

POWER PURCHASE AGREEMENT

BETWEEN

BOSWELL WIND, LLC

AND

PACIFICORP

DATED AUGUST 16, 2022

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”) is entered into as of August 16, 2022 (the “Execution Date”), by and between Boswell Wind, LLC, a Delaware limited liability company (“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, an Interconnection Delay (solely in the case of (b) above), 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 Exhibits B and C, as provided in Section 6.1, which provides the final “as-built” description of the Facility, including the Point of Delivery.

“Assign” is defined in Section 20.1. “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 that is owned by Seller as part of the Generating Facility has been 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 consistent with the terms and conditions of this Agreement; and (C) that all AGC equipment that is owned by Seller as part of the Generating Facility 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, all to the extent necessary to commence Commercial Operation;

(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 material violation of or subject to any material 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 [REDACTED] before the Scheduled Commercial Operation Date.

“Commission” means the Wyoming Public Service Commission.

“Commission Approval” means approval by the Wyoming Public Service Commission of a Certificate of Public Convenience and Necessity for the Gateway Transmission Projects pursuant to Wyoming Statute § 37-2-205, which approval is final and non-appealable.

“Commission Approval Deadline” means September 30, 2022.

“Commission Approval Notice” is defined in Section 2.1.2.

“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); provided that Interconnection Delay shall not be considered Compensable Curtailment and shall only apply as provided in Section 2.2.2 and Section 5.1.2.

“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 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 2.2.4.

“Default Security” means a Guaranty or a Letter of Credit, in each case, in an amount equal to [REDACTED] 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 to the sum of the product 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 2.2.3 and Section 2.2.4) divided by the number of hours in such month (in MWh); multiplied by (b) [REDACTED] the positive difference, if any, stated in \$/MWh, between (A) the Firm Market Price Index in such hour and (B) the Contract Price for the first Contract Year set forth in Exhibit K.

“Delayed Commercial Operation Date ” is defined in Section 2.2.2.

“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 2.1.1.

“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 of Exhibit A, as the same may be revised pursuant to Section 2.2.3 and Section 2.2.4.

“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 of Exhibit A, as the same may be revised pursuant to Section 2.2.3 and Section 2.2.4.

“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 of Exhibit A, as the same may be revised pursuant to Section 2.2.3 and Section 2.2.4.

“Expected Nameplate Capacity Rating” means the expected Nameplate Capacity Rating as of the Execution Date, which is specified in Exhibit A as of the Execution Date, as the same may be revised pursuant to Section 2.2.3 and Section 2.2.4.

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

“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 that is owned by Seller as part of the Generating Facility 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 2.2.4.

“Final Nameplate Capacity Rating” is defined in Section 2.2.4.

“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 Palo Verde On-Peak Index and the ICE Day-Ahead 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 “PACE. DGAP_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.

“FNTTP” means the full notice to proceed (or similar notice) that Seller delivers to a contractor pursuant to an executed construction agreement the purpose of which is to commence construction activities that in the aggregate total no less than fifty percent (50%) of the cost to construct the Facility.

“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.

“Gateway Transmission Projects” means PacifiCorp’s planned (a) 500 kV high-voltage transmission line extending approximately four hundred sixteen (416) miles from the planned Aeolus Substation in southeastern Wyoming near Medicine Bow, Wyoming into the Clover Substation near Mona, Utah and (b) 230 kV transmission line extending approximately fifty-nine (59) miles from the Windstar Substation near Glenrock, Wyoming to the Shirley Basin transmission line project.

“Generating Facility” means a wind-powered generating facility for the generation of electric energy located in Albany County, Wyoming, 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.

“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 R.

“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 2.2.4.

“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 Delayed Commercial Operation Date Period” is defined in Section 2.2.2.

“Initial Nameplate Capacity Rating” is defined in Section 2.2.4.

“Interconnection Delay” means the failure of Seller to achieve Commercial Operation by the Scheduled Commercial Operation Date solely as a result of Seller being unable to satisfy one or more of the requirements of Commercial Operation (as such requirements are set forth in the definition of “Commercial Operation”) solely because all or a portion of the Gateway Transmission Projects has not achieved commercial operation by the Scheduled Commercial Operation Date; provided that such failure and inability is not caused by Seller or any of its Affiliates (including a breach by Seller of any of its obligations under the Generation Interconnection Agreement or this Agreement or the failure of Seller to satisfy one or more of the requirements of Commercial Operation (as such requirements are set forth in the definition of “Commercial Operation”) other than solely because all or a portion of the Gateway Transmission Projects has not achieved commercial operation by the Scheduled Commercial Operation Date) or any Person acting by or on behalf of Seller or any of its Affiliates, including any failure of Seller or its Affiliates to timely complete construction of its Interconnection Customer Interconnection Facilities (as such term is used in the Generation Interconnection Agreement) in accordance with the Generation Interconnection Agreement.

“Interconnection Delay Price” means the applicable price, expressed in \$/MWh, set forth in Exhibit K.

“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, 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, naming PacifiCorp as the party entitled to demand payment and present draw requests that:

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

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means any 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 Mountain Standard Time or Mountain Daylight Time, as applicable, in the state in which the Facility is located on the day in question.

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

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market or any organized day-ahead or intra-hour market 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 2.2.3 and Section 2.2.4. The Maximum Delivery Rate as of the Execution Date is specified in Exhibit A, as the same may be revised pursuant to Section 2.2.3 and Section 2.2.4.

“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 the same may be revised pursuant to Section 2.2.3 and Section 2.2.4, as applicable.

“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 station service load), if any, delivered 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(a).

“OFAC Sanctions Lists” is defined in Section 3.2.16(a).

“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 DNR Request Breach” means PacifiCorp breaches its obligation in the first sentence of Section 4.2.1 to submit a DNR Request with the Network Service Provider within five (5) Business Days following the Execution Date.

“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, and all amendments, modifications, supplements, general conditions and addenda thereto.

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

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

“Point of Delivery” means the point of interconnection between the 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 or demonstratable 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 [REDACTED] 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 Exhibits B and E.

“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 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

“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.

“PTC Period” means the ten-year period commencing on the earlier of (i) the date the last wind turbine generator comprising the Facility is placed in service for federal income tax purposes or (ii) [REDACTED]

“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 any United States or Canadian (with a United States branch) 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, tariff 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).

“Resale Certificate” means a completed and executed Streamlined Sales Tax Agreement Certificate of Exemption pursuant to Wyo. Stat. §§ 39-15-101(a)(xvi); 39-15-105(a)(iii)(F), where PacifiCorp has checked the box to indicate the reason for exemption as “Resale.”

“Restricted Financial Information” is defined in Section 6.10.9.

“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 [REDACTED], 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.

“Subsequent Delayed Commercial Operation Date Period” is defined in Section 2.2.2.

“Supply Chain Audit” means an audit or investigation of the supply chain through which all equipment and materials (excluding the main power transformers) to be incorporated into the Facility are sourced, including the mines, factories and other facilities from which such equipment and materials (excluding the main power transformers) to be incorporated into the Facility are sourced by Seller and its contractors, subcontractors, vendors, suppliers and materialmans, of any tier, and the contracts, policies and procedures, codes of conduct and other documentation directly 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 2.1.1.

“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 (i) it has been executed and delivered by both Parties, (ii) PacifiCorp's termination right in Section 2.1.2 has expired and (iii) PacifiCorp's termination right in Section 4.2.2 has expired (the "Effective Date"), provided that prior to the Effective Date Sections 1.2, 2.1, 4.2, 4.6, 5.4, 5.6, 14, 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 for herein, this Agreement shall remain in effect until [REDACTED] years after the earlier of the Commercial Operation Date and the Delayed Commercial Operation Date, if any (the "Term").

2.1.2 Commission Approval. PacifiCorp shall notify Seller within ten (10) days after PacifiCorp has obtained the Commission Approval in form and substance acceptable to

PacifiCorp in its sole discretion (the “Commission Approval Notice”). If (a) the Commission fails to grant the Commission Approval on or before the Commission Approval Deadline or (b) the Commission 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 upon the earlier of [REDACTED] days after 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 (such earlier date, the “Commission Approval Termination Deadline”), PacifiCorp shall have the right to terminate this Agreement by providing Seller written notice thereof within [REDACTED] Business Days after the initial Commission Approval Termination Deadline or, if applicable, any extended Commission Approval Termination Deadline, provided that in the case of Section 2.1.2(b), PacifiCorp may extend the Commission Approval Termination Deadline by up to an additional [REDACTED] days by providing Seller written notice thereof within ten (10) Business Days after the initial Commission Approval Termination Deadline 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 by the Commission Approval Deadline or in form and substance not acceptable to PacifiCorp in its sole discretion.

2.2 Milestones.

2.2.1 Project Milestones. Time is of the essence in the performance of this Agreement, and Seller’s completion of the 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 completion date specified for each Project Milestone in Exhibit N, as such dates may be adjusted pursuant to Section 2.2.5. If Seller is unable to achieve any Project Milestone (including the Commercial Operation Date) on or before 16:00 hours Local Time on the completion date specified for such Project Milestone in Exhibit N solely as the result of Force Majeure or a PacifiCorp DNR Request Breach, or, in the case of the Commercial Operation Date, solely as a result of Force Majeure, a PacifiCorp DNR Request Breach or Interconnection Delay, then such Project Milestone completion date shall be extended on a day for day basis for any delay in achieving such Project Milestone caused solely by such Force Majeure, PacifiCorp DNR Request Breach or Interconnection Delay, as the case may be; provided, however, in no event shall the Scheduled Commercial Operation Date be extended by Force Majeure more than [REDACTED] days.

2.2.2 Interconnection Delay. If Seller fails to achieve Commercial Operation on the date [REDACTED] days following the Scheduled Commercial Operation Date (not including any extension pursuant to Section 2.2.1 as a result of Interconnection Delay) (the “Delayed Commercial Operation Date”) solely as a result of Interconnection Delay then, subject

to Seller using commercially reasonable efforts to achieve Commercial Operation as soon as practicable in accordance with this Section 2.2.2, PacifiCorp will pay to Seller pursuant to Section 5.1.2 (a) the Contract Price for each MWh of Net Output delivered to the Point of Delivery and for each MWh of Expected Hourly Net Output not delivered to the Point of Delivery, in each case, during the period from the Delayed Commercial Operation Date until the earlier of the date (i) [REDACTED] days following the Delayed Commercial Operation Date and (ii) Seller is able to achieve Commercial Operation in accordance with this Agreement (the “Initial Delayed Commercial Operation Date Period”) and (b) the Contract Price for each MWh of Net Output delivered to the Point of Delivery and the Interconnection Delay Price for each MWh of Expected Hourly Net Output not delivered to the Point of Delivery, in each case, during the period from the date [REDACTED] days following the Delayed Commercial Operation Date until Seller is able to achieve Commercial Operation in accordance with this Agreement (the “Subsequent Delayed Commercial Operation Date Period”). After the Delayed Commercial Operation Date, Seller shall use commercially reasonable efforts to achieve Commercial Operation as soon as practicable and shall provide notice to PacifiCorp when Seller believes that it has achieved Commercial Operation in accordance with Section 2.2.3. Effective as of the Commercial Operation Date, the Initial Delayed Commercial Operation Date Period and the Subsequent Delayed Commercial Operation Date Period, if any, shall end.

2.2.3 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 to a notice within ten (10) Business Days of receipt of Seller’s notice satisfying the requirements of the preceding sentence. If PacifiCorp does not respond within such time period 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 proportionately 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.

2.2.4 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 2.2.3 (the “Initial Nameplate Capacity Rating”) and Seller informs PacifiCorp in writing within five (5) Business Days following 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 2.2.3 based on the Initial Nameplate Capacity Rating. 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 proportionately 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.

2.2.5 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 ten (10) 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 ten (10) 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 ten (10) 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 2.2.5 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. Subject to the following sentence of this Section 2.3, 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 (as such date may be adjusted pursuant to Section 2.2.1) 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. Notwithstanding the foregoing, if there is an Interconnection Delay, Seller's liability for Delay Damages pursuant to this Section 2.3 shall not commence accruing until the date determined as follows: if (i) the Gateway Transmission Projects achieve commercial operation less than one hundred twenty (120) days before the Scheduled Commercial Operation Date (not including any extension pursuant to Section 2.2.1 as a result of Interconnection Delay), then Seller's liability for Delay Damages pursuant to this Section 2.3 shall commence accruing on the date that is one hundred twenty (120) days after the date the Gateway Transmission Projects achieve commercial operation (instead of the Scheduled Commercial Operation Date); or (ii) the Scheduled Commercial Operation Date is extended pursuant to Section 2.2.1 because of Interconnection Delay, then Seller's liability for Delay Damages pursuant to this Section 2.3 shall commence accruing on the date that is one hundred twenty (120) days after the date the Gateway Transmission Projects achieve commercial operation (instead of the Scheduled 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 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 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 as follows:

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 (a) represents and warrants to PacifiCorp pursuant to Sections 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.2.6(a), 3.2.8(a), 3.2.9, 3.2.10, 3.2.11, 3.2.12, 3.2.13(a), 3.2.14 and 3.2.16(a) and covenants to PacifiCorp pursuant to Sections 3.2.6(b), 3.2.6(c), 3.2.6(d), 3.2.7, 3.2.8(b), 3.2.13(b), 3.2.15, 3.2.16(b), 3.2.17, 3.2.18 and 3.2.19, as follows:

3.2.1 Organization. It is duly organized, validly existing and in good standing under the laws of the State of its 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.

(a) Subject to Section 3.2.6(b), all Required Facility Documents are listed on Exhibit D. Seller holds or will hold by the Commercial Operation Date (or such other date as may be specified under applicable Requirements of Law) all Required Facility Documents. Attached hereto as Exhibit R is a true, correct and complete copy of the Generation Interconnection Agreement.

(b) Seller will maintain all Required Facility Documents throughout the period for which the same is required in accordance with Prudent Electrical Practices and applicable Requirements of Law. Following the Execution Date, Seller shall promptly notify PacifiCorp of any changes reasonably required to the Required Facility Documents listed on Exhibit D, and such changes will automatically be deemed incorporated into Exhibit D effective upon receipt by PacifiCorp.

(c) 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.

(d) If reasonably requested by PacifiCorp, Seller shall provide copies of any or all other Required Facility Documents redacted to exclude any information which Seller determines to be proprietary or confidential.

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.

(a) 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.

(b) 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 which would adversely affect Seller's performance of its obligations under 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 agrees that it 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.

(a) 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.

(b) 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.

(a) Neither Seller nor, to Seller's reasonable knowledge, any officer, director, employee, agent, lobbyist or representative 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").

(b) 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 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, following the Execution Date, U.S. Governmental Authorities subsequently places any such person or entity that Seller involves or engages in the performance of this Agreement 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. Seller does not have fifty percent (50%) or more equity ownership by an entity owned or, to the reasonable knowledge of Seller, controlled by any country or territory subject to a general export, import, financial or investment embargo by U.S. Government Authorities (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 following the Execution Date, U.S. Government Authorities subsequently identify a country or territory as a Prohibited Country and at that time Seller shall have (50%) or more equity ownership by an entity owned or, to the reasonable knowledge of Seller, controlled by such Prohibited 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 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 that is the subject of sanctions imposed by the U.S. government; or (c) 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 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 as a Prohibited Vendor 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 within thirty (30) days of satisfying the fourth and fifth Project Milestones (i.e., Execute Purchase Agreement for Turbines 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) and reasonably acceptable to Seller. 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 material 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 material 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 4.5.1 and Section 5.1.2, to purchase, receive or pay for Net Output that is not delivered to the Point of Delivery, including Compensable Curtailment Energy and Non-Compensable Curtailment Energy. In addition, during the forty-five (45)-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 forty-five (45) days prior to the Scheduled Commercial Operation Date (as of the Execution 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 one hundred fifty (150) 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") [REDACTED] 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) Business 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 Seller 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 thirty (30) 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 thirty (30) 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, 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 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 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 prevents physical delivery or physical receipt of Net Output at the Point of Delivery. Within fifteen (15) Business Days after the end of each month, PacifiCorp shall provide Seller (x) written notice of any Compensable Curtailment and Non-Compensable Curtailment occurring during such month, together with reasonable supporting documentation, including with respect to time, duration and maximum level of generation (in MW) of any Compensable Curtailment and Non-Compensable Curtailment and (y) the Potential Net Output occurring during such month as determined and provided to Seller by the vendor pursuant to Section 6.7.

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. For purposes of determining the amount of Non-Compensable Curtailment Energy and Compensable Curtailment Energy, absent manifest or demonstrable error Seller shall use the information provided by PacifiCorp pursuant to the last sentence of Section 4.5.1, subject to its right pursuant to Section 24 and the proviso in the definition of Potential Net Output. Seller must promptly (x) notify PacifiCorp after becoming aware of any such manifest or demonstrable error and (y) 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, Network Service 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 any 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 within sixty (60) days of such notice notify Seller that it either: (a) agrees to reimburse Seller for such Compliance Costs above the Compliance Cost Cap; or (b) waives 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 participate in such additional program results from failing to expend amounts for Compliance Costs in excess of the Compliance Cost Cap, provided that if PacifiCorp fails to notify Seller within such sixty (60)-day period, then PacifiCorp will be deemed to have elected clause (b) above. If PacifiCorp agrees to reimburse Seller pursuant to clause (a) above, then PacifiCorp shall reimburse Seller for Seller’s actual costs incurred in excess of the Compliance Cost Cap to comply with such change or participate in such additional program within sixty (60) days from the time that PacifiCorp receives an invoice and reasonable documentation of such costs from Seller.

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 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 forty-five (45) 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.

(a) For the Initial Delayed Commercial Operation Date Period, if any, PacifiCorp shall pay Seller the Contract Price (i) for each MWh of Expected Hourly Net Output deemed delivered (but not actually delivered) to the Point of Delivery and (ii) for each MWh of Net Output delivered to the Point of Delivery, in each case, during the Initial Delayed Commercial Operation Date Period pursuant to Section 2.2.2.

(b) For the Subsequent Delayed Commercial Operation Date Period, if any, PacifiCorp shall pay Seller: (i) the Contract Price for each MWh of Net Output delivered to the Point of Delivery; and (ii) the Interconnection Delay Price for each MWh of Expected Hourly Net Output deemed delivered (but not actually delivered) to the Point of Delivery, in each case, during the Subsequent Delayed Commercial Operation Date Period pursuant to Section 2.2.2.

(c) 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. 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 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).

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 and prior to the Effective Date, PacifiCorp shall deliver a completed and executed Resale Certificate. 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 and other than expressly agreed hereunder, Seller shall be 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 sixty (60) days following Final Completion, Seller must provide PacifiCorp the As-Built Supplement, which As-Built Supplement will automatically be deemed incorporated into Exhibits B and C, as applicable, 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 2.2.3 or Section 2.2.4. 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 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) subject to Section 4.7.5, all Requirements of Law; (e) the requirements of this Agreement; and (f) Prudent Electrical Practice. Without limiting PacifiCorp's obligations under Section 5.1, Seller acknowledges that as of the Execution Date, 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. From and after the date Seller delivers any Product to PacifiCorp pursuant to this Agreement, Seller or an Affiliate of Seller shall operate and maintain the Facility or cause the Facility to be operated and maintained by an entity that has at least two (2) years of experience in the operation and maintenance of similar facilities of comparable size and characteristics to the Facility. Seller must provide PacifiCorp thirty (30) days prior notice of any change in the operator of the Facility.

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

6.3 Interconnection. Seller is responsible for the costs and expenses associated with obtaining from Interconnection Provider interconnection service for the Facility at its Expected Nameplate Capacity Rating. Without limiting PacifiCorp's obligations under Section 5.1, as of the Execution Date, 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 or Prudent Electrical Practices. Any such update to the Planned Outage schedule must be promptly submitted to PacifiCorp. Seller may not schedule a Planned Outage during any portion of the 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, subject to the limitations of the Facility and the terms of this Agreement, (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 commercially reasonable 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; provided that (a) Seller will not be required to modify or improve the Facility, in any manner, and (b) Seller's payments under this Agreement shall not be reduced except as provided for herein.

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, and providing such information to Seller. 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 either 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. 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 [Reserved].

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 by in writing 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 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; and
- (c) 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 use commercially reasonable efforts to promptly provide PacifiCorp, upon written request from 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 promptly provide this information to facilitate PacifiCorp's review and submission of such information to the Governmental Authority or Electric System Authority by the submission deadlines disclosed to Seller. 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 use commercially reasonable efforts to promptly provide PacifiCorp, upon written request from PacifiCorp, with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller must use commercially reasonable efforts to promptly provide this information to PacifiCorp to facilitate PacifiCorp's review and submission of such data to the Governmental Authority or Electric System Authority by the submission deadlines disclosed to Seller. 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. Promptly after 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 reasonable 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. Notwithstanding anything in this Agreement to the contrary, PacifiCorp shall not request from Seller (a) information relating to the financing of the Facility or (b) financial information related to any direct or indirect holder of any equity interest in Seller (all of the foregoing, "Restricted Financial Information") unless a Governmental Authority with jurisdiction over PacifiCorp requests such Restricted Financial Information from PacifiCorp. Any request by PacifiCorp for Restricted Financial Information shall include sufficient information regarding the proceeding in which such Governmental Authority requested such Restricted Financial Information so as to enable Seller to seek a protective order or other confidential treatment of such Restricted Financial Information. PacifiCorp shall support any such request for a protective order or other confidential treatment.

6.10.10 Contractor and Workforce Requirements. Seller shall provide to PacifiCorp such information and execute and deliver such reports, documents and certifications, as PacifiCorp may reasonably request, including such information, reports, documents and certifications required in Exhibit Q, with respect to the diversity and such other applicable criteria as PacifiCorp may reasonably identify, including such criteria identified in Exhibit Q, 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. 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 reasonably necessary substantiating documentation 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 or Electric System Authority that requests or to whom PacifiCorp proposes to provide such reports or other information. PacifiCorp shall not submit such Confidential Business Information without first notifying Seller so that Seller may seek a protective order or other confidential treatment of such information. PacifiCorp will reasonably support Seller's efforts for confidential treatment and PacifiCorp shall provide sufficient information regarding the proceeding or other process in which such Governmental Authority or Electric System Authority is to receive such reports or other information so as to enable Seller to seek confidential treatment with respect to such reports or other information. Notwithstanding any other provision in this Agreement, Seller shall have the right to redact or otherwise limit the disclosure of any proprietary, economic, or financial information requested by PacifiCorp to the extent reasonably necessary to comply with confidentiality agreements or Requirements of Law by which Seller or its Affiliates may be bound.

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 reasonably available to Seller 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 (reasonably available to Seller) 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. The information provided to PacifiCorp under this Section 6.11 shall be treated as Confidential Business Information if, at the time Seller provides such information to PacifiCorp,

Seller provides written notice that the information is Confidential Business Information. 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 any of its contractors or vendors, 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 indemnify, defend, hold harmless and release Seller and its employees, officers, directors, agents and representatives from and 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. Following the Commercial Operation Date, PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller’s prior written consent not to be unreasonably withheld, conditioned or delayed, and subject to any Requirements of Law. Following the Commercial Operation Date and 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.

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 (x) the expiration of PacifiCorp's termination right in Section 4.2.2; and (y) the expiration of PacifiCorp's termination right in 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 or other amounts 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. If no obligations or liabilities remain due by Seller to PacifiCorp upon termination of this Agreement prior to the Commercial Operation Date, then PacifiCorp must return any remaining Project Development Security to Seller within sixty (60) days following the termination of this Agreement.

8.3 Default Security. If on the Commercial Operation Date, or at any time thereafter during the Term, Seller fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the posting of Default Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, Default

Security. Within five (5) Business Days from receipt of a written request from PacifiCorp at any time after the Commercial Operation Date, Seller shall provide to PacifiCorp all such financial information and records as PacifiCorp may reasonably request in order to verify that Seller continues to satisfy the requirements of this Section 8, including that any Default Security and the Security Provider continues to satisfy the requirements of this Section 8. If at any time after the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within ten (10) Business Days after the earlier of Seller's receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Default Security, Seller must provide to PacifiCorp and maintain in accordance with this Section 8, alternate Default Security. PacifiCorp shall be entitled to draw upon the Default Security for: (A) any Performance 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. 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 Section 8.3. 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 bi-directional, 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 specified in Exhibit C and at the locations and in the manner specified in the Generation Interconnection Agreement, and as otherwise may be necessary to perform Seller's obligations under this Agreement. All quantities of Net Output purchased must reflect the amount of energy flowing onto the System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment 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 meteorological towers at the Premises in accordance with Prudent Electrical Practice. The meteorological towers 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 meteorological towers 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 (x) all Product delivered or made available to PacifiCorp in such month in accordance with Section 5 and (y) all Compensable Curtailment Energy in the prior month, 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 the prior 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) except as provided in Section 20.3, 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 resulting in the inability of PacifiCorp to utilize such 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, as a result of Seller's breach thereunder, maintain any Required Facility Documents 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 [REDACTED]
[REDACTED]

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 excused by Force Majeure that prevents physical receipt of Net Output at the Point of Delivery or by Sections 4.1(b), 4.1(c) or 4.1(d), 4.5.1 or 5.1.3, 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 any 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 or Expected Hourly Net Output not delivered to the Point of Delivery during the Subsequent Delayed Commercial Operation Period pursuant to Section 2.2.2 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 or Expected Hourly Net Output not delivered to the Point of Delivery during the Subsequent Delayed Commercial Operation Period pursuant to Section 2.2.2, in each case, 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 The Parties shall provide termination notices as follows:

(a) If PacifiCorp is the Defaulting Party, then:

(i) Seller must send copies of such termination notice to the attention of the then-current President and General Counsel of PacifiCorp at the addresses set forth in “Notices of an Event of Default or Potential Event of Default” set forth in Exhibit L, as may be updated by PacifiCorp in accordance with Section 22, by registered overnight delivery service or by certified or registered mail, return receipt requested, to the applicable address specified on Exhibit L; and

(ii) 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.

(b) If Seller is the Defaulting Party, then

(i) PacifiCorp must send copies of such termination notice to the attention of the then-current General Counsel of Seller at the addresses set forth in “Notices of an Event of Default or Potential Event of Default” set forth in Exhibit L, as may be updated by Seller in accordance with Section 22, by registered overnight delivery service or by certified or registered mail, return receipt requested, to the applicable address specified on Exhibit L and to any Lenders as notified to PacifiCorp prior to the date of any termination notice; and

(ii) PacifiCorp’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 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 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.

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 up to and including 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 3.2.16, Section 3.2.17 or Section 3.2.18; (iii) PacifiCorp being deemed by an RTO to be operationally or 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, 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 after its delivery to PacifiCorp at the Point of Delivery in accordance with this Agreement; and (ii) any action by any Governmental Authority due to noncompliance by PacifiCorp with any Requirements of Law or the provisions of this Agreement, except in each case to the extent such Liabilities are caused by the gross negligence, willful misconduct, or a breach of this Agreement by any PacifiCorp Indemnitee or Seller Indemnites, respectively.

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

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

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

12.1.6 Consequential Damages. **EXCEPT AS PROVIDED IN SECTION 12.1.1, SECTION 12.1.2 AND SECTION 12.1.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, INCLUDING DELAY DAMAGES AND PERFORMANCE DAMAGES, COMPENSABLE CURTAILMENT PRICE, LIABILITY FOR LOST OR FORGONE PTCS, 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 (other than a Party’s obligation to make any payment then due or becoming due under this Agreement) and that: (a) is not within the reasonable control of the Affected Party or its Affiliates; (b) is not the result of the negligence or fault or the failure to act by the Affected Party or its Affiliates; and (c) 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; epidemic or pandemic, including COVID-19 (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) (A) economic hardship, including lack of money or the increased cost of electricity, steel, labor, or transportation, or (B) loss of PacifiCorp’s market; (iv) any breakdown or malfunction of the Facility’s equipment 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, provided that in no event shall Interconnection Delay be an 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 upgrade or 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 an independent event of Force Majeure in clauses (ii), (iv), (vi), (vii), (viii), (ix), (xii) above 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. 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, to each Party's knowledge as of the Execution Date, no delay or failure in performance is expected based on the scope of such effects known 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 impacts of said military conflict in Eastern Europe that satisfy the requirements of the first sentence of this Section 14.1.

14.2 Suspension of Performance. Neither Party will be liable for any delay in or failure to perform its obligations under this Agreement (excluding the obligation to pay money), nor will any such delay or failure (excluding the delay or failure to pay money) 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 following knowledge of the impact 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) uses commercially reasonable efforts to mitigate the impact of such 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 two hundred seventy (270) 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 Wyoming, 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 greater of (x) 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 (y) a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of BBB- or greater from S&P or Baa3 or greater from Moody’s, provided that if such Person is rated by both S&P and Moody’s and such ratings are split, the lower of the two ratings must be at least BBB- from S&P or Baa3 from Moody’s; 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 or Seller, as applicable, will be released from all liability under this Agreement. Notwithstanding anything to the contrary herein, PacifiCorp may not Assign this Agreement to any entity that is an end user of electricity that would purchase Product to offset its own electric retail service. 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. Notwithstanding Section 20.1, Seller may, without the need for consent from PacifiCorp and 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 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 one Party to the other prior to the Execution Date relating to the market prices of energy and methodologies for its determination or estimation, (c) the Required Facility Documents, and (d) Restricted Financial Information. 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 transmittal email 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, contractors, vendors, employees, officers and directors that need to know the Confidential Business Information), without the prior written consent of the other Party; provided that subject to Section 6.10.11: (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, except for Restricted Financial Information, 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) that is aggregated with similar information from unaffiliated third-parties in a manner that protects Seller’s identity. In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party: (x) shall to the extent possible promptly notify the other Party of the obligation to disclose such information, (y) shall not submit such Confidential Business Information without first notifying the Party that it owns the Confidential Business Information so that it may, if it elects, seek a protective order or other confidential treatment of such information, and (z) shall provide information regarding the proceeding or other process in which such Governmental Authority or Electric System Authority is to receive information so as to enable the Party that owns the Confidential Business Information to seek a protective order or other confidential treatment of such information. The Parties will reasonably support the efforts of the Party that owns the

Confidential Business Information to obtain a protective order or other confidential treatment of 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. Subject to Section 23.2, 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. Subject to Section 23.2, PacifiCorp may submit Confidential Business Information in regulatory proceedings.

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

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

SECTION 24 DISAGREEMENTS

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

Party in any such litigation; or (c) constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, will be promptly returned to the Party providing the same.

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

24.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement (“Proceedings”) will be brought exclusively in the state and federal courts in Portland, Oregon. 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.

[Signature Page Follows]

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.

BOSWELL WIND, LLC

By: 
Name: Michel Letellier
Title: President and Chief Executive Officer

PACIFICORP


By: 
Name: Rick Link
Title: Senior Vice President, Resource
Planning, Procurement and
Optimization

EXHIBIT A
EXPECTED FACILITY PERFORMANCE

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)
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■	■	■	■	■	■	■	■	■	■	■	■	■	■
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 2.2.3 and Section 2.2.4, 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.

II. [Reserved]

III. Maximum Delivery Rate

The Maximum Delivery Rate: ■ MWh

IV. Expected Nameplate Capacity Rating

The Expected Nameplate Capacity Rating: ■ MW

V. Auxiliary Load (Station Service)

The expected annual auxiliary load for the Facility: ■ MWh.

EXHIBIT B
DESCRIPTION OF SELLER'S FACILITY

1. Name of Facility: Boswell Wind
 - (a) Location: Albany County, Wyoming
 - (b) Location: [REDACTED]
 - (c) Point of Delivery: South East corner of the Freezeout substation
 - (d) Legal Description of the Premises: See Exhibit B, Annex 1
 - (e) Describe easements secured for physical entrance of permanent and temporary equipment (e.g. drive way and cable/wire easements): Not Applicable
2. Seller: Boswell Wind, LLC
3. Ultimate parent: Innergex Renewable Energy Inc.
4. Qualified Operator: Boswell Wind, LLC
5. Equipment:
 - (a) Type of Generating Facility: Wind
 - Model: [REDACTED]
 - Number of Units: [REDACTED]
 - (b) Nameplate Capacity:
 - (i) Generating Facility Nameplate Capacity Rating at Point of Delivery: [REDACTED] MW
AC
 - (ii) Total gross output capacity: [REDACTED] MW
6. Operating Characteristics of Generating Facility:
 - (a) Rated Power Factor (PF) or reactive load (kVAR): [REDACTED]
 - (b) Rated Output (kW) [REDACTED] MW
 - (c) Rated Output (kVA): [REDACTED]
 - (d) Rated Voltage (line to line): 230 kV Point of Delivery; [REDACTED]
 - (e) Rated Current (A): Stator: [REDACTED]
 - (f) Maximum kW Output: [REDACTED] MW (Facility) as measured at the Point of Delivery
 - a. Maximum kW Output: [REDACTED] (Individual unit listed in 5(a))
 - (g) Maximum kVA Output: [REDACTED]
 - a. Maximum kW Output: [REDACTED] kW (Individual unit listed in 5(a))
 - (h) Minimum kW Output: 0 kW (Facility)
 - a. Maximum kW Output: [REDACTED] kW (Individual unit listed in 5(a))

- (i) Number of Phases: [REDACTED]
 - (j) Power factor requirements: [REDACTED]
 - (k) Rated Power Factor (PF) or reactive load (kVAR):
 - (l) Controlled Ramp Rate: Ramp up ramp can be adjusted with plant controller. Ramp down rate can be adjusted for controlled ramp down, however, uncontrolled ramp down such as sudden loss of wind resource or fault is not limited
7. Station service requirements, and other loads served by the Facility, if any: Station service transformer: [REDACTED]
8. Additional technology specific information, if any: Main Power Transformers: [REDACTED]
9. A layout of the Facility, including site boundaries of the Premises and the Point of Delivery is set forth below, which layout may be updated pursuant to Section 6.1 of the Agreement.

ANNEX 1
Legal Description of the Premises

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LESS AND EXCEPT THE FOLLOWING PARCEL (Albany County Gravel Pit):

A parcel of land located in Section 25, Township 23 North, Range 75 West 6th P.M., Albany County, Wyoming, being more particularly described as follows:

Commencing at the Southwest corner of said Section 25 being a 6"x8"x8" limestone found, from which the South quarter corner being an 11"x5"x 11" granite stone found, bears North 89°46'18" West 2668.63 feet being the basis of bearings for this description.

Thence North 39°30'27" West 3271.55 feet to the point of beginning of this description; Thence South 71°13'27" West 677.33 feet;

Thence North 19°49'06" West 683.73 feet;

Thence North 73°53'16" East 627.34 feet;

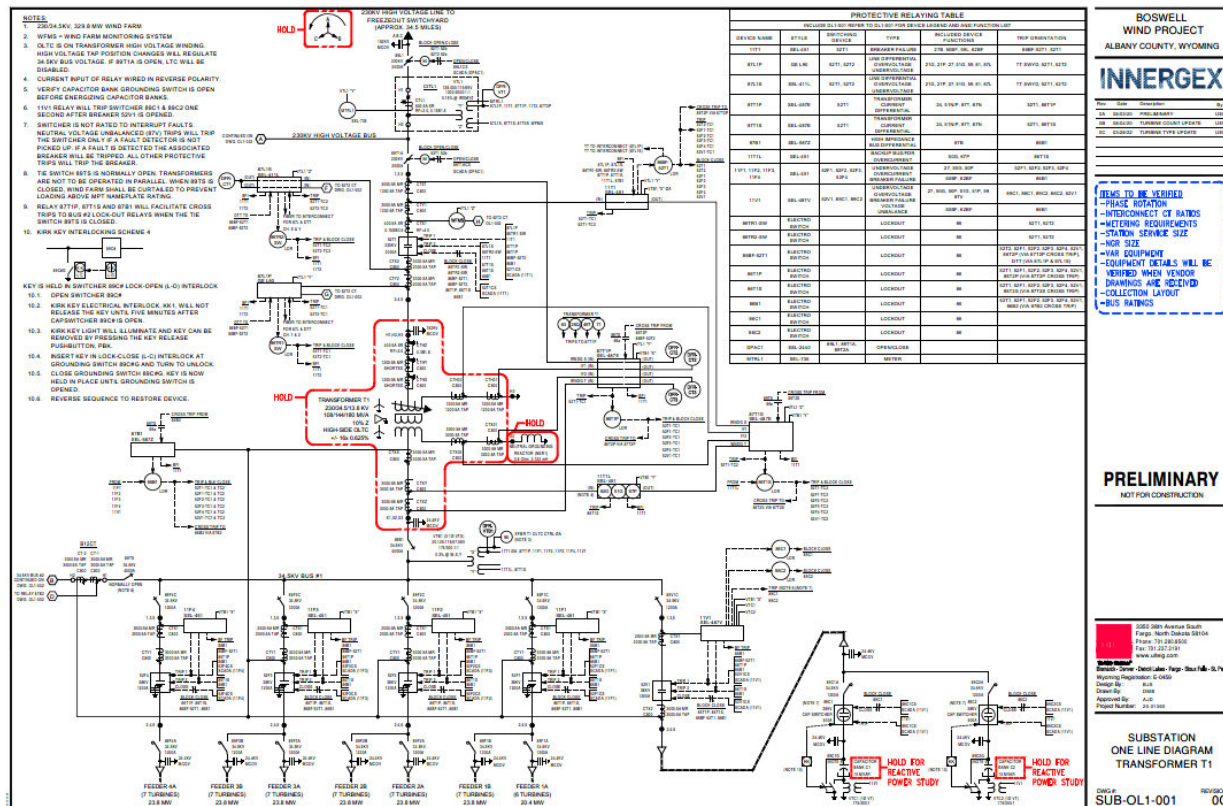
Thence South 24°17'02" East 657.50 feet to the point of beginning of this description which bears South

13°09'07" West 2581.22 feet to the South quarter corner of said Section 25 being an 11"x5"x11" granite

stone, found. Said parcel contains ten (10) acres more or less.

SELLER'S INTERCONNECTION FACILITIES

1. Description of Point of Delivery:
A new line position with a deadend structure and 230kV interchange metering to meet existing bus at the south east portion of the Freezeout substation.
2. Interconnection single line drawing of the Facility including any transmission facilities on Seller's side of the Point of Delivery, including the Point of Delivery, is set forth below, which drawing may be updated pursuant to Section 6.1 of the Agreement:



REDACTED

EXHIBIT D
REQUIRED FACILITY DOCUMENTS



BOSWELL WIND, LLC							
AGENCY	AGENCY TYPE	PERMIT/CITATION / APPROVAL	REASON REQUIRED	OBTAIN	TIMELINE	INTACT FOR PROJECT	STATUS
Department of Environmental Quality	State	Industrial Siting Permit DEQ/ISC 15-05 Boswell Springs Wind Energy Project Section 109 Industrial Siting Act [ISC] Permit (Industrial Siting Commission)	Permit required to build a commercial facility generating electricity from wind, consisting of thirty or more wind turbines.	Owner	Complete	YES	Approved
Planning Department	Albany County	Boswell Springs Wind Project Wind Energy Conversion System (WECS)-01-16 Permit	To construct Boswell Springs Wind Project, providing electricity to be sold to wholesale markets.	Owner	Complete	YES	Approved Construction must be completed prior to May 26, 2026.
Federal Aviation Administration	Federal	Determination of No Hazard to Air Navigation	To safely erect wind turbines and meteorological towers required for Boswell Springs Wind Project.	Owner	45 days prior to construction	YES	Approved: Boswell Wind received DNHs from FAA on June 5, 2019 for 80 wind turbine locations. Boswell Wind will re-apply with FAA based on refined design and statutory timelines.

US Fish and Wildlife Service	Federal	Eagle Take Permit (ETP)	Required for impact to eagle species from Boswell Springs Wind Project wind turbine operation.	Owner	Anticipated submittal of ECP and EITPA end of Summer 2022	YES	Timeline to permit issuance is unknown due to backlog of ETP applications. Can operate facilities without ETP in place.
Environmental Protection Agency (EPA)	Federal	Spill Prevention Control and Countermeasure Plan (SPCC) Plan	SPCC Plan for construction and operation of Boswell Springs Wind Project. Required if storing fuel in quantities over 1,320 gallons and could reasonably be expected to discharge oil to navigable waters of the U.S. or adjoining shorelines. Otherwise, general spill management plan will be developed and adhered to.	Boswell Construction Contractor/ Owner		YES	Pending detailed design: Will be completed before construction and operations begin.
US Army Corps of Engineers (USACE)	Federal	Clean Water Act (CWA) Section 404 – Nationwide Permit (NWP)	Clean Water Act / Discharge of dredged or fill material into waters of the US and wetlands.	Owner	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: Will acquire prior to commencement of construction.
Energy Information Administration	Federal	Power Plant Registration Plant Code with DOE	Registration of Boswell Springs Wind Project facility.	Owner		YES	Under Review: Boswell Wind submitted registration for the Boswell Springs Wind Project on June 23, 2020.

Federal Communications Commission	Federal	Private Operational Fixed Microwave License	For internal communications at Boswell Springs Wind Project.	Owner		YES	Pending detailed design: will acquire application prior to construction
Federal Energy Regulatory Commission	Federal	Market Based Rate Authorization pursuant to Section 205 of the Federal Power Act	FERC authorization to make wholesale sales of electric energy	Owner	Obtain prior to Commercial Operation Date	YES	
Federal Energy Regulatory Commission	Federal	Exempt Wholesale Generator Self-Certification		Owner	Obtain prior to Commercial Operation Date	YES	
Department of Water Quality	State	General Permit for Wetland Mitigation	Required if isolated wetlands impacted by construction. Pending final design; permit review in conjunction with CWA 404 permit and 401 certification process, if necessary, for Boswell Springs Wind.	Owner	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: Will acquire prior to construction, if necessary.
Department of Water Quality	State	CWA Section 401 Water Quality Certification	Required for nationwide wetland permits and/or stream crossings that have the potential to degrade or impact state waters. If required, will be	Owner	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: will acquire in conjunction with CWA 404 Permit, if needed.

Department of Water Quality	State	Temporary Increase in Turbidity Permit	Temporary turbidity waivers may be required for construction activities conducted in live waters. Pending final design; permit review in conjunction with CWA 404 permit and 401 certification process, if necessary, for Boswell Springs Wind.	Owner	1 month	NO	Pending detailed design: Permit review in conjunction with CWA 404 permit and 401 certification process. Will acquire prior to construction, if necessary.
Department of Water Quality	State	Wyoming Pollutant Discharge Elimination System (WYPDES) – Large Construction General Permit (WYR10-0000)	For construction of Boswell Springs Wind for disturbing 5 or more acres must be covered under the general construction permit.	Boswell Contractor	Within 3 to 6 months prior to construction to allow for processing of Individual Permit if required.	NO	Pending detailed design: will acquire before construction begins.
Department of Water Quality	State	Well Drilling Permit	Required prior to drilling any wells for Boswell Springs Wind Project.	Boswell Contractor	2 months	YES	Pending detailed design: will acquire before construction begins, if
State Engineer's Office	State	Permit to Appropriate Surface or Groundwater (U.W. 5 Form)	Required for new groundwater well for water supply during operations of Boswell Springs Wind Project (O&M).	Boswell Contractor	1-2 months	YES	Pending detailed design: will acquire prior to operations.

Department of Environmental Protection	State	Small Wastewater Facility General Permit	Permit to build septic tanks and leach fields at Boswell Springs Wind Project.	Boswell Contractor	3-6 months	YES	Pending detailed design: will acquire prior to operations.
Department of Environmental Protection	State	Batch Plant Permit	Permit needed for concrete that will be mixed on-site at Boswell Springs Wind Project.	Boswell Contractor	4-6 months	NO	Pending detailed design: will acquire prior to commencement of construction.
Department of Transportation	State	Road Use Agreement	To address road conditions and potential damages resulting from hauling operations related to Boswell Springs Wind Project.	Owner	TBD; can estimate 1-2 months	NO	Pending detailed design: will negotiate prior to commencement of construction.
Department of Transportation	State	Port of Entry Permit for Oversized / Overweight Loads	For hauling oversized/ overweight loads associated with Boswell Springs Wind Project.	Boswell Contractor	Est. 1 month	NO	Pending detailed design: Will acquire prior to construction when turbine delivery schedule is set.
Department of Transportation	State	Meteorological Towers Reporting System	To install meteorological tower at Boswell Springs Wind Project.	Owner	TBD	YES	Pending detailed design: will file at least 10 days prior to raising structure.
Planning Department	Albany County	Road Use and Maintenance Agreement between Board of Commissioners of the County of Albany, Wyoming and Boswell Wind, LLC	In order to use Albany County roads to access, construct, maintain, service, and operate Boswell Springs	Owner	Complete	YES	Approved: Executed agreement on January 15, 2018.

Planning Department	Albany County	<p>Approach License #1 – County Road #61, Fetterman Road, located in Section NW ¼ 25, Township 23 North, Range 75 West (#1 West)</p> <p>Approach License #2 – County Road #61, Fetterman Road, located in Section SW ¼ 6, Township 22 North, Range 74 West (#2 East Side of Fetterman Road)</p> <p>Approach License #3 – County Road #61, Fetterman Road, located in Section SW ¼ 6, Township 22 North, Range 74 West (#3 East Side of Fetterman Road)</p> <p>Access Permit</p>	Three approach licenses approved for Boswell Springs Wind Project to construct, maintain, use and operate an approach at two locations on the west side and one on the east side of Fetterman Road.	Owner	Complete	YES	Approved: Approval received June 5, 2018.
Planning Department	Albany County	Road Modification Approval	For material modifications to Fetterman Road at Boswell Springs Wind Project.	Boswell Contractor	TBD	NO	Pending detailed design: Will acquire prior to commencement of construction.
LAST MILE TRANSMISSION, LLC							
AGENCY	AGENCY TYPE	PERMIT/CITATION / APPROVAL	REASON REQUIRED	OBTAIN	TIMELINE	INTACT FOR PROJECT	STATUS

Bureau of Land Management	Federal	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT RIGHT-OF-WAY GRANT/TEMPORARY USE PERMITS SERIAL NUMBERS WYW-187003 and WYW-187003-01	To build Last Mile Transmission Line, an approximately 30-mile transmission line traversing approximately 5 miles of BLM-administered land.	Owner	Complete	YES	Approved: ROW grants for permanent and temporary construction were drafted by the BLM, Rawlins Office. The ROW grants were submitted on December 18, 2020 and approved on January 8, 2021.
Environmental Protection Agency (EPA)	Federal	SPCC Plan	SPCC Plan for construction and operation of the Last Mile Transmission Line Project. Required if storing fuel in quantities over 1,320 gallons and could reasonably be expected to discharge oil to navigable waters of the U.S. or adjoining shorelines. Otherwise, general spill management plan will be developed and adhered to.	Last Mile Construction Contractor/ Owner		YES	Pending detailed design: Will be completed before construction and operations begins.
US Army Corps of Engineers (USACE)	Federal	Clean Water Act (CWA) Section 404 – Nationwide Permit (NWP)	Clean Water Act / Discharge of dredged or fill material into waters of the US and wetlands. Pre-construction notice may be needed per	Owner	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: Will acquire prior to commencement of construction.

Department of Water Quality	State	General Permit for Wetland Mitigation	Required if isolated wetlands impacted by construction. Pending final design; permit review in conjunction with CWA 404 permit and 401 certification process, if necessary, for the Last Mile Transmission Line Project.	Owner	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: Will acquire prior to construction, if necessary.
Department of Water Quality	State	CWA Section 401 Water Quality Certification	Required for nationwide wetland permits and/or stream crossings that have the potential to degrade or impact state waters. If required, will be obtained in conjunction with Section 404 Permit for Last Mile Transmission Line Project.	Owner	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: will acquire in conjunction with CWA 404 Permit, if needed.
Department of Water Quality	State	Temporary Increase in Turbidity Permit	Temporary turbidity waivers may be required for construction activities conducted in live waters.	Owner	Est. 1 month	NO	Pending detailed design: Permit review in conjunction with CWA 404 permit and 401 certification process. Will

Department of Water Quality	State	Wyoming Pollutant Discharge Elimination System (WYPDES) – Large Construction General Permit (WYR10-0000)	For construction of Last Mile Transmission Line Project for disturbing 5 or more acres must be covered under the general construction permit.	Last Mile Contractor	Within 3 to 6 months prior to construction to allow for processing of Individual Permit, if required.	NO	Pending detailed design: will acquire before construction begins.
Department of Transportation	State	M-54 License	Construction of Last Mile Transmission Project across state Highway 487 ROW.	Owner	Est. 1 month	YES	Pending detailed design: Will acquire prior to commencement of construction.
Department of Transportation	State	Access Permit / Entrance Permit	Required if a new access road for Last Mile Transmission Line Project ties into a state highway.	Last Mile Contractor	Est. 3-6 months.	YES	Pending detailed design: Will acquire prior to commencement of construction.
Office of State Lands and Investments	State	Easement Application 9597	Required for Last Mile Transmission Line Project crossing one parcel of state land.	Owner	Est. 6 months	YES	In progress. Final approval of easement anticipated at April 7, 2022 meeting of Board of Land Commissioners.
Planning and Zoning Commission and Board of County Commissioners	Carbon County	Carbon County Conditional Use Permit for Last Mile Transmission Project	To install Last Mile Transmission Line, a transmission lines greater than 115,000 volts, traversing approximately 15 miles of private land in Carbon	Owner	Anticipated approval by Summer 2022	YES	Conditional Use Permit Application received approval at the April 4, 2022. Will be heard at the Board of County

Road and Bridge Department	Carbon County	Above Ground Utility Permit	To install Last Mile Transmission Line over County Road 121.	Last Mile Contractor	TBD	YES	Pending detailed design: Will acquire following issuance of CUP, prior to commencement of construction.
Road and Bridge Department	Carbon County	County Access Permit	To add new driveways off County Road 121 right-of-way for Last Mile Transmission Line Project.	Last Mile Contractor	TBD	YES	Pending detailed design: Will acquire following issuance of CUP, prior to commencement of construction.
Planning and Development Department	Carbon County	Building Permit	Authorization to construct Last Mile Transmission Line.	Last Mile Contractor	TBD	YES	Pending detailed design: Will acquire following final design, prior to commencement of construction.

EXHIBIT E
REAL ESTATE DOCUMENTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 [REDACTED] 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 such 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 consecutive Measurement Periods pursuant to Section 11.1.2(i), including for purposes of reporting whether Seller satisfied the Performance Guarantee pursuant to the second and third sentences of Section B(4) of this Exhibit F (but not for purposes of determining Performance Damages which will continue to be determined based on [REDACTED] as provided for in this Exhibit F), the Measurement Period immediately following such Failed Measurement Period shall be [REDACTED] 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) [REDACTED] of the Expected Annual Net Output (as determined in accordance with Section I of Exhibit A to this Agreement, as the same may be revised pursuant to Section 2.2.3 and Section 2.2.4 of this Agreement) in such Measurement Period (in MWh), less (b) the sum, without duplication, of: (i) the Compensable Curtailment Energy in such Measurement Period (in MWh); (ii) the Non-Compensable Curtailment Energy in such Measurement Period (in MWh); (iii) Potential Net Output that was not actually produced in such Measurement Period due solely to Force Majeure; and (iv) Potential Net Output not delivered due solely to the failure of PacifiCorp to purchase and receive Net Output in breach of this Agreement.

“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 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:

Performance Damages = Output Shortfall * 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.

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 fails to satisfy the Performance Guarantee for any Measurement Period, then within thirty (30) days after the end of the Contract Year immediately following such 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 Contract Year, including Table 1 (Measurement Period Hourly Net Output) set forth below fully completed for such Contract Year based on the Net Output in such Contract Year. If Seller fails to satisfy the Performance Guarantee for any Measurement Period, then Seller shall include in the report prepared above 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, 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 P.

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 Boswell Wind, LLC, a Delaware limited liability company (“Obligor”) entered into that certain Power Purchase Agreement, dated as of [____], 2022 (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 (as defined in 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 a Guaranteed 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 Guaranteed 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 Obligor is no longer required to maintain, and Beneficiary is required to return to Obligor, this Guaranty pursuant to Section 8 of the Agreement (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:

Boswell Wind, LLC (“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: [REDACTED] – each accident, [REDACTED] by disease – each employee, and [REDACTED] 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 [REDACTED] 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 [REDACTED].

1.1.6 Property Insurance. Seller shall maintain property insurance covering equipment and structures in an amount commercially reasonable for power generation facilities comparable to the Facility 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, employers' liability 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, but only with respect to liabilities arising out of Seller's activities under this Agreement;

(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, but only with respect to liabilities arising out of Seller's activities under this Agreement; 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. If coverage is written on a “claims made” basis, commercial general liability coverage must be maintained by Seller for a minimum period of three (3) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of Seller’s 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. Any changes to the policies shall be requested in writing by PacifiCorp. To the extent reasonably necessary to make changes to the policies, Seller shall have the option to coordinate such reasonable changes with renewal dates of said policies.

EXHIBIT J
NERC EVENT TYPES

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

EXHIBIT K
CONTRACT PRICE; COMPENSABLE CURTAILMENT PRICE;
INTERCONNECTION DELAY 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 Year		Contract Price (\$/MWh)	

2. Compensable Curtailment Price

[REDACTED]

3. Interconnection Delay Price

[REDACTED]

REDACTED



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	Boswell Wind, LLC c/o Innergex Renewable Energy, Inc. 3636 Nobel Drive, Suite 260 San Diego, CA 92122 Attn: Asset Management Email: assetmanagement@innergex.com
All Invoices:	Attn: Back Office, Suite 1900 Email: powerinvoices@pacificorp.com	Boswell Wind, LLC 1225 Saint-Charles St. West, 10 th Floor Longueuil, Quebec J4K 0B9 Canada Attn: Accounts Payable Email: ap@innergex.com
Scheduling:	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email: ctpreschd@pacificorp.com	Email: trading@innergex.com
Payments:	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826	Boswell Wind, LLC 1225 Saint-Charles St. West, 10 th Floor Longueuil, Quebec J4K 0B9 Canada Email: treasury@innergex.com
Wire Transfer:	To be provided in separate letter from PacifiCorp to Seller	To be provided in separate letter from Seller to PacifiCorp
Credit and Collections:	Attn: Credit Manager, Suite 600 Phone (503) 813-7280	Email: Questions@innergex.com
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	Boswell Wind, LLC c/o Innergex Renewable Energy, Inc. 1225 Saint-Charles St. West, 10 th Floor Longueuil, Quebec J4K 0B9 Canada Attn: General Counsel Email: legal@innergex.com

EXHIBIT M FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of [____], 20[___] (the “Effective Date”), 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 Boswell Wind, LLC, a Delaware limited liability company (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 320 MW wind-powered electric generating facility located in Albany County, Wyoming (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, PacifiCorp and Borrower have entered into that certain Power Purchase Agreement, dated as of [____], 2022 (collectively with all agreements entered into between PacifiCorp and Borrower 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 pursuant to any refinancing thereof, 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 plus an additional thirty (30) days 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 plus an additional thirty (30) days or sixty (60) 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 under the Financing Documents 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 one hundred twenty (120) 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 remaining 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 wind-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 remaining 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 the PPA and this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, 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 and the PPA 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) each of this Consent and the PPA 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 PPA, and the consummation of the transactions contemplated hereby and thereby, 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 under the PPA.

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. Except as provided in Section 9, 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.

SECTION 9. PAYMENT OF MONIES; TERMINATION.

Commencing on the Effective Date and until the date on which PacifiCorp receives written notice of the Financing Termination Date (as defined below) from Administrative Agent, PacifiCorp agrees to make all payments (if any) required to be made by it under the PPA in U.S. dollars and in immediately available funds, without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA, directly to the account described immediately below, or, if PacifiCorp has been notified in writing by Administrative Agent that an Event of Default under the Financing Agreement has occurred and is continuing, to such other Person or at such other address or account as Administrative Agent may from time to time specify in writing to PacifiCorp. Borrower hereby instructs PacifiCorp, and PacifiCorp accepts such instructions, to make all payments due and payable to Borrower under the PPA as set forth in the immediately preceding sentence. Borrower hereby consents to the foregoing and instructs PacifiCorp to do so.

ACCOUNT:

Account Name:

Account Number:

Bank Name:

Bank Address:

ABA:

The term of this Consent shall commence on the Effective Date and terminate and be of no further force and effect with respect to the PPA, on the date that is the earlier of (i) the date on which the PPA terminates in accordance with the terms thereof and the terms of this Consent and (ii) the date on which all loans and all other obligations under the Financing Agreement and the other Financing Documents have been satisfied in full and in cash (other than indemnities and other contingent obligations not then due and payable with respect to which a claim has not been made) (the date that is the earlier of clause (i) and (ii), the "Financing Termination Date"). Administrative Agent shall deliver a notice of the occurrence of the Financing Termination Date to PacifiCorp, with a copy to Borrower, promptly upon the occurrence of the Financing Termination Date.

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

Boswell Wind, LLC

By: _____

Name: _____

Title: _____

EXHIBIT N
PROJECT MILESTONES

#	Project Milestone	Project Milestone Completion Date
1	Execute Purchase Agreement for Main Power Transformer	██████████
2	Execute first amendment to Generation Interconnection Agreement	██████████
3	Execute second amendment to Generation Interconnection Agreement	██████████
4	Execute Purchase Agreement for Turbines	██████████
5	Execute Engineering, Procurement and Construction (EPC) or Balance of Plant (BOP) Agreement	██████████
6	Issue FNTF	██████████
7	Execute Interconnection Facilities Arrangements (i.e., a shared facilities agreement or other agreement with Last Mile Transmission, LLC that provides Seller with control and/or use of the Interconnection Customer's Interconnection Facilities (as defined in the Generation Interconnection Agreement) to transmit Product from the Facility to the Point of Delivery and that is consistent with the Generation Interconnection Agreement)	██████████
8	Required First Synchronization to achieve Commercial Operation by Scheduled Commercial Operation Date	██████████
9	Commercial Operation Date	Scheduled Commercial Operation Date

EXHIBIT O
METEOROLOGICAL AND OTHER DATA REQUIREMENTS

- 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.

EXHIBIT P
EXPECTED NET OUTPUT EXCEL FILE

[See the attached]



Boswell 12 X 24
Example Performanc

EXHIBIT Q
CONTRACTOR AND WORKFORCE REQUIREMENTS

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:

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		
*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.		

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

EXHIBIT R
GENERATION INTERCONNECTION AGREEMENT



Boswell
Springs_Q0409 Agmt



Boswell
Springs_Q0409 Agmt



201117 Q0409 LGIA -
Signed.pdf

EXHIBIT S
FORM OF LETTER OF CREDIT

[IRREVOCABLE STANDBY LETTER OF CREDIT NO. [____]]

DATE OF ISSUANCE: _____

Beneficiary:
[PacifiCorp Legal Name and Address]

Applicant:
[Boswell Legal Name and Address]

RE: Letter of Credit No. _____

We, [*Issuing Bank*] (the "Bank"), hereby establish our Irrevocable Standby Letter of Credit No. [____] (this "Letter of Credit") in favor of PacifiCorp (the "Beneficiary") for the account of Boswell Wind, LLC (the "Account Party") with respect to the Power Purchase Agreement dated [Date], 2022 (as may be further amended from time to time, the "PPA"), in the aggregate amount not exceeding [_____] United States Dollars (U.S.\$[_____]), available to you for payment at sight upon demand at [Location] on or before the expiration hereof against presentation to us of the following document, dated and signed by an authorized signatory of the Beneficiary:

“The Applicant has become obligated to pay to the Beneficiary an amount equal to \$[_____]. Wherefore, the undersigned does hereby demand payment of such dollar amount.”

OR

“The Applicant has failed to replace the Letter of Credit and less than thirty (30) days remain prior to its expiration. Wherefore, the undersigned does hereby demand payment of the entire dollar amount of the Letter of Credit.”

Partial and multiple drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one (1) year from the expiration date hereof, or any future expiration date, unless at least ninety (90) days prior to any expiration date we notify you at the above address by registered mail or hand delivered courier that we elect not to consider this Letter of Credit renewed for any such period; provided further that in no event shall this Letter of Credit be extended beyond the final expiration date of _____.

All commissions, expenses and charges incurred with this Letter of Credit are for the account of Applicant.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b), in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the Beneficiary thereof accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

All correspondence and/or demand shall be addressed to _____ and shall refer to our Letter of Credit No. _____

This Letter of Credit is effective immediately and expires at 5:00 p.m. (New York time) on [____], [____].

[BANK SIGNATURE]
Authorized Signatory]