstrating their

³ NERC, Improvements to Interconnection Requirements for BPS-Connected Inverter-Based Resources, September 2019

proposed commercial operation date. Finally, off-system bids shall demonstrate the availability of, and request for, long-term, firm point-to point transmission service from the resource's point of interconnection with the third party's system to the bidder's proposed point of delivery on PacifiCorp's system.

Section 7 – Environmental and Siting – PacifiCorp requests all bidders provide a critical issues analysis document. Bidder shall confirm in their **Appendix B-2** bid narrative that i) bidder will apply for required eagle take permit for the construction and operations of any wind projects, and as appropriate, for other energy sources (such as long-term or temporary disturbance [ie nest disturbance] or take from project development or operations), ii) bidder will identify and implement, voluntarily or as agreed upon with applicable agency, cut-in speed adjustment, curtailment strategy, and/or bat deterrent systems to address bat impacts at wind projects, and iii) bidder will utilize applicable wildlife siting guidance and meaningful coordination with state/federal wildlife agencies to avoid, minimize, and/or mitigate potential impacts to wildlife and their habitat. Bidder shall transfer any eagle take permit obtained to PacifiCorp should PacifiCorp become the owner of the project, and ii) bidder understands it is exclusively and entirely responsible for meeting and satisfying all federal, state and local laws, permits, licenses, approvals and/or variances required to assure physical delivery of energy in accordance with any PPA, Tolling Agreement, BTA or professional services agreement. Bidder shall reference, summarize and otherwise emphasize all applicable permits that bidder has secured or will be required to receive in order to construct and operate the facility consistent with the information submitted in **Appendix A-3 – Permit-Matrix**.

Bidder must provide any additional material information including scoping, feasibility and other associated studies conducted to assess environmental impacts and to obtain necessary permits. BTA bids must include all material studies related to wildlife (including eagles, all bats, sage-grouse, ungulates, and other protected species, such as those protected under the federal Endangered Species Act, federal Bald & Golden Eagle Protection Act, federal Migratory Bird Treaty Act and/or other applicable Federal and state laws), archeological, vegetation, hydrological, geotechnical, visual, noise, air quality, and other environmental impacts related to the project. The bid narrative shall note impacts to designated wilderness, national and state parks, and other scenic or protected areas. The bid narrative shall describe the methodologies for such studies and identify the person(s) or firm(s) who conducted and completed the work. If such studies are in progress, bidder should describe the scope and schedule for completion and identify the person(s) or firm(s) doing the studies and methodologies to be employed. Bidder should describe measures that will be taken to minimize the potential for environmental, wildlife, visual and cultural impacts of the project. Wildlife measures may include buffers from wildlife nesting/habitat (eagle/raptor nest buffers, prey base buffers, sage-grouse lek and habitat buffers, etc.), potential curtailment or cut-in speed strategies (bat cut-in speed adjustments, eagle curtailment, etc.), and/or other significant avoidance, minimization, and/or mitigation efforts. Finally, bidder should discuss plans to engage community and environmental stakeholders to support the proposed project.

To the extent applicable, bidder should include in the **Appendix B-2** bid narrative the following information with respect to any proposed facility site (see **Appendix A – Technical Specifications and Required Submittals** for additional detail applicable to specific resource type):

- i. List of all studies conducted; required environmental, construction and other regulatory permits and timelines.
- ii. Prevailing noise ordinance at the site and expected sound level (A-weighted) at the site boundary.
- iii. Proposed site plans, layouts, elevations or other aspects of the facility.
- iv. Types of transportation access required.
- v. A Phase I Environmental Site Assessment conducted or updated in the last three months.

- vi. Characterization of the area surrounding the site including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- vii. Proximity and extent of nearest wetlands and description of all types of all nearby wetlands and water bodies, including any proposed impacts.
- viii. Information on fish, avian species and other wildlife and vegetation inhabiting the area of the project, such as a Site Characterization Study (Tier I/II) and/or a Critical Issues Analysis report.
- ix. Proximity to nearest endangered or threatened or critical species habitat and information on all nearby endangered or threatened species or their nests and/or habitat which could potentially be impacted, including species protected under the federal Bald and Golden Eagle Protection Act and the federal Migratory Bird Treaty Act.
- x. All studies performed or planned for bats species and an assessment of cut-in speed adjustment, curtailment losses, and/or deterrent systems costs.
- xi. Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
- xii. Location and distance to population centers which could be impacted.
- xiii. Expected site ambient temperature extremes and verification that freeze protection will be provided if necessary.

Section 8 – Contract Terms – In addition to the redlines of the contract pro formas and term sheets as provided in **Appendix E-2 PPA Documents, Appendix E-3 Tolling Agreements, Appendix F-2 BTA Term sheet, or Appendix S-2 Professional Services Contract**, Bidder must identify and specify in the bid narrative they key exceptions to the terms and conditions from their redline of the contract pro formas or term sheet, as applicable. Bidder should include the issue list as part of the bid narrative. The issue list should summarize the priority exceptions to the terms and conditions from the pro forma documents or term sheets and the reason or context for why bidder feels their exception is reasonable. Bidder's narrative should suggest alternate language and context for each item on the issues list. Conformity to the pro forma documents is strongly encouraged so bidders should use the bid narrative to support any proposed redlines.

Section 9 – O&M Services Contract Terms (BTA Option Only) – BTA bidders must provide a comprehensive listing/description of all contract terms that the bidder would seek during contract negotiations regarding operating and maintenance services for the asset. In addition to the bid narrative, BTA Bidder are required to supply a markup of the applicable form in **Appendix K - Operations and Maintenance Services** for the proposed resource or else provide a separate operating and maintenance service proposal with their bid submittal. Conformity to **Appendix K** terms is strongly encouraged. Bidders objecting to terms are encouraged to use the bid narrative to explain any proposed redlines and provide context for PacifiCorp to evaluate the proposed change to the pro forma document.

Section 10 – Equity Summary - Of particular value are those resources which provide benefits to highly impacted communities and vulnerable populations in Washington⁴ and projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment, or that suffer from high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases in California⁵. PacifiCorp is committed to and understands the importance of promoting diversity among its suppliers, consultants and their subcontractors by increasing the amount of business conducted

⁴<https://www.utc.wa.gov/ layouts/15/CasesPublicWebsite/CaseItem.aspx?item=document&id=00076&year=2019&docketNumber=190837&resultSource=&page=1&query=190837&refiners=&isModal=false&omItem=false&doItem=false>

⁵ PUC399.13(8) (A)

with qualified diverse business enterprises, including women-owned, minority-owned, disabled veteran-owned, and lesbian, gay, bisexual, and transgender (“LGBT”)- owned businesses.

All Bidders are requested to complete **Tab 1** and **Tab 2** of **Appendix P – Equity Questionnaire**. When considering resources to be allocated to Washington customers, Appendix P – Equity Questionnaire responses will be used in the final phase of the evaluation process to measure Washington customer benefit indicators as part of Washington’s CETA. As resource allocations are not yet known, PacifiCorp requests that all bidders complete **Tab 2** of **Appendix P- Equity Questionnaire** to the best of their knowledge and ability.

California-located bidders must compete **Tab 3** of **Appendix P- Equity Questionnaire**, which contain California-specific questions.

All bidders shall summarize the following in their bid narrative:

- Summary of proximity and population characteristics of the nearest community to where facility is proposed.
- Bidder to describe itself and its own project team, including bidder’s employee diversity statistics. Summary of supplier, contractor and workforce strategy related to diversity targets for suppliers, contractors or workforce during development, construction and/or ongoing operations. ***Bidders may submit one free bid alternative for a second/different diversity strategy at no additional bid fee.*** Bidder’s supplier and contractor diversity will be subject to an annual reporting requirement as part of the pro forma contractual agreement.
- Bidder to describe previous experience implementing projects in partnership with diverse communities and entities (such as subcontractors), including women-, minority-, disabled-, and veteran-owned organizations and businesses.
- Bidder to confirm whether it, its suppliers and contractors have a written diversity-equity-inclusion (DEI) commitment, policy, or plan, and whether bidder or project leadership have received DEI training.
- Bidder to outline expected local community impacts due to short-term and long-term job creation, workforce training or apprenticeship program, impacts to local tax base, and any other nonenergy community benefits derived from the new resource.
- Summary of any local impacts during construction and ongoing operations which may be expected related to water usage, traffic, diesel emissions, soil disturbance, emissions, dust, wastewater, hazardous waste, cultural sites, wetlands, endangered species, wildlife (eagles, avian/raptors, bats, ungulates, sage-grouse, etc.)), replanting and pollinator re-seeding strategies.
- Bidder to provide detail on what it has done to inform the local community of the project and project plans, including information on whether the local community been receptive to the potential development, if any groups or individuals objected to the proposed development, and, if so, what specific concerns were expressed.
- Provide a summary of community engagement for the project site and interconnection facilities to the point of delivery on the transmission system, along with any specific proposed adjustment to the project based on these engagement activities. This summary should include meeting dates, attendees, meeting minutes, community support or opposition.
- Summarize and provide copies of any letters, memos, emails, news articles, or other communications demonstrating the level of support by the local community.

- Oregon-located resources must describe how they will comply with HB2021 Clean Energy Act requirements related to apprenticeship and labor standards.
- Washington-located resources must summarize the energy and non-energy benefits and burdens to vulnerable populations and highly impacted communities and provide self-scoring of PacifiCorp’s customer benefit indicators⁶.
- California-located resources must summarize whether it is located in a community afflicted with poverty or high unemployment or that suffers from high emission levels and how the community will be impacted by the resource.

Finally, for bids located in Washington, PacifiCorp prefers projects that utilize a project labor agreement or community workforce agreement for major construction activities associated with the construction of the project. Bidders shall make commercially reasonable efforts to ensure that such Project Labor Agreement or Community Workforce Agreements for Washington state projects are eligible to be certified by the Washington Department of Labor and Industries under the standards of the Washington State Clean Energy Transformation Act (RCW 19.405).

Bidders are requested to provide a narrative with respect to their staffing strategies and safety performance. Bidders to provide responses related to:

- Whether bidder intends to use temporary staffing agencies as subcontractors;
- Whether bidder or any proposed general contractors have been found in violation of serious safety requirements within the past three years on similar projects; and
- Whether bidder and associated contractors enroll their employees in any of the following: OSHA 10 training program, joint labor/management safety committees, joint labor/management apprenticeship programs, and other courses identified as essential to the safe and efficient installation of wind and solar power structures.

⁶ <https://www.pacificorp.com/energy/washington-clean-energy-transformation-act-equity.html>

APPENDIX C-1

Bid Summary and Pricing Input Sheet Instructions

General Bid Summary Instructions for PPAs with and without energy storage, Tolling Agreements and BTAs. All bidders must complete and submit and **Appendix C-2 - Bid Summary and Pricing Input Sheet** for each bid submitted. Appendix C-2 is an Excel-based worksheet that covers bid summary information, energy production profile, and pricing for bid types and categories. There are seven (7) tabs in the excel workbook:

Tab Name	Description	Technology				Structure				
		Renewable	Renewable plus storage	Stand-alone Storage	PSH	PPA with or without Toll	Tolling Agreement	Benchmark	BTA	
1	Data Inputs	Project detail	X	X	X	X	X	X	X	X
2	8760 First Year Generation Profile	First contract year - Expected Net Output (8760) delivered to PacifiCorp	X	X			X		X	X
3	PPA Pricing	PPA pricing structure	X	X			X			
4	Battery Pricing & Ops	BESS pricing and operations		X	X	X	X	X	X	X
5	PSH Pricing & Ops	PSH pricing and operations				X		X	X	X
6	BTA Pricing Schedule	BTA pricing structure	X	X	X	X			X	X
7	Additional Data	Blank tab to add data	X	X	X	X	X	X	X	X

Power Purchase Agreement

1. Bidder's submitting PPA bids shall provide the information requested in **tabs 1, 2 and 3** in the **Appendix C-2** spreadsheet.
 - a. Bidder's offering collocated energy storage systems with a PPA should also provide the information requested in **tab 4** of the **Appendix C-2** spreadsheet.
2. **Tab 7** can be used for any additional information to support bid.

Battery Energy Storage Systems

1. Energy storage systems offering a Tolling Agreement for their standalone storage resources shall provide the information requested in **tabs 1 and 4** in the **Appendix C-2**.
2. **Tab 7** can be used for any additional information to support bid.

Pumped Storage Agreement

1. Pumped Storage Hydro (PSH) bids shall provide the information requested in **tabs 1 and 5** in the **Appendix C-2**.
2. **Tab 7** can be used for any additional information to support bid.

Benchmarks and Build-Transfer Agreement

1. For renewable BTA, bidders shall complete **tabs 1, 2 and 6** in the **Appendix C-2**.
2. For collocated storage, standalone storage or PSH BTA bids, bidders shall complete **tabs 4 or 5, as appropriate** in the **Appendix C-2**.
3. **Tab 7** can be used for any additional information to support bid.
4. Operating Expenses: Please provide complete information on the following, including any assumptions made on a forward basis (e.g., escalation rates):

- Warranty Period and Characteristics for the overall project and the major equipment.
- Annual O&M – Facilities, \$ per year.
- Annual O&M - Substation/Interconnection, \$ per year.
- Auxiliary services electric energy costs, \$ per year.
- Land Lease costs (describe), \$ per year.
- Royalty payments (describe), \$ per year and/or \$/MWh.
- Property Tax.
 - a. Expected Rate %
 - b. Rate Escalation %
 - c. Initial Cost Assessed Value \$000
 - d. Replacement Cost Escalation %
 - e. Depreciation Method
- Any property in lieu of taxes (PILOT) or other grants.

Additional Information

Bidder should provide any other information considered to be germane to PacifiCorp’s analysis of bidder’s submittal in **Tab 7**.

Separate instructions will be provided for any bidder who submits a notice of intent for a technology (non-renewable, for example) or structure not covered by the current Appendix C-2.

APPENDIX C-2

Bid Summary and Pricing Input Sheet

[INCLUDED AS A SEPARATE ELECTRONIC SPREADSHEET (EXCEL FILE)]

APPENDIX C-3

Energy Performance Report

PacifiCorp was awarded Wyoming's 2021 Industry Wildlife Stewardship Award for its efforts to understand and minimize impacts to wildlife. In an effort to continuously advance this stewardship, PacifiCorp requests that all bidders include an appropriate deduction to its resource production estimates provided in Appendix C-2 to account for potential voluntary outages, cut-in speed adjustments and/or curtailment due to impacts to avian, wildlife and fish species, including impacts to eagles and bats. Such project curtailments would be non-compensable in any contract awarded in this RFP.

PacifiCorp prefers that all energy performance reports be prepared by an independent third party. However, should a bidder have a resident (in-house) renewable resource evaluation team, acceptance of bidder's in-house performance report will be subject to PacifiCorp being able to replicate the results via an independent third-party expert contracted by PacifiCorp. The energy performance report should be consistent with and support performance estimates provided in the **Appendix B-2 Bid Proposal Instructions and Required Information** bid narrative and also the **Appendix C-2 Bid Summary and Pricing Input Sheet**. Bidder must provide the expected performance of the resource as it varies with ambient conditions and other factors that will impact the performance of the resource. To the extent pricing, capability and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the bidder must clearly identify that relationship in tabular form.

The energy performance report should detail how it was prepared, answer the specific questions listed below for each resource type, and provide the minimum data requirements:

- BTA bid data requirements: Wind resource bid submittals must include a minimum of two years of on-site meteorological tower data, converted to an estimated MWh of production on an hourly time scale. PacifiCorp will accept two years of solar irradiance satellite data provided from Solargis or SolarAnywhere in lieu of on-site solar panel met data for all solar PPA and BTA bids. However, should a solar BTA bidder be selected to the final shortlist, to remain on the final shortlist, bidder must commit to install at least one solar monitoring station on the proposed solar site within 45 days of being selected to the final shortlist with the ability to capture solar irradiance data for at least four months prior to executing agreements following a final shortlist acknowledgement. If a solar BTA bidder is selected to the final shortlist, bidder will commit to maintaining at least one on-site solar monitoring station through the entire construction period and provide the solar monitoring station and all collected solar irradiance data to PacifiCorp at BTA closing.
- PPA bid data requirements: Wind resource bids must include a minimum of one year of on-site meteorological tower data converted to an estimated MWh production on an hourly time scale. PacifiCorp will accept one year of solar irradiance satellite data provided from Solargis or SolarAnywhere in lieu of on-site solar panel met data for all solar PPA bids.

Wind Resource Bids – Specific Questions

1. In addition to the BTA and PPA data requirements listed above, wind bids should answer the following questions related to their site data:
 - a. How was the wind data collected, certified and correlated to the reference points?
 - b. Who provided the wind data analysis service?
 - c. What is reference height, or heights, of the meteorological data?
 - d. How was the wind data adjusted for the turbine hub height?

- e. What is the estimated wind shear and how was the wind shear calculated?
 - f. What is the accuracy of the wind and energy forecast?
 - g. What is the basis year of the underlying data? Are the references years high, low, or average years?
 - h. How was generation output calculated from the meteorological data?
 - i. Identify the specific de-ratings included in the energy forecast (wind array losses, line losses, blade degradation, site elevation, etc.)?
2. Energy Production Estimate
- a. Predicted hub height mean wind speed and gross and net energy production for the full project.
 - b. Predicted long-term site air density.
 - c. Turbine power curve employed and description of any adjustments made to the power curve.
 - d. Description of methodology employed to calculate energy losses due to array effects
 - e. Clear breakdown of applied energy loss factors.
 - f. Monthly and diurnal pattern of predicted energy production with an explanation of the variation.
 - g. Analysis of the uncertainty associated with the predictions provided in the assessment.
3. Bidders may be asked to provide the following:
- a. Site Wind Data
 - i. Raw hourly or ten-minute wind speed and direction data.
 - ii. Description of equipment used to record data.
 - iii. Calibration certificates for equipment.
 - iv. Conversion factors (e.g. m/s per Hz) applied in recording wind speeds.
 - v. Maintenance records for the monitoring equipment.
 - vi. Location, height and orientation relative to mast of all sensors.
 - b. Reference Wind Data
 - i. Hourly or ten-minute wind speed and direction data.
 - ii. Description of equipment used to record data.
 - iii. Calibration certificates for equipment.
 - iv. Maintenance records for the monitoring work.
 - v. Location, height and orientation relative to mast of all sensors.
 - c. Wind Project Information
 - i. Layout of wind project turbine array using latitude and longitude coordinates.
 - ii. Detailed topographic maps of project area with all mast and turbine locations.
 - d. Verification and Analysis
 - i. Details of instrument configurations and measurement periods for each site mast and reference station.
 - ii. Summary of mast maintenance records and explanations for significant periods of missing data.
 - iii. Data recovery rates and measured monthly means for masts employed in the assessment.
 - e. Prediction of Wind Regime
 - i. Description of methodology employed to adjust measured wind speeds on site to the long-term.
 - ii. Correlation plots and coefficients for relevant correlations in the assessments.
 - iii. Predicted long-term mean wind speeds at measurement heights and hub height at all masts employed in the assessment.

- iv. Annual wind speed and direction frequency distribution for long-term site masts.
 - v. Plot of annual wind rose for long-term site masts.
 - vi. Description of methodology employed to extrapolate mean wind speeds at measurement heights to hub height.
- f. Prediction of Wind Speed Variations
- i. Description of methodology employed to predict wind speed variations across the site.
 - ii. Details of wind flow modeling employed and any inputs to the model (where applicable).

Solar

In addition to the BTA and PPA data requirements listed above, solar bids should answer the following questions related to their site data:

1. How was the resource data collected, certified and correlated to the reference points?
2. Who provided the data analysis service?
3. What is the accuracy of the raw data for the resource and energy forecast?
4. Was a typical weather year (highly preferred), an average year, or a specific weather year (i.e. 2016) used as the basis of the energy analysis for the project? If a specific weather year or an average of weather years was used, are the reference years high, low, or average years?
5. How the generation output was calculated from the meteorological and solar insolation data.
6. Identify the specific de-ratings included in the energy forecast (i.e., soiling, mismatch, wiring, inverter, transformation losses, etc.)?

Storage

PacifiCorp is battery chemistry and technology agnostic. Because there are no revenue grade, ANSI-approved DC meters, PacifiCorp requires AC-coupled systems, with centralized storage designs, when storage is collocated with a generating facility, because of the risk to the resource of not meeting its 2026 online date with a DC connected system. As part of the **Appendix C-3 Energy Performance Report** response, BESS bids must identify the collocated renewable energy resource, if applicable, and provide a detailed description of any shared facilities and/or equipment with the associated renewable resource. BTA bids must conform to both the *generating resource specifications* and the *BESS specifications* in **Appendix A - Technical Specifications and Required Submittals**.

Appendix C-3 Energy Performance Report should be consistent with responses in **Appendix B-2 Bid Proposal Instructions and Required Information** and **Appendix C-2 – Bid Summary and Pricing Input Sheet** and other bid documents such as **Appendix A-2 Interconnection Studies and Agreements**.

All bids including a storage resource must provide a description of the plant communications and control plan. The plan shall include a description and diagrams (as applicable) that demonstrate how bidder will provide BESS systems data, including state of charge, power charge/discharge status, and asset health indicators (temperature, HVAC alerts, emergency status, etc.) as well as BESS system control, including limitation of charging only from renewable energy production, if applicable, charge/discharge scheduling, and station service load.

BESS bidders will also be required to provide an emergency response plan and a remediation plan in the event of battery accidents.

Appendix C-3 Energy Performance Report for storage bids should answer the following questions:

- Manufacture, model, and chemistry of battery
- Manufacture and model of control system for battery
- Manufacture and model of energy management system

- Manufacture and model of inverters
- Confirmation that collocated BESS proposal is AC-coupled system
- Discharge capacity at point of delivery (MW)
- Storage capacity at point of delivery (MWh)
- Cycling capability and limitations (must be consistent with **Appendix C-2 Bid Summary and Pricing Input Sheet Instructions** submittal)
- Depth of charge capabilities and limitations
- Round trip efficiency (%) (must be consistent with **Appendix C-2** submittal)
- Annual degradation by contract year (%) (must be consistent with **Appendix C-2** submittal)
- Expected capacity by contract year (%) as applicable (must be consistent with **Appendix C-2** submittal)
- Guaranteed storage annual availability (%)
- Bidder to describe their ability to provide PacifiCorp with an option to grid charge along with description of what is required to upgrade system for battery charging from grid.

Pumped Storage Hydro (PSH) Systems.

PSH bids shall include an engineer report describing 1) proposed location and technology; 2) water resource; 3) operational limitations; 4) expected availability and depreciable life; 5) operational budget including capital, personnel and consumable expenses; 6) point of interconnection and LGIA status; 7) project Schedule through COD; and 8) regulatory & FERC licensing status.

Geothermal

Geothermal bids should address the following:

1. Minimum of one production well and one injection well flow results to support the viability and capacity of geothermal resource. For results in excess of three (3) years, summarize the results for all years and provide the detail for the past three (3) years of production well flow tests.
2. Summary of all collected geothermal data for the proposed generating facility site.
3. Characterization the geothermal resource quality, quantity and projected production levels.
4. Graph or table that illustrates the annual and monthly projection of geothermal resources.
5. Description of any other existing geothermal facilities in the resource area and characterize their production and their anticipated impact, if any, on the generating facility.

Biomass and Biogas

Biomass and biogas bids should address the following:

1. Fuel makeup and its source.
2. Third-party resource assessment reports of available fuel for the generating facility and its proximity to the generating facility. Such resource assessments should include a discussion of long-term fuel price risk and availability risk issues.
3. Identify competing resource end-uses.
4. Provide a plan for obtaining the fuel, including a transportation plan.
5. Identify any contracts or option agreements to acquire and transport the fuel.
6. Provide an agreement or option agreement with a fuel source for a period of ten (10) years or greater.

APPENDIX D

Bidder's Credit Information

Please provide the following information with Appendix B-1 – Notice of Intent to Bid form to enable PacifiCorp to evaluate the financial viability of the bidder and any entity(ies) providing credit assurances on behalf of the bidder, if applicable.

Bidder's Credit Information

1. Credit information for bidder
 - a. Exact legal name and address of bidder.
 - b. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source.
 - c. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years. Including the Auditor's Notes.
 - d. Identify pending legal disputes (describe).
 - e. Please state whether bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.
 - f. If bidder is unable to provide audited financial statements or is relying upon another entity(ies) to provide credit assurances on its behalf, bidder must indicate so here and complete the following section.
 - i. Is bidder unable to provide audited financial statements?
 - ii. Is bidder relying upon another entity(ies) to provide credit assurances on bidder's behalf?
 - g. Bidder should demonstrate its ability and/or the ability of its credit support provider to provide the required security, including its plan for doing so including type of security, sources of security, and a description of its credit support provider.
 - h. Bidder should provide a reasonable demonstration of its ability to finance the proposed project based on past experience and a sound financial plan identifying the proposed sources for debt and equity and evidence that the project is financeable.
2. Credit information for entity(ies) providing credit assurances on behalf of bidder (if applicable)
 - a. Exact legal name and address of entity(ies) providing credit assurances on behalf of bidder.
 - b. Describe relationship to bidder and describe type of credit assurances to be provided (e.g., parental guaranty, cash deposit, or a letter of credit from an acceptable financial institution). Bidder must provide to Company a letter to Company from the entity(ies) providing the credit assurances on behalf of the bidder executed by an authorized signatory and indicating their form of credit assurances it will provide. It should be noted that more than one commitment letter, or more than one form of commitment letter, may be necessary.
 - c. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate credit rating if a senior unsecured long term debt rating is unavailable). Please indicate type of rating, rating, and source:

- d. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years. Including the Auditor's Notes.
- e. Describe any pending legal disputes.
- f. Please state whether entity(ies) providing credit assurances on behalf of the bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

Credit Requirements

The bidder may be required to post credit assurances for the applicable bid categories of Power Purchase Agreement (PPA) or Build Transfer Agreement (BTA), each of which will be expected to have a commercial operation date of no later than December 31, 2027, with the exception of long-lead time resources. PacifiCorp will require a letter from the entity providing financial assurances at the bid submittal stating that it will provide financial assurances on behalf of the bidder.

If necessary, the bidder will be required to demonstrate the ability to post any required credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. PacifiCorp will require each bidder to provide an acceptable commitment letter(s), if applicable, twenty (20) business days after the bidder is notified that the bidder has been selected for the Final Shortlist. Bidder will be required to provide any necessary guaranty commitment letter from the entity(ies) providing guaranty credit assurances on behalf of the bidder and/or any necessary letter of credit commitment letter from the financial institution providing credit assurances in the form of a Letter of Credit. Forms of commitment letters are part of this **Appendix D**. The timing of when credit security must be posted is detailed in the Credit Security Requirements Methodology section, which is also part of this **Appendix D**.

Amount of Credit Assurances to be Posted

The RFP selected resources have the potential to expose PacifiCorp and its ratepayers to credit risk in the event a selected bidder is unable to fulfill its obligations pursuant to the terms of an executed agreement. The credit risk profile is a function of several factors:

1. Type of resource agreement.
2. Size of resource.
3. Expected energy delivery start date.
4. Term of underlying contract.
5. Creditworthiness of bidder and bidder's credit support provider, if applicable.

In addition, please note that a financial institution providing credit assurances on behalf of the bidder must be a major U.S. commercial bank and have at all times a Credit Rating of at least 'A' and 'A2' from S&P and Moody's, respectively, and have assets (net of reserves) of at least \$10,000,000,000. Should the financial institution providing credit assurances on behalf of the bidder fail to meet these minimum requirements PacifiCorp will require credit assurances from a replacement financial institution that does meet the requirements.

The Credit Rating is defined as the lower of: x) the most recently published senior, unsecured long term debt rating (or corporate credit rating if a debt rating is unavailable) from Standard & Poor's (S&P) or y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is unavailable) from Moody's Investor Services. If option x) or y) is not available, the Credit Rating will be determined by the Company through an internal process review utilizing a proprietary credit scoring

model developed in conjunction with a third party. All bidders will receive a Credit Rating which will be used in determining the amount of any credit assurances to be posted.

Power Purchase Agreement and Tolling Agreement

For PPAs and Tolling (i.e., Energy Storage) agreements, PacifiCorp views its potential credit exposure as the cost it would incur in the event the resource failed to reach commercial operation by the proposed online date or the bidder failed at any time during the life of the contract. The potential for this cost to change is greater for this resource group due to the term of the underlying contract. PacifiCorp will hold any credit security for a longer period, due to the length of the contract. PacifiCorp has determined the amount of credit assurances required for these types of transactions as **\$200.00/kW**,¹ based upon nameplate project size, to be provided at contract execution. The amount of credit assurances required will be reduced to **\$100.00/kW** upon the project achieving commercial operation date and will be held until the agreement expires. Bidders under these types of structures should understand the cost of credit and bid accordingly.

Build Transfer Agreement

For all resources that involve a physical asset with appropriate step-in rights, PacifiCorp views potential credit exposure as the cost it would incur in the event the resource failed to reach commercial operation by its proposed online date. If the failure occurred near the expected commercial operation date, PacifiCorp would also potentially have to procure energy and other environmental attributes associated with the energy in the open market at then-prevailing market prices. PacifiCorp has determined the amount of credit assurances required for these types of transactions as **\$200.00/kW**,² based upon nameplate project size. The credit assurance requirement will be terminated upon the project achieving commercial operation date with proven tax credit eligibility of the appropriate resource technology.

For PPA, Tolling (i.e., Energy Storage) agreements and BTAs, PacifiCorp will also explore with a bidder, if selected, other commercial avenues to reduce security requirements, such as, but not limited to, reduction in security amounts as project development milestones met, a stipulated acceleration of commercial operation date(s) (i.e., prior to October 2027) or PacifiCorp's review of bidder's underlying third-party contractual terms, provisions and/or incentives that further support bidder achieving commercial operations prior to December 31, 2027.

Posting of Credit Security

Terms and conditions for the posting of security are set forth in the applicable pro forma documents or term sheet which as noted above can be negotiated relative to milestones and amounts. If applicable, the bidder will be required to demonstrate the ability to post any required credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. Forms of commitment letters are a part of this **Appendix D**.

¹ Security in Appendix D and Appendix E-2, E-3 and F-2 pro forma agreements to be updated to reflect \$200/kW for resources with 2026 online dates, \$214/kW for resources with 2027 online dates and \$229/kW for resources with 2028 online dates.

² Security in Appendix D and Appendix E-2, E-3 and F-2 pro forma agreements to be updated to reflect \$200/kW for resources with 2026 online dates, \$214/kW for resources with 2027 online dates and \$229/kW for resources with 2028 online dates.

PacifiCorp Security

Please note that PacifiCorp will not post security to support its obligations under any definitive agreement. Bidders who will require such security from PacifiCorp should not submit a proposal under this RFP.

FORM OF GUARANTY COMMITMENT LETTER

(Must be on letterhead of bidder’s guarantor)

PacifiCorp
825 NE Multnomah Street, Suite 600
Portland, OR 97232
Attn: Credit Department

To Whom It May Concern:

[NAME OF GUARANTOR] (“Guarantor”) is [INSERT RELATIONSHIP TO BIDDER] (“Bidder”).

In connection with Bidder’s submittal in PacifiCorp’s 2022AS Request for Proposals (“RFP”), this commitment letter contains Guarantor’s assurance to PacifiCorp that, should PacifiCorp enter into a transaction with Bidder arising out of any bid submitted by Bidder in the RFP, with terms and conditions mutually acceptable to PacifiCorp and Bidder, Guarantor will at that time issue an unconditional guaranty in form and substance reasonably satisfactory to PacifiCorp, and that Guarantor will guarantee all obligations of payment and performance of Bidder to PacifiCorp as Guarantor’s independent obligation (up to a maximum amount of \$_____, plus expenses of enforcing the guaranty).

Guarantor understands that PacifiCorp will not enter into a transaction with Bidder without said guaranty. Guarantor further understands that PacifiCorp is under no obligation to enter into any transaction with Bidder, under the RFP or otherwise.

Yours truly,

(name of committing guarantor)
(name and title of authorized officer)

FORM OF LETTER OF CREDIT COMMITMENT LETTER

(Must be on letterhead of entity(ies) providing the letter of credit on behalf of the bidder)

PacifiCorp
825 NE Multnomah Street, Suite 600
Portland, OR 97232
Attn: Credit Department

To Whom It May Concern:

In connection with Bidder’s submittal in PacifiCorp’s 2022AS Request for Proposals (“RFP”), this commitment letter contains [ISSUING BANK]’s assurance to PacifiCorp that, should PacifiCorp enter into a transaction with Bidder arising out of any bid submitted by Bidder in the RFP, with terms and conditions mutually acceptable to PacifiCorp and Bidder, [ISSUING BANK] will at that time issue an irrevocable standby letter of credit in form and substance reasonably satisfactory to PacifiCorp, up to a maximum amount of \$_____.

[ISSUING BANK] understands that PacifiCorp will not enter into a transaction with Bidder without said letter of credit. [ISSUING BANK] further understands that PacifiCorp is under no obligation to enter into any transaction with Bidder, under the RFP or otherwise.

Yours truly,

(name of entity(ies) providing the letter of credit)
(name of authorized officer)

APPENDIX E-1

PPA and Tolling Agreement Instructions to Bidders

PPA and Tolling Agreement Bid Checklist

Each bidder must provide complete information as requested and described in **Appendix B-2 Bid Proposal Instructions and Required Information**. Applicable appendices, forms and attachments are outlined in the Bid Checklist table below that are required for PPA and Tolling Agreement bid submittals.

Bidders shall summarize the key issues list as part of their **Appendix B-2 Bid Proposal Instructions and Required Information** narrative and also provide a redline to the pro forma documents included in **Appendix E-2 PPA Documents** and **Appendix E-3 Tolling Agreement Documents**.

A	B	C
	2022AS RFP Bid Applicability	Bid must include completed Appendix
Appendix A	Resource Technical Specification	
<i>Appendix A-2</i>	<i>Interconnection Studies and Agreements</i>	X
<i>Appendix A-3</i>	<i>Permit-Matrix</i>	X
<i>Appendix A-5</i>	<i>Project One-Line Drawing and Layout</i>	X
<i>Appendix A-6</i>	<i>Division of Responsibility</i>	
<i>Appendix A-7</i>	<i>Owner Standards and Specification</i>	
<i>Appendix A-8</i>	<i>Real Estate Specifications</i>	
<i>Appendix A-9</i>	<i>Product Data- Equipment Supply Matrix</i>	X
<i>Appendix A-10</i>	<i>Plant Performance Guarantee/Warranties</i>	
Appendix B-1, B-1.1, and B-1.2	Intent to Bid Form as submitted and Bid Fee Calculator Worksheet	X
Appendix B-2	Information Required in Bid Proposal	X
Appendix C-1	Bid Summary and Pricing Input Sheet instructions	
Appendix C-2	Bid Summary and Pricing Input Sheet	X
Appendix C-3	Energy Performance Report	X
Appendix E-1	PPA and Tolling Agreement Instructions to Bidders	
Appendix E-2.1 or E2.2	Redline to PPA and exhibits, as applicable	X
Appendix E-3	Redline to Tolling Agreement, as applicable	X
Appendix F-1	BTA Instructions to bidders	
Appendix F-2	Redline to BTA Term Sheet	
Appendix G-1	Confidentiality Agreement	X
Appendix J	PacifiCorp Transmission Waiver	X
Appendix K	Operations and Maintenance Services	
Appendix L	Non-Price Scoring Matrix	X
Appendix P	Equity Questionnaire	X
Appendix S-1	Berkshire Hathaway Energy – Cyber Security Attestation	X

Appendix E-2

PPA Documents Including PPA Appendices

[INCLUDED AS A SEPARATE ATTACHMENT]

Appendix E-2 contains two forms of PPAs:

1. Appendix E-2.1: PPA for renewable or non-renewable (no energy storage): Renewable pertains to wind, solar and other renewables. PPA is footnoted to identify terms and conditions that would be removed to accommodate a non-renewable PPA.
2. Appendix E-2.2: PPA for collocated renewable energy generating resource with energy storage system.

Appendix E-3

Tolling Agreement Documents

[INCLUDED AS A SEPARATE ATTACHMENT]

For the purpose of standalone storage, pumped storage hydro and other resources proposing a tolling agreement as a bid response to this RFP, PacifiCorp has included a pro forma Tolling Agreement containing the major terms and conditions expected under a tolling arrangement.

PacifiCorp is accepting PSH bids in its 2022AS RFP due to the long-lead time for development and construction of PSH projects. While a PSH is considered a long-lead time bid with an on-line date beyond December 31, 2027, PacifiCorp suggests that a reasonable on-line date for PSH is five years from execution of a contract with the PSH which puts the expected on-line date by December 31, 2028. PSH bids may also propose a term length longer than 30 years consistent with their operating license. PSH opportunities are emerging within the footprint of PacifiCorp's system and may offer unique capacity and operating flexibility.

Appendix E-2.1

PPA Documents Including PPA Appendices

THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. PACIFICORP RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS DRAFT AT ANY TIME. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL PACIFICORP HAS COMPLETED ITS DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.

POWER PURCHASE AGREEMENT

BETWEEN

[_____]

AND

PACIFICORP

DATED [_____] , 20[__]

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POWER PURCHASE AGREEMENT

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

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

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

C. PacifiCorp intends to include certain Product in its resource planning and to designate this Agreement as a Network Resource (as such term is 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 Facility by Seller (other than in connection with an Assignment permitted by Section 20); (b) after achievement of the “Issue FNTP” Project Milestone for the Facility (as identified on Exhibit N), but prior to the Commercial Operation Date, the complete cessation of the construction, testing and commissioning of the Facility for ninety (90) consecutive days that is not consistent with the Project Milestones schedule attached hereto as Exhibit N, as the same may be amended in accordance with Section 2.2.1; and (c) after the Commercial Operation Date, the complete cessation of the operation of the Facility for ninety (90) consecutive days; provided, in the case of (a), (b) and (c) above, that such relinquishment or cessation is not caused by or attributable to an Event of Default by PacifiCorp, a written request by PacifiCorp, or an event of Force Majeure.

“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 Facility to receive AGC Set-Points that automatically adjust the amount of Output, Ancillary Services 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 Facility by PacifiCorp, the Interconnection Provider, the Transmission Provider or the Market Operator with respect to the Facility operations using AGC.

“Agreement” is defined in the Preamble.

“Ancillary Services” has the meaning set forth in the Tariff. Ancillary Services shall include reactive power, but shall 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 Facility, including the Point of Delivery and the Generating Facility Metering Point.

“Assign” is defined in Section 20.1. “Assignment” has a correlative meaning.

“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 electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights do not include any Ancillary Services, Green Tags, Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

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

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

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

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

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

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

(v) Seller has satisfied its obligation to pay for any network upgrades or other interconnection costs 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 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 [_____].¹]

[“Commission Approval” means [_____].]

[“Commission Approval Deadline” means [_____].]

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

“Compensable Curtailment” means Net Output that is curtailed during the Term other than as a result of Non-Compensable Curtailment, including curtailment due to or arising out of any scheduling, bidding or other market activities by PacifiCorp (acting in its merchant function capacity).

“Compensable Curtailment Energy” is defined in Section 4.5.2.

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

“Compensable Curtailment Price” is defined in Exhibit K.

“Compliance Cost Cap” is defined in Section 4.7.5.

“Compliance Costs” is defined in Section 4.7.5.

“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 Price” is defined in Exhibit K.

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

“COVID-19” means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations or variants thereof or related or associated epidemics, pandemics or disease outbreaks.

“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.

“Cut-off Date” is defined in Section 2.2.3.

“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 Nameplate Capacity Rating.

“Defaulting Party” is defined in Section 11.1.

“Delay Damages” means, for any given day in any given month, an amount equal the sum of the products calculated as follows for each hour in such day: (a) the Expected Monthly Net Output for the Facility for such month in the first Contract Year (as specified in Section 1 of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3) divided by the number of hours in such month (in MWh); multiplied by (b) PacifiCorp’s Cost to Cover for such hour .

“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 Cut-off Date” 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.

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

“Energy Imbalance Market” means the real-time energy imbalance market currently operated by the Market Operator, or any successor or replacement market.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances associated with the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane, and other greenhouse gases that have been determined by any Governmental Authority to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include: (i) Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility; (ii) matters designated by PacifiCorp as sources of liability; or (iii) adverse wildlife or environmental impacts.

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

“Event of Default” is defined in Section 11.1.

“Excess DNR Costs” is defined in Section 4.2.3.

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

“Execution Date” is defined in the Preamble.

“Expected Annual Net Output” means the estimated Net Output for each Contract Year during the Term (in MWh) as determined in accordance with Section I and [Section II]² of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Expected Hourly Net Output” means the estimated Net Output for each hour of each month in a Contract Year during the Term (in MWh) as determined in accordance with Section I and [Section II] of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3, provided that for purposes of the definition of “Performance Guarantee Cover Cost” in Exhibit F, “Expected Hourly Net Output” shall be determined based on the Expected Net Output Excel File.

“Expected Monthly Net Output” means the estimated Net Output for each month in each Contract Year during the Term (in MWh) as determined in accordance with Section I and [Section II] of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Expected Nameplate Capacity Rating” means the expected Nameplate Capacity Rating as of the Execution Date, which is specified in Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Expected Net Output Excel File” means that certain Excel file attached hereto as Exhibit S.

“Facility” means the Generating Facility.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, the AGC equipment is installed and fully operational in accordance with the requirements of this Agreement, and the Facility is fully interconnected, fully integrated, and synchronized with the Transmission Provider’s System, modified if necessary to reflect the Nameplate Capacity Rating and, if applicable, through completion of all the items set forth on the Final Completion Schedule, and Seller has sent written notice to PacifiCorp that Final Completion has occurred.

“Final Completion Schedule” is defined in Section 2.2.3.

“Final Nameplate Capacity Rating” is defined in Section 2.2.3.

² NTD: Here and below, all references to Section II to Exhibit A only applies to solar-powered Generating Facilities.

“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.³

“FNTP” means the full notice to proceed (or similar notice) that Seller delivers pursuant to the construction agreement pursuant to which the Facility will be constructed.

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

“Forced Outage” means the appropriate NERC Event Type(s), 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.

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

“Generating Facility Metering Point” means the point(s) at the Generating Facility at which Output flowing after the Generating Facility’s inverters but before the Point of Delivery is measured.

“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

³ NTD: The definition of “Firm Market Price Index” will be adjusted to appropriately reflect the location of the Generating Facility.

all times make available, or allocate, interconnection capacity to the Facility at no less than the Expected Nameplate Capacity Rating, a copy of which is attached hereto as Exhibit R.⁴

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

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

“Green Tags Price Component” means: (a) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from a renewable electric generation facility other than the Facility from three (3) nationally recognized independent Green Tag brokers selected by PacifiCorp pursuant to which PacifiCorp could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (b) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from the established liquid market for Green Tags in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder.

“Green Tag Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with applicable Requirements of Law to applicable Governmental Authorities or other Persons at such purchaser’s discretion, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

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

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

“Increased Nameplate Capacity Rating” is defined in Section 2.2.3.

“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.

⁴ NTD: Seller to demonstrate Generation Interconnection Agreement is FERC jurisdictional.

“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.

“Initial Nameplate Capacity Rating” is defined in Section 2.2.3.

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

“Interconnection Provider” means PacifiCorp Transmission.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as 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 a Person (other than an Affiliate of Seller) 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 development, construction, term or permanent financing or refinancing of the Facility; (b) working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency or weather hedge or swap agreement in connection with the development, construction or operation of the Facility; or (d) the purchase of the Facility and related rights from Seller.

“Lender Consent” is defined in Section 20.3.

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

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

“Local Time” means [Pacific/Mountain] Standard Time or [Pacific/Mountain] Daylight Time, as applicable, in the state in which the Facility is located on the day in question.⁵

“Maintenance Outage” means the appropriate NERC Event Type(s), 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 Nameplate Capacity Rating of the Generating 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.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility at the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the Nameplate Capacity Rating determined in connection with Commercial Operation, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3. The Maximum Delivery Rate is specified in Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Measurement Period” is defined in Exhibit F.

“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.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Generating Facility, expressed in MW as measured at the Point of Delivery, when operated in compliance with the Generation Interconnection Agreement and consistent with the Generating Facility’s equipment manufacturers’ operating parameters. The Nameplate Capacity Rating of the Generating Facility shall be the Nameplate Capacity Rating of

⁵ NTD: “Local Time” to be based on the location of the Generating Facility.

the Generating Facility specified by Seller in writing to PacifiCorp and accepted or deemed accepted by PacifiCorp, in each case, in accordance with the requirements of the definition of Commercial Operation, as such Nameplate Capacity Rating may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Generating Facility (excluding Wrongfully Delivered Energy), less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use (unless permitted pursuant to Section 5.3)), if any, delivered to and received by PacifiCorp at the Point of Delivery.

“Network Integration Transmission Service” 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.

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

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

“Notice” is defined in Section 22.1.

“OFAC” is defined in Section 3.2.16.

“OFAC Sanctions Lists” is defined in Section 3.2.16.

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

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

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

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.12.

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

“PacifiCorp’s Cost to Cover” means the positive difference, if any, stated in \$/MWh, between (a) the Firm Market Price Index for each hour for which the determination is being made and (b) the Contract Price in effect on each such hour; provided that prior to the

Commercial Operation Date, the Contract Price for subsection (b) of this definition shall be the Contract Price for the first Contract Year set forth in Exhibit K.

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

“Performance Damages” is defined in Exhibit F.

“Performance Guarantee” is defined in Exhibit F.

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

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

“Planned Outage” means the appropriate NERC Event Type(s), 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 Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit C.

“Potential Net Output” means the quantity of Net Output that Seller is capable of delivering at the Point of Delivery at any specific time. Potential Net Output will be determined by a qualified renewable energy production real-time forecasting vendor selected by PacifiCorp as provided in Section 6.7. Absent manifest error, the Parties agree that the determination of Potential Net Output by such vendor shall govern for purposes of this Agreement and shall not be subject to dispute by the Parties pursuant to Section 24 or otherwise; provided, however, that if Seller in good faith reasonably disputes such vendor’s determination of Potential Net Output (written notice of which, together with Seller’s reasonable grounds for disputing such vendor’s determination, Seller shall deliver to PacifiCorp within ninety (90) days of such vendor’s determination), then the quantity of such Potential Net Output shall be finally determined by an independent qualified renewable energy production forecasting vendor mutually acceptable to the Parties and such determination shall govern for purposes of this Agreement and shall not be subject to dispute by the Parties pursuant to Section 24 or otherwise; provided, further, that one hundred percent (100%) of the costs of such independent vendor’s determination shall be paid for by Seller, unless such independent vendor determines that the quantity of Potential Net Output was five percent (5%) or more than the amount determined by the original vendor, in which case PacifiCorp shall be responsible for one hundred percent (100%) of the costs of such independent vendor’s determination.

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

“Proceedings” is defined in Section 24.3.

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

“Prohibited Countries” is defined in Section 3.2.17.

“Prohibited Vendors” is defined in Section 3.2.18.

“Project Development Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to Two Hundred Dollars (\$200)⁶ per kW of the Expected Nameplate Capacity Rating.

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

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry for facilities of similar size, 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 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 Facility, and to deliver the Product to PacifiCorp in accordance with this Agreement and Requirements of Law, including those listed in Exhibit D.

“Required Percentage” means ninety-five percent (95%).

“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

⁶ NTD: \$200 per kW will be used for Facilities with a Scheduled Commercial Operation Date in 2026; \$214 per kW will be used for Facilities with a Scheduled Commercial Operation Date in 2027; and \$229 per kW will be used for Facilities with a Scheduled Commercial Operation Date in 2028.

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.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the product (in \$) of (i) the Compensable Curtailment Price (in \$/MWh) and (ii) the amount of Potential Net Output not purchased and received by PacifiCorp as required under this Agreement (in MWh), and (b) the net proceeds actually realized by Seller [(taking into consideration PTCs)] from the sale to a third party of the Net Output not purchased and received by PacifiCorp as required under this Agreement (in \$).

“SQMD” is defined in Section 9.5.

“Supply Chain Audit” means an audit or investigation of the supply chain through which all equipment and materials to be incorporated into the Facility are sourced, including the mines, factories and other facilities of Seller and its contractors, subcontractors, vendors, suppliers and materialmans, 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 3.2.18.

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

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

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

“Term” is defined in Section 2.1.

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

“WECC” means the Western Electricity Coordinating Council.

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

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

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

“Wrongfully Delivered Energy” means any Output delivered to the Point of Delivery in contravention of PacifiCorp’s dispatch instructions pursuant to Section 6.9.

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]⁷ (the "Effective Date"), provided that prior to the Effective

⁷ NTD: PacifiCorp is reviewing whether there may be any filings or approvals required by applicable state public utility commissions receipt of which would be conditions to the effectiveness of this Agreement.

Date those rights and obligations hereunder expressly arising upon the Execution Date (including Sections 1.2, 2.1, 4, 16, 17, 18, 19, 20, 21, 22, 23 and 24 and the defined terms in Section 1.1 used in the foregoing Sections) shall be effective as of the Execution Date. Unless earlier terminated as provided in this Agreement, this Agreement shall remain in effect until [_____] ([__]) years after the Commercial Operation Date (the “Term”).

[2.1.2 Commission Approval. Within sixty (60) days after the Execution Date, PacifiCorp shall submit one or more filings to the Commission for the Commission Approval. If the Commission (a) 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 (i) the Commission Approval Deadline or (ii) 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 day thirty (30) days after the occurrence of clause (i) or (ii), 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 2.1.2, 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 the failure of the Commission to grant the Commission Approval (x) by the Commission Approval Deadline or (y) in form and substance 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 Facility and delivery of Product by the Scheduled Commercial Operation Date is critically important. Therefore, Seller must achieve each of the Project Milestones specified in Exhibit N on or before 16:00 hours Local Time on the date specified for each Project Milestone in Exhibit N, as such dates may be adjusted pursuant to Section 2.2.4. 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.

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

the Required Percentage of the Expected Nameplate Capacity Rating), and the documentation required in the definition of Commercial Operation. PacifiCorp must respond 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, or responds informing Seller that PacifiCorp agrees that Commercial Operation has been achieved, 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 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 and resubmit a notice to PacifiCorp stating that Seller believes that the Facility has achieved Commercial Operation and the process set forth in this Section 2.2.2 shall repeat. 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. In the event the Facility achieves Commercial Operation with less than the Expected Nameplate Capacity Rating (but with a Nameplate Capacity Rating of not less than the Required Percentage of the Expected Nameplate Capacity Rating), the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall all be proportionally reduced based on the Nameplate Capacity Rating of the Generating Facility (which shall not be less than the Required Percentage of the Expected Nameplate Capacity Rating) at the time of the Commercial Operation Date and the Parties' mutual satisfaction that the Facility has achieved Commercial Operation, and Exhibit A shall be amended to reflect such changes.

2.2.3 Subsequent Increase in Nameplate Capacity Rating. If Commercial Operation is achieved at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating (but at least equal to or greater than the Required Percentage of the Expected Nameplate Capacity Rating) in accordance with Section 2.2.2 (the "Initial Nameplate Capacity Rating") and Seller informs PacifiCorp in writing within five (5) Business Days of the Commercial Operation Date that Seller intends to increase the Nameplate Capacity Rating of the Facility up to but not in excess of one hundred percent (100%) of the Expected Nameplate Capacity Rating (the "Increased Nameplate Capacity Rating"), then Seller shall provide PacifiCorp, no later than ten (10) Business Days after the Commercial Operation Date, with a list of all items to be completed in order to achieve Final Completion at the Increased Nameplate Capacity Rating (the "Final Completion Schedule"). All items on the Final Completion Schedule must be completed and certified as completed by an authorized officer of Seller, and Seller must provide PacifiCorp with certificates and documentation described in the definition of Commercial Operation, *mutatis mutandis*, with respect to the remaining capacity that is required to bring the Facility to the Increased Nameplate Capacity Rating and to demonstrate that the Facility can operate at one hundred percent (100%) of the Increased Nameplate Capacity Rating on or before the ninetieth (90th) day after the Commercial Operation Date. If (a) on the ninetieth (90th) day after the Commercial Operation Date (the "Cut-off Date"), not all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller is unable to provide certificates and documents as described above bringing the Facility to a Nameplate Capacity Rating above the Initial Nameplate Capacity Rating and demonstrating that the Facility can operate at an increased Nameplate Capacity Rating above the

Initial Nameplate Capacity Rating or (b) a Final Completion Schedule is not provided to PacifiCorp within ten (10) Business Days following the Commercial Operation Date, then, in each case, the date of Final Completion shall be the same as the Commercial Operation Date, the Nameplate Capacity Rating will be the Initial Nameplate Capacity Rating, and for all purposes of this Agreement the Facility shall include only the equipment and facilities which were part of the Facility that achieved Commercial Operation on the Commercial Operation Date, and the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall remain as determined pursuant to Section 2.2.2 based on the Initial Expected Nameplate Capacity. If on the Cut-off Date not all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller is unable to provide certificates and documents as described above to bring the Facility to the Increased Nameplate Capacity Rating and to demonstrate that the Facility can operate at one hundred percent (100%) of the Increased Nameplate Capacity Rating, but Seller provides such certificates and documents with respect to any incremental capacity to bring the Facility to a Nameplate Capacity Rating above the Initial Nameplate Capacity Rating and to demonstrate that the Facility can operate at an increased Nameplate Capacity Rating above the Initial Nameplate Capacity Rating, (the “Final Nameplate Capacity Rating”) then Seller shall be deemed to have achieved Final Completion at the Final Nameplate Capacity Rating, the Nameplate Capacity Rating will be the Final Nameplate Capacity Rating, and the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall all be proportionally increased based on the Final Nameplate Capacity Rating determined above, and Exhibit A shall be amended to reflect such changes, and within ten (10) Business Days after the Cut-off Date Seller shall deliver to PacifiCorp a replacement Default Security based on the Final Nameplate Capacity Rating. If on the Cut-off Date all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller is able to provide certificates and documents as described above to demonstrate that the Facility can operate at one hundred percent (100%) of the Increased Nameplate Capacity Rating, then Seller shall be deemed to have achieved Final Completion at the Increased Nameplate Capacity Rating, the Nameplate Capacity Rating will be the Increased Nameplate Capacity Rating, and the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall all be proportionately increased based on the Increased Nameplate Capacity Rating determined above, and Exhibit A shall be amended to reflect such changes, and within ten (10) Business Days after the Cut-off Date Seller shall deliver to PacifiCorp a replacement Default Security based on the Increased Nameplate Capacity Rating.

2.2.4 Completion of Other Project Milestones. Within thirty (30) days of completion of each Project Milestone (other than the Commercial Operation Date) 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 PacifiCorp may reasonably request demonstrating Seller’s 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 PacifiCorp informs Seller in writing within such fifteen (15) Business Day period that PacifiCorp believes the Project Milestone has not been achieved, identifying the specific areas of deficiency, then, unless Seller disputes such information from PacifiCorp, in which case Seller may submit the matter for dispute resolution in accordance with Section 24, Seller must address the deficiencies stated in PacifiCorp's notice to the reasonable satisfaction of PacifiCorp and resubmit a notice to PacifiCorp stating that Seller believes that the Project Milestone has been achieved and the process set forth in this Section 2.2.4 shall repeat. If any Project Milestone (other than the Commercial Operation Date) 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 the Commercial Operation Date by the Scheduled Commercial Operation Date. If Seller complies with the preceding sentence, including undertaking any remedial action to ensure the timely achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date, then no failure of Seller to achieve a Project Milestone (other than the Commercial Operation Date) on or before the scheduled date in Exhibit N will constitute an Event of Default.

2.3 Delay Damages. If the Commercial Operation Date is not achieved on or before the Scheduled Commercial Operation Date (as such date may be adjusted pursuant to Section 2.2.1), 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 Commercial Operation Date.

2.4 Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's delay in achieving the Commercial Operation Date by the Scheduled Commercial Operation Date (as such date may be adjusted pursuant to Section 2.2.1) 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 the Commercial Operation Date by the Scheduled Commercial Operation Date.

2.5 Damages Invoicing. By the tenth (10th) day following the end of the month in which Delay Damages begin to accrue and continuing on the tenth (10th) 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 Facility, including (a) any significant developments or delays in achieving Commercial Operation by the Scheduled Commercial Operation Date, (b) the percentage completion of the 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 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 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 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 PacifiCorp Representatives with respect to the acquisition, design, financing, engineering, construction, installation, start-up and testing of the Facility.

2.7 Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Term associated with Seller's or the Facility's eligibility to receive PTCs, ITCs or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product from the Facility is eligible for, or receives, or the Facility qualifies for, PTCs, ITCs or other Tax Credits or 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; (b) has (or will have prior to the Commercial Operation Date) all required legal authority to make wholesale sales of energy from the Facility; and (c) has the power and authority to own and operate the Facility and be present upon the Premises for the Term.

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

3.2.4 No Contravention. The execution and delivery of this Agreement 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 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 R 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 R 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 Product. Effective as of the first date of delivery of Product to PacifiCorp and thereafter throughout the Term, Seller shall hold all legal and contractual rights sufficient to enable Seller to deliver Product to PacifiCorp in accordance with the terms and conditions of this Agreement.

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

3.2.9 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate of Seller,

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

3.2.10 Eligible Contract Participant. Seller, and any Qualifying Person providing a Guaranty, 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 Renewable Claims. Seller has at all times complied with the Federal Trade Commission requirements set forth in 16 CFR Part 260, Section 260.15 in any communications concerning the Product that have or may be generated from the Facility. Except as permitted by Section 4.3, Seller has not claimed, and will not claim, the Green Tags, Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes of the Output or the Facility as belonging to Seller or any of its Affiliates and is not aware of any such claims made by third parties with respect to the Output or the Facility.

3.2.13 No Third Party Sales. Seller has not sold, or entered into any contract or agreement to sell, to any Person (other than PacifiCorp pursuant hereto) all or any portion of the Product. Except as permitted by Section 4.3, Seller will not sell, or enter into any contract or agreement to sell, to any Person (other than PacifiCorp pursuant hereto) all or any portion of the Product.

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

3.2.15 Eagle Take Permit Application. Prior to delivery of the FNTF, Seller shall have performed all necessary pre-construction surveys, coordinated with applicable Governmental Authorities, and applied to the U.S. Fish and Wildlife Service for an incidental eagle take permit for the taking of eagles for the operation (including commissioning) of the Facility, reasonable evidence of which Seller shall provide to PacifiCorp prior to the delivery of the FNTF.

3.2.16 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 3.2.16. 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 3.2.16 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.

3.2.17 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 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 3.2.17. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.17 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.

3.2.18 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 as defined by U.S. federal Requirements of Law, including the Uyghur Forced Labor Prevention Act (collectively, the “Prohibited Vendors”). 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 3.2.18. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.18 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.

3.2.19. Supply Chain Audit. If requested by PacifiCorp in writing within thirty (30) days of satisfying the second and third Project Milestones (i.e., Execute Purchase Agreement for Major Equipment and Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement), then 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 3.2.18 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 3.2.18, 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 DELIVERIES OF NET OUTPUT

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

Seller may sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, all Net Output and Green Tags from the Facility as test energy at the price specified in Section 5.1.1.

4.2 Designation as Network Resource; Termination Right.

4.2.1 Within five (5) Business Days following the Execution Date, PacifiCorp will submit an application to the Network Service Provider requesting designation of this Agreement as a Network Resource under PacifiCorp's agreement for Network Integration Transmission Service with the Network Service Provider with a commencement date for Network Integration Transmission Service of one hundred twenty (120) days prior to the Scheduled Commercial Operation Date (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 PacifiCorp may, in its sole discretion, terminate this Agreement upon not less than thirty (30) days prior written notice thereof to Seller (the "DNR Termination Notice") if within two hundred ten (210) days after the Execution Date (the "DNR Cut-off Date"): (a) 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)⁸ (the "DNR Cost Threshold"); or (b) the Network Service Provider fails to provide PacifiCorp with written notice either that: (i) no transmission service study will be necessary in connection with granting the DNR Request; or (ii) it has completed the final transmission service study and determined that the DNR Costs required in order to grant the DNR Request are not in excess of the DNR Cost Threshold. In order to exercise its termination right pursuant to this Section 4.2.2, PacifiCorp must deliver the DNR Termination Notice to Seller within ten (10) Business Days after the DNR Cut-off Date. .

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 issued by PacifiCorp pursuant to Section 4.2.2(a) (but not Section 4.2.2(b)) 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)

⁸ NTD: The DNR Cost Threshold to be negotiated by the Parties for Generating Facilities with an Expected Nameplate Capacity Rating of 20 MW or less.

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.

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

4.4 Delivery Responsibilities.

4.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Seller shall supply and deliver the Product to PacifiCorp at the Point of Delivery (other than Green Tags which shall be delivered pursuant to Section 4.7).

4.4.2 Title and Risk of Loss of Net Output. Seller warrants that all Product delivered to PacifiCorp shall be free and clear of all liens, claims and encumbrances of any nature or kind (other than liens, claims or encumbrances created or granted by PacifiCorp). Title to and risk of loss of all Net Output shall transfer from Seller to PacifiCorp upon its delivery to PacifiCorp at the Point of Delivery. Seller shall be in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery. PacifiCorp shall be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

4.5 Curtailment.

4.5.1 Non-Compensable Curtailment. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, Net Output not delivered to the Point of

Delivery due to any of the following (collectively, “Non-Compensable Curtailment”): (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement; (b) the Facility is not fully integrated or synchronized with the System; (c) any direction to Seller by the Market Operator, Network Service Provider, Transmission Provider, Interconnection Provider or PacifiCorp (in its merchant function capacity and acting at the direction of the Market Operator, Network Service Provider, Transmission Provider or Interconnection Provider) to curtail Net Output: (i) to effectuate a reduction in transmission service by Transmission Provider as provided for under Transmission Provider’s Tariff; (ii) to effectuate a reduction in interconnection service by the Interconnection Provider as provided for under the Generation Interconnection Agreement; (iii) to maintain compliance with NERC, WECC or similar national or regional reliability standard requirements; or (iv) to remedy any condition or situation: (A) that in the judgment of the party making the claim is imminently likely to endanger life or property; or (B) that Transmission Provider determines in a non-discriminatory manner is imminently likely to cause a material adverse effect on the security of, or damage to Transmission Provider’s System, Transmission Provider’s or Interconnection Provider’s interconnection facilities or the electric systems of others to which the Transmission Provider’s System is directly connected; or (d) an event of Force Majeure that prevents either Party from delivering or receiving Net Output.

4.5.2 Curtailed Amounts. Seller will reasonably determine the MWh amount of Non-Compensable Curtailment (“Non-Compensable Curtailment Energy”) and Compensable Curtailment (“Compensable Curtailment Energy”) based on the amount of Potential Net Output that could have been but was not generated at the Facility and delivered to PacifiCorp at the Point of Delivery as Net Output because of Non-Compensable Curtailment or Compensable Curtailment. Seller must promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably request to confirm to its reasonable satisfaction the amount of any Non-Compensable Curtailment Energy or Compensable Curtailment Energy. Any disputes between the Parties with respect to the amount or calculation of Compensable Curtailment Energy or Non-Compensable Curtailment Energy will be resolved in accordance with Section 24; provided, however, that the provisions in the definition of Potential Net Output shall control with respect to any dispute between the Parties with respect to the amount or calculation of Potential Net Output. For the avoidance of doubt, Wrongfully Delivered Energy shall not be considered Compensable Curtailment Energy.

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

4.7 Green Tags.

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

4.7.2 Documentation. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Seller must, at its own cost and expense, cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e Program (or such successor program) throughout the Term. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its own cost and expense, effectuate the transfer of WREGIS Certificates to PacifiCorp in accordance with the WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form then used by PacifiCorp (a copy of which PacifiCorp will provide to Seller) or elect to retain a third party or act as its own WREGIS-defined Qualified Reporting Entity. Unless the failure to deliver WREGIS Certificates was caused by an action of PacifiCorp not acting in its capacity as Qualified Reporting Entity under the Qualified Reporting Entity Services Agreement, PacifiCorp shall be entitled to a refund of the Green Tags Price Component of Green Tags associated with any Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tags back to Seller, provided that Seller shall have thirty (30) days to correct any error and deliver such WREGIS Certificates to PacifiCorp or provide such refund payment. Seller shall promptly provide PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by a Governmental Authority, upon notification by such Governmental Authority that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded.

4.7.3 Publicity. Except as permitted under Section 4.3, Seller shall not make any public statement or report under any program that any of the Green Tags purchased by PacifiCorp hereunder belong to any Person other than PacifiCorp. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registered the Facility by providing copies of all such information as PacifiCorp reasonably requires for such registration.

4.7.4 Renewable Claims. Seller will comply with the Federal Trade Commission requirements set forth in 16 CFR Part 260, Section 260.15 in any communications concerning the Output, the Facility and the Green Tags that are or may be generated from the Facility. Except as permitted under Section 4.3, Seller will not claim the Green Tags, Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes of the Output or the Facility as belonging to Seller or any Seller Affiliate.

4.7.5 Compliance Costs. Notwithstanding anything in this Agreement to the contrary, if after the Execution Date there is a change in the Requirements of Law, the requirements of WREGIS, the requirements of the Center for Resource Solution's Green-e Program, or PacifiCorp elects to utilize an additional program pursuant to Section 4.7.3, and Seller reasonably concludes that as a result of such change or participation in such additional program it may incur increased costs and expenses to comply with its obligations in Section

4.7.2 and Section 4.7.3 (“Compliance Costs”) in excess of Ten Thousand Dollars (\$10,000) in any Contract Year (the “Compliance Cost Cap”), then Seller shall provide PacifiCorp with a notice itemizing such excess Compliance Costs above the Compliance Cost Cap. PacifiCorp shall evaluate such notice and either: (a) agree to reimburse Seller for such Compliance Costs above the Compliance Cost Cap; or (b) waive Seller’s obligation to comply with such change or participate in such additional program to the extent such inability to comply with such change or participation in such additional program results from failing to expend amounts for Compliance Costs in excess of the Compliance Cost Cap.

4.8 Capacity Rights; Ancillary Services.

(a) For and in consideration of PacifiCorp’s agreement to purchase from Seller the Net Output and Green Tags on the terms and conditions set forth herein, Seller shall transfer to PacifiCorp, and PacifiCorp shall accept from Seller, all right, title, and interest that Seller may have in and to Capacity Rights, if any, and Ancillary Services, if any, existing during the Term, except as provided in Section 4.3.

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

(c) Nothing in this Section 4.8 shall require Seller (i) to make or pay for any physical modifications to the Facility (including the installation of additional equipment) or the design of the Facility, (ii) to make or pay for physical modifications or upgrades to any interconnection and transmission facilities, or (iii) to modify the operation of the Facility.

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

SECTION 5 CONTRACT PRICE; COSTS

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

5.1.1 Deliveries Prior to the Commercial Operation Date. Beginning no earlier than one hundred twenty (120) days before the Scheduled Commercial Operation Date, PacifiCorp will pay Seller for Net Output delivered at the Point of Delivery before the Commercial Operation Date, an amount per MWh equal to the lower of: (a) eighty-five percent (85%) of the Firm Market Price Index for the applicable hour on the applicable day in the applicable month; and (b) eighty-five percent (85%) of the Contract Price; provided, however, that Seller’s right to receive payment for energy deliveries under this Section 5.1.1 is subject to

PacifiCorp's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller.

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

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

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including (a) transmission costs, transmission line losses and any costs or charges imposed in connection with scheduling and delivery of Net Output up to and at the Point of Delivery and (b) transmission costs, transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider or Transmission Provider in connection with scheduling and delivery of Net Output up to and at the Point of Delivery. Except as provided in Section 4.2, PacifiCorp shall be responsible for all costs or charges, including transmission costs, transmission line losses and any costs or charges (including imbalance charges and penalties), if any, imposed in connection with the receipt of Net Output at the Point of Delivery and the scheduling and delivery of Net Output from the Point of Delivery, 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 Facility, including all costs and expenses associated with the interconnection of the Facility with the System.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, station service required for the Facility. Seller shall not use Output to provide station service for the 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); provided, that Seller may use Output to satisfy station service load of the Generating Facility (as specified in Section VI of Exhibit A).

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Product up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Product beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. All Net Output delivered by Seller to PacifiCorp hereunder shall be sales for resale, with PacifiCorp reselling such Net Output. The

Contract Price and Compensable Curtailment Price will not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exceptions or give backs. In the event any taxes are imposed on a Party for which the other Party is responsible in this Agreement, the Party on which the taxes are imposed must promptly provide the other Party notice and such other information as such other Party reasonably requests with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision of this Agreement and subject to Section 5.4, Seller shall be solely responsible for paying when due: (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions of this Agreement; and (b) all taxes and charges (however characterized) now existing or later imposed on or with respect to the Facility and its operation, including any tax or charge (however characterized) payable by a generator of Environmental Attributes.

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

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, provided that in no event shall such updated Exhibit B result in any change to Exhibit A, unless such change is required pursuant to Section 2.2.2 or Section 2.2.3. The Facility, as reflected in the As-Built Supplement to be provided under this Section, may not: (a) have a Nameplate Capacity Rating that exceeds the Expected Nameplate Capacity Rating; or (b) result in the increase of the Maximum Delivery Rate. Seller may not modify the Facility, whether by replacement or modification of the Facility equipment or related infrastructure, addition of battery storage or otherwise, in a manner that materially alters the As-Built Supplement without PacifiCorp’s prior written approval (which approval may not be unreasonably withheld, conditioned or delayed), provided that PacifiCorp shall not be required to approve any modification of the Facility that results or is reasonably likely to result in the Facility violating

Section 6.1(a) or (b) above; provided, further, that in no event shall PacifiCorp be required to purchase any Net Output at a rate above the Expected Nameplate Capacity Rating or the Maximum Delivery Rate delivered in any hour to the Point of Delivery as a result of any such modification to the Facility.

6.2 Standard of Facility Construction and Operation.

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

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

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

6.3 Interconnection. Seller is responsible for the costs and expenses associated with obtaining from Interconnection Provider interconnection service for the Facility at the Expected Nameplate Capacity Rating. Seller has no claims under this Agreement against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of Transmission Provider or Interconnection Provider, acting in such capacities, in connection with the Generation Interconnection Agreement or otherwise.

6.4 Coordination with System. Seller's delivery of electricity to PacifiCorp under this Agreement must be at a voltage, phase, power factor, and frequency as 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.

6.5 Outages.

6.5.1 Planned Outages. Seller must provide PacifiCorp with an annual forecast of Planned Outages for the Facility for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of each Contract Year, and may update such Planned Outage schedule as necessary to comply with the Generation Interconnection Agreement, Prudent Electrical Practices or the Facility equipment manufacturer recommendations (but only to the extent compliance with the Facility equipment manufacturer recommendations was not reasonably foreseeable at the time the annual forecast was provided). 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 or Prudent Electrical Practices.

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

6.5.3 Forced Outages. Seller must promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp with a backup written confirmation (or other method approved by PacifiCorp in writing), of any Forced Outage of the Facility resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Generating Facility being unavailable. This report from Seller must include the amount of the Net Output of the Facility that will not be available because of the Forced Outage and the expected return date of such Net Output. 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 and Prudent Electrical Practices 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 Nameplate Capacity Rating of the Generating Facility for the following day and will promptly update such notice to the extent of any material changes in this information.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the Expected Annual Net Output, the Expected Monthly Net Output and the Expected Hourly Net Output provided in Exhibit A take into account the Planned Outages, Maintenance Outages, Forced Outages and deratings that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

6.6 Scheduling.

6.6.1 Cooperation and Standards. During the Term, PacifiCorp shall have the exclusive right to schedule or designate the Generating Facility to deliver the Net Output in accordance with the requirements of this Agreement. With respect to any and all scheduling requirements, (a) Seller must cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party will designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Electric System Authority, as applicable.

6.6.2 Schedule Coordination. If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be 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. At Seller's cost and expense (not to exceed Ten Thousand Dollars (\$10,000) in any Contract Year), PacifiCorp will solicit and obtain from a qualified renewable energy production forecasting vendor selected by PacifiCorp forecast data and information with respect to the Facility, including day-ahead and real-time forecasting services and provision of real-time meteorological data necessary for compliance with applicable Electric System Authority procedures, protocols, rules and testing. Such vendor shall also be responsible for determining the amount of Potential Net Output, as further described in the definition of Potential Net Output. Seller shall, at its cost and expense, make available to such vendor and any vendor mutually agreed to by the Parties pursuant to the definition of Potential Net Output such information with respect to the operation and performance of the Facility, including real-time meteorological data with respect to the Premises collected pursuant to Section 9.7, as such vendor may reasonably request in order to perform in accordance with this Section 6.7 or the definition of Potential Net Output, as the case may be. In addition to any notice required by

Section 6.5, Seller must provide day-ahead notice of any Planned Outage, Maintenance Outage or deratings of the Facility. Seller must provide to PacifiCorp a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility. PacifiCorp will present Seller with an invoice and documentation supporting the costs of obtaining such forecasting data and information. Seller must pay the amount stated on the invoice within fifteen (15) days of receipt. PacifiCorp reserves the right to change the forecasting vendor in its sole discretion during the Term.

6.8 Cybersecurity Requirements. Seller shall comply with the cybersecurity requirements identified in Exhibit P.

6.9 Electronic Communications.

6.9.1 AGC.

(a) Beginning on the Commercial Operation Date, PacifiCorp will dispatch the 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 in writing by the Parties.

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

(c) The AGC Set-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 Facility control system manufacturer's set point margin of error.

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

(e) Seller will allow PacifiCorp access to its distributed control system and comply with all applicable NERC and WECC critical infrastructure protection requirements.

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

- (a) instantaneous MW output at the Point of Delivery;
- (b) Net Output;

- (c) Output at the Generating Facility Metering Point; and
- (d) the Facility's total instantaneous generation capacity.

Commencing on the date of initial deliveries of Net Output under this Agreement, Seller must also transmit or otherwise make accessible to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including Net Output data. Such real time data must be made available to PacifiCorp on the same basis as Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp must also receive the data in four second intervals). If Seller uses a web-based performance monitoring system for the Facility, Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.

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

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

6.10 Reports and Records.

6.10.1 Electronic Fault Log. Seller must maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the 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 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 Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving

intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller must use 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 Facility, Seller must promptly provide to PacifiCorp a copy of the same.

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

6.10.7 Notice of Material Adverse Events. Seller must promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility, or Seller's ability to develop, construct, operate, maintain or own the Facility 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 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 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 with respect to the diversity and such other applicable criteria as PacifiCorp may reasonably identify 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 Facility, including the information, reports, documents and certifications provided for in Exhibit Q. 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 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 Facility, including testing with respect to the Performance Guarantee; and (d) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp will release Seller 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 Facility, except to the extent such Liabilities are caused by the intentional or negligent act or omission of Seller or its Affiliates or their respective employees, agents and representatives.

6.13 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent not to be unreasonably withheld, conditioned or delayed. Upon PacifiCorp's request and at PacifiCorp's cost and expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and/or

web-based imaging equipment subject to the prudent written safety requirements of Seller and Requirements of Law relating to workplace health and safety. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

6.14 Performance Guarantee. If Seller fails to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit F, then Seller shall be liable to PacifiCorp for the Performance Damages calculated and paid in accordance with Exhibit F. The invoice for such Performance Damages shall include a written statement explaining in reasonable detail the calculation of such Performance Damages in accordance with Exhibit F. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's failure to satisfy the Performance Guarantee is difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Performance Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Except in the case of an Event of Default pursuant to Section 11.1.2(i), Performance Damages shall be PacifiCorp's sole remedy for Seller's failure to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit F.

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 an Event of Default when Seller is the Defaulting Party; 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 an Event of Default when Seller is the Defaulting Party; 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 or Network Service Provider.

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 Output and Net Output, as the case may be.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment provided for in this Section 9, without PacifiCorp assuming any obligations of Seller under this Section 9. If any of the inspections or tests disclose an error exceeding one half of one percent (0.5%), either fast or slow, then the necessary corrections based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, then the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other Person, pursuant to or under the Generation Interconnection Agreement.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall be responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Facility. The actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp, unless upon such additional inspection or testing the metering equipment is found to register inaccurately by more than the allowable limits established in Section 9.3, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

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

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter dedicated to the Facility and only the Facility.

9.7 Meteorological Data. No later than the Commercial Operation Date, Seller shall install, own, inspect, test and maintain during the Term three (3) industry approved remote sensing devices at the Premises in accordance with Prudent Electrical Practice. The sensing devices required pursuant to this Section 9.7 shall, at a minimum, record the meteorological and other data with respect to the Facility and the Premises consistent with Exhibit O. Seller shall

bear all costs relating to performance of its obligations under this Section 9.7, provided that the actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp. At Seller's cost and expense, Seller shall maintain all data obtained from the remote sensing devices for a period of at least two (2) years and shall make all such data available to (a) the vendor selected pursuant to Section 6.7 on a real time basis and (b) PacifiCorp and PacifiCorp Representatives and any vendor mutually agreed to by the Parties pursuant to the definition of Potential Net Output upon written request.

SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month during the Term, Seller shall deliver to PacifiCorp an invoice showing the total amount due for all Product delivered or made available to PacifiCorp in such month in accordance with Section 5, including Seller's computation of, as applicable: (a) the Net Output delivered to the Point of Delivery during such month, including the portion of Net Output that was delivered during On-Peak Hours and Off-Peak Hours, and any Performance Damages during such month; and (b) the Compensable Curtailment Energy, if any, and Non-Compensable Curtailment Energy, if any, during such month. Subject to Section 10.4, PacifiCorp shall pay each invoice on or before the later of (i) the twentieth (20th) day following receipt of such invoice or (ii) the thirtieth (30th) 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 breach is not cured within thirty (30) days after the other Party gives the Defaulting Party notice of such breach; provided, however, that if such breach 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 breach, not to exceed ninety (90) days following the date of such notice of breach, provided that the Defaulting Party provides to the other Party a remediation plan within fifteen (15) days following the date of such notice of breach 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 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 Output or any Product from the 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 breach, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, and Seller does not permanently cease and correct such public statement or action within ten (10) days after PacifiCorp gives notice to Seller of such breach.

(d) [Reserved].

(e) After the Commercial Operation Date, Seller fails to obtain or maintain any Required Facility Documents necessary to own or operate the 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 Facility and such Abandonment continues for thirty (30) days after PacifiCorp gives notice to Seller of such Abandonment.

(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) The Generating Facility fails to satisfy the requirements of the Performance Guarantee for two (2) consecutive Measurement Periods, notice of which PacifiCorp provides to Seller.

11.1.3 Defaults by PacifiCorp. PacifiCorp fails to receive any Net Output (other than Compensable Curtailment Energy) as and when required by this Agreement, and such non-performance is not caused by Seller's breach of its obligations under this Agreement or

otherwise excused under the terms of this Agreement and PacifiCorp does not resume receiving Net Output within ten (10) days after Seller gives notice to PacifiCorp of such non-performance.

11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. If Seller sells, delivers or transfers Output or any Product from the Facility to a Person other than PacifiCorp in breach of Section 4.3 or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c), then Seller shall pay PacifiCorp within five (5) Business Days after receipt of an invoice from PacifiCorp, an amount equal to the sum of (as applicable): (a) the sum for each hour during which Seller sells, delivers or transfers Output or any Product from the Facility to a Person other than PacifiCorp in breach of Section 4.3 of (i) PacifiCorp's Cost to Cover for such hour multiplied by (ii) the Net Output delivered to a Person other than PacifiCorp during such hour; (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as determined by PacifiCorp in its sole discretion; (c) damages incurred by PacifiCorp as a result of the failure of Seller to sell and deliver Capacity Rights 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); (d) damages incurred by PacifiCorp as a result of (i) the failure of Seller to sell and deliver Green Tags in accordance with this Agreement or (ii) Seller making a public statement or otherwise taking an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c), which shall be calculated based on the applicable Green Tags Price Component; and (e) any additional cost or expense incurred as a result of Seller's breach of Section 4.3 or an Event of Default by Seller pursuant to Section 11.1.2(c), as reasonably determined by PacifiCorp. PacifiCorp's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.1 shall limit in any respect PacifiCorp's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 11.3.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to purchase and receive any Net Output or pay Seller for any Compensable Curtailment Energy as and when required by this Agreement, including upon the occurrence and during the continuation of an Event of Default by PacifiCorp under Section 11.1.3, and such failure is not caused by Seller's breach of its obligations under this Agreement or otherwise excused by Seller's failure to perform under or comply with this Agreement or the terms of this Agreement, then PacifiCorp shall pay Seller within five (5) Business Days after receipt of an invoice from Seller, an amount equal to Seller's Cost to Cover. Seller's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.2 shall limit in any respect Seller's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 11.3. For the avoidance of doubt, this provision shall not apply with respect to any Compensable Curtailment Energy which is paid for by PacifiCorp in accordance with the terms of this Agreement.

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

11.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Seller, then neither Seller nor an Affiliate of Seller or any successor to Seller’s ownership in the Facility or the Premises, may, directly or indirectly, require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation facility constructed on the Premises under the Public Utility Regulatory Policies Act of 1978 (“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 by Seller from third parties for Net Output and Green Tags not purchased and accepted 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, green tags, capacity or Ancillary Services purchased to replace Net Output, Green Tags, Capacity Rights or Ancillary Services not sold, delivered or transferred by Seller to PacifiCorp as required under this Agreement.

11.8 Security. If this Agreement is terminated because of an Event of Default by Seller, then PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity (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 Facility or the Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person (not Affiliated with PacifiCorp), except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any PacifiCorp Indemnitee. Seller is solely responsible for and will indemnify, defend and hold harmless the PacifiCorp Indemnitees from and against any and all Liabilities resulting from, arising out of, or in any way connected with the breach by Seller of the Generation Interconnection Agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall indemnify, defend and hold harmless Seller and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) from and against any and all Liabilities resulting from, arising out of, or in any way connected with, the breach, performance or non-

performance by PacifiCorp of its obligations 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 Net Output prior to its delivery by Seller at the Point of Delivery; (ii) any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions of this Agreement, including the breach by Seller of any of its covenants in Section 3.2.15, Section 3.2.16, Section 3.2.17 or Section 3.2.18; (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; 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, and (b) PacifiCorp shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with: (i) the Net Output at and after its delivery to PacifiCorp at the Point of Delivery in accordance with this Agreement; and (ii) any action by any Governmental Authority due to noncompliance by PacifiCorp with any Requirements of Law or the provisions of this Agreement, except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct, or a breach of this Agreement by any Seller Indemnitees.

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 AND PERFORMANCE DAMAGES, PACIFICORP'S COST TO COVER DAMAGES AND SELLER'S COST TO COVER DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.**

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

SECTION 13 INSURANCE

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

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or an "event of Force Majeure" means an event or circumstance that prevents a Party (the "Affected Party") from performing, in whole or in part, an obligation under this Agreement and that: (a) is not reasonably anticipated

by the Affected Party as of the Execution Date; (b) is not within the reasonable control of the Affected Party or its Affiliates; (c) is not the result of the negligence or 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, ancillary services or green tags 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 Net Output 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; provided, however, that the existence of one or more of the factors listed in the exceptions to clauses (i), (iv), (vi), (vii), (viii), (ix), (xii) shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure if the event does not meet the criteria described in the first sentence of this definition or is excluded under another clause of this sentence. 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. Each Party acknowledges the effects of military conflict in Eastern Europe 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 military conflict in Eastern Europe and its effects shall be permitted only to the extent of material direct impacts of said military conflict in Eastern Europe of which the Party was not aware, and should not have reasonably 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 credit rating from S&P and Moody's as PacifiCorp as of the effective date of such assignment (or if such Affiliate is not rated by S&P and Moody's, the same or better creditworthiness as PacifiCorp, as reasonably determined by Seller); and (b) in the case of Assignment by Seller: (i) such Affiliate must possess (A) the same or similar experience as Seller (as reasonably determined by PacifiCorp) and (B) the same or better credit rating from S&P and Moody's as Seller as of the Execution Date (or if Seller or such Affiliate is not rated by S&P and Moody's, the same or better creditworthiness as Seller, 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; 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; (ii) has the same or better credit rating from S&P and Moody's as PacifiCorp as of the Execution Date (or if such assignee is not rated by S&P and Moody's, the same or better creditworthiness as PacifiCorp, as reasonably determined by Seller); and (iii) if required by applicable Requirements of Law, has received approval from any applicable public utility commission or equivalent or any other applicable Governmental Authority. If the foregoing requirements for Assignment have been satisfied, then effective as of the date of such Assignment PacifiCorp and Seller, as applicable, will be released from all liability under this Agreement. Any Party seeking to Assign this Agreement shall be solely responsible for paying all costs and expenses of Assignment, including any costs and expenses incurred by the other Party in connection with the review and/or execution and delivery of the assignment and assumption agreement and any other documents required in connection with the Assignment.

20.3 Project Lender. Seller may, without relieving itself from its obligations and liabilities under this Agreement, Assign this Agreement or the revenues or proceeds thereof, or all or any part of its ownership interest in the Facility, including the Premises, to a Lender in connection with a financing or refinancing of the Facility, 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 Contract Price and Compensable Curtailment 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 Section 23.1(b). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

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

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

23.5 News Releases and Publicity. Except as otherwise provided in Section 6.13, before either Party issues any news release or publicly distributed promotional material that

mentions the Facility (other than project name, technology type, size and location), such Party will first provide a copy thereof to the other Party for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. 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: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

EXPECTED FACILITY PERFORMANCE⁹

I. Expected Hourly Net Output; Expected Monthly Net Output; Expected Annual Net Output

Expected Hourly Net Output in Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Expected Annual Net Output (in MWh)
00													
01													
02													
03													
04													
05													
06													
07													
08													
09													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
Expected Monthly Net Output (in MWh)													

The above table is generated as of the Execution Date from the Expected Net Output Excel File based on the Expected Nameplate Capacity Rating of the Facility as of the Execution Date and the assumed inputs contained therein. If the Expected Nameplate Capacity Rating and the Nameplate Capacity Rating of the Facility changes pursuant to Section 2.2.2 and Section 2.2.3, then this table shall be regenerated from the Expected Net Output Excel File based on the revised Expected Nameplate Capacity Rating and Nameplate Capacity Rating of the Facility and the other assumed inputs contained therein and the new regenerated table shall automatically amend and restate in its entirety the previous table and be effective for all purposes of this Agreement. Seller acknowledges that PacifiCorp will include the Expected Annual Net Output in PacifiCorp’s resource planning.

⁹ NTD: Prior to executing this Agreement, Seller will be required to provide PacifiCorp information sufficient to allow PacifiCorp to reasonably verify the various Facility performance estimates stated in Exhibit A.

II. Expected Annual Degradation Schedule¹⁰

The Expected Annual Net Output will be adjusted each Contract Year following the first Contract Year as follows.

Contract Year ¹¹	Expected Degradation (%)	Expected Annual Net Output (MWh)
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		
15-16		
16-17		
17-18		
18-19		
19-20		
20-21		
21-22		
22-23		
23-24		
24-25		
25-26		
26-27		
27-28		
28-29		
29-30		

¹⁰ NTD: Section II of Exhibit A applies only to solar Generating Facilities.

¹¹ NTD: Table to be updated based on Term of the Agreement.

The Expected Monthly Net Output and the Expected Hourly Net Output will be adjusted each Contract Year following the first Contract Year consistent with the above changes in the Expected Annual Net Output.

III. Expected Nameplate Capacity Rating

The Expected Nameplate Capacity Rating of the Generating Facility is [] MW.

IV. Required Percentage

The Required Percentage for the Generating Facility is ninety-five percent (95%) of the Expected Nameplate Capacity Rating, which is equivalent to [] MW.

V. Maximum Delivery Rate

The "Maximum Delivery Rate" is [] MWh, as the same may be adjusted pursuant to Section 2.2.2 and Section 2.2.3 of this Agreement.

VI. Station Service

The maximum station service load of the Generating Facility in any Contract Year shall not exceed [] MWh.

EXHIBIT B

DESCRIPTION OF SELLER'S FACILITY

1. Name of Facility:
 - (a) Location: [County, State]
 - (b) Location: [GPS COORDINATES]
 - (c) Point of Delivery: [_____]
 - (d) Legal Description of the Premises: See real property documents in Exhibit E.
 - (e) Describe easements secured for physical entrance of permanent and temporary equipment (e.g. drive way and cable/wire easements)

2. Seller:

3. Ultimate parent: [_____]

4. Qualified Operator: [_____]

5. [Generating Facility – Solar Equipment:
Solar Module Manufacturer: _____
Model: _____
Number of Units: _____
MW DC: _____
DC:AC RATIO: _____
Inverter Manufacturer: _____
Inverter Model: _____
Nameplate Capacity Rating at Point of Delivery: ___ MW AC]¹²

5. [Generating Facility – Wind Equipment:
Model:
Number of Units:
Nameplate Capacity Rating at Point of Delivery: ___ MW
Total gross output capacity: ___ MW
Capacity Factor: ___ 1%]¹³

6. [Operating Characteristics of Generating Facility - Solar:

¹² NTD: For solar-powered Generating Facilities.

¹³ NTD: For wind-powered Generating Facilities.

- (a) Rated Power Factor (PF) or reactive load (kVAR):
- (b) Rated Output (kW):
- (c) Rated Output (kVA):
- (d) Rated Voltage (line to line):
- (e) Maximum kW Output: _____ kW as measured at the Point of Delivery (Facility)
 - a. Maximum kW Output: _____ kW (individual unit listed in 5(a))
- (f) Maximum kVA Output: _____ kVA (Facility)
 - a. Maximum kW Output: _____ kW (individual unit listed in 5(a))
- (g) Minimum kW Output: _____ kW (Facility)
 - a. Minimum kW Output: _____ kW (individual unit listed in 5(a))
- (h) Number of Phases:
- (i) Power factor requirements:
- (j) Rated Power Factor (PF) or reactive load (kVAR):
- (k) Controlled Ramp Rate: <[] second to [] MVA]¹⁴

6. [Operating Characteristics of Generating Facility - Wind:

- a. Type (synchronous or inductive):
- b. Model:
- c. Number of Phases:
- d. Rated Output (kW):
- e. Rated Voltage (line to line):
- f. Rated Current (A):
 - i. Rotor: ___ Amps
 - ii. Stator: ___ Amps
- g. Converter Supply Current:
- h. Maximum kW Output: _____ kW
- i. Minimum kW Output: _____ kW
- j. Rated Power Factor (PF) or reactive load (kVAR): ___ Leading to ___ Lagging]¹⁵

7. Additional technology specific information, if any:

- a. The design of the Storage Facility must contemplate improvements to accommodate technology and market changes as contemplated by Section E of Exhibit P.

8. A layout of the Facility, including site boundaries of the Premises and the Point of Delivery and the Generating Facility Metering Point, to be attached to this Exhibit B.

¹⁴ NTD: For solar-powered Generating Facilities.

¹⁵ NTD: For wind-powered Generating Facilities.

EXHIBIT C

SELLER'S INTERCONNECTION FACILITIES

[Instructions to Seller:

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

EXHIBIT D

REQUIRED FACILITY DOCUMENTS

[REQUIRED OF ALL FACILITIES:

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

Real property documents with respect to the Premises

[Incidental eagle take permit application required by Section 3.2.15 of the Agreement]

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

EXHIBIT E
REAL ESTATE DOCUMENTS

[See the attached]

EXHIBIT F

PERFORMANCE GUARANTEE

A. Definitions. Capitalized terms used but not defined herein shall have the meanings assigned to them in this Agreement.

“Measurement Period” means each successive period of two (2) consecutive Contract Years with the first Measurement Period beginning on the Commercial Operation Date and ending on the day that immediately precedes the second anniversary of the Commercial Operation Date, and each successive Measurement Period beginning on the day that immediately follows the last day of the immediately preceding Measurement Period, except that if the final day of the Measurement Period occurs on a day other than the day that immediately precedes the applicable anniversary of the Commercial Operation Date, the Measurement Period that would have ended on the day immediately preceding such anniversary will instead end on the last day of the Measurement Period; provided, however, that if Seller fails to satisfy the Performance Guarantee for any Measurement Period (“Failed Measurement Period”), then solely for purposes of determining whether Seller has satisfied the Performance Guarantee for two successive Measurement Periods pursuant to Section 11.1.2(i), including for purposes of reporting whether Seller satisfied the Performance Guarantee pursuant to the first two (2) sentence of Section B(4) of this Exhibit F (but not for purposes of determining Performance Damages which will continue to be determined based on two (2) successive Contract Years as provided for in this Exhibit F), the Measurement Period immediately following such Failed Measurement Period shall be a single Contract Year beginning on the day that immediately follows the last day of such Failed Measurement Period.

“Measurement Period Guaranteed Amount” means, in respect of any Measurement Period, (a) ninety percent (90%) of the Expected Annual Net Output (as determined in accordance with Section I [and Section II] of Exhibit A to this Agreement, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3 of this Agreement) for each Contract Year in such Measurement Period (in MWh), less (b) the sum of: (i) the Compensable Curtailment Energy in such Measurement Period (in MWh); and (ii) the Non-Compensable Curtailment Energy in such Measurement Period (in MWh).

“Measurement Period Net Output” means, in respect of any Measurement Period, the aggregate amount of Net Output in such Measurement Period (in MWh).

“Measurement Period Hourly Net Output” means, in respect of any hour in any month in a Measurement Period, the aggregate amount of Net Output in such hour in such month, as the same shall be reflected in the table delivered by Seller to PacifiCorp pursuant to Section B(4) of this Exhibit F (in MWh).

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

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

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

B. Performance Guarantee; Performance Damages.

1. Performance Guarantee. Seller agrees to deliver to PacifiCorp no less than the Measurement Period Guaranteed Amount of Net Output during each Measurement Period (the “Performance Guarantee”).

2. Performance Damages.

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

(b) If the Measurement Period Net Output during any Measurement Period is less than the Measurement Period Guaranteed Amount for such Measurement Period, then Seller shall be liable to PacifiCorp for liquidated damages (“Performance Damages”) in respect of such Measurement Period calculated as follows:

$$\text{Performance Damages} = \text{Output Shortfall} * \text{Performance Guarantee Cover Cost}$$

Where:

Output Shortfall = the positive difference between the Measurement Period Net Output and the Measurement Period Guaranteed Amount for such Measurement Period (in MWh); and

Performance Guarantee Cover Cost = the weighted average PacifiCorp’s Cost to Cover for such Measurement Period (in \$/MWh), where the weighting is based on the PacifiCorp’s Cost to Cover in the hours in such Measurement Period in which the Measurement Period Hourly Net Output is less than the Expected Hourly Net Output (as such Expected Hourly Net Output is determined based on the Expected Net Output Excel File).

3. Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller’s failure to satisfy the Performance 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) Performance 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(i), Performance Damages shall be PacifiCorp’s sole remedy for Seller’s failure to satisfy the Performance Guarantee.

4. Invoicing. On the thirtieth (30th) day following the end of each Measurement Period, Seller shall deliver to PacifiCorp a report (and reasonable supporting documentation regarding all data and calculations) detailing whether Seller satisfied the Performance Guarantee for such Measurement Period, including Table 1 (Measurement Period Hourly Net Output) set forth below fully completed for such Measurement Period based on the Net Output in such Measurement Period. If Seller failed to satisfy the Performance Guarantee for such Measurement Period, then Seller shall include in the report the Output Shortfall for such Measurement Period, together with reasonable supporting documentation regarding all data and calculations. If there is an Output Shortfall, then thirty (30) days after PacifiCorp receives the report and all reasonable supporting documentation regarding all data and calculations provided for above, then PacifiCorp shall deliver to Seller an invoice showing PacifiCorp’s computation of the Performance Damages calculated pursuant to Section B(2)(b) of this Exhibit F. In preparing such invoice, PacifiCorp shall utilize the meter data provided to PacifiCorp for the relevant Measurement Period in question but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Measurement Period is then incomplete or otherwise not available. Within twenty (20) days of receipt of the invoice, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Performance Damages not paid by Seller when due under this Section B(4) 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 Seller may have with respect to PacifiCorp’s invoice of Performance Damages.

Table 1 – Measurement Period Hourly Net Output

Measurement Period Hourly Net Output in Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Measurement Period Net Output (in MWh)
00													
01													
02													
03													
04													
05													
06													
07													
08													
09													
10													
11													
12													
13													
14													

15													
16													
17													
18													
19													
20													
21													
22													
23													
Monthly Net Output (in MWh)													

A sample calculation of Performance Damages for information purposes only is contained in Exhibit S.

EXHIBIT G

FORM OF PARENT GUARANTY

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

WHEREAS, Beneficiary and [____], a [____] ("Obligor") entered into that certain Power Purchase Agreement, dated as of [____], 20[___] (the "Agreement"); and Guarantor delivers this Guaranty to Beneficiary as an inducement to Beneficiary to enter into the Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Guarantor, at:

With a copy to:

If to Beneficiary, at:

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

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

EXHIBIT J

NERC EVENT TYPES¹⁶

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.

¹⁶ 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

CONTRACT PRICE; COMPENSABLE CURTAILMENT PRICE

1. Contract Price

The “Contract Price” for Net Output, Capacity Rights, Ancillary Services and Green Tags (expressed in \$/MWh) shall be as follows:

Contract Year¹⁷	Contract Price (\$/MWh)
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	
15-16	
16-17	
17-18	
18-19	
19-20	
20-21	
21-22	
22-23	
23-24	
24-25	
25-26	
26-27	
27-28	

¹⁷ NTD: Table to be updated based on Term of the Agreement.

28-29	
29-30	
Weighted Average	

2. Compensable Curtailment Price

[The “Compensable Curtailment Price” for Compensable Curtailment Energy (expressed in \$/MWh) shall be equal to the Contract Price.¹⁸]

[The “Compensable Curtailment Price” for Compensable Curtailment Energy and, in the case of Section 5.1.2(b), Potential Net Output (expressed in \$/MWh) shall be equal to (a) the Contract Price plus (b) the PTC Rate (with the payment of the PTC Rate to be made on an After-Tax Basis) for each MWh of Compensable Curtailment Energy. For purposes of this Agreement, (i) “PTC Rate” means the then-current rate for the PTCs (per MWh) provided in Section 45(a)(1) of the Internal Revenue Code for a qualified facility that uses wind to produce electricity, determined by taking into account the inflation adjustment provided in Section 45(b)(2) of the Internal Revenue Code and the reduction pursuant to Section 45(b)(5) (or any successor thereto) of the Internal Revenue Code for a facility beginning construction in the year that Seller demonstrates to the satisfaction of PacifiCorp that construction on Facility began, provided that the PTC Rate shall in no event exceed the rate used to calculate the PTCs for the Facility, as modified by the phasedown adjustment (as described in IRS Form 8835), that is reflected on the IRS Form 8835 (or any successor form thereto) filed by Seller as part of its timely filed federal income tax return for the applicable taxable year, and (ii) “After-Tax Basis” means, with respect to any payment received or deemed to have been received by Seller, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to Seller so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes (including federal, state or local income taxes) required to be paid by Seller in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that Seller is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local taxes in the aggregate not to exceed [five percent (5%)] with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of such state and local income taxes. No later than January 31st (the “Reporting Date”) of each of the first ten (10) calendar years occurring after the Commercial Operation Date, Seller shall certify to PacifiCorp in writing its aggregate state and local tax rate as reflected in its most recent financial statements prepared in accordance with generally accepted accounting principles in the United States of America, consistently applied (“Aggregate State and Local Tax Rate”). The lesser of Seller’s Aggregate State and Local Tax Rate and [five percent (5%)] shall be used for purposes of determining the After-Tax Basis and the Compensable Curtailment Price applicable during the period from the applicable Reporting Date until but not including the next Reporting Date. If Seller fails to deliver to

¹⁸ NTD: This definition of “Compensable Curtailment Price” is applicable for solar-powered Generating Facilities.

PacifiCorp the certification required above by a Reporting Date, then for purposes of determining the After-Tax Basis and the Compensable Curtailment Price applicable during the period from the applicable Reporting Date until but not including the next Reporting Date the Aggregate State and Local Tax Rate will be deemed to be zero percent (0%).^{19]}

¹⁹ NTD: This definition of “Compensable Curtailment Price” is applicable for wind-powered Generating Facilities.

EXHIBIT L

PARTY NOTICE INFORMATION

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

EXHIBIT M

FORM OF LENDER CONSENT

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

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

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

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

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

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

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

SECTION 1. CONSENT TO ASSIGNMENT

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

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

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

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

operator who has) at least three (3) years of experience operating a [_____] -powered electric generating facility of similar technology and similar size to the Project.

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

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

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

SECTION 2. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

SECTION 3. NOTICES

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

If to PacifiCorp:

[_____]
[_____]
[_____]
Telephone No.: [_____]
Facsimile No.: [_____]
Attn: [_____]

If to Administrative Agent:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Facsimile No.: [_____]

Attn: [_____]

If to Borrower:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Facsimile No.: [_____]

Attn: [_____]

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

SECTION 4. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

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

SECTION 5. COUNTERPARTS

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

SECTION 6. SEVERABILITY

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

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

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

SECTION 8. JURY TRIAL WAIVER

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

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

PacifiCorp

By: _____

Name: _____

Title: _____

_____,

a _____

By: _____

Name: _____

Title: _____

_____,

as Administrative Agent for the Lenders

[Borrower]

By: _____

Name: _____

Title: _____

EXHIBIT N

PROJECT MILESTONES²⁰

Project Milestone	Project Milestone Completion Date
Execute Generation Interconnection Agreement	
Execute Purchase Agreement for Major Equipment	
Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement	
Issue FNTF	
First Synchronization	
Commercial Operation Date	Scheduled Commercial Operation Date

²⁰ NTD: Project Milestones and dates by which the Milestones are to be achieved to be agreed to by the Parties prior to the Execution Date.

EXHIBIT O

METEOROLOGICAL AND OTHER DATA REQUIREMENTS²¹

- 1. [Required information for wind resources:**
 - 1.1. Hub height wind speed
 - 1.2. Hub height wind direction
 - 1.3. Hub height temperature
 - 1.4. *Optional information for wind resources if available:*
 - 1.4.1. Relative humidity
 - 1.4.2. Barometric pressure

- 2. Meteorological data may be provided in one or more of the following ways:**
 - 2.1. Average readings over all turbines or a representative subset of them.
 - 2.2. Meteorological towers, sodars, lidars, or monitoring stations.
 - 2.3. Readings from all individual turbines or a representative subset of them.]

- 1. [Required information for solar resources:**
 - 1.1. At least one of the following irradiance values:
 - 1.1.1. Plane of array (POA) irradiance (preferred)
 - 1.1.2. Global Horizontal Irradiance (if POA is not available)
 - 1.1.3. Direct Normal Irradiance (DNI)
 - 1.2. Wind speed at the array height (to assess the potential for stow conditions)
 - 1.3. Back panel temperature
 - 1.4. Air temperature at the array height (to assess the potential for icing/snow presence and melting on solar panels)

- 2. Optional information for solar resources:**
 - 2.1 Wind direction at the array height
 - 2.2 Relative Humidity
 - 2.3 Barometric pressure

- 3. Meteorological data may be provided in one or more of the following ways:**
 - 3.1 Meteorological towers, sodars, lidars, or solar monitoring stations.]

²¹ NTD: Required meteorological and other data requirements dependent upon whether the Generating Facility is wind or solar powered.

EXHIBIT P
CYBERSECURITY REQUIREMENTS

[To be provided by PacifiCorp]

EXHIBIT Q

FORM OF WORKFORCE REPORT

Pursuant to Section 6.10.10 of the Agreement, Seller shall provide to PacifiCorp the following information and execute and deliver the following reports, documents and certifications:²²

1. Seller shall deliver to PacifiCorp within thirty (30) Business Days following the end of each March, June, September and December in each year during the Term a report detailing (a) the number of local and state workers employed during construction of the Facility and (b) the number of incidents when contractors contracted by Seller in the course of construction of the Facility commit health, safety or environmental infractions.

2. Seller will deliver to PacifiCorp to copies of such declaration, attestations and documents as Seller is required to deliver to the Oregon State Department of Energy pursuant to Oregon HB 2021.

3. Seller shall complete and deliver to PacifiCorp within thirty (30) Business Days following the end of each March, June, September and December in each year during the Term the following report:

²² NTD: Seller will be required to comply with only those requirements applicable to Seller and/or its Facility.

Exhibit Q Workforce Reporting

Diverse Business Spend Report

Reporting Period: [QUARTER], 20__
 Date Submitted: [MONTH AND DAY],
 20__

Contract Name:

Company Name:
 Report Prepared by:
 Phone Number:
 Email Address:

	Goods & Materials	Services
PacifiCorp Service Area	Quarterly Diverse Business Spend*	Quarterly Diverse Business Spend*
California		
Oregon		
Washington		
Utah		
Idaho		
Wyoming		
<p>*Diversity Spend is that portion of the previous month's total spend provided by a diversity business, defined as "including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses" pursuant to WAC 480-107-075(3) Note: Leases, Real Estate, and Utilities should not be included in spend figures.</p>		

Total Spending
Application of Washington-state labor standards**"
**RCW 82.08.962 and 82.12.962

Exhibit Q Workforce Reporting

Diverse Business Spend Report / Detail

Quarter									Invoice Diversity Spend		
Name of Business (Supplier / Contractor / Subcontractor)	Diversity Classification(s) (See Below)"	Contact Person	Contact Information	Tax ID	Certifications (i.e., WBENC, California Clearinghouse, etc.)	Description of Goods/Services	Application of Washington-state labor standards in RCW 82.08.962 and 82.12.962 (Yes/No)	Location where services are performed or goods delivered (CA, OR, WA, UT, ID, WY)	Goods & Materials Diverse Business Spend	Services Diverse Business Spend	Total Diverse Business Spend

Diversity Classification	SAP Diversity Code
Female, Asian/Pacific Islander	FA
Female, Black	FB
Female, Hispanic	FH
Female, Am.Indian/Alaskan	FI
Female, White	FW
Female, White, Disabled Vet	FWD
Female, White, LGBT	FWL
Male, Asian/Pac Islander	MA
Male, Black	MB
Male, Hispanic	MH
Male, Am.Indian/Alaskan	MI
Male, White, Disabled Veteran	MWD
Male, White, LGBT	MWL

[See the attached]

EXHIBIT R
GENERATION INTERCONNECTION AGREEMENT

[See the attached]

EXHIBIT S

EXPECTED NET OUTPUT EXCEL FILE

[See the attached]

Appendix E-2.2

PPA Documents for Power Purchase Agreement with Collocated Energy Storage

Pro Forma Appendices

THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. PACIFICORP RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS DRAFT AT ANY TIME. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL PACIFICORP HAS COMPLETED ITS DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.

POWER PURCHASE AGREEMENT

BETWEEN

[_____]

AND

PACIFICORP

DATED [_____], 20[_]

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POWER PURCHASE AGREEMENT

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

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

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

C. PacifiCorp intends to include certain Product in its resource planning and to designate this Agreement as a Network Resource (as such term is 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 Facility by Seller (other than in connection with an Assignment permitted by Section 20); (b) after achievement of the “Issue FNTF” Project Milestone for the Facility (as identified on Exhibit N), but prior to the Commercial Operation Date, the complete cessation of the construction, testing and commissioning of the Facility for ninety (90) consecutive days that is not consistent with the Project Milestones schedule attached hereto as Exhibit N, as the same may be amended in accordance with Section 2.2.1; and (c) after the Commercial Operation Date, the complete cessation of the operation of the Facility for ninety (90) consecutive days; provided, in the case of (a), (b) and (c) above, that such relinquishment or cessation is not caused by or attributable to an Event of Default by PacifiCorp, a written request by PacifiCorp, or an event of Force Majeure.

“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 Facility to receive AGC Set Points that automatically adjust: (a) with respect to the Generating Facility, the amount of Output, including Charging Energy, and Ancillary Services; (b) with respect to the Storage Facility, the amount of Discharging Energy and Ancillary Services; and (c) with respect to the Facility, 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 Facility by PacifiCorp, the Interconnection Provider, the Transmission Provider or the Market Operator with respect to the Facility operations using AGC.

“Agreement” is defined in the Preamble.

“Ancillary Services” has the meaning set forth in the Tariff. Ancillary Services shall include reactive power, but shall 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 Facility, including the Point of Delivery, the Generating Facility Metering Point and the Storage Facility Metering Point.

“Assign” is defined in Section 20.1. “Assignment” has a correlative meaning.

“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 electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights do not include any Ancillary Services, Green Tags, Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Charging Energy” means all energy produced by the Generating Facility, net of transformation and transmission losses, if any, measured at the Storage Facility Metering Point 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. PacifiCorp’s payment for Charging Energy shall not be for more than the amount of energy flowing through, and delivered at, the Storage Facility Metering Point and, in any event, not greater than the amount of Charging Energy included in the applicable Charging Notice.

“Charging Notice” means the operating instruction, including AGC Set-Point, and any subsequent updates, given by PacifiCorp to Seller, using AGC or other means as 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. For the avoidance of doubt, any PacifiCorp request to initiate a Storage Energy Capacity Test shall not be considered a Charging Notice.

“Commercial Operation” means that the Generating Facility is fully operational and reliable at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, the Storage Facility is fully operational and capable of charging, storing and discharging energy at or greater than the Guaranteed Storage Power Capacity Rating, all AGC equipment is installed and fully operational in accordance with the requirements of this Agreement, and the Facility is fully interconnected, fully integrated, and synchronized with the System, which occurs when all of the following events (a) have occurred, all of which are Seller’s responsibility to achieve, receive or obtain, and (b) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice pursuant to Section 2.2.3 that Commercial Operation has occurred:

(i) PacifiCorp has received a letter addressed to PacifiCorp from a Licensed Professional Engineer certifying: (A) the Nameplate Capacity Rating of the Generating Facility at the anticipated time of Commercial Operation, which must be at least equal to or greater than the Required Percentage of the Expected Nameplate Capacity Rating; (B) that the Generating Facility is able to generate electric energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement; (C) 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; (D) 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; (E) 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; (F) that all AGC equipment is installed and operational in accordance with the requirements of this Agreement; (G) 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 (H) 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 Facility is physically interconnected with the System in conformance with the Generation Interconnection Agreement;

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

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

(v) Seller has satisfied its obligation to pay for any network upgrades or other interconnection costs 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 Facility in accordance with Section 2.2.3 but in no event earlier than ninety (90) days before the Scheduled Commercial Operation Date.

[“Commission” means the [_____].¹]

[“Commission Approval” means [_____].]

[“Commission Approval Deadline” means [_____].]

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

“Compensable Curtailment” means Net Output that is curtailed during the Term other than as a result of Non-Compensable Curtailment, including curtailment due to or arising out of any scheduling, bidding or other market activities by PacifiCorp (acting in its merchant function capacity).

“Compensable Curtailment Energy” is defined in Section 4.5.2.

“Compensable Curtailment Price” is defined in Exhibit K.

“Compliance Cost Cap” is defined in Section 4.7.5.

“Compliance Costs” is defined in Section 4.7.5.

“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

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

Citibank, N.A. prime rate is not available, the applicable prime rate will be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with Ten Billion Dollars (\$10,000,000,000) or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

“Contract Price” is defined in Exhibit K.

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

“COVID-19” means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations or variants thereof or related or associated epidemics, pandemics or disease outbreaks.

“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.

“Cut-off Date” is defined in Section 2.2.3.

“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 Nameplate Capacity Rating and the Guaranteed Storage Power Capacity Rating.

“Defaulting Party” is defined in Section 11.1.

“Delay Damages” means, for any given day in any given month, an amount equal to the sum of: (a) the sum of the products calculated as follows for each hour in such day: (i) the Expected Monthly Net Output for the Facility for such month in the first Contract Year (as specified in Section 1 of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3), divided by the number of hours in such month (in MWh); multiplied by (ii) PacifiCorp’s Cost to Cover for such hour; and (b) the product of (i) the Guaranteed Storage Power Capacity Rating expressed in MW, multiplied by (ii) the quotient of (i) the monthly Storage Price in the first Contract Year (in \$/MW/month) divided by (ii) 30.4.

“Discharging Energy” means all energy and capacity produced by the Generating Facility, 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. For the avoidance of doubt, any PacifiCorp request to initiate a Storage Energy Capacity Test shall not be considered a Discharging Notice.

“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 Cut-off Date” 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.

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

“Energy Imbalance Market” means the real-time energy imbalance market currently operated by the Market Operator, or any successor or replacement market.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances associated with the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane, and other greenhouse gases that have been determined by any Governmental Authority to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include: (i) Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility; (ii) matters designated by PacifiCorp as sources of liability; or (iii) adverse wildlife or environmental impacts.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Requirements of Law, and present a material risk under Requirements of Law that

the Facility or the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

“Excess Charging Energy” is defined in Section 6.15.2(b).

“Excess DNR Costs” is defined in Section 4.2.3.

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

“Execution Date” is defined in the Preamble.

“Expected Annual Net Output” means the estimated Net Output for each Contract Year during the Term (in MWh) as determined in accordance with Section I [and Section II]² of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Expected Hourly Net Output” means the estimated Net Output for each hour of each month in a Contract Year during the Term (in MWh) as determined in accordance with Section I [and Section II] of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3, provided that for purposes of the definition of “Performance Guarantee Cover Cost” in Exhibit F, “Expected Hourly Net Output” shall be determined based on the Expected Net Output Excel File.

“Expected Monthly Net Output” means the estimated Net Output for each month in each Contract Year during the Term (in MWh) as determined in accordance with Section I [and Section II] of Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Expected Nameplate Capacity Rating” means the expected Nameplate Capacity Rating as of the Execution Date, which is specified in Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Expected Net Output Excel File” means that certain Excel file attached hereto as Exhibit Q.

“Facility” means the Generating Facility and the Storage Facility.

“FERC” means the Federal Energy Regulatory Commission.

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

² NTD: Here and below, all references to Section II to Exhibit A only applies to solar-powered Generating Facilities.

interconnected, fully integrated, and synchronized with the Transmission Provider's System, modified if necessary to reflect the Nameplate Capacity Rating and, if applicable, through completion of all the items set forth on the Final Completion Schedule, and Seller has sent written notice to PacifiCorp that Final Completion has occurred.

“Final Completion Schedule” is defined in Section 2.2.3.

“Final Nameplate Capacity Rating” is defined in Section 2.2.3.

“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.³

“FNTTP” means the full notice to proceed (or similar notice) that Seller delivers pursuant to the construction agreement pursuant to which the Facility will be constructed.

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

“Forced Outage” means the appropriate NERC Event Type(s), 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.

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

³ NTD: The definition of “Firm Market Price Index” will be adjusted to appropriately reflect the location of the Generating Facility.

“Generating Facility Metering Point” means the point(s) at the Generating Facility at which Output flowing after the Generating Facility’s inverters but before the Point of Delivery and/or the Storage Facility is measured.

“Generation Interconnection Agreement” means the generator interconnection agreement entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities, as accepted for filing by FERC to the extent required, which shall at all times make available, or allocate, interconnection capacity to the Facility at no less than the Expected Nameplate Capacity Rating, a copy of which is attached hereto as Exhibit S.⁴

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

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

“Green Tags Price Component” means: (a) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from a renewable electric generation facility other than the Facility from three (3) nationally recognized independent Green Tag brokers selected by PacifiCorp pursuant to which PacifiCorp could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (b) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from the established liquid market for Green Tags in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder.

“Green Tag Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with applicable Requirements of Law to applicable Governmental Authorities or other Persons at such purchaser’s discretion, including under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“Guaranteed Storage Availability” is defined in Exhibit A.

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

⁴ NTD: Seller to demonstrate Generation Interconnection Agreement is FERC jurisdictional.

“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.

“Increased Nameplate Capacity Rating” is defined in Section 2.2.3.

“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.

“Initial Nameplate Capacity Rating” is defined in Section 2.2.3.

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

“Interconnection Provider” means PacifiCorp Transmission.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as 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 a Person (other than an Affiliate of Seller) 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 development, construction, term or permanent financing or refinancing of the Facility; (b) working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency or weather hedge or swap agreement in connection with the development, construction or operation of the Facility; or (d) the purchase of the Facility and related rights from Seller.

“Lender Consent” is defined in Section 20.3.

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

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

“Local Time” means [Pacific/Mountain] Standard Time or [Pacific/Mountain] Daylight Time, as applicable, in the state in which the Facility is located on the day in question.⁵

“Maintenance Outage” means the appropriate NERC Event Type(s), 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 (a) ten percent (10%) or more of the Nameplate Capacity Rating of the Generating Facility or (b) ten percent (10%) or more of the Storage Power Capacity Rating of the Storage Facility, in each case, 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.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility at the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the Nameplate Capacity Rating determined in connection with Commercial Operation, as the same may be revised pursuant to

⁵ NTD: “Local Time” to be based on the location of the Generating Facility.

Section 2.2.2 and Section 2.2.3. The Maximum Delivery Rate is specified in Exhibit A, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3.

“Measurement Period” is defined in Exhibit F.

“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.

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

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Generating Facility (including Charging Energy but excluding Discharging Energy, Excess Charging Energy and Wrongfully Delivered Energy), less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use (unless permitted pursuant to Section 5.3)), if any, delivered to and received by PacifiCorp at the Point of Delivery or delivered to the Storage Facility Metering Point.

“Network Integration Transmission Service” 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.

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

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

“Notice” is defined in Section 22.1.

“OFAC” is defined in Section 3.2.16.

“OFAC Sanctions Lists” is defined in Section 3.2.16.

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

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

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

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.12.

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

“PacifiCorp’s Cost to Cover” means the positive difference, if any, stated in \$/MWh, between (a) the Firm Market Price Index for each hour for which the determination is being made and (b) the Contract Price in effect on each such hour; provided that prior to the Commercial Operation Date, the Contract Price for subsection (b) of this definition shall be the Contract Price for the first Contract Year set forth in Exhibit K.

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

“Performance Damages” is defined in Exhibit F.

“Performance Guarantee” is defined in Exhibit F.

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

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

“Planned Outage” means the appropriate NERC Event Type(s), 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 Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit C.

“Potential Net Output” means the quantity of Net Output that Seller is capable of delivering at the Point of Delivery at any specific time. Potential Net Output will be determined by a qualified renewable energy production real-time forecasting vendor selected by PacifiCorp as provided in Section 6.7. Absent manifest error, the Parties agree that the determination of Potential Net Output by such vendor shall govern for purposes of this Agreement and shall not be subject to dispute by the Parties pursuant to Section 24 or otherwise; provided, however, that

if Seller in good faith reasonably disputes such vendor's determination of Potential Net Output (written notice of which, together with Seller's reasonable grounds for disputing such vendor's determination, Seller shall deliver to PacifiCorp within ninety (90) days of such vendor's determination), then the quantity of such Potential Net Output shall be finally determined by an independent qualified renewable energy production forecasting vendor mutually acceptable to the Parties and such determination shall govern for purposes of this Agreement and shall not be subject to dispute by the Parties pursuant to Section 24 or otherwise; provided, further, that one hundred percent (100%) of the costs of such independent vendor's determination shall be paid for by Seller, unless such independent vendor determines that the quantity of Potential Net Output was five percent (5%) or more than the amount determined by the original vendor, in which case PacifiCorp shall be responsible for one hundred percent (100%) of the costs of such independent vendor's determination. For the avoidance of doubt, Potential Net Output shall not include any Net Output that Seller is capable of delivering at the Point of Delivery at any specific time but that is actually delivered to the Storage Facility.

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

“Proceedings” is defined in Section 24.3.

“Product” means all: (a)(i) Net Output; (ii) Green Tags; (iii) Capacity Rights; and (iv) Ancillary Services, in each case, arising from or relating to the Generating Facility; and (b) the Storage Product.

“Prohibited Countries” is defined in Section 3.2.17.

“Prohibited Vendors” is defined in Section 3.2.18.

“Project Development Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to Two Hundred Dollars (\$200)⁶ per kW of the aggregate amount of the Expected Nameplate Capacity Rating and 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 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

⁶ NTD: \$200 per kW will be used for Facilities with a Scheduled Commercial Operation Date in 2026; \$214 per kW will be used for Facilities with a Scheduled Commercial Operation Date in 2027; and \$229 per kW will be used for Facilities with a Scheduled Commercial Operation Date in 2028.

electric power generation industry for 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 Facility, and to deliver the Product to PacifiCorp in accordance with this Agreement and Requirements of Law, including those listed in Exhibit D.

“Required Percentage” means ninety-five percent (95%).

“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.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the product (in \$) of (i) the Compensable Curtailment Price (in \$/MWh) and (ii) the amount of Potential Net Output not purchased and received by PacifiCorp as required under this Agreement (in MWh), and (b) the net proceeds actually realized by Seller [(taking into consideration PTCs)] from the sale to a third party of the Net Output not purchased and received by PacifiCorp as required under this Agreement (in \$).

“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, including all equipment, devices, associated appurtenances owned, controlled, operated or managed by or on behalf of Seller in connection with, or to facilitate the charging and storage of energy produced by the Generating Facility and the discharging, transmission, delivery or furnishing of energy produced by the Generating Facility and discharged from the Storage Facility to PacifiCorp.

“Storage Facility Metering Point” means the point of interconnection between the Generating Facility and 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” is defined 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” means the rate (measured in MW/millisecond) at which the Storage Facility can change power output.

“Storage Ramp Rate Guarantee” is defined in Section 6.15.6.

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

“Storage Round Trip Efficiency” means, in respect of the Storage Facility and a specified period of time, the ratio (expressed as a percentage) of (a) the total amount of energy (in MWh) discharged from the Storage Facility during such period of time and (b) the total amount of energy (in MWh) charged to the Storage Facility during such period of time, all as determined pursuant to 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 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 3.2.18.

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

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

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

“Term” is defined in Section 2.1.

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

“WECC” means the Western Electricity Coordinating Council.

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

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

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

“Wrongfully Delivered Energy” means any Output delivered to the Point of Delivery in contravention of PacifiCorp’s dispatch instructions pursuant to Section 6.9.1 or discharging instructions pursuant to Section 6.15.2.

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]⁷ (the "Effective Date"), provided that prior to the Effective Date those rights and obligations hereunder expressly arising upon the Execution Date (including Sections 1.2, 2.1, 4, 16, 17, 18, 19, 20, 21, 22, 23 and 24 and the defined terms in Section 1.1

⁷ NTD: PacifiCorp is reviewing whether there may be any filings or approvals required by applicable state public utility commissions receipt of which would be conditions to the effectiveness of this Agreement.

used in the foregoing Sections) shall be effective as of the Execution Date. Unless earlier terminated as provided in this Agreement, this Agreement shall remain in effect until [_____] ([__]) years after the Commercial Operation Date (the “Term”).

[2.1.2 Commission Approval. Within sixty (60) days after the Execution Date, PacifiCorp shall submit one or more filings to the Commission for the Commission Approval. If the Commission (a) 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 (i) the Commission Approval Deadline or (ii) 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 day thirty (30) days after the occurrence of clause (i) or (ii), 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 2.1.2, 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 the failure of the Commission to grant the Commission Approval (x) by the Commission Approval Deadline or (y) in form and substance 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 Facility and delivery of Product by the Scheduled Commercial Operation Date is critically important. Therefore, Seller must achieve each of the Project Milestones specified in Exhibit N on or before 16:00 hours Local Time on the date specified for each Project Milestone in Exhibit N, as such dates may be adjusted pursuant to Section 2.2.4. 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.

2.2.2 Completion of Commercial Operation. Seller must provide notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation in accordance with the requirements of the definition of Commercial Operation, which notice shall include the Nameplate Capacity Rating of the Generating Facility (which shall not be less than the Required Percentage of the Expected Nameplate Capacity Rating), 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 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, or responds informing Seller that PacifiCorp agrees that Commercial Operation has been achieved, 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 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 and resubmit a notice to PacifiCorp stating that Seller believes that the Facility has achieved Commercial Operation and the process set forth in this Section 2.2.3 shall repeat. 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. In the event the Facility achieves Commercial Operation with less than the Expected Nameplate Capacity Rating (but with a Nameplate Capacity Rating of not less than the Required Percentage of the Expected Nameplate Capacity Rating) the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall all be proportionally reduced based on the Nameplate Capacity Rating of the Generating Facility (which shall not be less than the Required Percentage of the Expected Nameplate Capacity Rating) at the time of the Commercial Operation Date and the Parties' mutual satisfaction that the Facility has achieved Commercial Operation, and Exhibit A shall be amended to reflect such changes.

2.2.3 Subsequent Increase in Nameplate Capacity Rating. If Commercial Operation is achieved at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating (but at least equal to or greater than the Required Percentage of the Expected Nameplate Capacity Rating and the Storage Power Capacity Rating of the Storage Facility is at least equal to or greater than the Guaranteed Storage Power Capacity Rating) in accordance with Section 2.2.2 (the "Initial Nameplate Capacity Rating") and Seller informs PacifiCorp in writing within five (5) Business Days of the Commercial Operation Date that Seller intends to increase the Nameplate Capacity Rating of the Facility up to but not in excess of one hundred percent (100%) of the Expected Nameplate Capacity Rating (the "Increased Nameplate Capacity Rating"), then Seller shall provide PacifiCorp, no later than ten (10) Business Days after the Commercial Operation Date, with a list of all items to be completed in order to achieve Final Completion at the Increased Nameplate Capacity Rating (the "Final Completion Schedule"). All items on the Final Completion Schedule must be completed and certified as completed by an authorized officer of Seller, and Seller must provide PacifiCorp with certificates and documentation described in the definition of Commercial Operation, *mutatis mutandis*, with respect to the remaining capacity that is required to bring the Facility to the Increased Nameplate Capacity Rating and to demonstrate that the Facility can operate at one hundred percent (100%) of the Increased Nameplate Capacity Rating on or before the ninetieth (90th) day after the Commercial Operation Date. If (a) on the ninetieth (90th) day after the Commercial Operation Date (the "Cut-off Date"), not all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller is unable to provide certificates and documents as described above bringing the Facility to a Nameplate Capacity Rating above the Initial Nameplate Capacity Rating and demonstrating that the Facility can

operate at an increased Nameplate Capacity Rating above the Initial Nameplate Capacity Rating or (b) a Final Completion Schedule is not provided to PacifiCorp within ten (10) Business Days following the Commercial Operation Date, then, in each case, the date of Final Completion shall be the same as the Commercial Operation Date, the Nameplate Capacity Rating will be the Initial Nameplate Capacity Rating, and for all purposes of this Agreement the Facility shall include only the equipment and facilities which were part of the Facility that achieved Commercial Operation on the Commercial Operation Date, and the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall remain as determined pursuant to Section 2.2.2 based on the Initial Expected Nameplate Capacity. If on the Cut-off Date not all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller is unable to provide certificates and documents as described above to bring the Facility to the Increased Nameplate Capacity Rating and to demonstrate that the Facility can operate at one hundred percent (100%) of the Increased Nameplate Capacity Rating, but Seller provides such certificates and documents with respect to any incremental capacity to bring the Facility to a Nameplate Capacity Rating above the Initial Nameplate Capacity Rating and to demonstrate that the Facility can operate at an increased Nameplate Capacity Rating above the Initial Nameplate Capacity Rating, (the “Final Nameplate Capacity Rating”) then Seller shall be deemed to have achieved Final Completion at the Final Nameplate Capacity Rating, the Nameplate Capacity Rating will be the Final Nameplate Capacity Rating, and the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall all be proportionally increased based on the Final Nameplate Capacity Rating determined above, and Exhibit A shall be amended to reflect such changes, and within ten (10) Business Days after the Cut-off Date Seller shall deliver to PacifiCorp a replacement Default Security based on the Final Nameplate Capacity Rating. If on the Cut-off Date all items on the Final Completion Schedule are completed and certified as completed by an authorized officer of Seller, and Seller is able to provide certificates and documents as described above to demonstrate that the Facility can operate at one hundred percent (100%) of the Increased Nameplate Capacity Rating, then Seller shall be deemed to have achieved Final Completion at the Increased Nameplate Capacity Rating, the Nameplate Capacity Rating will be the Increased Nameplate Capacity Rating, and the Expected Annual Net Output, the Expected Monthly Net Output, the Expected Hourly Net Output, the Expected Nameplate Capacity Rating and the Maximum Delivery Rate shall all be proportionately increased based on the Increased Nameplate Capacity Rating determined above, and Exhibit A shall be amended to reflect such changes, and within ten (10) Business Days after the Cut-off Date Seller shall deliver to PacifiCorp a replacement Default Security based on the Increased Nameplate Capacity Rating.

2.2.4 Completion of Other Project Milestones. Within thirty (30) days of completion of each Project Milestone (other than the Commercial Operation Date) 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 PacifiCorp may reasonably request demonstrating Seller’s 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 PacifiCorp informs Seller in writing within such fifteen (15) Business Day period that PacifiCorp believes the Project Milestone has not been achieved, identifying the specific areas of deficiency, then, unless Seller disputes such information from PacifiCorp, in which case Seller may submit the matter for dispute resolution in accordance with Section 24, Seller must address the deficiencies stated in PacifiCorp's notice to the reasonable satisfaction of PacifiCorp and resubmit a notice to PacifiCorp stating that Seller believes that the Project Milestone has been achieved and the process set forth in this Section 2.2.4 shall repeat. If any Project Milestone (other than the Commercial Operation Date) 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 the Commercial Operation Date by the Scheduled Commercial Operation Date. If Seller complies with the preceding sentence, including undertaking any remedial action to ensure the timely achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date, then no failure of Seller to achieve a Project Milestone (other than the Commercial Operation Date) on or before the scheduled date in Exhibit N will constitute an Event of Default.

2.3 Delay Damages. If the Commercial Operation Date is not achieved on or before the Scheduled Commercial Operation Date (as such date may be adjusted pursuant to Section 2.2.1), 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 Commercial Operation Date.

2.4 Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's delay in achieving the Commercial Operation Date by the Scheduled Commercial Operation Date (as such date may be adjusted pursuant to Section 2.2.1) 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 the Commercial Operation Date by the Scheduled Commercial Operation Date.

2.5 Damages Invoicing. By the tenth (10th) day following the end of the month in which Delay Damages begin to accrue and continuing on the tenth (10th) 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 Facility, including (a) any significant developments or delays in achieving Commercial Operation by the Scheduled Commercial Operation Date, (b) the percentage completion of the 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 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 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 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 PacifiCorp Representatives with respect to the acquisition, design, financing, engineering, construction, installation, start-up and testing of the Facility.

2.7 Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Term associated with Seller's or the Facility's eligibility to receive PTCs, ITCs or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product from the Facility is eligible for, or receives, or the Facility qualifies for, PTCs, ITCs or other Tax Credits or 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; (b) has (or will have prior to the Commercial Operation Date) all required legal authority to make wholesale sales of energy from the Facility; and (c) has the power and authority to own and operate the Facility and be present upon the Premises for the Term.

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

3.2.4 No Contravention. The execution and delivery of this Agreement 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 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 Product. Effective as of the first date of delivery of Product to PacifiCorp and thereafter throughout the Term, Seller shall hold all legal and contractual rights sufficient to enable Seller to deliver Product to PacifiCorp in accordance with the terms and conditions of this Agreement.

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

memoranda of real property interests recorded in connection with the development of the Facility.

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

3.2.10 Eligible Contract Participant. Seller, and any Qualifying Person providing a Guaranty, 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 Renewable Claims. Seller has at all times complied with the Federal Trade Commission requirements set forth in 16 CFR Part 260, Section 260.15 in any communications concerning the Product that have or may be generated from the Facility. Except as permitted by Section 4.3, Seller has not claimed, and will not claim, the Green Tags, Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes of the Output or the Facility as belonging to Seller or any of its Affiliates and is not aware of any such claims made by third parties with respect to the Output or the Facility.

3.2.13 No Third Party Sales. Seller has not sold, or entered into any contract or agreement to sell, to any Person (other than PacifiCorp pursuant hereto) all or any portion of the Product. Except as permitted by Section 4.3, Seller will not sell, or enter into any contract or agreement to sell, to any Person (other than PacifiCorp pursuant hereto) all or any portion of the Product.

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

3.2.15 Eagle Take Permit Application. Prior to delivery of the FNTP, Seller shall have performed all necessary pre-construction surveys, coordinated with applicable Governmental Authorities, and applied to the U.S. Fish and Wildlife Service for an incidental eagle take permit for the taking of eagles for the operation (including commissioning) of the Facility, reasonable evidence of which Seller shall provide to PacifiCorp prior to the delivery of the FNTP.

3.2.16 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 3.2.16. 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 3.2.16 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.

3.2.17 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 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 3.2.17. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.17 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.

3.2.18 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 as

defined by U.S. federal Requirements of Law, including the Uyghur Forced Labor Prevention Act (collectively, the “Prohibited Vendors”). 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 3.2.18. For the avoidance of doubt, Seller shall not be in breach of this Section 3.2.18 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.

3.2.19 Supply Chain Audit. If requested by PacifiCorp in writing within thirty (30) days of satisfying the second and third Project Milestones (i.e., Execute Purchase Agreement for Major Equipment and Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement), then 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 3.2.18 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 3.2.18, 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 DELIVERIES OF NET OUTPUT

4.1 Purchase and Sale. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive all rights, title and interest that Seller has in and to the Product in accordance with the terms herein. Notwithstanding anything

to the contrary contained in this Agreement, PacifiCorp shall be under no obligation: (a) to make any purchase hereunder other than Product; (b) to purchase, receive or pay for Net Output delivered to the Point of Delivery in any hour in excess of the Maximum Delivery Rate; (c) to purchase, receive or pay for Wrongfully Delivered Energy or Excess Charging Energy; (d) to purchase or pay for Discharging Energy or to receive Discharging Energy that is not delivered to the Point of Delivery; or (e) except as provided in Section 4.5.2, to purchase, receive or pay for Net Output that is not delivered to the Point of Delivery or the Storage Facility Metering Point, as applicable. In addition, during the ninety (90)-day period prior to the Scheduled Commercial Operation Date, Seller may sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, all Net Output and Green Tags from the Facility as test energy at the price specified in Section 5.1.1.

4.2 Designation as Network Resource; Termination Right.

4.2.1 Within five (5) Business Days following the Execution Date, PacifiCorp will submit an application to the Network Service Provider requesting designation of this Agreement as a Network Resource under PacifiCorp's agreement for Network Integration Transmission Service with the Network Service Provider with a commencement date for Network Integration Transmission Service of one hundred twenty (120) days prior to the Scheduled Commercial Operation Date (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 PacifiCorp may, in its sole discretion, terminate this Agreement upon not less than thirty (30) days prior written notice thereof to Seller (the "DNR Termination Notice") if within two hundred ten (210) days after the Execution Date (the "DNR Cut-off Date"): (a) 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)⁸ (the "DNR Cost Threshold"); or (b) the Network Service Provider fails to provide PacifiCorp with written notice either that: (i) no transmission service study will be necessary in connection with granting the DNR Request; or (ii) it has completed the final transmission service study and determined that the DNR Costs required in order to grant the DNR Request are not in excess of the DNR Cost Threshold. In order to exercise its termination right pursuant to this Section 4.2.2, PacifiCorp must deliver the DNR Termination Notice to Seller within ten (10) Business Days after the DNR Cut-off Date.

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 issued by PacifiCorp pursuant to

⁸ NTD: The DNR Cost Threshold to be negotiated by the Parties for Generating Facilities with an Expected Nameplate Capacity Rating of 20 MW or less.

Section 4.2.2(a) (but not Section 4.2.2(b)) 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.

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

4.4 Delivery Responsibilities.

4.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Seller shall supply and deliver the Product to PacifiCorp at the Point of Delivery (other than Charging Energy which shall be delivered at the Storage Facility Metering Point and Green Tags which shall be delivered pursuant to Section 4.7).

4.4.2 Title and Risk of Loss of Net Output. Seller warrants that all Product delivered to PacifiCorp shall be free and clear of all liens, claims and encumbrances of any nature or kind (other than liens, claims or encumbrances created or granted by PacifiCorp). Title

to and risk of loss of all Net Output and Discharging Energy shall transfer from Seller to PacifiCorp upon its delivery to PacifiCorp at the Point of Delivery. Seller shall be in exclusive control of, and responsible for, any damage or injury caused by, all Output and Discharging Energy up to and at the Point of Delivery. PacifiCorp shall be in exclusive control of, and responsible for, any damages or injury caused by, Net Output and Discharging Energy after the Point of Delivery.

4.5 Curtailement.

4.5.1 Non-Compensable Curtailement. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, Net Output not delivered to the Point of Delivery or Storage Facility Metering Point due to any of the following (collectively, “Non-Compensable Curtailement”): (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement; (b) the Facility is not fully integrated or synchronized with the System; (c) any direction to Seller by the Market Operator, Network Service Provider, Transmission Provider, Interconnection Provider or PacifiCorp (in its merchant function capacity and acting at the direction of the Market Operator, Network Service Provider, Transmission Provider or Interconnection Provider) to curtail Net Output: (i) to effectuate a reduction in transmission service by Transmission Provider as provided for under Transmission Provider’s Tariff; (ii) to effectuate a reduction in interconnection service by the Interconnection Provider as provided for under the Generation Interconnection Agreement; (iii) to maintain compliance with NERC, WECC or similar national or regional reliability standard requirements; or (iv) to remedy any condition or situation: (A) that in the judgment of the party making the claim is imminently likely to endanger life or property; or (B) that Transmission Provider determines in a non-discriminatory manner is imminently likely to cause a material adverse effect on the security of, or damage to Transmission Provider’s System, Transmission Provider’s or Interconnection Provider’s interconnection facilities or the electric systems of others to which the Transmission Provider’s System is directly connected; or (d) an event of Force Majeure that prevents either Party from delivering or receiving Net Output; provided that, consistent with Section 6.15.2(c), during any Non-Compensable Curtailement, so long as the Stored Energy Level is less than one hundred percent (100%) and the Storage Facility is capable of receiving Charging Energy, PacifiCorp will use commercially reasonable efforts to direct Charging Energy to the Storage Facility at the maximum rate for delivering Charging Energy, prior to ramping down the Generating Facility in response to the Non-Compensable Curtailement, provided further that PacifiCorp will not have liability to Seller for failure to direct Charging Energy to the Storage Facility at the maximum rate for delivering Charging Energy, prior to ramping down the Generating Facility as provided for above.

4.5.2 Curtailed Amounts. Seller will reasonably determine the MWh amount of Non-Compensable Curtailement (“Non-Compensable Curtailement Energy”) and Compensable Curtailement (“Compensable Curtailement Energy”) based on the amount of Potential Net Output that could have been but was not generated at the Generating Facility and delivered to PacifiCorp at the Point of Delivery as Net Output because of Non-Compensable Curtailement or Compensable Curtailement. For the avoidance of doubt, Compensable Curtailement Energy shall not include any Net Output that Seller is capable of delivering at the Point of Delivery at any

specific time but that is actually delivered to the Storage Facility. Seller must promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably request to confirm to its reasonable satisfaction the amount of any Non-Compensable Curtailment Energy or Compensable Curtailment Energy. Any disputes between the Parties with respect to the amount or calculation of Compensable Curtailment Energy or Non-Compensable Curtailment Energy will be resolved in accordance with Section 24; provided, however, that the provisions in the definition of Potential Net Output shall control with respect to any dispute between the Parties with respect to the amount or calculation of Potential Net Output. For the avoidance of doubt, Wrongfully Delivered Energy shall not be considered Compensable Curtailment Energy.

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

4.7 Green Tags.

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

4.7.2 Documentation. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Seller must, at its own cost and expense, cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e Program (or such successor program) throughout the Term. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its own cost and expense, effectuate the transfer of WREGIS Certificates to PacifiCorp in accordance with the WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form then used by PacifiCorp (a copy of which PacifiCorp will provide to Seller) or elect to retain a third party or act as its own WREGIS-defined Qualified Reporting Entity. Unless the failure to deliver WREGIS Certificates was caused by an action of PacifiCorp not acting in its capacity as Qualified Reporting Entity under the Qualified Reporting Entity Services Agreement, PacifiCorp shall be entitled to a refund of the Green Tags Price Component of Green Tags associated with any Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tags back to Seller, provided that Seller shall have thirty (30) days to correct any error and deliver such WREGIS Certificates to PacifiCorp or provide such refund payment. Seller shall promptly provide PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by a Governmental Authority, upon notification by such Governmental Authority that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded.

4.7.3 Publicity. Except as permitted under Section 4.3, Seller shall not make any public statement or report under any program that any of the Green Tags purchased by PacifiCorp hereunder belong to any Person other than PacifiCorp. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registered the Facility by providing copies of all such information as PacifiCorp reasonably requires for such registration.

4.7.4 Renewable Claims. Seller will comply with the Federal Trade Commission requirements set forth in 16 CFR Part 260, Section 260.15 in any communications concerning the Output, the Facility and the Green Tags that are or may be generated from the Facility. Except as permitted under Section 4.3, Seller will not claim the Green Tags, Environmental Attributes or other “renewable energy,” “green energy,” “clean energy” or similar attributes of the Output or the Facility as belonging to Seller or any Seller Affiliate.

4.7.5 Compliance Costs. Notwithstanding anything in this Agreement to the contrary, if after the Execution Date there is a change in the Requirements of Law, the requirements of WREGIS, the requirements of the Center for Resource Solution’s Green-e Program, or PacifiCorp elects to utilize an additional program pursuant to Section 4.7.3, and Seller reasonably concludes that as a result of such change or participation in such additional program it may incur increased costs and expenses to comply with its obligations in Section 4.7.2 and Section 4.7.3 (“Compliance Costs”) in excess of Ten Thousand Dollars (\$10,000) in any Contract Year (the “Compliance Cost Cap”), then Seller shall provide PacifiCorp with a notice itemizing such excess Compliance Costs above the Compliance Cost Cap. PacifiCorp shall evaluate such notice and either: (a) agree to reimburse Seller for such Compliance Costs above the Compliance Cost Cap; or (b) waive Seller’s obligation to comply with such change or participate in such additional program to the extent such inability to comply with such change or participation in such additional program results from failing to expend amounts for Compliance Costs in excess of the Compliance Cost Cap.

4.8 Capacity Rights; Ancillary Services.

(a) For and in consideration of PacifiCorp’s agreement to purchase from Seller the Net Output, Storage Energy Capacity and Green Tags on the terms and conditions set forth herein, Seller shall transfer to PacifiCorp, and PacifiCorp shall accept from Seller, all right, title, and interest that Seller may have in and to Capacity Rights, if any, and Ancillary Services, if any, existing during the Term, except as provided in Section 4.3.

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

(c) Nothing in this Section 4.8 shall require Seller (i) to make or pay for any physical modifications to the Facility (including the installation of additional equipment) or the

design of the Facility, (ii) to make or pay for physical modifications or upgrades to any interconnection and transmission facilities, or (iii) to modify the operation of the Facility.

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

SECTION 5 CONTRACT PRICE; COSTS

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

5.1.1 Deliveries Prior to the Commercial Operation Date. Beginning no earlier than one hundred twenty (120) days before the Scheduled Commercial Operation Date, PacifiCorp will pay Seller for Net Output delivered at the Point of Delivery or the Storage Facility Metering Point before the Commercial Operation Date, an amount per MWh equal to the lower of: (a) eighty-five percent (85%) of the Firm Market Price Index for the applicable hour on the applicable day in the applicable month; and (b) eighty-five percent (85%) of the Contract Price; provided, however, that Seller's right to receive payment for energy deliveries under this Section 5.1.1 is subject to PacifiCorp's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller.

5.1.2 Deliveries On and After the Commercial Operation Date. For the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp will pay to Seller: (a) the Contract Price per MWh of Net Output delivered at the Point of Delivery and the Storage Facility Metering Point; (b) the Compensable Curtailment Price per MWh of Compensable Curtailment Energy; and (c) for each month, the Storage Price per MW of the Storage Power Capacity Rating for such month.

5.1.3 Non Compensable Deliveries. PacifiCorp shall not be required to accept from Seller or pay Seller for: (a) any Non-Compensable Curtailment Energy; (b) Net Output delivered at the Point of Delivery in any hour in excess of the Maximum Delivery Rate; or (c) Excess Charging Energy or Wrongfully Delivered Energy. Notwithstanding any provision to the contrary contained in this Agreement, in no event shall PacifiCorp be required to pay for Discharging Energy, it being acknowledged and agreed by the Parties that compensation for Discharging Energy is included in the Contract Price for Net Output that is payable upon delivery to the Storage Facility Metering Point (in the form of Charging Energy).

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output and Discharging Energy up to and at the Point of Delivery, including (a) transmission costs, transmission line losses and any costs or charges imposed in connection with scheduling and delivery of Charging Energy to the Storage Facility Metering Point and Net Output and Discharging Energy up to and at the Point of Delivery and (b) transmission costs, transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider or

Transmission Provider in connection with scheduling and delivery of Charging Energy to the Storage Facility Metering Point, and Net Output and Discharging Energy up to and at the Point of Delivery. 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 the receipt of Net Output at the Point of Delivery and the scheduling and delivery of Net Output and Discharging Energy from the Point of Delivery, 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 Facility, including all costs and expenses associated with the interconnection of the Facility with the System.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, station service required for the Facility. Seller shall not use Output to provide station service for the 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); provided, that Seller may use Output (but not Discharging Energy) to satisfy station service load of the Generating Facility (as specified in Section VII of Exhibit A).

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Product up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Product beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. All Net Output and Discharging Energy delivered by Seller to PacifiCorp hereunder shall be sales for resale, with PacifiCorp reselling such Net Output and Discharging Energy. The Contract Price, Compensable Curtailment Price and 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 Facility in compliance with existing and future Requirements of Law and the terms and conditions of this Agreement; and (b) all taxes and charges (however characterized) now existing or later imposed on or with respect to the Facility and its operation, including any tax or charge (however characterized) payable by a generator of Environmental Attributes.

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

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, provided that in no event shall such updated Exhibit B result in any change to Exhibit A, unless such change is required pursuant to Section 2.2.2 or Section 2.2.3. The Facility, as reflected in the As-Built Supplement to be provided under this Section, may not: (a) have a Nameplate Capacity Rating that exceeds the Expected Nameplate Capacity Rating; (b) have a Storage Power Capacity Rating that is less than the Guaranteed Storage Power Capacity Rating; or (c) result in the increase of the Maximum Delivery Rate. Seller may not modify the Facility, whether by replacement or modification of the Facility equipment or related infrastructure or otherwise, in a manner that materially alters the As-Built Supplement without PacifiCorp’s prior written approval (which approval may not be unreasonably withheld, conditioned or delayed), provided that PacifiCorp shall not be required to approve any modification of the Facility that results or is reasonably likely to result in the Facility violating Section 6.1(a), (b) or (c) above, provided, further, that in no event shall PacifiCorp be required to (i) purchase any Net Output at a rate above the Expected Nameplate Capacity Rating or the Maximum Delivery Rate delivered in any hour to the Point of Delivery or (ii) to purchase any Storage Energy Capacity above the Guaranteed Storage Power Capacity Rating, in each case, as a result of any such modification to the Facility.

6.2 Standard of Facility Construction and Operation.

6.2.1 General. At Seller’s sole cost and expense, Seller shall operate, maintain and repair the Facility in accordance with: (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and other Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements

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

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

6.3 Interconnection. Seller is responsible for the costs and expenses associated with obtaining from Interconnection Provider interconnection service for the Facility at the Expected Nameplate Capacity Rating. Seller has no claims under this Agreement against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of Transmission Provider or Interconnection Provider, acting in such capacities, in connection with the Generation Interconnection Agreement or otherwise.

6.4 Coordination with System. Seller's delivery of electricity to PacifiCorp under this Agreement must be at a voltage, phase, power factor, and frequency as 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.

6.5 Outages.

6.5.1 Planned Outages. Seller must provide PacifiCorp with an annual forecast of Planned Outages for the Generating Facility and 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 or the Facility equipment manufacturer recommendations (but only to the extent compliance with the Facility equipment manufacturer recommendations was not reasonably foreseeable at the time the annual forecast was provided). 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 Generating Facility or 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, the Storage Operating Procedures and the Facility equipment manufacturer recommendations 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 Net Output of the Generating Facility or the amount of the Storage Power Capacity Rating or Storage Energy Capacity of the Storage Facility, in each case, 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 Generating Facility or the Storage Facility. Once the Maintenance Outage has commenced, Seller must keep PacifiCorp apprised of any changes in the Net Output or Storage Power Capacity Rating or Storage Energy Capacity available from the Generation Facility and the Storage Facility, respectively, 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 (i) of the Generating Facility resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Generating Facility being unavailable or (ii) 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 Net Output and Storage Power Capacity Rating or Storage Energy Capacity of the Generating Facility and Storage Facility, respectively, that will not be available because of the Forced Outage and the expected return date of such Net Output or Storage Power Capacity Rating or Storage Energy Capacity. Seller must promptly update the report as necessary to advise PacifiCorp of any changed circumstances. As soon as practicable, any oral report must be confirmed in writing to PacifiCorp. Seller shall take all reasonable actions consistent with the Generation 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 Nameplate Capacity Rating of the Generating Facility or 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.

6.5.5 Effect of Outages on Estimated Output. Seller represents and warrants that the Expected Annual Net Output, the Expected Monthly Net Output and the Expected Hourly Net Output provided in Exhibit A take into account the Planned Outages, Maintenance Outages, Forced Outages and deratings that Seller reasonably expects to encounter in the ordinary course of operating the Generating Facility and the Storage Facility.

6.6 Scheduling.

6.6.1 Cooperation and Standards. During the Term, PacifiCorp shall have the exclusive right to schedule or designate the Generating Facility to deliver the Net Output in accordance with the requirements of this Agreement. With respect to any and all scheduling requirements, (a) Seller must cooperate with PacifiCorp with respect to scheduling Net Output 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. At Seller's cost and expense (not to exceed Ten Thousand Dollars (\$10,000) in any Contract Year), PacifiCorp will solicit and obtain from a qualified renewable energy production forecasting vendor selected by PacifiCorp forecast data and information with respect to the Facility, including day-ahead and real-time forecasting services and provision of real-time meteorological data necessary for compliance with applicable Electric System Authority procedures, protocols, rules and testing. Such vendor shall also be responsible for determining the amount of Potential Net Output, as further described in the definition of Potential Net Output. Seller shall, at its cost and expense, make available to such vendor and any vendor mutually agreed to by the Parties pursuant to the definition of Potential Net Output such information with respect to the operation and performance of the Facility, including real-time meteorological data with respect to the Premises collected pursuant to Section 9.7, as such vendor may reasonably request in order to perform in accordance with this Section 6.7 or the definition of Potential Net Output, as the case may be. In addition to any notice required by Section 6.5, Seller must provide to PacifiCorp day-ahead notice of any Planned Outage, Maintenance Outage or deratings of the Generating Facility or Storage Facility. Seller must provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current

status of the Facility. PacifiCorp will present Seller with an invoice and documentation supporting the costs of obtaining such forecasting data and information. Seller must pay the amount stated on the invoice within fifteen (15) days of receipt. PacifiCorp reserves the right to change the forecasting vendor in its sole discretion during the Term.

6.8 Cybersecurity Requirements. Seller shall comply with the cybersecurity requirements identified in Exhibit X.

6.9 Electronic Communications.

6.9.1 AGC.

(a) Beginning on the Commercial Operation Date, PacifiCorp will dispatch the 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 in writing by the Parties.

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

(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 Facility control system manufacturer's set point margin of error.

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

(e) Seller will allow PacifiCorp access to its distributed control system and comply with all applicable NERC and WECC critical infrastructure protection requirements.

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

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

- (e) such information with respect to the Storage Facility as is required pursuant to Exhibit P.

Commencing on the date of initial deliveries of Net Output under this Agreement, Seller must also transmit or otherwise make accessible to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including Net Output data. Such real time data must be made available to PacifiCorp on the same basis as Seller receives the data (e.g., if Seller receives the data in four second intervals, PacifiCorp must also receive the data in four second intervals). If Seller uses a web-based performance monitoring system for the Facility, Seller must provide PacifiCorp access to Seller's web-based performance monitoring system.

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

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

6.10 Reports and Records.

6.10.1 Electronic Fault Log. Seller must maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the 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 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 Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller must use 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 Facility, Seller must promptly provide to PacifiCorp a copy of the same.

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

6.10.7 Notice of Material Adverse Events. Seller must promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility, or Seller's ability to develop, construct, operate, maintain or own the Facility 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 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 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 with respect to the diversity and such other applicable criteria as PacifiCorp may reasonably identify 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 Facility, including the information, reports, documents and certifications provided for in Exhibit R. 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 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 Facility, including testing with respect to the Performance Guarantee, Storage Availability and Storage Power Capacity Rating; 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 Facility, except to the extent such Liabilities are caused by the intentional or negligent act or omission of Seller or its Affiliates or their respective employees, agents and representatives.

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

Requirements of Law relating to workplace health and safety. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

6.14 Performance Guarantee. If Seller fails to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit F, then Seller shall be liable to PacifiCorp for the Performance Damages calculated and paid in accordance with Exhibit F. The invoice for such Performance Damages shall include a written statement explaining in reasonable detail the calculation of such Performance Damages in accordance with Exhibit F. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's failure to satisfy the Performance Guarantee is difficult or impossible to predict with certainty; (b) it is impractical and difficult to assess actual damages in these circumstances; and, therefore, (c) Performance Damages as agreed to by the Parties are a fair and reasonable calculation of damages and not a penalty. Except in the case of an Event of Default pursuant to Section 11.1.2(i), Performance Damages shall be PacifiCorp's sole remedy for Seller's failure to satisfy the Performance Guarantee in accordance with the requirements set forth in Exhibit F.

6.15 Storage Facility Charging, Discharging and Testing.

6.15.1 Operation and Maintenance of the Storage Facility. In addition to and not in limitation of its other obligations under this Agreement to operate and maintain the Facility, including the Storage Facility, during the Term, Seller shall operate, maintain and repair the Storage Facility to be capable to charge or discharge the Storage Facility 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 Generating Facility 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 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 Output) and discharge the Storage Facility in strict compliance with PacifiCorp's Charging Notices and Discharging Notices, provided that in no event shall Seller charge the Storage Facility other than from Output.

(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. If during the Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or Storage Operating Procedures or (ii) except as permitted under the Storage Operating Procedures, charges the Storage Facility without PacifiCorp providing a Charging Notice (“Excess Charging Energy”), then, in each case: (A) Seller shall be responsible for all costs and expenses associated with such Excess Charging Energy; (B) PacifiCorp shall not be required to pay for such Excess Charging Energy; and (C) PacifiCorp shall be entitled to discharge such Excess Charging Energy and to all of the benefits (including Storage Product) associated with discharging such Excess Charging Energy.

(c) If and to the extent Net Output cannot be delivered to the Point of Delivery because of Non-Compensable Curtailment, then PacifiCorp will use commercially reasonable efforts consistent with the Storage Operating Procedures and the other requirements of this Agreement to schedule the Storage Facility to accept Charging Energy in an amount equal to the lesser of (i) the Non-Compensable Curtailment Energy associated with such Non-Compensable Curtailment and (ii) the amount of Charging Energy that the Storage Facility is capable of receiving to achieve a Stored Energy Level of one hundred percent (100%), provided that notwithstanding any provision to the contrary contained in this Agreement in no event shall PacifiCorp be in breach or default of this Agreement or have any liability to Seller if PacifiCorp fails to schedule the Storage Facility to accept such Charging Energy.

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 an Event of Default when Seller is the Defaulting Party; 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 an Event of Default when Seller is the Defaulting Party; 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 or the Network Service Provider.

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 Output, Net Output, Charging Energy and Discharging Energy, as the case may be.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment provided for in this Section 9, without PacifiCorp assuming any obligations of Seller under this Section 9. If any of the inspections or tests disclose an error exceeding one half of one percent (0.5%), either fast or slow, then the necessary corrections based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, then the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other Person, pursuant to or under the Generation Interconnection Agreement.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall be responsible for all costs and expenses relating to all metering equipment installed to accommodate Seller's Facility. The actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp, unless upon such additional inspection or testing the metering equipment is found to register inaccurately by more than the allowable limits established in Section 9.3, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

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

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter dedicated to the Facility and only the Facility.

9.7 Meteorological Data. No later than the Commercial Operation Date, Seller shall install, own, inspect, test and maintain during the Term three (3) industry approved remote sensing devices at the Premises in accordance with Prudent Electrical Practice. The sensing devices required pursuant to this Section 9.7 shall, at a minimum, record the meteorological and other data with respect to the Facility and the Premises consistent with Exhibit O. Seller shall bear all costs relating to performance of its obligations under this Section 9.7, provided that the actual expense of any PacifiCorp-requested additional inspection or testing shall be borne by PacifiCorp. At Seller's cost and expense, Seller shall maintain all data obtained from the remote sensing devices for a period of at least two (2) years and shall make all such data available to (a) the vendor selected pursuant to Section 6.7 on a real time basis and (b) PacifiCorp and PacifiCorp Representatives and any vendor mutually agreed to by the Parties pursuant to the definition of Potential Net Output upon written request.

SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month during the Term, Seller shall deliver to PacifiCorp an invoice showing the total amount due for all Product delivered or made available to PacifiCorp in such month in accordance with Section 5, including Seller's computation of, as applicable: (a) the Net Output delivered to the Point of Delivery and the Storage Facility Metering Point during such month, including the portion of Net Output that was delivered during On-Peak Hours and Off-Peak Hours, and any Performance Damages during such month; (b) the Compensable Curtailment Energy, if any, and Non-Compensable Curtailment Energy, if any, during such month; (c) the Storage Availability of the Storage Facility and any Storage Availability Damages during such month; (d) the Storage Round Trip Efficiency of the Storage Facility and any Storage Round Trip Efficiency Damages during such month; and (e) the Storage Power Capacity Rating of the Storage Facility and any Storage Power Capacity Damages during such month. For purposes of calculating payments under this Agreement, Net Output will be equal to the sum of (i) the amount of energy delivered and metered at the Point of Delivery, less Wrongfully Delivered Energy, plus (ii) the amount of Charging Energy delivered and metered at the Storage Facility Metering Point, less Discharging Energy and Excess Charging Energy. Subject to Section 10.4, PacifiCorp shall pay each invoice on or before the later of (x) the twentieth (20th) day following receipt of such invoice or (y) the thirtieth (30th) 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 breach is not cured within thirty (30) days after the other Party gives the Defaulting Party notice of such breach; provided, however, that if such breach 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 breach, not to exceed ninety (90) days following the date of such notice of breach, provided that the Defaulting Party provides to the other Party a remediation plan within fifteen (15) days following the date of such notice of breach 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 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 Output or any Product from the 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 breach, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, and Seller does not permanently cease and correct such public statement or action within ten (10) days after PacifiCorp gives notice to Seller of such breach.

(d) [Reserved].

(e) After the Commercial Operation Date, Seller fails to obtain or maintain any Required Facility Documents necessary to own or operate the 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 Facility and such Abandonment continues for thirty (30) days after PacifiCorp gives notice to Seller of such Abandonment.

(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) The Generating Facility fails to satisfy the requirements of the Performance Guarantee for two (2) consecutive Measurement Periods, notice of which PacifiCorp provides to Seller.

(j) the Storage Power Capacity Rating of the Storage Facility determined pursuant to Exhibit T is less than 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 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 the Guaranteed Storage Round Trip Efficiency for two (2) consecutive Contract Years.

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

11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. If Seller sells, delivers or transfers Output or any Product from the Facility to a Person other than PacifiCorp in breach of Section 4.3 or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c), then Seller shall pay PacifiCorp within five (5) Business Days after receipt of an invoice from PacifiCorp, an

amount equal to the sum of (as applicable): (a) the sum for each hour during which Seller sells, delivers or transfers Output or any Product from the Facility to a Person other than PacifiCorp in breach of Section 4.3 of (i) PacifiCorp's Cost to Cover for such hour multiplied by (ii) the Net Output delivered to a Person other than PacifiCorp during such hour; (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as determined by PacifiCorp in its sole discretion; (c) damages incurred by PacifiCorp as a result of the failure of Seller to sell and deliver Capacity Rights 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); (d) damages incurred by PacifiCorp as a result of (i) the failure of Seller to sell and deliver Green Tags in accordance with this Agreement or (ii) Seller making a public statement or otherwise taking an action that any Governmental Authority or the Center for Resource Solutions determines is a retirement, double counting, double sale, double use or double claim of Green Tags, including upon the occurrence and during the continuation of an Event of Default by Seller under Section 11.1.2(c), which shall be calculated based on the applicable Green Tags Price Component; and (e) any additional cost or expense incurred as a result of Seller's breach of Section 4.3 or an Event of Default by Seller pursuant to Section 11.1.2(c), as reasonably determined by PacifiCorp. PacifiCorp's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.1 shall limit in any respect PacifiCorp's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 11.3.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to purchase and receive any Net Output or pay Seller for any Compensable Curtailment Energy as and when required by this Agreement, including upon the occurrence and during the continuation of an Event of Default by PacifiCorp under Section 11.1.3, and such failure is not caused by Seller's breach of its obligations under this Agreement or otherwise excused by Seller's failure to perform under or comply with this Agreement or the terms of this Agreement, then PacifiCorp shall pay Seller within five (5) Business Days after receipt of an invoice from Seller, an amount equal to Seller's Cost to Cover. Seller's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Nothing in this Section 11.2.2 shall limit in any respect Seller's right to terminate this Agreement and exercise its other rights and remedies in connection therewith pursuant to Section 11.3. For the avoidance of doubt, this provision shall not apply with respect to any Compensable Curtailment Energy which is paid for by PacifiCorp in accordance with the terms of this Agreement.

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 Defaulting 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 Net Output. If PacifiCorp terminates this Agreement in accordance with Section 11 due to an Event of Default by Seller, then neither Seller nor any Affiliate of Seller may sell, or enter into a contract to sell, any Output, Green Tags, Capacity Rights or Ancillary Services generated by, associated with or attributable to the Facility or any electric generating 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 sell the Output, Green Tags, Capacity Rights and Ancillary Services to PacifiCorp at the rate set forth in this Agreement and otherwise on terms and conditions substantially and in all material respects the same as the terms and conditions in this Agreement and PacifiCorp fails to accept such offer within (a) forty-five (45) days after PacifiCorp’s receipt of such offer if this Agreement had originally been terminated by PacifiCorp after the commencement of construction of the Facility, and (b) one hundred twenty (120) days after PacifiCorp’s receipt of such offer if this Agreement had originally been terminated by PacifiCorp prior to the commencement of construction of the Facility. If PacifiCorp elects to purchase such Output, Green Tags, Capacity Rights and Ancillary Services, then the Parties shall enter into a binding agreement consistent with the foregoing and otherwise on terms and conditions substantially and in all material respects the same as this Agreement, the same being modified only as necessary to address changes which arise due to the passage of time. Neither Seller nor an Affiliate of Seller may sell or transfer the Facility, or any part thereof, or their land rights or interests in the Premises (including the Generation Interconnection Agreement or interconnection queue position) during the Restricted Period so long as the limitations contained in this Section 11.4 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.4 pursuant to a written agreement approved by PacifiCorp. PacifiCorp shall be permitted to file a notice of the rights contained in this Section 11.4 with respect to Seller’s or any of its Affiliate’s interests in the Premises.

11.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Seller, then neither Seller nor an Affiliate of Seller or any successor to Seller’s ownership in the Facility or the Premises, may, directly or indirectly, require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation facility or storage facility constructed on the Premises under the Public Utility Regulatory Policies Act of 1978 (“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 by Seller from third parties for Net Output and Green Tags not purchased and accepted 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, green tags, capacity or Ancillary Services purchased to replace Net Output, Green Tags, Capacity Rights or Ancillary Services not sold, delivered or transferred by Seller to PacifiCorp as required under this Agreement.

11.8 Security. If this Agreement is terminated because of an Event of Default by Seller, then PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity (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 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 Indemnatee. Seller is solely responsible for and will indemnify, defend and hold harmless the PacifiCorp Indemnitees from and against any and all Liabilities resulting from, arising out of, or in any way connected with the breach by Seller of the Generation Interconnection Agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall indemnify, defend and hold harmless Seller and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) from and against any and all Liabilities resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by PacifiCorp of its obligations 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 Indemnatee.

12.1.3 Additional Cross Indemnity. Without limiting Section 12.1.1 and Section 12.1.2, (a) Seller shall indemnify, defend and hold harmless the PacifiCorp Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with (i) the Net

Output and Discharging Energy prior to its delivery by Seller at the Point of Delivery; (ii) any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions of this Agreement, including the breach by Seller of any of its covenants in Section 3.2.15, Section 3.2.16, Section 3.2.17 or Section 3.2.18; (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 Charging Notices or Discharging Notices in accordance with Section 6.15.2, including Excess Charging Energy or Wrongfully Delivered Energy, 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; and (b) PacifiCorp shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Liabilities resulting from, arising out of, or in any way connected with: (i) the Net Output and 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 Seller Indemnitees.

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, STORAGE AVAILABILITY DAMAGES, PACIFICORP'S COST TO COVER DAMAGES AND SELLER'S COST TO COVER DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT DO NOT REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES AS CONTEMPLATED IN THIS PARAGRAPH.**

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

SECTION 13 INSURANCE

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

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or an "event of Force Majeure" means an event or circumstance that prevents a Party (the "Affected Party") from performing, in whole or in part, an obligation under this Agreement and that: (a) is not reasonably anticipated by the Affected Party as of the Execution Date; (b) is not within the reasonable control of the Affected Party or its Affiliates; (c) is not the result of the negligence or 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, ancillary services or green tags 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 Net Output or 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; provided, however, that the existence of one or more of the factors listed in the exceptions to clauses (i), (iv), (vi), (vii), (viii), (ix), (xii) shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure if the event does not meet the criteria described in the first sentence of this definition or is excluded under another clause of this sentence. 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. Each Party acknowledges the effects of military conflict in Eastern Europe 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 military conflict in Eastern Europe and its effects shall be permitted only to the extent of material direct impacts of said military conflict in Eastern Europe of which the Party was not aware, and should not have reasonably 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 credit rating from S&P and Moody’s as PacifiCorp as of the effective date of such assignment (or if such Affiliate is not rated by S&P and Moody’s, the same or better creditworthiness as PacifiCorp, as reasonably determined by Seller); and (b) in the case of Assignment by Seller: (i) such Affiliate must possess (A) the same or similar experience as Seller (as reasonably determined by PacifiCorp) and (B) the same or better credit rating from S&P and Moody’s as Seller as of the Execution Date (or if Seller or such Affiliate is not rated by S&P and Moody’s, the same or better creditworthiness as Seller, 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; 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; (ii) has the same or better credit rating from S&P and Moody’s as PacifiCorp as of the Execution Date (or if such assignee is not rated by S&P and Moody’s, the same or better creditworthiness as PacifiCorp, as reasonably determined by Seller); and (iii) if required by applicable Requirements of Law, has received approval from any applicable public utility commission or equivalent or any other applicable Governmental Authority. If the foregoing requirements for Assignment have been satisfied, then effective as of the date of such Assignment PacifiCorp and Seller, as applicable, will be released from all liability under this Agreement. Any Party seeking to Assign this Agreement shall be solely responsible for paying all costs and expenses of Assignment, including any costs and expenses incurred by the other Party in connection with the review and/or execution and delivery of the assignment and assumption agreement and any other documents required in connection with the Assignment.

20.3 Project Lender. Seller may, without relieving itself from its obligations and liabilities under this Agreement, Assign this Agreement or the revenues or proceeds thereof, or all or any part of its ownership interest in the Facility, including the Premises, to a Lender in connection with a financing or refinancing of the Facility, 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 Contract Price and Compensable Curtailment 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 Section 23.1(b). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp’s net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1 or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with

supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller.

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

23.5 News Releases and Publicity. Except as otherwise provided in Section 6.13, before either Party issues any news release or publicly distributed promotional material that mentions the Facility (other than project name, technology type, size and location), such Party will first provide a copy thereof to the other Party for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. 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: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

EXPECTED FACILITY PERFORMANCE⁹

I. Expected Hourly Net Output; Expected Monthly Net Output; Expected Annual Net Output

Expected Hourly Net Output in Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Expected Annual Net Output (in MWh)
00													
01													
02													
03													
04													
05													
06													
07													
08													
09													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
Expected Monthly Net Output (in MWh)													

The above table is generated as of the Execution Date from the Expected Net Output Excel File based on the Expected Nameplate Capacity Rating of the Facility as of the Execution Date and the assumed inputs contained therein. If the Expected Nameplate Capacity Rating and the Nameplate Capacity Rating of the Facility changes pursuant to Section 2.2.2 and Section 2.2.3, then this table shall be regenerated from the Expected Net Output Excel File based on the revised Expected Nameplate Capacity Rating and Nameplate Capacity Rating of the Facility and the other assumed inputs contained therein and the new regenerated table shall automatically amend and restate in its entirety the previous table and be effective for all purposes of this Agreement.

⁹ NTD: Prior to executing this Agreement, Seller will be required to provide PacifiCorp information sufficient to allow PacifiCorp to reasonably verify the various Facility performance criteria stated in Exhibit A.

Seller acknowledges that PacifiCorp will include the Expected Annual Net Output in PacifiCorp's resource planning.

II. Expected Annual Degradation Schedule¹⁰

The Expected Annual Net Output will be adjusted each Contract Year following the first Contract Year as follows.

Contract Year ¹¹	Expected Degradation (%)	Expected Annual Net Output (MWh)
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		
15-16		
16-17		
17-18		
18-19		
19-20		
20-21		
21-22		
22-23		
23-24		
24-25		
25-26		
26-27		
27-28		

¹⁰ NTD: Section II of Exhibit A applies only to solar Generating Facilities.

¹¹ NTD: Table to be updated based on Term of the Agreement.

28-29		
29-30		

The Expected Monthly Net Output and the Expected Hourly Net Output will be adjusted each Contract Year following the first Contract Year consistent with the above changes in the Expected Annual Net Output.

III. Expected Nameplate Capacity Rating

The Expected Nameplate Capacity Rating of the Generating Facility is [] MW.

IV. Required Percentage

The Required Percentage for the Generating Facility is ninety-five percent (95%) of the Expected Nameplate Capacity Rating, which is equivalent to [] MW.

V. Maximum Delivery Rate

The “Maximum Delivery Rate” is [] MWh, as the same may be adjusted pursuant to Section 2.2.2 and Section 2.2.3 of this Agreement.

VI. 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:

Contract Year ¹²	Guaranteed Storage Power Capacity Rating (MW)	Guaranteed Storage Availability (%)	Guaranteed Storage Round Trip Efficiency (%)
0			
0-1			
1-2			
2-3			
3-4			
4-5			
5-6			
6-7			
7-8			
8-9			
9-10			
10-11			

¹² NTD: Table to be updated based on Term of the Agreement.

11-12			
12-13			
13-14			
14-15			
15-16			
16-17			
17-18			
18-19			
19-20			
20-21			
21-22			
22-23			
23-24			
24-25			
25-26			
26-27			
27-28			
28-29			
29-30			
Average		N/A	

VII. Station Service

The maximum station service load of the Generating Facility in any Contract Year shall not exceed [] MWh.

VIII. Maximum Charges Per Year

The maximum number of equivalent full Depth of Discharge (“DOD”) cycles during any Contract Year, as shown in Part 3 in Exhibit P.

IX. Maximum Charges Per Day

The “Daily Cycle Limit” per day, as shown in Part 3 of Exhibit P.

X. Average Annual State of Charge

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

EXHIBIT B
DESCRIPTION OF SELLER'S FACILITY

1. Name of Facility:
 - (a) Location: [County, State]
 - (b) Location: [GPS COORDINATES]
 - (c) Point of Delivery: [_____]
 - (d) Legal Description of the Premises: See real property documents in Exhibit E.
 - (e) Describe easements secured for physical entrance of permanent and temporary equipment (e.g. drive way and cable/wire easements)

2. Seller: [_____]

3. Ultimate parent: [_____]

4. Qualified Operator: [_____]

5. [Generating Facility – Solar Equipment:
Solar Module Manufacturer: _____
Model: _____
Number of Units: _____
MW DC: _____
DC:AC RATIO: _____
Inverter Manufacturer: _____
Inverter Model: _____
Nameplate Capacity Rating at Point of Delivery: ___ MW AC]¹³

5. [Generating Facility – Wind Equipment:
Model:
Number of Units:
Nameplate Capacity Rating at Point of Delivery: ___ MW
Total gross output capacity: ___ MW
Capacity Factor: __1%]¹⁴

6. Type of Storage Facility:
Battery technology (& chemistry if chemical battery): _____
Type of Battery Storage Design: AC-Coupled

¹³ NTD: For solar-powered Generating Facilities.

¹⁴ NTD: For wind-powered Generating Facilities.

Brand & Model: _____
 Number of Units: _____
 PCS or EMS or DSM _____
 Battery Management System: _____

7. [Operating Characteristics of Generating Facility - Solar:
- (a) Rated Power Factor (PF) or reactive load (kVAR): _____
 - (b) Rated Output (kW): _____
 - (c) Rated Output (kVA): _____
 - (d) Rated Voltage (line to line): _____
 - (e) Maximum kW Output: _____ kW as measured at the Point of Delivery (Facility)
 - a. Maximum kW Output: _____ kW (individual unit listed in 5(a))
 - (f) Maximum kVA Output: _____ kVA (Facility)
 - a. Maximum kW Output: _____ kW (individual unit listed in 5(a))
 - (g) Minimum kW Output: _____ kW (Facility)
 - a. Minimum kW Output: _____ kW (individual unit listed in 5(a))
 - (h) Number of Phases: _____
 - (i) Power factor requirements: _____
 - (j) Rated Power Factor (PF) or reactive load (kVAR): _____
 - (k) Controlled Ramp Rate: <[] second to [] MVA]¹⁵

7. [Operating Characteristics of Generating Facility - Wind:
- a. Type (synchronous or inductive): _____
 - b. Model: _____
 - c. Number of Phases: _____
 - d. Rated Output (kW): _____
 - e. Rated Voltage (line to line): _____
 - f. Rated Current (A): _____
 - i. Rotor: _____ Amps
 - ii. Stator: _____ Amps
 - g. Converter Supply Current: _____
 - h. Maximum kW Output: _____ kW
 - i. Minimum kW Output: _____ kW
 - j. Rated Power Factor (PF) or reactive load (kVAR): _____ Leading to _____ Lagging]¹⁶

8. Operating Characteristics of Storage Facility available to PacifiCorp:
- (a) Charging power capacity at the Storage Facility Metering Point: _____ MW

¹⁵ NTD: For solar-powered Generating Facilities.

¹⁶ NTD: For wind-powered Generating Facilities.

- (b) Discharging power capacity at the Storage Facility Metering Point: ___ MW
- (c) Maximum MW Output
- (d) Minimum MW Output
- (e) Allowed Depth of Discharge
- (f) Average State of Charge (SoC)

9. Additional technology specific information, if any:

- a. The design of the Storage Facility must contemplate improvements to accommodate technology and market changes as contemplated by Section E of Exhibit P.

10. A layout of the Facility, including site boundaries of the Premises and the Point of Delivery, the Storage Facility Metering Point and the Generating Facility Metering Point, to be attached to this Exhibit B.

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 Facility including any transmission facilities on Seller's side of the Point of Delivery.*
- 3. Include description of Generating Facility Metering Point.]*

EXHIBIT D

REQUIRED FACILITY DOCUMENTS

[REQUIRED OF ALL FACILITIES:

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

[Incidental eagle take permit application required by Section 3.2.15 of the Agreement]

Real property documents with respect to the Premises.

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

EXHIBIT E
REAL ESTATE DOCUMENTS

[See the attached]

EXHIBIT F

PERFORMANCE GUARANTEE

A. Definitions. Capitalized terms used but not defined herein shall have the meanings assigned to them in this Agreement.

“Measurement Period” means each successive period of two (2) consecutive Contract Years with the first Measurement Period beginning on the Commercial Operation Date and ending on the day that immediately precedes the second anniversary of the Commercial Operation Date, and each successive Measurement Period beginning on the day that immediately follows the last day of the immediately preceding Measurement Period, except that if the final day of the Measurement Period occurs on a day other than the day that immediately precedes the applicable anniversary of the Commercial Operation Date, the Measurement Period that would have ended on the day immediately preceding such anniversary will instead end on the last day of the Measurement Period; provided, however, that if Seller fails to satisfy the Performance Guarantee for any Measurement Period (“Failed Measurement Period”), then solely for purposes of determining whether Seller has satisfied the Performance Guarantee for two successive Measurement Periods pursuant to Section 11.1.2(i), including for purposes of reporting whether Seller satisfied the Performance Guarantee pursuant to the first two (2) sentence of Section B(4) of this Exhibit F (but not for purposes of determining Performance Damages which will continue to be determined based on two (2) successive Contract Years as provided for in this Exhibit F), the Measurement Period immediately following such Failed Measurement Period shall be a single Contract Year beginning on the day that immediately follows the last day of such Failed Measurement Period.

“Measurement Period Guaranteed Amount” means, in respect of any Measurement Period, (a) ninety percent (90%) of the Expected Annual Net Output (as determined in accordance with Section I [and Section II] of Exhibit A to this Agreement, as the same may be revised pursuant to Section 2.2.2 and Section 2.2.3 of this Agreement) for each Contract Year in such Measurement Period (in MWh), less (b) the sum of: (i) the Compensable Curtailment Energy in such Measurement Period (in MWh); and (ii) the Non-Compensable Curtailment Energy in such Measurement Period (in MWh).

“Measurement Period Net Output” means, in respect of any Measurement Period, the aggregate amount of Net Output in such Measurement Period (in MWh).

“Measurement Period Hourly Net Output” means, in respect of any hour in any month in a Measurement Period, the aggregate amount of Net Output in such hour in such month, as the same shall be reflected in the table delivered by Seller to PacifiCorp pursuant to Section B(4) of this Exhibit F (in MWh).

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

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

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

B. Performance Guarantee; Performance Damages.

1. Performance Guarantee. Seller agrees to deliver to PacifiCorp no less than the Measurement Period Guaranteed Amount of Net Output during each Measurement Period (the “Performance Guarantee”).

2. Performance Damages.

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

(b) If the Measurement Period Net Output during any Measurement Period is less than the Measurement Period Guaranteed Amount for such Measurement Period, then Seller shall be liable to PacifiCorp for liquidated damages (“Performance Damages”) in respect of such Measurement Period calculated as follows:

$$\text{Performance Damages} = \text{Output Shortfall} * \text{Performance Guarantee Cover Cost}$$

Where:

Output Shortfall = the positive difference between the Measurement Period Net Output and the Measurement Period Guaranteed Amount for such Measurement Period (in MWh); and

Performance Guarantee Cover Cost = the weighted average PacifiCorp’s Cost to Cover for such Measurement Period (in \$/MWh), where the weighting is based on the PacifiCorp’s Cost to Cover in the hours in such Measurement Period in which the Measurement Period Hourly Net Output is less than the Expected Hourly Net Output (as such Expected Hourly Net Output is determined based on the Expected Net Output Excel File).

3. Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller’s failure to satisfy the Performance 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) Performance 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(i), Performance Damages shall be PacifiCorp’s sole remedy for Seller’s failure to satisfy the Performance Guarantee.

4. Invoicing. On the thirtieth (30th) day following the end of each Measurement Period, Seller shall deliver to PacifiCorp a report (and reasonable supporting documentation regarding all data and calculations) detailing whether Seller satisfied the Performance Guarantee for such Measurement Period, including Table 1 (Measurement Period Hourly Net Output) set forth below fully completed for such Measurement Period based on the Net Output in such Measurement Period. If Seller failed to satisfy the Performance Guarantee for such Measurement Period, then Seller shall include in the report the Output Shortfall for such Measurement Period, together with reasonable supporting documentation regarding all data and calculations. If there is an Output Shortfall, then thirty (30) days after PacifiCorp receives the report and all reasonable supporting documentation regarding all data and calculations provided for above, then PacifiCorp shall deliver to Seller an invoice showing PacifiCorp’s computation of the Performance Damages calculated pursuant to Section B(2)(b) of this Exhibit F. In preparing such invoice, PacifiCorp shall utilize the meter data provided to PacifiCorp for the relevant Measurement Period in question but may also rely on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Measurement Period is then incomplete or otherwise not available. Within twenty (20) days of receipt of the invoice, Seller shall pay to PacifiCorp, by wire transfer of immediately available funds to an account specified in writing by PacifiCorp or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Performance Damages not paid by Seller when due under this Section B(4) 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 Seller may have with respect to PacifiCorp’s invoice of Performance Damages.

Table 1 – Measurement Period Hourly Net Output

Measurement Period Hourly Net Output in Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Measurement Period Net Output (in MWh)
00													
01													
02													
03													
04													
05													
06													
07													
08													
09													
10													
11													
12													
13													

14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
Monthly Net Output (in MWh)													

A sample calculation of Performance Damages for information purposes only is contained in Exhibit Q.

EXHIBIT G

FORM OF PARENT GUARANTY

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

WHEREAS, Beneficiary and [____], a [____] (“Obligor”) entered into that certain Power Purchase Agreement, dated as of [____], 20[___] (the “Agreement”); and Guarantor delivers this Guaranty to Beneficiary as an inducement to Beneficiary to enter into the Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Guarantor, at:

With a copy to:

If to Beneficiary, at:

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

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

EXHIBIT J
NERC EVENT TYPES¹⁷

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.

¹⁷ 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

CONTRACT PRICE; COMPENSABLE CURTAILMENT PRICE; STORAGE PRICE

1. Contract Price

The “Contract Price” for Net Output, Capacity Rights, Ancillary Services and Green Tags (expressed in \$/MWh) shall be as follows:

Contract Year¹⁸	Contract Price (\$/MWh)
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	
15-16	
16-17	
17-18	
18-19	
19-20	
20-21	
21-22	
22-23	
23-24	
24-25	
25-26	
26-27	

¹⁸ NTD: Table to be updated based on Term of the Agreement.

27-28	
28-29	
29-30	
Weighted Average	

2. Storage Price

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

Contract Year¹⁹	Storage Price (\$/MW/Month)
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	
15-16	
16-17	
17-18	
18-19	
19-20	
20-21	
21-22	
22-23	
23-24	
24-25	
25-26	
26-27	

¹⁹ NTD: Table to be updated based on Term of the Agreement.

27-28	
28-29	
29-30	
Weighted Average	

3. Compensable Curtailment Price

[The “Compensable Curtailment Price” for Compensable Curtailment Energy (expressed in \$/MWh) shall be equal to the Contract Price.²⁰]

[The “Compensable Curtailment Price” for Compensable Curtailment Energy and, in the case of Section 5.1.2(b), Potential Net Output (expressed in \$/MWh) shall be equal to (a) the Contract Price plus (b) the PTC Rate (with the payment of the PTC Rate to be made on an After-Tax Basis) for each MWh of Compensable Curtailment Energy. For purposes of this Agreement, (i) “PTC Rate” means the then-current rate for the PTCs (per MWh) provided in Section 45(a)(1) of the Internal Revenue Code for a qualified facility that uses wind to produce electricity, determined by taking into account the inflation adjustment provided in Section 45(b)(2) of the Internal Revenue Code and the reduction pursuant to Section 45(b)(5) (or any successor thereto) of the Internal Revenue Code for a facility beginning construction in the year that Seller demonstrates to the satisfaction of PacifiCorp that construction on Facility began, provided that the PTC Rate shall in no event exceed the rate used to calculate the PTCs for the Facility, as modified by the phasedown adjustment (as described in IRS Form 8835), that is reflected on the IRS Form 8835 (or any successor form thereto) filed by Seller as part of its timely filed federal income tax return for the applicable taxable year, and (ii) “After-Tax Basis” means, with respect to any payment received or deemed to have been received by Seller, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to Seller so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes (including federal, state or local income taxes) required to be paid by Seller in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that Seller is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local taxes in the aggregate not to exceed [five percent (5%)] with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of such state and local income taxes. No later than January 31st (the “Reporting Date”) of each of the first ten (10) calendar years occurring after the Commercial Operation Date, Seller shall certify to PacifiCorp in writing its aggregate state and local tax rate as reflected in its most recent financial statements prepared in accordance with generally accepted accounting principles in the United States of America, consistently

²⁰ NTD: This definition of “Compensable Curtailment Price” is applicable for solar-powered Generating Facilities.

applied (“Aggregate State and Local Tax Rate”). The lesser of Seller’s Aggregate State and Local Tax Rate and [five percent (5%)] shall be used for purposes of determining the After-Tax Basis and the Compensable Curtailment Price applicable during the period from the applicable Reporting Date until but not including the next Reporting Date. If Seller fails to deliver to PacifiCorp the certification required above by a Reporting Date, then for purposes of determining the After-Tax Basis and the Compensable Curtailment Price applicable during the period from the applicable Reporting Date until but not including the next Reporting Date the Aggregate State and Local Tax Rate will be deemed to be zero percent (0%).^{21]}

²¹ NTD: This definition of “Compensable Curtailment Price” is applicable for wind-powered Generating Facilities.

EXHIBIT L
PARTY NOTICE INFORMATION

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

EXHIBIT M
FORM OF LENDER CONSENT

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

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately [___] MW [____]-powered electric generating facility and integrated storage facility located in [County, State] (the “Project”).

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

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

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

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

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

SECTION 1. CONSENT TO ASSIGNMENT

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

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

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

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

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

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

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

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

SECTION 2. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

SECTION 3. NOTICES

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

If to PacifiCorp:

[_____
[_____
[_____
Telephone No.: [_____
Facsimile No.: [_____
Attn: [_____]

If to Administrative Agent:

[_____
[_____
[_____
Telephone No.: [_____
Facsimile No.: [_____
Attn: [_____]

If to Borrower:

[_____
[_____
[_____
Telephone No.: [_____
Facsimile No.: [_____
Attn: [_____]

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

SECTION 4. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

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

SECTION 5. COUNTERPARTS

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

SECTION 6. SEVERABILITY

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

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

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

SECTION 8. JURY TRIAL WAIVER

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

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

PacifiCorp

By: _____

Name: _____

Title: _____

_____,

a _____

By: _____

Name: _____

Title: _____

_____,

as Administrative Agent for the Lenders

[Borrower]

By: _____

Name: _____

Title: _____

EXHIBIT N
PROJECT MILESTONES²²

Project Milestone	Project Milestone Completion Date
Execute Generation Interconnection Agreement	
Execute Purchase Agreement for Major Equipment	
Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement	
Issue FNTF	
First Synchronization	
Commercial Operation Date	Scheduled Commercial Operation Date

²² NTD: Project Milestones and dates by which the Milestones are to be achieved to be agreed to by the Parties prior to the Execution Date.

EXHIBIT O
METEOROLOGICAL AND OTHER DATA REQUIREMENTS²³

1. [Required information for wind resources:

- 1.1. Hub height wind speed
- 1.2. Hub height wind direction
- 1.3. Hub height temperature
- 1.4. *Optional information for wind resources if available:*
 - 1.4.1. Relative humidity
 - 1.4.2. Barometric pressure

2. Meteorological data may be provided in one or more of the following ways:

- 2.1. Average readings over all turbines or a representative subset of them.
- 2.2. Meteorological towers, sodars, lidars, or monitoring stations.
- 2.3. Readings from all individual turbines or a representative subset of them.]

1. [Required information for solar resources:

- 1.1. At least one of the following irradiance values:
 - 1.1.1. Plane of array (POA) irradiance (preferred)
 - 1.1.2. Global Horizontal Irradiance (if POA is not available)
 - 1.1.3. Direct Normal Irradiance (DNI)
- 1.2. Wind speed at the array height (to assess the potential for stow conditions)
- 1.3. Back panel temperature
- 1.4. Air temperature at the array height (to assess the potential for icing/snow presence and melting on solar panels)

2. Optional information for solar resources:

- 2.1 Wind direction at the array height
- 2.2 Relative Humidity
- 2.3 Barometric pressure

3. Meteorological data may be provided in one or more of the following ways:

- 3.1 Meteorological towers, sodars, lidars, or solar monitoring stations.]

²³ NTD: Required meteorological and other data requirements dependent upon whether the Generating Facility is wind or solar powered.

EXHIBIT P

STORAGE OPERATING PROCEDURES²⁴

- 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 (collectively, “BESS SCADA”). The Parties shall cooperate to integrate the systems and controls necessary to implement the Storage Operating Procedures.
 - a. The Storage Facility is to operate without on-site operations personnel on a 24 hour a day, 7 day per week basis. 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 in accordance with Section 6.9.1(e).
 - b. Seller shall provide as part of the Storage Facility a proven and established instrumentation and control system for the BESS SCADA. PacifiCorp’s control systems (“PacifiCorp SCADA”) will supervise and monitor the BESS SCADA system while Seller’s BESS SCADA will act as the master for the Storage Facility. PacifiCorp SCADA shall be the master for the point of interconnection (“POI”) breaker.
 - c. The BESS SCADA system shall be compatible with PacifiCorp SCADA (including historian database and AGC) via DNP3 protocols. The BESS SCADA shall incorporate an RTU, to which Seller shall provide read/write access to PacifiCorp SCADA via DNP 3.0.
 - d. The monitoring system shall provide data as described in Section II of this Exhibit P. 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.

²⁴ NTD: Exhibit P is a preliminary draft and is subject to change based on project-specific details and further negotiation.

- 2) BESS Telemetry. Detailed metering, relay and protection requirements will be specified in the Generation Interconnection Agreement. Seller must provide as part of the Storage Facility telemetry equipment and facilities capable of transmitting the information listed in Section II of this Exhibit P, 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 Seller's energy management system and data historian that will monitor the Storage Facility's state of health 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 Storage Facility 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 SCADA master controller. A proven and established combined instrumentation and control system shall be provided for the BESS SCADA. The BESS SCADA system shall feed into an RTU that shall be the primary interface with PacifiCorp SCADA and shall be compatible with PacifiCorp SCADA via DNP3 protocol. 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 voltage and frequency ranges as specified by equipment manufacturers and as required at the POI by the Generation Interconnection Agreement and providing full output for the required Storage Facility operation modes specified or UL 1741 certified.

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 Storage Facility 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 BESS SCADA or control system has protective features ensuring that charge and discharge setpoints cannot exceed charge and discharge limits reported by battery management system (BMS) and PCS SCADA systems.
- 3) The BESS SCADA control system shall allow PacifiCorp's dispatcher to initiate remotely Seller-specified/programmed charge and discharge cycles.
- 4) Automatic or programmed charge cycles shall be implemented to prevent the state of charge ("SoC") going above or below the battery vendor specified SoC limits.
- 5) Seller will indicate any required rest (neither charging nor discharging of the Storage Facility) periods, their duration and what event they must follow or precede.
- 6) The maximum rest period allowed (days, weeks, months) is provided in Section II of this Exhibit P.
- 7) The Storage Facility will be solely charged with Output unless this Agreement is amended by mutual agreement of the Parties to provide for grid charging, which in any event shall not occur before the end of any ITC recapture period to preserve any ITC benefit.

- 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 Generating Facility is not generating Output because of Force Majeure, 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, Planned Outage, Maintenance Outage, or Forced Outage.

E. Cooperation

- 1) Seller will design the Facility per the current specification and will cooperate with PacifiCorp to modify the Facility to accommodate technology and market changes if requested. For example:
 1. Grid charging after expiration of any ITC recapture period
 2. Bidding into the Extended Day Ahead Market (EDAM)
- 2) Seller and PacifiCorp shall mutually agree on the required modifications, the scope and related costs.

F. Charging and Discharging Notices and Modifications

- 1) PacifiCorp will provide to Seller, per WECC pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging Notice and Discharging Notice will incorporate Seller's resource availability per the day-ahead forecasts provided pursuant to Section 6.7 of the Agreement.
- 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 access to BESS SCADA data through a DNP 3.0 communication link.
- 3) To make intraday adjustments on the day of operation, PacifiCorp will communicate with Seller through (i) plant SCADA 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.
- 4) Intraday adjustments will be subject to limitations and a predetermined control system (algorithm).

- 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.

G. Reports.

Seller will deliver to PacifiCorp a quarterly written report highlighting performance from Storage Facility Operating Parameters with respect to the performance of the Storage Facility, including: 1) impacts to physical availability greater than five percent (5%) of capacity; 2) with respect to throughput, average SoC or 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.

II. Storage Facility Operating Parameters

Storage Facility Operating Parameters are comprised of three (3) 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

#	Operating Parameter	Values	Notes
	Charging Source	Generating Facility	This is for main power. Station Service to feed auxiliary loads to come from separate service.
	Minimum CP-rate for Charging the Storage Facility Maximum CP-rate for Charging the Storage Facility		Maximum rate in MW at which energy can be charged. Measured at the Storage Facility Metering Point Provide Constant Power charge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in Exhibit A)
	Minimum CP-rate for Discharging the Storage Facility		Maximum rate in MW at which energy can be discharged. Measured at the Storage Facility Metering Point.

	Maximum CP-rate for Discharging the Storage Facility		Provide Constant Power discharge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in Exhibit A)
	Storage Ramp Rate	[] MW per milliseconds to reach full Storage Power Capacity Rating	
	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 Discharge 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		Between full discharge and charge Between charge and full discharge
	Resting SoC of the Storage Facility (average per Contract Year)		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		
	Operating Mode		List operating modes Storage Facility is designed and capable of and any limitations, for example Standby Mode
	Additional operating limitations e.g. thermal or seasonal limits		Min/Max temperatures for example

Part 2: Day Ahead Inputs

#	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
	Roundtrip Efficiency (%)		The measure of in/out losses of the Storage Facility during a charge/discharge cycle as measured at the Storage Facility transformer

Part 3: Real Time SCADA POINTS

#	Day Ahead Inputs	Values	Notes
	Instantaneous MW output		At the Point of Delivery and Storage Facility Metering Point Net Output
	Pmax		Guaranteed Storage Power Capacity Rating (MW)
	Pmin		
	SoC		Measured in % equal to Stored Energy Level divided by the Storage Energy Capacity determined as a result of the most recent Storage Energy Capacity Test, with fully charged being 100% and fully discharged being 0%
	Max. SoC		Measured in percentage (%) or MWh. As updated based on the most recently completed Storage Energy Capacity Test
	Number of equivalent full Depth of Discharge (DOD) cycles used during Contract Year		
	Current status and physical ability of the Storage Facility		
	Daily Cycle Limit		Percentage of daily limit met
	Operating Mode		
	Current Faults		

EXHIBIT Q

EXPECTED NET OUTPUT EXCEL FILE

[See the attached]

EXHIBIT R

WORKFORCE REPORTING

Pursuant to Section 6.10.10 of the Agreement, Seller shall provide to PacifiCorp the following information and execute and deliver the following reports, documents and certifications:²⁵

1. Seller shall deliver to PacifiCorp within thirty (30) Business Days following the end of each March, June, September and December in each year during the Term a report detailing (a) the number of local and state workers employed during construction of the Facility and (b) the number of incidents when contractors contracted by Seller in the course of construction of the Facility commit health, safety or environmental infractions.

2. Seller will deliver to PacifiCorp to copies of such declaration, attestations and documents as Seller is required to deliver to the Oregon State Department of Energy pursuant to Oregon HB 2021.

3. Seller shall complete and deliver to PacifiCorp within thirty (30) Business Days following the end of each March, June, September and December in each year during the Term the following report:

²⁵ NTD: Seller will be required to comply with only those requirements applicable to Seller and/or its Facility.

Exhibit R Workforce Reporting

Diverse Business Spend Report

Reporting Period: [QUARTER], 20__
 Date Submitted: [MONTH AND DAY],
 20__

Contract Name:

Company Name:
 Report Prepared by:
 Phone Number:
 Email Address:

	Goods & Materials	Services
PacifiCorp Service Area	Quarterly Diverse Business Spend*	Quarterly Diverse Business Spend*
California		
Oregon		
Washington		
Utah		
Idaho		
Wyoming		
<p>*Diversity Spend is that portion of the previous month's total spend provided by a diversity business, defined as "including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses" pursuant to WAC 480-107-075(3) Note: Leases, Real Estate, and Utilities should not be included in spend figures.</p>		

Total Spending
Application of Washington-state labor standards**"
**RCW 82.08.962 and 82.12.962

Exhibit R Workforce Reporting

Diverse Business Spend Report / Detail

Quarter									Invoice Diversity Spend		
Name of Business (Supplier / Contractor / Subcontractor)	Diversity Classification(s) (See Below)"	Contact Person	Contact Information	Tax ID	Certifications (i.e., WBENC, California Clearinghouse, etc.)	Description of Goods/Services	Application of Washington-state labor standards in RCW 82.08.962 and 82.12.962 (Yes/No)	Location where services are performed or goods delivered (CA, OR, WA, UT, ID, WY)	Goods & Materials Diverse Business Spend	Services Diverse Business Spend	Total Diverse Business Spend

Diversity Classification	SAP Diversity Code
Female, Asian/Pacific Islander	FA
Female, Black	FB
Female, Hispanic	FH
Female, Am.Indian/Alaskan	FI
Female, White	FW
Female, White, Disabled Vet	FWD
Female, White, LGBT	FWL
Male, Asian/Pac Islander	MA
Male, Black	MB
Male, Hispanic	MH
Male, Am.Indian/Alaskan	MI
Male, White, Disabled Veteran	MWD
Male, White, LGBT	MWL

EXHIBIT S
GENERATION INTERCONNECTION AGREEMENT

[See the attached]

EXHIBIT T

STORAGE ENERGY CAPACITY TESTS; STORAGE POWER CAPACITY GUARANTEE²⁶

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 schedule and complete a Storage Energy Capacity Test to determine the Storage Power Capacity Rating of the Storage Facility for the first Contract Year. 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.²⁷

2. Subsequent Testing. At least once per Contract Year (starting after the first Contract Year) within the first three (3) months of each Contract Year or at such other time during the Contract Year as the Parties may mutually agree, upon no less than five (5) Business Days prior notice to PacifiCorp, Seller shall schedule and complete a Storage Energy Capacity Test. In each Contract Year, Seller shall have the right to run up to four (4) retests of the Storage Energy Capacity Test at any time upon five (5) days prior written notice to PacifiCorp (or any shorter period reasonably acceptable to PacifiCorp consistent with Prudent Electrical Practices). In addition, PacifiCorp shall have the right to require a retest of the Storage Energy Capacity Test at any time upon five (5) days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Energy Capacity has varied materially from the results of 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. Notwithstanding anything to the contrary contained in this Exhibit T, in no event shall Storage Energy Capacity 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 Energy Capacity Tests. PacifiCorp shall be responsible for 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

²⁶ NTD: Exhibit T is a preliminary draft and is subject to change based on project-specific details and further negotiation.

²⁷ NTD: Seller to propose duration for PacifiCorp review.

borne by Seller (other than (i) any Charging Energy required to perform such Storage Energy Capacity Test and (ii) any third party costs incurred by Seller for 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) Fifty percent (50%) of the 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 the 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 full capacity 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, 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 = $100 \text{ MWh} / 4 \text{ hours} = 25$ 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 GUARANTEE²⁸

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

²⁸ NTD: Exhibit U is a preliminary draft and is subject to change based on project-specific details and further negotiation.

b) The Storage Power Capacity Rating

Multiplied by

c) The Storage Price.

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 EFFICIENCY²⁹

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 schedule and complete a Storage Round Trip Efficiency Test to verify that the Storage Facility can satisfy the Guaranteed Storage Round Trip Efficiency.

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, upon no less than five (5) Business Days prior notice to PacifiCorp, Seller shall schedule and complete a Storage Round Trip Efficiency Test. In each Contract Year, Seller shall have the right to run up to four (4) retests of the Storage Round Trip Efficiency at any time upon five (5) days prior written notice to PacifiCorp (or any shorter period reasonably acceptable to PacifiCorp consistent with Good Utility Practice). In addition, PacifiCorp shall have the right to require a retest of the Storage Round Trip Efficiency at any time upon five (5) days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Round Trip Efficiency has varied materially from the results of 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 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 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 Seller (other than (i) any Charging Energy required to perform such Storage Round Trip Efficiency Test and (ii) any third party costs incurred by Seller for 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).

²⁹ 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.

4. Test Results. No later than five (5) 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;
- (b) where Actual RTE = EnergyOUT / EnergyIN (both defined below);
- (c) the then applicable Storage Power Capacity Rating;
- (d) the then applicable Storage Price; and
- (e) 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 e[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 charge 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 schedule and complete a Storage Ramp Rate Test to verify that the Storage Facility can satisfy the Storage Ramp Rate criteria specified in Exhibit P.

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, upon no less than five (5) Business Days prior notice to PacifiCorp, Seller shall schedule and complete a Storage Ramp Rate Test. 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 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 (i) any Charging Energy required to perform such Storage Ramp Rate Test and (ii) any third party costs incurred by Seller for 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 five (5) 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: full 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 Ending 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.

EXHIBIT X
CYBERSECURITY REQUIREMENTS

[To be provided by PacifiCorp]

Appendix E-3

Tolling Agreement Documents

THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. PACIFICORP RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS DRAFT AT ANY TIME. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL PACIFICORP HAS COMPLETED ITS DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.

ENERGY STORAGE AGREEMENT

BETWEEN

[_____]

AND

PACIFICORP

DATED [_____] , 20[__]

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ENERGY STORAGE AGREEMENT

THIS ENERGY STORAGE AGREEMENT (this “Agreement”) is entered into as of [____], 20[] (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 achievement of the “Issue FNTP” Project Milestone for 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 Milestones schedule attached hereto as Exhibit N, as the same may be amended in accordance with Section 2.2.1; and (c) after the Commercial Operation Date, the complete cessation of the operation 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 shall include reactive power, but shall 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. “Assignment” has a correlative meaning.

“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. For the avoidance of doubt, any PacifiCorp request to initiate a Storage Energy Capacity Test shall not be considered a Charging Notice.

“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, 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 [_____].]¹

[“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.

“COVID-19” means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations or variants thereof or related or associated epidemics, pandemics or disease outbreaks.

“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

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

‘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.

“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 Guaranteed Storage Power Capacity Rating.

“Defaulting Party” is defined in Section 11.1.

“Delay Damages” means, for any given day, the product of (a) the Guaranteed Storage Power Capacity Rating, expressed in kW, multiplied by (b) the quotient of (i) the Storage Price in the first Contract Year (in \$/MW/month) divided by (ii) 30.4.

“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. For the avoidance of doubt, any PacifiCorp request to initiate a Storage Energy Capacity Test shall not be considered a Discharging Notice.

“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 Cut-off Date” 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.

“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, or any successor or replacement market.

“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.

“Excess Charging Energy” is defined in Section 6.15.2(b).

“Excess DNR Costs” is defined in Section 4.2.3.

“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.²

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

“Forced Outage” means the appropriate NERC Event Type(s), 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 than the Guaranteed Storage Power Capacity Rating, a copy of which is attached hereto as Exhibit S.³

“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.

² NTD: The definition of “Firm Market Price Index” will be adjusted to appropriately reflect the location of the Storage Facility.

³ NTD: Seller to demonstrate Generation Interconnection Agreement is FERC jurisdictional.

“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 a Person (other than an Affiliate of Seller 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 development, construction, term or permanent financing or refinancing of the 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 or weather hedge or swap agreement 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 a 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 [Pacific/Mountain] Standard Time or [Pacific/Mountain] Daylight Time, as applicable, in the state in which the Storage Facility is located on the day in question.⁴

“Maintenance Outage” means the appropriate NERC Event Type(s), 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.

⁴ NTD: “Local time” to be based on the location of the Storage Facility.

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

“PacifiCorp Indemnitees” is defined in Section 12.1.1.

“PacifiCorp Representatives” is defined in Section 6.12.

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

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

“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(s), 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 Guaranteed Storage Power Capacity Rating.⁵

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

⁵ NTD: \$200 per kW will be used for Storage Facilities with a Scheduled Commercial Operation Date in 2026; \$214 per kW will be used for Storage Facilities with a Scheduled Commercial Operation Date in 2027; and \$229 per kW will be used for Storage Facilities with a Scheduled Commercial Operation Date in 2028.

“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 Indemnities” 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” is defined 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” means the rate (measured in MW/millisecond) at which the Storage Facility can change power output.

“Storage Ramp Rate Guarantee” is defined in Section 6.15.6.

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

“Storage Round Trip Efficiency” means, in respect of the Storage Facility and a specified period of time, the ratio (expressed as a percentage) of (a) the total amount of energy (in MWh) discharged from the Storage Facility during such period of time and (b) the total amount of energy (in MWh) charged to the Storage Facility during such period of time, all as determined pursuant to 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, 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]⁶ (the "Effective Date"), provided that prior to the Effective Date those rights and obligations hereunder expressly arising upon the Execution Date (including Sections 1.2, 2.1, 4, 16, 17, 18, 19, 20, 21, 22, 23 and 24 and the defined terms in Section 1.1 used in the foregoing Sections) shall be effective as of the Execution Date. Unless earlier terminated as provided in this Agreement, this Agreement shall remain in effect until [_____] ([]) years after the Commercial Operation Date (the "Term").

[2.1.2 Commission Approval. Within sixty (60) days after the Execution Date, PacifiCorp shall submit one or more filings to the Commission for the Commission Approval. If the Commission (a) 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 (i) the Commission Approval Deadline or (ii) 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 day thirty (30) days after the occurrence

⁶ NTD: PacifiCorp is reviewing whether there may be any filings or approvals required by applicable state public utility commissions receipt of which would be conditions to the effectiveness of this Agreement.

of clause (i) or (ii), 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 2.1.2, 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 the failure of the Commission to grant the Commission Approval (x) by the Commission Approval Deadline or (y) 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, as such dates may be adjusted pursuant to Section 2.2.3. 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.

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 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, or responds informing Seller that PacifiCorp agrees that Commercial Operation has been achieved, 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 and resubmit a notice to PacifiCorp stating that Seller believes that the Storage Facility has achieved Commercial Operation and the process set forth in this Section 2.2.2 shall repeat. 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 the Commercial Operation Date) 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 PacifiCorp may reasonably request demonstrating Seller's 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 PacifiCorp informs Seller in writing within such fifteen (15) Business Day period that PacifiCorp believes the Project Milestone has not been achieved, identifying the specific areas of deficiency, then, unless Seller disputes such information from PacifiCorp, in which case Seller may submit the matter for dispute resolution in accordance with Section 24, Seller must address the deficiencies stated in PacifiCorp's notice to the reasonable satisfaction of PacifiCorp and resubmit a notice to PacifiCorp stating that Seller believes that the Project Milestone has been achieved and the process set forth in this Section 2.2.4 shall repeat. If any Project Milestone (other than the Commercial Operation Date) 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 the Commercial Operation Date by the Scheduled Commercial Operation Date. If Seller complies with the preceding sentence, including undertaking any remedial action to ensure the timely achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date, then no failure of Seller to achieve a Project Milestone (other than the Commercial Operation Date) on or before the scheduled date in Exhibit N will constitute an Event of Default.

2.3 Delay Damages. If the Commercial Operation Date is not achieved on or before the Scheduled Commercial Operation Date (as such date may be adjusted pursuant to Section 2.2.1), 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 Commercial Operation Date.

2.4 Damages Calculation. Each Party acknowledges and agrees that: (a) the damages PacifiCorp would incur due to Seller's delay in achieving the Commercial Operation Date by the Scheduled Commercial Operation Date (as such date may be adjusted pursuant to Section 2.2.1)

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 the Commercial Operation Date by the Scheduled Commercial Operation Date.

2.5 Damages Invoicing. By the tenth (10th) day following the end of the month in which Delay Damages begin to accrue and continuing on the tenth (10th) 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 PacifiCorp 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, or the Storage Facility qualifies for PTCs, ITCs or other Tax Credits or 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; (b) has (or will have prior to the Commercial Operation Date) all required legal authority to deliver and make available Storage Product to Seller; and (c) 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 and 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 E. Seller shall maintain throughout the Term all such real property agreements, including leases and easements, required for the construction, ownership, operation and maintenance of the 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 Qualifying Person providing a Guaranty, 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 (other than PacifiCorp pursuant hereto) 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 pursuant hereto) 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 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; or (d) as produced by slavery, servitude, child labor, or forced or compulsory labor as defined by U.S. federal Requirements of Law, including the Uyghur Forced Labor Prevention Act (collectively, the “Prohibited Vendors”). 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 thirty (30) days of satisfying the second and third Project Milestones (i.e., Execute Purchase Agreement for Major Equipment and Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement), then 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. Notwithstanding anything to the contrary contained in this Agreement, PacifiCorp shall be under no obligation to purchase, receive or pay for Excess Charging Energy.

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 agreement for Network Integration Transmission Service with the Network Service Provider with a commencement date for Network Integration Transmission Service of one hundred twenty (120) days prior to the Scheduled Commercial Operation Date (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 PacifiCorp may, in its sole discretion, terminate this Agreement upon not less than thirty (30) days prior written notice thereof to Seller (the "DNR Termination Notice") if within two hundred ten (210) days after the Execution Date (the "DNR Cut-off Date"): (a) 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)⁷ (the "DNR Cost Threshold"); or (b) the Network Service Provider fails to provide PacifiCorp with written notice either that: (i) no transmission service study will be necessary in connection with granting the DNR Request; or (ii) it has completed the final transmission service study and determined that the DNR Costs required in order to grant the DNR Request are not in excess of the DNR Cost Threshold. In order to exercise its termination right pursuant to this Section 4.2.2, PacifiCorp must deliver the DNR Termination Notice to Seller within ten (10) Business Days after the DNR Cut-off Date.

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 issued by PacifiCorp pursuant to

⁷ NTD: The DNR Cost Threshold to be negotiated by the Parties for Storage Facilities with Storage Power Capacity Rating of 20 MW or less.

Section 4.2.2(a) (but not Section 4.2.2(b)) 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.

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. Subject to Section 11.7, PacifiCorp may report to any Person that it exclusively owns the Storage Product during the Term 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.

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

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

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 each month during the Term, PacifiCorp will pay to Seller the Storage Price per MW of the Storage Power Capacity Rating in each such month.

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 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, provided that in no event shall such updated Exhibit B result in any change to Exhibit A. 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, whether by replacement or modification of the Storage Facility equipment or related infrastructure or otherwise, 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, provided, further, that in no event shall PacifiCorp be required to pay for any Storage Energy Capacity above the Guaranteed Storage Power Capacity Rating as a result of any such modification to the Storage Facility.

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.

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 or the Facility equipment manufacturer recommendations (but only to the extent compliance with the Facility equipment manufacturer recommendations was not reasonably foreseeable at the time the annual forecast was provided). 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, the Storage Operating Procedures and the Facility equipment manufacturer recommendations 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 or Storage Energy Capacity 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 or Storage Energy Capacity 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 or Storage Energy Capacity 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 or Storage Energy Capacity. Seller must promptly update the report as necessary to advise PacifiCorp of any changed circumstances. As soon as practicable, any oral report must be confirmed in writing to PacifiCorp. Seller shall take all reasonable actions consistent with the Generation 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 cooperate with PacifiCorp 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. Seller must provide to PacifiCorp 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 Cybersecurity Requirements. Seller shall comply with the cybersecurity requirements identified in Exhibit Q.

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 in writing 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 all applicable NERC and WECC critical infrastructure protection requirements.

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 in writing.

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 with respect to the diversity and such other applicable criteria as PacifiCorp may reasonably identify 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, including the information, reports, documents and certifications provided for in Exhibit R. 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 Power Capacity Rating; 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. In addition to and not in limitation of its other obligations under this Agreement to operate and maintain the Storage Facility during the Term, Seller shall operate, maintain and repair the Storage Facility to be capable to charge or discharge the Storage Facility 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. If during the Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or Storage Operating Procedures or (ii) except as permitted under the Storage Operating Procedures, charges the Storage Facility without PacifiCorp providing a Charging Notice ("Excess Charging Energy"), then, in each case: (A) Seller shall be responsible for all costs and expenses associated with such Excess Charging Energy; (B) PacifiCorp shall not be required to pay for such Excess Charging Energy; and (C) PacifiCorp shall be entitled to discharge such Excess Charging Energy and to all of the benefits (including Storage Product) associated with discharging such Excess Charging Energy.

(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 an Event of Default when Seller is the Defaulting Party; 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 an Event of Default when Seller is the Defaulting Party; 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 or the Network Service Provider.

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 the allowable limits established in Section 9.3, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

9.5 SQMD Plan. Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with PacifiCorp in PacifiCorp's development and submittal to the Market Operator of its Settlement Quality Meter Data ("SQMD") plan for the 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 (10th) 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 Seller's computation of, as applicable: (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 (20th) day following receipt of such invoice or (y) the thirtieth (30th) 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 breach is not cured within thirty (30) days after the other Party gives the Defaulting Party notice of such breach; provided, however, that if such breach 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 breach, not to exceed ninety (90) days following the date of such notice of breach, provided that the Defaulting Party provides to the other Party a remediation plan within fifteen (15) days following the date of such notice of breach 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 breach.

(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 Abandonment.

(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 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 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 the Guaranteed Storage Round Trip Efficiency for two (2) consecutive Contract Years.

11.2 [Reserved].

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 Defaulting 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 any 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 the Public Utility Regulatory Policies Act of 1978 (“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 by Seller 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 Indemnitees from and against any and all Liabilities resulting from, arising out of, or in any way connected with the breach by Seller of the Generation Interconnection Agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall indemnify, defend and hold harmless Seller and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnitees”) from and against any and all Liabilities resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by PacifiCorp of its obligations 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 Charging Notices or Discharging Notices in accordance with Section 6.15.2, including Excess Charging Energy, 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; and (b) PacifiCorp shall indemnify, defend and hold harmless the Seller Indemnites 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 Seller Indemnites.

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; provided, however, that the existence of one or more of the factors listed in the exceptions to clauses (i), (iv), (vi), (vii), (viii), (ix), (xii) shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure if the event does not meet the criteria described in the first sentence of this definition or is excluded under another clause of this sentence. 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. Each Party acknowledges the effects of military conflict in Eastern Europe 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 military conflict in Eastern Europe and its effects shall be permitted only to the extent of material direct impacts of said military conflict in Eastern Europe of which the Party was not aware, and should not have reasonably 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 credit rating from S&P and Moody’s as PacifiCorp as of the effective date of such assignment (or if such Affiliate is not rated by S&P and Moody’s, the same or better creditworthiness as PacifiCorp, as reasonably determined by Seller); and (b) in the case of Assignment by Seller: (i) such Affiliate must possess (A) the same or similar experience with energy storage facilities as Seller (as reasonably determined by PacifiCorp) and (B) the same or better credit rating from S&P and Moody’s as Seller as of the Execution Date (or if Seller or such Affiliate is not rated by S&P and Moody’s, the same or better creditworthiness as Seller, 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; 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; (ii) has the same or better credit rating from S&P and Moody’s as PacifiCorp as of the Execution Date (or if such assignee is not rated by S&P and Moody’s, the same or better creditworthiness as PacifiCorp, as reasonably determined by Seller); and (iii) if required by applicable Requirements of Law, has received approval from any applicable public utility commission or equivalent or any other applicable Governmental Authority. If the foregoing requirements for Assignment have been satisfied, then effective as of the date of such Assignment PacifiCorp and Seller, as applicable, will be released from all liability under this Agreement. 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 Section 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, which approval shall not be unreasonably withheld, conditioned or delayed. 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: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

EXPECTED STORAGE FACILITY PERFORMANCE⁸

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:

Contract Year ⁹	Guaranteed Storage Power Capacity Rating (MW)	Guaranteed Storage Availability (%)	Guaranteed Storage Round Trip Efficiency (%)
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			
Average		N/A	

II. Station Service

The maximum station service load of the Storage Facility in any Contract Year shall not exceed: [] MWh.¹⁰

⁸ 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 criteria stated in Exhibit A.

⁹ NTD: Table to be updated based on Term of the Agreement.

¹⁰ 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 equivalent full Depth of Discharge (“DOD”) cycles during any Contract Year, as shown in Part 3 in Exhibit P.

IV. Maximum Charges Per Day

The “Daily Cycle Limit” per day, as shown in Part 3 of Exhibit P.

V. Average Annual State of Charge

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

EXHIBIT B

DESCRIPTION OF SELLER'S STORAGE FACILITY

1. Name of Storage Facility:
 - (a) Location: [County, State]
 - (b) Location: [GPS COORDINATES]
 - (c) Point of Delivery: [_____]
 - (d) Legal Description of the Premises: See real property documents in Exhibit E.
 - (e) Describe easements secured for physical entrance of permanent and temporary equipment (e.g. drive way and cable/wire easements)

2. Seller: [_____]

3. Ultimate parent: [_____]

4. Qualified Operator: [_____]

5. Type of Storage Facility:
 - Battery technology (& chemistry if chemical battery): _____
 - Type of Battery Storage Design: _____
 - Brand & Model: _____
 - Number of Units: _____
 - PCS or EMS or DSM: _____
 - Battery Management System: _____

6. Operating Characteristics of Storage Facility available to PacifiCorp:
 - (a) Charging power capacity at the Storage Facility Metering Point: ___ MW
 - (b) Discharging power capacity at the Storage Facility Metering Point: ___ MW
 - (c) Maximum MW Output
 - (d) Minimum MW Output
 - (e) Allowed Depth of Discharge
 - (f) Average State of Charge (SoC)

7. Additional technology specific information, if any:
 - a. The design of the Storage Facility must contemplate improvements to accommodate technology and market changes as contemplated by Section E of Exhibit P.

8. A layout of the Storage Facility, including site boundaries of the Premises and the Point of Delivery and the Storage Facility Metering Point, to be attached to this Exhibit B.

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 provided as Exhibit S (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.

Real property documents with respect to the Premises.

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

EXHIBIT E
REAL ESTATE DOCUMENTS

[See the attached]

EXHIBIT F
RESERVED

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.

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 TYPES¹¹

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.

¹¹ 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:

Contract Year¹²	Storage Price (\$/MW/Month)
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	
Weighted Average	

¹² NTD: Table to be updated based on Term of the Agreement.

EXHIBIT L
PARTY NOTICE INFORMATION

Notices	PacifiCorp	Seller
All Notices:	PacifiCorp 825 NE Multnomah, Suite 600 Portland, Oregon 97232- 2315 Attn: Contract Administration E-mail: cntadmin@pacificorp.com	
All Invoices:	Attn: Back Office, Suite 1900 Email: powerinvoices@pacificorp.com	
Scheduling:	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email: ctpreschd@pacificorp.com	
Payments:	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826	
Wire Transfer:	To be provided in separate letter from PacifiCorp to Seller	
Credit and Collections:	Attn: Credit Manager, Suite 600 Phone (503) 813-7280	
Notices of an Event of Default or Potential Event of Default:	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 MILESTONES¹³

Project Milestone	Project Milestone Completion Date
Execute Generation Interconnection Agreement	
Execute Purchase Agreement for Major Equipment	
Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement	
Issue FNTF	
First Synchronization	
Commercial Operation Date	Scheduled Commercial Operation Date

¹³ NTD: Project Milestones and dates by which the Milestones are to be achieved to be agreed to by the Parties prior to the Execution Date.

EXHIBIT O
[RESERVED]

EXHIBIT P
STORAGE OPERATING PROCEDURES¹⁴

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 (collectively, “BESS SCADA”). The Parties shall cooperate to integrate the systems and controls necessary to implement the Storage Operating Procedures.
 - a. The Storage Facility is to operate without on-site operations personnel on a 24 hour a day, 7 day per week basis. 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 in accordance with Section 6.9.1(e).
 - b. Seller shall provide as part of the Storage Facility a proven and established instrumentation and control system for the BESS SCADA. PacifiCorp’s control systems (“PacifiCorp SCADA”) will supervise and monitor the BESS SCADA system while Seller’s BESS SCADA will act as the master for the Storage Facility. PacifiCorp SCADA shall be the master for the point of interconnection (“POI”) breaker.
 - c. The BESS SCADA system shall be compatible with PacifiCorp SCADA (including historian database and AGC) via DNP3 protocols. The BESS SCADA shall incorporate an RTU, to which Seller shall provide read/write access to PacifiCorp SCADA via DNP 3.0.
 - d. The monitoring system shall provide data as described in Section II of this Exhibit P. Seller shall design the system so that the data can be retrieved remotely.
- 2) BESS Telemetry. Detailed metering, relay and protection requirements will be specified in the Generation Interconnection

¹⁴ NTD: Exhibit P is a preliminary draft and is subject to change based on project-specific details and further negotiation

Agreement. Seller must provide as part of the Storage Facility telemetering equipment and facilities capable of transmitting the information listed in Section II of this Exhibit P, 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 Seller's energy management system and data historian that will monitor the Storage Facility's state of health 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 Storage Facility 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 SCADA master controller. A proven and established combined instrumentation and control system shall be provided for the BESS SCADA. The BESS SCADA system shall feed into an RTU that shall be the primary interface with PacifiCorp SCADA and shall be compatible with PacifiCorp SCADA via DNP3 protocol. 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 voltage and frequency ranges as specified by equipment

manufacturers and as required at the POI by the Generation Interconnection Agreement and providing full output for the required Storage Facility operation modes specified or UL 1741 certified.

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 Storage Facility 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 BESS SCADA or control system has protective features ensuring that charge and discharge setpoints cannot exceed charge and discharge limits reported by battery management system (BMS) and PCS SCADA systems.
- 3) The BESS SCADA control system shall allow PacifiCorp's dispatcher to initiate remotely Seller-specified/programmed charge and discharge cycles.
- 4) Automatic or programmed charge cycles shall be implemented to prevent the state of charge ("SoC") going above or below the battery vendor specified SoC limits.
- 5) Seller will indicate any required rest (neither charging nor discharging of the Storage Facility) periods, their duration and what event they must follow or precede.
- 6) The maximum rest period allowed (days, weeks, months) is provided in Section II of this Exhibit P.
- 7) 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, Planned Outage, Maintenance Outage, or Forced Outage.
- 8) 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, Planned Outage, Maintenance Outage, or Forced Outage.

E. Cooperation

- 1) Seller will design the Facility per the current specification and will cooperate with PacifiCorp to modify the Facility to accommodate technology and market changes if requested. For example:
 1. Bidding into the Extended Day Ahead Market (EDAM).

F. Charging and Discharging Notices and Modifications

- 1) PacifiCorp will provide to Seller, per WECC pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging Notice and Discharging Notice will incorporate Seller's resource availability per the day-ahead forecasts provided pursuant to Section 6.7 of the Agreement.
- 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 access to BESS SCADA data through a DNP 3.0 communication link.
- 3) To make intraday adjustments on the day of operation, PacifiCorp will communicate with Seller through (i) plant SCADA 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.
- 4) Intraday adjustments will be subject to limitations and a predetermined control system (algorithm).
- 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.

G. Reports.

Seller will deliver to PacifiCorp a quarterly written report highlighting performance from Storage Facility Operating Parameters with respect to the performance of the Storage Facility, including: 1) impacts to physical availability

greater than five percent (5%) of capacity; 2) with respect to throughput, average SoC or 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.

II. Storage Facility Operating Parameters

Storage Facility Operating Parameters are comprised of three (3) 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

#	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 Maximum CP-rate for Charging the Storage Facility		Maximum rate in MW at which energy can be charged. Measured at the Storage Facility Metering Point Provide Constant Power charge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in Exhibit A)
	Minimum CP-rate for Discharging the Storage Facility Maximum CP-rate for Discharging the Storage Facility		Maximum rate in MW at which energy can be discharged. Measured at the Storage Facility Metering Point. Provide Constant Power discharge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in Exhibit A)
	Storage Ramp Rate	[] MW per milliseconds to reach full Storage Power Capacity Rating	

	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 Discharge 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		Between full discharge and charge Between charge and full discharge
	Resting SoC of the Storage Facility (average per Contract Year)		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		
	Operating Mode		List operating modes Storage Facility is designed and capable of and any limitations, for example Standby Mode
	Additional operating limitations e.g. thermal or seasonal limits		Min/Max temperatures for example

Part 2: Day Ahead Inputs

#	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

	Roundtrip Efficiency (%)		The measure of in/out loses of the Storage Facility during a charge/discharge cycle as measured at the Storage Facility transformer
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Part 3: Real Time SCADA POINTS

#	Day Ahead Inputs	Values	Notes
	Instantaneous MW output		At the Point of Delivery and Storage Facility Metering Point Net Output
	Pmax		Guaranteed Storage Power Capacity Rating (MW)
	Pmin		
	SoC		Measured in % equal to Stored Energy Level divided by the Storage Energy Capacity determined as a result of the most recent Storage Energy Capacity Test, with fully charged being 100% and fully discharged being 0%
	Max. SoC		Measured in percentage (%) or MWh. As updated based on the most recently completed Storage Energy Capacity Test
	Number of equivalent full Depth of Discharge (DOD) cycles used during Contract Year		
	Current status and physical ability of the Storage Facility		
	Daily Cycle Limit		Percentage of daily limit met
	Operating Mode		
	Current Faults		

EXHIBIT Q
CYBERSECURITY REQUIREMENTS

[To be provided by PacifiCorp]

EXHIBIT R

WORKFORCE REPORTING

Pursuant to Section 6.10.10 of the Agreement, Seller shall provide to PacifiCorp the following information and execute and deliver the following reports, documents and certifications:¹⁵

1. Seller shall deliver to PacifiCorp within thirty (30) Business Days following the end of each March, June, September and December in each year during the Term a report detailing (a) the number of local and state workers employed during construction of the Facility and (b) the number of incidents when contractors contracted by Seller in the course of construction of the Facility commit health, safety or environmental infractions.

2. Seller will deliver to PacifiCorp to copies of such declaration, attestations and documents as Seller is required to deliver to the Oregon State Department of Energy pursuant to Oregon HB 2021.

3. Seller shall complete and deliver to PacifiCorp within thirty (30) Business Days following the end of each March, June, September and December in each year during the Term the following report:

¹⁵ NTD: Seller will be required to comply with only those requirements applicable to Seller and/or its Facility.

Exhibit R Workforce Reporting

Diverse Business Spend Report

Reporting Period: [QUARTER], 20__
 Date Submitted: [MONTH AND DAY],
 20__

Contract Name:

Company Name:
 Report Prepared by:
 Phone Number:
 Email Address:

	Goods & Materials	Services
PacifiCorp Service Area	Quarterly Diverse Business Spend*	Quarterly Diverse Business Spend*
California		
Oregon		
Washington		
Utah		
Idaho		
Wyoming		
<p>*Diversity Spend is that portion of the previous month's total spend provided by a diversity business, defined as "including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses" pursuant to WAC 480-107-075(3) Note: Leases, Real Estate, and Utilities should not be included in spend figures.</p>		

Total Spending
Application of Washington-state labor standards**"
**RCW 82.08.962 and 82.12.962

Exhibit R Workforce Reporting

Diverse Business Spend Report / Detail

Quarter									Invoice Diversity Spend		
Name of Business (Supplier / Contractor / Subcontractor)	Diversity Classification(s) (See Below)"	Contact Person	Contact Information	Tax ID	Certifications (i.e., WBENC, California Clearinghouse, etc.)	Description of Goods/Services	Application of Washington-state labor standards in RCW 82.08.962 and 82.12.962 (Yes/No)	Location where services are performed or goods delivered (CA, OR, WA, UT, ID, WY)	Goods & Materials Diverse Business Spend	Services Diverse Business Spend	Total Diverse Business Spend

Diversity Classification	SAP Diversity Code
Female, Asian/Pacific Islander	FA
Female, Black	FB
Female, Hispanic	FH
Female, Am.Indian/Alaskan	FI
Female, White	FW
Female, White, Disabled Vet	FWD
Female, White, LGBT	FWL
Male, Asian/Pac Islander	MA
Male, Black	MB
Male, Hispanic	MH
Male, Am.Indian/Alaskan	MI
Male, White, Disabled Veteran	MWD
Male, White, LGBT	MWL

EXHIBIT S
GENERATION INTERCONNECTION AGREEMENT

[See the attached]

EXHIBIT T

STORAGE ENERGY CAPACITY TESTS; STORAGE POWER CAPACITY GUARANTEE¹⁶

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 schedule and complete a Storage Energy Capacity Test to determine the Storage Power Capacity Rating of the Storage Facility for the first Contract Year. 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.¹⁷

2. Subsequent Testing. At least once per Contract Year (starting after the first Contract Year) within the first three (3) months of each Contract Year or at such other time during the Contract Year as the Parties may mutually agree, upon no less than five (5) Business Days prior notice to PacifiCorp, Seller shall schedule and complete a Storage Energy Capacity Test. In each Contract Year, Seller shall have the right to run up to four (4) retests of the Storage Energy Capacity Test at any time upon five (5) days prior written notice to PacifiCorp (or any shorter period reasonably acceptable to PacifiCorp consistent with Prudent Electrical Practices). In addition, PacifiCorp shall have the right to require a retest of the Storage Energy Capacity Test at any time upon five (5) days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Energy Capacity has varied materially from the results of 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. Notwithstanding anything to the contrary contained in this Exhibit T, in no event shall Storage Energy Capacity 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 Energy Capacity Tests. PacifiCorp shall be responsible for all costs and expenses payable or reimbursable to its representative(s) witnessing

¹⁶ NTD: Exhibit T is a preliminary draft and is subject to change based on project-specific details and further negotiation.

¹⁷ NTD: Seller to propose duration for PacifiCorp review.

any Storage Energy Capacity Test. All other costs of any Storage Energy Capacity Test shall be borne by Seller (other than (i) any Charging Energy required to perform such Storage Energy Capacity Test and (ii) any third party costs incurred by Seller for 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) Fifty percent (50%) of the 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 the 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 full capacity 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, 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 = $100 \text{ MWh} / 4 \text{ hours} = 25$ 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 GUARANTEE¹⁸

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

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

Multiplied by

c) The Storage Price.

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 EFFICIENCY¹⁹

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 schedule and complete a Storage Round Trip Efficiency Test to verify that the Storage Facility can satisfy the Guaranteed Storage Round Trip Efficiency.

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, upon no less than five (5) Business Days prior notice to PacifiCorp, Seller shall schedule and complete a Storage Round Trip Efficiency Test. In each Contract Year, Seller shall have the right to run up to four (4) retests of the Storage Round Trip Efficiency at any time upon five (5) days prior written notice to PacifiCorp (or any shorter period reasonably acceptable to PacifiCorp consistent with Good Utility Practice). In addition, PacifiCorp shall have the right to require a retest of the Storage Round Trip Efficiency at any time upon five (5) days prior written notice to Seller if PacifiCorp reasonably believes that the Storage Round Trip Efficiency has varied materially from the results of 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 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 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 Seller (other than (i) any Charging Energy required to perform such Storage Round Trip Efficiency Test and (ii) any third party costs incurred by Seller for 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).

¹⁹ 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.

4. Test Results. No later than five (5) 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;
- (b) where $\text{Actual RTE} = \text{EnergyOUT} / \text{EnergyIN}$ (both defined below);
- (c) the then applicable Storage Power Capacity Rating;
- (d) the then applicable Storage Price; and
- (e) 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 charge 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 schedule and complete a Storage Ramp Rate Test to verify that the Storage Facility can satisfy the Storage Ramp Rate criteria specified in Exhibit P.

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, upon no less than five (5) Business Days prior notice to PacifiCorp, Seller shall schedule and complete a Storage Ramp Rate Test. 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 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 (i) any Charging Energy required to perform such Storage Ramp Rate Test and (ii) any third party costs incurred by Seller for 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 five (5) 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: full 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 Ending 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.

APPENDIX F-1

BTA Instructions to Bidders

BTA – and Benchmark – Bid Checklist

Each BTA bidder must provide complete information as requested and described in **Appendix B-2 - Bid Proposal Instructions and Required Information**. Applicable appendices, forms and attachments are outlined in the Bid Checklist table below that are required in the BTA bid submittal. Benchmark bidders must submit the same requirements as BTA bidders with the exception that Benchmark bids are exempt from submitting Appendix A-6, Appendix A-10, Appendix D, Appendix F-2, Appendix G-1, Appendix J, Appendix K, and Appendix S-1.

Bidders shall summarize the key issues list as part of their **Appendix B-2 - Bid Proposal Instructions and Required Information** narrative and also provide a redline to the pro forma documents included in **Appendix F-2 - BTA Documents**.

PacifiCorp is accepting PSH bids in its 2022AS RFP due to the long-lead time for development and construction of PSH projects. While a PSH is considered a long-lead time bid with an on-line date beyond December 31, 2027, PacifiCorp suggests that a reasonable on-line date for PSH is five years from execution of a contract with the PSH which puts the expected on-line date by December 31, 2028. PSH bids may also propose a term length longer than 30 years consistent with their operating license. PSH opportunities are emerging within the footprint of PacifiCorp’s system and may offer unique capacity and operating flexibility.

A	B	C
	2022AS RFP Bid Applicability	Bid must include completed Appendix
Appendix A	Resource Technical Specification	
<i>Appendix A-2</i>	<i>Interconnection Studies and Agreements</i>	X
<i>Appendix A-3</i>	<i>Permit-Matrix</i>	X
<i>Appendix A-5</i>	<i>Project One-Line Drawing and Layout</i>	X
<i>Appendix A-6</i>	<i>Division of Responsibility</i>	X
<i>Appendix A-7</i>	<i>Owner Standards and Specification</i>	X
<i>Appendix A-8</i>	<i>Real Estate Specifications</i>	X
<i>Appendix A-9</i>	<i>Product Data- Equipment Supply Matrix</i>	X
<i>Appendix A-10</i>	<i>Plant Performance Guarantee/Warranties</i>	X
Appendix B-1, B-1.1 and B-1.2	Intent to Bid Form as submitted and Bid Fee Calculator Worksheet	X
Appendix B-2	Information Required in Bid Proposal (Bid Narrative)	X
Appendix C-1	Bid Summary and Pricing Input Sheet instructions	
Appendix C-2	Bid Summary and Pricing Input Sheet	X
Appendix C-3	Energy Performance Report	X
Appendix E-1	PPA Instructions to Bidders	
Appendix E-2.1 or E-2.2	Redline to PPA and exhibits	
Appendix E-3	Redline to Tolling Agreement and exhibits	
Appendix F-1	BTA Instructions to bidders	
Appendix F-2	Redline to BTA Term Sheet	X
Appendix G-1	Confidentiality Agreement	X

A	B	C
Appendix J	PacifiCorp Transmission Waiver	X
Appendix K	Operations and Maintenance Services	X
Appendix L	Non-Price Scoring Matrix	X
Appendix P	Equity Questionnaire	X
Appendix S-1	Berkshire Hathaway Energy Cyber Security Attestation	X

APPENDIX F-2

BTA Documents

[INCLUDED AS A SEPARATE ATTACHMENT]

For the 2022AS RFP, Appendix F-2 includes a term sheet containing the major terms and conditions expected under a negotiated BTA.

APPENDIX F-2

Build Transfer Agreement (BTA) Documents

Term Sheet - Build Transfer Agreement

The following are the material terms and conditions of the Build Transfer Agreement between Seller and Purchaser. Capitalized terms used and not defined herein will have the meaning given to such terms in the definitive Build Transfer Agreement between the Parties.

1.	Purchaser	PacifiCorp, an Oregon corporation
2.	Seller	[_____]. Seller and Purchaser are sometimes hereafter referred to as a “ <u>Party</u> ” or collectively as the “ <u>Parties</u> ”.
3.	Project and Project Site	<p>A site located in [_____] County, [_____] (“<u>Project Site</u>”) that is capable of being fully permitted and developed to permit the construction and commissioning, by or on behalf of Purchaser, of an approximately [___] MW[(ac)] [ground-mounted solar photovoltaic][wind powered] electric generating facility (“<u>Project</u>”) [with a fully integrated AC-coupled energy storage system (“<u>ESS</u>”).</p> <p>[Note: Bidders should adjust the wording of this section to accurately describe the proposed Project, present technical details to PacifiCorp with respect to the proposed Project, and, if applicable, the ESS, with sufficient detail to show how the components of the Project will be fully integrated (including with respect to charging and discharging of energy from the ESS).]</p>
4.	Proposed Transaction	The “ <u>Proposed Transaction</u> ” means the purchase by Purchaser and sale by Seller of the Project (including the Project Site and the Project Assets) pursuant to the Build Transfer Agreement. For the avoidance of doubt, the Proposed Transaction will not be structured as a sale of equity interests in one or more entities owned or controlled by Seller that relate to the Project (including the Project Site and the Project Assets). At the Closing, the Project Assets will be conveyed to Purchaser free and clear of all Liens, other than Permitted Liens, together with the Assumed Liabilities.
5.	Project Assets; Assumed Liabilities; Excluded Assets; Excluded Liabilities	“ <u>Project Assets</u> ” means all assets, properties, rights and interests of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site), and any goodwill related thereto, owned or leased by, or licensed to, Seller as of the Closing Date, in each case, which relate to or are used or held for use in connection with the development, construction, operation, maintenance, repair, ownership or use of the Project, including the Shared Facilities, if applicable

		<p>(other than the Excluded Assets), including: (a) books and records; (b) the Project Site; (c) the Project Contracts; (d) the Project real property agreements; (e) the Project fixtures and equipment; (f) the Project improvements; (g) the Project intellectual property; (h) the Project Permits (other than the Purchaser permits); (i) the Project reports; (j) the resource data (solar irradiance or wind data, as applicable and including meteorological data with respect to all resources); and (k) any warranties associated with the equipment and/or workmanship of the Project.</p> <p>“<u>Assumed Liabilities</u>” means (i) all Liabilities under the Project Contracts expressly assumed by Purchaser, and (ii) all Liabilities arising from the ownership, operation, maintenance, repair or use of the Project or the Project Assets by Purchaser following the Closing, in each case, other than Excluded Liabilities and such Liabilities which arise from the acts or omissions of Seller or any of its Affiliates prior to the Closing.</p> <p>Except for the Assumed Liabilities, Purchaser will not assume and will not be responsible to pay, perform, satisfy or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, relating to the development, construction, ownership, operation, maintenance, repair or use of the Project (including the Project Assets and the Project Site) prior to the Closing (the “<u>Excluded Liabilities</u>”).</p> <p>The Project Assets and the Assumed Liabilities will not include (i) any “<u>Excluded Assets</u>,” which will be listed in a schedule to the Build Transfer Agreement, or (ii) any Excluded Liabilities, which Seller (or its Affiliates) will retain, pay and perform, including:</p> <ul style="list-style-type: none">• Liabilities from any violation of applicable environmental law on the Project Site prior to Closing;• Liabilities from any environmental condition on, under or near the Project Site existing prior to Closing, including remediation costs, natural resource damages, bodily injury or property damage;• Liabilities from off-site transportation, disposal, recycling or storage of any hazardous substances on the Project Site prior to Closing, including Liabilities related to remediation, natural resource damages, bodily injury or property damage;• Liabilities related to any employee benefit plan of Seller (or its Affiliates (including ERISA Affiliates)) with respect to current or former employees or contractors;• Liabilities under the Project Contracts, the Project real property agreements and Project Permits (other than Purchaser permits) prior to Closing;
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		<ul style="list-style-type: none"> • Liabilities related to the development, construction, commissioning, operation, maintenance, repair and use of the Project prior to Final Completion, including all Liabilities under the EPC Agreement and other Construction Agreements¹, if any (collectively, the “<u>Project Costs</u>”); • Liabilities for personal injury, property damage or tort arising out of development, construction, commissioning, operation, maintenance, repair or use of the Project or the Project Assets prior to Closing; • Liabilities with respect to pending or threatened litigation before or arising from acts or omissions occurring before the Closing in connection with the Project, the Project Site or Project Assets; • Pre-Closing tax Liabilities with respect to the transfer of the Project Assets; and • Liabilities related to the Excluded Assets.
6.	Project Contracts	“ <u>Project Contracts</u> ” means all contracts to which Seller or any of its Affiliates is a party with respect to the Project or the Project Assets other than the Project real property agreements.
7.	Purchase Price; Payment of Purchase Price	<p>The “<u>Purchase Price</u>” means [_____]. Purchaser will pay to Seller the Purchase Price at the times, in the amounts and otherwise subject to the conditions and requirements in the Build Transfer Agreement, <u>provided</u> that Purchaser does not expect to make any payments to Seller before the Firm Date. Seller will not be entitled to a change in the Purchase Price for Force Majeure or change in law, including any change in tax law.</p> <p>[Note: Bidder to propose timing and structure of payments, including payment milestones. See related note with respect to performance security below.]</p>
8.	Allocation of Purchase Price	Within forty-five (45) days after Closing, Purchaser will provide Seller with an allocation of Purchase Price. Seller will have thirty (30) days to propose any changes.
9.	Firm Date and Firm Date Conditions	“ <u>Firm Date</u> ” means the date on which all of the Firm Date Conditions have been satisfied (or waived by the Party entitled to do so).

¹ NTD: Purchaser does not anticipate that there will be more than one Construction Agreement in addition to the EPC Agreement (e.g., turbine supply agreement or module supply agreement). If and to the extent Seller contemplates additional Construction Agreements, then Purchaser expects Seller to bear any and all risk associated with such additional Construction Agreements, including any gap (or disputes with respect to gaps) in scope or warranty coverage, schedule delay or cost increase.

		<p>The Parties' obligations between the Firm Date and the Closing are subject to fulfillment of conditions which must be satisfied on or prior to the Firm Date and include, among other customary conditions:</p> <p>For Purchaser and Seller (all or any of which may be waived in whole or in part by each Party in its sole discretion):</p> <ul style="list-style-type: none">• Firm Date Permits (a) have been obtained and issued in the name of Seller or the Project, (b) are in full force and effect, and (c) satisfy any other requirements of the Build Transfer Agreement with respect to review and approval of Permits;• Seller has delivered to Purchaser each of the Firm Date Reports and any Additional Reports required pursuant to the Build Transfer Agreement and such reports have satisfied any other requirements of the Build Transfer Agreement with respect to the preparation, sufficiency and material findings of such reports;• Seller has delivered to Purchaser a Phase I ESA, current and valid on the Firm Date under ASTM Standard Practice E1527-13, addressed to Purchaser, and accompanied by a reliance letter incorporating user provided information from Purchaser, in form and substance reasonably satisfactory to Purchaser;• Seller and Purchaser have agreed on all Firm Date Title Objections and NDA-Required Exceptions and Seller has delivered all Non-Disturbance Agreements and Curative Documents in accordance with the standards and processes set forth in the Build Transfer Agreement;• The form of Title Policy to be issued as of the Closing Date has been finalized and agreed to;• Seller has caused the Title Company to issue to Purchaser the Updated Title Commitment and a pro forma policy of title insurance consistent with the Updated Title Commitment and the agreed upon Firm Date Title Objections and NDA-Required Exceptions;• The EPC Agreement and other Construction Agreements, if any, have been finalized and executed by the parties thereto in accordance with the requirements of the Build Transfer Agreement and are in form and substance acceptable to Purchaser in its reasonable discretion, and Seller has issued a full notice to proceed pursuant to the EPC Agreement;• The Interconnection Agreement has been finalized and executed by the parties thereto in accordance with the requirements of the Build Transfer Agreement and is in form and substance acceptable to Purchaser in its reasonable discretion;• All Firm Date Required Consents have been duly obtained, made or given and are in full force and effect;
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		<ul style="list-style-type: none"> • The final form of the Construction Completion Management Agreement has been mutually agreed to by the Parties; • The final form of the O&M Agreement, if applicable, has been mutually agreed to by the Parties; and • The final form of the Shared Facilities Agreement, if applicable, has been mutually agreed to by the Parties. <p>For Purchaser (all or any of which may be waived in whole or in part by Purchaser in its sole discretion):</p> <ul style="list-style-type: none"> • Seller’s representations and warranties are true and correct as of Firm Date in all material respects except for Seller’s fundamental representations and warranties and representations and warranties qualified by a materiality standard, which will be true and correct in all respects; • Seller has performed its obligations in the Build Transfer Agreement in all material respects; and • There are no Seller Material Adverse Effects. <p>For Seller (all or any of which may be waived in whole or in part by Seller in its sole discretion):</p> <ul style="list-style-type: none"> • Purchaser’s representations and warranties are true and correct as of Firm Date in all material respects except for Purchaser’s fundamental representations and warranties and representations and warranties qualified by a materiality standard, which will be true and correct in all respects; • Purchaser has performed its obligations in the Build Transfer Agreement in all material respects; and • There are no Purchaser Material Adverse Effects.
10.	Closing	The Parties will mutually agree on a Closing Date following the satisfaction of the conditions to the Closing.
11.	Seller’s Closing Deliverables	<p>The Build Transfer Agreement will contain certain Seller deliverables required by Purchaser to Close which are customary and appropriate for a transaction of this type and scale, including, among other things, fully executed (other than by Purchaser or its Affiliates) copies of:</p> <ul style="list-style-type: none"> • Bill of Sale; • Assignment and Assumption Agreement; • Construction Completion Management Agreement; • O&M Agreement, if applicable; • Shared Facilities Agreement, if applicable; • EPC Agreement and other Construction Agreements, if any; • Bargain and Sale Deed, if applicable; • Owner’s Affidavit (in form and substance satisfactory to the Title Company);

		<ul style="list-style-type: none"> • Phase I ESA, current and valid on the Closing Date under ASTM Standard Practice E1527-13, addressed to Purchaser, and accompanied by a reliance letter incorporating user provided information from Purchaser, in form and substance reasonably satisfactory to Purchaser; • FIRPTA certificate; and • Purchaser’s and Officer’s Certificates.
12.	Purchaser’s Closing Deliverables	<p>The Build Transfer Agreement will contain certain Purchaser deliverables required by Seller to Close which are customary and appropriate for a transaction of this type and scale, including, among other things, fully executed (other than by Seller or its Affiliates) copies of:</p> <ul style="list-style-type: none"> • Bill of Sale; • Assignment and Assumption Agreement; • Construction Completion Management Agreement; • O&M Agreement, if applicable; • Shared Facilities Agreement, if applicable; and • Seller’s and Officer’s Certificates.
13.	Covenants and Efforts to Close	<p>Each Party will take commercially reasonable efforts to complete the Proposed Transaction, and Seller will continue to conduct business with respect to the Project in the ordinary course and consistent with Good Operating Practices. The Parties will take additional actions, including as follows:</p> <ul style="list-style-type: none"> • Each Party will provide reasonable cooperation to obtain consents and make all filings required to complete the Proposed Transaction; • Each Party will prepare all necessary filings required by governmental authorities [Note: FERC approval under Section 203 is not anticipated.]; • Seller will deliver to Purchaser (i) one or more commitments for title insurance for the Project Site, and (ii) a current ALTA survey. Purchaser may provide to Seller a Title Objection Letter that identifies Firm Date Title Objections and NDA-Required Exceptions. The Parties will work through these matters in accordance with the requirements of the Build Transfer Agreement; • Seller will not: (i) enter into the EPC Agreement or any other Construction Agreement, if any, other than substantially and in all material respects in the forms attached to the Build Transfer Agreement²; (ii) enter into any material contract relating to the Project (including the Project Assets or the Project Site); (iii)

² NTD: Among other things, Purchaser expects the EPC Agreement to include a full wrap 24-month warranty for the Project.

		<p>modify or amend in any material respect any material contract with respect to the Project, including Project Contracts or Project real property agreements; (iv) fail to take actions necessary to maintain the Project Permits; or (v) take any action that would reasonably be expected to materially adversely affect the Project or the Project Assets;</p> <ul style="list-style-type: none"> • Upon reasonable prior notice to Seller, Purchaser and its representatives will have a reasonable right to access and inspect the Project Site, the Project Assets and the Books and Records; • Seller will obtain and maintain, or cause to be obtained and maintained, insurance on the Project and Project Site effective as of the start of construction; • Seller will not solicit from or engage with any Person (other than Purchaser or an Affiliate of Purchaser) any competition to the Proposed Transaction; • Seller will not make or change any material tax election; • Purchaser will use reasonable efforts to replace credit support following the Closing; • Seller will provide to Purchaser such information and execute and deliver such reports, documents and certifications, as Purchaser may reasonably request with respect to the diversity and such other applicable criteria as Purchaser may reasonably identify with respect to the contractors, subcontractors, consultants, service providers and equipment suppliers, contracted by Seller in the course of the development, construction, ownership, operation, maintenance, repair or use of the Project. If a Governmental Authority audits any Purchaser report or filing concerning the information, reports, documents or certifications provided by Seller above, then Seller shall provide Purchaser all substantiating documentation to sufficiently support Purchaser’s report or filing; and • Seller will deliver true and correct copies of draft and final reports with respect to the Project.
14.	Purchaser’s Conditions Precedent to Closing	<p>The Build Transfer Agreement will contain certain conditions precedent required for Purchaser to Close which are customary and appropriate for a transaction of this type and scale, including, among other things:</p> <ul style="list-style-type: none"> • Seller’s representations and warranties are true and correct as of Closing in all material respects except for Seller’s fundamental representations and warranties and representations and warranties qualified by a materiality standard, which will be true and correct in all respects; • Seller has performed its obligation in all material respects;

		<ul style="list-style-type: none"> • No laws or final orders restrict the Proposed Transaction; • All of Purchaser’s Consents have been obtained and are in full force and effect; • All of Seller’s closing deliverables have been provided; • The Project Contracts and schedules support achievement of the Commercial Operation Date (as defined in the EPC Agreement) on or prior to the Commercial Operation Deadline (as defined in the EPC Agreement); • The Project has achieved Availability Completion (as defined in the EPC Agreement) and, if applicable, ESS Availability Completion (as defined in the EPC Agreement) and Purchaser has agreed to achievement of the same;³ • The Project has not, in whole or in part, been synchronized to the electric transmission system; • Seller has provided documentation satisfactory to Purchaser with respect to qualification for any applicable tax credits; • Seller’s Parent Guaranty is in full force and effect; • Any objections to title and survey matters have been cured to Purchaser’s reasonable satisfaction; • There are no Seller Material Adverse Effects; and • The required Project Permits have been issued.
15.	Seller’s Conditions Precedent to Closing	<p>The Build Transfer Agreement will contain certain conditions precedent required for Seller to Close which are customary and appropriate for a transaction of this type and scale, including, among other things:</p> <ul style="list-style-type: none"> • All required Purchase Price payments have been made; • Purchaser’s representations and warranties are true and correct as of Closing in all material respects except for Purchaser’s fundamental representations and warranties and representations and warranties qualified by a materiality standard, which will be true and correct in all respects; • Purchaser has performed its obligation in all material respects; • No laws or final orders restrict the Proposed Transaction; • All of Seller’s Consents have been obtained and are in full force and effect; • All of Purchaser’s closing deliverables have been provided; and • There are no Purchaser Material Adverse Effects.
16.	Performance Security	<p>Seller will provide a parent guaranty (“<u>Seller’s Parent Guaranty</u>”) from a creditworthy entity guaranteeing to Purchaser repayment of any</p>

³ NTD: Availability Completion and, if applicable, ESS Availability Completion will be defined in the EPC Agreement to mean that the Project and, if applicable, the ESS has achieved a level of completion equivalent to mechanical completion or such earlier state of completion as Purchaser may require.

		amount or liability of Seller under the Build Transfer Agreement. The form, amount and conditions surrounding performance security provided by Seller will ultimately be subject to an evaluation of the payment structure agreed to between the Parties as well as Purchaser's evaluation of the risk profile that accompanies the final terms and conditions of the Proposed Transaction. Additional or different performance security requirements may result therefrom.
17.	Update of Seller's Disclosure Schedules	<p>Prior to the Firm Date and the Closing Date, Seller will update certain factual schedules to reflect, among other things, new contracts entered into; new fixtures and equipment; additional improvements; additional Project intellectual property; any new Project real property agreements entered into; new reports; and additional resource data.</p> <p>In addition, prior to the Firm Date and the Closing Date, Seller will update the disclosure schedules with any matter arising after the date of the Build Transfer Agreement which would have been required to be disclosed. If any matter disclosed has or would reasonably be expected to have a Seller Material Adverse Effect and Purchaser does not elect to terminate the Build Transfer Agreement, then such disclosed matter will be taken into consideration for purposes of Seller satisfying the Firm Date or Closing condition with respect to its representations and warranties and Purchaser will not be entitled to indemnification with respect thereto if Closing occurs. If any matter disclosed does not have and would not reasonably be expected to have a Seller Material Adverse Effect, then such disclosed matter will be taken into consideration for purposes of Seller satisfying the Firm Date or Closing condition with respect to its representations and warranties, but Purchaser will be entitled to indemnification with respect thereto if Closing occurs.</p>
18.	Representations and Warranties	<p>The Build Transfer Agreement will include representations and warranties as are customary and appropriate in transactions of this type and scale, including representations and warranties regarding the following items, which will contain such knowledge and materiality qualifiers as are mutually agreed to by the Parties and will be subject to such exceptions as will be disclosed by Seller as of the date of the Build Transfer Agreement (and updated thereafter in accordance with the Update of Seller's Disclosure Schedules provided above):</p> <ul style="list-style-type: none"> • Corporate existence and authority to complete the Proposed Transaction and enter into the ancillary agreements; • The Proposed Transaction and ancillary agreements do not conflict with corporate authority, contracts, or other obligations or applicable law; • Seller and the Project are in compliance with all applicable laws;

		<ul style="list-style-type: none"> • Seller has good and marketable title to the Project Assets (including the Shared Facilities, if any) free and clear of all Liens except for Permitted Liens; • Seller has good and marketable fee simple title or valid leasehold or easement interests in the Project Site, free and clear of all Liens except for Permitted Liens; • The Project Assets (including the Shared Facilities, if any) constitute all of the material Contracts, Permits, rights, assets and properties necessary to develop, construct, own, operate, maintain and use the Project; • After Closing, except for the Project Contracts and the Project real property agreements, the Project Assets will not be bound to any contracts; • The Project Contracts and the Project real property agreements are in full force and effect and no breach or defaults exists thereunder; • The disclosed Permits constitute all Project Permits and all such disclosed Permits are in full force and effect; • There are no Seller Material Adverse Effects; • The disclosed insurance policies with respect to the Project Assets constitute all insurance policies; • At Closing, Seller will have disclosed all material reports and other documents with respect to the Project, including any documents with respect to resource data; • No energy, capacity, ancillary services or environmental attributes associated with the Project have been sold; and • At Closing the Project is in compliance with all environmental permits and environmental laws and there are no pending or threatened violations.
19.	Liquidated Damages for Delayed Closing Date and Commercial Operation Date	<p>Depending upon the payment and security arrangements, the Build Transfer Agreement may contain delay liquidated damages for delay in timely achieving the Closing Date and the Commercial Operation Date by specified deadlines. Subject to Purchaser’s termination right below, Seller will be entitled to schedule relief for delay caused by Force Majeure, <u>provided</u> that in no event will schedule relief extend the Closing beyond the Outside Closing Date or the Commercial Operation Date beyond the Required Scheduled Commercial Operation Date.</p>
20.	Termination Rights	<p>At any time before Closing, the Build Transfer Agreement may be terminated upon the occurrence of any of the following events:</p> <ul style="list-style-type: none"> • By mutual written consent of the Parties;

		<ul style="list-style-type: none"> • By Purchaser or Seller in the event any non-appealable law becomes effective, or a final order is issued, which prohibits the completion of the Proposed Transaction; • By Purchaser or Seller, as applicable, if (a) (i) the other Party breaches any representation, warranty or covenant in the Build Transfer Agreement, (ii) such breach would result in a failure of, or inability of the other Party to satisfy the applicable Closing conditions(s), and (iii) such breach has not been cured to Purchaser's or Seller's, as applicable, reasonable satisfaction within thirty (30) days following receipt of written notice of such breach or an extended cure period not to exceed the Outside Closing Date; or (b) a disclosure schedule update is delivered by a Party which discloses a Seller Material Adverse Effect or Purchaser Material Adverse Effect, as applicable, and which is not been cured within thirty (30) days following receipt of written notice of such breach or an extended cure period not to exceed the Outside Closing Date; • By either Party, upon the bankruptcy of the other Party; • By either Party, any time after a specified Outside Firm Date if the failure to achieve the Firm Date is not caused by a breach of such Party; and • By either Party, any time after a specified Outside Closing Date if the failure to complete Closing is not caused by a breach of such Party. <p>If validly terminated, then all further obligations of the Parties will end (other than those which are intended to survive termination), and the Parties will be entitled to pursue all rights or remedies available at law or in equity.</p>
21.	Indemnification	<p>The Build Transfer Agreement will include indemnification provisions as are customary and appropriate in transactions of this type and scale including the following:</p> <p>Seller will indemnify Purchaser and the other Purchaser Indemnified Parties from and against any and all Losses resulting from:</p> <ul style="list-style-type: none"> • Breach of Seller's representations or warranties; • Breach by Seller of its covenants, agreements or obligations pursuant to the Build Transfer Agreement or ancillary agreements; • Seller's fraud or willful misconduct; and • Excluded Assets and Excluded Liabilities, including all Project Costs. <p>Purchaser will indemnify Seller and the other Seller Indemnified Parties from and against any and all Losses resulting from:</p> <ul style="list-style-type: none"> • Breach of Purchaser's representations or warranties;

		<ul style="list-style-type: none"> • Breach by Purchaser of its covenants, agreements or obligations pursuant to the Build Transfer Agreement or ancillary agreements; • Purchaser’s fraud or willful misconduct; and • Assumed Liabilities. <p>Such indemnification provisions will include: (a) a claim threshold which equals a specified percent of the Purchase Price⁴; (b) a liability cap for each Party not to exceed 100% of the Purchase Price (except in the event of fraud or willful misconduct of a Party or its related persons, Excluded Liabilities or Assumed Liabilities, or breach of fundamental representations and warranties, for which there will be no liability cap); and (c) a general survival period for representations and warranties of not less than 24 months following the Closing, with specified representations and warranties surviving for greater time periods (i.e., fundamental representations and warranties surviving indefinitely; tax and employee benefit representations and warranties surviving through the applicable statute of limitations plus 60 days; and environmental representations and warranties surviving 5 years)</p> <p>Purchaser’s right to indemnification based on representations, warranties, covenants and other obligations in the Build Transfer Agreement will not be limited, diminished or otherwise affected by any investigation conducted or knowledge obtained before or after Closing with respect to the accuracy or inaccuracy of such representations, warranties, covenants or other obligations.</p>
22.	Limitation of Liability	<p>Seller’s aggregate liability under the Build Transfer Agreement will not exceed the Purchase Price, subject to carveouts for fraud, willful misconduct or claims for Excluded Assets and Excluded Liabilities, including Project Costs, Seller’s fundamental representations and warranties, or any claim for specific performance.</p> <p>Purchaser’s aggregate liability under the Build Transfer Agreement will not exceed the Purchase Price, subject to carveouts for fraud, willful misconduct or claims for Assumed Liabilities, Purchaser’s fundamental representations and warranties, or any claim for specific performance.</p>
23.	Taxes	<p>Seller will be responsible for the payment of all sales, conveyance, transfer, excise, real estate transfer, business and occupation and similar taxes assessed with respect to or imposed on either Party relating to Purchaser’s acquisition of the Project Assets (or otherwise) in connection with the Proposed Transaction. Seller will also make several tax representations customary for this type of transaction,</p>

⁴ NTD: Purchaser expects the percentage to be less than one percent (1%) of the Purchase Price.

		including any tax representations required with respect to applicable tax credits.
24.	Force Majeure	<p>“<u>Force Majeure</u>” means an event or circumstance that prevents a Party (the “<u>Affected Party</u>”) from performing, in whole or in part, an obligation under the Build Transfer Agreement or ancillary 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 or related persons; (c) is not the result of the negligence or fault or the failure to act by the Affected Party or its Affiliates or related persons; and (d) could not be overcome or its effects mitigated by the use of due diligence by the Affected Party or its Affiliates or related persons. None of the following will constitute Force Majeure: (i) Seller’s ability to sell, or Purchaser’s ability to purchase, an electric generating facility at a more advantageous price than is provided under the Build Transfer Agreement; (ii) economic hardship, including lack of money or the increased cost of electricity, steel, labor, transportation or goods and services; (iii) inability to obtain any supply of goods or services, unless due to an independent event of Force Majeure; (iv) any breakdown or malfunction of the Project’s equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure; (v) Seller’s failure to obtain, or perform under, or any delay, alleged breach of contract, or failure by transmission provider or interconnection provider under, the Interconnection Agreement; (vi) 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 other governmental approval or the applications therefor; (vii) delays in customs clearance, unless due to an independent event of Force Majeure; (viii) 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 laws regarding unfair trade practices; and (ix) the occurrence after the date of the Build Transfer Agreement, of an enactment, promulgation, modification or repeal of one or more laws. Each Party acknowledges the effects of COVID-19 and the military conflict in Eastern Europe 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 the military conflict in Eastern Europe and its effects shall be permitted only to the extent of material direct impacts of COVID-19 and the military conflict in Eastern Europe, as the case may be, 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 above are met.</p>

25.	Dispute Resolution; Governing Law; Venue; Jury Trial Waiver	<p><u>Dispute Resolution</u>: Disputes not resolved in the ordinary course of business will be referred to senior executives. If such senior executives cannot in good faith resolve the dispute within thirty (30) days the Parties may pursue any remedy at law, equity or under the Build Transfer Agreement.</p> <p><u>Governing Law</u>: The Build Transfer Agreement and the rights and obligations of the Parties thereunder and the transactions contemplated thereby will be governed by, enforced and interpreted in accordance with the laws of the State of [Oregon] without regard to principles of conflicts of law that would apply the laws of another jurisdiction.</p> <p><u>Venue</u>: Each of the Parties will irrevocably and unconditionally submit to the exclusive jurisdiction of the federal and state courts located in [Portland], [Oregon] (or if no such court will accept jurisdiction, in any state or federal court of general jurisdiction in the State of Oregon, or if no such court will accept jurisdiction, in any court of competent jurisdiction in the United States) with respect to any proceeding relating to the Build Transfer Agreement.</p> <p><u>Jury Trial Waiver</u>: The Parties will waive jury trial in any suit or proceeding related to the Build Transfer Agreement or any ancillary agreements.</p>
25.	Waiver of Remedies; Specific Performance	<p>Except for Purchase Price adjustments, claims for fraud or willful misconduct, the remedies in the Build Transfer Agreement are the sole and exclusive remedies under the Build Transfer Agreement, and all other remedies or damages at law or equity are waived. Either Party is entitled to seek specific performance of the obligations under the Build Transfer Agreement.</p>
26.	Assignment	<p>Neither Party may assign the Build Transfer Agreement without the prior written consent of the other Party; provided, however:</p> <ul style="list-style-type: none"> • Purchaser may assign the Build Transfer Agreement to any Affiliate or successor in interest without Seller’s consent; and • Seller may assign the Build Transfer Agreement to an Affiliate without Purchaser’s consent, provided that the Seller’s Parent Guaranty (or other applicable credit support) remains in full force and effect.

APPENDIX G-1

Confidentiality Agreement

MUTUAL CONFIDENTIALITY AGREEMENT

This MUTUAL CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of the ___ day of _____, 2022 (the "Effective Date"), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and _____ ("Counterparty").

WHEREAS, Counterparty is submitting a bid in response to PacifiCorp's 2020AS Request for Proposals (the "Bid"), and in connection therewith the parties wish to exchange certain Confidential Information (as hereinafter defined).

NOW, THEREFORE, in consideration of the above and the mutual promises herein contained, the parties hereto agree as follows:

1. Confidential Information. "Confidential Information" means information made available by one party (the "Disclosing Party") to the other (the "Recipient") on or after the Effective Date, that is in a writing marked conspicuously as "CONFIDENTIAL," and is any of the following in relation to the Bid or PacifiCorp's evaluation of the Bid: (a) non-public financial information of the Disclosing Party or its proposed guarantor, if any, (b) the specifics of the price and business terms and conditions of the Bid; or (c) documentation exchanged between the parties pertaining to PacifiCorp's evaluation of the Bid or negotiation with Counterparty on a definitive agreement in relation to the Bid. Confidential Information does not include information which at the time of disclosure: (x) is generally available to the public (other than as a result of disclosure by Recipient), (y) was available to Recipient on a non-confidential basis from a source other than a Disclosing Party not actually known by Recipient to be under a duty of confidentiality to a Disclosing Party, or (z) independently developed by Recipient without reliance on the Confidential Information.

2. Confidentiality; Disclosure.

(a) Until the establishment of a docket or proceeding relating to the Bid before any public service commission, public utility commission, or other agency having jurisdiction over PacifiCorp, the Confidential Information will be kept confidential by Recipient and will not be used knowingly for any purpose by Recipient other than for the purpose set forth above and Recipient must restrict the dissemination of the Confidential Information to its employees who have a need to see it.

(b) Upon the establishment of a docket or proceeding relating to the Bid before any public service commission, public utility commission, or other agency having jurisdiction over PacifiCorp, Recipient's obligations to Disclosing Party with respect to the Confidential Information will automatically be governed solely by the rules and procedures governing such docket and not by this Agreement.

3. Protective Order. Except as provided in Section 2(b) of this Agreement, if Recipient becomes legally compelled to disclose any Confidential Information, it must provide Disclosing Party with

prompt prior written notice so that Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, Recipient must (i) furnish only that portion of the Confidential Information which, in accordance with the advice of its own counsel, is legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished. Notwithstanding the foregoing, and without limiting Section 2(b), the parties acknowledge that PacifiCorp is required by law or regulation to report certain information that could embody Confidential Information from time to time, and may do so from time to time without providing prior notice to Counterparty. Such reports include models, filings, and reports of PacifiCorp's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as the North American Electric Reliability Corporation, Western Electricity Coordinating Council, Pacific Northwest Utility Coordinating Committee, Western Regional Generation Information System, or similar or successor organizations, or similar or successor 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 Information, and may do so without prior notice and use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures.

4. Conduct of Process. Neither PacifiCorp nor Counterparty is under any obligation, and each party is free to elect not to consummate an agreement or to furnish or receive information. Nothing contained in this Agreement will prevent PacifiCorp from negotiating with or entering into a definitive agreement with any other person or entity without prior notice to Counterparty. Until PacifiCorp and Counterparty enter into a definitive agreement, no contract or agreement or other investment or relationship is deemed to exist between them as a result of this Agreement, the issuance of a term sheet, the issuance, receipt, review or analysis of information, the negotiation of definitive documentation, or otherwise, and none of the foregoing may be relied upon as the basis for an implied contract or a contract by estoppel.

5. Intellectual Property Rights. Nothing contained herein grants any rights respecting any intellectual property (whether or not trademarked, copyrighted or patented) or uses thereof.

6. Costs and Expenses. Except as otherwise provided in any other written agreement between the parties, the parties will bear their own costs and expenses, including without limitation fees of counsel, accountants and other consultants and advisors.

7. Remedies. Disclosing Party is entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to all other remedies available to it at law or in equity. In no event will any party be liable to the other for punitive or consequential damages for any alleged breach hereof. No failure or delay by a party in exercising any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. SUCH WAIVERS WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

8. Venue and Choice of Law. This Agreement is governed by the laws of the State of Oregon. Any suit, action or proceeding arising out of the subject matter hereof, or the interpretation, performance or breach hereof, will be instituted in any State or Federal Court in Multnomah County, Oregon (the "Acceptable Forums"). Each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, and waives any and all objections to jurisdiction or venue that it may have any such suit, action or proceeding.

9. Miscellaneous. The term of this Agreement is two years from the date hereof. This Agreement constitutes the entire agreement of the parties relating to its subject matter, and supersedes all prior communications, representations, or agreements, verbal or written. This Agreement may only be waived or amended in writing. Notices hereunder must be in writing and become effective when actually delivered. This Agreement may be executed in counterparts, each of which, when taken together, will constitute one and the same original instrument. Neither party may assign or otherwise transfer its rights or delegate its duties hereunder without the prior written consent of the other party, and any attempt to do so is void.

IN WITNESS WHEREOF, the undersigned parties have executed this Mutual Confidentiality Agreement as of the date first written above.

PACIFICORP
an Oregon corporation

a

By: _____
Its: _____

By: _____
Its: _____

APPENDIX G-2

Non-Reliance Letter

825 N.E. Multnomah
Portland, Oregon 97232
(503) 813-5000

Date

[Name]

[Address]

Re: PacifiCorp's 2022AS Request for Proposals Renewable Resources

Dear [_____]:

This letter clarifies PacifiCorp's rights relating to its further evaluation and discussion of your possible involvement with _____ ("Counterparty") proposal submitted in response to PacifiCorp's Request for Proposals ("RFP") (collectively with Counterparty's proposal and all matters relating thereto, the "Project") and any subsequent negotiations regarding the terms of any agreement or agreements entered into with you or any other party in connection with the Project. PacifiCorp will agree to enter into further discussions with you only upon your prior acknowledgement of these rights. "You" and similar words (whether or not capitalized) refer to the addressee of this letter, Counterparty, and any Project development entity or other affiliate of the addressee in any way involved in the Project.

PacifiCorp is committed to following a fair process in selecting the winning proposal. However, PacifiCorp reserves the right, in its sole discretion, to terminate the consideration of the Project and any discussions with you or any other parties (such as your lenders) relating to the Project at any time and for any reason without incurring any liability for costs or expenses incurred by you in the course of, or as a result of, your participation in the bidding process or negotiations respecting the Project, including but not limited to any costs or expenses related to or arising from the preparation or submission of your proposal, your legal fees, transmission or environmental studies or reviews, expenses of any third party incurred at your behest, your participation in discussions with PacifiCorp, the Project, or any development costs incurred by you in connection with this process. The submission of a proposal by Counterparty and PacifiCorp's decision to engage in further discussions with you does not constitute acceptance of the Project, and will not obligate PacifiCorp to accept or to proceed further with the Project. The acceptance of any proposal and the commencement of the Project are contingent on a number of factors, including but not limited to financial and creditworthiness considerations, strategic decisions, resource planning, regulatory approvals, and the approval of PacifiCorp's board of directors and/or shareholders. PacifiCorp makes no representation as to the likelihood of Counterparty's proposal being accepted or of the Project being commenced and, if PacifiCorp decides not to accept Counterparty's proposal or the Project, you hereby fully and forever release and discharge PacifiCorp of all liability whatsoever, whether arising from your alleged reliance on PacifiCorp's acceptance of the Project or any part thereof or whether based upon any other action or claim in tort, contract, promissory estoppel, equity, negligence or intentional conduct, and

PacifiCorp will not be liable for any amount of liability or damages, including but not limited to any amounts for incidental, special, consequential or punitive damages.

PacifiCorp reserves the right to engage in discussions with multiple parties simultaneously with respect to this RFP or any other matter, and to accept or reject any type of proposal of any party in its sole discretion. PacifiCorp also reserves the rights to reject all proposals relating to this RFP, and to pursue any other course it deems appropriate.

PacifiCorp will have no obligations to you with respect to the Project unless and until the execution by all applicable parties of one or more definitive written agreements (the "Definitive Agreements") in form and substance satisfactory to the parties entering into such Definitive Agreements and then only to the extent stated therein. No contract will nor will be deemed to exist, whether by estoppel or otherwise, in any other way than execution and delivery (if ever) of the Definitive Agreements. The execution (if any) of any Definitive Agreements would be subject, among other things, to the satisfactory completion of due diligence by such parties as well as the satisfaction of applicable financial, environmental and other regulatory requirements as determined by PacifiCorp. If PacifiCorp selects the Project, then except as specifically set forth in the Definitive Agreements, PacifiCorp will have no obligations to you in the event that the Project or any part thereof is discontinued, cancelled, stopped, or terminated for any reason whatsoever, including without limitation financial or creditworthiness considerations concerning you or any contemplated source of Project-related funds, third-party delay or failure (with PacifiCorp's transmission function constituting a third party for purposes hereof), regulatory restrictions, transmission infrastructure restrictions, environmental or community challenges, or the Project is embargoed, restrained, subject to labor strike or lockout, destroyed, subject to terrorist attack or any other force beyond your control, is incapable of receiving required electricity transmission or network service, or is otherwise rendered impossible to complete by the times set forth in the Definitive Agreements for any other reason, whether your fault or not.

Whether or not the Project is commenced and Definitive Agreements executed, you will be responsible to pay your own fees and expenses, including without limitation legal fees and expenses, incurred in connection with the preparation, discussion and negotiation of the Project as well as the preparation, negotiation, execution and delivery of the Definitive Agreements and any other agreements or documents contemplated thereby, and PacifiCorp will not be responsible for any of those fees and expenses.

If the foregoing is acceptable, please indicate so by executing and dating this letter in the space indicated below.

Sincerely,

PacifiCorp

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED:

[Insert Name of Party]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX H-1

2021 PacifiCorp IRP Preferred Portfolio Transmission Upgrade Selections

P02-MM-CETA: 2015-2028

Year	Resource(s)	From	To	Description
2025	1,641 MW RFP Wind (2025)	Aeolus WY	Clover	Enables 1,930 MW of interconnection with 1700 MW of TTC: Energy Gateway South
2026	615 MW Wind (2026)	Within Willamette Valley OR Transmission Area		Enables 615 MW of interconnection: Albany OR area reinforcement
2026	130 MW Wind (2026)	Portland North Coast	Willamette Valley	Enables 2080 MW of interconnection with 1950 MW TTC; Portland Coast area reinforcement, Willamette Valley and Southern Oregon
	450 MW Wind (2032)		Southern Oregon	
	650 MW Battery (2037)			
2026	600 MW Solar+Storage (2026)	Borah-Populous	Hemingway	Enables 600 MW of interconnection with 600 MW of TTC: B2H Boardman-Hemingway
2028	41 MW Solar+Storage (2028) 377 MW Solar+Storage (2030)	Within Southern OR Transmission Area		Enables 460 MW of interconnection: Medford area reinforcement

APPENDIX H-2

2021 PacifiCorp IRP Preferred Portfolio Proxy Resource Selections

Project Name	Bidder/Owner	Type	Location	Resource Size (MW)	Battery Size (MW)	Expected Online
Portland/N. Coast	TBD	Wind	NW Oregon	130	n/a	2025
Willamette	TBD	Wind	NW Oregon	615	n/a	2025
Borah Hemingway	TBD	Solar with Battery	Idaho	600	600	2025

APPENDIX H-3

Transmission Summary of OASIS Queue Positions

[INCLUDED AS A SEPARATE ELECTRONIC SPREASHEET (EXCEL FILE)]

Appendix H-3 is an excel spreadsheet which includes four tabs showing each of the following OASIS reports at the time of RFP issuance and are subject to change:

1. Active Serial Queue Positions
2. Executed Interconnection Agreements – Not in Service
3. Transition Cluster Study
4. First Annual Cluster Study (Cluster Study 1)

APPENDIX I

Standards of Conduct; Separation of Functions

As a vertically-integrated utility with both transmission provider and merchant functions, PacifiCorp is required to comply with FERC's Standards of Conduct which govern interactions between PacifiCorp's Transmission Function and its Marketing Function. Under the Standards of Conduct, PacifiCorp's Transmission Function employees must function independently of PacifiCorp's Marketing Function employees. Marketing Function employees cannot have access to transmission control center or other transmission facilities or information systems that differ in any way from the access provided to non-affiliated transmission customers. The Standards of Conduct prohibit Marketing Function employees from gaining access to any information about PacifiCorp's transmission system that is not posted on the OASIS or otherwise made publicly-available to all other market participants.

Under the Standards of Conduct, FERC will allow certain non-operating employees to be shared between the Transmission Function and Marketing Function. Under FERC's "no-conduit rule", shared employees may receive confidential transmission system or marketing information, but they are prohibited from sharing such information with Marketing Function employees through any non-public or off-OASIS communications.

Market Function Employees

PacifiCorp has identified employees in the following business groups as Marketing Function employees of PacifiCorp:

Energy Supply Management

Energy Trading

Origination

Transmission Function Employees

PacifiCorp's Transmission Function includes: employees, contractors, consultants or agents of PacifiCorp who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, or carrying out transmission-related operations.

Shared Employees

PacifiCorp has identified Integrated Resource Planning, Resource Development, Structuring and Pricing, Contract Administration, Environmental, Credit, Legal and Risk Management as shared employee functions under FERC's Standards of Conduct.

Information Status

PacifiCorp's Marketing Function employees will not be involved in a Bidder's transmission or interconnection requests with PacifiCorp's Transmission Function, nor will such Marketing Function employees be permitted access to non-public transmission function information. All PacifiCorp employees at all times abide by FERC's Standards of Conduct. If an issue arises about compliance with FERC's Standards of Conduct, PacifiCorp's FERC Standards of Conduct Compliance Officer, Colt Norrish at 503-813-5545, should be contacted immediately.

APPENDIX J

PacifiCorp Transmission Waiver

SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP

[Interconnection Customer Letterhead]

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

RE: _____ Interconnection Request: Interconnection Position # _____

Dear Director:

_____ hereby voluntarily authorizes PacifiCorp's Transmission business unit to share _____'s generator interconnection information and generator meter data with marketing function employees of PacifiCorp, including, but not limited to those in the energy supply management group. _____ acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

Name

Title

Date

APPENDIX K

Operations and Maintenance Services

[PROVIDED AS SEPARATE ATTACHMENTS]

BTA bids only. Not required for PPA bids.

Bidder shall complete one or more of the following services and maintenance agreement term sheets as applicable for the type of resource bid:

- Appendix K-1 Wind_SMA_Term_Sheet**
- Appendix K-2 BOP_OM_Term_Sheet**
- Appendix K-2 Solar_OM_Term_Sheet**
- Appendix K-3 Solar_Storage_OM_Term_Sheet**

2022AS RFP Appendix K-1

SERVICE AND MAINTENANCE AGREEMENT TERM SHEET

THIS TERM SHEET DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS TERM SHEET OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS TERM SHEET SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND A DEFINITIVE AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS TERM SHEET OR IN THE COURSE OF ANY NEGOTIATIONS.

<u>Contractor:</u>	[] (“ Contractor ”).
<u>Owner:</u>	PacifiCorp, an Oregon corporation (“ Owner ”). Owner and [] (“ Developer ”) have entered into that certain Build Transfer Agreement (“ Build Transfer Agreement ”) whereby Owner shall purchase (and Developer shall sell and transfer) the Facility (as defined below) prior to Availability Completion (as defined in the Build Transfer Agreement).
<u>Scope:</u>	Contractor and Owner would enter into a Service and Maintenance Agreement (the “ Agreement ”) for the provision of scheduled and unscheduled maintenance services on wind turbine generators (“ WTGs ”), towers, SCADA system, fire suppression system, switchgear, climb assists, foundation, FAA lighting, CMS monitoring and other ancillary WTG related equipment (and on replacement parts installed in any of them) (the “ Serviced Equipment ”) at Owner’s wind-powered electric generation facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to a Balance of Plant Engineering, Procurement and Construction Agreement (the “ EPC Agreement ”) between [] (“ EPC Contractor ”) and Developer. In addition to the Agreement, there will be a separate Turbine Supply Agreement (“ TSA ”) with respect to the WTGs to be executed by Contractor and Developer. The EPC Agreement and TSA will be assigned by Developer to Owner prior to Project Mechanical Completion and the commencement of the Term of the Agreement (at closing of the Build Transfer Agreement).
<u>SMA Services:</u>	Contractor shall provide all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services for the Serviced Equipment for the duration of the Term, which services shall include typical and customary long-term servicing activities for WTGs, to be defined and set forth in an exhibit to the Agreement, but including, at a minimum, (i) Planned Maintenance and Unplanned Maintenance including provision and maintenance of all labor, tools, equipment and safety equipment including cranes or such other lifting equipment required for such maintenance and service of WTGs, (ii) In-and-Out Activities and (ii) services comprising or related to inspections and testing of parts or components of the WTGs including vibration analysis (the “ SMA Services ”). In addition, Contractor may perform certain extra work requested by Owner or recommended by Contractor and documented in a written change order executed by

	Owner and Contractor (the “ Extra Work ”).
<u>Planned Maintenance:</u>	<p>“Planned Maintenance” shall include any and all typical and customary inspection, testing, maintenance and replacement of Covered Parts and Miscellaneous Hardware of the Serviced Equipment and any SMA Services as may be necessary:</p> <ul style="list-style-type: none"> (i) to complete all inspections in accordance with a schedule and scope of work to be agreed by Owner and Contractor and set forth in the Agreement (the “Scheduled Inspections”); (ii) to perform, as necessary, typical and customary maintenance on each WTG following the removal of such WTG from electric or power generation service due to Planned Maintenance (a “Planned Maintenance Outage”); and (iii) to repair or replace Covered Parts as required by the original manufacturer’s recommendations, including all Service Bulletins issued by Contractor or its Affiliates and relating to potential defects of the Covered Parts or any parts or components thereof.
<u>In-and-Out:</u>	Contractor shall be responsible for all in-and-out activities (and costs related thereto) necessary to perform all Planned Maintenance, Unplanned Maintenance and Extra Work on the Serviced Equipment, including (i) the removal, disassembly and opening of all coverings, assemblies, systems, structures and components of the Serviced Equipment so as to allow access as required, (ii) the replacing, reassembly and closing of such coverings, assemblies, systems, structures and components of the Serviced Equipment that were affected, and (iii) the provision of all tools, equipment, labor, technical direction, and start-up support in connection therewith (the “ In-and-Out Activities ”).
<u>Covered Parts:</u>	During the Term, Contractor shall provide Covered Parts, Miscellaneous Hardware and Spare Parts for Planned Maintenance, Unplanned Maintenance and Extra Work. “ Covered Parts ” shall include parts typical and customary in the operation of WTGs of the model(s) used in the Facility.
<u>Miscellaneous Hardware:</u>	“ Miscellaneous Hardware ” shall include the consumable and contingency hardware (such as bolts, studs, screws, nuts, washers, lock wire, lock washers, pins and springs) required for disassembly and reassembly of the Serviced Equipment.
<u>Spare Parts Title:</u>	<p>Contractor shall maintain any initial spare parts provided by Owner or EPC Contractor and otherwise supply (in conjunction with provision of Spare Parts by the Contractor under the TSA) all necessary and recommended spare parts and consumables for the Facility (collectively, the “Spare Parts”). Contractor shall maintain the Spare Parts at its own expense at the Site and on a dedicated basis for exclusive use for the Facility; <u>provided, however</u>, that with respect to Spare Parts related to Extra Work, Contractor shall offer to sell to Owner such Spare Parts as are manufactured by Contractor or its affiliates (including Seller under the TSA) at Contractor’s then-current market prices in the United States for spare parts and consumables subject to an agreed-upon discount set forth in the Agreement.</p> <p>Contractor shall provide a monthly report with respect to the inventory of Spare Parts, including any parts procured or replaced during such period, and shall make recommendations to Owner regarding the appropriate number and type of Spare Parts for the Facility. Contractor shall replenish the inventory of Spare Parts on an</p>

	<p>ongoing basis as necessary to ensure operation of the Facility in accordance with the Performance Guarantee.</p> <p>All Spare Parts procured or used with respect to the Facility shall be new OEM parts that comply with any applicable warranty requirements and are of equal or better quality as compared to the OEM parts used in the initial construction of the Facility. Title to such Spare Parts shall transfer from Contractor to Owner upon the earlier of Owner’s payment therefor or installation of the same into the Facility.</p>
<u>Technical Advisory Services:</u>	<p>“Technical Advisory Services” shall include technical advice, instruction, direction, information, or assistance and counsel provided by Contractor or its personnel (including, but not limited to, the individual who shall be on-Site on a full-time basis) or any field engineers, supervisors or inspectors who may be provided by Contractor for the purpose of Planned Maintenance, Unplanned Maintenance or Extra Work concerning installation, operation, inspection, maintenance, repair and removal of Covered Parts or for the Serviced Equipment. Unless otherwise specified in the Agreement, Technical Advisory Services would not include supervision or management of Owner’s employees, agents, or other contractors.</p>
<u>Unplanned Maintenance:</u>	<p>Contractor shall provide all Covered Parts, Miscellaneous Hardware, tools and equipment (including cranes) and SMA Services, and undertake all activities necessary to plan and perform all Unplanned Maintenance. “Unplanned Maintenance” shall include any and all inspection, testing, maintenance, replacement and refurbishment of parts and components of the Serviced Equipment and the performance of SMA Services as may be necessary to remedy any sudden and accidental in-service failure of any part or component (without prejudice to Contractor’s warranty obligations), including any “downstream” or “collateral” physical property damage caused by Covered Parts, Miscellaneous Hardware or SMA Services provided by Contractor. Contractor’s Unplanned Maintenance obligations would result from (without limitation) the following circumstances: (a) the Covered Parts or Miscellaneous Hardware proved defective, (b) damage occurred to the Serviced Equipment, Covered Parts or Miscellaneous Hardware while within the care, custody and control of Contractor (e.g., foreign object damage), (c) the root technical cause of an incident involving a Covered Part or Miscellaneous Hardware cannot be determined after a reasonable time for technical assessment, or (d) a Covered Part fails after a Planned Maintenance interval has been extended based on Contractor’s technical recommendation.</p>
<u>SMA Fee:</u>	<p>The Agreement shall provide for a typical and customary fixed annual fee covering the SMA Services and Technical Advisory Services (the “SMA Fee”). Contractor shall not be entitled to any additional compensation, except as set forth in a change order with respect to Extra Work and in connection with Owner’s purchase of Spare Parts as described above.</p>
<u>Term:</u>	<p>The Agreement shall be executed and effective on or before the date that the EPC Agreement is executed by both Developer and EPC Contractor, <u>provided</u> that the operational term of the Agreement shall commence upon Project Mechanical Completion (as defined in the EPC Agreement) of the Facility and expire upon the date that is [_____] (__) calendar years from the commencement of the Agreement (the “Term”). <i>Note that the Term should match the warranty term of the TSA such that the Term is aligned with the term for “Covered Parts” (or similar concept)</i></p>

	<i>under the TSA.</i>
<u>Independent Contractor:</u>	Contractor is acting and shall be deemed for all purposes to be an independent contractor and nothing in the Agreement shall be construed as constituting any relationship with Owner other than that of owner and independent contractor. Contractor shall have no authority to bind Owner to any contractual obligations with third parties, including any vendors, suppliers or service-providers. Owner and Contractor are not partners, agents or joint venturers with each other, and the Agreement is not intended to nor shall it be construed to create a partnership or joint venture between Owner and Contractor. Contractor shall complete the SMA Services according to its own means and methods of work, which shall be in the exclusive charge and control of Contractor and which shall not be subject to the control and supervision of Owner, except as to the results of the SMA Services.
<u>Subcontracts:</u>	Subject to Owner’s consent, not to be unreasonably withheld, Contractor may enter into subcontracts for particular aspects of its obligations under the Agreement. All subcontracts shall incorporate and flow-down applicable requirements from the Agreement (including with respect to insurance), be assignable to the Owner upon termination of the Agreement and provide that Owner is a third-party beneficiary thereunder. Contractor shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Owner’s warranty requirements.
<u>Personnel:</u>	Contractor shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the SMA Services, and such personnel shall perform such SMA Services in accordance with the applicable Requirements (defined below). Contractor shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the SMA Services. Contractor shall be responsible for all matters relating to labor relations (including confirming labor union agreement with applicable project labor agreements), working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements.
<u>Business Practices:</u>	Contractor, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the SMA Services. In conjunction with its performance of the SMA Services, Contractor and its employees, officers, agents and representatives shall comply with, and cause its subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and Owner’s “code of business conduct”, which code of business conduct would be included as an exhibit to the Agreement.
<u>Cyber Security</u>	Contractor shall have and maintain security controls to protect the Owner’s networks, systems, software, confidential information, and data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems-Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management. All cyber security shall meet the Cybersecurity Requirements contained in Appendix A-1.2 “Wind Work Specifications” to the Request for Proposal to which this term sheet is attached. Note that prior to

	<p>execution of a definitive agreement, Owner reserves the right to update its cybersecurity requirements to which Contractor must comply, as Owner deems advisable, in its sole discretion.</p>
<p><u>SMA Manual:</u></p>	<p>Not later than one hundred eighty (180) days prior to the commencement of the Term, Contractor shall prepare and submit, for Owner’s review and approval, a manual relating to the operation and maintenance of the Facility that incorporates any specific service requirements necessary to comply with the Requirements or that are an integral part of Contractor’s obligations in connection with the SMA Services and the Technical Advisory Services (the “O&M Manual”). Owner shall provide comments, if any, to the O&M Manual to Contractor within thirty (30) days after Owner’s receipt of such O&M Manual. Contractor shall modify the O&M Manual based upon Owner’s comments and shall provide Owner with a copy of such revised O&M Manual within thirty (30) days after Contractor’s receipt of Owner’s comments. Once approved by the parties, the O&M Manual may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; provided that, Owner may require that the O&M Manual be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause SMA Services and Technical Advisory Services to be performed in accordance with applicable law and insurance requirements.</p>
<p><u>Annual Maintenance Plan:</u></p>	<p>Not later than ninety (90) days prior to the commencement of each contract year, Owner and Contractor shall meet to discuss the projected SMA Services and Technical Advisory Services for the Facility to be performed for such upcoming calendar year in accordance with the Requirements. Within twenty (20) days after each such meeting, Contractor shall prepare and submit, for Owner’s review and approval, a recommended plan (an “Annual Maintenance Plan”) setting forth (i) Contractor’s intended work plan for the SMA Services and Technical Advisory Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the SMA Services and Technical Advisory Services to be performed, and (iv) any other related activities for each calendar month over the ensuing contract year, which Annual Maintenance Plan shall be in compliance with the Requirements. Owner shall provide comments to the Annual Maintenance Plan, if any, to Contractor within fifteen (15) days after such meeting. Contractor shall modify the Annual Maintenance Plan based upon Owner’s comments. Once approved by the parties, the Annual Maintenance Plan may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; provided that, Owner may require that the Annual Maintenance Plan be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the SMA Services and Technical Advisory Services to be performed in accordance with applicable law and insurance requirements. The approved Annual Maintenance Plan shall be integrated into the O&M Manual.</p>
<p><u>Minimal Interference:</u></p>	<p>Contractor shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the SMA Services in a manner that will minimize interference with the operation of the Facility (by the BOP O&M operator) and to conduct its work at such times so as to minimize reduction of production in respect of the Facility, including where applicable, coordination with the BOP O&M operator. Unless granted prior written approval from Owner, Contractor shall not conduct any scheduled maintenance on Facility equipment that would reasonably be expected to</p>

	reduce Facility production during wind season, determined by site location, unless winds are below 4 m/s.
<u>Hazardous Substances:</u>	Contractor shall minimize the use of hazardous substances and shall not permit any of its subcontractors, directly or indirectly, to use, handle, store, generate, manufacture, transport or release any hazardous substances in, on or under the Facility, the Site and any adjacent areas thereto, except to the extent required for the performance of the SMA Services, and, in each such case in accordance with the Requirements and at the sole cost and expense of Contractor. Contractor or subcontractors shall be responsible for the disposal, transportation and reporting of hazardous substances at the Site, in each case, by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable laws. Contractor shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Contractor discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Contractor shall promptly notify Owner thereof and stop work in and restrict access to the area containing such hazardous substances. Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by the Requirements in connection with the release of hazardous substances by Contractor. Contractor shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Contractor as a result of the remediation or removal of hazardous substances for which Contractor is responsible.
<u>Title; Risk:</u>	The Agreement shall provide for typical and customary provisions with respect to delivery of Covered Parts and Miscellaneous Hardware as well as transfer of title.
<u>Standard of Performance:</u>	All SMA Services shall be performed by Contractor in a good and workmanlike manner, free of any defect or deficiency, consistent with prudent industry practices with respect to first-tier, grid-interconnected, rate-based wind facilities in the Western United States, applicable laws, applicable governmental approvals, applicable project documents, the warranties applicable to the Serviced Equipment and the Covered Parts, the SMA Manual, the Safety Plan and Owner’s operating procedures (collectively, the “ Requirements ”).
<u>Services Warranty:</u>	Contractor shall warrant in the Agreement that the SMA Services will be performed in a good and workmanlike manner and be free from defects in workmanship and materials in accordance with the Requirements for a period of two (2) years after completion thereof. The Agreement shall provide for typical and customary provisions with respect to Contractor’s warranty of the SMA Services, including a services warranty that extends at least two (2) years after the conclusion of the Term of the Agreement and extensions of the services warranty for two (2) years following repair and replacement of parts and equipment. Contractor shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and materials related to the SMA Services, which such obligation shall survive expiration of the Term. When Contractor detects or is notified of a defect covered by the services warranty, Contractor shall, at its sole cost and expense, promptly repair, replace, and/or re-perform the services and/or materials as necessary to cure such defect, in each case to the satisfaction of Owner.
<u>Safety</u>	Contractor shall take necessary safety and other precautions to protect property and

<u>Requirements:</u>	persons from damage, injury or illness arising out of the performance of the SMA Services and Technical Advisory Services and be responsible for the compliance by Contractor, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of the SMA Services and Technical Advisory Services. Contractor shall strictly comply with the terms of Owner’s site safety plan (the “ Safety Plan ”). Owner shall be entitled to review and provide comments to the Safety Plan and Contractor shall incorporate any comments provided by Owner. Contractor shall be responsible for updating and revising the Safety Plan to comply with all Requirements including any changes thereto. Contractor shall comply with the Safety Plan including with respect to passes, badges, drug and alcohol testing and conduct on the Site.
<u>Performance Guarantee:</u>	The Agreement shall provide for typical and customary performance guarantee provisions.
<u>Credit Support:</u>	Contractor will provide such credit support as may be reasonably required by Owner based on Owner’s analysis of relevant financial criteria with respect to Contractor’s financial capability to satisfy its obligations under the Agreement. Such credit support shall cover Contractor’s performance under the Agreement, the Performance Guarantee and any other agreements or undertakings related to the SAM Services or the Facility.
<u>Regulatory/ Compliance:</u>	Contractor shall comply with all requirements of any governmental authorities including, but not limited to, FERC, NERC, WECC, CAISO, WREGIS and the applicable public service commission.
<u>Site Access:</u>	Owner shall provide Contractor with such access to the Facility as reasonably necessary to enable Contractor to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Contractor and to local electric utility personnel, and be in accordance with any ground lease, easement or related instrument in effect with respect to the Site. Contractor shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Owner’s use of the Site, the BOP O&M operator’s performance of its services, and any of Owner’s separate contractors’ activities at the Site.
<u>Indemnification:</u>	Contractor shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (“ Owner Parties ”) and hold them harmless from and against all reasonable out-of-pocket costs, expenses and actual liabilities arising out of or relating to any claim or any litigation or other proceeding that relate to (i) claims for injury or property damage, (ii) worker’s compensation claims, (iii) penalties due to failure to comply with applicable law, (iv) taxes owed by Contractor, (v) Liens arising with respect to the Facility and (vi) hazardous substances.
<u>Liens:</u>	Contractor shall keep and maintain the Facility and the Site free and clear of all liens, encumbrances, claims, charges that if unpaid, might become a lien, and rights of retention (“ Liens ”) resulting from the action of Contractor or work done at the request of Contractor (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Contractor shall

	<p>take prompt steps to discharge any such Lien. Contractor shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Contractor shall indemnify and hold harmless Owner for any losses or expenses incurred by Owner (including reasonable attorneys' fees) in discharging any such Lien. Upon request from Owner, Contractor shall request lien waivers from a subcontractor upon completion and payment for such subcontractor's relevant work and, upon request from Owner, Contractor shall supply copies of such lien waivers to Owner.</p>
<p><u>Termination Rights:</u></p>	<p>The Agreement shall provide for typical and customary termination rights and associated termination payments, including termination for insolvency, bankruptcy, non-payment, prohibited assignment, etc. Owner shall have termination rights related to a failure for Contractor to satisfy certain benchmarks related to the Performance Guarantee.</p> <p>Following any termination of the Agreement for any reason, Contractor shall (a) withdraw from the Site and expeditiously transfer to Owner any Spare Parts, warranties, manuals, software licenses, keys, access credentials, records, reports and other documentation relating to the Facility and the SMA Services and (b) cooperate with Owner and any replacement service provider concerning the transition to such replacement service provider.</p>
<p><u>Insurance:</u></p>	<p>The Agreement shall provide for typical and customary insurance provisions with respect to coverage for Contractor's performance of its obligations with respect to the Facility.</p>
<p><u>Intellectual Property Matters:</u></p>	<p>Owner shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Contractor in connection with the SMA Services and Technical Advisory Services. In addition, Contractor shall grant to Owner, for the life of the Facility, a paid-up, irrevocable, non-exclusive, transferrable, royalty-free right and license under all intellectual property rights that are used by Contractor in providing the SMA Services and Technical Advisory Services as necessary to own, use, operate, maintain, service, repair, alter commission, decommission, remove, dispose, and transfer ownership of the Facility.</p>
<p><u>Limitation of Liability:</u></p>	<p>The Agreement shall provide for typical and customary terms regarding Contractor's aggregate liability for all losses and all other costs and obligations arising out of or relating to the Agreement (with a liability cap in any contract year of two hundred percent (200%) of the fee).</p> <p>With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Contractor to pay liquidated damages under the Agreement or the Performance Guarantee), neither party shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages or lost profits; <i>provided</i> that to the extent not fully covered by insurance, each party shall remain liable for any damage to or loss of any property or equipment (including any deductible amounts) caused by such party's fraud, negligence, gross negligence, or willful misconduct.</p>
<p><u>Taxes:</u></p>	<p>Contractor shall pay any and all sales and use, goods and services, value added, customs and duties (including federal import taxes, including any import duties or</p>

	fees, on materials imported for performance of the SMA Services), withholding, service, general excise, ad valorem or similar taxes to the extent assessed or assessable under applicable law, and taxes measured by or imposed on the net income or net profit of Contractor.
<u>Records; Audit:</u>	Contractor shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the SMA Services and the Facility for a period not less than the Term of the Agreement plus five (5) years. To the extent specified in the SMA Manual, such records shall be maintained in electronic form on the secure shared file site relating to the Facility. In addition, Owner shall have the right to audit and inspect Contractor's records upon reasonable advance notice.
<u>Assignment:</u>	Contractor may not assign its rights and obligations under the Agreement without Owner's prior written consent, which consent shall not be unreasonably withheld. For the avoidance of doubt, Owner may, without the consent of Contractor, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, including assignment or delegation made consistent with the assignment provisions of the Build Transfer Agreement.
<u>Confidentiality:</u>	Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Contractor shall acknowledge that certain governmental authorities have the power to examine Owner's books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to such governmental authorities (or any representatives thereof), as the case may be, any confidential information so requested or required.
<u>Dispute Resolution; Governing Law:</u> ¹	<p>This Term Sheet is, and the Agreement shall be, governed by the laws of the State of [____], without regard to its conflict of laws provisions.</p> <p>The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in [____], [____], or, if such court does not have subject matter jurisdiction, the state courts of the State of [____]. Each party shall waive any objection to forum or venue, and any right to jury trial. The parties shall consent to joinder or consolidation with respect to any disputes involving common issues of law or fact with respect to the Facility, the EPC Agreement or any other agreement relating to the Facility.</p> <p>Any disputes between the parties not resolved via good faith negotiations may proceed to litigation unless the parties mutually agree to arbitration, which arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.</p>

¹ Note to Bidders – PacifiCorp will accept governing law and venue in Oregon or Utah.

2022AS RFP Appendix K-2

BOP O&M TERM SHEET

THIS TERM SHEET DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS TERM SHEET OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS TERM SHEET SHALL BE AT THAT PARTY’S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND A DEFINITIVE AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS TERM SHEET OR IN THE COURSE OF ANY NEGOTIATIONS.

<u>Operator:</u>	[] (“ Operator ”).
<u>Owner:</u>	PacifiCorp, an Oregon corporation (“ Owner ”). Owner and [] (“ Developer ”) have entered into that certain Build Transfer Agreement (“ Build Transfer Agreement ”) whereby Owner shall purchase (and Developer shall sell and transfer) the Facility (as defined below) prior to Availability Completion (as defined in the Build Transfer Agreement).
<u>Scope:</u>	Operator and Owner would enter into an Operations and Maintenance Agreement (the “ Agreement ”) for the provision of BOP O&M Services (defined below) with respect to an approximately [] MW wind-powered electric generating facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to a Balance of Plant Engineering, Procurement and Construction Agreement (the “ EPC Agreement ”) between [] (“ EPC Contractor ”) and Developer. The EPC Agreement will be assigned by Developer to Owner prior to Substantial Completion (as defined in the EPC Agreement) and the commencement of the Term of the Agreement (at closing of the Build Transfer Agreement).

<p><u>BOP O&M Services:</u></p>	<p>Operator shall provide all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services for the entire Facility, excluding the SMA Services (defined below), for the duration of the Term (the “BOP O&M Services”), which shall include (i) certain basic services that constitute typical and customary operation and maintenance activities for a regulated electric utility, to be defined and set forth in an exhibit to the Agreement, but including, at a minimum, visual inspection, system testing and calibration, corrective and unscheduled maintenance, failure response, notifications, staffing and remote monitoring, warranty support, asset management, regulatory/compliance, reporting and compliance (including environmental and avian compliance and unauthorized persons), hazardous waste removal, training of personnel, cooperation and coordination with the SMA Contractor providing the SMA Services for Owner (and the turbine supplier under the Turbine Supply Agreement, if applicable) and reasonable assistance to Owner in its annual operation, maintenance, administrative and general budgeting and capital planning efforts (the “Basic Services”), (ii) any additional services requested by Owner or recommended by Operator and documented in a written change order executed by the parties (the “Additional Services”) and (iii) any emergency services necessary to address emergency affecting the safety or protection of persons or endangering the Facility or other property located at the Site (the “Emergency Services”).</p> <p>Contractor shall, as part of the Basic Services, maintain the meteorological towers including all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services necessary to record readings in the Facility SCADA system.</p> <p>The services to be performed by Operator do not include provision of services, parts, and other work (the “SMA Services”) to be furnished by a separate contractor (the “SMA Contractor”) under the Service and Maintenance Agreement (the “SMA”) to be entered into by Owner and SMA Contractor but do include interfacing, coordinating and cooperating with the SMA Contractor and enforcing the terms and conditions of the SMA Services in relation to the Facility.</p>
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<p><u>Spare Parts Title:</u></p>	<p>Operator shall maintain any initial spare parts provided by Owner or EPC Contractor and otherwise supply all necessary and recommended spare parts and consumables for the Facility and performance of the BOP O&M Services (the “Spare Parts”). Operator shall maintain the Spare Parts at its own expense at the Site and on a dedicated basis for exclusive use for the Facility; <i>provided, however</i>, that with respect to Spare Parts related to Additional Services, Operator shall offer to sell to Owner such Spare Parts as are manufactured by Operator or its affiliates at Operator’s then-current market prices in the United States for spare parts and consumables for utility-scale projects subject to an agreed-upon discount set forth in the Agreement.</p> <p>Operator shall provide a monthly report with respect to the inventory of Spare Parts, including any parts procured or replaced during such period, and shall make recommendations to Owner regarding the appropriate number and type of Spare Parts for the Facility. Operator shall replenish the inventory of Spare Parts on an ongoing basis as necessary to ensure operation of the Facility in accordance with the Performance Guarantee. All Spare Parts procured or used with respect to the Facility shall be new OEM parts that comply with any applicable warranty requirements and are of equal or better quality as compared to the OEM parts used in the initial construction of the Facility. Title to such Spare Parts shall transfer from Operator to Owner upon the earlier of Owner’s payment therefor or installation of the same into the Facility.</p>
<p><u>O&M Fee:</u></p>	<p>The Agreement shall provide for a typical and customary fixed annual fee (the “BOP O&M Fee”). Operator shall not be entitled to any additional compensation, except as set forth in a change order with respect to Additional Services or with respect to Emergency Services or in connection with Owner’s purchase of Spare Parts as described above.</p>
<p><u>Term:</u></p>	<p>The Agreement shall be executed and effective on or before the date that the EPC Agreement is executed by both Developer and EPC Contractor, <i>provided</i> that the operational term of the Agreement shall be a period of [_____] years, commencing upon Substantial Completion (as defined in the EPC Agreement) of the Facility (the “Term”). <i>Note that the Term should match the warranty term of the TSA such that the Term is aligned with the term for “Covered Parts” (or similar concept) under the TSA.</i></p>

<p><u>Independent Contractor:</u></p>	<p>Operator is acting and shall be deemed for all purposes to be an independent contractor and nothing in the Agreement shall be construed as constituting any relationship with Owner other than that of owner and independent contractor. Operator shall have no authority to bind Owner to any contractual obligations with third parties, including any vendors, suppliers or service-providers. Owner and Operator are not partners, agents or joint venturers with each other, and the Agreement is not intended to nor shall it be construed to create a partnership or joint venture between Owner and Operator. Operator shall complete the BOP O&M Services according to its own means and methods of work, which shall be in the exclusive charge and control of Operator and which shall not be subject to the control and supervision of Owner, except as to the results of the BOP O&M Services.</p>
<p><u>Subcontracts:</u></p>	<p>Subject to Owner’s consent, not to be unreasonably withheld, Operator may enter into subcontracts for particular aspects of its obligations under the Agreement. All subcontracts shall incorporate and flow-down applicable requirements from the Agreement (including with respect to insurance), be assignable to the Owner upon termination of the Agreement and provide that Owner is a third-party beneficiary thereunder. Operator shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Owner’s warranty requirements.</p>
<p><u>Personnel:</u></p>	<p>Operator shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the BOP O&M Services, and such personnel shall perform such BOP O&M Services in accordance with the applicable Requirements (defined below). Operator shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the BOP O&M Services. Operator shall be responsible for all matters relating to labor relations, working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements.</p>
<p><u>Business Practices:</u></p>	<p>Operator, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the BOP O&M Services. In conjunction with its performance of BOP O&M Services, Operator and its employees, officers, agents and representatives shall comply with, and cause its subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and Owner’s “code of business conduct”, which code of business conduct would be included as an exhibit to the Agreement.</p>

<p><u>Cyber Security</u></p>	<p>Operator shall have and maintain security controls to protect the Owner’s networks, systems, software, confidential information, and data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems-Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management. All cyber security shall meet the Cybersecurity Requirements contained in Appendix A-1.2 “Wind Work Specifications” to the Request for Proposal to which this term sheet is attached. Note that prior to execution of a definitive agreement, Owner reserves the right to update its cybersecurity requirements to which Operator must comply, as Owner deems advisable, in its sole discretion.</p>
<p><u>O&M Manual:</u></p>	<p>Not later than one hundred eighty (180) days prior to the commencement of the Term, Operator shall prepare and submit, for Owner’s review and approval, a manual relating to the operation and maintenance of the Facility that incorporates any specific service requirements necessary to comply with the Requirements or that are an integral part of Operator’s obligations in connection with the BOP O&M Services (the “O&M Manual”). Owner shall provide comments, if any, to the O&M Manual to Operator within thirty (30) days after Owner’s receipt of such O&M Manual. Operator shall modify the O&M Manual based upon Owner’s comments and shall provide Owner with a copy of such revised O&M Manual within thirty (30) days after Operator’s receipt of Owner’s comments. Once approved by the parties, the O&M Manual may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; provided that, Owner may require that the O&M Manual be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the BOP O&M Services to be performed in accordance with applicable law and insurance requirements.</p>

<p><u>Annual Maintenance Plan:</u></p>	<p>Not later than ninety (90) days prior to the commencement of each contract year, Owner and Operator shall meet to discuss the projected BOP O&M Services for the Facility to be performed for such upcoming contract year in accordance with the Requirements. Within twenty (20) days after each such meeting, Operator shall prepare and submit, for Owner’s review and approval, a recommended plan (an “Annual Maintenance Plan”) setting forth (i) Operator’s intended work plan for the BOP O&M Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the BOP O&M Services to be performed, and (iv) any other related activities for each calendar month over the ensuing contract year, which Annual Maintenance Plan shall be in compliance with the Requirements. Owner shall provide comments to the Annual Maintenance Plan, if any, to Operator within fifteen (15) days after such meeting. Operator shall modify the Annual Maintenance Plan based upon Owner’s comments. Once approved by the parties, the Annual Maintenance Plan may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; provided that, Owner may require that the Annual Maintenance Plan be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the BOP O&M Services to be performed in accordance with applicable law and insurance requirements. The approved Annual Maintenance Plan shall be integrated into the O&M Manual.</p>
<p><u>Reporting Requirements:</u></p>	<p>Operator shall provide usual and customary reports and summaries to Owner, including: (i) a daily production report (via email and File Share upload) relating to the weather, irradiance, availability and performance of the Facility; (ii) a detailed monthly report (in written and electronic format) relating to the monthly and year-to-date availability and performance of the Facility, inverter performance metrics, spare parts utilization and inventory, equipment failures and warranty claims, OSHA and safety-related matters, scheduled and unscheduled maintenance activities, alarm logs and failure reports and any Emergency Services or Additional Services performed; and (iii) an annual report (in written and electronic format) including a summary of the monthly performance reports together with totals for the Performance Guarantee calculations and performance metrics and Owner recommendations. Operator shall provide such reports and summaries in formats as requested by Owner.</p>
<p><u>Notifications:</u></p>	<p>Operator shall promptly notify Owner regarding any pending or threatened litigation, claim, dispute, action, investigation or proceeding relating to the Facility or the Site, or which may impact the Facility or the Site, any refusal or threatened refusal to grant, renew, or extend any governmental approval, any discovery of any existing or concealed hazardous substances, forced outages of the Facility (and the known causes thereof and the corrective action taken with respect thereto), all notices and other communications from any governmental authority in relation to the Facility or the Site and any other event or circumstance that reasonably could be expected to adversely impact the operation of the Facility or access to the Site including labor disputes, violations of applicable laws or applicable governmental approvals, material damage to any of the major pieces of equipment comprising the Facility, or notices or other communications from the transmission provider.</p>

<p><u>Monitoring Services:</u></p>	<p>Operator shall staff and maintain a first-tier network operations center, and shall provide remote monitoring of the Facility therefrom on a twenty-four (24) hour a day, seven (7) days a week basis via connection with the Facility’s SCADA system. Remote monitoring shall include real time performance, weather and operational metrics and remote event notification. Operator shall cause Owner to have a direct, real-time data feed with respect to the foregoing, install and maintain a dedicated T-1 line and such other telecommunications and equipment necessary to support the same, and shall host and maintain an electronic file share (“File Share”) and provide Owner with a license to access same.</p> <p>Operator shall maintain on-site and area staffing consistent with minimum levels and qualifications to be established and included in the O&M Manual.</p>
<p><u>Alarm and Failure Response:</u></p>	<p>Operator shall, in consultation with Owner, establish an alarm and failure notification protocol. Pursuant to the O&M Manual, upon receiving a system alarm or failure notification, Operator shall immediately initiate a response plan appropriate in light of the nature of the alarm or failure. Owner and Operator shall agree on a detailed, tiered failure response protocol, which shall require Operator to respond on-site to failures involving the outage of the Facility or one or more inverters within four (4) hours.</p> <p>. Operator shall promptly curtail the production of the Facility upon direction by the transmission provider, utility or other governmental authority.</p>
<p><u>Minimal Interference:</u></p>	<p>Operator shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the BOP O&M Services in a manner that will minimize interference with the operation of the Facility and to conduct its work at such times so as to minimize reduction of production in respect of the Facility, including where applicable, coordination with the SMA Contractor. Unless granted prior written approval from Owner, Operator shall not conduct any scheduled maintenance on Facility equipment that would reasonably be expected to reduce Facility production during wind season, determined by site location, unless winds are below 4 m/s.</p>

<p><u>Hazardous Substances:</u></p>	<p>Operator shall minimize the use of hazardous substances and shall not permit any of its subcontractors, directly or indirectly, to use, handle, store, generate, manufacture, transport or release any hazardous substances in, on or under the Facility, the Site and any adjacent areas thereto, except to the extent required for the performance of the BOP O&M Services, and, in each such case in accordance with the Requirements and at the sole cost and expense of Operator. Operator. or subcontractors shall be responsible for the disposal, transportation and reporting of hazardous substances at the Site, in each case, by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable laws Operator shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Operator discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Operator shall promptly notify Owner thereof and stop work in and restrict access to the area containing such hazardous substances. Operator shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by the Requirements in connection with the release of hazardous substances by Operator. Operator shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Operator as a result of the remediation or removal of hazardous substances for which Operator is responsible.</p>
<p><u>Standard of Performance:</u></p>	<p>All BOP O&M Services shall be performed by Operator in a good and workmanlike manner, free of any defect or deficiency, consistent with prudent industry practices with respect to first-tier, grid-interconnected, rate-based, utility-scale wind facilities in the Western United States, applicable laws, applicable governmental approvals, applicable project documents, the Warranties, the O&M Manual, the Safety Plan and Owner’s operating procedures (collectively, the “Requirements”).</p>
<p><u>Services Warranty:</u></p>	<p>Operator shall warrant in the Agreement that the BOP O&M Services will be performed in a good and workmanlike manner and be free from defects in workmanship and materials in accordance with the Requirements for a period of two (2) years after the completion thereof. The Agreement shall provide for typical and customary provisions with respect to EPC Contractor’s warranty of the BOP O&M Services, including a services warranty that extends at least two (2) years after the conclusion of the Term of the Agreement and extensions of the services warranty for two (2) years following repair and replacement of parts and equipment. Operator shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and materials related to the BOP O&M Services, which such obligation shall survive the expiration of the Term. When Operator detects or is notified of a defect covered by the services warranty, Operator shall, at its sole cost and expense, promptly repair, replace, and/or re-perform the services and/or materials as necessary to cure such defect, in each case to the satisfaction of Owner.</p>
<p><u>Warranty Enforcement:</u></p>	<p>Operator shall, on Owner’s behalf, maintain, administer and pursue claims with respect to all applicable warranties provided by EPC Contractor, SMA Contractor, turbine supplier and other suppliers of the inverters and other components of the Facility (the “Warranties”). Operator shall manage, supervise and verify that all persons providing Warranties for the Facility comply promptly and diligently with</p>

	all of their respective warranty obligations and coordinate and schedule the provision of all warranty work with the BOP O&M Services. Operator shall keep Owner reasonably informed of the status of any warranty claims and, in any case, provide information and documentation reasonably requested by Owner. Operator shall not be required to commence or prosecute a legal action (whether litigation, arbitration or otherwise) to enforce a warranty claim, except as may be agreed as part of the Additional Services, but Operator shall cooperate with Owner’s reasonable requests in connection with any such legal action.
<u>Safety Requirements:</u>	Operator shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the BOP O&M Services and be responsible for the compliance by Operator, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Operator shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of the BOP O&M Services. Not later than one hundred twenty (120) days prior to the commencement of the Term, Operator shall provide Owner with a Site-specific safety plan in connection with Operator’s performance of its obligations that complies with the Requirements (the “ Safety Plan ”). Owner shall be entitled to review and provide comments to the Safety Plan and Operator shall incorporate any comments provided by Owner. Operator shall be responsible for updating and revising the Safety Plan to comply with all Requirements, including any changes thereto. Operator shall comply with the Safety Plan including with respect to passes, badges, drug and alcohol testing and conduct on the Site.
<u>Performance Guarantee:</u>	The Agreement shall provide for typical and customary performance guarantee provisions.
<u>Credit Support:</u>	Operator shall deliver (i) an ultimate parent guaranty covering Operator’s performance under the Agreement, the Performance Guarantee and any other agreements or undertakings related to the BOP O&M Services or the Facility and (ii) such other credit support as may reasonably be required by Owner.
<u>Regulatory/ Compliance:</u>	Operator shall register with the North American Electric Reliability Corporation (NERC) as the “ Generator Operator ” with respect to the Facility and shall cause the Facility to comply with all requirements of any governmental authorities including, but not limited to, FERC, NERC, WECC, CAISO, WREGIS and the applicable public service commission.
<u>Project Labor:</u>	Operator shall ensure compliance and confirm labor union agreement with all project labor agreements related to the Facility.
<u>Training:</u>	Operator shall provide typical and customary training sessions to Owner’s personnel each year.

<p><u>Force Majeure:</u> <u>Excusable</u> <u>Events:</u></p>	<p>In the event a force majeure (to be defined in the Agreement) or excusable event (to be defined in the Agreement, but including Owner-caused delays and certain specified changes in law) prevents Operator from performing any services, Operator shall be excused from performing such services for the duration of the event, subject to Operator using best efforts to mitigate the impact on its performance. Owner may, at its sole option, request that Operator remediate the effects of such event by agreeing to a change order that details the remediation work and Operator’s fee to perform such work.</p>
<p><u>Site Access:</u></p>	<p>Owner shall provide Operator with such access to the Facility as reasonably necessary to enable Operator to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Operator and to local electric utility personnel, and be in accordance with any ground lease, easement or related instrument in effect with respect to the Site. Operator shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Owner’s use of the Site, SMA Contractor’s performance of the SMA Services, and any of Owner’s separate contractors’ activities at the Site.</p>
<p><u>Indemnification:</u></p>	<p>Operator shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (“Owner Parties”), and hold them harmless from and against all reasonable out-of-pocket costs, expenses and actual liabilities arising out of or relating to any claim or any litigation or other proceeding that relate to (a) claims for injury or property damage, (b) worker’s compensation claims, (c) penalties due to failure to comply with applicable law, (d) taxes owed by Operator, (e) Liens arising with respect to the Facility and (f) hazardous substances.</p>
<p><u>Liens:</u></p>	<p>Operator shall keep and maintain the Facility and the Site free and clear of all liens, encumbrances, claims, charges that if unpaid, might become a lien, and rights of retention (“Liens”) resulting from the action of Operator or work done at the request of Operator (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Operator shall take prompt steps to discharge any such Lien. Operator shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Operator shall indemnify and hold harmless Owner for any losses or expenses incurred by Owner (including reasonable attorneys’ fees) in discharging any such Lien. Upon request from Owner, Operator shall request lien waivers from a subcontractor upon completion and payment for such subcontractor’s relevant work and, upon request from Owner, Operator shall supply copies of such lien waivers to Owner.</p>
<p><u>Termination</u> <u>Rights:</u></p>	<p>The Agreement shall provide for typical and customary termination rights and associated termination payments, including as provided below.</p> <p>Owner may terminate the Agreement for convenience upon sixty (60) days’ notice in which case Owner shall pay Operator for any BOP O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed by the parties).</p>

	<p>In the event of an Operator Default, (a) Owner may terminate the Agreement and exercise any rights available thereunder, at law or in equity, and (b) Operator shall pay Owner a termination payment equal to the positive difference between the O&M Fee and the cost to Owner of, or market price associated with, procuring replacement services for the remainder of the Term.</p> <p>For purposes hereof, an “Operator Default” shall include any of the following:</p> <ul style="list-style-type: none"> i. Operator becomes insolvent; ii. Operator fails to pay to Owner any amounts due (other than any amounts which are the subject of a bona fide dispute) within thirty (30) days after written notice of such failure from Owner to Operator; iii. Operator fails to perform any of its material obligations and such failure is not remedied within thirty (30) days after written notice of such failure from Owner to Operator; iv. Any representation or warranty by Operator is false or misleading; v. Operator attempts to assign the Agreement in violation of its terms; vi. Operator or any affiliate defaults under any other agreement, warranty, guaranty or instrument relating to the operation, construction or management of the Facility, the equipment comprising the Facility or the O&M Services; vii. <i>[Placeholder with respect to performance guarantees]</i>; or viii. The aggregate liability of Operator exceeds Operator’s Limitation of Liability in any period. <p>In the event of an Owner default, as its sole remedy therefor, (a) Operator may terminate the Agreement and (b) Owner shall pay Operator for any BOP O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed to by the parties).</p> <p>Following any termination of the Agreement for any reason, Operator shall (a) withdraw from the Site and expeditiously transfer to Owner any Spare Parts, warranties, manuals, software licenses, keys, access credentials, records, reports and other documentation relating to the Facility and BOP O&M Services and (b) cooperate with Owner and any replacement operator concerning the transition of operational responsibility for the Facility.</p>
<p><u>Insurance:</u></p>	<p>The Agreement shall provide for typical and customary insurance provisions with respect to coverage for Operator’s performance of its obligations with respect to the Facility.</p>

<u>Intellectual Property Matters:</u>	Owner shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Operator in connection with the BOP O&M Services. In addition, Operator shall grant to Owner, for the life of the Facility, a paid-up, irrevocable, non-exclusive, transferrable, royalty-free right and license under all intellectual property rights that are used by Operator in providing the BOP O&M Services as necessary to own, use, operate, maintain, service, repair, alter commission, decommission, remove, dispose of and transfer ownership of the Facility.
<u>Limitation of Liability:</u>	<p>The Agreement shall provide for typical and customary terms regarding Operator's aggregate liability for all losses and all other costs and obligations arising out of or relating to the Agreement (with a liability cap in any contract year of two hundred percent (200%) of the BOP O&M Fee).</p> <p>With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Operator to pay liquidated damages under the Agreement or the Performance Guarantee), neither party shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages or lost profits; <i>provided</i> that to the extent not fully covered by insurance, each party shall remain liable for any damage to or loss of any property or equipment (including any deductible amounts) caused by such party's fraud, negligence, gross negligence, or willful misconduct.</p>
<u>Taxes:</u>	Operator shall pay any and all sales and use, goods and services, value added, customs and duties (including federal import taxes, including any import duties or fees, on materials imported for performance of the BOP O&M Services), withholding, service, general excise, ad valorem or similar taxes to the extent assessed or assessable under applicable law, and taxes measured by or imposed on the net income or net profit of Operator.
<u>Records; Audit:</u>	Operator shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the BOP O&M Services and the Facility for a period not less than the Term of the Agreement plus five (5) years. To the extent specified in the O&M Manual, such records shall be maintained in electronic form on the File Share. In addition, Owner shall have the right to audit and inspect Operator's records upon reasonable advance notice.
<u>Assignment:</u>	Operator may not assign its rights and obligations under the Agreement without Owner's prior written consent, which consent shall not be unreasonably withheld. For the avoidance of doubt, Owner may, without the consent of Operator, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, including assignment or delegation made consistent with the assignment provisions of the Build Transfer Agreement.
<u>Confidentiality:</u>	Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Operator shall acknowledge that certain governmental authorities have the power to examine Owner's books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to such governmental

	<p>authorities (or any representatives thereof), as the case may be, any confidential information so requested or required.</p>
<p><u>Dispute Resolution;</u> <u>Governing Law:</u>¹</p>	<p>This Term Sheet is, and the Agreement shall be, governed by the laws of the State of [____], without regard to its conflict of laws provisions.</p> <p>The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in [____], [____], or, if such court does not have subject matter jurisdiction, the state courts of the State of [____]. Each party shall waive any objection to forum or venue, and any right to jury trial. The parties shall consent to joinder or consolidation with respect to any disputes involving common issues of law or fact with respect to the Facility, the EPC Agreement or any other agreement relating to the Facility.</p> <p>Any disputes between the parties not resolved via good faith negotiations may proceed to litigation unless the parties mutually agree to arbitration, which arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.</p>

¹ Note to Bidders – PacifiCorp will accept governing law and venue in Oregon or Utah.

2022AS RFP Appendix K-3

SOLAR O&M TERM SHEET

THIS TERM SHEET DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS TERM SHEET OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS TERM SHEET SHALL BE AT THAT PARTY’S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND A DEFINITIVE AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS TERM SHEET OR IN THE COURSE OF ANY NEGOTIATIONS.

<u>Operator:</u>	[] (“ Operator ”).
<u>Owner:</u>	PacifiCorp, an Oregon corporation (“ Owner ”). Owner and [] (“ Developer ”) have entered into that certain Build Transfer Agreement (“ Build Transfer Agreement ”) whereby Owner shall purchase (and Developer shall sell and transfer) the Facility (as defined below) prior to Availability Completion (as defined in the Build Transfer Agreement).
<u>Scope:</u>	Operator and Owner would enter into an Operations and Maintenance Agreement (the “ Agreement ”) for the provision of O&M Services (defined below) with respect to a [] MW(ac) ground-mounted solar photovoltaic electric generating facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to an Engineering, Procurement and Construction Agreement (the “ EPC Agreement ”) between [] (“ EPC Contractor ”) and Developer. The EPC Agreement will be assigned by Developer to Owner prior to the Substantial Completion (as defined in the EPC Agreement) and the commencement of the Term of the Agreement (at closing of the Build Transfer Agreement).

<p><u>O&M Services:</u></p>	<p>Operator shall provide all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services for the entire Facility for the duration of the Term (the “O&M Services”), which shall include (i) certain basic services that constitute typical and customary operation and maintenance activities for a regulated electric utility, to be defined and set forth in an exhibit to the Agreement, but including, at a minimum, annual cleaning (x2), full preventative maintenance (including mechanical, electrical, inverter, tracker and MV/HV maintenance services), visual inspection, system testing and calibration, corrective and unscheduled maintenance, failure response, notifications, forecasting, staffing and remote monitoring, warranty support, asset management, regulatory/compliance, site and vegetation management (including any site grading and maintenance of storm water structures), garbage disposal, security services, perimeter fencing, restroom and Facility maintenance (including janitorial services), water supply, dust containment, snow and ice removal, road maintenance, reporting and compliance (including environmental compliance), training of personnel and reasonable assistance to Owner in its annual operation, maintenance, administrative and general budgeting and capital planning efforts (the “Basic Services”), (ii) any additional services requested by Owner or recommended by Operator and documented in a written change order executed by the parties (the “Additional Services”) and (iii) any emergency services necessary to address emergency affecting the safety or protection of persons or endangering the Facility or other property located at the Site (the “Emergency Services”).</p>
<p><u>Spare Parts Title:</u></p>	<p>Operator shall maintain any initial spare parts provided by Owner or EPC Contractor and otherwise supply all necessary and recommended spare parts and consumables for the Facility (the “Spare Parts”). Operator shall maintain the Spare Parts at its own expense at the Site and on a dedicated basis for exclusive use for the Facility; <u>provided, however,</u> that with respect to Spare Parts related to Additional Services, Operator shall offer to sell to Owner such Spare Parts as are manufactured by Operator or its affiliates at Operator’s then-current market prices in the United States for spare parts and consumables for utility-scale projects subject to an agreed-upon discount set forth in the Agreement.</p> <p>Operator shall provide a monthly report with respect to the inventory of Spare Parts, including any parts procured or replaced during such period, and shall make recommendations to Owner regarding the appropriate number and type of Spare Parts for the Facility. Operator shall replenish the inventory of Spare Parts on an ongoing basis as necessary to ensure operation of the Facility in accordance with the Performance Guarantee. All Spare Parts procured or used with respect to the Facility shall be new OEM parts that comply with any applicable warranty requirements and are of equal or better quality as compared to the OEM parts used in the initial construction of the Facility. Title to such Spare Parts shall transfer from Operator to Owner upon the earlier of Owner’s payment therefor or installation of the same into the Facility.</p>

<u>O&M Fee:</u>	Owner shall pay Operator a fee of \$[]/kW (DC) determined on the basis of final capacity of the Facility as certified under the EPC Agreement (the “ O&M Fee ”). The O&M Fee shall be paid in semi-annual installment in arrears. The O&M Fee covers all Basic Services. Operator shall not be entitled to any additional compensation, except as set forth in a change order with respect to Additional Services or with respect to Emergency Services or in connection with Owner’s purchase of Spare Parts as described above. Payment for Additional Services or Emergency Services shall be capped at (i) Operator’s personnel costs (at an agreed rate schedule) plus (ii) any actual, direct third-party costs to Operator plus a markup of five percent (5%).
<u>Term:</u>	The Agreement shall be executed and effective on or before the date that the EPC Agreement is executed by both Developer and EPC Contractor, <u>provided</u> that the operational term of the Agreement shall be a period of [] years, commencing upon Substantial Completion of the Facility (the “ Term ”) with mutually agreed term extension provisions.
<u>Independent Contractor:</u>	Operator is acting and shall be deemed for all purposes to be an independent contractor and nothing in the Agreement shall be construed as constituting any relationship with Owner other than that of owner and independent contractor. Operator shall have no authority to bind Owner to any contractual obligations with third parties, including any vendors, suppliers, or service-providers. Owner and Operator are not partners, agents or joint venturers with each other, and the Agreement is not intended to nor shall it be construed to create a partnership or joint venture between Owner and Operator. Operator shall complete the O&M Services according to its own means and methods of work, which shall be in the exclusive charge and control of Operator and which shall not be subject to the control and supervision of Owner, except as to the results of the O&M Services.
<u>Subcontracts:</u>	Subject to Owner’s consent, not to be unreasonably withheld, Operator may enter into subcontracts for particular aspects of its obligations under the Agreement. All subcontracts shall incorporate and flow-down applicable requirements from the Agreement (including with respect to insurance), be assignable to the Owner upon termination of the Agreement and provide that Owner is a third-party beneficiary thereunder. Operator shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Owner’s warranty requirements.
<u>Personnel:</u>	Operator shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the O&M Services, and such personnel shall perform such O&M Services in accordance with the applicable Requirements (defined below). Operator shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the O&M Services. Operator shall be responsible for all matters relating to labor relations, working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements.

<p><u>Business Practices:</u></p>	<p>Operator, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the O&M Services. In conjunction with its performance of O&M Services, Operator and its employees, officers, agents and representatives shall comply with, and cause its subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and Owner’s “code of business conduct”, which code of business conduct would be included as an exhibit to the Agreement.</p>
<p><u>Cyber Security</u></p>	<p>Operator shall have and maintain security controls to protect the Owner’s networks, systems, software, confidential information, and data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems-Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management. All cyber security shall meet the Cybersecurity Requirements contained in Appendix A-1.2 “Wind Work Specifications” to the Request for Proposal to which this term sheet is attached. Note that prior to execution of a definitive agreement, Owner reserves the right to update its cybersecurity requirements to which Operator must comply, as Owner deems advisable, in its sole discretion.</p>
<p><u>O&M Manual:</u></p>	<p>Not later than one hundred eighty (180) days prior to the commencement of the Term, Operator shall prepare and submit, for Owner’s review and approval, a manual relating to the operation and maintenance of the Facility that incorporates any specific service requirements necessary to comply with the Requirements or that are an integral part of Operator’s obligations in connection with the O&M Services (the “O&M Manual”). Owner shall provide comments, if any, to the O&M Manual to Operator within thirty (30) days after Owner’s receipt of such O&M Manual. Operator shall modify the O&M Manual based upon Owner’s comments and shall provide Owner with a copy of such revised O&M Manual within thirty (30) days after Operator’s receipt of Owner’s comments. Once approved by the parties, the O&M Manual may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; <u>provided</u> that, Owner may require that the O&M Manual be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the O&M Services to be performed in accordance with applicable law and insurance requirements.</p>

<u>Annual Maintenance Plan:</u>	<p>Not later than ninety (90) days prior to the commencement of each contract year, Owner and Operator shall meet to discuss the projected O&M Services for the Facility to be performed for such upcoming contract year in accordance with the Requirements. Within twenty (20) days after each such meeting, Operator shall prepare and submit, for Owner’s review and approval, a recommended plan (an “Annual Maintenance Plan”) setting forth (i) Operator’s intended work plan for the O&M Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the O&M Services to be performed, and (iv) any other related activities for each calendar month over the ensuing contract year, which Annual Maintenance Plan shall be in compliance with the Requirements. Owner shall provide comments to the Annual Maintenance Plan, if any, to Operator within fifteen (15) days after such meeting. Operator shall modify the Annual Maintenance Plan based upon Owner’s comments. Once approved by the parties, the Annual Maintenance Plan may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; <u>provided</u> that, Owner may require that the Annual Maintenance Plan be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the O&M Services to be performed in accordance with applicable law and insurance requirements. The approved Annual Maintenance Plan shall be integrated into the O&M Manual.</p>
<u>Reporting Requirements:</u>	<p>Operator shall provide usual and customary reports and summaries to Owner, including: (i) a daily production report (via email and File Share upload) relating to the weather, irradiance, availability and performance of the Facility; (ii) a detailed monthly report (in written and electronic format) relating to the monthly and year-to-date availability and performance of the Facility, inverter performance metrics, spare parts utilization and inventory, equipment failures and warranty claims, OSHA and safety-related matters, scheduled and unscheduled maintenance activities, alarm logs and failure reports and any Emergency Services or Additional Services performed; and (iii) an annual report (in written and electronic format) including a summary of the monthly performance reports together with totals for the Performance Guarantee calculations and performance metrics and Owner recommendations. Operator shall provide such reports and summaries in formats as requested by Owner.</p>
<u>Forecasting:</u>	<p>Operator shall deliver to Owner (i) day-ahead and hour-ahead (with five (5) minute increments) forecasts of electrical energy deliveries from the Facility using Operator’s then current forecasting tools, (ii) projections of scheduled outages of the Facility and (iii) notification of changes to any forecast of electrical energy deliveries or of any forced outage of the Facility.</p>

<u>Notifications:</u>	<p>Operator shall promptly notify Owner regarding any pending or threatened litigation, claim, dispute, action, investigation or proceeding relating to the Facility or the Site, or which may impact the Facility or the Site, any refusal or threatened refusal to grant, renew, or extend any governmental approval, any discovery of any existing or concealed hazardous substances, forced outages of the Facility (and the known causes thereof and the corrective action taken with respect thereto), all notices and other communications from any governmental authority in relation to the Facility or the Site and any other event or circumstance that reasonably could be expected to adversely impact the operation of the Facility or access to the Site including labor disputes, violations of applicable laws or applicable governmental approvals, material damage to any of the major pieces of equipment comprising the Facility, or notices or other communications from the transmission provider.</p>
<u>Monitoring Services:</u>	<p>Operator shall staff and maintain a first-tier network operations center, and shall provide remote monitoring of the Facility therefrom on a twenty-four (24) hour a day, seven (7) days a week basis via connection with the Facility’s SCADA system. Remote monitoring shall include real time performance, weather and operational metrics and remote event notification. Operator shall cause Owner to have a direct, real-time data feed with respect to the foregoing, install and maintain a dedicated T-1 line and such other telecommunications and equipment necessary to support the same, and shall host and maintain an electronic file share (“File Share”) and provide Owner with a license to access same.</p> <p>Operator shall maintain on-site and area staffing consistent with minimum levels and qualifications to be established and included in the O&M Manual.</p>
<u>Alarm and Failure Response:</u>	<p>Operator shall, in consultation with Owner, establish an alarm and failure notification protocol. Pursuant to the O&M Manual, upon receiving a system alarm or failure notification, Operator shall immediately initiate a response plan appropriate in light of the nature of the alarm or failure. Owner and Operator shall agree on a detailed, tiered failure response protocol, which shall require Operator to respond on-site to failures involving the outage of the Facility or one or more inverters within four (4) hours.</p> <p>Operator shall promptly curtail the production of the Facility upon direction by the transmission provider, utility or other governmental authority.</p>
<u>Minimal Interference:</u>	<p>Operator shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the O&M Services in a manner that will minimize interference with the operation of the Facility and to conduct its work at such times so as to minimize reduction of production in respect of the Facility. Unless granted prior written approval from Owner, Operator shall not conduct any scheduled maintenance on Facility equipment that would reasonably be expected to reduce Facility production during summer peak hours.</p>

<u>Hazardous Substances:</u>	<p>Operator shall minimize the use of hazardous substances and shall not permit any of its subcontractors, directly or indirectly, to use, handle, store, generate, manufacture, transport or release any hazardous substances in, on or under the Facility, the Site and any adjacent areas thereto, except to the extent required for the performance of the O&M Services, and, in each such case in accordance with the Requirements and at the sole cost and expense of Operator. Operator or subcontractors shall be responsible for the disposal, transportation and reporting of hazardous substances at the Site, in each case, by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable laws. Operator shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Operator discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Operator shall promptly notify Owner thereof and stop work in and restrict access to the area containing such hazardous substances. Operator shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by the Requirements in connection with the release of hazardous substances by Operator. Operator shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Operator as a result of the remediation or removal of hazardous substances for which Operator is responsible.</p>
<u>Standard of Performance:</u>	<p>All O&M Services shall be performed by Operator in a good and workmanlike manner, free of any defect or deficiency, consistent with prudent industry practices with respect to first-tier, grid-interconnected, rate-based, utility-scale solar plants in the Western United States, applicable laws, applicable governmental approvals, applicable project documents, the Warranties, the O&M Manual, the Safety Plan and Owner’s operating procedures (collectively, the “Requirements”).</p>
<u>Services Warranty:</u>	<p>Operator shall warrant in the Agreement that the O&M Services will be performed in a good and workmanlike manner and be free from defects in workmanship and materials in accordance with the Requirements for a period of two (2) years after the completion thereof (the “Services Warranty”) and Operator shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and material related to the O&M Services, which such obligation shall survive the expiration of the Term. When Operator detects or is notified of a defect covered by the Services Warranty, Operator shall, at its sole cost and expense, promptly repair, replace, and/or re-perform the services and/or materials as necessary to cure such defect, in each case to the satisfaction of Owner. For any O&M Services (including any parts or equipment) required to be re-performed, repaired, corrected or replaced following discovery of a defect, the Services Warranty shall be extended for two (2) additional years after the date such performance, repair, correction or replacement is complete. In addition, to the extent not covered by a Warranty, Operator shall ensure that any replacement modules, inverters, trackers or other key equipment have warranties consistent with Owner’s warranty requirements.</p>
<u>Warranty Enforcement:</u>	<p>Operator shall, on Owner’s behalf, maintain, administer and pursue claims with respect to all applicable warranties provided by EPC Contractor and suppliers of the modules, inverters, trackers and other components of the Facility (the “Warranties”). Operator shall manage, supervise and verify that all persons providing Warranties for the Facility comply promptly and diligently with all of their respective warranty obligations and coordinate and schedule the provision of all</p>

	warranty work with the O&M Services. Operator shall keep Owner reasonably informed of the status of any warranty claims and, in any case, provide information and documentation reasonably requested by Owner. Operator shall not be required to commence or prosecute a legal action (whether litigation, arbitration or otherwise) to enforce a warranty claim, except as may be agreed as part of the Additional Services, but Operator shall cooperate with Owner's reasonable requests in connection with any such legal action.
<u>Safety Requirements:</u>	Operator shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the O&M Services and be responsible for the compliance by Operator, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Operator shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of the O&M Services. Not later than one hundred twenty (120) days prior to the commencement of the Term, Operator shall provide Owner with a Site-specific safety plan in connection with Operator's performance of its obligations that complies with the Requirements (the " Safety Plan "). Owner shall be entitled to review and provide comments to the Safety Plan and Operator shall incorporate any comments provided by Owner. Operator shall be responsible for updating and revising the Safety Plan to comply with all Requirements, including any changes thereto. Operator shall comply with the Safety Plan including with respect to passes, badges, drug and alcohol testing and conduct on the Site.
<u>Performance Guarantee:</u>	Operator shall deliver a performance guarantee (" Performance Guarantee ") to Owner which shall guarantee that the actual annual output of the Facility is at least ninety-eight percent (98%) of the expected output on a weather-adjusted basis, subject to customary limitations with respect to force majeure, scheduled maintenance and outages directed by Owner or the transmission provider. Shortfalls in output shall be compensated based upon Owner's avoided energy price. Operator shall be excused under the Performance Guarantee if Owner terminates the O&M Agreement for convenience. Owner may, in its sole discretion, accept an availability guarantee in lieu of the Performance Guarantee.
<u>Credit Support:</u>	Operator shall deliver (i) an ultimate parent guaranty covering Operator's performance under the Agreement, the Performance Guarantee and any other agreements or undertakings related to the O&M Services or the Facility and (ii) such other credit support as may reasonably be required by Owner.
<u>Regulatory/ Compliance:</u>	Operator shall register with the North American Electric Reliability Corporation (NERC) as the " Generator Operator " with respect to the Facility and shall cause the Facility to comply with all requirements of any governmental authorities including, but not limited to, NERC, WECC, CAISO, WREGIS and the applicable public service commission.
<u>Project Labor:</u>	Operator shall ensure compliance and confirm labor union agreement with all project labor agreements related to the Facility.
<u>Training:</u>	Operator shall provide two (2) separate eight (8) hour training sessions per year for

	Owner's personnel.
<u>Force Majeure;</u> <u>Excusable</u> <u>Events:</u>	In the event a force majeure (to be defined in the Agreement) or excusable event (to be defined in the Agreement, but including Owner-caused delays and certain specified changes in law) prevents Operator from performing any services, Operator shall be excused from performing such services for the duration of the event, subject to Operator using best efforts to mitigate the impact on its performance. Owner may, at its sole option, request that Operator remediate the effects of such event by agreeing to a change order that details the remediation work and Operator's fee to perform such work.
<u>Site Access:</u>	Owner shall provide Operator with such access to the Facility as reasonably necessary to enable Operator to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Operator and to local electric utility personnel, and be in accordance with any ground lease, easement or related instrument in effect with respect to the Site. Operator shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Owner's use of the Site and any of Owner's separate contractors' activities at the Site.
<u>Indemnification:</u>	Operator shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (" Owner Parties "), and hold them harmless from and against all reasonable out-of-pocket costs, expenses and actual liabilities arising out of or relating to any claim or any litigation or other proceeding that relate to (i) claims for injury or property damage, (ii) worker's compensation claims, (iii) penalties due to failure to comply with applicable law, (iv) taxes owed by Operator, (v) Liens arising with respect to the Facility and (vi) hazardous substances.
<u>Liens:</u>	Operator shall keep and maintain the Facility and the Site free and clear of all liens, encumbrances, claims, charges that if unpaid, might become a lien, and rights of retention (" Liens ") resulting from the action of Operator or work done at the request of Operator (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Operator shall take prompt steps to discharge any such Lien. Operator shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Operator shall indemnify and hold harmless Owner for any losses or expenses incurred by Owner (including reasonable attorneys' fees) in discharging any such Lien. Upon request from Owner, Operator shall request lien waivers from a subcontractor upon completion and payment for such subcontractor's relevant work and, upon request from Owner, Operator shall supply copies of such lien waivers to Owner.
<u>Termination</u> <u>Rights:</u>	Owner may terminate the Agreement for convenience upon sixty (60) days' notice in which case Owner shall pay Operator for any O&M Services performed to date, plus Operator's reasonable demobilization expenses (not to exceed a demobilization cap to be agreed by the parties). In the event of an Operator Default, (a) Owner may terminate the Agreement and exercise any rights available thereunder, at law or in equity, and (b) Operator shall pay Owner a termination payment equal to the positive difference between the O&M

	<p>Fee and the cost to Owner of, or market price associated with, procuring replacement services for the remainder of the Term.</p> <p>For purposes hereof, an “Operator Default” shall include any of the following:</p> <ul style="list-style-type: none"> i. Operator becomes insolvent; ii. Operator fails to pay to Owner any amounts due (other than any amounts which are the subject of a bona fide dispute) within thirty (30) days after written notice of such failure from Owner to Operator; iii. Operator fails to perform any of its material obligations and such failure is not remedied within thirty (30) days after written notice of such failure from Owner to Operator; iv. Any representation or warranty by Operator is false or misleading; v. Operator attempts to assign the Agreement in violation of its terms; vi. Operator or any affiliate defaults under any other agreement, warranty, guaranty or instrument relating to the operation, construction or management of the Facility, the equipment comprising the Facility or the O&M Services; vii. The Facility production is below ninety percent (90%) of the expected output on a weather-adjusted basis for any consecutive twelve (12) month period; or viii. The aggregate liability of Operator exceeds Operator’s Limitation of Liability in any period. <p>In the event of an Owner default, as its sole remedy therefor, (a) Operator may terminate the Agreement and (b) Owner shall pay Operator for any O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed to by the parties).</p> <p>Following any termination of the Agreement for any reason, Operator shall (a) withdraw from the Site and expeditiously transfer to Owner any Spare Parts, warranties, manuals, software licenses, keys, access credentials, records, reports and other documentation relating to the Facility and O&M Services and (b) cooperate with Owner and any replacement operator concerning the transition of operational responsibility for the Facility.</p>
<u>Insurance:</u>	The Agreement shall provide for typical and customary insurance provisions with respect to coverage for Operator’s performance of its obligations with respect to the Facility.
<u>Intellectual Property Matters:</u>	Owner shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Operator in connection with the O&M Services. In addition, Operator shall grant to Owner, for the life of the Facility, a paid-up, irrevocable, non-exclusive, transferrable, royalty-free right and license under all intellectual property rights that are used by Operator in providing the O&M Services as necessary to own, use, operate, maintain, service,

	repair, alter commission, decommission, remove, dispose of and transfer ownership of the Facility.
<u>Limitation of Liability:</u>	<p>The Agreement shall provide for typical and customary terms regarding Operator's aggregate liability for all losses and all other costs and obligations arising out of or relating to the Agreement (with a liability cap in any contract year of two hundred percent (200%) of the O&M Fee).</p> <p>With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Operator to pay liquidated damages under the Agreement or the Performance Guarantee), neither party shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages or lost profits; <u>provided</u> that to the extent not fully covered by insurance, each party shall remain liable for any damage to or loss of any property or equipment (including any deductible amounts) caused by such party's fraud, negligence, gross negligence, or willful misconduct.</p>
<u>Taxes:</u>	Operator shall pay any and all sales and use, goods and services, value added, customs and duties (including federal import taxes, including any import duties or fees, on materials imported for performance of the O&M Services), withholding, service, general excise, ad valorem or similar taxes to the extent assessed or assessable under applicable law, and taxes measured by or imposed on the net income or net profit of Operator.
<u>Records; Audit:</u>	Operator shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the O&M Services and the Facility for a period not less than the Term of the Agreement plus five (5) years. To the extent specified in the O&M Manual, such records shall be maintained in electronic form on the File Share. In addition, Owner shall have the right to audit and inspect Operator's records upon reasonable advance notice.
<u>Assignment:</u>	Operator may not assign its rights and obligations under the Agreement without Owner's prior written consent, which consent shall not be unreasonably withheld. For the avoidance of doubt, Owner may, without the consent of Operator, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, including assignment or delegation made consistent with the assignment provisions of the Build Transfer Agreement.
<u>Confidentiality:</u>	Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Operator shall acknowledge that certain governmental authorities have the power to examine Owner's books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to such governmental authorities (or any representatives thereof), as the case may be, any confidential information so requested or required.

<p><u>Dispute Resolution:</u> <u>Governing Law:</u>¹</p>	<p>This Term Sheet is, and the Agreement shall be, governed by the laws of the State of [____], without regard to its conflict of laws provisions.</p> <p>The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in [____], [____], or, if such court does not have subject matter jurisdiction, the state courts of the State of [____]. Each party shall waive any objection to forum or venue, and any right to jury trial. The parties shall consent to joinder or consolidation with respect to any disputes involving common issues of law or fact with respect to the Facility, the EPC Agreement or any other agreement relating to the Facility.</p> <p>Any disputes between the parties not resolved via good faith negotiations may proceed to litigation unless the parties mutually agree to arbitration, which arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.</p>
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¹ Note to Bidders – PacifiCorp will accept governing law and venue in Oregon or Utah.

2022AS RFP Appendix K-4

INTEGRATED SOLAR/STORAGE O&M TERM SHEET

THIS TERM SHEET DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS TERM SHEET OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS TERM SHEET SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND A DEFINITIVE AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS TERM SHEET OR IN THE COURSE OF ANY NEGOTIATIONS.

<u>Operator:</u>	[] (“ Operator ”).
<u>Owner:</u>	PacifiCorp, an Oregon corporation (“ Owner ”). Owner and [] (“ Developer ”) have entered into that certain Build Transfer Agreement (“ Build Transfer Agreement ”) whereby Owner shall purchase (and Developer shall sell and transfer) the Facility (as defined below) prior to Availability Completion (as defined in the Build Transfer Agreement).
<u>Scope:</u>	Operator and Owner would enter into an Operations and Maintenance Agreement (the “ Agreement ”) for the provision of O&M Services (defined below) with respect to an integrated [] MW(ac) ground-mounted solar photovoltaic electric generating and energy storage facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to an Engineering, Procurement and Construction Agreement (the “ EPC Agreement ”) between [] (“ EPC Contractor ”) and Developer. The EPC Agreement will be assigned by Developer to Owner prior to the Substantial Completion (as defined in the EPC Agreement) and the commencement of the Term of the Agreement (at closing of the Build Transfer Agreement).

<p><u>O&M Services:</u></p>	<p>Operator shall provide all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services for the entire Facility for the duration of the Term (the “O&M Services”), which shall include (i) certain basic services that constitute typical and customary operation and maintenance activities for a regulated electric utility, to be defined and set forth in an exhibit to the Agreement, but including, at a minimum, annual cleaning (x2), full preventative maintenance (including mechanical, electrical, inverter, tracker and MV/HV maintenance services and including maintenance services with respect to the energy storage system), visual inspection, system testing and calibration, corrective and unscheduled maintenance, failure response, notifications, forecasting, staffing and remote monitoring, warranty support, asset management, regulatory/compliance, site and vegetation management (including any site grading and maintenance of storm water structures), garbage disposal, security services, perimeter fencing, restroom and Facility maintenance (including janitorial services), water supply, dust containment, snow and ice removal, road maintenance, reporting and compliance (including environmental compliance), training of personnel and reasonable assistance to Owner in its annual operation, maintenance, administrative and general budgeting and capital planning efforts (the “Basic Services”), (ii) any additional services requested by Owner or recommended by Operator and documented in a written change order executed by the parties (the “Additional Services”) and (iii) any emergency services necessary to address emergency affecting the safety or protection of persons or endangering the Facility or other property located at the Site (the “Emergency Services”).</p>
<p><u>Spare Parts Title:</u></p>	<p>Operator shall maintain any initial spare parts provided by Owner or EPC Contractor and otherwise supply all necessary and recommended spare parts and consumables for the Facility (the “Spare Parts”). Operator shall maintain the Spare Parts at its own expense at the Site and on a dedicated basis for exclusive use for the Facility; <u>provided, however,</u> that with respect to Spare Parts related to Additional Services, Operator shall offer to sell to Owner such Spare Parts as are manufactured by Operator or its affiliates at Operator’s then-current market prices in the United States for spare parts and consumables for utility-scale projects subject to an agreed-upon discount set forth in the Agreement.</p> <p>Operator shall provide a monthly report with respect to the inventory of Spare Parts, including any parts procured or replaced during such period, and shall make recommendations to Owner regarding the appropriate number and type of Spare Parts for the Facility. Operator shall replenish the inventory of Spare Parts on an ongoing basis as necessary to ensure operation of the Facility in accordance with the Performance Guarantee. All Spare Parts procured or used with respect to the Facility shall be new OEM parts that comply with any applicable warranty requirements and are of equal or better quality as compared to the OEM parts used in the initial construction of the Facility. Title to such Spare Parts shall transfer from Operator to Owner upon the earlier of Owner’s payment therefor or installation of the same into the Facility.</p>

<u>O&M Fee:</u>	Owner shall pay Operator a fee of \$[]/kW (DC) determined on the basis of final capacity of the Facility as certified under the EPC Agreement (the “ O&M Fee ”). The O&M Fee shall be paid in semi-annual installment in arrears. The O&M Fee covers all Basic Services. Operator shall not be entitled to any additional compensation, except as set forth in a change order with respect to Additional Services or with respect to Emergency Services or in connection with Owner’s purchase of Spare Parts as described above. Payment for Additional Services or Emergency Services shall be capped at (i) Operator’s personnel costs (at an agreed rate schedule) plus (ii) any actual, direct third-party costs to Operator plus a markup of five percent (5%).
<u>Term:</u>	The Agreement shall be executed and effective on or before the date that the EPC Agreement is executed by both Developer and EPC Contractor, <u>provided</u> that the operational term of the Agreement shall be a period of [] years, commencing upon Substantial Completion of the Facility (the “ Term ”) with mutually agreed term extension provisions.
<u>Independent Contractor:</u>	Operator is acting and shall be deemed for all purposes to be an independent contractor and nothing in the Agreement shall be construed as constituting any relationship with Owner other than that of owner and independent contractor. Operator shall have no authority to bind Owner to any contractual obligations with third parties, including any vendors, suppliers, or service-providers. Owner and Operator are not partners, agents or joint venturers with each other, and the Agreement is not intended to nor shall it be construed to create a partnership or joint venture between Owner and Operator. Operator shall complete the O&M Services according to its own means and methods of work, which shall be in the exclusive charge and control of Operator and which shall not be subject to the control and supervision of Owner, except as to the results of the O&M Services.
<u>Subcontracts:</u>	Subject to Owner’s consent, not to be unreasonably withheld, Operator may enter into subcontracts for particular aspects of its obligations under the Agreement. All subcontracts shall incorporate and flow-down applicable requirements from the Agreement (including with respect to insurance), be assignable to the Owner upon termination of the Agreement and provide that Owner is a third-party beneficiary thereunder. Operator shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Owner’s warranty requirements.
<u>Personnel:</u>	Operator shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the O&M Services including, for the avoidance of doubt, all such O&M Services related to the energy storage system, and such personnel shall perform such O&M Services in accordance with the applicable Requirements (defined below). Operator shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the O&M Services. Operator shall be responsible for all matters relating to labor relations, working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements.

<u>Business Practices:</u>	<p>Operator, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the O&M Services. In conjunction with its performance of O&M Services, Operator and its employees, officers, agents and representatives shall comply with, and cause its subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and Owner’s “code of business conduct”, which code of business conduct would be included as an exhibit to the Agreement.</p>
<u>Cyber Security</u>	<p>Operator shall have and maintain security controls to protect the Owner’s networks, systems, software, confidential information, and data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems-Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management. All cyber security shall meet the Cybersecurity Requirements contained in Appendix A-1.2 “Wind Work Specifications” to the Request for Proposal to which this term sheet is attached. Note that prior to execution of a definitive agreement, Owner reserves the right to update its cybersecurity requirements to which Operator must comply, as Owner deems advisable, in its sole discretion.</p>
<u>O&M Manual:</u>	<p>Not later than one hundred eighty (180) days prior to the commencement of the Term, Operator shall prepare and submit, for Owner’s review and approval, a manual relating to the operation and maintenance of the Facility that incorporates any specific service requirements necessary to comply with the Requirements or that are an integral part of Operator’s obligations in connection with the O&M Services (the “O&M Manual”). Owner shall provide comments, if any, to the O&M Manual to Operator within thirty (30) days after Owner’s receipt of such O&M Manual. Operator shall modify the O&M Manual based upon Owner’s comments and shall provide Owner with a copy of such revised O&M Manual within thirty (30) days after Operator’s receipt of Owner’s comments. Once approved by the parties, the O&M Manual may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; <u>provided</u> that, Owner may require that the O&M Manual be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the O&M Services to be performed in accordance with applicable law and insurance requirements.</p>

<u>Annual Maintenance Plan:</u>	<p>Not later than ninety (90) days prior to the commencement of each contract year, Owner and Operator shall meet to discuss the projected O&M Services for the Facility to be performed for such upcoming contract year in accordance with the Requirements. Within twenty (20) days after each such meeting, Operator shall prepare and submit, for Owner’s review and approval, a recommended plan (an “Annual Maintenance Plan”) setting forth (i) Operator’s intended work plan for the O&M Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the O&M Services to be performed, and (iv) any other related activities for each calendar month over the ensuing contract year, which Annual Maintenance Plan shall be in compliance with the Requirements. Owner shall provide comments to the Annual Maintenance Plan, if any, to Operator within fifteen (15) days after such meeting. Operator shall modify the Annual Maintenance Plan based upon Owner’s comments. Once approved by the parties, the Annual Maintenance Plan may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; <u>provided</u> that, Owner may require that the Annual Maintenance Plan be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the O&M Services to be performed in accordance with applicable law and insurance requirements. The approved Annual Maintenance Plan shall be integrated into the O&M Manual.</p>
<u>Reporting Requirements:</u>	<p>Operator shall provide usual and customary reports and summaries to Owner, including: (i) a daily production report (via email and File Share upload) relating to the weather, irradiance, availability and performance of the Facility; (ii) a detailed monthly report (in written and electronic format) relating to the monthly and year-to-date availability and performance of the Facility, inverter performance metrics, energy storage system performance metrics, spare parts utilization and inventory, equipment failures and warranty claims, OSHA and safety-related matters, scheduled and unscheduled maintenance activities, alarm logs and failure reports and any Emergency Services or Additional Services performed; and (iii) an annual report (in written and electronic format) including a summary of the monthly performance reports together with totals for the Performance Guarantee calculations and performance metrics and Owner recommendations. Operator shall provide such reports and summaries in formats as requested by Owner.</p>
<u>Forecasting:</u>	<p>Operator shall deliver to Owner (i) day-ahead and hour-ahead (with five (5) minute increments) forecasts of electrical energy deliveries from the Facility using Operator’s then current forecasting tools, (ii) projections of scheduled outages of the Facility and (iii) notification of changes to any forecast of electrical energy deliveries or of any forced outage of the Facility.</p>

<u>Notifications:</u>	<p>Operator shall promptly notify Owner regarding any pending or threatened litigation, claim, dispute, action, investigation or proceeding relating to the Facility or the Site, or which may impact the Facility or the Site, any refusal or threatened refusal to grant, renew, or extend any governmental approval, any discovery of any existing or concealed hazardous substances, forced outages of the Facility (and the known causes thereof and the corrective action taken with respect thereto), all notices and other communications from any governmental authority in relation to the Facility or the Site and any other event or circumstance that reasonably could be expected to adversely impact the operation of the Facility or access to the Site including labor disputes, violations of applicable laws or applicable governmental approvals, material damage to any of the major pieces of equipment comprising the Facility, or notices or other communications from the transmission provider.</p>
<u>Monitoring Services:</u>	<p>Operator shall staff and maintain a first-tier network operations center, and shall provide remote monitoring of the Facility therefrom on a twenty-four (24) hour a day, seven (7) days a week basis via connection with the Facility’s SCADA system. Remote monitoring shall include real time performance, weather and operational metrics and remote event notification. Operator shall cause Owner to have a direct, real-time data feed with respect to the foregoing, install and maintain a dedicated T-1 line and such other telecommunications and equipment necessary to support the same, and shall host and maintain an electronic file share (“File Share”) and provide Owner with a license to access same.</p> <p>Operator shall maintain on-site and area staffing consistent with minimum levels and qualifications to be established and included in the O&M Manual.</p>
<u>Alarm and Failure Response:</u>	<p>Operator shall, in consultation with Owner, establish an alarm and failure notification protocol. Pursuant to the O&M Manual, upon receiving a system alarm or failure notification, Operator shall immediately initiate a response plan appropriate in light of the nature of the alarm or failure. Owner and Operator shall agree on a detailed, tiered failure response protocol, which shall require Operator to respond on-site to failures involving the outage of the Facility or one or more inverters within four (4) hours.</p> <p>Operator shall promptly curtail the production of the Facility upon direction by the transmission provider, utility or other governmental authority.</p>
<u>Minimal Interference:</u>	<p>Operator shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the O&M Services in a manner that will minimize interference with the operation of the Facility and to conduct its work at such times so as to minimize reduction of production in respect of the Facility. Unless granted prior written approval from Owner, Operator shall not conduct any scheduled maintenance on Facility equipment that would reasonably be expected to reduce Facility production during summer peak hours.</p>

<u>Hazardous Substances:</u>	<p>Operator shall minimize the use of hazardous substances and shall not permit any of its subcontractors, directly or indirectly, to use, handle, store, generate, manufacture, transport or release any hazardous substances in, on or under the Facility, the Site and any adjacent areas thereto, except to the extent required for the performance of the O&M Services, and, in each such case in accordance with the Requirements and at the sole cost and expense of Operator. Operator or subcontractors shall be responsible for the disposal, transportation and reporting of hazardous substances at the Site, in each case, by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable laws. Operator shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Operator discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Operator shall promptly notify Owner thereof and stop work in and restrict access to the area containing such hazardous substances. Operator shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by the Requirements in connection with the release of hazardous substances by Operator. Operator shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Operator as a result of the remediation or removal of hazardous substances for which Operator is responsible.</p>
<u>Standard of Performance:</u>	<p>All O&M Services shall be performed by Operator in a good and workmanlike manner, free of any defect or deficiency, consistent with prudent industry practices with respect to first-tier, grid-interconnected, rate-based, integrated utility-scale photovoltaic solar and energy storage plants in the Western United States, applicable laws, applicable governmental approvals, applicable project documents, the Warranties, the O&M Manual, the Safety Plan and Owner’s operating procedures (collectively, the “Requirements”).</p>
<u>Services Warranty:</u>	<p>Operator shall warrant in the Agreement that the O&M Services will be performed in a good and workmanlike manner and be free from defects in workmanship and materials in accordance with the Requirements for a period of two (2) years after the completion thereof (the “Services Warranty”) and Operator shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and material related to the O&M Services, which such obligation shall survive the expiration of the Term. When Operator detects or is notified of a defect covered by the Services Warranty, Operator shall, at its sole cost and expense, promptly repair, replace, and/or re-perform the services and/or materials as necessary to cure such defect, in each case to the satisfaction of Owner. For any O&M Services (including any parts or equipment) required to be re-performed, repaired, corrected or replaced following discovery of a defect, the Services Warranty shall be extended for two (2) additional years after the date such performance, repair, correction or replacement is complete. In addition, to the extent not covered by a Warranty, Operator shall ensure that any replacement modules, inverters, trackers, energy storage system components or other key equipment have warranties consistent with Owner’s warranty requirements.</p>
<u>Warranty Enforcement:</u>	<p>Operator shall, on Owner’s behalf, maintain, administer and pursue claims with respect to all applicable warranties provided by EPC Contractor and suppliers of the modules, inverters, trackers, energy storage system components and other components of the Facility (the “Warranties”). Operator shall manage, supervise</p>

	and verify that all persons providing Warranties for the Facility comply promptly and diligently with all of their respective warranty obligations and coordinate and schedule the provision of all warranty work with the O&M Services. Operator shall keep Owner reasonably informed of the status of any warranty claims and, in any case, provide information and documentation reasonably requested by Owner. Operator shall not be required to commence or prosecute a legal action (whether litigation, arbitration or otherwise) to enforce a warranty claim, except as may be agreed as part of the Additional Services, but Operator shall cooperate with Owner's reasonable requests in connection with any such legal action.
<u>Safety Requirements:</u>	Operator shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the O&M Services and be responsible for the compliance by Operator, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Operator shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of the O&M Services. Not later than one hundred twenty (120) days prior to the commencement of the Term, Operator shall provide Owner with a Site-specific safety plan in connection with Operator's performance of its obligations that complies with the Requirements (the " Safety Plan "). Owner shall be entitled to review and provide comments to the Safety Plan and Operator shall incorporate any comments provided by Owner. Operator shall be responsible for updating and revising the Safety Plan to comply with all Requirements, including any changes thereto. Operator shall comply with the Safety Plan including with respect to passes, badges, drug and alcohol testing and conduct on the Site.
<u>Performance Guarantee:</u>	Operator shall deliver a performance guarantee (" Performance Guarantee ") to Owner which shall guarantee that the actual annual output of the Facility is at least ninety-eight percent (98%) of the expected output on a weather-adjusted basis, subject to customary limitations with respect to force majeure, scheduled maintenance and outages directed by Owner or the transmission provider. Shortfalls in output shall be compensated based upon Owner's avoided energy price. Operator shall be excused under the Performance Guarantee if Owner terminates the O&M Agreement for convenience. Owner may, in its sole discretion, accept an availability guarantee in lieu of the Performance Guarantee.
<u>Credit Support:</u>	Operator shall deliver (i) an ultimate parent guaranty covering Operator's performance under the Agreement, the Performance Guarantee and any other agreements or undertakings related to the O&M Services or the Facility and (ii) such other credit support as may reasonably be required by Owner.
<u>Regulatory/ Compliance:</u>	Operator shall register with the North American Electric Reliability Corporation (NERC) as the " Generator Operator " with respect to the Facility and shall cause the Facility to comply with all requirements of any governmental authorities including, but not limited to, NERC, WECC, CAISO, WREGIS and the applicable public service commission.
<u>Project Labor:</u>	Operator shall ensure compliance and confirm labor union agreement with all project labor agreements related to the Facility.

<u>Training:</u>	Operator shall provide two (2) separate eight (8) hour training sessions per year for Owner’s personnel.
<u>Force Majeure;</u> <u>Excusable</u> <u>Events:</u>	In the event a force majeure (to be defined in the Agreement) or excusable event (to be defined in the Agreement, but including Owner-caused delays and certain specified changes in law) prevents Operator from performing any services, Operator shall be excused from performing such services for the duration of the event, subject to Operator using best efforts to mitigate the impact on its performance. Owner may, at its sole option, request that Operator remediate the effects of such event by agreeing to a change order that details the remediation work and Operator’s fee to perform such work.
<u>Site Access:</u>	Owner shall provide Operator with such access to the Facility as reasonably necessary to enable Operator to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Operator and to local electric utility personnel, and be in accordance with any ground lease, easement or related instrument in effect with respect to the Site. Operator shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Owner’s use of the Site and any of Owner’s separate contractors’ activities at the Site.
<u>Indemnification:</u>	Operator shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (“ Owner Parties ”), and hold them harmless from and against all reasonable out-of-pocket costs, expenses and actual liabilities arising out of or relating to any claim or any litigation or other proceeding that relate to (i) claims for injury or property damage, (ii) worker’s compensation claims, (iii) penalties due to failure to comply with applicable law, (iv) taxes owed by Operator, (v) Liens arising with respect to the Facility and (vi) hazardous substances.
<u>Liens:</u>	Operator shall keep and maintain the Facility and the Site free and clear of all liens, encumbrances, claims, charges that if unpaid, might become a lien, and rights of retention (“ Liens ”) resulting from the action of Operator or work done at the request of Operator (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Operator shall take prompt steps to discharge any such Lien. Operator shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Operator shall indemnify and hold harmless Owner for any losses or expenses incurred by Owner (including reasonable attorneys’ fees) in discharging any such Lien. Upon request from Owner, Operator shall request lien waivers from a subcontractor upon completion and payment for such subcontractor’s relevant work and, upon request from Owner, Operator shall supply copies of such lien waivers to Owner.
<u>Termination</u> <u>Rights:</u>	Owner may terminate the Agreement for convenience upon sixty (60) days’ notice in which case Owner shall pay Operator for any O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed by the parties). In the event of an Operator Default, (a) Owner may terminate the Agreement and exercise any rights available thereunder, at law or in equity, and (b) Operator shall

	<p>pay Owner a termination payment equal to the positive difference between the O&M Fee and the cost to Owner of, or market price associated with, procuring replacement services for the remainder of the Term.</p> <p>For purposes hereof, an “Operator Default” shall include any of the following:</p> <ul style="list-style-type: none"> i. Operator becomes insolvent; ii. Operator fails to pay to Owner any amounts due (other than any amounts which are the subject of a bona fide dispute) within thirty (30) days after written notice of such failure from Owner to Operator; iii. Operator fails to perform any of its material obligations and such failure is not remedied within thirty (30) days after written notice of such failure from Owner to Operator; iv. Any representation or warranty by Operator is false or misleading; v. Operator attempts to assign the Agreement in violation of its terms; vi. Operator or any affiliate defaults under any other agreement, warranty, guaranty or instrument relating to the operation, construction or management of the Facility, the equipment comprising the Facility or the O&M Services; vii. The Facility production is below ninety percent (90%) of the expected output on a weather-adjusted basis for any consecutive twelve (12) month period; or viii. The aggregate liability of Operator exceeds Operator’s Limitation of Liability in any period. <p>In the event of an Owner default, as its sole remedy therefor, (a) Operator may terminate the Agreement and (b) Owner shall pay Operator for any O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed to by the parties).</p> <p>Following any termination of the Agreement for any reason, Operator shall (a) withdraw from the Site and expeditiously transfer to Owner any Spare Parts, warranties, manuals, software licenses, keys, access credentials, records, reports and other documentation relating to the Facility and O&M Services and (b) cooperate with Owner and any replacement operator concerning the transition of operational responsibility for the Facility.</p>
<u>Insurance:</u>	The Agreement shall provide for typical and customary insurance provisions with respect to coverage for Operator’s performance of its obligations with respect to the Facility.
<u>Intellectual Property Matters:</u>	Owner shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Operator in connection with the O&M Services. In addition, Operator shall grant to Owner, for the life of the Facility, a paid-up, irrevocable, non-exclusive, transferrable, royalty-free right and license under all intellectual property rights that are used by Operator in

	providing the O&M Services as necessary to own, use, operate, maintain, service, repair, alter commission, decommission, remove, dispose of and transfer ownership of the Facility.
<u>Limitation of Liability:</u>	<p>The Agreement shall provide for typical and customary terms regarding Operator's aggregate liability for all losses and all other costs and obligations arising out of or relating to the Agreement (with a liability cap in any contract year of two hundred percent (200%) of the O&M Fee).</p> <p>With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Operator to pay liquidated damages under the Agreement or the Performance Guarantee), neither party shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages or lost profits; <u>provided</u> that to the extent not fully covered by insurance, each party shall remain liable for any damage to or loss of any property or equipment (including any deductible amounts) caused by such party's fraud, negligence, gross negligence, or willful misconduct.</p>
<u>Taxes:</u>	Operator shall pay any and all sales and use, goods and services, value added, customs and duties (including federal import taxes, including any import duties or fees, on materials imported for performance of the O&M Services), withholding, service, general excise, ad valorem or similar taxes to the extent assessed or assessable under applicable law, and taxes measured by or imposed on the net income or net profit of Operator.
<u>Records; Audit:</u>	Operator shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the O&M Services and the Facility for a period not less than the Term of the Agreement plus five (5) years. To the extent specified in the O&M Manual, such records shall be maintained in electronic form on the File Share. In addition, Owner shall have the right to audit and inspect Operator's records upon reasonable advance notice.
<u>Assignment:</u>	Operator may not assign its rights and obligations under the Agreement without Owner's prior written consent, which consent shall not be unreasonably withheld. For the avoidance of doubt, Owner may, without the consent of Operator, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, including assignment or delegation made consistent with the assignment provisions of the Build Transfer Agreement.
<u>Confidentiality:</u>	Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Operator shall acknowledge that certain governmental authorities have the power to examine Owner's books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to such governmental authorities (or any representatives thereof), as the case may be, any confidential information so requested or required.

<p><u>Dispute Resolution;</u> <u>Governing Law:</u>¹</p>	<p>This Term Sheet is, and the Agreement shall be, governed by the laws of the State of [____], without regard to its conflict of laws provisions.</p> <p>The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in [____], [____], or, if such court does not have subject matter jurisdiction, the state courts of the State of [____]. Each party shall waive any objection to forum or venue, and any right to jury trial. The parties shall consent to joinder or consolidation with respect to any disputes involving common issues of law or fact with respect to the Facility, the EPC Agreement or any other agreement relating to the Facility.</p> <p>Any disputes between the parties not resolved via good faith negotiations may proceed to litigation unless the parties mutually agree to arbitration, which arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.</p>
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¹ Note to Bidders – PacifiCorp will accept governing law and venue in Oregon or Utah.

APPENDIX L

Non-Price Scoring Matrix

[INCLUDED AS A SEPARATE ELECTRONIC SPREADSHEET (EXCEL FILE)]

All bidders are required to complete and self-score **Appendix L – Non-Price Scoring Matrix**. PacifiCorp will complete due diligence, audit and evaluate bidder's responses.

APPENDIX M

Role of the Independent Evaluator

1. The general role and function of the Independent Evaluators (“IE”) are outlined as follows. A more detailed description of the IE’s role and function are included in the competitive bidding rules for Oregon, the Significant Energy Procurement rules for Utah and the Procurement of Energy rules for Washington.¹
2. The Independent Evaluator will facilitate and monitor communications between PacifiCorp and bidders.
3. Receive benchmark and market bid responses.
4. Provide input to PacifiCorp on:
 - a. the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the solicitation process is fair, reasonable and in the public interest in preparing a solicitation and in evaluating market bids;
 - b. the development of initial screening and evaluation criteria that take into consideration the assumptions included in the PacifiCorp’s most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update;
 - c. whether a bidder has met the criteria specified in any bidding process and whether to reject or accept non-conforming bid responses;
 - d. whether and when data and information should be distributed to bidders when it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;
 - e. whether to reject non-conforming bids for any reason or accept conforming changes; and
 - f. whether to return bid fees.
5. Ensure that all bids are treated in a fair and non-discriminatory manner.
6. Monitor, observe, validate and offer feedback to PacifiCorp and the Washington, Utah and Oregon Commissions on all aspects of the solicitation and solicitation process, including:
 - a. content of the solicitation;
 - b. evaluation and ranking of bid responses;
 - c. creation of a short list(s) of bidders for more detailed analysis and negotiation;
 - d. post-bid discussions and negotiations with, and evaluations of, shortlisted bidders; and
 - e. negotiation of proposed contracts with successful bidders.
7. Once the competing bids have been evaluated by PacifiCorp and the IEs, PacifiCorp and the IE will compare results.
8. Offer feedback to PacifiCorp on possible adjustments to the scope or nature of the solicitation or requested resources in light of bid responses received.
9. Solicit additional information on bids necessary for screening and evaluation purposes.
10. Advise the Commissions at all stages of the process of any unresolved disputes or other issues or

¹ Public Utility Commission of Oregon Docket AR 600, In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources, Order 18-324, August 30, 2018 and Utah Admin. Code R746-420 and Washington’s WAC 480-107 Electric Companies - Purchases of Resources.

concerns that could affect the integrity or outcome of the solicitation process.

11. Analyze and attempt to mediate disputes that arise in the solicitation process with PacifiCorp and/or bidders, and present recommendations for resolution of unresolved disputes to the Commissions.
12. Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or acknowledgement of the final shortlist.
13. Coordinate as appropriate and as directed by the Commissions with staff or evaluators designated by regulatory authorities from other states served by PacifiCorp.
14. The IEs shall always be included in communications involving PacifiCorp and the bidders as described in Appendix N - PacifiCorp's Organization for RFP Process.
15. The IEs shall prepare reports as defined under Washington, Oregon and Utah rules and provide them to the Commissions and PacifiCorp. The final reports shall be provided as soon as possible following the completion of the solicitation process. Final reports shall include analyses of the solicitation, the solicitation process, the PacifiCorp's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest.

APPENDIX N

PacifiCorp's Organization for RFP Process

As part of the RFP process, PacifiCorp will commit to abide by a self-imposed code of conduct which will govern PacifiCorp's intra-company business relationships in order to ensure a fair and unbiased RFP evaluation and selection process. PacifiCorp has identified employees who will be responsible for the evaluation of the bids and employees who will be responsible for the development of any company benchmark resources. These employees and teams are also defined and described in Section 3.E of the 2022AS RFP. The evaluation and benchmark team will have separate responsibilities, will be required to attend a code of conduct training prior to RFP issuance, and will be required to sign code of conduct acknowledgement forms and adhere to the self-imposed code of conduct to ensure a fair and unbiased RFP evaluation and selection process.

Bidders will provide an Intent to Bid Form that will not be blinded. The evaluation team and the benchmark team will comply with this code of conduct during the RFP evaluation process.

No members of the evaluation team will have contact or 2022AS RFP-related communication with any market or benchmark bidder regarding their bid unless the IEs are included. If any bidder attempts to contact a member of the evaluation team, the evaluation team will only respond if the IEs are included.

EVALUATION TEAM

Market and benchmark bid evaluations will be led and coordinated by the originators and power marketers of the Valuation and Commercial Business Group. The evaluation team will gather and coordinate inputs from employees in several PacifiCorp departments, including shared resources. Several work groups, including the portfolio optimization modeling team (IRP team), the credit, engineering, compliance, permitting and safety, and structure and pricing teams, will be treated as a shared resource to perform work for the evaluation team. The shared work group members will not share any information they obtain from the Evaluation Team with the Benchmark Team.

The roles and responsibilities of the members of the evaluation team are set forth below.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the evaluation team will have 2022AS RFP-related contact or communication with any bidder unless the IE is included.

1. Evaluation Team – Origination, Power Marketing and Commercial Business

Roles: Members of the evaluation team will be responsible for overall coordination of the 2022AS RFP process, including bid process management for all proposals. Origination will have responsibility to coordinate with the IEs and employees in shared work groups responsible for evaluating certain bid criteria such as credit, engineering inputs, etc. Bidders will self-score their bids using the non-price scorecard, and evaluation team members will perform a validation and confirmation of the non-price score. The evaluation team will coordinate with members of the structuring and pricing and resource planning team to prepare bid inputs for PLEXOS and complete portfolio optimization modeling and price scoring. The evaluation team will work with members of the structure and pricing and resource planning teams to rank bids and recommend a final shortlist.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the evaluation team will have 2022AS RFP-related contact or communication with any market or benchmark bidder related to their proposal unless the IE is included.

2. Structuring and Pricing

Roles: Members of PacifiCorp's structuring and pricing group will be responsible for validating the bid and benchmark inputs, preparing bid inputs for the portfolio optimization models and combining the price and non-price score to support the final shortlist determination.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the evaluation team will have 2022AS RFP-related contact or communication with any market or benchmark bidder related to their proposal unless the evaluation team and the IEs are included.

3. Resource Planning

Roles: Members of PacifiCorp's IRP team will be responsible for the portfolio optimization and production cost modeling required to develop price scoring, portfolio optimization recommendations and the final shortlist.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the resource planning team will have 2022AS RFP-related contact or communication with any market or benchmark bidder related to their proposal unless the evaluation team and the IEs are included.

4. Legal

Roles: Legal will be responsible for providing legal support to the various company functions, including supporting the Evaluation Team in reviewing contract redlines from bidders.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

5. Regulatory

Roles: Regulatory will be responsible for providing regulatory guidance and filings throughout the entire RFP process.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

6. Credit

Roles: Credit will be responsible for credit screening, evaluation and monitoring credit provisions throughout the entire RFP process.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

7. Benchmark Team - Project Development

Roles: Project Development will be responsible for developing and submitting benchmark bids. Benchmark team members will have no communications with evaluation team members during the RFP process related to the benchmark or market bids without the oversight of the IEs.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the benchmark team will have 2022AS RFP-related contact or communication with any market bidder related to their proposal.

8. Engineering

Roles: Engineering will be responsible for providing engineering guidance, reviews of and general support related to proposal design, equipment capability, capacity factors, and other specifications throughout the entire RFP process and will provide interface with the independent engineers hired to evaluate the proposal resource assessments.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

9. Compliance, Permitting and Safety

Roles: Compliance, permitting and safety will be responsible for providing guidance, reviews and general support related to critical issues analyses, permitting, environmental, fish, wildlife, cultural, environmental, safety and other due diligence criteria throughout the entire RFP process.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

APPENDIX O

PacifiCorp's Company Alternative (Benchmark Resources)

Proposed 2022AS RFP Company Benchmark Resources

- PacifiCorp intends to submit up to thirty-seven (37) individual Benchmark Resources. Benchmark Resources will be comprised of Market Options and Owned Options. For each of the Market Options, PacifiCorp will have a purchase option to purchase the entire project outright. Market Option resources will not be eligible to be bid into the RFP separately as either PPA or BTA bids.
- These will be new greenfield resources that will be constructed across PacifiCorp's transmission system.
- To be built on property either currently owned or leased by PacifiCorp, or on property that PacifiCorp will acquire rights to develop.
- Prospective Benchmark Resource sizes and tie-in locations as shown below:

Size (MW)	Technology	Benchmark Option Type	Location (POI)	Interconnection Status	Expected Life	Expected Efficiency	State
80	Wind	Market	BPA: Schultz Switchyard	N/A	30	TBD	WA
100	Solar	Market	Grandview 115kV Substation	N/A	25	TBD	WA
120	Wind	Market	Whitney 138kV Tap	LGIA Signed	30	32-36%	WY
150	Wind	Market	Colstrip Substation	LGIA Signed	30	33-37%	MT
150	Storage	Market	Troutdale Substation	N/A	20	TBD	OR
199	Solar	Market	Diamond Hill Substation	Studied in 2021 Interconnection Cluster	25	27-31%	OR
199	Solar	Market	Fry Substation	Studied in 2021 Interconnection Cluster	25	27-31%	OR
199	Solar	Market	Black Rock Substation	Studied in 2021 Interconnection Cluster	25	28-32%	UT
200	Solar	Market	Yamsay - Klamath 230kV Tap	N/A	25	TBD	OR
199.9	Storage	Market	Clover Substation	Submitted on 4/1/22	20	89-92%	UT
200	Storage	Market	Mercer Substation	To be studied in 2022 Interconnection Cluster	20	TBD	UT
200	Solar	Market	Mercer Substation	Studied in 2021 Interconnection Cluster	25	28-32%	UT
302	Solar	Market	Clover 345kV Substation	N/A	25	TBD	UT
330	Wind	Market	IPC: Boise Bench-Midpoint #2 230kV	N/A	30	TBD	ID
400	Solar	Market	Summer Lake - Burns 500kV Tap	N/A	25	TBD	OR
600	Wind	Market	Midpoint Substation	N/A	30	TBD	ID
600	Solar	Market	Borah Substation	N/A	25	TBD	ID
800	Wind	Market	Rogerson Substation	N/A	30	TBD	ID

30	Solar	Owned	Gunnison-Sigurd #1 Tap	LGIA Signed	25	27-31%	UT
35	Solar	Owned	Ponderosa Substation	LGIA Signed	25	28-32%	OR
50	Solar	Owned	Horseshoe - Jensen 138kV Tap	To be studied in 2022 Interconnection Cluster	25	28-32%	UT
80	Solar	Owned	Bar Nunn Substation	Submitted	25	26-30%	WY
100	Wind	Owned	Evanston-Anschutz Tap	LGIA Signed	30	31-34%	UT
119	Solar	Owned	Windstar Substation	Submitted on 3/4/2022	25	19-23%	WY
160	Solar	Owned	Casper Substation	LGIA Signed; Submitted	25	26-29%	WY
178	Solar	Owned	Emery Substation	LGIA Signed	25	27-31%	UT
199.9	Storage	Owned	Aeolus Substation	Submitted on 4/1/22	20	88-92%	WY
199.9	Storage	Owned	Anticline Substation	Submitted on 4/1/22	20	88-92%	WY
199.9	Storage	Owned	Mona Substation	Submitted on 4/1/22	20	88-92%	UT
199.9	Storage	Owned	Snow Goose Substation	Submitted on 4/1/22	20	88-92%	OR
266	Solar	Owned	Shirley Basin Substation	Submitted on 3/4/2022	25	20-24%	WY
450	Wind	Owned	Goshen-Jefferson Tap Goshen-Antelope Tap	To be studied in 2022 Interconnection Cluster	30	33-36%	N/A
46	Solar	Owned	Dunlap Substation	Submitted on 3/4/2022	25	17-21%	N/A
393	Storage	Market	Malin Substation	LGIA Signed	50	79-83%	OR
400	Storage	Market	New Loco Mountain Substation	LGIA anticipated to be executed in April 2022	50	79-83%	NT
500	Storage	Market	Rocky Reach-Columbia line (BPA or PSE)	BPA Interconnection Study in process	50	79-83%	WA
500	Storage	Market	Oquirrh Substation	To be studied in 2022 Interconnection Cluster	50	79-83%	UT

- Benchmark Resource bids will include costs assumptions consistent with the main RFP document Section 6.C, and specifically Table 4, where the Company lists the characteristics which will be used to determine the Net Cost of benchmark bids. These inputs will be provided to the IEs for review and comment.
- PacifiCorp will administer a competitive supply solicitation(s), on a case-by-case basis, for the wind turbines, solar panels, and battery systems required for all Owned Benchmark Resources. Procurement of equipment for Market Benchmark Resources will be conducted by third-party developers in coordination with PacifiCorp.
- PacifiCorp will administer a separate competitive solicitation(s) to secure firm fixed pricing to engineer-procure-construct and commission the balance of plant for Owned Benchmark Resources. Agreements with contractors for engineering, procurement, construction, and commissioning for Market Benchmark Resources will be conducted by third-party developers in coordination with PacifiCorp.

- All projects are expected to be able to be placed in service no later than December 31, 2027 with the exception of long-lead time resources which will be bid with commercial operations dates no later than December 31, 2028.
- All solar generating resources noted above may be bid as collocated battery storage component up to 100% of the nameplate capacity of the solar project and a four (4) hour duration and may be bid separately as standalone solar subject to applicable bid fee requirements.
- Project efficiencies will be evaluated in coordination with experienced third-party engineers for Owned Benchmark Resources, and by third-party developers for Market Benchmark Resources in coordination with PacifiCorp.
- Transmission requirements, operating requirements, and dispatch requirements for Benchmark Resources will be evaluated pursuant to applicable Large Generator Interconnection Agreements and necessary Transmission Service Agreements for each resource.
- The Benchmark Resources will be constructed in compliance with PacifiCorp's specifications and technical standards.
- The Benchmark Resources will also include an operations and maintenance (O&M) building at each site or an addition to an existing PacifiCorp O&M facility.
- Benchmark Resources will include the following pro forma estimates for operations, maintenance and on-going capital expenditures:
 - Wind: 30 years
 - Solar & Solar plus Battery: 25 years
 - Battery: 20 years
 - Pumped Hydro Storage: 40-50 years (or federal license term)
- The Benchmark Resources costs will include allocated development costs, fees, permitting, project management and equipment costs.

APPENDIX R

Bid Scoring and Modeling

PacifiCorp proposes that all bids be scored considering two scoring methodologies, Case 1 and Case 2 as described below.

PacifiCorp's proposed 2022AS RFP price scoring approach is comprised of two methodologies both of which will be evaluated and discussed with the IEs. The first, Case 1, is embedded in the second, Case 2, which includes additional consideration for capacity contribution, as described in the examples below. PacifiCorp is proposing the two Case methodologies so that the Company and IEs can explicitly review and discuss how bids rank based on 1) net benefit to the system and 2) net benefit plus the value of deferring¹ a proxy peaking resource whose costs will be included in the 2023 IRP.

As described in the main RFP document, Section 6, PacifiCorp's RFP team will provide bid preparation models to the portfolio optimization team and will also share those models with the IEs. Within the bid preparation models will be the results from a Location Capacity Cost model which will recast a bidder's production profiles to reflect the actual profiles of a given reference year (2018 was used in the 2021 IRP). In other words, while the total annual average generation provided in the bid will not change, 8760 net output will be reallocated across the year according to the performance of existing resources in that part of PacifiCorp's system as experienced by PacifiCorp in the reference year, aligning the windy and/or sunny days in the generation forecast for each resource with the comparable conditions of neighboring resources. The recast production profiles will be uploaded into PLEXOS along with leveled cost information. PLEXOS will then run its LT-MT-ST models and provide a final net system benefit for each resource in terms of \$/kW-mon, where kW is the resource's maximum output (the lower of its nameplate or LGIA limit).

The net benefit is simply the difference between the leveled costs provided by the bidder and the system benefit values identified by PLEXOS for each bid. The net benefit may be negative indicating a resource which reduces system costs for PacifiCorp's customers, or it may be positive indicating a resource which increases system costs, but which may or may not provide other value to the system. This net benefit will be used to create price scores in accordance with the two methodologies (Cases) provided below.

Micro-resources: In order to provide a price score for all resources, including those not picked as part of the portfolio optimization process, PacifiCorp will create micro versions of each bid² and upload the fractional (proportional) bid representation into PLEXOS to determine the micro-resource marginal net benefit and ultimately its price score. Because of the immaterial size of

¹ Deferral basis is adjusted by the capacity contribution adjustment mechanism and may be complete or partial deferral.

² Sized at or below 100kW

the micro-resources, PacifiCorp will be able to upload and include micro-resource bids without impacting the ultimate bid portfolio selection.

After completion of the PLEXOS runs, PacifiCorp will have net benefit values for each micro-resource bid into the 2022AS RFP which will be used to determine price scores. The PLEXOS outputs will be provided to the IEs for their oversight purposes. A detailed description of the two scoring methodologies which will be prepared is provided below and an excel example demonstrating the math and formula behind each example is included as Appendix R-1:

Case 1 will provide initial “price scores” for each of the 2022AS RFP bids by ranking the net benefit of each bid against the range of “best” and “worst” bids submitted into the 2020AS RFP on a \$/kw-month basis. The tables below use for example the range of best to worst prices bids into the 2020AS RFP that are indicative of what might be offered in the 2022AS RFP. The range of best and worst bids sets a minimum (0) and maximum (75) “price” point range to be awarded.

Case 2 will provide PacifiCorp’s preferred “price score” for use in determining the price score for final bid ranking purposes, subject to review and adjustment in coordination with the IEs. The Case 2 scores will be calculated as the sum of i) each bid’s net benefit and ii) an additional capacity adder, or credit, for the resource’s contribution to system reliability, based on the cost of a peaking resource. The deferred peaking resource value (or capacity contribution adder) will be calculated as the product of a) each bid’s capacity contribution as determined in the Location Capacity Cost model with the bid preparation file and b) PacifiCorp’s “proxy” cost assumption for a peaking resource included in the 2023 IRP. The sum of the net benefit and capacity contribution adder will then be ranked using the same methodology as Case 1, where bids will be ranked based on a range of “best” and “worst” bids on a \$/kw-month basis. The example below shows how Case 2 bids perform against the best and worst bids from the 2020AS RFP. Consistent with Case 1, the best and worst bid prices set the minimum and maximum point range to be awarded in Case 2.

The following page includes examples.

Example Assumptions:

Bid Types: Each of Case 1 and Case 2 scoring methodologies show scoring calculations for four representative bids demonstrating how price scores would be calculated for each of the four potential bid types:

1. Bid 1: Low capacity contribution resource equal to 10%. Net cost to PacifiCorp system (positive difference between levelized cost and system benefit)
2. Bid 2: Same low capacity contribution. Same levelized cost, but net benefit to PacifiCorp system (negative difference)
3. Bid 3: High capacity contribution resource equal to 100%. Net benefit to PacifiCorp system (negative difference between levelized cost and system benefit)
4. Bid 4: Same high capacity contribution. Net cost to PacifiCorp system (positive difference)

Ranking: The highest and lowest net benefits realized from bid from the 2020AS RFP are used to force rank bids between zero and 75 potential price score points:

- 2020AS RFP: Most net benefit: -\$93/MW-mon³
- 2020AS RFP: Least net benefit (net cost): \$196/MW-mon

Case 1: Price scoring methodology used to rank all bids using PLEXOS benefit results (in dollars) based on the equation below:

$$\text{Bid Score}_x = \frac{[(\text{PLEXOS Bid Benefit of Score}_x - \text{Lowest ("worst") Bid Net Benefit of ALL 2020AS RFP Bid Scores})]}{\text{divided by: } [(\text{Highest ("best") Bid Net Benefit of ALL 2020AS RFP Bids} - \text{Lowest ("worst") Bid Net Benefit of ALL 2020AS RFP Bid Scores})]}$$

Where,

- the Lowest Bid Score = 75 points; and
- the Highest Bid Score = 0 points

Case 2: Price scoring methodology to rank all bids using PLEXOS benefit results (in dollars) and a capacity contribution adder based on the equation below:

$$\text{Bid Score}_x = \frac{[(\text{PLEXOS Bid Benefit of Score}_x - \text{Lowest ("worst") Bid Net Benefit of ALL 2020AS RFP Bid Scores})]}{\text{divided by: } [(\text{Highest ("best") Bid Net Benefit of ALL 2020AS RFP Bids} - \text{Lowest ("worst") Bid Net Benefit of ALL 2020AS RFP Bid Scores})]}$$

Plus, the positive benefit from;

[Proxy cost of new peaking resource in 2025-2027 X Capacity Contribution of the Project (from the Locational Capacity Cost (LCC) Model within the Bid Preparation model)]

Where,

- the Lowest Bid Score = 75 points; and
- the Highest Bid Score = 0 points

³ Following consultation with the IEs, the high and low scores may be rounded for ease of scoring purposes.

By example,

Case 1:

Example Bids		Bid 1	Bid 2	Bid 3	Bid 4
Calcuated Capacit Contribution from LCC Model		10%	10%	100%	100%
Points					
0	2020AS RFP Highest Cost Bid (\$/kw-mon)	\$196.00	\$196.00	\$196.00	\$196.00
75	2020AS RFP Lowest Cost Bid (\$/kw-mon)	-\$93.00	-\$93.00	-\$93.00	-\$93.00
Nom. Levelized Cost over Contract Life (\$/kw-mon)		\$80	\$80	\$130	\$100
Nom. Levelized Benefit (from PLEXOS) over Contract Life (\$/kw-mon)		(\$70)	(\$90)	(\$160)	\$0
Nom. Levelized Net Benefit (from PLEXOS) over Contract Life (\$/kw-mon)		\$10	(\$10)	(\$30)	\$100
Bid Score _x		48	53	59	25

This Case 1 example scores Net Benefit results from PLEXOS, by bid asset, then ranks each net benefit result within the range of results received from all bids received in the 2020AS RFP. It is clear in Case 1 that bids with net costs (positive difference) to the system perform poorly relative to bids with net benefits (negative difference), which is reflected in the price scores ranging from \$25 to \$59/kW-mon based on a net benefit range of \$196/kW-mon to -\$93/kW-mon realized in the 2020AS RFP bid results. The relative capacity contributions of the resources are not reflected in this indicative price scoring methodology.

Case 2:

Example Bids		Bid 1	Bid 2	Bid 3	Bid 4
Calcuated Capacit Contribution from LCC Model		10%	10%	100%	100%
Points					
0	2020AS RFP Highest Cost Bid (\$/kw-mon)	\$196.00	\$196.00	\$196.00	\$196.00
->	Est. Cost of a Natural Gas Peaker (\$/kw-mon)	\$123.00	\$123.00	\$123.00	\$123.00
75	2020AS RFP Lowest Cost Bid (\$/kw-mon)	-\$93.00	-\$93.00	-\$93.00	-\$93.00
Nom. Levelized Cost over Contract Life (\$/kw-mon)		\$80	\$80	\$80	\$100
Nom. Levelized Benefit (from PLEXOS) over Contract Life (\$/kw-mon)		(\$70)	(\$90)	(\$160)	\$0
Added Value for Deferred NG Peaker Based on Capacity Contribution		(\$12)	(\$12)	(\$123)	(\$123)
Nom. Levelized Net Benefit (from PLEXOS) over Contract Life (\$/kw-mon)		(\$2)	(\$22)	(\$203)	(\$23)
Bid Score _x		51	57	75	57

This Case 2 example scores Net Benefit results from PLEXOS, by bid asset plus the capacity contribution adjusted value of a deferred peaking resource, then ranks the resultant net benefit result within the range of results received from all bids received in the 2020AS RFP.

It is clear by comparing Case 1 and Case 2 that bids with net costs (positive difference) to the system and lower capacity contribution factors perform relatively poorly as compared to bids with net benefits (negative difference) and higher capacity contributions, which is reflected in

the price scores ranging from \$51 to \$75/kW-mon based on a net benefit range of \$196/kW-mon to -\$93/kW-mon realized in the 2020AS RFP bid results. The relative capacity contributions of the resources are not reflected in the Case 1 price scoring methodology.

All pricing results from both Case 1 and Case 2, by bid, will be considered when determining a final price score to be summed with the non-price score, which will be used to rank bids for the 2022AS RFP. PacifiCorp will consult with all the IEs to determine whether Case 1 or Case 2 should be the preferred methodology before finalizing the price score and determining the final shortlist.

APPENDIX R-1

Bid Scoring Example

[INCLUDED AS A SEPARATE EXCEL ATTACHMENT]

APPENDIX S

Berkshire Hathaway Energy Cyber Security Requirements Applicable to PPAs, Tolling Agreements and BTAs

Cyber security is an evolving issue with growing importance to the electric power industry. Berkshire Hathaway Energy is developing security requirements for PPAs, Tolling Agreements and BTAs, which will be folded into contractual documents prior to the market bid deadline on February 14, 2023.

APPENDIX S-1

Berkshire Hathaway Energy Cyber Security Attestation

Berkshire Hathaway Energy is developing a cyber security attestations document which will be required of all PPAs, Tolling Agreements and BTA bidders providing a Notice of Intent (NOI) to Bid due on November 17, 2023. Please go to the 2022AS RFP website prior to the NOI deadline to download the attestation:

<https://www.pacificorp.com/suppliers/rfps/2022-all-source-rfp.html>