

Appendix E

POWER PURCHASE AGREEMENT (RENEWABLE ENERGY)

BETWEEN

[_____]

AND

PACIFICORP

[_____ Project]
[County, State]

Appendix E

TABLE OF CONTENTS

	Page
SECTION 1	DEFINITIONS; RULES OF INTERPRETATION..... 1
1.1	Defined Terms 1
1.2	Rules of Interpretation 8
1.2.1	General..... 8
1.2.2	Terms Not to be Construed For or Against Either Party 8
1.2.3	Headings 8
SECTION 2	TERM; FACILITY DEVELOPMENT 8
2.1	Term..... 8
2.2	Milestones..... 9
2.3	Daily Delay Damages 9
SECTION 3	REPRESENTATIONS AND WARRANTIES 10
3.1	PacifiCorp’s Representations and Warranties 10
3.1.1	Organization..... 10
3.1.2	Authority 10
3.1.3	Corporate Actions 10
3.1.4	No Contravention..... 10
3.1.5	Valid and Enforceable Agreement..... 10
3.2	Seller’s Representations and Warranties 10
3.2.1	Organization..... 10
3.2.2	Authority 10
3.2.3	Actions 10
3.2.4	No Contravention..... 10
3.2.5	Valid and Enforceable Agreement..... 11
3.3	No Other Representations or Warranties 11
SECTION 4	DELIVERIES OF ENERGY AND GREEN TAGS..... 11
4.1	Purchase and Sale 11
4.2	No Sales to Third Parties 11
4.3	Title and Risk of Loss 11
4.4	Curtailement 12
4.4.1	Required Curtailement..... 12
4.4.2	Voluntary Curtailement by PacifiCorp..... 12
4.5	Documentation of Green Tags Transfers 12
SECTION 5	PURCHASE PRICE; COSTS..... 13
5.1	Purchase Price..... 13
5.1.1	Test Energy and Green Tags..... 13

Appendix E

5.1.2	Commercial Operation.....	13
5.2	Costs and Charges.....	13
5.3	Station Service	13
5.4	Taxes.....	13
5.5	Costs of Ownership and Operation.....	14
SECTION 6	OPERATION AND CONTROL	14
6.1	As-Built Supplement.....	14
6.2	General.....	14
6.3	Outages	14
6.3.1	Planned Outages	14
6.3.2	Maintenance Outages.....	14
6.3.3	Forced Outages	15
6.3.4	Notice of Deratings and Outages	15
6.4	Scheduling	15
6.4.1	Cooperation and Standards	15
6.4.2	Schedule Coordination.....	15
6.5	Forecasting.....	15
6.5.1	Long-Range Forecasts	15
6.5.2	Day-Ahead Forecasts and Updates	16
6.5.3	Basis of Forecasts	16
6.6	No Increase in Nameplate Capability Rating	16
6.7	Electronic Communications.....	16
6.7.1	Telemetry.....	16
6.7.2	Dedicated Communication Circuit	17
6.8	Reports and Records	17
6.8.1	Monthly Reports	17
6.8.2	Electronic Fault Log	17
6.8.3	Other Information to be Provided to PacifiCorp	17
6.9	Performance Guaranty	18
6.9.1	Guaranteed Output.....	18
6.9.2	Liquidated Damages	18
6.9.3	Annual Invoicing	18
6.10	Access Rights.....	18
SECTION 7	QUALIFYING FACILITY OR EXEMPT WHOLESALE GENERATOR STATUS	18
7.1	Seller's Election.....	18
7.2	QF Facility	18
7.3	EWG	19

Appendix E

SECTION 8	SECURITY	19
8.1	Project Development Security	19
8.1.1	Form of Project Security	19
8.1.2	Use of Project Development Security to Pay Daily Delay Damages.....	19
8.1.3	Termination of Project Development Security	19
8.2	Default Security	19
8.2.1	Duty to Post Default Security	19
8.2.2	Amount of Default Security.....	20
8.2.3	Adjustments to Default Security.....	20
8.3	Annual and Quarterly Financial Statements	20
8.4	Security is Not a Limit on Seller’s Liability.....	20
SECTION 9	METERING	20
9.1	Installation of Metering Equipment.....	20
9.2	Metering.....	21
9.3	Inspection, Testing, Repair and Replacement of Meters	21
9.4	Metering Costs	21
SECTION 10	BILLINGS, COMPUTATIONS AND PAYMENTS	21
10.1	Monthly Billings	21
10.2	Offsets	21
10.3	Interest on Late Payments.....	21
10.4	Disputed Amounts	21
10.5	Audit Rights	22
SECTION 11	DEFAULTS AND REMEDIES	22
11.1	Defaults	22
11.2	Termination and Remedies	23
11.3	Termination of Duty to Buy.....	23
11.4	Net Replacement Power Costs.....	23
11.5	Default Security	24
SECTION 12	INDEMNIFICATION AND LIABILITY.....	24
12.1	Indemnities.....	24
12.1.1	Indemnity by Seller.....	24
12.1.2	Indemnity by PacifiCorp.....	24
12.2	No Dedication	24
12.3	Consequential Damages.....	24
SECTION 13	INSURANCE.....	25
13.1	Required Policies and Coverages	25
13.2	Certificates and Certified Copies of Policies.....	25

Appendix E

SECTION 14	FORCE MAJEURE	25
14.1	Definition of Force Majeure	25
14.2	Suspension of Performance.....	25
14.3	Force Majeure Does not Affect Other Obligations.....	26
14.4	Strikes	26
14.5	Right to Terminate	26
SECTION 15	SEVERAL OBLIGATIONS	26
SECTION 16	CHOICE OF LAW	26
SECTION 17	PARTIAL INVALIDITY	26
SECTION 18	WAIVER	27
SECTION 19	GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS	27
SECTION 20	SUCCESSORS AND ASSIGNS	27
20.1	Restriction on Assignments	27
20.2	Permitted Assignments	27
20.3	Right of First Offer On Sale of the Facility	28
20.3.1	Offered Assets.....	28
20.3.2	PacifiCorp’s Rejection of Offer; Revival of Offer	28
20.3.3	PacifiCorp’s Acceptance of Offer.....	28
20.4	Right of First Offer on Facility Expansion	28
20.4.1	Seller’s Duty to Offer Expansion Energy	28
20.4.2	PacifiCorp’s Rejection of Offer; Revival of Offer	28
20.4.3	PacifiCorp’s Acceptance of Offer.....	28
SECTION 21	ENTIRE AGREEMENT	29
SECTION 22	NOTICES	29
22.1	Addresses and Delivery Methods	29
22.2	Changes of Address	30
SECTION 23	CONFIDENTIALITY	30
23.1	Confidential Business Information	30
23.2	Duty to Maintain Confidentiality.....	30
23.3	Irreparable Injury; Remedies	31
23.4	Non-Confidential Information. PacifiCorp shall be free to use any and all images of the Facility for promotional purposes	31
23.5	Permitted Disclosure of Information Concerning Tax Treatment of Transaction.....	31
23.6	News Releases and Publicity	31
SECTION 24	DISAGREEMENTS	31
24.1	Negotiations	31
24.2	Choice of Forum	31

Appendix E

24.3	Settlement Discussions	32
24.4	Waiver of Jury Trial.....	32
24.5	Specific Performance	32

Appendix E

THIS AGREEMENT, entered into this ____ day of _____, 200_, is between [____], a [describe entity] (the “Seller”) and PacifiCorp, an Oregon corporation acting in its merchant function capacity (“PacifiCorp”). Seller and PacifiCorp are referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Seller intends to construct, own, operate and maintain a [_____] facility for the generation of electric energy located in [township/range], _____ County, [State], _____ with a Nameplate Capability Rating of [] megawatts (the “Facility”).

B. Seller expects that the Facility will deliver to PacifiCorp [] megawatt-hours (MWh) per calendar year [*Note to Bidders: This number should correspond to Expected Energy, as defined below*] of energy and associated green tags. Seller estimates that the energy and green tags will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit D**. Seller acknowledges that PacifiCorp will include this amount of energy and associated green tags in PacifiCorp’s resource planning.

C. Seller desires to sell, and PacifiCorp desires to purchase, the energy expected to be delivered by the Facility and all associated green tags in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties mutually agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization) shall have the following meanings:

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built.

Appendix E

“Billing Period” means the time period between PacifiCorp’s readings of the power purchase billing meter at the Facility in the normal course of PacifiCorp’s business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

“Business Day” means any day on which banks in Portland, Oregon are open for business, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Oregon.

“CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator.

“Cash Escrow” means an escrow account established by PacifiCorp in a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P or “A2” by Moody’s. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the banking institution from time to time, and the interest shall be retained in the escrow account as additional security for Seller’s performance under this Agreement. With respect to any escrow account established pursuant to Section 8, Seller hereby grants PacifiCorp a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller’s obligations under this Agreement. PacifiCorp shall have all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in a form acceptable to PacifiCorp in its good faith discretion and shall contain the following language: “Escrow Agent acknowledges that Seller has granted PacifiCorp a security interest in the amounts held by Escrow Agent in the [describe escrow accounts and all moneys and other amounts in the account] (collectively, the “Collateral”). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of PacifiCorp and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for PacifiCorp’s benefit until Escrow Agent receives notice in an authenticated record from PacifiCorp that PacifiCorp’s security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement.”

“Commercial Operation Date” means the date on which PacifiCorp, in its reasonable judgment, deems the Facility to be fully operational and reliable. This shall require, among other things, that all of the following events have occurred:

- (1) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;
- (2) Start-Up Testing of the Facility shall have been completed;
- (3) After PacifiCorp has received notice of the completion of Start-Up Testing, PacifiCorp shall have endorsed a certificate addressed to PacifiCorp from a

Appendix E

Licensed Professional Engineer stating that, [using the fuel type and composition specified in this Agreement,] the Facility has operated for testing purposes under this Agreement uninterrupted for a period of _____ () consecutive days at a rate of at least _____ MW based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) working days' written notice to PacifiCorp before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive _____ () day testing period and Seller shall provide PacifiCorp forty-eight (48) hour written notice before the start of such testing period;

(4) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission Provider's electric system;

(5) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that Seller has obtained all Required Facility Documents and, if requested by PacifiCorp in writing, Seller shall have provided copies of any or all such requested Required Facility Documents;

(6) PacifiCorp shall have issued a written certificate to Seller stating that PacifiCorp has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) PacifiCorp shall have received a certificate addressed to PacifiCorp from Seller's primary construction contractor stating that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor owes no further construction-related obligations to Seller (other than punch list items); and

(8) PacifiCorp shall have provided to Seller its determination that Seller satisfies the Credit Requirements; *provided, however*, that such determination by PacifiCorp shall not be unreasonably withheld or unreasonably delayed.

"Contract Price" means the applicable price for energy and Green Tags stated in Section 5.1.

"Contract Year" means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last day of the Term.

"Credit Requirements" means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) "Baa2" or higher by Moody's, and (2) "BBB" or higher by S&P.

Appendix E

“**Daily Delay Damages**” shall be equal to (i) the result of (a) Expected Energy, stated in MWh, multiplied by (b) the price per MWh specified for the first Contract Year in **Exhibit F**, divided by (ii) 365.

“**Effective Date**” shall have the meaning given to that term in Section 2.1.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by PacifiCorp. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change 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 production tax credits or certain other financial incentives existing now or in the future associated with the construction or operation of the Facility.

“**EWG**” means an “exempt wholesale generator,” as defined under PUHCA.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Expected Energy**” means the Seller’s best estimate of annual energy production from the Facility in megawatt hours per year and is equal to [_____] MWh/yr.

“**Facility**” shall have the meaning given to that term in Recital A. The Facility is more fully described in attached **Exhibit A**.

“**Forced Outage**” shall mean NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit H**.

“**Generation Interconnection Agreement**” means the generation interconnection agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the interconnection facilities at the Point of Delivery.

“**Green Tags**” means (i) the Environmental Attributes associated with the energy generated from the Facility, together with (ii) the Green Tag Reporting Rights associated with such energy and Environmental Attributes. One Green Tag represents the Environmental Attributes made available by the generation of 1 MWh from the Facility.

“**Green Tag Reporting Right(s)**” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at the

Appendix E

purchaser's discretion, and include without limitation reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program.

“Guaranteed Commercial Operation Date” means the date that is forty-five (45) days after the Scheduled Commercial Operation Date.

“Guaranteed Output” shall have the meaning given to that term in Section 6.9.

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder, which letter(s) of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a credit rating on its senior unsecured debt of:

- (a) “A2” or higher from Moody’s; or
- (b) “A” or higher from S&P;

(2) on the terms provided in the letter(s) of credit, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder.

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits PacifiCorp to draw upon the U.S. branch;

(4) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits PacifiCorp to draw the entire amount available thereunder if such letter(s) of credit are not increased, replaced or replenished as and when provided in Section 8;

(6) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement under Section 19;

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Licensed Professional Engineer” means a person acceptable to PacifiCorp in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with the Seller, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the

Appendix E

development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, and (v) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with the Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached **Exhibit H**.

“Moody’s” shall mean Moody’s Investor Services, Inc. and any successor thereto.

“MW” means megawatt.

“MWh” means megawatt hour.

“Nameplate Capability Rating” means the maximum capability of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“Net Dependable Capability” means the maximum capability the Facility can sustain over a specified period modified for seasonal limitations and reduced by the capability required for station service or auxiliaries. For purposes of this Agreement, Net Dependable Capability shall be [] MW.

“Net Output” means all energy produced by the Facility and delivered at the Point of Delivery, less station use and less transformation and transmission losses and other adjustments, if any.

“Planned Outage” means NERC Event Type PO, as set forth in attached **Exhibit H**.

“Point of Delivery” means [the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and Transmission Provider’s transmission system, as specified in the Generation Interconnection Agreement and in **Exhibit B**.] *[Note to Bidders: If energy is to be delivered to a Transmission Provider other than PacifiCorp Transmission and wheeled to the Point of Delivery, the Point of Delivery will be at a point of interconnection with PacifiCorp Transmission’s transmission system where the resource can be integrated as a Network Resource.]*

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

“Prime Rate” means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect

Appendix E

from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

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

“PTCs” shall mean production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from [wind] resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible.

“PUHCA” shall mean the Public Utility Holding Company Act of 1935, as amended from time to time.

“QF” shall mean “qualifying facility” as that term is defined in the version of 18 C.F.R. Part 292 in effect on the date of this Agreement.

“Replacement Price” means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any energy or Green Tags that Seller is required to deliver under this Agreement, plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement energy or Green Tags, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Point of Delivery for such energy or Green Tags not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

“Reporting Month” shall have the meaning given to that term in Section 6.8.

“Required Facility Documents” means all licenses, permits, authorizations, and agreements necessary for construction, operation, and maintenance of the Facility including without limitation those set forth in **Exhibit C**.

“S&P” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

“Scheduled Commercial Operation Date” means [_____], 200[___].

“Start-Up Testing” means the completion of required factory and start-up tests as set forth in **Exhibit E**.

Appendix E

“**Tariff**” means the PacifiCorp FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” shall have the meaning given to that term in Section 2.2.

“**Transmission Provider**” means [PacifiCorp, an Oregon corporation, acting in its transmission function capacity.] *[Note to Bidders: If Project is interconnected to another system, identify the appropriate Transmission Provider.]* Seller acknowledges that PacifiCorp, as purchaser under this Agreement, has no responsibility for or control over such Transmission Provider.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; and (g) the masculine shall include the feminine and neuter and vice versa.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term of this Agreement shall be construed against a Party on the ground that the Party is the author of that provision.

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

SECTION 2

TERM; FACILITY DEVELOPMENT

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the “**Effective Date**”) and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [] anniversary of the Commercial Operation Date (the “**Term**”).

2.2 Milestones. Time is of the essence of this Agreement, and Seller’s ability to meet certain milestones before the Commercial Operation Date and to deliver energy and Green Tags

Appendix E

by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones:

2.2.1 By [____], Seller shall provide Project Development Security as described in Section 8.1;

2.2.2 By [____], Seller shall demonstrate to PacifiCorp's reasonable satisfaction that Seller has confirmed the availability of and the means for obtaining [fuel or other sources of motive energy] sufficient to allow the Facility to generate the Expected Energy in each Contract Year for the Term;

2.2.3 By [____], Seller shall obtain and provide to PacifiCorp copies of all Required Documents necessary for construction of the Facility;

2.2.4 By [____], Seller shall provide to PacifiCorp written evidence acceptable to PacifiCorp that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.5 By [____], Seller shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.6 By [____], Seller shall provide Default Security required under Section 8.2 of this Agreement;

2.2.7 By [____], Seller shall begin deliveries of Net Output for purposes of initiating Start-Up Testing; and

2.2.8 By the Guaranteed Commercial Operation Date, the Facility shall achieve the Commercial Operation Date.

2.3 Daily Delay Damages. Seller shall cause the Facility to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, Seller shall pay PacifiCorp delay damages equal to the Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, up to a total of forty-five (45) days ("**Daily Delay Damages**"). Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to delay in achieving the Commercial Operation Date on or before the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages.

Appendix E

SECTION 3

REPRESENTATIONS AND WARRANTIES

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

3.1.1 Organization. PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 Authority. PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

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

3.1.4 No Contravention. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

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

3.2.1 Organization. Seller is a [**corporation/other**] duly organized and validly existing under the laws of [_____].

3.2.2 Authority. Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Actions. Seller has taken all [**corporate/other**] actions required 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 does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other

Appendix E

material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

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 set forth 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.

SECTION 4

DELIVERIES OF ENERGY AND GREEN TAGS

4.1 Purchase and Sale. Except as otherwise expressly provided in this Agreement, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, (a) the entire Net Output from the Facility at the Point of Delivery, and (b) all Green Tags resulting from the generation of the Facility's Net Output (which shall come from the Facility and from no other source). PacifiCorp shall be under no obligation to purchase any energy under this Agreement other than Net Output. ***[Note to Bidders: the following sentence would be included only if energy is delivered at the Facility's busbar into PacifiCorp Transmission's system:*** In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive, all Net Output and associated Green Tags from the Facility on a test energy basis at the price specified in Section 5.1.1.]

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any of the energy or Green Tags from the Facility to any party other than PacifiCorp.

4.3 Title and Risk of Loss. Seller shall deliver Net Output and associated Green Tags to PacifiCorp at the Point of Delivery free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Net Output and associated Green Tags shall transfer from Seller to PacifiCorp upon delivery of Net Output to PacifiCorp at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, Net Output up to and at the Point of Delivery. PacifiCorp shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output from the Point of Delivery.

Appendix E

4.4 Curtailement.

4.4.1 Required Curtailement. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output or associated Green Tags at the Point of Delivery (a) during times and to the extent that the interconnection between the Facility and Transmission Provider's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, (b) to the extent generation curtailement is required as a result of Seller's non-compliance with the Generation Interconnection Agreement, (c) during times and to the extent that PacifiCorp Transmission Curtails (as defined in the Tariff) Network Integration Transmission Service to PacifiCorp pursuant to the terms of the Tariff, or (d) during times and to the extent that an event of Force Majeure prevents either Party from delivering or receiving Net Output.

4.4.2 Voluntary Curtailement by PacifiCorp. Seller shall curtail deliveries of Net Output at any time, in whole or in part, and for any duration specified by PacifiCorp with no less than five (5) minutes prior notice (which may be given by telephone) from PacifiCorp to Seller. PacifiCorp shall take reasonable steps to confirm Seller's receipt of such notice. The MWh amount of Net Output curtailed ("**Curtailement Energy**") shall be reasonably determined by Seller after the fact based on the Net Output that could have been generated and delivered to PacifiCorp at the Point of Delivery but that was not generated and delivered because of PacifiCorp's curtailement instructions. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of Net Output that was not generated because of PacifiCorp's curtailement instructions. PacifiCorp shall be obligated to pay Seller for the Curtailement Energy at the purchase price applicable to energy and the associated Green Tags in Section 5.1, plus an amount equal to the value of the PTCs, if applicable, associated with the Curtailement Energy determined on an after-tax basis, as if the Curtailement Energy were Net Output. During any such period of curtailement, Seller shall not generate Net Output (to the extent curtailed by PacifiCorp) or sell the Facility's energy to any third party. An example setting forth a calculation of payment due for Curtailement Energy under certain stated assumptions is set forth in **Exhibit G**. Curtailement Energy shall not include Net Output that PacifiCorp is not obligated to purchase and receive under Section 4.4.1.

4.5 Documentation of Green Tags Transfers. Seller shall make the Green Tags available to PacifiCorp immediately to the fullest extent allowed by Applicable Law upon Seller's obtaining the Green Tags. The Parties shall execute all documents and instruments requested by PacifiCorp in order to effect transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit I** for all Green Tags delivered to PacifiCorp under this Agreement in the preceding month. In the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD 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 transfer can be recorded. Seller shall not report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp under this Agreement belong to any Party other than PacifiCorp.

Appendix E

PacifiCorp may report under such program that such Environmental Attributes purchased under this Agreement belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.

SECTION 5

PURCHASE PRICE; COSTS

5.1 Purchase Price. PacifiCorp shall pay Seller the prices stated below for all deliveries of Net Output and associated Green Tags up to Net Dependable Capability.

5.1.1 Test Energy and Green Tags. If Section 4.1 of this Agreement requires PacifiCorp to purchase test energy from the Facility, then for the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Output and associated Green Tags to PacifiCorp at the Point of Delivery as test energy. With respect to such test energy, PacifiCorp shall pay Seller (a) for Net Output and associated Green Tags delivered at the Delivery Point during heavy load hours, an amount per MWh equal to eighty-five percent (85%) of the market price of non-firm energy for heavy load hours as specified in *[identify price index for the market hub closest to the Point of Delivery]*, and (b) for Net Output and associated Green Tags delivered at the Delivery Point during light load hours, an amount per MWh equal to eighty-five percent (85%) the market price of non-firm energy for light load hours as specified in *[identify price index for the market hub closest to the Point of Delivery]*; *provided, however,* that the amount to be paid by PacifiCorp for such test energy and associated Green Tags shall in no event exceed seventy-five percent (75%) of the Contract Price specified for the first Contract Year.

5.1.2 Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, PacifiCorp shall pay to Seller the amount per MWh specified for a given Contract Year in **Exhibit F**.

5.2 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Output at the Point of Delivery, including but not limited to transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider's interconnection facilities or electric system (including but not limited to system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's system, (b) any increase in generating capability of the Facility, and (c) any increase of delivery of Net Dependable Capability from the Facility.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

5.4 Taxes. Seller shall pay when due all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local

Appendix E

governmental agency on the sale of Net Output and Green Tags to PacifiCorp under this Agreement.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision of this Agreement, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future laws and regulations and the terms and conditions of this Agreement, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including but not limited to any such tax or charge (however characterized) to the extent payable by a purchaser of such energy or environmental attributes.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide PacifiCorp the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by PacifiCorp. PacifiCorp shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 General. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code, as such laws and code may be amended from time to time.

6.3 Outages.

6.3.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the months of [November, December, January, February, June, July, and August].

6.3.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing [wind] conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp; *provided, however*, that, unless PacifiCorp otherwise reasonably consents, no Maintenance Outage may be scheduled between hour ending 0700 through hour ending 2200, Monday through Saturday, during the months of [November, December, January, February, June, July and August]. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of generation capability of the Facility that will not be available, and the expected completion date of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller

Appendix E

shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage. Seller shall notify PacifiCorp of any subsequent changes in generation capability available to PacifiCorp or any changes in the Maintenance Outage completion date. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to minimize the frequency and duration of Maintenance Outages.

6.3.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report of any Forced Outage of the Facility. This report shall include the amount of the generation capability of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capability. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than 10 MW of nameplate capability being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to avoid Forced Outages and to minimize their duration.

6.3.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Nameplate Capability Rating of the Facility.

6.4 Scheduling.

6.4.1 Cooperation and Standards. To the extent that scheduling is required now or in the future, (a) Seller will reasonably cooperate with PacifiCorp with respect to the scheduling of Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising under this Agreement. Each Party shall comply with the applicable standards and criteria of FERC, NERC, and or any regional or subregional reliability council.

6.4.2 Schedule Coordination. If, as a result of this Agreement, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold PacifiCorp harmless against any liability arising due to Seller's performance or failure to perform under the Generation Interconnection Agreement.

6.5 Forecasting. *[WIND PROJECTS ONLY]*

6.5.1 Long-Range Forecasts. For PacifiCorp's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide a forecast of each month's average-day energy production from the Facility, by hour, for the following calendar year. This forecast (a) shall include an expected range of uncertainty based

Appendix E

on historical operating experience, and (b) shall be updated on a monthly basis by notice given to PacifiCorp at least six Business Days before the first Business Day of each month.

6.5.2 Day-Ahead Forecasts and Updates. By 6:00 AM Pacific Prevailing Time on the Business Day immediately preceding the day on which energy from the Facility is to be delivered, Seller shall provide PacifiCorp with an hourly forecast of deliveries for each hour of the next day; *provided, however*, that a forecast provided on a day before any non-Business Day shall include forecasts for each day to and including the next Business Day. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of Net Output from the then current forecast; *provided, however*, that Seller shall not be required to update such forecasts more frequently than once per hour. To the extent commercially reasonable, the Parties shall cooperate to implement and use automatic forecast updates.

6.5.3 Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only. Seller shall prepare such forecasts and updates by utilizing a wind speed and direction prediction model or service that is (a) commercially available or proprietary to Seller or an Affiliate of Seller, and (b) comparable in accuracy to models or services commonly used in the wind energy industry and that reflect turbine availability, so long as such model or service is available at a commercially reasonable cost and is satisfactory to PacifiCorp in the exercise of its reasonable discretion. On or prior to May 1 during each Contract Year of the Term, Seller shall determine in good faith which such model or service to utilize after consultation with PacifiCorp. In the event such model or service is not available at a commercially reasonable cost, Seller shall internally develop a forecasting process and present such process to PacifiCorp for acceptance, which shall not be unreasonably withheld.

6.6 No Increase in Nameplate Capability Rating. Except with PacifiCorp's prior written consent (which PacifiCorp may withhold in its sole discretion) Seller shall not increase the Nameplate Capability Rating above that specified in **Exhibit A** or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capability through any means including, but not limited to, replacement of, modification of, or addition of existing equipment. PacifiCorp shall not be required to purchase any Net Output above the Net Dependable Capability, but may in its sole discretion, elect to pay for such additional Net Output on a non-firm basis.

6.7 Electronic Communications.

6.7.1 Telemetry. Seller shall 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

Appendix E

- (c) the Facility's total capability.

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real time basis [(including but not limited to meteorological data, wind speed data, wind direction data and output data)]. Seller shall provide such real time data to PacifiCorp on the same basis as the basis on which Seller receives the data (*e.g.*, if Seller receives the data in four second intervals, PacifiCorp shall also receive the data in four second intervals).

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

6.8 Reports and Records.

6.8.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a "**Reporting Month**"), Seller shall provide to PacifiCorp a report in electronic format, which report shall include (a) summaries of the Facility's [wind and] output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including but not limited to information from the Facility's Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that PacifiCorp may from time to time reasonably request (including historical [wind] data for the Facility).

6.8.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.8.3 Other Information to be Provided to PacifiCorp. Seller shall provide to PacifiCorp the following information concerning the Facility:

- (a) Upon the request of PacifiCorp, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;
- (b) A report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;
- (c) Before the Commercial Operation Date, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior Month; and
- (d) Before the Commercial Operation Date, a monthly report containing a brief summary of construction activity contemplated for the next Month.

Appendix E

6.9 Performance Guaranty.

6.9.1 Guaranteed Output. Seller guarantees that the annual production of energy from the Facility in each Contract Year beginning with the first full Contract Year shall be no less than [] MWh (the “**Guaranteed Output**”). Energy that is not delivered because it has been curtailed under Section 4.4.2 shall be deemed delivered for purposes of calculating the annual production of energy from the Facility.

6.9.2 Liquidated Damages. For each MWh that the Net Output for a Contract Year is less than the Guaranteed Output, Seller shall pay PacifiCorp liquidated damages equal to the positive difference, if any, between the Replacement Price and the Contract Price. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility’s failure to produce the Guaranteed Output would be difficult or impossible to predict with certainty, and (b) the liquidated damages contemplated by this provision are an appropriate approximation of such damages.

6.9.3 Annual Invoicing. Beginning on January 31, 200[] and continuing on January 31 of each Contract Year thereafter, PacifiCorp shall deliver to Seller a proper invoice showing PacifiCorp’s computation of Net Output for the prior Contract Year and any amount due PacifiCorp in respect thereof. The invoice may be based on best available information available, to be trued up in as promptly as practicable in the next monthly invoice following PacifiCorp’s receipt of actual results for the prior year. 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.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required generation capability tests necessary to determine the amount of generation capability associated with the Facility, (c) in connection with the operation and maintenance of the interconnection facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than 12 times per year), (e) for purposes of implementing Section 10.5, and (f) for other reasonable purposes at the reasonable request of PacifiCorp.

SECTION 7

QUALIFYING FACILITY OR EXEMPT WHOLESALE GENERATOR STATUS

7.1 Seller’s Election. Seller covenants that, during the Term and before delivering Net Output to PacifiCorp under this Agreement, Seller shall either (a) cause the Facility to be a QF, or (b) cause Seller to be an EWG.

7.2 QF Facility. If the Facility is a QF, Seller shall provide PacifiCorp with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. At any time during the Term, PacifiCorp may require

Appendix E

Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of [] who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data that PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF. During the Term, Seller shall maintain its QF status.

7.3 EWG. If Seller is an EWG, Seller shall provide PacifiCorp with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall maintain its EWG status and its authority to sell power under this Agreement.

SECTION 8

SECURITY

8.1 Project Development Security. Not required if Seller meets or exceeds Credit Requirements or provides guaranty that does

8.1.1 Form of Project Security. If Seller does not satisfy the Credit Requirements at any time after the Effective Date and before the date specified in Section 8.1.4, Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, (b) a Letter of Credit in favor of PacifiCorp, or (c) a Cash Escrow (the "**Project Development Security**") [*Note to Bidders: Project Development Security will be equal to 730 x Daily Delay Damages*].

8.1.2 Use of Project Development Security to Pay Daily Delay Damages. If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, PacifiCorp shall be entitled to draw upon the Project Development Security from time to time an amount equal to the Daily Delay Damages until such time as the Project Development Security is exhausted. PacifiCorp shall also be entitled to draw upon the Project Development Security for damages arising if this Agreement is terminated under Section 11 because of Seller's default.

8.1.3 Termination of Project Development Security. If at such time no damages are owed to PacifiCorp under this Agreement, Seller shall no longer be required to maintain the Project Development Security (or the remaining balance thereof) on and after the thirtieth (30th) day after the Facility achieves the Commercial Operation Date; *provided, however*, that with PacifiCorp's consent, Seller may apply the Project Development Security toward the Default Security required by Section 8.2.

8.2 Default Security.

8.2.1 Duty to Post Default Security. At any time during the Term when Seller does not satisfy the Credit Requirements, Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, (b) a Letter of Credit, or (c) a Cash Escrow (the "**Default Security**") as provided in this Section 8.2.

Appendix E

8.2.2 Amount of Default Security. The amount of the Default Security required by Section 8.2.1 shall be sufficient to provide replacement power and corresponding Green Tags under this Agreement for the next eighteen (18) calendar months. This amount shall be deemed equal to the positive difference between the forward power prices at [specify appropriate liquid market hub] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source) for the next eighteen (18) calendar months (or, if the remaining Term is less than eighteen (18) calendar months), then for the remainder of the Term) multiplied by 110%, minus the Purchase Price, multiplied by the MWhs that would be delivered for such period under this Agreement (assuming Net Output based on the total of the estimated monthly outputs set forth on **Exhibit D** for that period); *provided, however*, that the Default Security shall not exceed the purchase price applicable to the next eighteen (18) calendar month period multiplied by the total estimated monthly output for that period as set forth on **Exhibit D**. An Example illustrating the calculation of this amount under certain stated conditions is included in **Exhibit G**.

8.2.3 Adjustments to Default Security. On or before January 1 of each year during the Term, Seller shall (a) adjust the Default Security by increasing or decreasing the Default Security to correspond to the amount reasonably determined by PacifiCorp under Section 8.2.2 and (b) deliver such adjusted Default Security to PacifiCorp. PacifiCorp shall notify Seller of the determination of such amount on or before the preceding December 1.

8.3 Annual and Quarterly Financial Statements. If requested by PacifiCorp, Seller shall within thirty (30) days provide PacifiCorp with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

8.4 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PacifiCorp draws on the Project Development Security or the Default Security, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 8.

SECTION 9

METERING

9.1 Installation of Metering Equipment. PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement. ***[Note to Bidders: This provision will be adjusted as needed if the Facility interconnects with a Transmission Provider other than PacifiCorp Transmission.]***

9.2 Metering. Metering shall be performed at the location and in the manner specified in **Exhibit B** and the Generation Interconnection Agreement. All quantities of energy purchased under this Agreement shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net

Appendix E

amount of energy flowing into PacifiCorp's system at the Point of Delivery. *[Note to Bidders: please propose backup measuring provisions in the event of meter failure, based on the characteristics of the Facility.]*

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests disclose an error exceeding two percent (2%), either fast or slow, proper correction, 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, 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) Billing Periods, 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.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including PacifiCorp's costs) relating to all metering equipment installed to accommodate Seller's Facility.

SECTION 10

BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Billings. On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output and associated Green Tags to PacifiCorp, together with computations supporting such payment.

10.2 Offsets. PacifiCorp may offset any payment due under this Agreement against amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, any other agreement between the Parties or otherwise.

10.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; *provided, however*, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Agreement, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days of such determination or

Appendix E

resolution, along with interest accrued at the rate determined under Section 10.3 from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of energy delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the rate determined under Section 10.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 11

DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults under this Agreement:

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

11.1.2 Seller's failure to post and maintain Project Development Security or Default Security as required by Section 8 if the failure is not cured within five (5) days after PacifiCorp gives Seller a notice of the default.

11.1.3 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after PacifiCorp gives Seller a notice of the default.

11.1.4 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date

11.1.5 A Party (a) makes an assignment for the benefit of its creditors; (b) 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; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.6 Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

Appendix E

11.1.7 A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

11.1.8 Seller's sale of energy or Green Tags from the Facility to a Party other than PacifiCorp in breach of this Agreement if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

11.1.9 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; *provided, however*, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2 Termination and Remedies. If a default occurs under this Agreement, the non-defaulting Party may in its sole discretion terminate this Agreement by delivering notice of termination to the defaulting Party; *provided, however*, that termination under Section 11.1.5 shall occur automatically and without notice, unless the Parties otherwise agree in writing. Upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 11.4). The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

11.3 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require PacifiCorp to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require PacifiCorp to do so. This Section 11.3 shall survive the termination of this Agreement.

11.4 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and Green Tags that Seller was obligated to provide during the remainder of the Term ("**Net Replacement Power Costs**"). Amounts owed by Seller pursuant to this Section shall be due within five (5) Business Days after PacifiCorp gives Seller notice of the amount due.

11.5 Default Security. If this Agreement is terminated because of Seller's default, PacifiCorp may proceed against any Default Security provided pursuant to Section 8.2 to reduce any amounts that Seller owes PacifiCorp arising from such default.

Appendix E

SECTION 12

INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy and Green Tags delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy and Green Tags delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives, including without limitation within such exception losses, claims, actions and suits related to, arising under or resulting from the Generation Interconnection Agreement.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 **CONSEQUENTIAL DAMAGES.** PACIFICORP SHALL NOT BE LIABLE TO SELLER 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.

Appendix E

SECTION 13

INSURANCE

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than “A” by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

13.2 Certificates and Certified Copies of Policies. Seller shall provide PacifiCorp with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 14

FORCE MAJEURE

14.1 Definition of Force Majeure. As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means an event (a) is not anticipated as of the date of this Agreement, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party’s negligence or failure to act, and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller’s ability to sell, or PacifiCorp’s ability to purchase, energy or Green Tags at a more advantageous price than is provided under this Agreement; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship including lack of money; and (iv) the imposition upon Seller of costs or taxes allocated to Seller under Section 6 of this Agreement.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

14.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

14.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

Appendix E

14.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

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

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

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding 180 days (despite the affected Party's effort to take all reasonable steps to remedy the cause of the Force Majeure with all reasonable dispatch), then either Party may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to 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 contained in this Agreement shall 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. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16

CHOICE OF LAW

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

SECTION 17

PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended

Appendix E

terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

SECTION 18

WAIVER

No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed 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 shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

SECTION 19

GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. PacifiCorp's duty to comply with this Agreement is conditioned on Seller's submission to PacifiCorp before the Commercial Operation Date and maintaining thereafter copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

SECTION 20

SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 19, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

20.2 Permitted Assignments. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party. In addition, without the consent of the other Party, (d) Seller must transfer or assign this Agreement to any party succeeding to all or substantially all of the assets comprising the Facility, and (e) PacifiCorp may transfer or assign this Agreement to any person or entity in the event that PacifiCorp ceases to be a load-serving entity. In each and every assignment of this Agreement, the assignee shall (x) agree in writing to be bound by the terms and conditions hereof, (y) possess the same or similar experience, and possess the same or better creditworthiness, as the assignor; and (z) the assignor shall remain liable for its obligations hereunder.

Appendix E

20.3 Right of First Offer On Sale of the Facility.

20.3.1 Offered Assets. If Seller intends to sell the Facility or any part of the Facility or to sell (individually or in the aggregate) a controlling interest in the Facility (the “Offered Assets”), it shall first offer the Offered Assets to PacifiCorp. Seller’s offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that PacifiCorp may have concerning the offered terms and conditions and shall meet with PacifiCorp to discuss the offer.

20.3.2 PacifiCorp’s Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within thirty (30) days after receiving Seller’s offer, Seller may enter into an agreement to sell the Offered Assets to a third party on terms and conditions no more favorable in the aggregate to the third party than those offered to PacifiCorp. If Seller wishes to enter into an agreement with a third party on terms more favorable to the third party than those previously offered to PacifiCorp under this Section, Seller shall first offer the revised terms and conditions to PacifiCorp under this Section.

20.3.3 PacifiCorp’s Acceptance of Offer. If PacifiCorp accepts an offer made by Seller under this Section, the Parties shall within a further sixty (60) days enter an acquisition agreement that incorporates the terms and conditions of Seller’s offer.

20.4 Right of First Offer on Facility Expansion.

20.4.1 Seller’s Duty to Offer Expansion Energy. If, at any time during the Term, Seller intends (a) to install equipment on the Premises in addition to the and equipment included in the original Facility, and/or (b) to otherwise enable the Facility or any expansion thereof to produce more than the Net Dependable Capability, it shall first offer the excess above Net Dependable Capability (the “**Expansion Energy**”) to PacifiCorp. Seller’s offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Except to the extent otherwise noted in Seller’s offered terms and conditions, the Expansion Energy shall be purchased and sold pursuant to a power purchase agreement in form substantially the same as this Agreement (with the security requirements set forth in Section 8 to be adjusted on a pro rata basis to account for the size of the proposed expansion relative to the Nameplate Capability Rating of the Facility). Seller shall promptly answer any questions that PacifiCorp may have concerning the offered terms and conditions and shall meet with PacifiCorp to discuss the offer.

20.4.2 PacifiCorp’s Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within thirty (30) days after receiving Seller’s offer, Seller may enter into an agreement to sell the Expansion Energy to a third party on terms and conditions no more favorable to the third party than those offered to PacifiCorp. If Seller wishes to enter into an agreement with a third party on terms more favorable to PacifiCorp than those previously offered to PacifiCorp under this Section, Seller shall first offer the revised terms and conditions to PacifiCorp under this Section.

20.4.3 PacifiCorp’s Acceptance of Offer. If PacifiCorp accepts an offer made by Seller under this Section, the parties shall within a further sixty (60) days enter into a power

Appendix E

purchase agreement in substantially the same form as this Agreement, but incorporating such changes as are expressly identified in the terms and conditions offered by Seller.

SECTION 21

ENTIRE AGREEMENT

This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

SECTION 22

NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

To Seller:

with a copy to:

To PacifiCorp:

PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

Appendix E

with a copy to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, C&T

With a copy to: Jeremy Weinstein, Esq.
Senior Counsel
PacifiCorp Financial Services
1512 Bonanza Street
Walnut Creek, CA 94596

Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Attn: William H. Holmes

22.2 Changes of Address. The Parties may change any of the persons to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

SECTION 23

CONFIDENTIALITY

23.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to PacifiCorp under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for PacifiCorp to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a

Appendix E

court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

23.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of Section 22 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including but not limited to injunctive relief.

23.4 Non-Confidential Information. PacifiCorp shall be free to use any and all images of the Facility for promotional purposes. Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install equipment as PacifiCorp may request including, but not limited to, video and or web-based imaging equipment. PacifiCorp shall retain full discretion on how images of the Facility are presented including, but not limited to, associating images of the Facility with PacifiCorp's corporate logo but not the corporate logo of Seller.

23.5 Permitted Disclosure of Information Concerning Tax Treatment of Transaction. For purposes of 26 CFR 1.6011-4(b)(3)(iii), each Member, its employees, representatives, consultants or agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the instant transaction and all materials of any kind (including opinions or other tax analyses) that have been or will be provided to such Member relating to such tax treatment or tax structure.

23.6 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact PacifiCorp for language that credits PacifiCorp as purchasing the Delivered Energy from the Facility and shall use such language in such news releases and promotional material.

SECTION 24

DISAGREEMENTS

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall 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 from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter. All negotiations pursuant to this clause are confidential.

24.2 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Oregon, Portland Division. By execution and delivery of this Agreement, each Party (a) accepts

Appendix E

the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum), (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

24.3 Settlement Discussions. The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT 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 TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

24.5 Specific Performance. Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other party under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of PacifiCorp's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief, all expenses incurred by the prevailing party in such proceeding, including, but not limited to, reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to PacifiCorp's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control,

Appendix E

hold in its own name or be signatory to (as the case may be) all assets relating to the Facility to the extent necessary to prevent a material adverse effect on PacifiCorp's right to specific performance or injunctive relief.

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

[SELLER]

By: _____

Name: _____

Title: _____

PACIFICORP

By: _____

Name: _____

Title: _____

Appendix E

EXHIBIT A

DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of a _____ [wind, geothermal, biomass, etc] generator manufactured by _____. More specifically, the Facility _____ [provide description of Facility, including motive force, bottoming or topping cycle, etc].

Nameplate Capability Rating: _____ MW, under the following conditions: [describe manufacturer's stated operating conditions]

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capability Rating:

Station service requirements are described as follows: _____

_____.

Location of the Facility: The Facility is to be constructed in the vicinity of _____ in _____ County, _____. The real property on which the Facility is to be constructed (the "**Premises**") is more particularly described as follows:

[legal description of parcel]

Power factor requirements:

Appendix E

EXHIBIT B

POINT OF DELIVERY/INTERCONNECTION FACILITIES

[include description of point of metering]

Appendix E

EXHIBIT C

REQUIRED FACILITY DOCUMENTS

Appendix E

EXHIBIT D

ESTIMATED MONTHLY OUTPUT

Appendix E

EXHIBIT E

START-UP TESTING *[Note to Bidders: To be adapted to conform to proposed resource.]*

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to:

1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PacifiCorp.

Required start-up test are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to:

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;
11. Excitation and voltage regulation operation tests;
12. Open circuit and short circuit; saturation tests;
13. Governor system steady state stability test;
14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
15. Auto stop/start sequence;
16. Level control system tests; and
17. Completion of all state and federal environmental testing requirements.

Appendix E

Appendix E

EXHIBIT F

PURCHASE PRICE

Appendix E

EXHIBIT G

EXAMPLES

Appendix E

EXHIBIT H

EVENT TYPES

The outages in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Outages
U1 ¹	<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 ¹	<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 ¹	<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 ¹	<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. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
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.

¹ These event types are all contributors to the FOR & EFOR calculations in the reports section.

Appendix E

The deratings in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Deratings - Restrictions
D1 ²	<u>Unplanned (Forced) Derating - Immediate</u> - A derating that requires an immediate reduction in capacity.
D2 ²	<u>Unplanned (Forced) Derating - Delayed</u> - A derating that does not require an immediate reduction in capacity but requires a reduction in capacity within six (6) hours.
D3 ²	<u>Unplanned (Forced) Derating - Postponed</u> - A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.
D4	<u>Maintenance Derating</u> - A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.
PD	<u>Planned Derating</u> - A derating that is scheduled well in advance and is of a predetermined duration. (Periodic derating for tests, such as weekly turbine valve tests, should not be reported as PD's. Report deratings for these types as Maintenance Deratings (D4).

The other reportable events listed in the table below are in no particular order. Although these events are reportable, they have no reducing impact on the Equivalent Availability Factor.

Event Type	Description of Other Reportable Events
RS	<u>Reserve Shutdown</u> - An event that exists whenever a unit is available for load but is not synchronized due to lack of demand. This type of event is sometimes referred to as an economy outage or economy shutdown. If a unit is shut down due to any equipment-related problems, whether or not the unit was needed by the system, report an Unplanned (Forced) Outage, Maintenance Outage, or Planned Outage, <u>not</u> a Reserve Shutdown.
NC	<u>Noncurtailing Event</u> - An event that exists whenever equipment or major components are removed for maintenance, testing, or other purposes that does not result in a unit outage or derating.
	<u>Noncurtailing Event</u> - An event that exists whenever a unit is being intentionally dispatched at a level less than its full capacity, when the designated capacity would otherwise be at full capacity, because of lack of demand on the system.

² These event types are all contributors to the EFOR calculations in the reports section.

Appendix E

EXHIBIT I

GREEN TAG ATTESTATION AND BILL OF SALE

[_____] (“Seller”) hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Environmental Attributes and Green Tag Reporting Rights) associated with the generation and delivery of energy to PacifiCorp under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [_____] (the “PPA”), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: _____ Fuel Type: _____
Capability (MW): _____ Operational Date: _____

Energy Admin. ID no.: _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags and associated Environmental Attributes referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated above pursuant to the PPA; and
- iv) to the best of Seller’s knowledge, each of the Green Tags and Environmental Attributes associated with the generation of energy for delivery under the PPA have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller’s right, title and interest in and to the Green Tags (including Green Tag Reporting Rights and Environmental Attributes) associated with the generation of the energy from the Facility under the PPA as set forth above.

Appendix E

Seller's Contact Person: [_____]

WITNESS MY HAND,

[SELLER],
a [_____] [_____]

By _____
Its _____
Date: _____

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

Appendix E

EXHIBIT J

REQUIRED INSURANCE

1. Pending Financial Closing. Seller shall procure and maintain for the period commencing on the Effective Date and ending on the closing of construction financing, at its own expense, the following policies of insurance *[If construction financing is not contemplated, delete and begin with Paragraph 2, below.]*:

1.1. Worker's Compensation insurance which complies with the laws of the state within which the Facility is located;

1.2. Employers' Liability insurance with limits of at least \$1,000,000;

1.3. Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Agreement, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability, and, where applicable, watercraft protection and indemnity liability; and

1.4. Automobile Liability or Business Automobile Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired or non-owned.

2. Financial Closing through the Commercial Operation Date. Seller shall procure and maintain for the period from the close of construction financing through the Commercial Operation Date, at its own expense, the following policies of insurance:

2.1. Worker's Compensation insurance which complies with the laws of the state within which the Wind Facility is located,

2.2. Employers' Liability insurance with limits of at least \$1,000,000;

2.3. Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Agreement, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability, and, where applicable, watercraft protection and indemnity liability;

2.4. Automobile Liability or Business Automobile Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired or non-owned; and

2.5. Excess Umbrella Liability insurance with a single limit of at least \$10,000,000 per occurrence in excess of the limits of insurance provided above.

Appendix E

2.6 Builder's All-Risk Insurance, which shall insure as named insureds Seller and subcontractors of any tier, as their interest may appear, and shall cover all property in the course of construction, including work, materials and equipment, miscellaneous equipment and furnishings. Such insurance shall include mechanical and electrical breakdown coverage during start-up and testing, and other operation of the Facility before the Commercial Operation Date. The limit of liability shall be the full replacement cost of the work then at risk, including primary cost of equipment plus freight. Coverage for flood, earthquake, windstorm and lightning shall be at maximum limits commercially available. The required deductible for all such insurance shall not exceed [US\$100,000 per wind turbine and] US\$300,000 (US Dollar Three Hundred Thousand) in the aggregate except for flood, earthquake, windstorm and lightning, with respect to which such deductibles shall be five percent (5%) of the value of the lost or damaged property. Applicable deductibles shall be allocated pursuant to the risk of loss. The Builder's All-Risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Such insurance shall provide for a waiver of the underwriters' right to subrogation against all insured parties. Additional coverages to be included are:

- (a) expediting expense with a sublimit of not less five percent (5%) of the total insured values;
- (b) coverage for equipment and material at laydown areas or temporary storage off of the actual construction site (including freight expense);
- (c) removal of debris with a sublimit of five percent (5%) of the total insured values resulting from a covered loss; and
- (d) business interruption insurance (of a "delay" or "delay in start-up" nature) in a minimum aggregate amount not less than the sum of (3) three months total estimated project revenue plus the value of the estimated PTCs, if any.

3. Commercial Operation Date Through the End of the Term. Seller shall procure and maintain for the period from the Commercial Operation Date until the Termination Date of this Agreement, at its own expense, the following policies of insurance:

3.1 Worker's Compensation insurance which complies with the laws of the state within which the Wind Facility is located;

3.2 Employers' Liability insurance with limits of at least \$1,000,000;

3.3 Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Agreement, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability, and, where applicable, watercraft protection and indemnity liability;

Appendix E

3.4 Automobile Liability or Business Automobile Liability insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired or non-owned; and

3.5 Excess Umbrella Liability insurance with a single limit of at least \$10,000,000 per occurrence in excess of the limits of insurance provided above.

3.6 All Risk Insurance in an amount at least equal to the full replacement value of the Facility. The policy shall provide coverage in an amount equal to the full replacement value of the Facility for “all risks” of physical loss or damage except as hereinafter provided, including coverage for earth movement, flood, boiler and machinery, transit and off-site storage accident exposure, but excluding the equipment owned or leased by Operator and its subcontractors and their personal property. The policy may contain separate sublimits and deductibles subject to insurance company underwriting guidelines. Seller shall maintain the policy in accordance with terms available in the insurance market for similar electric generating facilities. The policy shall include coverage for business interruption in an amount covering a period of indemnity equal to twelve (12) months.

4. Insurance Structure. Seller may satisfy the amounts of insurance required above by purchasing primary coverage in the amounts specified or by buying a separate excess Umbrella Liability policy together with lower limit primary underlying coverage. The structure of the coverage is at Seller’s option, as long as the total amount of insurance meets the above requirements.

5. Occurrence-Based Coverage. The coverage required above, and any umbrella or excess coverage, shall be “occurrence” form policies. If Seller wishes to use “claims-made” form coverage, Seller must obtain PacifiCorp’s prior written approval to do so.

6. Endorsement Items. Seller shall immediately cause its insurers to amend its Commercial General Liability and Umbrella or Excess Liability policies with all of the following endorsement items, and to amend its Worker’s Compensation and Auto Liability policies with the endorsement items set forth in Paragraphs 6.3 and 6.4 below:

6.1 PacifiCorp and its Affiliates, their respective directors, officers, employees, and agents are additional named insureds under this policy and to the maximum extent allowed by law, shall be provided with coverages at least as broad as those required of the Seller by this Agreement;

6.2 This insurance is primary with respect to the interest of PacifiCorp and its Affiliates and their respective directors, officers, employees, and agents; and any other insurance maintained by them is excess and not contributory with this insurance;

6.3 Insurer hereby waives all rights of subrogation against PacifiCorp, its Affiliates, officers, directors, employees and agents; and

Appendix E

6.4 Notwithstanding any provision of the policy, this policy may not be canceled, non-renewed or materially changed by the insurer without giving thirty (30) days' prior written notice to PacifiCorp.

7. Periodic Review. PacifiCorp may review this schedule of required insurance as often as once every two (2) years. PacifiCorp may in its discretion require the Seller to make 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 plants comparable to the Facility at the time PacifiCorp's review takes place.