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April 28, 2008

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97310-2551

Attn: Vikie Bailey-Goggins, Administrator
Regulatory and Technical Support

RE: **UM 1368** – Draft Request for Proposals for New Renewable Resources

Enclosed for filing by PacifiCorp d.b.a. Pacific Power is the Company's draft request for proposals for new renewable resources (2008R-1 RFP) in the above-referenced docket. A copy of this filing was served on all parties on the service list.

Informal inquiries on this matter may be directed to Joelle Steward, Regulatory Manager, at 503-813-5542.

Very truly yours,

Andrea L. Kelly
Vice President, Regulation

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2008, I caused to be served, via E-Mail and Overnight Delivery (to those parties who have not waived paper service), a true and correct copy of the foregoing document on the following named person(s) at his or her last-known address(es) indicated below.

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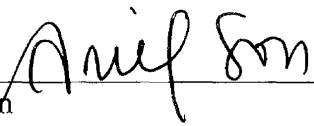
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1368

In the Matter of PacifiCorp's Request for
Approval of a 2008R-1 Solicitation
Process for New Renewable Resources

**DRAFT REQUEST FOR PROPOSAL
FOR NEW RENEWABLE RESOURCES**

1 PacifiCorp dba Pacific Power hereby submits its draft request for proposal for new
2 renewable resources to the Public Utility Commission of Oregon ("Commission") pursuant
3 to Order No. 06-446 ("Exhibit A").

Introduction of the 2008R-1 RFP

4
5 1. On March 4, 2008, PacifiCorp filed a request to open this docket and begin
6 the solicitation process for an independent evaluator ("IE"). IE proposals were submitted to
7 PacifiCorp April 4, 2008 and Commission Staff and interested parties are in the process of
8 reviewing the IE proposals.

9 2. As explained in PacifiCorp's March 4, 2008 filing, the purpose of the 2008R-
10 1 RFP is to establish a Commission approved RFP that can be used, as needed, to request and
11 evaluate proposals from bidders to fulfill a portion of the supply-side renewable resources
12 identified in PacifiCorp's 2007 Integrated Resource Plan ("IRP"). PacifiCorp is proposing a
13 form of RFP process that would enable the Company to call for new bidders or updated bids
14 on an as needed basis to provide needed flexibility in the procurement process due to timing
15 concerns, uncertainty with the status of the production tax credit, the status of the then-
16 current wind turbine supply market, and quality and quantity of bids received. Similar to the
17 process PacifiCorp used with its RFP 2003-B in Docket UM 1118, once the 2008R-1 RFP is
18 approved by the Commission, PacifiCorp would use the form and process associated with the
19 2008R-1 RFP to solicit bids from the market. PacifiCorp will notify the Commission of its

1 intent to re-issue an “updated 2008R-1 RFP” and the detail associated with such updates.
2 Should the Commission determine that the updates are substantive modifications and
3 necessitate a filing with the Commission for approval of the updates then the Company will
4 make such a filing.

5 3. The 2008R-1 RFP will solicit system-wide (east and west) renewable
6 resources new to the Company’s portfolio and which are capable of delivery, within the
7 prescribed time period, in or into PacifiCorp’s network transmission system or to another
8 Company prescribed point(s) that enables the Company to meet its obligations. The first
9 request for renewable resources pursuant to the 2008R-1 RFP will be for renewable resources
10 with commercial operation dates prior to December 31, 2011. The targeted acquisition
11 quantity for this 2008R-1 RFP will be up to 500 MW; the 2008R RFP may solicit up to 300
12 MW.

13 4. The chart below identifies the renewable resources targeted in the current IRP:

Commercial Operation Date	Target Quantity
2008	Up to 200 MW
2009	Up to 100 MW
2010	Up to 300 MW
2011	Up to 200 MW

14 5. For purposes of the 2008R-1 RFP, each renewable resource is limited in size
15 to no more than 300 MW.¹ In addition, each renewable resource must have an expected
16 annual output of at least 70,000 megawatt hours after accounting for planned and unplanned
17 outages. PacifiCorp issued a RFP (“2008R RFP”) on January 31, 2008 for renewable

¹ Nameplate capacity or quantity of capacity. 300 MW is the upper limit permitted by Utah Senate Bill 202.

1 resources of less than 100 MW (for resources greater than five years in length) or greater
2 than 100 MW for resources less than or equal to five years in length. The 2008R RFP solicits
3 renewable resources that have a commercial operation date prior to December 31, 2009.

4 6. The 2008R-1 RFP will permit qualified bidders to bid qualifying renewable
5 resources in the form of a power purchase agreement and/or asset transfer arrangements. As
6 described in the attached draft RFP document, the Company is developing one or more cost-
7 based benchmark resources for use in the RFP process. The Company's determination as to
8 the size, number, and feasibility of any such benchmarks in meeting the RFP criteria will be
9 based on the then-current status of development, permitting, and major equipment
10 availability as well as the Company's understanding of regulatory cost recovery issues
11 associated with long lead-time equipment and/or other development costs. .

12 7. In addition to bidding in renewable resources, bidders will have the option to
13 bid in renewable resources coupled with energy storage. Energy storage has the distinct
14 advantage of potentially enabling higher penetrations of intermittent renewable energy in the
15 company's portfolio. Pumped water, compressed air, battery storage, or other contractual
16 forms can firm intermittent renewable resources and therefore create an energy resource that
17 can be scheduled to better match customer demand or result in a higher degree of
18 dependability throughout a prescribed time period.

19 8. The 2008R-1 RFP will not be duplicative of the 2012 RFP (Base Load
20 solicitation) (Docket UM 1208) or the 2008 RFP (Base Load, Intermediate Load, Peak Load
21 solicitation) (Docket UM 1360). The 2008R-1 RFP will request renewable resources located
22 in the Western Electricity Coordinating Council that are compliant with existing or
23 anticipated renewable portfolio standards. The 2008R-1 RFP is not anticipated to be
24 duplicative with the 2008R RFP unless a bidder has a resource that can reach commercial

1 operation by December 31, 2009 and the bidder elects to bid the same resource in each RFP.

2 9. The Company decided to issue the new 2008R-1 RFP as the time for
3 submissions of interest and submission of bids published in the 2008R RFP made it difficult
4 and potentially confusing to bidders to simply modify that RFP. If the same resource is bid in
5 the 2008R RFP and the 2008R-1 RFP, each bid will be considered under the terms of the
6 RFP under which the bid is submitted. It is generally expected that wind resources will be the
7 primary resources bid but other forms of renewable resources will be accepted. The
8 Company will further define each such compliant renewable resource in the draft form of the
9 2008R-1 RFP submitted to the Commission for approval.

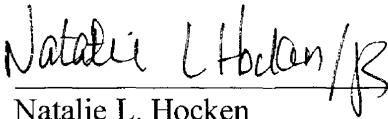
10 **Revised Preferred Schedule**

11 10. To assist parties in understanding anticipated timelines, the Company has
12 included a revised preferred schedule below.

Event	Estimated Timeline
RFP for Independent Evaluator issued	By March 21, 2008
Selection of Independent Evaluator	May 2008
2008R-1 Draft RFP filed	April 28, 2008
2008R-1 RFP approval process completed	June 2008
2008R-1 RFP issued	June 2008
Intent to Bid Forms and Appendix D due	July 2008
2008R-1 Benchmark Resource proposals due	August 2008
2008R-1 RFP responses due	September 2008
Evaluation completed	November 2008
Final shortlist filed in Oregon	November 2008
Oregon Commission acknowledgement of final shortlist	December 2008
Bidder negotiations completed	March 2009
Finalize resource decision(s)	April 2009
Commercial operation	Prior to December 31, 2011

1 WHEREFORE, PacifiCorp respectfully requests that the Commission approve the
2 2008R-1 RFP following comments by the parties.

DATED: April 28, 2008



Natalie L. Hocken
Vice President & General Counsel,
Pacific Power

Counsel for PacifiCorp

EXHIBIT A

**DRAFT 2008R-1 RENEWABLE RESOURCE
REQUEST FOR PROPOSAL**



PacifiCorp

Request for Proposals

Renewable Electric Resources

(RFP 2008R-1)

ISSUED: [INSERT DATE]

DUE DATE: [INSERT DATE]

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- I. Company Benchmark(s)
- J. Pricing Input Sheet
- K. Role of the Oregon Independent Evaluator and the Utah Consultant
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SECTION 1. INTRODUCTION

The purpose of this document is to prescribe the process by which PacifiCorp (the Company) will request and evaluate proposals from Bidders to fulfill a portion of the Renewable Resource generation identified in the Company's 2007 Integrated Resource Plan (IRP) as filed with and pending acknowledgement before the Oregon Commission.¹

The scope of this Renewable Request for Proposal (RFP 2008R-1) will request renewable resources located in the Western Electricity Coordinating Council that are compliant with existing or anticipated renewable portfolio standards and that are new to the Company's resource portfolio. The RFP 2008R-1 will require renewable resources capable of delivering energy, within the prescribed timeframe, in or into the Company's Network Transmission system² (www.oasis.pacificorp.com).

For purposes of the 2008R-1 RFP, each renewable resource is limited in size to no more than 300 MW.³ In addition, each renewable resource must have an expected annual output of at least 70,000 megawatt hours after accounting for planned and unplanned outages. PacifiCorp issued a RFP (2008R RFP) on January 31, 2008 for renewable resources of less than 100 MW (for resources greater than five years in length) or greater than 100 MW for resources less than or equal to five years in length. The 2008R RFP solicits renewable resources that have a commercial operation date prior to December 31, 2009. The 2008R-1 RFP will not be duplicative of the 2012 RFP (Base Load solicitation) or the 2008 RFP. The 2008R-1 RFP is not anticipated to be duplicative with the 2008R RFP unless a Bidder has a resource that can reach commercial operation prior to December 31, 2009 and the Bidder elects to bid the same resource in each RFP.

In addition to bidding in renewable resources, Bidders will have the option to bid in renewable resources coupled with energy storage. Energy storage has the distinct advantage of potentially enabling higher penetrations of intermittent renewable energy in the Company's portfolio. Pumped water, compressed air, battery storage, or other contractual forms can firm intermittent renewable resources and therefore create an energy resource that can be scheduled to better match customer demand or result in a higher degree of dependability throughout a prescribed time period.

If the same resource is bid in the 2008R RFP and the 2008R-1 RFP, each bid will be considered under the terms of the RFP under which the bid is submitted.

The scope of this RFP 2008R-1 is focused on system-wide, east and west control area, for Renewable Resource⁴ generation which is capable of delivering energy, within the prescribed timeframe, in or into the Company's Network Transmission system (www.oasis.pacificorp.com) and that is new to the Company's resource portfolio.

¹ The Public Service Commission of Utah did not acknowledge the 2007 IRP.

² Company's Eastern Control Area (PACE) and/or the Company's Western Control Area (PACW).

³ 300 MW is the nameplate capacity or quantity of capacity and is the upper limit permitted by Utah Senate Bill 202, The Energy Resource and Carbon Reduction Initiative.

⁴ PacifiCorp reserves the right to reject any Renewable Resource not eligible for existing or anticipated renewable portfolio standard compliance in California, Oregon, Utah and/or Washington.

The 2008R-1 RFP will be the RFP under which the Company will issue subsequent RFPs to meet the renewable resource target quantity over the ten year IRP planning horizon. The 2008R-1 RFP will be a tool under which periodic Renewable RFPs will be issued. The 2008R-1 shelf request for proposal will allow the Company to react effectively and competitively to stay current with the status of the production tax credit and the competitive nature of the wind turbine market. This 2008R-1 will be the first renewable RFP under which subsequent solicitation for Renewable Resources will be conducted. The 2008R-1 is for Renewable Resources which can reach commercial operation during the 2008 through 2011 time period. The purpose of this RFP is to comply with current regulatory rules, orders, and any applicable resource procurement state laws.

The 2007 IRP⁵ identifies a target of 2,000 megawatts of renewable resources to be acquired by 2013. Under the 2007 IRP plan, the company will seek to acquire 1,400 megawatts of new renewable resources by 2010, with an additional 600 megawatts in its portfolio by 2013. The 2,000 megawatts of renewable resources is inclusive of the 1,400 megawatts of cost-effective renewable resources identified in the company's 2004 IRP.

The targeted acquisition quantity for this 2008R-1 RFP will be up to 500 MW; the 2008R RFP may solicit up to 300 MW.

CHART 1- RESOURCE TARGET QUANTITY

Commercial Operation Date	Target Quantity
2008 ⁶	Up to 200 MW
2009	Up to 100 MW
2010	Up to 300 MW
2011	Up to 200 MW

Renewable Resources are defined as:

An electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995 that derives its energy from one or more of the following:

- (A) wind energy;
- (B) solar photovoltaic and solar thermal energy (i.e., concentrated solar);
- (C) wave, tidal and ocean thermal energy;
- (D) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including

⁵ More information on the IRP can be found at www.pacificorp.com/Navigation/Navigation23807.

⁶ Renewable resources in 2008 will be highly dependent on the approval of this 2008R-1 RFP and the tentative timeline in Section 2.

- (I) organic human or animal waste;
 - (II) spent pulping liquor;
 - (III) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
 - (IV) agricultural residues;
 - (V) dedicated energy crops; and
 - (VI) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or municipal solid waste;
- (E) geothermal energy;
- (F) certified low-impact hydro-electric energy with a nameplate capacity less than fifty megawatts, without regard to the date upon which the facility becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995, by a national certification organization;
- (G) waste gas and waste heat capture or recovery;*
- (H) efficiency upgrades to a hydroelectric facility, without regard to the date upon which the facility became operational, if the upgrades become operational on or after January 1, 1995;
- (I) geothermal energy if located within the state of Utah, without regard to the date upon which the facility becomes operational; or
- (J) hydroelectric energy if located within the state of Utah, without regard to the date upon which the facility becomes operational.

Bidders have the option to also bid Renewable Resources coupled with energy storage.

The Company may opt to contract for more or less power, depending among other things, bids received in response to the ongoing 2008R RFP, quality of bids received in response to this RFP, updates to the Company's forecasts, regional transmission availability and timing, and changes in the wholesale energy market conditions.

The Renewable Resource must have a commercial operation date no later than December 31, 2011. Bidders may only bid in Renewable Resources in the form of a Power Purchase Agreement (PPA) or a Build Own Transfer (BOT).⁷ To the extent that Bidders bid in variations of a PPA or BOT, such proposals will be considered at the Company's discretion and the Company reserves the right to reject non-compliant bids. PacifiCorp generation will submit a benchmark resource(s) which are further described in **Appendix I**.

In order to provide for a transparent and fair process, the RFP will be conducted under the oversight of independent evaluators (IEs). A consultant will be hired by the Utah Public Service Commission and an IE retained by the Company on behalf of the Oregon Public Utility Commission will be involved in ensuring the RFP is conducted in a fair

* PacifiCorp reserves the right to reject waste gas and waste heat capture or recovery resources if the resource is not eligible for existing or anticipated renewable portfolio standard compliance.

⁷ Form of Power Purchase Agreement is set forth in Appendix E and the Build Own Transfer, which consists of a site agreement and an Engineering Procurement Contract (EPC) is set forth in Appendix F.

and reasonable manner.⁸ Potential Bidders are invited and encouraged to contact either the Oregon IE or the Utah consultant with questions or concerns. More information concerning the role of the IE and the consultant is provided in **Appendix K**. Contact information for the consultant and the IE is as follows:

Utah Consultant : [Utah Consultant]
[Insert Consultant's contact information]
Oregon Independent Evaluators: [Oregon IE].
[Insert IEs contact information]

The Company has the option of seeking regulatory acknowledgement of the final shortlist consistent with Oregon Order No. 06-446. PacifiCorp will seek rate recovery consistent with standard rate making practices in its six state jurisdictions.

This introductory Section 1 describes the type, timing and amount of resources sought. Section 2 addresses the procedural items. Section 3 covers logistics such as where and when proposals must be submitted, bid fees and minimum requirements, as well as important conditions and procedures. Section 4 outlines the required content and format. Section 5 outlines resource information including price and non-price information, integration, interconnection and transmission services. Section 6 outlines the bid evaluation and selection process. Section 7 outlines the awarding of contracts. All of the required Appendices which are required are included.

SECTION 2. PROCEDURAL ITEMS

PacifiCorp is seeking proposals for renewable projects that are online or have a projected online date prior to December 31, 2011. PacifiCorp is seeking proposals for up to the target amounts set forth in Section 1 of this solicitation. PacifiCorp will evaluate the proposals based on cost effective economics, a viable implementation schedule, verifiable major equipment availability (such as wind turbines or long lead-time equipment), appropriate ability to provide security for the Bidders proposed obligation, transmission access and interconnection status, and conformance to the pro forma contracts attached as Appendices to this RFP. PacifiCorp may elect to select more or less than the resource target quantity, or no proposals at all as a result of this solicitation.

Each proposal will be prepared at the sole cost and expense of the respondent and with the express understanding that there will be no claims whatsoever for reimbursement from PacifiCorp. PacifiCorp is not liable for any costs incurred by respondents in responding to this RFP or for any damages arising out of or relating to PacifiCorp's rejection of any proposal, or Bidder's reliance upon any communication received from PacifiCorp, for any reason. Respondent shall bear all costs and expenses of any response to PacifiCorp in connection with its proposal, including providing additional information and respondent's own expenses in negotiating and reviewing any documentation.

⁸A Bidder may request the appointment of an independent third-party to assist the Washington Utilities & Transportation staff with review of any utility bids at the expense of the Bidder requesting the appointment.

All proposals belong to PacifiCorp and will not be returned. PacifiCorp will use reasonable efforts to protect information clearly and prominently marked as proprietary and confidential on the page it appears, but PacifiCorp reserves the right to release such information to agents or contractors to help evaluate the Proposal, as well as to its regulators and non-bidding parties to regulatory proceedings subject to standard protective orders or confidentiality arrangements. PacifiCorp shall not be liable for any damages resulting from any disclosure of such information, howsoever occurring.

PacifiCorp is interested in creative proposal options that add value to customers. As a result, PacifiCorp encourages Bidders to offer several different alternatives under the same proposal. For each proposal, Bidders are allowed to submit a base proposal and up to two alternatives for the same bid fee. Bidders will also be allowed to offer up to three additional alternatives at a fee of \$1,000 each. Alternatives will be limited to different bid sizes, contract terms, in service dates, and/or pricing structures. A Bidder may submit more than one proposal. If a Bidder submits the same proposal but with three different bid sizes, the proposal will be considered one proposal with two alternatives and the Bidder will receive three separate bid numbers for the proposal and pay one bid fee. The Company's objective in offering Bidders the opportunity to propose multiple alternatives is to allow the Company to optimize the benefits from the solicitation by combining proposals of different sizes, terms and in-service dates. Proposals must be submitted in the legal name of the respondent who would be bound by any agreement with PacifiCorp.

SECTION 3. LOGISTICS

A. SCHEDULE

Chart 2 sets forth the anticipated schedule.

CHART 2 – ANTICIPATED SCHEDULE

Event	Estimated Timeline
Selection of Independent Evaluator	May 2008
2008R-1 Issued	Issued
2008R-1 Bid Conference	Issued + 20 days
Intent to Bid Forms and Appendix Ds due	Issued + 30 days
Benchmark Resource(s) Responses due	Issued + 60 days
Responses due	Issued + 75 days
Evaluation completed	Issued + 120 days
Oregon Commission acknowledgement of final shortlist	Issued + 120 days
Bidder negotiations completed	Issued + 180 days

Bidders should note that the above schedule is an anticipated schedule only and is subject to change. The Company accepts no liability to the extent the actual schedule is different from the anticipated schedule.

B. RFP CONFERENCE

Time: TBD

Date: TBD

Location: Oregon - 825 NE Multnomah – Room TBA
Utah - North Temple Office – Room TBA

Interested parties and Bidders may submit questions prior to the RFP bid conference, so that such questions may be addressed in a more timely fashion. All information, including the pre-bid conference materials, questions and answers will be posted on the PacifiCorp website at www.pacificorp.com. The Company will be responsible to maintain and post all materials on the Company's website at www.pacificorp.com. Any questions on the RFP or related documents should be sent to the Company via email at RFP2008R-1@pacificorp.com.

Communications with the Oregon IE and Utah Consultant can be emailed to them directly at the following email addresses: **[Insert email addresses.]**

C. INTENT TO BID FORMS

Bidders who intend to be considered as part of this RFP process must return both the "Intent to Bid Form" and the "Bidder's Credit Information" (**Appendices A and D**) as set forth below.

Five (5) copies of the Intent to Bid Form and the Bidder's Credit Information must be sent to the following address by express, certified or registered mail, or hand delivery by 5:00 p.m. Pacific Prevailing Time on **[Insert Date]**:

Oregon Independent Evaluator

[Insert IE]

c/o PacifiCorp

Attention: RFP 2008R-1

825 NE Multnomah, Suite 600

Portland, Oregon 97232

D. SUBMISSION OF BIDS

The Bidder will be required to submit its proposal(s) to the following addresses. Bidders must submit the following to the address below:

1. a signed original and five (5) hard copies of each bid and any required forms, and
2. two (2) electronic copies of the bid and any required forms (on two (2) separate compact discs) that are in PDF format.
3. one (1) electronic copy of the Pricing Input Sheet.

All submitted bids must be transmitted by express, certified or registered mail, or hand delivery to the following address:

Oregon Independent Evaluator
Attention: RFP 2008R-1
825 NE Multnomah, Suite 600
Portland, Oregon 97232

Bids will be accepted until 5:00 p.m. Pacific Prevailing Time on **[Insert Date]**. **Any bids received after this time will be subject to return unopened to the Bidder following a decision based on consultation between the IE, the Consultant and PacifiCorp.**

PacifiCorp will not accept any late proposals. The anticipated dates for evaluations, negotiations and definitive agreements are targets only, and actual dates will vary for reasons that include, but are not limited to, negotiation time, availability of key personnel, due diligence, the evaluation or negotiation of any issues unique to any bid, Bidder, or project, Bidder's willingness to agree to forms of agreements desired by PacifiCorp, PacifiCorp's evaluation of Bidder's creditworthiness, and actions required by any third parties.

E. RFP TEAM

An RFP Team will be established by the Company prior to the final approval of the RFP. The RFP Team shall consist of an Evaluation Team and Intent to Bid Team. The composition of the teams and their primary roles and responsibilities are shown below in Chart 3.

CHART 3

Work Group	Roles
Oregon Independent Evaluator (IE) and Utah Consultant	The IE and Consultant will ensure a fair and reasonable process is used in the RFP. See Appendix I for the Roles of the Oregon IE and the Utah Consultant.
Evaluation Team: Origination and/or Third-Party Engineering Consultants as required	Overall coordinator of the process. Bid process management for all proposals and coordination with the IE and the Consultant and all of the work groups. Evaluation of the non-price components of the analysis. Specifying, evaluating and confirming conformity with design specifications; conducting, as needed, technological and operational due diligence, environmental due diligence on all resources.
Evaluation Team: Structuring and Pricing and/or Third-Party Engineering Consultant as required	Economic analysis and modeling including validation of the inputs to the risk assessment of the bid.

Evaluation Team: Environmental	If applicable, review of local, state, and federal permits, permit applications, and supporting documentation, including: wildlife baseline study (including wildlife habitat mapping, special status species survey, and raptor nest survey); avian and bat use data analysis (including four-season study); avian and bat impact assessments; rare plant habitat assessments; wetlands survey; historic, cultural, and archaeological resources survey; Phase One environmental site assessment; and project mitigation and monitoring plan (including any proposed conservation easements).
Evaluation Team: Credit	Credit screening, evaluation and monitoring throughout the process.
Evaluation Team: Legal	Legal will confirm compliance of bids to requirements of RFP and its Forms, Attachments and Appendices; conduct of legal process; conducting due diligence inquiries; supervising any documentation entered into as part of the RFP process.
Intent to Bid Team: Origination, Legal and Credit	Origination, Legal and Credit will work with the IEs to ensure that Appendices A and D are complete.

F. BID FEES

To help defray the cost of the Oregon Independent Evaluator and/or the Utah Consultant, each Bidder shall submit with each of its bid proposals a nonrefundable “bid fee” of \$10,000. A bid may consist of one base proposal in addition to two alternatives for the same bid fee. The alternatives may consist of a different bid size, contract term, in-service date and/or pricing structure for the same bid. In addition, Bidders will have the option of submitting up to three additional alternatives for a fee of \$1,000 per alternative. The bid fee(s) must be submitted with the proposals to **[Oregon IE]**. The Bidder must attach to its proposal a certified check written in the required amount payable to the order of PacifiCorp. Bidders may submit multiple base bid proposals in response to this RFP. The Oregon IE, in consultation with the Company shall confirm whether a Bidder’s submission constitutes one or more proposals, for purposes of assessing bid fees. Any questions regarding bid fees should be directed to **[Oregon IE]**.

G. MINIMUM ELIGIBILITY REQUIREMENTS FOR BIDDERS

Bidders may be disqualified for failure to comply with the RFP if any of the requirements are not met. To the extent proposals do not comply with these requirements they will be deemed ineligible and will not be considered for further evaluation. Reasons for rejection of a Bidder or its bid include:

- a) Receipt of Intent to Bid and Bidder’s Credit Information forms or any proposal after the response deadline.

- b) Failure to meet the requirements and provide all of the information requested in **Appendix C-1 and/or Appendix C-2** of this RFP.
- c) Failure to permit disclosure of information contained in the proposal to PacifiCorp's agents, contractors, regulators, or non-bidding parties to regulatory proceedings under appropriate confidentiality agreements.
- d) Any attempt to influence PacifiCorp in the evaluation of the proposals, outside the solicitation process.
- e) Any failure to disclose the real parties of interest in the proposal submitted.
- f) The Bidder, or an affiliate of Bidder, is in current litigation with PacifiCorp or has, in writing, threatened litigation against PacifiCorp, respecting an amount in dispute in excess of one million dollars.
- g) Proposal has failed to clearly specify all pricing terms.
- h) Proposal has failed to offer unit contingent or system firm capacity and energy, delivered into or in PACW or PACE and include appropriate contract term lengths and commercial operation dates.
- i) Proposal presents unacceptable level of development and technology risk.
- j) Failure to demonstrate a contractual right or an option to acquire major equipment (i.e., wind turbines) and/or other critical long lead time equipment.
- k) The transaction results in a third party owned asset being consolidated on PacifiCorp's balance sheet.
- l) Bidder fails to demonstrate, to PacifiCorp's satisfaction, that it can meet the security requirements for each Renewable Resource proposed consistent with the requirements in **Appendix D** provided in this RFP.
- m) Bidder fails to address satisfactorily both the price and non-price factors.
- n) Bidder fails or is unable to abide by the applicable safety standards.
- o) The Bidder submits an unacceptable contract structure.
- p) Collusive bidding or any other anticompetitive behavior or conduct exists.
- q) Bidder or project being bid is involved in bankruptcy proceedings.
- r) Submission of a PPA that is not backed by an asset for a term longer than five (5) years.
- s) Failure of the respondent's authorized officer to sign the proposal.
- t) Misrepresentation or failure to abide by National Association of Attorneys General (NAAG) Environmental Marketing Guidelines (available at http://www.naag.org/issues/pdf/Green_Marketing_guidelines.pdf).
- u) Any change in regulations or regulatory requirements that make the Bidder's proposal non-conforming.
- v) Any matter impairing the respondent, the specified resources or the generation of power or Environmental Attributes of the Renewable Resource.

H. COMPANY RESERVATION OF RIGHTS AND DISCLAIMERS

The Company reserves the right, without qualification and in its sole discretion, to reject any or all bids, and to terminate this RFP in whole or in part at any time. Without limiting the foregoing, the Company reserves the right to reject as non responsive any or all bid proposals received for failure to meet any requirement of this RFP outlined in Section 4. The Company also reserves the right to request that the IE or Consultant contact any Bidder for additional information. The Company further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any

Bidder for any reason, including, but not limited to, change in regulations or regulatory requirements that impact the Company and/or any collusive bidding or other anticompetitive behavior or conduct.

Bidders who submit bid proposals do so without recourse against PacifiCorp, its parent company, its affiliates and its subsidiaries, or against any director, officer, employee, agent or representative of any of them, for any modification or withdrawal of this RFP, rejection of any bid proposal, failure to enter into an agreement, or for any other reason relating to or arising out of this RFP. Bidders will be required to execute the non-reliance Agreement in **Appendix H** after the Final Shortlist and prior to entering into final negotiations.

I. ACCOUNTING

All proposals will be assessed by PacifiCorp for appropriate accounting or tax treatment. Bidders must supply all information PacifiCorp reasonably requires in order to make such assessments.

Specifically, accounting and tax rules may require that: (i) a contract is accounted for by PacifiCorp as a Capital Lease or Operating Lease,⁹ or (ii) the seller or assets owned by the seller be consolidated as a Variable Interest Entity¹⁰ (VIE) onto PacifiCorp's balance sheet. PacifiCorp will not accept bids that result in a VIE being consolidated onto its balance sheet.

Each Bidder must also agree to make available at any point in the bid evaluation process, any and all financial data associated with the Bidder, the Facility and the PPA, or BOT that PacifiCorp requires to determine potential accounting impacts. Such information, including data supporting the economic life (both initial and remaining), the fair market value, executory costs, nonexecutory costs, and investment tax credits or other costs (including debt specific to the asset) associated with the Bidder's proposal. Financial data contained in the Bidder's financial statements (e.g., income statements, balance sheets, etc.) may also be required to provide additional information.

J. CONFIDENTIALITY

PacifiCorp will attempt to maintain the confidentiality of all bids submitted, to the extent consistent with law or regulatory order, as long as such confidentiality does not adversely impact a regulatory proceeding. It is the Bidder's responsibility to clearly indicate in its proposal what information it deems to be confidential. Bidders may not mark an entire proposal as confidential, but must mark specific information on individual pages to be confidential in order to receive confidential treatment for that information.

⁹ "Capital Lease" and "Operating Lease" - shall have the meaning as set forth in the Statement of Financial Accounting Standards (SFAS) No. 13 as issued and amended from time to time by the Financial Accounting Standards Board.

¹⁰ "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in Financial Accounting Standards Board (FASB) Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by the FASB.

All information supplied to PacifiCorp or generated internally by PacifiCorp shall remain the property of PacifiCorp. Bidder shall maintain the confidentiality of such information and such information shall not be available to any entity before, during or after this RFP process unless required by law or regulatory order. The Bidder expressly acknowledges that PacifiCorp may retain information submitted by the Bidder in connection with this RFP.

Only those Company employees who are directly involved in this RFP process or with the need to know for business reasons will be afforded the opportunity to view submitted bids or Bidder information.

Bidders should be aware that information supplied by Bidders may be requested and supplied during regulatory proceedings, subject to appropriate confidentiality provisions applicable to that particular proceeding. This means that parties to regulatory proceedings may request and view confidential information. If such a request occurs, PacifiCorp will attempt to prevent such confidential Bidder information from being supplied to intervening parties who are Bidders or who may be providing services to a Bidder, but PacifiCorp can not promise success in that endeavor and accordingly cannot be held liable for any information that it is ordered to be released or that is inadvertently released.

Lastly, PacifiCorp intends to utilize its internal, proprietary, forward price projections in its evaluation process. The resulting projections and evaluations will not be shared with entities external to PacifiCorp or its consultants, including with Bidders, unless required by law or regulatory order.

Bidders will be required to execute the confidentiality agreement included as **Appendix G** to this solicitation after the Final Shortlist and prior to entering into final negotiations.

SECTION 4. REQUEST FOR PROPOSAL CONTENT

Bidders can submit proposals for either (A) a Power Purchase Agreement (PPA) or (B) a Build Own Transfer (BOT).

A. POWER PURCHASE AGREEMENT

Appendix C-1 contains an explanation of the information required if a Bidder plans to pursue the PPA option. The Bidder would agree to meet its contractual obligations within the PPA during the Term of the Agreement agreeing to sell the Project to PacifiCorp at the end of the term as outlined in Section 5.6 of the PPA (**Appendix E**). The Bidder's proposal must contain the information requested in **Appendices B, C-1, D, J**, and any proposed changes to **Appendix E**. The Bidder must provide information sufficient to assure PacifiCorp that any proposed project has a reasonable probability of successful construction and operation by December 31, 2011. In the event a Bidder proposes a PPA not backed by an asset, the maximum term accepted will be (5) years.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary

Contractor under a single engineer, procure, and construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to PacifiCorp and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity (or the entity's credit support provider, if applicable) must have a Credit Rating (as defined in Appendix D) that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp.

B. BUILD OWN TRANSFER

Appendix C-2 contains an explanation of the information required if a Bidder plans to pursue the BOT option. The Bidder's proposal must contain the information requested in **Appendices B, C-2, D, J**, and any proposed changes to **F**. The Bidder must provide information sufficient to assure PacifiCorp that any proposed project has a reasonable probability of successful construction and operation by December 31, 2011.

Under the BOT option, PacifiCorp and the entity building the project must be counterparties. The BOT pro forma documents are attached as **Appendix F**. BOT can be structured with progress payments with defined milestones, or as a single lump sum payment due upon achievement of commercial operation. PacifiCorp will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or a percentage ownership of an asset at the time each payment is made. Bidders must submit bids that comply with one of these two payment structures. All Bidders in this category must complete the information requested in **Appendix C-2**.

PacifiCorp will only accept proposals in which PacifiCorp purchases a fully completed project which has reached commercial operation. Any proposals that consist of either only a site sale or only an EPC contract will be rejected as a nonconforming proposal.

The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction, interconnection and all related costs up to achieving commercial operation. Without limiting the foregoing, the Bidder shall be responsible for obtaining all rights and resources required to construct and provide an operational generation resource consistent with the Bidder's proposal.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor, which must be a party to the BOT. To the extent the Bidder uses a Contractor or a separate legal entity other than the Bidder itself, this entity must be a party to the EPC and must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity (or the entity's credit support provider, if applicable) must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp, or otherwise provide adequate credit assurances to PacifiCorp's satisfaction.

SECTION 5. RESOURCE INFORMATION

PacifiCorp shall rely on the outcome from this RFP to ascertain the most prudent resource decision(s). PacifiCorp's Integrated Resource Plan (IRP) is a comprehensive decision support tool and road map for meeting PacifiCorp's objective of providing reliable and least-cost electric service to all of its customers while addressing the substantial risks inherent in the electric utility business. Bidders should note that the IRP report is a useful document for information purposes and Bidders should not infer in any way that the IRP should prescriptively guide their specific proposal. PacifiCorp's IRP is available at www.pacificorp.com/Navigation/Navigation23807.

A. PRICE AND NON-PRICE INFORMATION

Bids will be evaluated on the basis of price and non-price factors to determine the initial shortlist. The bids on the initial shortlist will then be evaluated using the IRP models to determine the final shortlist.

The initial shortlist will consist of Price and Non-Price factors.

The Price factors will be determined using the comparison metric which will be the projected net present value revenue requirement (net PVRR) per kilowatt month (Net PVRR/kW-mo). The net PVRR component views the value of the energy and capacity as a positive, and the offsetting costs as negative. The larger the net PVRR, the more valuable a given resource is to PacifiCorp's customers. The net PVRR/kW-mo metric is the annuity value which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same net PVRR as a straight NPV calculation¹¹ with the appropriate adjustments.

The Non-Price factors will include without limitation positive or negative conformity to RFP bid requirements (**Appendix B**) and the form power purchase agreement (**Appendix E**) or BOT agreements (**Appendix F**), transmission availability and interconnection status, status of the development of the project, Bidder's experience, and performance guarantees. Price factors will recognize the value of the power (e.g., firm versus non-firm, delivery shape, and the relative value of environmental attributes associated with the facilities).

All bids must include exclusive ownership by PacifiCorp of any and all Environmental Attributes¹² associated with the energy generated.

¹¹The term "straight NPV calculation" refers to the act of present-valuing the net of the nominal capacity and energy value, and costs, to derive a net present value of the net margin between value and costs. To the extent that all proposals are above 140% of adjusted appropriate price curve in the initial shortlist, such proposals will be ranked by percentage.

¹² As defined in the Power Purchase Agreement.

A.1. PRICE INFORMATION

PacifiCorp is willing to consider the following contract structures so long as the Bidder supplies sufficient information to permit effective evaluation:

- *Power purchase agreements with purchase options* – for the initial term of the power purchase agreement Bidder owns the asset and PacifiCorp purchases the output. At some defined point in time PacifiCorp must have the option to purchase the asset for a price.
- *Build Own Transfer* – Bidder sells a fixed price turn key project payable in a single amount on delivery or upon achievement of milestones as progress payments, with an online date prior to December 31, 2011.

For PPAs, PacifiCorp is willing to consider the following delivery concepts so long as the Bidder supplies sufficient information to permit effective evaluation:

- Unit contingent generation as generated by the facility interconnected directly to PacifiCorp's transmission system
- Firm, scheduled generation into PacifiCorp's system
- Generation from other systems telemetered into PacifiCorp's system if adequate third party transmission is available.

A.2 NON-PRICE INFORMATION

Non-price factors will include without limitation positive or negative conformity to RFP bid requirements (**Appendix B**) and the form of power purchase agreement (**Appendix E**) or build own transfer agreement (**Appendix F**), transmission availability and interconnection status, Bidder's experience, and performance guarantees.

This RFP is requesting cost-effective resources that are capable for delivery into or in PacifiCorp's network transmission system¹³ in PACE or PACW. All proposals will be contingent on the ability of PacifiCorp's commercial and trading function to designate the proposed resource as a Network Resource under the network service contract between PacifiCorp Transmission (www.oasis.pacificorp.com) and PacifiCorp Commercial and Trading.

B. POINT OF DELIVERY

PacifiCorp is interested in resources that are capable of delivery into or in a portion of PacifiCorp's network transmission system in PACE or PACW. Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

¹³ Any costs required to upgrade PacifiCorp's electrical infrastructure incremental to those contained in the IRP will be considered in the overall economics of the resource. PacifiCorp will use the best available information at the time of evaluation to determine the integration costs for the analysis.

Eastern Control Area (PACE)

- Salt Lake Valley
- Mona¹⁴ 345 kV
- Glen Canyon 230 kV
- Nevada/Utah Border:
 - Gonder-Pavant 230 kV line known as “Gonder 230 kV”
 - Sigurd – Harry Allen 345 line known as “NUB” or Red Butte 345 kV
- Crystal 500 kV (southern terminus of Gateway South project) starting 2012
- Wyoming- delivery points will require further evaluation for integration.
- Borah, Brady or Kinport if such resource is interconnected to PacifiCorp’s Southwest Idaho electrical system near the Goshen 161 kV area.

Western Control Area (PACW)

- Mid Columbia
- Paul 500kV
- California Oregon Border
- PACW System
 - Within the Western Control Area – The point of interconnection between the resource, or the electrical system to which the resource is connected, and PacifiCorp’s transmission system.¹⁵

¹⁴ PacifiCorp’s transmission function has broken Mona into three distinct delivery points. These three points are “MDWP” (IPP-Mona from LADWP control area), “MDGT” (Bonanza-Mona within the PACE control area), and “MPAC” (all other lines into Mona with the PACE control areas).

¹⁵ Willamette Valley

Alvey 230 kV
Chiloquin 230 kV
Dixonville 230 kV

Fry 230 kV
Meridian 230 kV
Reston 230 kV

Central Oregon – Deschutes Valley

Bend 69 kV
Pilot Butte 69/230 kV

Ponderosa 230 kV
Redmond 69 kV

Yakima Area – Mid Columbia

Midway 230 kV

Wanapum 230 kV

Oregon Coast

Astoria to Tillamook 115 kV
Boyer (Lincoln City) 115 kV
Fairview (Coos Bay) 115/230 kV
Alvey 500 kV
Chiloquin 230 kV
Dixonville 230 kV

Fry 230 kV
Meridian 230 kV
Reston 230 kV

Central Oregon – Deschutes Valley

Bend 69 kV
Pilot Butte 69/230 kV
Redmond 69 kV

Ponderosa 230 kV

- Scheduled to the point(s) of interconnection between PacifiCorp's western control area and the Bonneville Power Administration or Portland General Electric such that transfer limitations are not exceeded. If the source located within the Bonneville the Bidder must show they have control area service from the resource to the delivery point.

C. THIRD-PARTY INTERCONNECTION AND INTEGRATION AND TRANSMISSION SERVICE

PPA Bidders are responsible for any interconnection, electric losses, reserves, transmission, integration tariffs, imbalance tariffs, and ancillary service arrangements required to deliver the proposed firm capacity and associated energy to the bid specified Point(s) of Delivery. Such costs will be included in the evaluation of BOT proposals. All proposals must identify all third-party interconnection, electric losses, transmission and ancillary service products, provider of reserves, and must provide a complete description of those service agreements, and provide documentation that such service(s) will be available to during the full term of offer(s) proposed or that contractual roll-over options are available.

Bidders who propose bids relying on third-party transmission should be aware that the use of transmission that is interruptible within the hour in any segment of the schedule or tagged from the source to the Point(s) of Delivery will require PacifiCorp to evaluate the need to carry reserves against the schedule, which can be up to 100% in the case of electricity moved from a third party control area to PACE or PACW.

D. STANDARDS OF CONDUCT

Each Bidder responding to this RFP must conduct its communications, implementation and operations in compliance with FERC's Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. The third-party transmission service is NOT a transmission service agreement with PacifiCorp's commercial and trading function; rather it is with PacifiCorp's transmission function or other third-party transmission providers, and hence absolutely no communication by a Bidder to PacifiCorp's transmission function can be made through the submission of a bid in this RFP. Any bid seeking to do so will be summarily rejected if the attempt is not immediately withdrawn when discovered. If requested, short-listed Bidders shall execute a customer consent consistent with FERC requirement that enables PacifiCorp's merchant function to discuss the Bidder's interconnection and/or transmission service application(s) with the transmission interconnection or transmission service provider.

Yakima Area – Mid Columbia
Midway 230 kV

Wanapum 230 kV

Oregon Coast
Astoria to Tillamook 115 kV
Boyer (Lincoln City) 115 kV
Fairview (Coos Bay) 115/230 kV

E. TRANSMISSION INTERCONNECTION AND TRANSMISSION SERVICES

This RFP requires that all Bidders must enter into a separate Interconnection Agreement if their facilities are located within the PacifiCorp footprint in accordance with PacifiCorp's Open Access Transmission Tariff. Bidders must advise PacifiCorp Transmission if any such service is being requested as part of this RFP. Bidders requiring interconnection service from PacifiCorp Transmission must request both Network Resources Interconnection (NR) and Energy Resource (ER) service. As stated above, all such requests, if made, must be made directly to PacifiCorp's transmission function through OASIS or other applicable tariffs, and not made to PacifiCorp through the submission of a bid in this RFP. Any bid seeking to do so will be summarily rejected if the attempt is not immediately withdrawn when discovered.

All proposals that will require a new electrical interconnection or an upgrade to an existing electrical interconnection must include a statement of the cost of interconnection (broken out between network upgrade costs and facility specific interconnection costs), together with a diagram of the interconnection facilities. The Bidder will be responsible for, and is required to include in its bid, all costs to interconnect to the transmission provider's system. The Bidder will be responsible for applying to the transmission provider for a Large Generator Interconnection Agreement (LGIA). The interconnection costs from all Bidders will be included in the bid evaluation. Bidders shall describe interconnection costs in their bids by disclosing that portion of costs associated with network upgrades and that portion that is facility specific. Bidders are reminded that they shall bear 100% of the costs to interconnect to the transmission provider's system. Bidders are encouraged to contact the applicable transmission function (i.e., PacifiCorp's transmission function at www.oasis.pacificorp.com) for information related to a system interconnection request. As stated above, all such requests, if made, must be made directly to PacifiCorp's transmission function through OASIS or other applicable tariffs, and not made to PacifiCorp through the submission of a bid in this RFP. Any bid seeking to do so will be summarily rejected if the attempt is not immediately withdrawn when discovered.

Once the Bidder is selected, the applicable transmission function typically has the option of funding the interconnection upgrades or requiring the Bidder to fund such upgrades and then receive revenue credits per the applicable OATT. Any such refunds shall be assigned to PacifiCorp directly or through a three-party contract, with the transmission provider treated as an independent third party; provided, however, if the Bidder is scheduling power for delivery to PacifiCorp's control area using third party transmission then the refund shall remain with the Bidder.

F. PACIFICORP TRANSMISSION INTEGRATION SERVICE

Notwithstanding the foregoing, Bidders should not factor in the cost of integrating the proposed resources from bid-specified Points of Delivery to PacifiCorp's system. Such transmission integration costs and other integration costs will be factored in for determination of the final shortlist. PacifiCorp has preliminarily identified the potential

costs to integrate and transmit resources in the IRP. These costs do not include interconnection costs. Transmission and other integration costs incremental to those in the IRP will be taken into account within the analysis. Integration costs consistent with the IRP will be added to all bids.

After the initial Shortlist is selected, the Structuring and Pricing group will provide the results of the initial Short list to the IRP Group. Pursuant to a consulting agreement between the IRP Group and PacifiCorp Transmission, PacifiCorp Transmission will provide more refined cost estimates associated with integrating the Short-listed resources into PacifiCorp's system. The IRP group will seek updated costs from PacifiCorp Transmission for only the Short-listed Bidders. These integration costs will be used as inputs into the IRP model along with the Short-listed proposals in order to determine the final Short list.

G. RESOURCE TYPES ELIGIBLE TO BID

The Renewable Resource must have a commercial operation date no later than December 31, 2011. Facilities generating power from the resource types defined as Renewable Resources in Section 1 are eligible to be the subject of bids under this RFP, provided they are capable of delivering at least 70,000 MWh per year.

Any resource considered pursuant to this RFP must be capable of clearly verifying time and amount of delivery of energy from the resource by metering or other means acceptable to PacifiCorp including without limitation metering on less than or equal to an hourly basis.

This solicitation is for proposals that offer *both* Renewable Energy Credits (RECs) and underlying generation from an associated Renewable Resource and not RECs only or RECs bundled with market purchases. Proposals that offer only Environmental Attributes or a rebundled product will be rejected.

H. PRODUCTION TAX CREDIT

Bidders shall bear all risks, financial and otherwise, associated with Bidder's or the facility's eligibility to receive production tax credits or qualify for accelerated depreciation for Bidder's accounting, reporting or tax purposes. The obligations of the Bidder to perform under any executed agreement as a result of this solicitation shall be effective and binding regardless of whether the sale of output from the Bidder's facility under such agreement is eligible for, or receives, production tax credits during the term of the agreement.

I. ACCOUNTING

All contracts proposed to be entered into as a result of this RFP will be assessed by the Company for appropriate accounting and/or tax treatment. Bidders shall be required to supply the Company with any and all information that the Company reasonably requires in order to make such assessments. Specifically, given the term lengths that Build own Transfer or Power Purchase Agreements accounting and tax rules may require either: (i)

a contract be accounted for by PacifiCorp as a Capital Lease or Operating Lease¹⁶ pursuant to SFAS No. 13, or (ii) the seller or assets owned by the seller, as a result of an applicable contract, be consolidated as a Variable Interest Entity¹⁷ (VIE) onto PacifiCorp's balance sheet. To the extent a Bidder's proposal results in an applicable contract, the following shall apply with respect to VIE treatment:

The Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment. As a result, all Bidders are required to certify, with supporting information sufficient to enable the Company to independently verify such certification, that none of their proposals will subject the Company to such VIE treatment. Bids that result in VIE treatment will be rejected after they are given an opportunity to provide an alternate structure that does not trigger a VIE, which will be subject to consultation with the IEs. Further, any applicable contract that the Company executes will require that: (i) the Seller covenant that the Company will not be subject to VIE treatment at any point during the term of the agreement, and (ii) in the event that the contract causes the Company to be subject to VIE treatment at any point during the term of the agreement, unless cured, such treatment will constitute a seller event of default.

Each Bidder must also agree to make available at any point in the bid evaluation process, any and all financial data associated with the Bidder power purchase agreement or build own transfer that PacifiCorp requires to determine potential accounting impacts. Such information may include, but may not be limited to, data supporting the economic life (both initial and remaining), the fair market value, executory costs, nonexecutory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the Bidder's proposal. Financial data contained in the Bidder's financial statements (e.g., income statements, balance sheets, etc.) may also be required to provide additional information. To the extent PacifiCorp rejects a proposal submitted in this RFP because it triggers VIE treatment, PacifiCorp shall provide documentation to the IEs justifying the basis for its decision.

J. COST ASSOCIATED WITH DIRECT OR INFERRED DEBT

PacifiCorp will not take into account potential costs to the Company associated with direct or inferred debt (described below) as part of its economic analysis in the initial or final shortlist evaluation. However, after completing the final shortlist and before the final resource selections are submitted for acknowledgement by the Oregon Commission, the Company may take into consideration, in seeking approval, cost recovery or acknowledgement with respect to selected resources, any projected costs of direct or inferred debt. The Company will bear the burden to demonstrate to the satisfaction of its regulators the validity, magnitude and impacts of any such projected costs. At the request of the Utah or Oregon Commission, PacifiCorp will be required to obtain a written

¹⁶ "Capital Lease" and "Operating Lease" - shall have the meaning as set forth in the Statement of Financial Accounting Standards (SFAS) No. 13 as issued and amended from time to time by the Financial Accounting Standards Board.

¹⁷ "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in Financial Accounting Standards Board (FASB) Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by the FASB.

advisory opinion from a rating agency to substantiate the utility's analysis and final decision regarding direct or inferred debt.

Direct debt results when a contract is deemed to be a Capital Lease pursuant to EITF 01-08 and SFAS No. 13 and the lower of the present value of the nonexecutory minimum lease payments or 100% of the fair market value of the asset must be added to PacifiCorp's balance sheet.

Inferred debt results when credit rating agencies infer an amount of debt associated with a power supply contract and, as a result, take the added debt into account when reviewing PacifiCorp's credit standing.

SECTION 6. BID EVALUATION AND SELECTION

PacifiCorp will utilize a "first-price sealed bid format" in order to generate an initial short list. The initial short list constitutes the bids that will be evaluated with the IRP models, and from which the final short-listed bids will be selected for any post-bid negotiations.

Under this format, contract payments are based on the price contained in each winning bid proposal. The "first-price sealed bid format" means that PacifiCorp will utilize the initial prices and pricing structure submitted by the Bidder in order to determine the initial short-listed entities. PacifiCorp will not ask for, or accept, updated pricing from Bidders during the evaluation period. **PacifiCorp will negotiate both price and non-price issues after the initial shortlist and during post-shortlist negotiations.** PacifiCorp reserves the right not to engage in any post-bid or post-Shortlist negotiations with any Bidder that has not made the initial short list. Selection for the initial short list, the final shortlist and post-shortlist negotiations does not constitute a "winning bid proposal." Only execution of a definitive agreement by both PacifiCorp and the Bidder on terms acceptable to PacifiCorp in its sole and absolute discretion will constitute a "winning bid proposal". Any definitive power purchase agreement or build own transfer will be in the form of the PPA and BOT shown in **Appendices E and F**, respectively. If the Bidder alters the PPA, or the BOT or does not use it as the underlying agreement the bid evaluation will be effected. PacifiCorp has no legal obligation to enter into any agreement of any kind with any Bidder.

A. OVERVIEW OF THE EVALUATION PROCESS

The analysis for the RFP will be focused on determining which resources provide the best value to customers on a system-wide planning basis to meet customer requirements at the least cost, on a risk adjusted basis and in the public interest. The evaluation process will utilize a screening process to derive an initial shortlist of bids (described in Step 1 below) and the final shortlist will be determined using the integrated resource planning models, and any residual value of the project to determine the final shortlist.

The selection of an initial shortlist of bids will be based on price and non-price factors. The price factor will be derived using the PacifiCorp Structuring and Pricing RFP Base Model. The RFP Base Model determines the initial shortlist of the top performing proposals on the basis of the projected net present value revenue requirement (net PVRR)

per kilowatt month (Net PVRR/kW-mo). The non-price factors will evaluate the positive or negative conformity to RFP bid requirements (**Appendix B**) and the form of power purchase agreement (**Appendix E**) or build own transfer documents (**Appendix F**), transmission availability and interconnection status, status of the development of the resource, Bidder's experience, and performance guarantees.

Bids that qualify for the initial shortlist from a screening basis will then be evaluated using an Integrated Resource Planning model to establish the Final Shortlist.

The Bidder is responsible for the negotiation, execution and cost of interconnecting or delivering in or into the PacifiCorp control area. The Bidder will be responsible for all incremental transmission expenses associated with delivery to PacifiCorp's network transmission system (inclusive of any third-party system upgrade needed to deliver such energy to PACE or PACW). Any anticipated transmission cost which is not included in Bidder's response or is incremental to transmission assumptions included in the IRP will be added by PacifiCorp using information reasonable and readily available during the economic evaluation phase.

Bids submitted in this RFP will be evaluated in two steps:

STEP 1—PRICE AND NON-PRICE SCREEN WILL BE USED TO DETERMINE A LIST OF BIDS DEEMED AS THE INITIAL SHORTLIST.

STEP 2—PACIFICORP'S PRODUCTION COST SIMULATION MODEL, USED FOR INTEGRATED RESOURCE PLANNING, WILL BE USED TO DETERMINE A LIST OF BIDS DEEMED AS THE FINAL SHORTLIST.

PacifiCorp intends to evaluate each bid received in a consistent manner by separately evaluating the non-price characteristics of the resource and the price characteristics. Each component will be evaluated separately and recombined to determine the bundled price and non-price score. The price factor will be weighted up to 70%, while the non-price factor will be weighted up to 30%. No proposal will receive a total weighting in excess of 100%. The price and non-price evaluation will be added together and used to determine the initial shortlist. The initial shortlist will be made up of the highest scoring proposals.

B. PRICE FACTOR EVALUATION (UP TO 70%)

PacifiCorp will utilize the RFP Base Model to screen the proposals and to evaluate and determine the price ranking for the initial shortlist.

The RFP Base Model is contained in a Microsoft Excel workbook that includes a number of proprietary Visual Basic macros, custom add-ins, and computational code written in C++.

RFP Base Model Inputs:

Market Quote Date: The model will pull corresponding forward price, volatilities, and correlation projections for electricity and fuel commodities. Treasury discount curves are

also included. The same Market Quote Date will be used for all bids during each evaluation phase.

- Term: Start and End date
- Transmission Cost assumptions
- Rate Base Inputs: if applicable
- Point of Delivery (POD) and Point of Receipt (POR)
- Dispatch Pattern
- Firm/Unit Contingent
- Resource Type
- Product Source
- Variable O&M Payment (\$/MWh)
- VOM costs (\$MWH)
- Fixed Energy Payment (\$/MWh, if applicable)
- Capacity Charge (\$/KW-mo, if applicable)
- Resource/POD Availability by Month
- Forward Price Curve Multiplier by Month
- Corporate Financial Inputs – Inflation Curve, WACC, etc.

Comparison Metric

The comparison metric will be the projected net present value revenue requirement (net PVRR) per kilowatt month (Net PVRR/kW-mo). The net PVRR component views the value of the energy and capacity as a positive, and the offsetting costs as negative. The larger the net PVRR, the more valuable a given resource is to PacifiCorp’s customers. The net PVRR/kW-mo metric is the annuity value which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same net PVRR as a straight NPV calculation.¹⁸

Bid Cost Relative to Adjusted Price Curves	Price Factor Weighting
Less than or equal to 80% of adjusted price projections	70%
Greater than 80% of adjusted price projections but less than 140% of adjusted price curves	Linearly interpolated
Equal to or greater than 140% of the adjusted price projection	0%

C. NON-PRICE FACTORS (UP TO 30%)

The primary purpose of the non-price analysis is to help gauge the factors related to the proposal which are outside of price. A matrix will be established for each non-price factor and will be used to compare the bids with one another. Non-price factors will be weighted up to 30% (in combination with the price scores) in the determination of which proposals will be chosen for the initial shortlist. The non-price factor criteria are

¹⁸The term “straight NPV calculation” refers to the act of present-valuing the net of the nominal capacity and energy value, and costs, to derive a net present value of the net margin between value and costs. To the extent that all proposals are above 140% of adjusted price curves for the Initial shortlist which will be ranked by percentage.

identified in Chart 4 below. Bids will be evaluated and scored in three discrete categories: (1) 100% of the percentage weight; (2) 50% of the percentage weight; or (3) 0% of the percentage weight. Bids will be evaluated based on their ability to demonstrate the proposal is thorough, comprehensive and provides limited risk to the buyer prior to PacifiCorp performing due diligence on any given Bid. Bids which have a demonstrated track record or are mature proposals will be more highly evaluated. Chart 4 lists the key non-price criteria and the basis for weighting for each criterion.

CHART 4 – NON-PRICE FACTORS

Non-Price Factor	Non-Price Factor Weighting
Conformity to RFP requirements	6%
Conformity to pro forma PPA or BOT	6%
Status of project development	6%
Bidder's experience	6%
Performance guarantees	6%

Step 2 – Integrated Resource Plan – Final Shortlist

The Company will use its current wind resource valuation methodology for evaluating bids for inclusion in the final shortlist. This methodology, called the Alternative Compliance Cost (ACC) method, uses the Company's production cost simulation system and its Forward Price Curve to generate a market-based alternative comparison of the bid resources. In determining the alternative, the Company first runs the production cost simulation system (the Planning and Risk, or PaR model) in stochastics mode using the then-current IRP preferred portfolio. The PaR model is then run a second time with the uncommitted future renewable resources removed from the preferred portfolio. The resulting production costs from this second model run reflect the market-based energy costs incurred as a result of no longer adding renewable resources to the IRP preferred portfolio. Next, other costs and benefits of the specific bid resource being considered are compared against the PaR model results. This comparison is in the form of a bid resource ACC value, which represents the resource cost, over the life of the project that yields a zero net PVRP difference with respect to the PaR model's market-based resource alternative. A negative ACC value, expressed on a dollar-per-MWh basis, indicates that the bid resource compares favorably to the market-based alternative, whereas a positive ACC value indicates that the bid resource compares unfavorably to the market-based alternative.

D. FINAL SELECTIONS; OTHER FACTORS

The two steps described above constitute the formal evaluation process and will lead to the compilation of the final shortlist of resources for further negotiation. After completing the formal evaluation process described above, but before making the final resource selections to be submitted for approval or acknowledgement, the Company will take into consideration, in consultation with the IE and the Consultant, certain other factors that are not expressly or adequately factored into the formal evaluation process, but that are required by applicable law or Commission order to be considered. In addition the

Company may evaluate and include in its final finally and prudent costs associated with direct and or indirect debt directly related with the resource procurement consistent with the information outlined in Section 5(I) and (J).

The Utah Energy Resource Procurement Act requires consideration of at least the following factors in determining whether a resource selected by the Company should be approved as in the public interest:

- whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;
- long-term and short-term impacts;
- risk;
- reliability;
- financial impacts on the affected electrical utility; and
- other factors determined by the Commission to be relevant.

Oregon Order No. 06-446, Guideline 10(d), requires that the Oregon IE evaluate the unique risks and advantages associated with a Self Build option, including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.

The Washington solicitation rules (WAC 480-107-001 et seq.) provide that ranking criteria must consider the following:

- Resource cost;
- Market-volatility risks;
- Demand side resource uncertainties;
- Resource dispatchability;
- Resource effect on system operation;
- Credit and financial risks to utility;
- Risks imposed on customers;
- Public policies regarding resource preference adopted by Washington state or the federal government;
- Environmental effects including carbon dioxide (CO₂);
- Differences in relative amounts of risk inherent among technologies, fuel sources, financing arrangements, and contract provisions; and
- Complements power acquisition goals identified in the IRP.

SECTION 7. AWARDING OF CONTRACTS

A. INVITATION

This RFP is merely an invitation to make proposals to the Company. No proposal in and of itself shall constitute a binding contract. The Company may, in its sole and absolute discretion, perform any one or more of the following:

- Determine, in consultation with the IE and Consultant, which proposals are eligible for consideration as proposals in response to this RFP.
- Issue additional subsequent solicitations for information and conduct investigations with respect to the qualifications of each Bidder.
- Disqualify proposals contemplating resources that do not meet the definition of Renewable Resources in this RFP.
- Supplement, amend, or otherwise modify this RFP, or cancel this RFP with or without the substitution of another RFP.
- Negotiate and request Bidders to amend any proposals.
- Select and enter into agreements with the Bidders who, in the Company's sole judgment, are most responsive to the RFP and whose proposals best satisfy the interest of the Company, its customers, and state legal and regulatory requirements, and not necessarily on the basis of any single factor alone.
- Issue additional subsequent solicitations for proposals.
- Reject any or all proposals in whole or in part.
- Vary any timetable.
- Conduct any briefing session or further RFP process on any terms and conditions.
- Withdraw any invitation to submit a response.

B. CONFIDENTIALITY AGREEMENT

All parties will be required to sign Confidentiality Agreements if they qualify for the final shortlist (**Appendix F**) prior to entering into negotiations with the Company.

C. NONRELIANCE LETTER

All parties will be required to sign a nonreliance letter if they are qualify for the final shortlist (**Appendix H**) prior to entering into negotiations with the Company.

D. POST-BID NEGOTIATION

Prior to entering into post-bid negotiation with Bidders, selected Bidders must execute the confidentiality agreement and the non-reliance letter in **Appendices F** and **H**, respectively.

PacifiCorp will further negotiate both price and non-price factors during post-bid negotiations. PacifiCorp will also include in its evaluation any factor that may impact the total cost of a resource, including but not limited to all of the factors used in the initial cost analysis plus consideration of accounting treatment and potential effects due to rating agency treatment. Post bid negotiation will be based on PacifiCorp's cost assessment. PacifiCorp will continually update its economic and risk evaluations until

both parties execute a definitive agreement acceptable to PacifiCorp in its sole and absolute discretion.

PacifiCorp shall have no obligation to enter into any agreement with any Bidder to this RFP and PacifiCorp may terminate or modify this RFP at any time without liability or obligation to any Bidder. In addition, this RFP shall not be construed as preventing PacifiCorp from entering into any agreement that PacifiCorp deems prudent, in PacifiCorp's sole opinion, at any time before, during, or after this RFP process is complete. Finally, PacifiCorp reserves the right to negotiate only with those entities who propose transactions that PacifiCorp believes in its sole discretion to have a reasonable likelihood of being executed.

E. SUBSEQUENT REGULATORY ACTION

Unless mutually agreed between the parties or unless required by actual (or proposed) law or regulatory order, at the time of contract execution, PacifiCorp does not intend to include a contractual clause whereby PacifiCorp is allowed to adjust contract prices in the event that an entity who has regulatory jurisdiction over PacifiCorp does not fully recognize the contract prices in determining PacifiCorp's revenue requirement. As of the issuance date for this solicitation, PacifiCorp is unaware of any such actual law or regulatory order.

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

POWER PURCHASE AGREEMENT

(RENEWABLE ENERGY)

BETWEEN

[_____]

**AND
PACIFICORP**

[Project]

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**POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY) (this “**Agreement**”), entered into this ___ day of ___, 200_, is between _____, a _____ (the “**Seller**”) and PacifiCorp, an Oregon corporation acting in its merchant function capacity (“**PacifiCorp**”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**.”

WHEREAS, Seller intends to construct, own, operate and maintain a wind-powered generation facility for the generation of electric energy located in _____ with an expected nameplate capacity rating of ____ (the “**Facility**”).

WHEREAS, Seller expects that the Facility will deliver to PacifiCorp [____] megawatt-hours (MWh) per calendar year 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 A**. Seller acknowledges that PacifiCorp will include this amount of energy and associated green tags in PacifiCorp’s resource planning.

WHEREAS, 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 hereof.

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

**SECTION 1
DEFINITIONS; RULES OF INTERPRETATION**

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

“**AAA**” is defined in Section 24.2.

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

“**As-built Supplement**” is a supplement to be added to **Exhibit 6.1** that describes the Facility as actually built, pursuant to Section 6.1 and includes an American Land Title Association survey of the Premises.

“**Availability**” means, for any Contract Year, the ratio, expressed as a percentage, of (x)

the aggregate sum of the turbine-minutes in which each of the Wind Turbines at the Facility was available to operate during a Contract Year over (y) the product of the number of Wind Turbines that comprise the Nameplate Capacity Rating as of Final Completion multiplied by the number of minutes in such Contract Year. A Wind Turbine shall be deemed not available to operate during minutes in which it is (a) in an emergency, stop, service mode or pause state; (b) in “run” status and faulted; (c) included in a Planned Outage, Maintenance Outage or Forced Outage; or (d) otherwise not operational or capable of delivering energy to the Point of Delivery; unless if unavailable due solely to (i) Force Majeure; (ii) a default by PacifiCorp; (iii) a curtailment in accordance with Section 4.4.1(b) or (c) or Section 4.4.2.

“Business Day” means any day on which banks in Portland, Oregon are not authorized or required by Requirements of Law to be closed, 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, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include PTCs or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Commercial Operation” means that not less than the Required Percentage of the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the System, all of which shall be Seller’s responsibility to receive or obtain, and which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

(1) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer (a) stating the Nameplate Capacity Rating of the Facility at the anticipated time of Commercial Operation, of at least the Required Percentage of the Expected Nameplate Capacity Rating, and (b) stating that the Facility is able to generate electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof;

(2) Start-Up Testing of the Facility shall have been completed;

(3) 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 System in conformance with the Generation Interconnection

Agreement and able to deliver energy consistent with the terms of this Agreement, [(d) the Facility is fully integrated and synchronized with the System].

(4) PacifiCorp shall have received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, and, with respect to legal matters, an opinion from counsel acceptable to PacifiCorp in the reasonable exercise of its discretion, stating that Seller has obtained or entered into all Required Facility Documents and (ii) copies of any or all such requested Required Facility Documents; *provided, however,* that Seller may redact or omit confidential or commercial terms from non-public Required Facility Documents.

Seller shall provide written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates described above. PacifiCorp shall have ten days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PacifiCorp reasonably believes has not been satisfied. If, within such ten day period, PacifiCorp does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PacifiCorp notifies Seller within such ten day period that PacifiCorp believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in PacifiCorp's notice to the mutual satisfaction of both Parties, and Commercial Operation shall occur on the date of such satisfaction, as specified in a notice from PacifiCorp to Seller. If Commercial Operation is achieved at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating and Seller informs PacifiCorp that Seller intends to bring the Facility to one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall provide PacifiCorp with a list of all items to be completed in order to achieve Final Completion ("Final Completion Punch List").

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

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A as its "prime rate". If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect 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 is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh for Net Output, Green Tags and Capacity Rights 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.

“**Covered Facility**” is defined in Section 11.9.

“**Covered Facility Right of First Offer**” is defined in Section 11.9.

“**Credit Matrix**” means the credit matrix attached hereto as Exhibit 14.

“**Credit Rating**” means, as of any date, a senior, unsecured long-term debt rating (or corporate rating if a such debt rating is not available) of (x) BBB- or greater from S&P, or (y) Baa3 or greater from Moody’s, provided if (x) or (y) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

“**Credit Support**” means the amount of Credit Support Security, if any, and subject to Section 8.1, that is required pursuant to the Credit Matrix.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 8.1.

“**Curtailed Energy**” is defined in Section 4.4.2.

“**Deficit Damages**” means a one time payment equal to (x) the difference between (a) Expected Nameplate Capacity Rating and (b) the Nameplate Capacity Rating of the Facility on the 120th day after the Guaranteed Commercial Operation Date, stated in MWs, multiplied by (y) _____ dollars (\$_____) per MW of difference. Seller’s total liability for Deficit Damages shall not exceed _____ dollars (\$_____).

“**Delay Damages**” are equal to (a) the Expected Energy, expressed in MWhs per year, divided by 365, multiplied by (b) PacifiCorp’s Cost to Cover. An Example illustrating the calculation of Delay Damages under certain stated assumptions is set forth in **Exhibit C**.

“**Effective Date**” is defined in Section 2.1.

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

“**Environmental Attributes**” means any and all claims, 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 PTCs or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the

Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

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

“Example” means an example of certain calculations to be made hereunder. 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.

“Expansion Energy” is defined in Section 20.4.

“Expected Energy” means ___ MWh of Net Output per year measured at the Point of Delivery, which is the Seller’s best estimate of the projected long-term average annual Net Output production based upon average wind conditions from the Facility, delivery to the Point of Delivery and the Expected Nameplate Capacity Rating. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit A**. If at Final Completion the Facility’s Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Expected Energy shall be reduced by ___ MWh per year for each full MW of Nameplate Capacity Rating below the Expected Nameplate Capacity Rating. Seller acknowledges that PacifiCorp will include Expected Energy in PacifiCorp’s resource planning. PacifiCorp acknowledges that wind is a variable resource and that the Facility’s actual annual output of Net Output and Green Tags in the ordinary course in any given year will be subject to variation caused by differences in the actual wind resource at the Facility from year to year.

“Expected Nameplate Capacity Rating” means __ MW, the expected maximum instantaneous generation capacity of the Facility.

“Facility” is defined in the Recitals and is more fully described in attached **Exhibit 6.1**.

“Facility Financing Date” means the closing date for the first transaction between Seller and a Lender relating to financing of the Facility.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Facility is fully operational and reliable, at or greater than the Required Percentage of the Expected Nameplate Capacity Rating, and interconnected, integrated, and synchronized with the Transmission Provider’s System, as evidenced (to the reasonable satisfaction of PacifiCorp) by the completion of all items set forth on the Final Completion Punch List, modified if necessary to reflect the Nameplate Capacity Rating, and that the completed Facility has been fully interconnected, fully integrated, and synchronized with the Transmission Provider’s System.

“Final Completion Punch List” is defined in the definition of “Commercial Operation.”

“Firm Market Price Index” means (i) 93% of the IntercontinentalExchange (ICE) [dependent upon resource location] Index, for On-Peak Hours, and (ii) 93% of the IntercontinentalExchange (ICE) [dependent upon resource location] Index for Off-Peak Hours.

For reference, a sample day's report from each of these indexes is attached as **Exhibit F**. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose hereunder, during the Term, PacifiCorp shall select as a replacement Firm Market Price Index or component an index or component acceptable to PacifiCorp that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity for the applicable periods.

"Force Majeure" means an event of Force Majeure as defined and described in Section 14.1.

"Forced Outage" means NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit D**, and specifically excludes any Maintenance Outage or Planned Outage.

"Generation Interconnection Agreement" means the agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

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

"Green Tags" means (1) the Environmental Attributes associated with all Output, together with (2) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility.

"Green Tags Price Component" means five dollars (\$5) per MWh; provided that if after the Effective Date a liquid market for Green Tags emerges in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder, PacifiCorp may in its discretion replace such \$5 per MWh with such designated market price reports for Green Tags, effective as of the time specified by PacifiCorp.

"Green Tag Reporting Rights" means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include 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 or renewable portfolio standard.

"Guaranteed Availability" is defined in Section 6.12.1.

“Guaranteed Commercial Operation Date” means that date which is 90 days after the Scheduled Commercial Operation Date.

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

“Interconnection Provider” means _____.

“Lender” means any entity lending money or extending credit (including any financing lease, monetization of tax benefits, backleverage financing or credit derivative arrangement) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes a Tax Investor (as defined in the Lender Consent).

“Lender Consent” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit 8.6**.

“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:

- (1) issued by a Qualifying Institution;
- (2) by its terms, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;
- (3) if 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 letters of credit are not increased, replaced or replenished as and when provided in Section 8; and
- (6) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement.
- (7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and acceptable to PacifiCorp in its reasonable judgment who (1) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (2) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (3) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of PacifiCorp, services previously or currently being rendered to Seller or its members or Affiliates, and (4) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. The engineers and engineering firms listed on **Exhibit G** are acceptable to PacifiCorp as “Licensed Professional Engineers” if they meet the requirements above.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached **Exhibit D**, and includes any outage involving 10% of the Facility's Wind Turbines that is not a Forced Outage or a Planned Outage.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

“Mediation Notice” is defined in Section 24.2(a).

“Mediation Procedures” is defined in Section 24.2.

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

“MW” means megawatt.

“MWh” means megawatt hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW, when operated in compliance with the Generation Interconnection Agreement and consistent with the Wind Turbine manufacturer’s recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered prior to the Commercial Operation Date and, if applicable, updated in a subsequent notice from Seller to PacifiCorp as required for Final Completion. The Nameplate Capacity Rating of the Facility shall not exceed __ MW.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy produced by the Facility and delivered at the Point of Delivery.

“**Network Resource**” is defined in the Tariff.

“**Network Service Provider**” means PacifiCorp acting in its regulated transmission function, as a provider of network service to PacifiCorp under the Tariff.

“**Off-Peak Hours**” means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, Pacific Prevailing Time, Monday through Saturday and hours ending 01:00:00 through 24:00:00, Pacific Prevailing Time, on Sundays and NERC designated holidays.

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

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

“**Output Shortfall**” is defined in Section 6.12.2.

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

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

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

“**PacifiCorp’s Cost to Cover**” means the positive difference, if any, between (1) the sum of (i) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, plus (ii) the Green Tags Price Component, minus (2) the Contract Price specified in Exhibit 5.1 in effect on such days, stated as an amount per MWh. If the difference between (1) minus (2) referenced above is zero or negative, then PacifiCorp’s Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 6.12.2 or Section 11.2.1. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (2). An Example illustrating the calculation of PacifiCorp’s Cost to Cover under certain stated assumptions is set forth in **Exhibit E**.

“**Permits**” means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership and operation of the Facility and occupancy of the Premises, including those specified in **Exhibit H**, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Planned Outage**” means NERC Event Type PO, as set forth in attached **Exhibit D**, and specifically excludes any Maintenance Outage or Forced Outage.

“**Pledge Interest**” is defined in Section 8.2.2.

“**Point of Delivery**” means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in

Exhibit 9.2.

“Premises” means the real property on which the Facility is or will be located, as more fully described on Exhibit 6.1.

“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” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term hereof 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.

“PTC Amount” is defined in Section 11.2.2.

“PUHCA” means the Public Utility Holding Company Act of 2005.

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

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

“Qualifying Institution” means the United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, or a foreign bank, with a net worth of at least \$1,000,000,000 and a credit rating on its long-term senior unsecured debt of at least “A” by S&P or “A2” by Moody’s.

“Reporting Month” is defined in Section 6.10.1.

“Required Facility Documents” means all Permits, authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Facility, including those set forth in **Exhibit 3.2.6**. Nothing set forth in **Exhibit 3.2.6** limits the obligations of Seller to obtain the Permits set forth in Exhibit H or otherwise required hereunder.

“Required Percentage” means 90%.

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

“RTO” means any entity that becomes responsible as system operator for, or directs the

operation of, the System.

“**S&P**” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Scheduled Commercial Operation Date**” means _____.

“**Security Interests**” is defined in Section 8.2.1.

“**Seller**” is defined in the Recitals.

“**Seller Indemnitees**” is defined in Section 12.1.2.

“**Seller’s Cost to Cover**” means the positive difference, if any, between (1) the Contract Price per MWh specified in **Exhibit 5.1**, and (2) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output and Green Tags not purchased by PacifiCorp as required hereunder. If the difference between (1) minus (2) referenced above is zero or negative, then Seller’s Cost to Cover shall be zero dollars (\$0), and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 11.2.2.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of the costs of development and construction, as described in the definition of “Lenders”, other than Affiliates of Seller.

“**Start-Up Testing**” means the start-up tests for the Facility as set forth in **Exhibit I**.

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

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

“**Tax Investor**” is defined in the Lender Consent.

“**Term**” is defined in Section 2.1.

“**Test Energy**” means any Output during periods prior to the Commercial Operation Date, and all associated Green Tags and Capacity Rights.

“**Transmission Provider**” means _____.

“**Transmission Service**” means, if applicable, the transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

“**Wind Leases**” means the wind leases that are required to operate the Facility, which Seller represents are truly and fully described on **Exhibit 3.2.8**, as the same may be supplemented, amended, extended, restated or replaced from time to time.

“Wind Turbine” means a [description of intended wind turbine model]. At its full Nameplate Capacity Rating, the Facility is expected to consist of ___ Wind Turbines.

“WECC” means the Western Electricity Coordinating Council.

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

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

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

1.2 Rules of Interpretation.

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof 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 hereof 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 hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5. Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider’s transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties

recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider.

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

(b) Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between the Seller and the Transmission Provider.

(c) Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

SECTION 2

TERM; FACILITY DEVELOPMENT

2.1 Term. This Agreement shall become effective when it is executed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided herein, shall remain in effect until the ____ (__) anniversary of the date of Final Completion (the "**Term**").

2.2 Milestones. Time is of the essence in the performance hereof, and Seller's completion of the Facility and delivery of Net Output and Green Tags by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones at the times indicated:

(a) Credit Support shall be posted according to the schedule set forth in Appendix D to RFP 2008R-1;

(b) Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date; and

(c) If Commercial Operation of the Facility is achieved based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, then Seller shall cause the Facility to achieve Final Completion on or before the 90th day after the Commercial Operation Date.

2.3 Project Construction and Delay Damages and Deficit Damages. Seller shall further perform as follows:

(a) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to PacifiCorp Delay Damages for each day from and after the Scheduled Commercial Operation Date through the date that the Facility achieves Commercial Operation.

(b) If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, PacifiCorp may terminate this Agreement pursuant to Section 11.

(c) If the Facility achieves Final Completion based on less than one hundred percent (100%) of the Expected Nameplate Capacity Rating, Seller shall pay to PacifiCorp Deficit Damages. If the Facility achieves Commercial Operation with a Nameplate Capacity Rating of less than 75% of Expected Nameplate Capacity Rating, in addition to all of PacifiCorp's other rights and remedies hereunder, PacifiCorp may terminate this Agreement with respect to all further obligations of PacifiCorp hereunder and retain all Credit Support Security.

(d) After the date of Final Completion, any partially completed Wind Turbines shall not be part of the Facility, and Seller shall not undertake to add those turbines or output from such turbines to the Facility without the prior written consent of PacifiCorp. Any output of such turbines and any Green Tags associated with such output shall be subject to Section 20.4.

2.4 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to Seller's delay in achieving Commercial Operation or Final Completion or failure to reach Final Completion based on one hundred percent (100%) of the Expected Nameplate Capacity Rating would be difficult or impossible to predict with certainty, and (b) that it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages and Deficit Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Section 2.4 shall not limit the amount of damages payable to PacifiCorp if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.5 Damages Invoicing. By the tenth (10th) day following the end of the calendar month in which the Scheduled Commercial Operation Date, Final Completion or other applicable event or condition under this Section Two occurs, and continuing on the tenth (10th) day of each calendar month during the period in which Delay Damages or Deficit Damages accrue (and the following months if applicable), PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of such damages and any amount due PacifiCorp in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Sections 10.3 and 10.4, 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.

2.6 PacifiCorp's Right to Monitor. During the Term, Seller shall permit PacifiCorp and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility. Between the Effective Date and thirty (30) days following the date of Final Completion, Seller shall, on or before the tenth (10th) day of each calendar month, provide PacifiCorp with a brief monthly status report for the preceding month.

(b) Monitor the status of the acquisition, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment, turbines, and warranties, (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between the Seller and manufacturer of the Facility's Wind Turbines and any other material items of Facility equipment that require testing for warranty agreements to be effective. Seller shall provide PacifiCorp with at least five (5) Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient wind or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient wind or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date. Seller does not herein grant PacifiCorp the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require PacifiCorp to review, comment on, or approve of any contract between Seller and a third party.

(d) Witness initial performance tests and other tests and review the results thereof; with Seller to make best effort to provide PacifiCorp five Business Days advance notice of each such major test.

(e) Perform such examinations, inspections, and quality surveillance as, in PacifiCorp's reasonable judgment, are appropriate and advisable to determine that each Wind Turbine has been properly commissioned and Commercial Operation and Final Completion have been achieved.

With respect to PacifiCorp's right to monitor under this Section 2.6, (a) PacifiCorp is under no obligation to perform any of these monitoring rights, (b) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (c) that PacifiCorp shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by PacifiCorp with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by PacifiCorp hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. PacifiCorp shall maintain

one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.6, which representatives shall have authority to act for PacifiCorp in all technical matters under this Section 2.6 but not to amend or modify any provision hereof. PacifiCorp's initial representatives and their contact information are listed in Exhibit 2.6. PacifiCorp may, by written notice to Seller, change its representatives or their contact information.

2.7 PTCs. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Net Output and Green Tags, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, PTCs during the Term.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1. Organization. It is duly organized and validly existing under the laws of the State its state of organization.

3.1.2. Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

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

3.1.4. No Contravention. The execution and delivery hereof do not contravene any provision of, or constitute a default under, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other body having authority to which it is subject.

3.1.5. Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

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

3.2.1. Organization. Seller is a limited liability company duly organized and validly existing under the laws of Delaware.

3.2.2. Authority. Seller has all required regulatory authority to make wholesale sales from the Facility; (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3. No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in **Exhibit 3.2.6** or (ii) without limiting Seller's obligations under Section 3.2.6 required in connection with the construction or operation of the Facility and expected to be obtained in due course;

(c) result in a breach of or constitute a default under any provision of any security issued by any of Seller's members or any Affiliates of Seller's members or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound.

3.2.4. Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against any of Seller, its members, or any Affiliate with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened against Seller, its members, or any Affiliate.

3.2.5. Accuracy of Information. No exhibit, contract, report or document furnished by Seller to PacifiCorp in connection with this Agreement, or the negotiation or execution hereof contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.6. Required Facility Documents. All Required Facility Documents are listed on **Exhibit 3.2.6**. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver Net Output to PacifiCorp in accordance with this Agreement. No unusually burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents and the anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. Seller shall notify PacifiCorp of any material consent or approval that (a) Seller determines is required for the construction, ownership or operation of the Facility, and (b) is not already listed in Exhibit 3.2.6.

3.2.7 Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Output at the Expected Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.8 Wind Leases. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit 3.2.8 as Wind Leases. Seller shall not amend any Wind Lease without PacifiCorp's consent, which PacifiCorp shall not unreasonably withhold. On or before the Commercial Operation Date, and continuing thereafter throughout the Term, Seller shall cause all Wind Leases to (i) be for remaining terms of no less than the Term, with options for renewal at the end of such periods for a further _____ years commencing no earlier than the end of the Term and (ii) contain a clause providing that should PacifiCorp exercise the option provided it in Section 5.6 to purchase the Facility, PacifiCorp's rent shall be for a fixed dollar per kilowatt hour set forth in such Wind Lease.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto 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 hereof.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Section 3 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4 **DELIVERIES OF NET OUTPUT AND GREEN TAGS**

4.1 Purchase and Sale. Except as otherwise expressly provided herein, 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 associated with Output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source). PacifiCorp shall be under no obligation to make any purchase hereunder other than Net Output and associated Green Tags. PacifiCorp shall not be obligated to purchase, receive or pay for energy (or associated Green Tags) that is not delivered to the Point of Delivery. 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 as Test Energy at the price specified in Section 5.1.1.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, Green Tags or Capacity Rights from the Facility to any party other than PacifiCorp; *provided, however*, that this restriction shall not apply during periods when PacifiCorp is in default hereof because it has, without excuse, failed to accept or purchase that Net Output or Green Tags if required to hereunder.

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

4.4 Curtailment.

4.4.1. Required Curtailment. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output (or associated Green Tags) that is not delivered to the Point of Delivery during times and to the extent that such Net Output (and associated Green Tags) are not delivered to the Point of Delivery because (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, pursuant to the terms of the Generation Interconnection Agreement, (b) the Network Service Provider or Transmission Provider Curtails (as defined in the Tariff) Net Output, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. The MWh amount of Net Output curtailed pursuant to this Section 4.4.1 shall be reasonably determined by Seller after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on (x) the time and duration of the curtailment period and (y) wind conditions recorded at the Facility during the period of curtailment and the tested and verified power curve for the wind turbines at the Facility. 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 energy that was not generated or delivered because of a curtailment described in this Section 4.4.1.

4.4.2. Voluntary Curtailment by PacifiCorp. Seller shall curtail deliveries of Net Output and associated Green Tags at any time, in whole or in part, and for any duration specified by PacifiCorp with no less than ten (10) minutes (or such lesser time as may be provided for, as between Seller and Interconnection Provider, in the Generation Interconnection Agreement) 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 pursuant to this Section 4.4.2 ("**Curtailment Energy**") shall be reasonably determined by Seller after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output at the Point of Delivery but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of Curtailment Energy based on (1) the time and duration of the curtailment period and (2) the number of MWhs that would have been generated based on the wind velocities recorded at the Facility

during the period of curtailment and the tested and verified power curve for the wind turbines at the Facility. 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 Curtailment Energy that was not generated or delivered because of a curtailment pursuant to this Section 4.4.2. PacifiCorp shall be obligated to pay Seller for the Curtailment Energy at the then applicable Contract Price. Notwithstanding any other provision hereof, during any period of curtailment pursuant to this Section 4.4.2, Seller shall not generate Net Output to the extent curtailed by PacifiCorp, or sell any portion of the Facility's energy to any third party. An example setting forth a calculation of payment due for Curtailment Energy under certain stated assumptions is set forth in **Exhibit 4.4.2**. Notwithstanding the foregoing, PacifiCorp's obligation to pay for Curtailment Energy pursuant to this Section 4.4.2 shall not apply during any times Seller would otherwise have been required to curtail pursuant to Section 4.4.1.

4.5 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the energy at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the tenth (10th) day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit 4.5** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. PacifiCorp shall be entitled to a refund of the Green Tag Price Component of any Net Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tag back to Seller. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, 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 transfers 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 hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers. Seller shall at its expense cause the Facility to maintain its registration in good standing with the Center for Resource Solution's Green-e program throughout the Term.

4.6 Capacity Rights.

4.6.1. Purchase and Sale of Capacity Rights. For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output and Green Tags on the terms and conditions set forth herein, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

4.6.2. Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp. PacifiCorp may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

4.6.3. Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to PacifiCorp.

SECTION 5 **CONTRACT PRICE; COSTS**

5.1 Contract Price; Includes Green Tags and Capacity Rights. PacifiCorp shall pay Seller the prices stated below for all deliveries of Net Output, and including associated Green Tags and Capacity Rights, up to the Maximum Delivery Rate. The Contract Price provided for in Section 5.1.2 and the price for Test Energy provided for in Section 5.1.1 include the consideration to be paid by PacifiCorp to Seller for all Green Tags and Capacity Rights associated with all Output, Net Output and Test Energy, respectively, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the Green Tags or Capacity Rights associated therewith.

5.1.1. Test Energy. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to PacifiCorp all Test Energy. PacifiCorp shall pay Seller (a) for Test Energy delivered at the Point of Delivery during On-Peak Hours, an amount per MWh equal to 75% of the Firm Market Price Index for On-Peak Hours and (b) for Test Energy delivered at the Point of Delivery during Off-Peak Hours, an amount per MWh equal to 75% of the Firm Market Price Index for Off-Peak Hours; *provided, however*, that (1) the amount to be paid by PacifiCorp for each MWh of such Test Energy shall in no event exceed 75% of the Contract Price specified for the first Contract Year, and (2) Seller's right to receive payment for such Test Energy is subject to PacifiCorp's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to PacifiCorp by Seller pursuant to Section 2.3.

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 Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in **Exhibit 5.1**.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, and

transmission line losses, and any operation and maintenance charges imposed by Transmission Owner or the Transmission Provider for the Interconnection Facilities. PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller shall bear all costs associated with the modifications to Interconnection Facilities or the System (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System and (b) any increase in generating capacity of 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 or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority up to and including, but not beyond, the Point of Delivery, on the generation of Net Output or Green Tags or on the sale of Net Output or Green Tags from Seller to PacifiCorp hereunder, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due all such taxes levied at or beyond the Point of Delivery upon a purchaser of power or Green Tags, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law.

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

5.6 Purchase Option. On the last day of the Term, PacifiCorp shall have the option to purchase the Facility and all rights of Seller therein or relating thereto, for the sum of \$1.00. Such option shall be exercised by notice from PacifiCorp to Seller provided no less than 30 days prior to the last day of the Term. Seller covenants that in the event PacifiCorp provides such notice of its exercise of this purchase option, that Seller shall sell, transfer, assign and convey to PacifiCorp all of the Facility and all rights of Seller therein or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others arising through Seller on the last day of the Term, including good and valid title to the Facility and Seller's rights in the Premises. In connection with such sale, transfer, assignment and conveyance, Seller shall (a) assign or otherwise make available, to the extent permitted by Requirements of Law and not already assigned or otherwise transferred to PacifiCorp, Seller's interest in all material Required Facility Documents and licenses, permits approvals and consents of any Governmental Authorities or other Persons that are then in effect and that are utilized for the operation or maintenance of the Facility; (b) cooperate with all reasonable requests of PacifiCorp for purposes of obtaining or making, or enabling PacifiCorp to obtain or make, any and all material Permits and licenses, permits, approvals and consents of any Governmental Authorities or other persons that are or will be required to

be obtained by PacifiCorp in connection with the use, occupancy, operation or maintenance of the Facility or the Premises in compliance with Requirements of Law; (c) provide PacifiCorp copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Facility, as shall be in the Seller's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility. Seller shall not take any action during the Term that would inhibit Seller's ability to comply with this provision.

5.7 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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 6.1** when it has been reviewed and approved by PacifiCorp. If the proposed As-built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, PacifiCorp may within fifteen days after receiving the proposed As-built Supplement give Seller a notice describing that PacifiCorp wishes to correct. If PacifiCorp does not give Seller such a notice within the fifteen (15) day period, the As-built Supplement shall be deemed approved. If PacifiCorp provides a timely notice requiring corrections, Seller shall in good faith cooperate with PacifiCorp to revise the As-built Supplement to address PacifiCorp's concerns. Notwithstanding the foregoing, PacifiCorp shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built.

6.2 Standard of Facility Operation.

6.2.1. General. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (i) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (ii) the Permits and Required Facility Documents; (iii) the Generation Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements hereof and (vi) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Owner or the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

6.2.2. Qualified Operator. From and after the Commercial Operation Date, Seller shall itself operate the Facility or cause the Facility to be operated by an entity that has at least two years of experience in operation of wind energy facilities of comparable size to the Facility and approved by PacifiCorp.

6.2.3. Fines and Penalties.

(a) Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings and Seller has (i) set aside and funded adequate reserves to cover such fines, penalties or legal costs in the event of an adverse determination, or (ii) posted security to PacifiCorp or Seller's Senior Lenders adequate to ensure Seller's ability to cover such fines, penalties or legal costs in the event of an adverse determination.

(b) If fines, penalties, or legal costs are assessed against or incurred by PacifiCorp on account of any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions hereof, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless PacifiCorp against any and all losses, liabilities, damages, and claims suffered or incurred by PacifiCorp as a result. Without limiting the generality of the foregoing, Seller shall reimburse PacifiCorp for all fees, damages, or penalties imposed on PacifiCorp by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default by Seller or a failure of performance by Seller hereunder.

(c) Seller shall reimburse PacifiCorp for all fees, damages, or penalties imposed on PacifiCorp by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default or a failure of performance by Seller hereunder.

6.3 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery as a Network Resource, including the costs of any System upgrades beyond the Point of Delivery necessary to interconnect the Facility with the System and to allow the delivery of all Output to the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Owner, the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. 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.

6.4 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System, and shall be

solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement. In the event there are unanticipated changes in FERC or Electric System Authority rules sufficiently significant to change the benefits, risks and burdens held by the Parties, the Parties shall meet in good faith to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

6.5 Outages.

6.5.1. Planned Outages. Except as otherwise provided herein, Seller shall not schedule Planned Outage during any portion of the months of [November, December, January, February, June, July, and August], except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.5.2. Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event 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 Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: [November, December, January, February, June 15 through June 30, July, August, and September 1 through September 15]. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after 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 shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3. Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility.

This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller 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 15% of the Nameplate Capacity Rating of the Facility being unavailable, the oral report shall be confirmed in writing by notice. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4. Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by 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 Capacity Rating of the Facility.

6.5.5. Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly net output set forth on **Exhibit A** takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility, and that such outages are not expected to substantially reduce the Facility's average estimated monthly output as set forth in **Exhibit A**.

6.6 Scheduling.

6.6.1. Daily Scheduling. [provide if applicable]

6.6.2. Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall 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 hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.6.3. Schedule Coordination. If, as a result hereof, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then (a) Seller shall acquire such RTO recognized standing (or shall contract with a third party who has 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.

6.7 Forecasting.

6.7.1. 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 Contract Year. This forecast shall include an expected range of uncertainty based on

historical operating experience. Seller shall update the forecast for each month by notice to PacifiCorp at least six Business Days before the first Business Day of such month.

6.7.2. Day-Ahead Forecasts and Updates. By 0600 PPT on the Business Day immediately preceding the day on which Net Output 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 notwithstanding the foregoing, Seller shall provide to PacifiCorp any forecasting updates it provides to the Transmission Provider as soon as they are provided to the Transmission Provider. The Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.7.2 in an efficient manner, including electronic mail or other such media as determined by PacifiCorp (which, at PacifiCorp's discretion, may be in lieu of or in addition to notice to PacifiCorp). Upon request by PacifiCorp, Seller shall provide a 24-hour telephone number that PacifiCorp may contact to determine the then-current status of the Facility.

6.7.3. 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 calendar year in 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.

6.7.4 PacifiCorp Right to Arrange Forecasting Services. PacifiCorp shall have the right from time to time during the Term to enter into contracts with wind forecast service providers for the provision of forecasts respecting the Facility. In such event, PacifiCorp shall provide Seller reasonable advance written notice sufficient to enable Seller to terminate its agreements with the Facility's existing forecast service providers without paying damages. Upon the termination date of such agreements, the wind forecaster selected by PacifiCorp shall during the term of such arrangement assume and discharge Seller's obligations under the remainder of this Section 6.7. The wind forecaster selected by PacifiCorp shall agree with PacifiCorp to render such forecasts in good faith and in accordance with Prudent Electrical Practices. During such periods, Seller shall pay to PacifiCorp as reimbursement an amount equal to the current market costs of the wind forecasting services for the Facility or the Facility's pro rata share of the costs of the forecasting services arranged by PacifiCorp. PacifiCorp shall timely share with Seller the forecasts generated by the wind forecasting services for which PacifiCorp contracts under this Section 6.7.4.

6.8 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting any restrictions herein on Nameplate Capacity Rating, if Seller elects to in-

crease, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of turbines or related infrastructure, PacifiCorp shall not be required to purchase any Net Output or Green Tags above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion or additional wind project in the geographic vicinity of the Facility, Seller shall have no rights pursuant hereto to require PacifiCorp to purchase (and PacifiCorp shall have no obligation to purchase pursuant hereto) the output of any such expansion or additional facility. Any such expansion or additional facility may not adversely impact the ability of either Party to fulfill its obligations pursuant hereto and shall be subject to Section 20.4.

6.9 Electronic Communications.

6.9.1. 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
- (c) the Facility's total instantaneous generation capacity.

Seller shall also transmit to PacifiCorp any other data from the Facility that Seller receives on a real time basis, including meteorological data, wind speed data, wind direction data and Output data. Seller shall provide such real time data to PacifiCorp on the same 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). PacifiCorp shall have the right from time to time to require Seller to provide additional telemetry equipment and facilities to the extent necessary and reasonable.

6.9.2. Transmission Provider Consent. Seller shall execute a consent, in the form required by Transmission Provider, to provide that PacifiCorp can read the meter and receive any and all data from the Transmission Provider relating to transmission of Output or other matters relating to the Facility without the need for further consent from Seller.

6.9.3. 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.

6.10 Reports and Records.

6.10.1. 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 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).

6.10.2. Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on 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.

6.10.3. 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 Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;

(c) Before Final Completion, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;

(d) Before Final Completion, a monthly report containing a brief summary of construction activity contemplated for the next Month;

(e) From and after the Commercial Operation Date, a monthly report detailing the Availability of the Facility; and

(f) At any time from the Effective Date, one year's advance notice of the termination or expiration of any agreement, including Wind Leases, pursuant to which the Facility or any equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any Wind Lease.

6.10.4. Information to Governmental Authorities. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data collected by Seller related to the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or Electric System Authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.5. Data Request. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any

Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.

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

6.10.7. Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents. Seller shall further provide PacifiCorp with all environmental impact mitigation measures it is taking in connection with the Facility's construction of operation, as well as copies of all agreements between Seller and federal, state or local environmental agencies.

6.10.8. Operational Reports. Seller shall provide PacifiCorp monthly operational reports in a form and substance acceptable to PacifiCorp and Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all operational data requested by PacifiCorp with respect to the performance of the Facility and delivery of energy, Green Tags or Capacity Rights therefrom.

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

6.10.10. Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, materially and adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to PacifiCorp of the same. In addition, following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding against the Seller before any court or Governmental Authority, Seller shall promptly give notice to PacifiCorp of the same.

6.10.11. Additional Information. Seller shall provide to PacifiCorp such other information respecting the condition or operations of Seller or the Facility as PacifiCorp may, from time to time, reasonably request.

6.10.12. Confidential Treatment. The monthly reports and other information provided to PacifiCorp under this Section 6.10 shall be treated as Confidential Business Information, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 9.5, 22.3, and pursuant to any applicable Requirements of Law. Seller shall have

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

6.11 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("**FIN 46**"), it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under FIN 46. If PacifiCorp or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by FIN 46. PacifiCorp shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.11.

6.12 Availability Guaranty.

6.12.1. Guaranteed Availability. Seller guarantees that the annual Availability of the Facility (the "**Guaranteed Availability**") shall be that set forth in **Exhibit B**. In no event shall the required Guaranteed Availability for any period be subject to any adjustment in the event that Seller achieves Final Completion at less than one hundred percent (100%) of the Expected Nameplate Capacity Rating.

6.12.2. Liquidated Damages for Output Shortfall. If the Availability in any given Contract Year falls below the Guaranteed Availability for that Contract Year, the resulting shortfall shall be expressed in MWh as the "Output Shortfall." The Output Shortfall shall be calculated in accordance with the following formula:

$$\text{Output Shortfall} = (\text{Guaranteed Availability} - \text{Availability}) \times \text{Expected Energy}.$$

If an Output Shortfall occurs in any given Contract Year, Seller shall pay PacifiCorp liquidated damages equal to the product of (i) the Output Shortfall for that Contract Year, multiplied by (ii) PacifiCorp's Cost to Cover for that Contract Year; *provided, however*, for the first calendar year in which Commercial Operation occurs the Output Shortfall shall be prorated on the basis of the number of days in the period from the Commercial Operation Date through to the end of such calendar year. Each Party agrees and acknowledges that (a) the damages that PacifiCorp would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty and (b) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages. An Example calculation of liquidated damages for an Output Shortfall is included in **Exhibit 6.12.2**.

6.12.3. Annual Invoicing. On January 31 of each Contract Year, PacifiCorp shall deliver to Seller an invoice showing PacifiCorp's computation of Net Output and Output Shortfall, if any, for the prior Contract Year and any amount due PacifiCorp for liquidated damages pursuant to 6.12.2 in respect thereof. In preparing such invoices, PacifiCorp shall utilize the meter data provided to PacifiCorp for the Contract Year in question, but may also rely

on historical averages and such other information as may be available to PacifiCorp at the time of invoice preparation, if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, PacifiCorp shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract 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, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Seller within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements 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 acceptance tests, (c) in connection with the operation and maintenance of the Interconnection Facilities, (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 Sections 2.6 or 10.5, and (f) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release the Seller against and from any and all Liabilities resulting from actions or omissions by any person or entity within the PacifiCorp Indemnitees in connection with their access to the Facility Site, except to the extent that such damages are caused or exacerbated by the intentional or gross negligent act or omission of any Seller Indemnitee.

6.14 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes. Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

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 and associated Green Tags to PacifiCorp hereunder, Seller shall, to the extent required to prevent Seller from being regulated as a "Public Utility" pursuant to PUHCA or otherwise, 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, for cause, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing with recognized expertise in FERC matters and 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, to the extent required to prevent Seller from being regulated as a “Public Utility” pursuant to PUHCA or otherwise, maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF.

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 hereunder before Commercial Operation and within ten (10) days after filing such applications. During the Term, Seller shall maintain its EWG status (to the extent it is required by law to do so) and its authority to sell power hereunder.

SECTION 8

SECURITY AND CREDIT SUPPORT

8.1 Credit Support. At any time during the Term, PacifiCorp may require Seller to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its’ Credit Rating or that of the entity providing credit assurances as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody’s, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing credit assurances as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer’s proprietary credit scoring model developed in conjunction with a third party, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall provide the Credit Support in the form of: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow.

8.1.1. Use of Credit Support Security to Pay Amounts Due to PacifiCorp. If Seller fails to pay any amount due to PacifiCorp within the time provided for payment hereunder, PacifiCorp shall be entitled to and shall draw upon the Credit Support Security from time to time in an amount equal to the amount unpaid, and Seller shall be required to replenish or reinstate the Credit Support Security up to the amount specified in Credit Matrix. Without limiting its other remedies hereunder, PacifiCorp shall also be entitled to draw upon the Credit Support Security for damages arising if this Agreement is terminated under Section 11 because of Seller’s default.

8.2 Subordinated Security Interests (SECTION 8.2 IS APPLICABLE ONLY FOR AGREEMENTS BACKED BY AN ASSET).

8.2.1. Security Interests. On or before the Effective Date, and simultaneously with the acquisition by Seller after the Effective Date of any additional real property in connection with the Facility, Seller shall execute, file and record such agreements, documents, instruments, mortgages, deeds of trust and other writings as PacifiCorp may reasonably request, all in form and substance reasonably satisfactory to PacifiCorp, to give PacifiCorp a perfected security interest in and lien on the Facility, the Premises, all present and future real property, personal property and fixtures therein and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Facility, as security for

Seller's performance and any amounts owed by Seller to PacifiCorp pursuant hereto (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to (i) the interests of the Senior Lenders, and (ii) to the extent provided by applicable law, any workers', mechanics', suppliers' or similar liens arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within five (5) Business Days of the commencement of any proceeding to foreclose the lien.

8.2.2. Pledge of Ownership Interests. On or before the Effective Date, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as PacifiCorp may request, all in form and substance satisfactory to PacifiCorp, to give PacifiCorp a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to PacifiCorp pursuant hereto (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the Senior Lenders.

8.2.3. Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by PacifiCorp to confirm and continue the validity, priority, and perfection of the Security Interests and the Pledge Interest. The granting of the Security Interests and the Pledge Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to PacifiCorp by reason of any breach or default by Seller hereunder or the termination hereof prior to the expiration of the Term.

8.2.4. Transfer of Required Facility Documents. The Security Interests shall provide that if PacifiCorp acts to obtain title to the Facility pursuant to the Security Interests, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to PacifiCorp, and shall diligently prosecute and cooperate in such transfers.

8.2.5. Debt-to-Equity Ratio Seller shall at all times during the Term maintain a debt-to-equity ratio of no less than 30% equity and annually provide to PacifiCorp by March 1 of each Contract Year a certificate of Seller's Chief Financial Officer attesting to the maintenance of such debt-to-equity ratio. Seller shall not grant a security interest to any third party in the Facility or any of its assets to support the obligations of any entity other than Seller, or any obligations of Seller other than obligations that relate directly to the Facility.

8.3 Annual and Quarterly Financial Statements. If requested by PacifiCorp from time to time, 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 hereunder, 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 any credit security, Seller shall,

within five (5) Business Days, replenish or reinstate the drawn security to the full amount then required by this Section 8. At any time the Seller or its credit support provider(s), if applicable, must maintain Credit Ratings such that the amount of Credit Support required in Section 8.1 is maintained during the Term.

8.5 Senior Lender Protective Provisions. PacifiCorp agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent attached hereto as **Exhibit 8.6** for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however,* that except as provided in the form of the Lender Consent, in no event shall PacifiCorp be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from PacifiCorp with regard hereto, then Seller shall reimburse PacifiCorp for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to PacifiCorp at the closing of the financing as a condition to the effectiveness of PacifiCorp's consents, documents and opinions.

SECTION 9 **METERING**

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; *provided, however,* that PacifiCorp acting in its merchant function capacity shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment.

9.2 Metering. Metering shall be performed at the location and in the manner specified in **Exhibit 9.2**, the Generation Interconnection Agreement and as necessary to perform Section 4.5 and Seller's other obligations hereunder. All quantities of energy purchased hereunder shall reflect the net amount of energy flowing into the System at the Point of Delivery.

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 one-half of one percent (0.5%), 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) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment.

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.

9.5 Meter Data. Upon written request by PacifiCorp, Seller shall promptly request the Interconnection Provider or Transmission Provider in writing to provide any and all meter or other data associated with the Facility or Net Output directly to PacifiCorp. Notwithstanding any other provision hereof, PacifiCorp shall have the right to provide such data to any Electric System Authority.

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Seller shall be the WREGIS Qualified Reporting Entity, provided that PacifiCorp may at its option, without being obligated to do so, elect to perform the Qualified Reporting Entity functions for the Facility.

SECTION 10

BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the tenth (10th) day following the end of each calendar month, Seller shall deliver to PacifiCorp a proper invoice showing Seller's computation of Net Output delivered to PacifiCorp during such month. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of each month, payment for Seller's deliveries of Net Output and associated Green Tags to PacifiCorp

10.2 Offsets. PacifiCorp may offset any payment due hereunder against amounts owing from Seller to PacifiCorp pursuant hereto or any other agreement between the Parties. PacifiCorp's exercise of recoupment and set off rights shall not limit the other remedies available to PacifiCorp hereunder, under such other agreements, or otherwise.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate 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 hereunder, 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. Except with respect to invoices provided under Section 6.12.3, 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 after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any 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 at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, 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 hereunder:

11.1.1. Defaults by Either Party.

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

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

(c) A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(d) A Party otherwise fails to perform any material obligation hereunder if the failure is not cured within 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 30 day period shall be extended by an additional 60 days if (a) the failure cannot reasonably be cured within the 30 day period despite diligent efforts, (b) the default is capable of being cured within the additional 60 day period, and (c) the defaulting Party commences the cure within the original 30 day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.1.2. Defaults by Seller.

(a) Seller fails to post, increase, maintain or replenish any Credit Support Security as required in Section 8.

(b) Seller fails to (i) cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, or (ii) complete all items included on the Final Completion Punch List by 120 days after the Commercial Operation Date.

(c) Seller sells energy, Green Tags or Capacity Rights from the Facility to a Party other than PacifiCorp in breach hereof 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.

(d) Seller defaults under any material agreement with third parties relating to the ownership, interconnection, operation, transmission from, maintenance or repair of the Facility, and fails to cure such default within the time required under such agreement, after the expiration of applicable notice, cure and waiver periods.

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

(f) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents, Permits, land rights, interconnection rights or other material rights necessary to own or operate the Facility, after the expiration of applicable notice, cure and waiver periods.

11.2 Remedies for Failure to Deliver/Receive.

11.2.1. Remedy for Seller's Failure to Deliver. If Seller fails to deliver all or part of the energy (and associated Green Tags) required to be delivered as Net Output pursuant hereto, and such failure is not excused under the terms hereof or by PacifiCorp's failure to perform, then Seller shall pay PacifiCorp within five (5) Business Days after invoice receipt, an amount equal to (i) PacifiCorp's Cost to Cover multiplied by the Net Output not delivered, (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, and (iii) 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). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2. Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output and associated Green Tags required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased. In addition, to the extent Seller is unable to sell the Net Output to third parties, PacifiCorp shall be obligated to pay Seller an amount (the "**PTC Amount**") equal

to the sum of (a) the value of the PTCs, if applicable, that would have been earned by Seller associated with the amount of such Net Output not purchased by PacifiCorp (and not excused under the terms hereof or by Seller's failure to perform) at no more than \$19.00 MWh adjusted annually for inflation, plus (b) an amount in respect of any taxes on the PTC Amount required to be paid by Seller to any taxation authority, to the extent that Seller is not eligible to receive the PTC value associated with such Net Output as a result of Seller's inability to sell such Net Output to a substitute buyer and provided that Seller has used all commercially reasonable efforts to mitigate its damages (as provided in Section 11.6) to avoid the loss of PTC eligibility for such amounts. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3. Remedy for Seller's Failure to Sell/Deliver Capacity Rights. Seller shall be liable for PacifiCorp's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights to PacifiCorp.

11.3 Termination and Remedies. Upon the occurrence of, and during the continuation of, an event of default hereunder, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such termination date. Further, during the continuation of default by Seller, and until it has recovered all damages incurred on account of such default by Seller, without exercising its termination right, PacifiCorp may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6). 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. In the event of a termination hereof:

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

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid.

(c) Before and after upon the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6).

(d) The provisions of Sections 4.5, 5.4, 6.10.4, 6.10.5, 8.2, 9.5, 10.3, 10.4, 10.5, 11.4, 11.5, 11.9, 12, 20.3 and 23 shall survive the termination hereof.

11.4 Termination of Duty to Buy; Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require PacifiCorp to purchase energy from the Facility under PURPA (on account of its

status as a QF), or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PacifiCorp to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the Counties in which the Facility or Premises are situated, and of the U.S. Bureau of Land Management or other federal agency as applicable, a memorandum in the form of **Exhibit 11.4** to provide constructive notice to third parties of Seller's agreements under this Section 11.4 and under PacifiCorp's Covered Facility Right of First Offer and Section 8.2 hereof with respect to PacifiCorp's subordinated lien rights.

11.5 Termination Damages. If this Agreement is terminated as a result of a default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. Amounts owed pursuant to this Section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

11.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" by Seller shall require Seller to (i) use commercially reasonable efforts to maximize the price for energy received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such energy (and associated Green Tags) not purchased or accepted by PacifiCorp, and (ii) offering to sell to PacifiCorp (prior to selling to any third party) the Green Tags associated with such energy at the price then applicable to Green Tags hereunder.

11.7 Credit Support Security. If this Agreement is terminated because of Seller's default, PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any Credit Support Security or security held by PacifiCorp in whatever form to reduce any amounts that the Seller owes PacifiCorp arising from such default.

11.8 Step-In Rights. (SECTION 11.8 IS APPLICABLE ONLY FOR AGREEMENTS BACKED BY AN ASSET).

11.8.1 Failure to Achieve Commercial Operation. If Seller fails to achieve Commercial Operation of the Facility by the Guaranteed Commercial Operation Date, PacifiCorp shall have the right to enter the Facility and do all such things as PacifiCorp may consider necessary or desirable to complete the Facility and cause Commercial Operation to occur. PacifiCorp may at its option following Commercial Operation Date (a) return the Facility to Seller upon execution of an indemnity and release by Seller of all claims arising out of the period of PacifiCorp's entry on the Facility in a form reasonable acceptable to PacifiCorp or (b) failing the execution of such release or indemnity, (i) operate the Facility for the Term pursuant to Section 11.8.2 or (ii) terminate this Agreement without payment of any damages. Seller shall indemnify and hold PacifiCorp harmless from and against all losses, costs, charges and expenses

incurred by PacifiCorp in connection with exercise of its rights under this Section 11.8.1, whether to third parties or otherwise, other than due to the gross negligence or willful misconduct of PacifiCorp.

11.8.2. License to Operate Facility. Seller hereby irrevocably grants to PacifiCorp the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations hereunder for the Term during the continuance of a an Event of Default by Seller. PacifiCorp may, but shall not be obligated to, exercise its rights as licensee under this Section in lieu of termination. During any period in which PacifiCorp is operating the Facility pursuant to the license granted in this Section, Seller shall, upon request from PacifiCorp, reimburse PacifiCorp for all reasonable costs and expenses incurred by PacifiCorp to operate and maintain the Facility.

11.8.3. Records and Access. Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon PacifiCorp's notice of its intent to exercise Step-In Rights pursuant to Section 11.8.1 or 11.8.2, PacifiCorp, its employees, contractors, or designated third parties shall have the right to enter the Site and the Facility for the purpose of constructing or operating the Facility. Upon the exercise by PacifiCorp of the Step-In Rights, the Seller shall cause the Facility operator (and any Person within the control of the Seller) to give PacifiCorp access to and control of the operation and maintenance of the Facility to the extent reasonably necessary to enable PacifiCorp to exercise the Step-In Rights in respect of the part of the Facility so to be operated by PacifiCorp, and shall provide reasonable assistance and cooperation to PacifiCorp to effect safely the transfer of operational responsibility as may be requested by PacifiCorp. The Seller shall execute such documents and take such other action as may be necessary for PacifiCorp to effectuate its rights under this Section.

11.8.4. Return. PacifiCorp may, at any time, terminate its exercise of the Step-In Rights whether or not the applicable event has been cured. If at any time after exercising its Step-In Rights, PacifiCorp elects to return such possession to Seller, PacifiCorp shall provide Seller with at least ten (10) Days advance notice of the date PacifiCorp intends to return such possession, and upon receipt of such notice Seller shall take all measures necessary to resume possession of the Facility on such date.

11.8.5. No Assumption. PacifiCorp's exercise of its Step-In Rights shall not be deemed an assumption by PacifiCorp of any liability of the Seller due and owing prior to the exercise of such rights. PacifiCorp shall not assume any liability of the Seller for the period during which PacifiCorp exercises such Step-In Rights pursuant to this Section 11.8. During any period that PacifiCorp is exercising its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and all of its other property and its revenues. When exercising its Step-In Rights, PacifiCorp shall assume possession, operation, and control of the Facility solely as agent for Seller. In no event shall PacifiCorp' election to exercise the Step-In Rights be deemed to constitute a transfer of ownership of or title to the Facility or any assets of Seller.

11.8.6. Costs and Expenses. Seller shall indemnify and hold harmless PacifiCorp from and against all losses, costs, charges and expenses incurred by PacifiCorp in connection

with exercise of its rights under this Section 11.8 other than due to the gross negligence or willful misconduct of PacifiCorp. In connection with its exercise of rights under this Section 11.8, PacifiCorp shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by PacifiCorp hereunder. PacifiCorp's exercise of such recoupment and set off rights shall not limit the other remedies available to PacifiCorp hereunder or otherwise.

11.9 Right of First Offer for Facility Output. In the event of any termination hereof by PacifiCorp pursuant to Section 11.1.2, in addition to PacifiCorp's rights to collect Delay Damages and its remedies under the Credit Support Security, PacifiCorp shall have a right of first offer (the "**Covered Facility Right of First Offer**") on the output of any wind-powered generation facility (a "**Covered Facility**") that from time to time may be constructed by Seller or any Affiliate of Seller on the Premises, up to (but not to exceed) an amount equal to the Expected Energy at the Contract Price. The Covered Facility Right of First Offer shall be exercisable by PacifiCorp through the fifth (5th) anniversary date of PacifiCorp's notice of termination. Seller shall provide PacifiCorp with no less than fifteen (15) days' (but no more than twelve (12) months') prior written notice of the anticipated commercial operation date for any wind turbines constituting part of a Covered Facility and not previously subject to PacifiCorp's Covered Facility Right of First Offer. PacifiCorp shall notify Seller within sixty (60) days as to whether PacifiCorp elects to purchase the output of such portions of the Covered Facility. If PacifiCorp elects to purchase the output of such portions of the Covered Facility, such output (along with associated Green Tags) shall be sold to PacifiCorp for the contract price that would have applied to energy and associated Green Tags purchased by PacifiCorp hereunder had this Agreement remained in effect, at the rates and for the periods indicated in **Exhibit 5.1**. PacifiCorp shall not have a Covered Facility Right of First Offer (a) with respect to the output of any turbines constituting a portion of the Covered Facility that has been offered to PacifiCorp pursuant to this Section 11.9 on an earlier occasion and not been accepted by PacifiCorp, or (b) with respect to any output that would cause the total output purchased by PacifiCorp pursuant to its Covered Facility Right of First Offer to exceed the amount of the Expected Energy.

11.10 Cumulative Remedies. The rights and remedies provided to PacifiCorp hereunder are cumulative and not exclusive of any rights or remedies of PacifiCorp.

SECTION 12

INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1. Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall release, indemnify and hold harmless PacifiCorp, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnities**") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney's fees, both at trial and on appeal, whether or not suit is brought) (collectively, "**Liabilities**") resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or

economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Buyer Indemnities.

12.1.2. Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “**Seller Indemnities**”) against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance by PacifiCorp of its obligations hereunder for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity within the Buyer Indemnities, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnities.

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

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

12.1.5. Consequential Damages. **EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES, DELAY DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, PTC LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.**

SECTION 13 **INSURANCE**

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, 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 13** during the periods specified on **Exhibit 13**.

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 13** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit 13**). The certificate (a) shall not include the legend “certificate is not evidence of coverage” or any statement with similar effect, (b) the insurer shall have a firm obligation to provide PacifiCorp with thirty (30) days prior written notice of coverage modifications (not merely an obligation to “endeavor” or words of similar effect), and (c) shall be endorsed by a person who has authority to bind the insurer. Within thirty (30) days after the date by which such policies are required to be obtained, Seller shall provide PacifiCorp with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit 13**. 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. “**Force Majeure**” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (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 hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of Facility Wind Turbines or other equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure, (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5, (vi) delay or failure of Seller to obtain or perform any Required Facility Document, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection provider (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a direct result of an event of Force Majeure); (ix) Seller’s failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to Transmission Owner, Transmission Provider or Interconnection Provider; or (x) any event attributable to the use of Transmission Owner Interconnection Facilities for deliveries of Output to any party other than PacifiCorp. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder 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 five (5) days 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 to remedy the effect of the Force Majeure; and

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

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding 180 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the event of Force Majeure, with respect to its obligations hereunder, 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 hereunder before the effective date of such termination.

SECTION 15 **SEVERAL OBLIGATIONS**

Nothing contained herein 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.

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

SECTION 18
NON-WAIVER

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof 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 Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

SECTION 20
SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Permitted Assignments. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) subject to Section 20.3, transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller); provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. Except with respect to collateral assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, 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. PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp shall be released from liability hereunder if its assignee meets the requirements of

clauses (x) and (y) in the immediately preceding sentence and the requirement of clause (z) in the immediately preceding sentence shall not apply to such assignment. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

20.3 Right of First Offer of 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 Seller or 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. The provisions of this Agreement will bind any successor or transferee of Seller as if such successor or transferee were the Seller.

20.3.2. PacifiCorp’s Rejection of Offer; Revival of Offer. If PacifiCorp does not accept the offered terms and conditions within 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 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 or any Affiliate of Seller intends (a) to install equipment on the Premises in addition to the equipment included in the original Facility, and such installation is designed to increase the capacity of the Facility to more than Facility Nameplate Capacity Rating at Final Completion, or (b) to otherwise enable the Facility or any expansion thereof to produce more than the Maximum Delivery Rate, Seller shall first offer (or cause its Affiliate to offer) the excess above the Maximum Delivery Rate (the “**Expansion Energy**”) to PacifiCorp. Such 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.

20.4.2. 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 (or the applicable Affiliate of 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 (or its Affiliate) 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 (or cause its Affiliate to 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 (or its Affiliate) under this Section, the parties shall within a further sixty (60) days enter into a power purchase agreement in substantially the same form as this Agreement for the purchase and sale of such Expansion Energy (with the security and energy and Green Tags delivery 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 Capacity Rating of the Facility), but incorporating such changes as are expressly identified in the terms and conditions offered by Seller (or its Affiliate).

SECTION 21
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed 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: [to be provided]

To PacifiCorp: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232- 2315
Attn: Sr. Vice President, Commercial & Trading
Telefacsimile (503) 813-6260

with a copy to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Director of Contract Administration, C&T
Telefacsimile (503) 813-6291

with copies to: PacifiCorp Energy Legal Department
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Assistant General Counsel
Telefacsimile (503) 813-6761

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

22.3 Notices to Senior Lenders. The requirements concerning notice by PacifiCorp to Senior Lenders, if any, are set forth in the Lender Consent, if any.

SECTION 23 **CONFIDENTIALITY**

23.1 Confidential Business Information. The following constitutes “**Confidential Business Information,**” whether oral or written: (a) the parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the date hereof, (b) the terms hereof, (c) information provided under Section 6.10.1, (d) the actual charges billed to PacifiCorp hereunder, and (e) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation, and (f) information provided by one Party to the other pursuant to the terms of this Agreement. 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 hereof 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: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law, (ii) in order for PacifiCorp to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, PacifiCorp may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Section 23.1 (d) or 23.1(e). In the event a Party is required by law or by a 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 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that could embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp’s net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource

planning reports, reports to entities such as the North American Electric Reliability Council, Western Electricity Coordinating Council, Pacific Northwest Utility Coordinating Committee, Western Regional Generation Information System, or similar or successor organizations, or similar or successor forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller if PacifiCorp has obtained in such proceedings a protective order covering such Confidential Business information.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 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 injunctive relief.

23.5 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, Seller shall first provide a copy thereof to PacifiCorp for its review and approval. Any use of PacifiCorp's name in such news release or promotional material must adhere to PacifiCorp's publicity guidelines then in effect; any use of Berkshire Hathaway's name requires PacifiCorp's prior written consent.

SECTION 24 **DISAGREEMENTS**

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, 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 after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 24.2 below. All negotiations pursuant to this clause are confidential.

24.2 Mediation. If the dispute is not resolved within thirty (30) days after 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 request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the "AAA"), as amended and effective on July 1, 2003 (the "Mediation Procedures"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

(a) The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“Mediation Notice”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in Portland, Oregon.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days after receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2(c), and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2(f). The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

(e) All verbal and written communications between the parties and issued or prepared in connection with this Section 24.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 24.2 may be extended by mutual agreement.

24.3 Place of Contract Formation; Choice of Forum. Seller and PacifiCorp acknowledge and agree that this Agreement has been made and entered into as of the date first set forth above in the City of Portland, Oregon. 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, or if such court does not have jurisdiction, in the Circuit Court for Multnomah County, Oregon. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, and), (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 herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

24.4 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 between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON 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 HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

24.6 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, to enjoin any actual or threatened breach of any material obligation of the other Party hereunder. 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 hereunder, and that any liability limits contained herein shall not operate to limit the exercise of PacifiCorp's remedies in equity to cause Seller to perform its obligations hereunder. 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, hold in its own name or be signatory to (as the case may be) all assets and Required Facility Documents 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: _____

EXHIBIT A

ESTIMATED MONTHLY OUTPUT

	On-Peak Hours	Off-Peak Hours	Total
January	___MWh	___MWh	___MWh
February	___MWh	___MWh	___MWh
March	___MWh	___MWh	___MWh
April	___MWh	___MWh	___MWh
May	___MWh	___MWh	___MWh
June	___MWh	___MWh	___MWh
July	___MWh	___MWh	___MWh
August	___MWh	___MWh	___MWh
September	___MWh	___MWh	___MWh
October	___MWh	___MWh	___MWh
November	___MWh	___MWh	___MWh
December	___MWh	___MWh	___MWh
Total	___MWh	___MWh	___MWh

EXHIBIT B

GUARANTEED AVAILABILITY

<u>Contract Year</u>	<u>Guaranteed Availability</u>
1	70.0%
2	80.0%
3 - end of Term	87.5%

EXHIBIT C

EXAMPLE OF CALCULATION OF DELAY DAMAGES

For the purposes of this example only, assume the following:

(Note: These assumptions are illustrative only. Actual terms are as defined in this Agreement)

Expected Energy = 185,000 MWhs

PacifiCorp's Cost to Cover = as set forth in the table below

Scheduled Commercial Operation Date: December 31, 2009

Actual Commercial Operation Date: January 15, 2010

DATE	A PacifiCorp's Cost to Cover	B Delay Damages (A X 185,000 / 365)
Thursday, January 14, 2010	\$14.15	\$7,171.92
Wednesday, January 13, 2010	\$20.90	\$10,593.15
Tuesday, January 12, 2010	\$13.90	\$7,045.21
Monday, January 11, 2010	\$16.15	\$8,185.62
Sunday, January 10, 2010	\$16.15	\$8,185.62
Saturday, January 09, 2010	\$14.90	\$7,552.05
Friday, January 08, 2010	\$17.15	\$8,692.47
Thursday, January 07, 2010	\$23.15	\$11,733.56
Wednesday, January 06, 2010	\$19.90	\$10,086.30
Tuesday, January 05, 2010	\$11.90	\$6,031.51
Monday, January 04, 2010	\$12.90	\$6,538.36
Sunday, January 03, 2010	\$12.90	\$6,538.36
Saturday, January 02, 2010	\$20.90	\$10,593.15
Friday, January 01, 2010	\$20.40	\$10,339.73

Total Delay Damages \$119,286.99

EXHIBIT D

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.

EXHIBIT E

EXAMPLE CALCULATION OF PACIFICORP'S COST TO COVER

Period in Question **January 1, 2009 through December 31, 2009**
Contract Price **\$60.77 /MWh (illustrative only)**
Green Tag Value **\$ 5.00 /MWh (illustrative only)**
Firm Market Price Index **Per Agreement definition**

DATE	A	B	C	D	E
	Firm On Peak	Firm Off Peak	Sun & NERC 24 HOUR	Weighted Average Firm Mkt Price C or [(16 X A + 8 X B) / 24]	PacifiCorp's Cost to Cover Max [0.0, (D + 5 - 60.77)] (\$/MWh)
Thursday, December 31, 2009	\$60.00	\$42.00		\$54.00	\$0.00
Wednesday, December 30, 2009	\$70.00	\$45.00		\$61.67	\$5.90
Tuesday, December 29, 2009	\$65.00	\$46.00		\$58.67	\$2.90
Monday, December 28, 2009	\$56.00	\$47.00		\$53.00	\$0.00
Sunday, December 27, 2009	-	-	\$45.64	\$45.64	\$0.00
Saturday, December 26, 2009	\$67.00	\$46.00		\$60.00	\$4.23
Friday, December 25, 2009	\$69.00	\$52.00		\$63.33	\$7.56
Thursday, December 24, 2009	\$61.00	\$45.00		\$55.67	\$0.00
Wednesday, December 23, 2009	\$65.00	\$50.00		\$60.00	\$4.23
Tuesday, December 22, 2009	\$66.00	\$43.00		\$58.33	\$2.56
Monday, December 21, 2009	\$54.00	\$47.00		\$51.67	\$0.00
Sunday, December 20, 2009	-	-	\$42.38	\$42.38	\$0.00
Saturday, December 19, 2009	\$53.00	\$46.00		\$50.67	\$0.00
Friday, December 18, 2009	\$59.00	\$47.00		\$55.00	\$0.00



Friday, January 16, 2009	\$56.00	\$40.00		\$50.67	\$0.00
Thursday, January 15, 2009	\$55.00	\$42.00		\$50.67	\$0.00
Wednesday, January 14, 2009	\$65.00	\$46.00		\$58.67	\$2.90
Tuesday, January 13, 2009	\$56.00	\$47.00		\$53.00	\$0.00
Monday, January 12, 2009	\$57.00	\$48.00		\$54.00	\$0.00
Sunday, January 11, 2009	-	-	\$41.55	\$41.55	\$0.00
Saturday, January 10, 2009	\$66.00	\$52.00		\$61.33	\$5.56
Friday, January 09, 2009	\$61.00	\$45.00		\$55.67	\$0.00
Thursday, January 08, 2009	\$65.00	\$50.00		\$60.00	\$4.23
Wednesday, January 07, 2009	\$66.00	\$43.00		\$58.33	\$2.56
Tuesday, January 06, 2009	\$54.00	\$47.00		\$51.67	\$0.00

Monday, January 05, 2009	\$55.00	\$44.00		\$51.33	\$0.00
Sunday, January 04, 2009	-	-	\$41.56	\$41.56	\$0.00
Saturday, January 03, 2009	\$53.00	\$46.00		\$50.67	\$0.00
Friday, January 02, 2009	\$56.00	\$40.00		\$50.67	\$0.00
Thursday, January 01, 2009	\$55.00	\$42.00		\$50.67	\$0.00

Cost to Cover for
2009 \$1.52

- * The Cost to Cover for each Calendar Year is the average of the daily Cost to Cover calculations shown above.
- * Firm On-peak and Firm Off-peak prices in this example are illustrative only.
- * The Contract Price used in the example above is illustrative only. Actual Contract Prices are in Exhibit 5.1.2.
- * Green Tag replacement value is illustrative only.

EXHIBIT F

SAMPLE REPORT FROM FIRM MARKET PRICE INDEX

[Note to Bidders: A sample report will be provided during the final negotiation process]

EXHIBIT G

APPROVED LICENSED PROFESSIONAL ENGINEERS

[Note to Bidders: A list of approved licensed professional engineers will be provided during the final negotiation process]

EXHIBIT H

PERMITS

[Note to Bidders: To be adapted to conform to proposed resource.]

EXHIBIT I

START-UP TESTING

[Note to Bidders: To be adapted to conform to proposed resource.]

EXHIBIT 2.6

PACIFICORP'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives.

PacifiCorp: Senior Vice President- Commercial & Trading
PacifiCorp Energy
825 NE Multnomah St., Suite 600
Portland, OR 97232-2315
Fax 503-813-6271

With a copy to: Director, Marketing and Trading Contracts
PacifiCorp Commercial and Trading
825 NE Multnomah St., Suite 600
Portland, OR 97232-2315
Fax 503-813-6271

EXHIBIT 3.2.6

REQUIRED FACILITY DOCUMENTS

1. **Obtained Required Facility Documents:**

Licenses, Permits and Authorizations:

Construction and Operations and Maintenance:

Land Rights:

Wind Leases:

See Exhibit 3.2.8

2. **To Be Obtained Required Facility Documents:**

Licenses, Permits and Authorizations:

Construction Agreements:

Operations and Maintenance Agreements:

[should also include easements (overhang, noise, ROW), crossing agreements, subordination agreements (i.e., agricultural leases), estoppels, non-interference, or wind indemnity agreements; such further documents as internal review further requires.

EXHIBIT 3.2.8

WIND LEASES

[description of wind leases to be provided]

EXHIBIT 4.4.2

EXAMPLE OF CALCULATION OF PAYMENT DUE FOR CURTAILMENT ENERGY

For the purposes of this example only, assume the following:

(Note: These assumptions are illustrative only. Actual terms are as defined in this Agreement)

- The Facility is curtailed pursuant to Section 4.4.2 from 12:00 August 15, 2008 through 17:00 August 15, 2008
- Contract Price in 2008 during the hours of the curtailment is \$55.10/MWh
- Production Tax Credit in 2008 is \$19/MWh
- Curtailment Energy as agreed to by the parties pursuant to Section 4.4.2 is as shown in the table below

Hour Ending	A Curtailed Energy (MWhs)	B = A X (55.10 + 19) Curtailment Payment
8/15/08 20:00	0	\$0.00
8/15/08 19:00	0	\$0.00
8/15/08 18:00	0	\$0.00
8/15/08 17:00	60	\$4,446.00
8/15/08 16:00	35	\$2,593.50
8/15/08 15:00	37	\$2,741.70
8/15/08 14:00	42	\$3,112.20
8/15/08 13:00	56	\$4,149.60
8/15/08 12:00	65	\$4,816.50
8/15/08 11:00	0	\$0.00
8/15/08 10:00	0	\$0.00
8/15/08 9:00	0	\$0.00
8/15/08 8:00	0	\$0.00
Total Curtailment Payment		\$21,859.50

EXHIBIT 4.5

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: _____

Capacity (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.

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.

EXHIBIT 5.1

CONTRACT PRICE

[Note to Bidders: List Contract Prices by year and broken out in each year into On-Peak Hours and Off-Peak Hours prices]

EXHIBIT 6.1

DESCRIPTION OF FACILITY

[To be provided by bidder]

EXHIBIT 6.12.2

**EXAMPLE CALCULATION OF LIQUIDATED DAMAGES
FOR AN OUTPUT SHORTFALL**

[Example to be developed based upon actual Expected Energy]

EXHIBIT 8.4.1

FORM OF SUBORDINATED MORTGAGE

[Note to Bidders: This will be provided by PacifiCorp and will vary based upon the jurisdictions in which the Facility is located.]

EXHIBIT 8.6

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW wind-powered electric generating facility located _____, known as the _____ Wind Generation Project (the “Project”).

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

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

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

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

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of

which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT

PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

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

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA, or (iii) amend or modify the PPA in any manner materially adverse to the interest of the Lenders in the PPA as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the PPA, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the PPA, Section 11.1.2(c) of the PPA is not being breached, and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the PPA to the Lenders or Administrative Agent or their designees or assignees or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon

such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designees or assignees or any of them or other purchaser or grantee as the applicable party under the PPA (provided that such Lenders or Administrative Agent or their designees or assignees or purchaser or grantee assume the obligations of Borrower under the PPA, including satisfaction and compliance with all requirements of Article 8 of the PPA, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any such transfer of Borrower's interest under the PPA).

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designees or assignees will enter into a new contract. Such new contract shall be on the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designees or assignees to cure any payment defaults then existing under the original PPA.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower's obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties' interests in the Project, the credit support required under Article 8 of the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract. Nothing herein abrogates PacifiCorp's Covered Facility Right of First Offer as that term is defined in the PPA.

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

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding

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

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

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

(C) each of this Consent and the PPA is in full force and effect;

(D) each of this Consent and the PPA has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the PPA;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the PPA and the transactions contemplated hereby and thereby;

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

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

(H) to the best of PacifiCorp’s actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the PPA and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the PPA; and

(I) the PPA and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project.

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES

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

If to PacifiCorp:

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

If to Administrative Agent:

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

If to Borrower:

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

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

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including

without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the PPA to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the PPA not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS

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

SECTION 6. SEVERABILITY

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

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

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

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized,

have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

EXHIBIT 9.2

POINT OF DELIVERY/INTERCONNECTION FACILITIES

[To be provided by bidder]

EXHIBIT 11.4

FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

PACIFICORP
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Director of Contract Administration

MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT (“Memorandum”), dated as of _____, 200__, is made by and between _____, a _____ limited liability company (“Seller”), and PACIFICORP, an Oregon corporation acting in its merchant function capacity (“PacifiCorp”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Seller and PacifiCorp have entered into that certain Power Purchase Agreement on the ___ day of _____, 200__ (the “Agreement”), pursuant to which Seller has agreed to construct, own, operate and maintain a wind-powered generation facility for the generation of electric energy to be located in _____ (as more particularly defined in the Agreement, the “Project”), and upon completion of said Project, to sell to PacifiCorp the electric energy to be produced by the Project as well as all associated “Green Tags” (as that term is defined in the Agreement), all on the terms and conditions set forth in the Agreement. The real property on which the Project is to be constructed (the “Premises”) is more particularly described in the attached Exhibit “A”.

B. Seller and PacifiCorp desire to provide record notice of (i) certain terms and conditions of the Agreement pertaining to the Parties’ respective rights and obligations under the Agreement in the event the Agreement is terminated due to a default by Seller, and (ii) Seller’s obligation under the Agreement to grant to PacifiCorp a subordinated lien on the Project and Premises, as security for Seller’s obligations under the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in the Agreement and this Memorandum, Seller and PacifiCorp agree as follows:

TERMS

1. The Premises. Seller acknowledges and agrees that the real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Project, is and will be owned by the Seller and shall hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the provisions of Sections 8.3 and 11.4 and 11.8 of the Agreement and this Memorandum.

2. Covenants Running with the Land. The provisions of Section 11.4 and 11.8 of the Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Seller and PacifiCorp and their respective successors and assigns, including without limitation any person acquiring or owning an interest in the Premises or the Project, and their respective heirs, executors, successors, assigns, administrators, devisees and representatives.

3. Notice.

a. Termination for Default. If the Agreement is terminated due to a default by Seller, neither Seller nor any successor to Seller with respect to the ownership of the Project may thereafter require or seek to require PacifiCorp to purchase energy from the Project under the Public Utility Regulatory Policies Act of 1978, as amended from time to time (“PURPA”), or any other “Requirements of Law” on account of its status as a “QF” or “qualifying facility” (as those terms are defined in the Agreement), for any periods that would have been within the “Term” (as defined in the Agreement), had the Agreement remained in effect. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself and its successors, waived its rights to require PacifiCorp to so purchase such energy from the Project in the event of such termination.

b. Survival. The terms and provisions of Section 11.4 of the Agreement shall survive the termination of the Agreement.

4. Notice of Agreement to Grant Subordinated Lien. Pursuant to Section 8 of the Agreement, Seller has agreed to grant PacifiCorp, concurrently with the execution of the Agreement and simultaneously with the acquisition by Seller after the effective date of the Agreement of any additional real property in connection with the Project, a subordinated lien on the Project and all other assets necessary or appropriate for the development, construction, ownership, operation or maintenance of the Project (which lien shall be subordinate to the interests of the “Senior Lenders”, as defined in the Agreement), as security for the obligations of Seller to PacifiCorp under the Agreement.

5. Effect of Memorandum. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Agreement. The Agreement is hereby incorporated by reference as if fully set forth herein.

6. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument.

7. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from PacifiCorp at 825 NE Multnomah, Suite 2000, Portland, Oregon 97232-2315, Attn: Sr. Vice President, Commercial & Trading. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to PacifiCorp in its sole and absolute discretion.

IN WITNESS WHEREOF, Seller and PacifiCorp have executed and acknowledged this Memorandum as of the day and year first above written.

a _____ limited liability company

PACIFICORP,
a Oregon corporation

By _____
Name _____
Title _____

By _____
Name _____
Title _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005 by _____, the _____ of _____, a _____ limited liability company.

NOTARY PUBLIC

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of PACIFICORP, an Oregon corporation.

NOTARY PUBLIC

Exhibit "A"

Legal Description of the Premises

EXHIBIT 13

REQUIRED INSURANCE

[Note to Bidders: A description of required insurance will be provided during the final negotiation process]

EXHIBIT 14

CREDIT MATRIX

[Note to Bidders: The credit matrix is provided in Appendix D of RFP 2008R-1]

_____, 2008

**BALANCE OF PLANT
WIND ENERGY PROJECT AGREEMENT**

by and between

**PACIFICORP,
an Oregon corporation
as Owner**

and

**a _____ corporation,
as Contractor**

dated as of

_____, 2007

[_____] **Project**

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BALANCE OF PLANT WIND ENERGY PROJECT AGREEMENT

THIS BALANCE OF PLANT WIND ENERGY PROJECT AGREEMENT (this “**Agreement**”), dated as of _____, 2007, (the “**Effective Date**”), by and between PacifiCorp, an Oregon corporation, (hereinafter, “**Owner**”), and _____, a _____ corporation, (hereinafter, “**Contractor**”).

WITNESSETH:

WHEREAS, Owner is developing a wind-powered electric generation facility at the [_____] Site:

WHEREAS, Contractor has represented that it is experienced and qualified in providing technical assistance, licensing, engineering, procurement, supply, construction management, construction, unloading, erecting, installation, commissioning, start-up and testing services, and that it possesses the requisite expertise and resources to complete the Work;

WHEREAS, Owner desires to obtain, and Contractor desires to provide, through itself or through Subcontractors, the Work, including, among other things, engineering, procurement, construction and related services for the Contractor Facilities and engineering, construction, assembly, erection, and installation services for the WTGs, for the Contract Price; and

WHEREAS, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings indicated:

“**Access Road Completion**” has the meaning set forth in **Section 6.1**.

“**Access Roads Completion Certificate**” means a certificate in the form of **Exhibit R**.

“**Affiliate**” means with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person. For purposes of this definition only, the term “**control**” (including, with correlative meaning, the terms “**controlled by**” and “**under common control with**”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise. For purposes of Owner, Affiliate shall be limited to MidAmerican Energy Holdings Company and its subsidiaries.

“**Agreement**” has the meaning set forth in the first paragraph hereof, and includes all exhibits attached hereto, as any of them may be amended, supplemented or modified from time to time in accordance with the terms hereof.

“**Applicable Laws**” means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any written interpretation or administration of, any of the foregoing by any Governmental Authority with jurisdiction over a Party (as to that Party), the Project, the Job Site, the performance of the Work or other services to be performed under this Agreement. For the avoidance of doubt, with regard to the project, “Applicable Laws” includes all _____ rules, regulations and other determinations with respect to reclamation obligations.

“**Applicable Permits**” means any valid waiver, exemption, variance, certificate, franchise, permit, interconnection agreement, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that have been obtained for the benefit of the Project or the project Site or are otherwise necessary for the performance of the Work.

“**Applicable Standards**” means Prudent Industry Practices, Prudent Engineering Practices, the Interconnection Agreement, and those construction and electrical standards and codes applicable to projects such as the Project, including those set forth in this Agreement; provided, however, that if any portion of such standards or codes conflicts with or is less stringent than any Applicable Law or Applicable Permit, such conflicting or less stringent portions of such standards shall not be deemed “applicable.”

“**Acceptable Letter of Credit**” The term shall mean an irrevocable letter of credit that (a) is issued by a Qualified Bank who is acceptable to Owner, in Owner’s sole discretion, (b) (i) in the case of the Performance LOC, has a stated amount equal to the amount of payments to Contractor through the Substantial Completion Guaranteed Date, as provided in Exhibit “ ” (\$_____), (ii) in the case of the Retainage LOC, has a stated amount equal to the Retainage, and (iii) in the case of the Warranty LOC, has a stated amount equal to five percent (5%) of the Contract Price, (c) has an expiration date of no earlier than the Letter of Credit Termination Date and (d) is in the form attached hereto as Exhibit “AC” with such deviations as are approved in writing by Owner.

“**As-Built Drawings**” has the meaning set forth in **Section 2.7**.

“**Business Day**” means every day other than a Saturday, Sunday or a day which is a legal holiday in the State of [state that project is located in].

“**Site**” means all those parcels of land subject to the Real Property Rights in _____ County, [state that project is located in], all as more particularly described in **Exhibit K**.

“Commissioning” means the start-up commission and testing activities to be conducted in accordance with the Commissioning Procedures.

“Commissioning Procedures” means the procedures set forth in Exhibit F to the Wind Turbine Supply Contract.

“Confidential Information” has the meaning set forth in **Section 17.1.1**.

“Consumable Parts” has the meaning set forth in **Section 2.8.8**.

“Contract Documents” means this Agreement and any documents delivered hereunder, each of which is hereby incorporated by reference and made a part hereof for all purposes.

“Contract Price” has the meaning set forth in **Section 4.1**.

“Contractor” has the meaning set forth in the first paragraph hereof, and includes its legal successors and permitted assigns, pursuant to the terms of this Agreement.

“Contractor Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors for performance of the Work but which is not intended to be incorporated into the Project.

“Contractor Event of Default” has the meaning set forth in **Section 13.1**.

“Contractor Facilities” means, collectively, the Infrastructure Facilities, and all other structures, equipment and components comprising the Project other than the Owner-Furnished Equipment.

“Contractor Indemnified Parties” has the meaning set forth in **Section 10.1.2**.

“Contractor Permits” means those Applicable Permits required to be obtained by Contractor, as set forth in **Exhibit H**.

“Contractor Termination for Cause” has the meaning set forth in **Section 13.2.1**.

“Critical Milestone” means each “Critical Activity” designated as such in the Project Schedule.

“Critical Milestone Date” means each date identified in the Project Schedule as being the date by which the corresponding Critical Milestone is required to be achieved, each as extended pursuant to the terms hereof.

“Defect” means, any designs, engineering, drawings, components, tools, Equipment, installation, construction, workmanship or Work that (i) do not conform to the terms of this Agreement, (ii) are not of good quality, are not free from defects or deficiencies in design, application, manufacture or workmanship, or that contain improper or inferior workmanship or (iii) would adversely affect (A) the performance of the Project under anticipated operating conditions, (B) the continuous safe operation of the Project during the Project’s design life, or (C) the structural integrity of the Project. The term “Defect” shall neither be construed to include

material damage caused by Owner's acts or omissions to the extent arising out of abuse, misuse, or negligence in operation, maintenance or repair (unless such act or omission was taken or made at the direction of Contractor or any Subcontractor, including any written Design Documents, Job Books or other material supplied by any of them in accordance with this Agreement) or failure to follow Contractor's or manufacturers' written recommendations and directions and Applicable Standards, nor shall the term "Defects" be construed to include ordinary wear and tear, erosion, corrosion, or deterioration (unless as a result of a defect or deficiency).

"Design Basis and Project Site Data" means the Design Basis and Project Site Data set forth in **Exhibit N**.

"Design Documents" means (i) all specifications, calculations, designs, plans, drawings, engineering, analyses, electrical studies and analysis, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Work, including the structure and foundation thereof, and (ii) all technical drawings, operating drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-lines, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors all of which are and required to be submitted by Contractor, or any Subcontractor of Contractor, from time to time under this Agreement or at Owner's request which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

"Dispute" has the meaning set forth in **Section 15.1**.

"Dollars" or **"\$"** means the lawful currency of the United States of America.

"Down Payment" has the meaning set forth in **Section 4.3**.

"Effective Date" has the meaning set forth in the first paragraph hereof.

"Electrical Works" means the facilities and equipment, including the Interconnection Facilities, described in **Exhibits A and E**.

"Electrical Works Completion" has the meaning set forth in **Section 6.3**.

"Electrical Works Completion Certificate" means the certificate in the form of **Exhibit T**.

"Equipment" means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors that are installed or incorporated into the Project or otherwise form or are intended to form part of the Work or the Project (other than Contractor Equipment).

"Final Completion" has the meaning set forth in **Section 6.6**.

"Final Completion Certificate" means the certificate in the form of **Exhibit W**.

“Final Completion Date” means the date on which Final Completion occurs.

“Force Majeure Event” means any event that wholly or partly prevents or delays the performance by the Party affected of any obligation arising under the Contract Documents, but only if and to the extent: (i) such event is not within the reasonable control, directly or indirectly, of and not the fault of the Party affected; (ii) such event, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party; (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof; and (iv) such event is not the direct or indirect result of the affected Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement; provided, however, that such event is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; Wind Days to the extent described in **Section 8.4**; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared) or other armed conflict; chemical or Hazardous Materials contamination which prevents access by Contractor or Subcontractors to the Project Site; material physical damage to the Project caused by third parties; area-wide or regional strikes and other area-wide or regional labor disputes (including collective bargaining disputes and lockouts) involving Contractor or Subcontractors and not directed exclusively at Contractor and/or such Subcontractor; riot or similar civil disturbance or commotion; other acts of God, including unusual weather conditions (according to the records of the National Oceanic and Atmospheric Administration for the vicinity of the Project Site) including storms or wind gusts with a velocity of more than fifty (50) miles per hour (subject to the provisions of **Section 8.4**); acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a Governmental Authority (other than in respect of Contractor’s compliance with Applicable Laws and Applicable Permits required in connection with the Contractor’s performance under this Agreement). The definition of **“Force Majeure Event”** shall not include strikes, labor disputes or labor shortages (except as explicitly provided above), unavailability, late delivery or breakage of equipment or materials (except to the extent due to a Force Majeure Event otherwise excusable hereunder), economic hardship (including lack of money), delays in transportation other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities, and changes since the Effective Date in Applicable Laws (other than any such change that prohibits or impairs Contractor from performing the Work or importing equipment or machinery to be used in the Work into the United States).

“Foundation” means each Wind Turbine Generator foundation to be completed in accordance with this Agreement.

“Foundation Completion” has the meaning set forth in **Section 6.2**.

“Foundation Completion Certificate” means a certificate in the form of **Exhibit S**.

“Geotechnical Investigation” has the meaning set forth in **Section 9.5**.

“Governmental Authority” means any federal, state, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

“Guaranteed Access Roads Completion Date” means _____, 200_ for the [_____] Site, as such date may be extended in accordance with the terms hereof.

“Guaranteed Mechanical Completion Date” means, subject to **Article IX**, a date twenty (20) days after the delivery of the applicable WTG Shipment at the location indicated in Wind Turbine Supply Contract.

“Hazardous Materials” shall mean any dangerous, hazardous or toxic substance or constituent or pollutant or contaminant which, pursuant to any Applicable Law, has been determined, or at any future time may be determined, to be hazardous, toxic or dangerous to human health or the environment, including but not limited to any hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C.A. § 9601 et seq.), any solid waste under the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.A. § 6901 et seq.), or any contaminant, pollutant, waste or toxic substance under the Clean Air Act, as amended (42 U.S.C.A. § 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C.A. § 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C.A. § 300f et seq.), the Emergency Planning and Community Right-To-Know Act, as amended (42 U.S.C.A. sec. 110001 et. seq.), the Occupational Safety and Health Act, as amended (29 U.S.C.A. sec. 651 et. seq.), the Hazardous Materials Transportation Act, as amended, (49 U.S.C.A. sec. 5101 et. seq.) or the Toxic Substances Control Act, as amended (15 U.S.C.A. § 2601 et seq.), and any equivalent or applicable state or local laws.

“Import Taxes” means taxes, customs duties, fees, imposts, value-added tax, sales tax and governmental charges of any kind (including interest and penalties related thereto, except in the case of interest and penalties resulting from actions or omissions taken at Owner’s written request), in each case that are payable upon or in relation to the importation of any component or portion of the Contractor Facilities, drawings or designs into the United States.

“Indemnifying Party” has the meaning set forth in **Section 10.2.1**.

“Indemnified Person” has the meaning set forth in **Section 10.2.1**.

“Infrastructure Facilities” means all of the works, buildings, roads, pad mounted transformers, Electrical Works and other permanent fixtures as more fully described in **Exhibits A, D, E and G**.

“Intellectual Property Rights” has the meaning set forth in **Section 17.2**.

“Interconnection Agreement” means that certain Large Generation Interconnection Agreement by and between Owner and Utility dated [_____].

“Interconnection Date” means as to the _____ Site _____, 200_.

“**Interconnection Facilities**” means all facilities from the output of the Project Substation to the connection to the Utility’s transmission line, including but not limited to those defined in the Interconnection Agreement.

“**Interim Punch List**” has the meaning set forth in **Section 6.4.2**.

“**Job Book**” means all Contractor (and Subcontractor) engineering, design, purchasing and other information relating to the Work in the format and with the content as set forth in **Exhibit Z**.

“**Job Site**” means the Project Site and any other areas where Contractor may temporarily obtain care, custody and control, use, easement or license for purposes directly, indirectly or incidentally related to performance of, or as an accommodation to, the Work.

“**Labor**” means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers.

“**Lien**” means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

“**Major Subcontract**” means any agreement with a Subcontractor having an aggregate value in excess of two hundred thousand dollars (\$200,000) for performance of any part of the Work.

“**Major Subcontractor**” means any Subcontractor with whom Contractor has entered into a Major Subcontract.

“**Mechanical Completion Delay Liquidated Damages**” has the meaning set forth in **Section 6.8.3**.

“**Milestone**” means the “Activities” (including Critical Milestones) designated as such in the Project Schedule.

“**Milestone Date**” means the date identified in the Project Schedule as being the date by which the corresponding Milestone is required to be achieved, as extended pursuant to the terms hereof.

“**Milestone Payment**” has the meaning set forth in **Section 4.6**.

“**Monthly Progress Report**” means a monthly written report of actual progress of the Work in the form of **Exhibit O** showing in detail the progress to date and the then-current scheduling of all major elements of design, procurement, construction, testing and other aspects of the Work, including the incorporation of Scope Change Orders and delay and acceleration analyses where appropriate, as specified in the Project Schedule.

“**MW**” means megawatts.

“**O&M Personnel**” means either (i) employees of Owner or (ii) employees of any entity with which Owner enters into an operation and maintenance agreement, which are engaged by Owner to operate and maintain the Project.

“**Operating Manual**” means the complete system instructions and procedures for the operation and maintenance of the Work, which shall comply with the requirements of the Scope of Work, including Contractor’s, manufacturers’, vendors’, suppliers’ and Subcontractors’ recommended list of Spare Parts, all safety information and any precautionary measures therefor.

“**Owner**” has the meaning set forth in the first paragraph hereof, and includes its legal successors and permitted assigns, pursuant to the terms of this Agreement.

“**Owner-Caused Delay**” means a delay in Contractor’s performance of any Critical Milestone, to the extent that such delay is directly, actually and demonstrably caused by either (i) Owner’s failure (which is not excused due to a Force Majeure Event, default of Contractor, or other condition excused under this Agreement) to perform any covenant of Owner hereunder, or (ii) any action or inaction on the part of the Turbine Vendor or an Owner Subcontractor in violation of Applicable Law, Applicable Permits or its obligations under the Wind Turbine Supply Contract or the applicable Owner Subcontract or in breach of this Agreement and, in each case, which actually, demonstrably and adversely affects a Critical Milestone. Contractor expressly acknowledges and agrees that any delay that is caused or exacerbated by Contractor’s or any Subcontractor’s action or inaction is not an Owner-Caused Delay.

“**Owner Event of Default**” has the meaning set forth in **Section 13.2**.

“**Owner-Furnished Equipment**” means (i) _____; (ii) _____, and (iii) any other equipment or components of the Project to be furnished or procured by Owner as expressly set forth in **Exhibit A**.

“**Owner-Indemnified Party**” has the meaning set forth in **Section 10.1.1**.

“**Owner Permits**” means the Applicable Permits required to be obtained by Owner as set forth in **Exhibit H**.

“**Owner Subcontractor**” means the Turbine Vendor and any other subcontractor (other than the Contractor) engaged by Owner to perform work in connection with the Project.

“**Owner Termination for Cause**” has the meaning set forth in **Section 13.1.1**.

“**Party**” or “**Parties**” means, respectively, a party or both parties to this Agreement.

“**Payment Milestones**” means a list of activities to be performed by Contractor in its prosecution of the Work, all as set forth in **Exhibit B-1**.

“**Person**” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, or Governmental Authority or other entity of whatever nature.

“Pre-Existing Hazardous Materials” means Hazardous Materials that existed on or in the Property Site prior to the date Contractor or any of its Subcontractors or other representatives are present on the Project Site (and not released or disposed of on the Project Site by Contractor prior to such date).

“Prime Rate” means the rate published in *The Wall Street Journal* as the “prime rate” from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises.

“Project” means the complete, integrated, wind-powered, electric generating facility to be located on the Project Site, consisting of all foundations, structures, facilities, appliances, lines, transformers, WTGs, Towers, conductors, instruments, equipment, apparatus, components, roads and other property comprising and integrating the entire facility described generally in the Scope of Work and the Technical Specifications.

“Project Mechanical Completion” means achievement of WTG Mechanical Completion for all WTGs at the Project Site.

“Project Mechanical Completion Certificate” means a certificate in the form of **Exhibit V**.

“Project Schedule” means the critical path schedule defining certain dates and Milestones for timely completion of the Work as set forth in **Exhibit C**, as amended in accordance with the terms of this Agreement.

“Project Site” means the [_____] Site.

“Project Substantial Completion Date” means the date that all WTGs have been Commissioned and all such WTGs are in commercial operation, as such date is notified to Contractor by Owner.

“Project Substation” means the substation at the Project Site.

“Prudent Engineering Practices” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by professional construction and engineering firms performing engineering, procurement and construction services on wind energy facilities of the type, size and location similar to the project which, in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the construction and use of wind energy generating and operating equipment and other electrical equipment, facilities and improvements, with commensurate standards of safety, efficiency and economy, and as are in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to engineering, construction and project management practices. Prudent Engineering Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“Prudent Industry Practices” means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the power industry for similar facilities in the United States) that at a particular time in the exercise of good judgment would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, safety, environmental protection, economy and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“Punch List” has the meaning set forth in **Section 6.4.2**.

“Punch List Items” means each item of Work that:

- (a) Owner and Contractor agree remain to be performed by Contractor as provided in **Article VI**;
- (b) does not, in Owner’s reasonable judgment, affect the ability of Owner to safely operate the Project in accordance with Applicable Standards and in compliance with all Applicable Laws;
- (c) does not, in Owner’s reasonable judgment, affect the operability (including capacity, efficiency, reliability, or cost effectiveness), safety or mechanical or electrical integrity of the Project; and
- (d) does not, in Owner’s reasonable judgment, affect the ability to Commission and test the WTGs, Infrastructure Facilities and the other components of the Project.

“Quality Assurance Plan” shall mean the quality assurance plan to be prepared by Contractor and accepted by Owner and which is in accordance with **Section 2.8.3.4** and an outline of which is attached hereto as **Exhibit Y**.

“Real Property Rights” means all rights in or to real property, permits, easements, licenses, private rights-of-way, and utility and railroad crossing rights required to be obtained or maintained by Owner in connection with construction of the Project on the Project Site, transmission of electricity to the Utility, performance of the Work, or operation of the Project, a description of which is set forth in **Exhibit K**. **Exhibit K** also contains the form of the “Windpark Lease” to be used by the Owner in connection with the Project and a preliminary site map with respect to the Project Site.

“Request for Payment” has the meaning set forth in **Section 4.3**.

“Requirements of this Agreement” has the meaning set forth in **Section 2.5**.

“Retainage” has the meaning set forth in **Section 4.5**.

“Sales Taxes” means sales, use, local option or school local option taxes levied by the State of [state project is located in] or any county or local government of [state project is located in], on the Work pursuant to applicable State of [state project is located in] and any county or local government laws and regulations of the State of [state project is located in] that are not subject to a sales and use tax exemption available to the Party under such laws and regulations.

“**Scheduled Final Completion Date**” means the date described as such in the Project Schedule.

“**Scope Change**” has the meaning set forth in **Section 9.1**.

“**Scope Change Order**” has the meaning set forth in **Section 9.1** and in the form set forth in **Exhibit Q**.

“**Scope of Work**” means the services and work to be provided, or caused to be provided, by or through Contractor under this Agreement for the Contract Price, as more particularly described in **Exhibits A, D and E**, as the same may be amended from time to time in accordance with the terms hereof.

“**Spare Parts**” has the meaning set forth in **Section 2.8.9**.

“**Subcontract**” means an agreement between Contractor and any Subcontractor.

“**Subcontractor**” means any subcontractor or supplier/vendor of equipment or services to Contractor or any subcontractor or supplier/vendor of any Person engaged or employed by Contractor or any Subcontractor in connection with the performance of the Work.

“**Tax**” or “**Taxes**” means all fees, taxes (including Sales Taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), Import Taxes, levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any Governmental Authority (including penalties or other amounts payable pursuant to subtitle B of Title I of ERISA).

“**Technical Specifications**” means the description of the Work, including the technical specifications referenced or described therein for the Project, set forth as **Exhibits A, D, E, F and G**.

“**Termination Payment**” has the meaning set forth in **Section 4.9.1**.

“**Termination Without Cause**” has the meaning set forth in **Section 13.3**.

“**Tower**” means each steel tubular tower component of a Wind Turbine Generator (having a hub height of approximately 80 meters) as further described in the Wind Turbine Supply Contract.

“**Turbine Blade**” means a 77 meter rotor diameter turbine blade component of a Wind Turbine Generator as further described in the Wind Turbine Supply Contract.

“**Turbine Nacelle**” means the turbine nacelle component of a Wind Turbine Generator, including gearbox, generator, blade pitch controls, brakes, hydraulic systems, lightning protection system, and nacelle yaw controls, and associated control and ancillary equipment.

“**Turbine Vendor**” means General Electric Company.

“**Utility**” means the entity physically accepting delivery of energy at the Project Substation (which as of the Effective Date is expected to be the transmission function of Owner).

“**Warranty**” has the meaning set forth in **Section 7.1.1**.

“**Warranty Period**” has the meaning set forth in **Section 7.1.2**.

“**Warranty Service**” has the meaning set forth in **Section 7.1.3**.

“**Wind Day**” means a day or portion thereof consisting of at least 5 hours between the hours of 7 a.m. and 5 p.m. on which (i) the Contractor has scheduled construction activities at the Job Site involving erection of Towers and/or WTGs which cannot be performed due to sustained winds in excess of 30 mph for erection of Towers and Turbine Nacelles and 25 mph for the erection of the Turbine Blades or (ii) due to the necessary sequencing of Work or other scheduling considerations or contingencies, Contractor is unable to perform other Work at the Job Site that would not be affected by such sustained wind conditions; provided, however, in order to qualify as a Wind Day, such event and the scheduling and other impacts resulting therefrom must be beyond the reasonable control of the Contractor, be unavoidable or incapable of being prevented or overcome by the reasonable efforts and due diligence of the Contractor, and have an impact which will actually, demonstrably and adversely affect Contractor’s ability to complete a Critical Milestone by the Critical Milestone Date therefor.

“**Wind Turbine Generator**” or “**WTG**” means all or any portion of one (1) _____ wind turbine generator, including the following components: a Tower, a Turbine Nacelle, three (3) Turbine Blades, hub, controller, control panels, wind vanes and anemometers, all as more particularly described in the Technical Specifications in **Exhibit F** and to be delivered to the Project Site by the Turbine Vendor in accordance with the terms of the Wind Turbine Supply Contract.

“**Wind Turbine Supply Contract**” means that certain contract executed by and between Owner and Turbine Vendor and attached hereto as **Exhibit F**.

“**Work**” has the meaning set forth in **Section 2.1**.

“**WTG Construction Period**” has the meaning set forth in **Section 8.4**.

“**WTG Mechanical Completion**” has the meaning set forth in **Section 6.4**.

“**WTG Mechanical Completion Certificate**” means a certificate in the form of **Exhibit U**.

“**WTG Mechanical Completion Date**” means the date on which WTG Mechanical Completion occurs.

“**WTG Shipment**” means the shipments of controllers, towers, nacelle/hubs and blades for a WTG, each such complete shipment constituting a WTG Shipment. Scheduled WTG Shipments are shown in **Exhibit F**.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears:

- (a) capitalized terms used in this Agreement have the meanings specified in this **Article I**;
- (b) the singular shall include the plural;
- (c) references to “**Articles,**” “**Sections,**” “**Schedules,**” “**Annexes,**” “**Appendices**” or “**Exhibits**” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time hereunder;
- (d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns;
- (e) the words “**herein,**” “**hereof**” and “**hereunder**” shall refer to this Agreement as a whole and not to any particular Section or subsection of this Agreement;
- (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;
- (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and Exhibits hereto, as the same may be amended, modified, supplemented or replaced pursuant to the terms hereof from time to time;
- (h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (i) the use of the word “**including**” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and
- (j) references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE

II

RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES

2.1 Work to be Performed. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed all Work in accordance with the terms and conditions of this Agreement. Contractor shall, at its own cost and expense, (i) design

(or arrange for design pursuant to a Subcontract executed in accordance with this Agreement), engineer (or arrange for engineering pursuant to a Subcontract executed in accordance with this Agreement), procure, construct, start-up the Contractor Facilities, unload, assemble, erect, and install the WTG, conduct testing of the Contractor Facilities, and perform all of its other obligations hereunder, including without limitation completion of the Scope of Work in accordance with the Technical Specifications, (ii) manage, supervise, inspect and furnish or caused to be furnished all materials, equipment, machinery, tools, labor, transportation, temporary structures, temporary utilities, administration and other services and items required to complete and deliver to Owner the fully integrated and operational Project, all in accordance with this Agreement (including without limitation the Project Schedule and the Scope of Work, as each may be modified from time to time in accordance with the terms hereof by a Scope Change Order or other amendment hereto), Applicable Laws and Applicable Standards (all of the foregoing obligations of the Contractor being referred to herein collectively as the “**Work**”).

2.2 General; Applicable Standards.

2.2.1 Status of Contractor; No Partnership. Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under this Agreement. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party. Contractor shall be responsible for overall construction management of the Work, all civil and electrical infrastructure design, and the coordination and general management of the Work. Contractor shall procure, deliver, handle and store all materials and equipment used in the Work.

2.2.2 Applicable Standards for the Work. Subject to the remedies provided for herein, Contractor shall perform the Work and turn the Project over to Owner in a manner that is: (i) sufficient, complete and adequate in all respects necessary for the Project to successfully achieve WTG Mechanical Completion for each WTG Shipment on or before the Guaranteed Mechanical Completion Date for that WTG Shipment, respectively; (ii) in conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in wind power projects of similar size and nature to the Project; (iii) in compliance with the terms of this Agreement, the Utilities’ switching procedures, as set forth in **Exhibit L**, all Applicable Laws and Applicable Permits and Applicable Standards; and (iv) approved as to form, use and content by public and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the Project, or any portion thereof, is necessary for the construction, operation of the Project, or interconnection of the Project in compliance with the Interconnection Agreement.

2.3 Scope of Work; Exclusions Therefrom. In light of the foregoing, Contractor has included within the Contract Price the cost to complete the Work. Items need not be specifically listed in this Agreement or in the Exhibits in order to be deemed to be items included in the Work. It is understood that Contractor is better qualified to list exclusions than Owner is to list inclusions. Therefore, any item indicated on this Agreement, reasonably inferable therefrom, incidental

thereto or required in accordance with any Applicable Law or Applicable Permit, that is not specifically excluded from the Scope of Work in Contractor's exclusions set forth on **Exhibit A** of this Agreement, is to be considered part of the Work.

2.4 Storage; Security of WTG. Prior to the date of Project Mechanical Completion, and with respect to the WTGs upon delivery of the WTGs to the Project Site by the Turbine Vendor and with respect to the step-up transformers upon delivery of the step-up transformers to the Project Site by the step-up transformer supplier, Contractor shall provide appropriate storage and security for all Owner-Furnished Equipment, including the WTGs and step-up transformers, Consumable Parts, materials, supplies and other equipment required to unload, assemble, erect and install the WTGs and other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner, incorporated in the Owner-Furnished Equipment. Contractor shall use the same care to protect any of the Owner-Furnished Equipment at any time in its possession or under its control while performing the Work as it does with its own property, and shall be responsible for any damage to such property resulting from its failure to use such care and any damage or loss to such property until the date of Project Mechanical Completion.

2.5 Compliance. The Work shall meet professional standards utilized by design and construction professionals regularly involved in wind power projects. Without limiting the generality of the foregoing, Contractor shall ensure that: (i) Contractor shall comply with, and shall cause the Work including the Contractor Facilities and all components thereof (including the design, engineering, construction and testing of the Contractor Facilities) to comply with, Applicable Standards, Applicable Laws, and this Agreement, and to be capable of being operated at all levels and operating modes, in accordance with all Applicable Laws and Applicable Permits; (ii) all engineering and design services shall be provided in accordance with this Agreement, Applicable Laws and Applicable Standards and the generally accepted standard of care, skill and diligence as would be provided by, in the case of engineering services, a prudent engineering firm, and in the case of assembly, erection and installation services, by a prudent construction firm, in each case experienced in supplying engineering services or installation services in the U.S. to power-producing entities for projects of technology, complexity and size similar to the Project; and (iii) the Work shall be performed with Contractor's best skill and judgment, in a safe, expeditious, good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Contractor shall inspect or cause to be inspected all materials and equipment to be incorporated into the Infrastructure Facilities or used in the performance of the Work and shall reject those items determined not to be in compliance with the requirements of this Agreement. Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this **Section 2.5** shall apply to all aspects of the Work, and this **Section 2.5** shall be deemed to be incorporated by reference into each provision of this Agreement describing the Work, Contractor's obligations hereunder, or referring to the "**requirements of this Agreement**" or words of similar effect.

2.6 Commencement of Work; Scheduling and Milestones.

2.6.1 Notice to Proceed. The execution of this Agreement by the Parties shall be deemed to be Owner's notice to Contractor to proceed with the Work. On the Effective Date, Contractor shall

commence and shall thereafter diligently pursue the Work assigning to it a priority that will permit the attainment of Access Road Completion on or before the Guaranteed Access Road Completion Date, and WTG Mechanical Completion on or before the Guaranteed Mechanical Completion Dates. Contractor shall proceed with the performance of the Work in accordance with the Project Schedule.

2.6.2 Project Schedule. Contractor shall perform the Work in accordance with the Project Schedule, including completing the Work required on or before the Guaranteed Access Road Completion Date and the Guaranteed Mechanical Completion Dates, as such Project Schedule may be adjusted pursuant to the terms hereof. Contractor hereby covenants and warrants to Owner that in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays (including without limitation delays due to weather and Wind Days as and to the extent provided in **Section 8.4**) incident to such Work. Contractor shall meet or achieve each Critical Milestone noted as such on the Project Schedule no later than the date set forth opposite such Milestone on such Project Schedule. Contractor shall coordinate and incorporate the schedules of all Subcontractors and Owner Subcontractors into all applicable schedules, work plans and progress reports. Contractor shall provide the Project Schedule and any updates thereto that provide for the orderly, practicable and expeditious completion of the Work in accordance with the requirements of this Agreement on a weekly basis as the Work progresses, including the incorporation of delay and acceleration analyses where appropriate; provided, however, that Contractor shall not be relieved from the obligation to meet any Milestone Date set forth on the Project Schedule unless such date is extended pursuant to a Scope Change Order, or otherwise pursuant to a written notice from Owner. The current portion of the Project Schedule and any update shall be presented electronically on a weekly basis and in such reasonable detail as Owner may require and shall address all material elements of the Work. Contractor shall submit to Owner not later than the fifth (5th) day of each month a Monthly Progress Report. Additionally, the updated and complete Project Schedule shall be made available to the Owner monthly, and as otherwise reasonably requested by Owner. Contractor shall attend and participate in daily planning meetings at the Job Site between representatives of Owner, Owner Subcontractors and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there shall be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligation to meet the Milestone Dates specified hereunder.

2.6.3 Acceleration of Work. If, at any time or from time to time, Owner determines, in its reasonable discretion, that:

- (a) Contractor has failed to show adequate progress of the Work toward completion of a Milestone included in the Project Schedule by the Milestone Date therefor, or
- (b) Contractor has failed to achieve a Milestone included in the Project Schedule by the Milestone Date therefor,

then, on each such date, after receiving a written request from Owner, Contractor shall promptly but in any event within five (5) Business Days, submit for approval by Owner a written recovery plan to complete all necessary Work to achieve completion of the remaining Milestones included in the Project Schedule by the date set forth for such Milestone in the Project Schedule. Owner shall promptly approve or submit reasonable revisions to such written recovery plan, and Contractor shall incorporate such revisions into such recovery plan and thereafter diligently prosecute the Work in accordance with such recovery plan. Approval by Owner of such recovery plan shall not (i) be deemed in any way to have relieved Contractor of its obligations under this Agreement relating to the failure to timely achieve either of the Guaranteed Access Roads Completion Date or the Guaranteed Mechanical Completion Dates, or (ii) be a basis for an increase in the Contract Price. If Contractor cannot cause prosecution of the Work to conform to the Project Schedule within ten (10) days, then Owner shall have the right to direct Contractor to accelerate the Work by means of overtime, additional crews, additional shifts, additional equipment and/or re-sequencing of the Work. In the event of any acceleration pursuant to this **Section 2.6.3**, Contractor shall cause prosecution of the Work to conform to the Project Schedule within ten (10) days. Contractor shall receive no reimbursement for costs arising out of, Contractor shall not be entitled to a Scope Change Order with respect to, and Contractor shall be solely responsible for any costs or expenses incurred by Contractor as a result of, formulation and implementation of the recovery plan or the acceleration of the Work described in this **Section 2.6.3**. This **Section 2.6.3** shall not be construed to limit any of the rights and remedies Owner may have under any provision of this Agreement. Nothing herein shall be construed to excuse, limit, alter or amend Contractor's obligations to cooperate with Owner and, where appropriate, to participate in any dispute resolution proceedings.

2.6.4 Local Contracting. Contractor will designate a coordinator of local services who will act as a liaison between any individuals, businesses and contractors residing or doing business in the State of [state project is located in] who are interested in obtaining information about providing goods or services related to the construction of the Project. Additionally, Contractor will advertise in local newspapers in [state project is located in] for local contractors to perform work on the construction of the Project.

2.7 As-Built Drawings. Contractor shall prepare and submit to Owner a complete set of as-built drawings prepared by Contractor in accordance with the requirements of this Agreement, which accurately and completely represent in reasonable detail the physical placement of the Contractor Facilities and all Owner-Furnished Equipment as assembled, erected and installed (the "**As-Built Drawings**") no later than the Scheduled Final Completion Date. Such As-Built Drawings shall also be provided in [] editable electronic format.

2.8 Engineering and Design; and Other.

2.8.1 Engineering. Contractor shall perform (or arrange for performance pursuant to a Subcontract executed in accordance with this Agreement) all engineering and design services for completion of the Contractor Facilities in conformity with the requirements of this Agreement. All engineering work of or on behalf of Contractor requiring certification shall be certified, and all Design Documents requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in all appropriate

jurisdictions, which engineers and their qualifications shall be subject to Owner's review under **Section 2.8.11.2**. Engineering and design specifications for Owner-Furnished Equipment are set forth in **Exhibits F and G**, and Contractor shall design, prosecute and install the Work so as to effect complete integration of the Contractor Facilities with the Owner-Furnished Equipment according to Applicable Standards.

2.8.2 Design. Contractor shall design (or arrange for design pursuant to a Subcontract executed in accordance with this Agreement) the Contractor Facilities such that they are capable of complying with the requirements of this Agreement, Applicable Laws, and Applicable Standards. No later than is reasonably necessary to achieve the Critical Milestones, Contractor shall prepare (or arrange for preparation pursuant to a Subcontract executed in accordance with this Agreement) and submit all Design Documents for the Work for Owner's review. Based on the Technical Specifications, Contractor shall prepare comprehensive Design Documents setting forth in detail the requirements for the construction of the Work. As the drawings and specifications for the Work are issued, they shall be clearly identified as Design Documents.

2.8.3 Review of Design Documents, Reports and Manuals.

2.8.3.1 Plan for Review Schedule. Contractor shall provide to Owner within fifteen (15) days following the Effective Date a submittal schedule setting out the anticipated dates of issue of all other Design Documents sufficient to enable Owner to plan its review of the documentation. The timing of Design Document submittals in the schedule shall coordinate with the requirements of the Wind Turbine Supply Contract so as not to cause delay of any installations or other activities thereunder. Contractor shall transmit in a timely fashion one (1) set of reproducible Design Documents as prepared by Contractor or any Subcontractor in conjunction with the performance of the Work (in addition to the final As-Built Drawings and documentation to be included in the Job Books) for each Job Book deliverable to Owner under **Section 2.8.10.2**, and, pursuant to Owner's reasonable request therefor, any additional Design Documents and drawings not listed above.

2.8.3.2 Submission of Design Documents. Contractor shall submit to Owner, periodically through the date of Project Mechanical Completion, current complete copies of the Project Design Document list, and shall submit to Owner, within a reasonable time after the request therefor, each other document and drawing that Owner requires for the construction, operation and maintenance of the Contractor Facilities. If this Agreement is terminated prior to the Project Mechanical Completion Date, Contractor shall furnish Owner with any and all final documents which have been prepared, and the most up-to-date versions of documents which are not yet final.

2.8.3.3 Owner Comment. Except as otherwise provided in this Agreement, within fifteen (15) days of receipt of any Design Document required to be submitted to it for review under this Agreement, Owner shall notify Contractor of any resulting comments or queries. If Owner fails to respond within such period, then such Design Document shall be deemed to have been reviewed by Owner. Contractor shall, within ten (10) days of Owner's notification of any comments or queries on any Design Document, amend such drawing or document or otherwise respond to Owner's comments or queries. Notwithstanding anything contained herein to the

contrary, Owner's review and/or acceptance of the Design Documents, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including, but not limited to, its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Design Documents. Owner shall notify Contractor as soon as practicable after it becomes aware of any errors in such designs; provided, however, that failure to so notify Contractor will not constitute a breach of this Agreement by Owner or otherwise affect Owner's rights under this Agreement.

2.8.3.4 Quality Assurance Plan. Attached as **Exhibit Y** is an outline draft of a quality assurance plan. Contractor shall submit to Owner a detailed quality assurance plan for Owner's review within thirty (30) days of the Effective Date, which such plan sets forth Contractor's procedures regarding quality assurance which shall (i) enable Contractor to achieve the standards in the performance of the entire Scope of Work consistent with the requirements of this Agreement, and (ii) be consistent with the requirements of this Agreement in performing the Work (the "**Quality Assurance Plan**"). Owner may provide Contractor comments respecting the Quality Assurance Plan within thirty (30) days of receipt of such plan from Contractor. If Owner's comments are reasonable changes to the Quality Assurance Plan submitted by Contractor, Contractor will effect such changes at no additional cost to Owner and resubmit such Quality Assurance Plan to Owner within ten (10) days after Contractor receives Owner's comments. Owner will have ten (10) days after such resubmission to review and provide comments to such Quality Assurance Plan resubmitted by Contractor. Such procedure shall continue with the same ten (10) day time periods until Owner accepts such Quality Assurance Plan. If Owner fails to respond within any of the applicable periods specified above, Owner shall be deemed to have agreed to the last such Quality Assurance Plan submitted by Contractor.

2.8.4 Preparatory Work. Contractor pursuant to this Agreement shall undertake all geotechnical work at and a topographical survey of, the Project Site, including any required utility locating notifications. Contractor shall undertake all necessary site preparation. All such preparatory work contained in this **Section 2.8.4** shall be performed in accordance with the requirements of this Agreement.

2.8.5 Materials, Equipment, Construction Utilities and Related Services. Contractor shall procure and supply, at its own expense, whether by producing itself or by procuring from others, all materials, equipment and services required for performance of its obligations under this Agreement (whether on or off the Project Site), including the furnishing of labor, equipment, materials and tools for performance of the Work. Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the performance and completion of the Work. All equipment and materials purchased by Contractor shall be new (except as otherwise agreed to in writing by Owner and Contractor) and of suitable grade for their respective purpose, and plant identification shall be consistent throughout the Work. Contractor shall provide appropriate storage for materials, supplies and equipment for use in performance of the Work. Contractor shall have exclusive responsibility for construction methods, means, techniques and procedures and for the establishment of and compliance with safety procedures at the Project Site. All materials, supplies and equipment which may be used in performance of the Work and

which are stored at a location other than on the Project Site shall be segregated from other materials, supplies and equipment.

2.8.6 Obtaining, Maintaining and Identifying Applicable Permits. Contractor shall, at its sole cost and expense, timely obtain and maintain all Contractor Permits. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits, including, without limitation, witnesses testimony, depositions, preparation of exhibits, technical calculations and attending meetings. In the event that any Applicable Permit is required for the Project or to perform the Work that is not identified in this Agreement, Contractor or Owner, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. Contractor shall, at its sole cost and expense, be obligated to obtain and maintain any Applicable Permit required to be obtained by contractors performing work in [state project is located in]. Owner shall cooperate with Contractor in obtaining any Contractor Permits. All Applicable Permits (other than any building permits (but excluding any applicable occupancy certificates) or other Applicable Permits designated as either "To be issued in the name of Contractor" or "To be issued in the name of the Owner and Contractor" on **Exhibit H**) shall be issued in the name of Owner unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Owner or otherwise requires action by Owner, Owner shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate. Owner reserves the right to review any such application of Contractor; provided, however, that Owner's exercise of such right shall not under any circumstances, be considered an approval of the necessity, effect or contents of such application or related permit. Contractor shall deliver to Owner true and complete copies of all Applicable Permits obtained by Contractor upon its receipt thereof. Contractor shall notify Owner in writing if it has or hereafter obtains knowledge of any Applicable Permits or other government requirements necessary for performance of the Work but not identified in this Agreement. Contractor agrees that it has reviewed and accepted all terms and conditions of all Applicable Permits identified on **Exhibit H** and that Contractor shall not be entitled to a Scope Change in respect of the costs or schedule effects associated with compliance with such Applicable Permits. Contractor shall indemnify, defend and hold harmless Owner from and against all claims, losses, damages, expenses and liability (including attorney's fees and expenses) that Owner may incur as a result of signing any such Permit applications at Contractor's request, pursuant to this **Section 2.8.6**.

2.8.7 Real Property Rights; Site-Specific Requirements. Contractor shall comply with the terms of the Real Property Rights. As of the date hereof, Contractor represents and warrants that it has reasonably inspected and is familiar with the Project Site and the Real Property Rights as described in **Exhibit K**, and that (i) other than with respect to the status of Owner's title thereto (as to which Contractor makes no representation or warranty), nothing has come to the Contractor's attention that would lead it to believe that the Project Site and such Real Property Rights are not sufficient for Contractor to undertake and complete that portion of the Work to be located on such portion of the Project Site as described in such **Exhibit K** in accordance with the requirements of this Agreement, and (ii) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming the occurrence of a Force Majeure Event. Contractor shall provide all necessary information and documents within the

Scope of Work and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems, provided however, Owner shall be responsible for resolving such problems and timely obtaining Real Property Rights.

If the Real Property Rights do not allow the Contractor's currently contemplated route of access to the Project Site, the construction and use of alternative routes of access to the Project Site shall be at Contractor's sole cost and expense. If any lack of necessary Real Property Rights requires relocation of any utilities, transmission lines or other facilities from their existing or currently planned location, the Contractor shall bear the sole construction cost associated with relocating any such utilities, transmission lines or other facilities. Contractor shall not enter into any agreements regarding Real Property Rights without Owner's consent to the terms of such agreement, which consent will not be unreasonably withheld. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall cooperate with Owner in resolving all such problems. Contractor shall be required to reimburse Owner for any payment Owner is required to make to any other party to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work; provided that in no event shall Contractor be required to reimburse Owner for any operating period payments or other similar rental payments required to be made to landowners pursuant to the Real Property Rights agreements.

Contractor acknowledges that the Project Site is located on a former coal mine site, which has been reclaimed to federal and state standards and is under regulatory scrutiny of the Wyoming Department of Environmental Quality - Land Quality Division for regulatory performance. Contractor further acknowledges that Owner's reclamation activities are intended to result in the release of reclamation bonds. Contractor shall comply with all Applicable Laws and shall attend orientation meetings prior to commencement of the Work to understand concerns related to reclamation. Contractor shall designate a project manager to coordinate on-site activities with Owner's on-site reclamation/environmental specialist. Contractor further acknowledges that authority to locate, travel, access and perform the Work is allowed only on designated areas and travel ways having received the necessary post-mining land use change, as described on **Exhibit [BB]**, and access to and from the Project Site shall be via locked gates, which gates shall be locked daily at end of each shift. Hunting shall not be allowed.]

2.8.8 Consumable Parts. Contractor shall supply within the Contract Price all consumable parts required for assembling, erecting, installing, testing or otherwise performing the Work (the "**Consumable Parts**") (excluding consumable parts comprising the Owner-Furnished Equipment). All Consumable Parts not used during Project start-up and testing shall become the property of Owner.

2.8.9 List of Consumable Parts and Spare Parts. Sufficiently in advance of the first WTG Mechanical Completion Date to allow Owner to purchase timely and assemble and store same at the Project Site at or prior to commercial operation of the Project, Contractor shall provide a general list in Microsoft Excel format of recommended spare parts necessary to operate and maintain the Project (excluding spare parts comprising the Owner-Furnished Equipment) (the “**Spare Parts**”) and Consumable Parts necessary to operate and maintain the Project. For each Spare Part, the list shall indicate price, delivery lead time and maintenance cycle, if any, and shall be in Microsoft Excel format.

2.8.10 Operating Manuals and Job Books.

2.8.10.1 Operating Manuals and Procedures. Contractor shall submit for Owner’s written approval a draft of the Operating Manual and operating procedures which shall be part of the Job Books and submitted and revised as provided in **Section 2.8.10.2.**

2.8.10.2 Job Books. Not later than the Project Mechanical Completion Date, Contractor shall deliver to Owner for Owner’s review and approval three (3) copies of the final Job Books, substantially in the format and having the contents set forth in **Exhibit Z.** The Job Books shall be prepared in English only. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an editable electronic copy of such information; and Owner shall have a non-exclusive, irrevocable, royalty-free license to use such information for the purposes of construction, operation, maintenance, service, and/or repair of the Project.

2.8.10.3 Contractor-Provided Training. Contractor shall provide on-the-job training in the specific operation and maintenance of the Project (specifically other than the Owner-Furnished Equipment) and shall coordinate and conduct all training sessions with competent trainers in a manner sufficient to provide the O&M Personnel with an adequate understanding of the basic and principal design, and the operation and maintenance aspects, of each dimension of the Contractor Facilities as an integrated part of the Infrastructure Facilities, such that Owner’s O&M Personnel are capable of operating and maintaining the facilities and components so that it shall comply with this Agreement and the requirements of manufacturers’ warranties and this Agreement. The cost of the O&M Personnel’s travel, lodging, food and other living expenses shall be borne by Owner.

2.8.11 Labor and Personnel.

2.8.11.1 Engagement of Labor. Contractor shall provide, manage, oversee, hire, remove, promote and transfer all labor and personnel required in connection with the performance of the Work and of its obligations hereunder, all of whom shall have had experience (in the case of supervisors, managers and other key personnel) and appropriate levels of experience (in the case of other personnel) performing work similar in technology and magnitude to those portions of the Work each will perform on the Project, including: (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing; (b) a project engineer; (c) competent on-site staff to perform the Work; and (d) assembly, erection, installation, construction, testing, training and quality assurance

personnel and supervisors, all or a majority of whom shall have had experience with wind turbine equipment similar to the WTG in technology and magnitude and all of whom are competent to perform their assigned duties in a safe and secure manner. The Contractor shall use all reasonable efforts to cause its Subcontractors to adhere to the same standard with respect to their Labor. Contractor agrees, where required by Applicable Law, to employ only licensed personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed in accordance with Applicable Standards. To the extent required or necessary for the proper performance of the Work, Labor shall have received formal documented training in their area of expertise and, if applicable, certification.

2.8.11.2 Owner Review of Labor; Contractor Information. Contractor shall provide Owner with its corporate organizational chart (with names, titles and functions), as well as information as to the Contractor's key supervisory personnel and representatives both on the Job Site and at Contractor's home office. Upon Owner's request, Contractor shall provide Owner with the resumes of, and arrange for the interview by Owner of, any or all personnel employed in connection with the Work and Owner may require the replacement of any such personnel, at Contractor's sole expense if such person is not fully qualified to perform the Work, is impeding the orderly progress of the Work, or is otherwise causing interference or delays with respect to the Project. Rejection of Contractor's personnel by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under this Agreement.

2.8.11.3 Alcohol and Drugs. Contractor shall not possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law and so as not to interfere in any way with the proper execution of the Work) at the Job Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor and shall at all times assure that the Job Site is kept free of all such substances. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Job Site any person (whether in the charge of Contractor or any Subcontractor) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such person's performance of any portion of the Work, excluding any person using a prescription drug under supervision and approval from a medical doctor (provided the prescription drug does not interfere in any way with the proper execution of the Work), or any other person who does or whose actions may create any unsafe condition or other situation that may cause damage or harm to any person or property. Contractor shall also comply with the Owner's Drug & Alcohol Policy attached hereto as **Exhibit L**.

2.8.11.4 Arms and Ammunition. Except as required for Job Site security performed by specifically designated security personnel, Contractor shall not possess, give, barter or otherwise dispose of, to any person or persons, any arms or ammunition of any kind at the Job Site, or permit or suffer the same as aforesaid and shall at all times assure that the Job Site is kept free from arms and ammunition.

2.8.11.5 Disorderly Conduct. Contractor shall be responsible for the conduct and deeds of its Labor and its Subcontractors' Labor relating to this Agreement and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such Labor and for the preservation of peace, protection and safety of Persons and property in the area of the Job Site against the same. Contractor shall not interfere with any members of any authorized police, military or security force in the execution of their duties.

2.8.11.6 Labor Disputes. Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Taking account of the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.8.11.7 Personnel Documents. Contractor shall ensure that all its personnel and personnel of any Subcontractors performing the Work are, and at all times shall be, in possession of all such documents (including, without limitation, visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

2.8.11.8 Bilingual Employees. Contractor shall employ such reasonable number of bilingual employees as are reasonably necessary so as to ensure that use of non-English-speaking or limited-English-speaking employees by the Contractor or any of its Subcontractors will not impede or adversely affect the efficient and safe prosecution of the Work.

2.8.12 Safety and Emergencies.

2.8.12.1 Safety. Contractor shall initiate and maintain safety precautions and programs to conform with Applicable Laws and Applicable Standards designed to prevent injury to all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Owner, Contractor and its Subcontractors, and other Owner Subcontractors) and all public and private property (including structures, sewers and service facilities at the Job Site) that are at the Job Site or that could be affected by the performance of the Work. Such precautions and programs shall include prevention of injury by local flora and fauna. Contractor shall erect and maintain reasonable safeguards for the protection of workers and the public. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. Contractor shall, and shall cause all of its employees, agents and Subcontractors to, follow the safety plan as referenced in **Exhibit P** and to follow all other safety measures and procedures implemented by the Owner at the Project Site. Without limiting the generality of the foregoing, Contractor shall furnish and maintain all necessary safety equipment such as barriers, signs,

warning lights and guards as required to provide adequate protection to persons and property. In addition, Contractor shall give reasonable notice to owners of public and private property and utilities on or off the Job Site when such property is susceptible to injury or damage through the performance of the Work and shall make all necessary arrangements with such owners relative to the removal and replacement of protection of such property or utilities. As between the Parties, Contractor shall be responsible for (i) all damage it and its Subcontractors cause to public roads and highways, and (ii) all damage caused by it and its Subcontractors to private roads or property of third parties (including utilities), in each case in connection with performance of the Work.

2.8.12.2 Emergencies. In the event of any emergency endangering persons or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Owner. Whenever Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, Owner may, but shall be under no obligation to, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner's failure to do so shall not limit Contractor's obligations or liability hereunder. Contractor shall reimburse Owner for any costs incurred by Owner in taking such actions in the event of an emergency. Contractor shall assist Owner in any safety or accident investigation, and promptly provide information as requested by Owner related thereto.

2.8.12.3 Security. Contractor shall be responsible for the security and protection of the equipment, machinery and components comprising the Contractor Facilities and the Owner-Furnished Equipment upon delivery of such equipment to the Project Site through the date of Project Mechanical Completion, and for the other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Final Completion. Contractor shall take reasonable precautions to protect the Project Site. Contractor shall use the same care to protect any of Owner's property at any time in its possession or under its control while performing the Work as it does with its own property and shall be responsible for any damage to such property. Without limiting the foregoing provisions of this Section 2.8.12.3, security will be provided by the Contractor to control entry to the Project Site. Contractor-provided security personnel will enforce adherence to Owner's and Contractor's policies and procedures. Any necessary security fence at the Project Site will be provided and constructed by the Contractor. The fenced area will be used to prevent unauthorized entry and exit. Owner retains the right to restrict any individual's access to the Project Site and will be authorized to utilize the Contractor's security personnel to enforce this right. The Contractor will be responsible for bracing all Contractor personnel. In addition, the Contractor will provide for the security of its construction, letdown material, storage, office and parking area. The security for the Contractor's and the various subcontractors' tools, equipment, and materials will be the responsibility of the Contractor's and the various subcontractors, but not Owner's responsibility. All Contractor and subcontractor personnel employed at the Project Site will have a form of personal identification. This identification must be kept in the possession of all site personnel at all times while on the Project Site and will be presented for identification upon request. All visitors to the Project Site will enter by the main gate and are required to produce identification upon request and obtain clearance from the party to be visited through the security personnel, and complete and sign the

visitor registration upon entering the facility. The visitor will be issued a pass, hardhat, safety glasses, and earplugs and shall be escorted while at the Project Site. At the conclusion of the visit, the visitor will return all items to the security personnel at the main gate. Camera systems and/or other security systems will be in place to deter and document unauthorized activities at the Project Site. All personnel, vehicles, and equipment are subject to search while on the Project Site. Security personnel will be assigned assembly and accountability duties for personnel on site in cases of emergencies. A list will be maintained of all personnel on site at any particular time and date. Security personnel will not be armed and will be backed up with the local sheriff's department and other law enforcement agencies.

2.8.13 Hazardous Materials.

2.8.13.1 Contractor Duty to Monitor Compliance. Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Materials and all Applicable Permits. Without limiting the generality of the foregoing: (i) Contractor shall, and shall cause its Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Materials that are necessary, customary or advisable for the performance of the Work. Contractor shall, and shall cause its Subcontractors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Materials under this Agreement if and as required under Applicable Laws or Applicable Permits; (ii) Contractor shall conduct its activities under this Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Materials by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to, or otherwise in violation of, any Applicable Law; (iii) Contractor shall not cause or allow the release or disposal of Hazardous Materials at the Job Site, bring Hazardous Materials to the Job Site, or transport Hazardous Materials from the Job Site, except in accordance with Applicable Law and Applicable Permits. Contractor shall be responsible for the management of and proper disposal of all Hazardous Materials brought onto the Job Site by it or its Subcontractors, if any. Contractor shall cause all such Hazardous Materials brought onto the Job Site by it or its Subcontractors, if any, (A) to be transported only by carriers maintaining valid permits and operating in compliance with such permits and laws regarding Hazardous Materials pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (B) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such permits and laws regarding Hazardous Materials, from which, to the best of Contractor's knowledge, there has been and will be no release of Hazardous Materials. Contractor shall submit to Owner a list of all Hazardous Materials to be brought onto the Job Site prior to bringing such Hazardous Materials onto the Job Site. Contractor shall keep Owner informed as to the status of all Hazardous Materials on the Job Site and disposal of all Hazardous Materials by Contractor or any Subcontractor or any of their respective agents or employees from the Job Site. Notwithstanding the foregoing, Contractor shall not be responsible for the release or disposal of Pre-Existing Hazardous Materials, except to the extent such release is caused by Contractor's negligent acts or omissions and Contractor shall at no time be deemed to be the owner or be deemed to have title to such Pre-Existing Hazardous Materials.

2.8.13.2 Environmental Releases. If Contractor or any of its Subcontractors releases any Hazardous Materials on, at, or from the Job Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Materials on, at, or from the Job Site during the Work, Contractor, as soon as it becomes aware of such occurrence, shall immediately notify Owner in writing. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area. At Owner's request, Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by any Hazardous Materials that were brought onto the Job Site by Contractor or any of its Subcontractors, whether on or off the Job Site. If Contractor discovers any Pre-Existing Hazardous Materials that have been stored, released or disposed of at the Project Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor and its agents, officers, and employees from and against claims, damages, losses, and expenses, including but not limited to judgments, the cost of remediation of a Pre-Existing Hazardous Material, fines, penalties, civil sanctions, and attorneys fees, arising out of or resulting from Pre-Existing Hazardous Material, except to the extent that such claim, damage, loss or expense is due to the negligence of a party seeking indemnity.

2.8.13.3 Record-keeping. Contractor shall minimize the use of Hazardous Materials in performance of the Work and shall not utilize, or permit or cause or permit any Subcontractor to utilize, such Hazardous Materials as are prohibited under Applicable Laws from being imported into or used in the United States. Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Materials used by Contractor or its Subcontractors in connection with performance of the Work at or near the Project Site or at any construction area related to the Project.

2.8.14 Start-Up and Testing. Contractor shall perform the start-up and testing of the Contractor Facilities, including the calibration and functional testing of all controls and equipment in accordance with **Exhibits A, D, E and F**. Contractor shall conduct all start-up, synchronization, operation and testing of the Contractor Facilities in accordance with this Agreement, applicable manufacturers' instructions and warranty requirements, Applicable Laws, Applicable Standards, Applicable Permits, and any and all applicable rules as agreed to by Owner and the Contractor. Owner and its respective authorized representatives shall have the right to inspect the Work and to be present during the start-up, synchronization, operation and testing of the Contractor Facilities.

2.8.15 Clean-up; Non-Interference. Contractor shall at all times keep the Project Site reasonably free from waste materials and rubbish related to the Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. During the period from WTG Mechanical Completion to Final Completion, Contractor's performance of the Work shall not unreasonably interfere with the Commissioning of the WTGs or the commercial operation of the Project. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of **Article XIII**, Contractor shall: (i) remove all Contractor equipment from the Job Site (other than equipment, supplies and

materials necessary or useful to the operation or maintenance of the Project and equipment, supplies and materials directed by Owner to remain at the Job Site until completion of the Project); (ii) clean out all conduits; (iii) tear down and remove all temporary structures on the Job Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed power plant; (iv) remove all waste and rubbish from and around the Job Site; and (v) re-grade areas disturbed during the Work, as required by this Agreement and the conveyances and other documentation creating the Real Property Rights. During construction of the Project, Contractor shall use commercially reasonable efforts to minimize the disruption to public roads caused by the construction process and to repair any damages caused to a public road by Contractor during the construction process. After construction, Contractor shall leave such public roads in a state of equal condition as they were prior to construction, excepting normal wear and tear.

2.8.16 Waste Disposal. Contractor shall arrange and contract for the disposal, transportation, record-keeping and reporting of Hazardous Materials generated by or produced in connection with Contractor's performance of the Work and from the operation of the Project prior to Project Mechanical Completion from the Project by licensed, insured, competent and professional contractors in a safe manner and in accordance with Applicable Law and any Governmental Authority requirements.

2.8.17 Books and Records; Taxes. Contractor shall keep such full and detailed books, records and accounts as may be necessary for proper financial management under this Agreement. In addition, within a reasonable period of time after a request therefor, Contractor shall provide Owner with any information regarding quantities and descriptions of the Work that Owner reasonably deems necessary in connection with the preparation of its Tax returns and other regulatory compliance filings.

2.9 Delivery and Unloading of Owner-Furnished Equipment. Contractor shall unload the WTGs in compliance with the Wind Turbine Supply Contract, and Contractor shall be responsible for any reasonable costs and demurrage resulting from Contractor's failure to unload the WTGs in accordance with the terms and conditions of the Wind Turbine Supply Contract. Contractor shall unload the step-up transformers in compliance with **Exhibit G**, and Contractor shall be responsible for any reasonable costs and demurrage resulting from Contractor's failure to unload the step-up transformers in accordance with **Exhibit G**.

2.10 Interconnection. Contractor shall be responsible for performing all Work necessary to interconnect the WTGs, the Project Substation and other components of the Work, as set forth in the Scope of Work and Technical Specifications, and in compliance with the Interconnection Agreement.

2.11 Owner's Right to Inspect; Correction of Defects.

2.11.1 Right to Inspect. Owner and representatives authorized by Owner shall have the right to inspect the Work and to maintain personnel at the Project Site for such purpose, which representatives will comply with Contractor's safety plan as referenced in **Exhibit P**. Contractor shall give Owner at least one (1) Business Day's written notice of covering of any portion of the

Work. If any portion of the Work should be covered without proper notice to Owner or contrary to the requirements in this Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If Owner does not object to any properly noticed covering of any portion of the Work or request to view such work prior to its covering, Owner shall bear the cost of uncovering such work unless such portion of the Work is found not to be in accordance with the requirements of this Agreement, in which case, the cost and scheduling risk of uncovering, replacement and re-covering shall be charged to Contractor. If such other portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs and provide an extension of time to perform pursuant to an appropriate Scope Change Order in accordance with **Article IX**. Such inspection (or lack of inspection) of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work, including correcting any Defect, in accordance with this Agreement.

2.11.2 Correction of Defects. Contractor shall at its own cost and expense correct or replace any Work that contains a Defect, or is not otherwise in accordance with this Agreement. Equipment that has been replaced, if situated on the Job Site, shall be removed by Contractor from the Job Site at Contractor's own cost and expense. If Contractor or any Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and Contractor fails within a reasonable period of time (as reasonably determined by Contractor) after it knows or should have known of such default or neglects to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have under this Agreement, correct such deficiencies. In such event, an appropriate Scope Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such deficiencies, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within three (3) days from Owner's request therefor. Contractor shall correct any and all deficiencies as required by this Agreement notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section shall modify Contractor's obligation to achieve Final Completion in accordance with this Agreement.

2.12 No Liens. Contractor shall, at Contractor's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within ten (10) days after receipt of a written demand from Owner, any Lien in respect to the Project, this Agreement, the Work, the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing labor or materials within the scope of Contractor's Work. Notwithstanding the foregoing provision, as long as Owner, in its sole discretion, determines that the Job Site and the improvements thereon will not be subject to any liability, penalty or forfeiture, upon the written request of Contractor, Owner may permit Contractor to contest the validity, enforceability or applicability of any such Lien, in which event Owner shall provide, at no cost to Owner, such cooperation as Contractor may reasonably request in connection therewith. Contractor agrees to refrain from filing a lien statement or similar instrument until five (5) days before the expiration of the statutory period for filing liens,

and to prevent each Subcontractor in its subcontract from doing the same. Upon the failure of Contractor to promptly discharge or cause to be released any Lien as required by this **Section 2.12**, within thirty (30) days of notice of the existence thereof, Owner may, but shall not be obligated to, pay, discharge or obtain a surety bond for such Lien and, upon such payment, discharge or posting of surety bond therefor, shall be entitled to immediately recover from Contractor the amount thereof together with all expenses incurred by Owner in connection with such payment, discharge or posting, or set off all such amounts against any sums owed by Owner to Contractor. Notwithstanding any provision in this Agreement to the contrary, nothing herein shall affect Contractor's right to file or otherwise place any Lien on the Project, the Equipment, the Work or the Job Site, as a result of non-payment by Owner of any undisputed amounts owing to Contractor under this Agreement.

2.13 Cooperation. Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, Applicable Permits and Owner's Commissioning of the WTGs. Contractor acknowledges that work may be performed by others (including without limitation the Turbine Vendor and other Owner Subcontractors) at the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that Owner, through itself or through its employees, subcontractors or agents, will continue to work and perform activities in connection therewith at the Job Site during the execution of the Work under this Agreement. Contractor shall cooperate and cause its Subcontractors to cooperate with Owner, Owner's representatives and Owner Subcontractors who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors unreasonably hinders or increases the work being done by Owner and other unrelated contractors. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by Owner, whether such Work is partially or entirely complete, when, in the reasonable judgment of Owner, such access or use is necessary for the performance and completion of the work of others. All material and labor shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by this Agreement. In addition, Contractor shall use reasonable efforts, and cause its Subcontractors to use their reasonable efforts, to assist Owner in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the host community caused by the construction of the Project. Such programs shall include: (i) sequencing of the Work so as to minimize the impacts of noise and dust at and around the Job Site and (ii) using local labor and other resources whenever reasonably possible and cost effective. Owner shall require Owner Subcontractors to similarly cooperate with Contractor and to comply with Contractor's safety plan and safety requirements.

2.14 FAA Lighting. Upon Owner's request, Contractor shall supply and install the FAA lighting required for each WTG. Owner shall pay Contractor the per unit price set forth on **Exhibit B-3** for each WTG that Contractor installs the FAA required lighting.

2.15 Site Specific Requirements. Contractor

**ARTICLE
SUBCONTRACTORS**

III

3.1 Subcontractors. Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written subcontracts between Contractor and such Subcontractors. Owner agrees to the use and engagement of Subcontractors by Contractor, provided, that Contractor may not enter into any contract with a Major Subcontractor unless the Major Subcontractor is named on **Exhibit I** or has been approved by Owner in accordance with **Section 3.2** and that Contractor shall provide Owner with the right to inspect all aspects of the Work at facilities of each Major Subcontractor during business hours and upon reasonable notice. Except as otherwise expressly provided in this Agreement, Contractor shall be solely responsible for engaging, managing, supervising and paying all such Subcontractors. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors are received, inspected and otherwise furnished in accordance with this Agreement, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of such Subcontractors. All contracts with Subcontractors shall be consistent with the terms and provisions of this Agreement. At a minimum, all Subcontracts shall require the Subcontractors to comply with Applicable Laws and Applicable Permits, shall provide that Owner has the right of inspection as provided hereunder and require such Subcontractors to (a) be subject to the labor obligations hereunder as well as the safety and security provisions of this Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the Equipment, (c) provide certificates of insurance as set forth herein, (d) be subject to the dispute resolution procedures as required herein and (e) provide partial Lien waivers in connection with each payment by Owner to Contractor (and final Lien waivers upon completion of the Work and Owner's payment therefor) with respect to any interest in the Project Site, the Equipment and the Owner-Furnished Equipment in advance of performing any portion of the Work. All Subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to enter into similar agreements with other Subcontractors. Except as hereinafter provided, no contractual relationship shall exist between Owner and any Subcontractor with respect to the Work to be performed hereunder. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of this Agreement. No Subcontractor is intended to be nor shall be deemed a third party beneficiary of this Agreement. Contractor agrees that it shall be fully responsible to Owner for the acts and omissions of Subcontractors and of Persons directly or indirectly employed by them, as it is for the acts or omissions of Persons directly employed by Contractor. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor in connection with the Project.

3.1.1 Assignment. No subcontract or purchase order between Contractor and Persons other than the Owner shall bind or purport to bind Owner, but each Major Subcontractor entering into a subcontract with respect to the Work shall name Owner as an intended third-party beneficiary and contain a provision substantially in the form of **Exhibit J** permitting its assignment to Owner

upon Owner's written request, following default by Contractor or termination or expiration of this Agreement.

3.1.2 Subcontractor Warranties. Without in any way derogating Contractor's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Work, Contractor shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, equipment, tools, supplies, and other items furnished by such Subcontractors. Contractor shall assign all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Owner, and without recourse to Contractor, to Owner upon default by Contractor or upon any termination or expiration of this Agreement; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Contractor has any liability under this Agreement. To the extent assignable, Contractor hereby assigns to Owner, effective as of the end of the Warranty Period for the Project, all representations, warranties, guaranties and obligations of all Subcontractors.

3.2 Major Subcontracts. Appended to this Agreement, as **Exhibit I**, is a list of approved Subcontractors. In the event that Contractor is considering the selection of a Subcontractor not listed in **Exhibit I** for a Major Subcontract, Contractor shall: (i) notify Owner of the proposed Major Subcontractor at the earliest practical point in its selection process and furnish to Owner all information reasonably requested by Owner with respect to the qualifications of proposed Major Subcontractors; and (ii) notify Owner no less than fifteen (15) Business Days prior to the proposed date of execution of a Major Subcontract. Owner shall have the right to reject for good cause any proposed Major Subcontractor and Contractor shall not enter into any Major Subcontract with a proposed Major Subcontractor rejected by Owner. Owner shall undertake in good faith to review the information provided by Contractor expeditiously and shall notify Contractor of any such rejection as soon as practicable after such decision is made. If at the end of the fifteen (15) Business Days after receipt of such information by Owner, Contractor has not received notice of Owner's rejection of the proposed Major Subcontractor, Contractor shall have the right to execute such agreement with the proposed Major Subcontractor, and such Major Subcontractor shall be deemed added to the list of approved Subcontractors in **Exhibit I**. Approval (or deemed approval) of any Major Subcontractor under this paragraph shall only be for the portion of the Work so approved. Contractor hereby acknowledges and agrees that the review and/or acceptance of any Subcontract by Owner and the acceptance of the approved Major Subcontractors shall not: (i) modify, in any way, the obligations of Contractor pursuant to this Agreement; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with this Agreement.

**ARTICLE
CONTRACT PRICE**

IV

4.1 Contract Price. As consideration to Contractor for completing and furnishing the Work, Owner agrees to pay Contractor an amount equal to _____

Dollars (\$ _____), as full payment for all Work to be performed by Contractor under this Agreement, as may be adjusted pursuant to **Article IX** (the “**Contract Price**”). The Contract Price shall be increased by the amounts required to be paid by Owner to Contractor in accordance with **Section 2.14**. The following amounts and only the following amounts that may be payable to Contractor pursuant to the terms hereof are in addition to the Contract Price: (i) interest, if any, payable hereunder on delayed payments by Owner; (ii) Sales Tax reimbursement, if any, pursuant to **Section 4.2**; (iii) indemnification pursuant to **Article X**; and (iv) the Termination Payment, if any. The Contract Price is stated in U.S. Dollars and is not subject to adjustment for exchange rate fluctuations.

4.2 **Taxes.** Except as otherwise provided herein, Contractor shall pay all Import Taxes and any other Taxes levied on the Work, including without limitation, Sales Taxes on any of the materials and Work to construct the access roads, taxes based on or related to the income, receipt, capital or net worth of Contractor, Contractor’s or its Subcontractors’ labor or income, but excluding (i) net income taxes or franchise taxes imposed on Owner and (ii) real property taxes assessed against the Project Site and any permanent use charges or assessments such as water or sewer (but excluding charges and taxes for construction utilities and fuel to be supplied by Contractor as required hereunder, which shall be Contractor’s responsibility). When requested by Owner, Contractor shall make available to Owner and claim any and all applicable Sales Tax exemptions, credits or deductions relating to the Work available to itself or Owner, including (but not limited to) any exemption for wind energy conversion property, sale-for-resale exemption, and any manufacturing machinery and/or equipment exemption. At the direction of Owner, Contractor agrees to take such action as may be reasonably required to allow any of the property included within the Project to qualify for any applicable Sales Tax exemption. If required in connection with the purchase of any property from its vendors, Contractor agrees to provide its vendors resale certificates reflecting the fact that Contractor is purchasing such property for resale to Owner. To the extent Contractor is required by Applicable Law to collect Sales Tax from Owner, Contractor shall either collect Sales Tax from Owner on all materials physically incorporated in the Project that are not subject to exemption or Owner shall provide Contractor with a direct pay certificate issued to Owner by the applicable taxing jurisdiction. In the event that an assessment for Sales Taxes is levied against Contractor, Contractor shall promptly notify Owner and furnish to Owner a copy of such assessment. If Owner determines that the assessment should be contested and so notifies Contractor in writing, Owner may, at Owner’s sole cost and expense, file such documents as are necessary to contest such assessment. Owner shall exclusively control any contest, assessment or other action regarding any such taxes or assessments, or any penalties or interest in respect thereof. Contractor shall cooperate with and assist Owner, at Owner’s expense, in any contest or proceeding relating to Sales Taxes payable by Owner hereunder. If Owner provides to Contractor the necessary resale and exemption certificates under Applicable Law, Contractor shall not collect Sales Taxes from Owner; provided, that notwithstanding the provision of such certificates, Owner shall remain liable for such Sales Taxes that actually become due and shall reimburse Contractor for any amounts Contractor pays relating thereto, including any interest and penalties and other costs incurred by Contractor as a result of Owner not paying such taxes. Contractor shall timely administer and pay all Taxes for which Contractor is responsible, and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and furnish copies of such information and reports (other than information specifically pertaining

to Contractor's income and profit) to Owner. Contractor shall provide to Owner such further information reasonably requested by Owner to confirm that the correct amount of sale and use tax or other like-taxes will be paid on the Work and the Project.

Notwithstanding the foregoing, Contractor shall not be liable for and the Contract Price shall not include any Sales Taxes (other than Sales Taxes on access road materials and related Work). If Contractor is requested to pay such Sales Taxes not included in the Contract Price, then Owner shall reimburse Contractor for any and all such Sales Taxes paid by Contractor. Contractor shall invoice Owner for any such Sales Taxes, and the invoice shall include sufficient detail so that Owner can verify that the Sales Tax is appropriate.

4.3 Payment of the Contract Price. As full consideration for the satisfactory performance of Contractor's obligations under this Contract, (i) within five (5) Business Days of the Effective Date, Owner shall pay to Contractor the initial payment amount set out in **Exhibit B-1** (the "**Down Payment**"), and (ii) Owner will pay Contractor the Contract Price in accordance with Exhibit B-1 "Payment Milestones."

Owner shall pay Contractor all undisputed invoice amounts within twenty-one (21) days after receipt of a Request for Payment, as set forth below, in strict accordance with the Payment Milestones, less a retention as set forth in **Section 4.5**, however in no event shall any payment be due and owing until such time as the Work has been satisfactorily completed and accepted by Owner pursuant to the procedures set forth in Exhibit B-1 "Payment Milestones" and all other conditions have been satisfied. No payment shall be made unless the Contractor has achieved the Milestone for which the payment is requested prior to the Contractor submitting its Request for Payment with respect thereto.

Contractor shall, on the first (1st) day of each calendar month (or the following Business Day if the first (1st) of the month is not a Business Day), prepare and submit to Owner an application for payment (each, a "**Request for Payment**") in the form set forth in **Exhibit B-2** hereto specifying (i) components of the Work corresponding to Milestones set forth in the Payment Milestones which have achieved completion, (ii) the Work completed during the period commencing upon the date of the Request for Payment for the prior period and ending on the date of the Request for Payment for the current period, and (iii) the total payment sought in the Request for Payment based upon the Payment Milestones, including the appropriate supporting documentation of the foregoing including, but not limited to, any certificates of completion, as applicable.

Payment Milestones have been selected to clearly identify the actual status of Work completed, rather than anticipated Project Schedules. This will establish a tangible basis for mutual agreement that the Milestone objective has been met.

The Owner will consider all Work complete only when the Work is completed in accordance with the terms and conditions of this Agreement including, all training and documentation has been provided, all equipment and spares have been provided, the construction Work is finished, the final product has been inspected and tested, all make good deficiencies are corrected, all liquidated damages have been reconciled and paid and the equipment and the Work is operating

in a condition reasonably satisfactory to Owner, as specified herein.

4.4 Disputed Invoices. If there is any dispute about any amount invoiced by Contractor, the amount not in dispute shall be paid by Owner in accordance with this Agreement. Any such amount that is ultimately determined to have been payable shall be paid with interest calculated as provided in **Section 4.10**. If a payment dispute arises, Contractor shall continue its performance under this Agreement.

4.5 Retainage. There shall be withheld as retainage from each payment due and payable to Contractor hereunder (other than the Down Payment and payments due upon and after Project Mechanical Completion) fifteen percent (15%) of the amount of such payment (the "**Retainage**"). Such amount shall be held by Owner as security for the performance of Contractor's obligations hereunder and any interest thereon shall accrue for the account of Owner and not Contractor. As a form of Retainage, Contractor may post a letter of credit on terms and with such institutions as are reasonably acceptable to Owner, and the amount thereof shall be adjusted with each payment by Owner to equal the amount of the Retainage which would be otherwise withheld from time to time under this Agreement. Owner may use the Retainage to cure a Contractor Event of Default, for Mechanical Completion Delay Liquidated Damages, for payment of unpaid suppliers and payments made to remove Liens filed by Subcontractors, and any and all other amounts payable to Owner hereunder. Except as set forth in the next sentence, Owner shall hold the aggregate amount of the Retainage until the Project Mechanical Completion Date. On such date, Owner, as security for performance of Contractor's obligations to complete any remaining items on the Punch List, shall continue to withhold two hundred percent (200%) of the estimated cost to complete the items on the Punch List (which shall, for purposes of this **Section 4.5 and Section 6.6**, be deemed to include the value of Contractor deliverables required to be provided to Owner hereunder as a prerequisite to the achievement of Final Completion, including without limitation, Lien releases, As-Built Drawings, and other required documentation, as well as the value of performance of Job Site clean-up and other post-construction activities) as such costs are reasonably estimated by Owner. Subject to retention as security for completion of Punch List Items, at Final Completion Owner shall release to Contractor the remaining portion of the Retainage. Any interest accruing on such amount shall accrue for the account of Owner and not Contractor.

4.6 Conditions of Payment. Contractor's right to receive any payment to be paid to it hereunder is conditioned upon its submitting to Owner, in a form reasonably acceptable to Owner, evidence of achievement for that portion of the Work required to be achieved prior to such milestone payment, and appropriate written waivers and releases of Liens and security interests from all Subcontractors and other third parties to the extent of such payment and duly executed by Contractor and its Subcontractors in the applicable form set forth as **Exhibit AA** in order to assure an effective release to the extent permitted under Applicable Laws. To the extent of payments received (including payments received at the time of execution of such release) by Contractor, each waiver and release of Liens by a Subcontractor shall provide that all amounts that were due and payable to the certifying party in connection with the Work as of such date have been paid in full (subject to proper retention by Contractor pursuant to its Subcontract with such Person) and that the certifying party waives, releases or relinquishes any Lien, security interest or claim (whether for breach of contract, pursuant to Applicable Laws or otherwise) to

the extent set out in the first sentence of this subsection on account of the work to which it may be entitled by Applicable Laws (or this Agreement, in the case of Contractor). Contractor shall obtain such waiver and release of Lien in the form of a partial release effective upon delivery in accordance with Applicable Law. Notwithstanding the foregoing, Contractor shall at all times, with respect to any claim, have the option to bond with a reputable surety company any claim or Lien of any Subcontractor that Contractor is disputing in good faith, in lieu of paying or discharging the same. Contractor's obligation to provide the foregoing releases, waivers and bonds shall not excuse its obligation under **Section 2.12** to prevent or minimize their filing in the first instance. Within thirty (30) days after its receipt of a Request for Payment, provided that Contractor has satisfied the foregoing conditions, Owner shall pay to Contractor the amount that remains after the deduction from the amount requested in the applicable Request for Payment of the following amounts: (i) any portion thereof that Owner disputes in good faith as not being due and owing, (ii) any overpayment made by Owner for any previous period, (iii) any Mechanical Completion Delay Liquidated Damages (including interest thereon) payable by Contractor, and (iv) any amounts withheld pursuant to **Sections 4.5 and 4.7** (the "**Milestone Payment**").

4.7 Withholding Payment. Notwithstanding any other provision to the contrary contained herein, Owner may withhold payments to Contractor hereunder and Owner may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such extent as may be necessary in Owner's reasonable opinion to protect Owner from loss because of: (i) Defects in the Work not remedied; (ii) third party claims filed for which Contractor is responsible (including Liens) against the Work, the Project or the Project Site; (iii) the unexcused failure of Contractor to make payments when due to Subcontractors; (iv) damage to Owner or another contractor, for which Contractor is liable, including damage to the property of Owner or any of its Affiliates; (v) Contractor's, or any Subcontractor's failure to carry out the Scope of Work in accordance with this Agreement; (vi) the occurrence of a Contractor Event of Default; (vii) Contractor's failure to, or a good faith determination by Owner that Contractor cannot, with prompt and reasonable acceleration of the Work, achieve WTG Mechanical Completion for each WTG or any other Critical Milestone on or before the applicable Guaranteed Mechanical Completion Date or the Critical Milestone Date therefore; or (viii) Contractor's failure to deliver a recovery plan acceptable to Owner as set forth in **Section 2.6** or the failure of Contractor to cause the prosecution of the Work to conform to the recovery plan accepted by Owner; provided, however, the amount withheld or retained on account of clauses (vii) and (viii) shall not exceed the amount of Mechanical Completion Delay Liquidated Damages for which Contractor could ultimately be liable under **Section 6.10 and Section 11.1**. Contractor shall not have any rights of termination or suspension under such Sections as a result of Owner's exercise of its rights under this **Section 4.7**. Owner shall release payments withheld pursuant to this **Section 4.7** within five (5) days from the date when Contractor cures such breaches.

4.8 Intentionally Omitted.

4.9 Termination Payment.

4.9.1 Termination Payments Due to Contractor. Upon a termination of this Agreement pursuant to **Section 13.2, Section 13.3, Section 13.4(i)** or **Section 13.4(ii)** (only as to items (i)

and (ii) below), Contractor shall be entitled to a payment (the “**Termination Payment**”), which shall equal the sum of the following, without duplication: (i) that portion of the Contract Price that is applicable to Work performed up to the date of termination that has not previously been paid to Contractor (as determined below); (ii) the expenses reasonably incurred by Contractor in effecting the termination and withdrawing Contractor’s Equipment and personnel from the Job Site and in otherwise demobilizing; and (iii) the expenses reasonably incurred by Contractor in terminating or (to the extent so requested by Owner) assigning to Owner contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor). The Termination Payment shall not include any cost incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable diligent efforts to mitigate the costs associated with termination including a reasonable attempt to identify and pursue other uses for equipment or supplies manufactured or obtained pursuant to this Agreement. Contractor shall supply suitable invoices, information and other documentation to support its calculation of the Termination Payment.

4.9.2 Payment of Termination Payment. Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documents referred to in **Section 4.9.1**. Owner shall pay the undisputed portions of such invoice on the later of (i) thirty (30) days after its receipt of same and (ii) the date on which Contractor has complied with all of the requirements of **Section 13.5**.

4.9.3 Termination Payment Contractor’s Sole Remedy. Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement under **Section 13.2**, **Section 13.3** or **Section 13.4**, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination; provided, however, the foregoing shall not relieve Owner of any indemnification obligations Owner may have to Contractor pursuant to **Article X**. If this Agreement is terminated pursuant to **Section 13.1**, no Termination Payment shall be due and payable pursuant to this **Section 4.9** from Owner and any payment to Contractor shall be computed solely in accordance with **Section 13.1**.

4.10 Interest. Any amount owed to either Party beyond the date that such amount first becomes due and payable under this Agreement shall accrue interest from the date that it first became due and payable until the date that it is paid at the lesser of (a) the Prime Rate plus two hundred (200) basis points, and (b) the maximum rate permitted by Applicable Laws.

4.11 Effect of Payment. Payment of the Contract Price shall not constitute Owner’s approval of any portion of the Project or the Work which has been determined not to be, or subsequently is determined not to have been, performed in accordance with the requirements of this Agreement.

4.12 Set-off. Owner may deduct and set-off (including a draw on any bond or any other security held by Owner) against any part of the balance due or to become due to Contractor under this Agreement including (i) any Mechanical Completion Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder, (ii) any amounts due or to become

due to Owner under **Article IX**, (iii) any Retainage permitted by this Agreement, and (iv) any other amounts that are due from Contractor to Owner under or in connection with this Agreement.

4.13 Payment Dates. Notwithstanding anything to the contrary in this **Article IV**, in the event that a payment to be made under this Agreement falls due on any day that is not a Business Day, the payment shall be deemed due on the first Business Day thereafter.

4.14 No Payment in the Event of Material Breach. Notwithstanding any other provision to the contrary contained herein, Owner shall have no obligation to make any payment to Contractor at any time when a Contractor Event of Default has occurred and is continuing, except to the extent that amounts owing to Contractor (taking into account the Down Payment) any time following such Contractor Event of Default exceed the potential liability of Contractor to Owner hereunder as reasonably calculated by Owner (including without limitation potential liability in respect amounts necessary to discharge Liens of Subcontractors, pay Mechanical Completion Delay Liquidated Damages that have or may accrue, or to pay amounts due in respect of indemnification pursuant to **Article X**). Any payments not made pursuant to this **Section 4.14** shall be paid to Contractor within fifteen (15) Business Days following any reduction of the potential liability of Contractor to Owner hereunder.

ARTICLE OWNER RESPONSIBILITIES

V

5.1 Project Site Access.

5.1.1 Easements and Project Layout. Owner shall obtain the Real Property Rights and provide reasonable access for construction mobilization not later than [_____ 1, 200X] with respect to the Project Site. Prior to the access dates described in the previous sentence, upon Contractor's reasonable request, Owner will take actions necessary to allow Contractor to access property covered by then existing Real Property Rights in order to obtain representative soil borings and conduct such other reasonable site investigations. Owner shall comply with the terms of the Real Property Rights and shall enforce the terms of the Real Property Rights in connection with the Work. If the WTGs, Civil Works or Electric Works are required to be relocated as a result of Owner not obtaining the Real Property Rights as described in **Exhibit K**, or in the event of changes to the preliminary Project layout attached in **Exhibit K** (to the extent such changes are not caused by Contractor), Contractor shall be entitled to a Scope Change in accordance with **Article IX**.

5.1.2 Owner is responsible for obtaining the Real Property Rights as described in **Section 5.1.1** above and is responsible to ensure that the terms of such Real Property Rights reasonably permit Contractor to perform the Work on the Project Site (including providing for construction laydown areas). Owner is not responsible for providing access to the Project Site (other than to ensure that the Project Site is reasonably accessible from public roads or from other parts of the Project Site that itself has access to public roads). Contractor shall be responsible at Contractor's sole cost for all Real Property Rights necessary (if any) to gain access to the Project Site and

shall be responsible for obtaining Real Property Rights for any property used by Contractor for a storage yard, construction office trailers and/or show-up location. Owner shall not prevent, obstruct or otherwise interfere with Contractor's reasonable rights of ingress or egress to and from the Project Site.

5.1.3 Real Property Rights Payments; Payments for Crops. Owner shall be responsible for all annual evaluation period, operating period and/or other fixed payments to the landowner under the terms of the Real Property Rights. Owner and Contractor shall use reasonable efforts to mitigate any payments that may be required to compensate the landowners under the Real Property Rights for crops (if any), including designating appropriate areas in which the landowners should refrain from planting crops. Owner shall be solely responsible for any compensation required to be paid for crops on acreage that is permanently lost to cultivation at the locations of the WTGs and access roads on the Project Site. Contractor shall be responsible for all other crop damages in accordance with **Section 2.8.7**.

5.1.4 Survey. Owner shall provide an ALTA survey to Contractor prior to [_____ 1, 200X] as it relates to the Project Site, that shall show the property covered by the Real Property Rights and the boundaries of the Project Site, in addition to such other information normally and customarily included in such surveys (and Owner will provide a draft survey at such time that they are available and upon Contractor's reasonable request). Contractor shall be responsible for flagging or otherwise marking the Project Site to the extent it determines such Work is required.

5.2 Owner-Furnished Equipment. Owner shall provide or cause to be provided all Owner-Furnished Equipment at the Project Site in accordance with the delivery schedule therefor set forth in **Exhibit F** (for the WTGs) and **Exhibit G** (for the step-up transformers).

5.3 Permits. Owner shall be responsible for obtaining and maintaining those Permits listed in **Exhibit H** as Owner's responsibility. Owner shall cooperate with Contractor in connection with Contractor's efforts to obtain the Permits required pursuant to **Section 2.6.8**. Owner shall promptly advise and keep Contractor advised regarding the terms and requirements (and changes thereto) applying to Permits which Owner is obliged to secure hereunder. If Owner fails to procure the Permits identified on **Exhibit H** that are necessary for Contractor and its Subcontractors to mobilize for construction on the Project Site by [_____ 1, 200X] with respect to the Project Site, Contractor shall be entitled to a Scope Change in accordance with **Section 9.3**.

ARTICLE COMPLETION OF WORK

VI

6.1 Access Road Completion. Contractor shall achieve Access Road Completion on or before the Access Road Guaranteed Date and otherwise in accordance with the requirements of this Agreement. "**Access Road Completion**" shall mean that Contractor has achieved completion of the following:

- (a) the access roads to each applicable Foundation,

(b) the turning radius (which such turning radii satisfy the requirements set forth in the Wind Turbine Supply Contract) that are necessary for the public roads in the State of [state project is located in] and from the public roads to the private access roads,

(c) and other road improvements and work necessary to permit the delivery of the Wind Turbine Generator (including the Tower) to each Foundation, and otherwise in accordance with the requirements of this Agreement, and

(d) Owner has accepted or is deemed to have accepted an Access Roads Completion Certificate with respect to such Work pursuant to **Section 6.7**.

6.2 Foundation Completion. Contractor shall achieve Foundation Completion with respect to each individual Foundation on or before the Critical Milestone Date therefor and otherwise in accordance with the requirements of this Agreement. “**Foundation Completion**” means with respect to a Foundation the achievement of the following with respect to each individual Foundation:

(a) such Foundation is mechanically completed and installed in accordance with the Technical Specifications and the requirements of this Agreement;

(b) such Foundation is structurally complete and contains all necessary embedded inserts;

(c) the concrete portion of such Foundation has cured so as to have achieved the minimum strength necessary to allow assembly, erection and installation of the base Tower of the WTG thereon;

(d) backfilling of the area surrounding such Foundation has been completed;

(e) Contractor has documented any changes to each Foundation and the Infrastructure Facilities (both above-ground and below-ground in the immediate surrounding area of the such Foundation); and

(f) Owner has accepted or is deemed to have accepted a Foundation Completion Certificate with respect to such Work pursuant to **Section 6.7**.

6.3 Electrical Works Completion. Contractor shall achieve Electrical Works Completion on a per-circuit basis and otherwise in accordance with the requirements of this Agreement. “**Electrical Works Completion**” with respect to an individual circuit of Electrical Works and equipment associated therewith means the achievement of the following milestones:

(a) The padmount foundations have been completed;

(b) all of the Electrical Works including the installation of all grounding, necessary to energize the WTGs, are completed in accordance with the requirements of this Agreement;

- (c) subject to Punch List Items, all materials and equipment associated with such Electrical Works have been installed in accordance with the Technical Specifications, the Commissioning checklist set forth in **Exhibits A and E**, and the other requirements of this Agreement and checked for adjustment;
- (d) such Electrical Works and all other Infrastructure Facilities necessary to achieve connection of such WTGs to the electricity transmission system interconnected at the Project Substation, are energized;
- (e) all of the Electrical Works necessary to achieve connection of such padmount transformers to the Project Substation in accordance with this Agreement have been installed, insulated, protected and tested, including synchronization with such system;
- (f) subject to Punch List Items, all of such Electrical Works have been properly constructed, installed, insulated and protected where required for such operation, correctly adjusted, tested and commissioned, are mechanically, electrically and structurally sound as set forth in the Technical Specifications, and can be used safely in accordance with the Contract Documents, Applicable Laws and Applicable Standards;
- (g) Contractor has prepared and submitted a list of Punch List Items with respect to such circuit of Electrical Works; and
- (h) Owner has accepted or is deemed to have accepted an Electrical Works Completion Certificate with respect to such Electrical Works pursuant to **Section 6.7**.

6.4 Mechanical Completion of WTGs. Contractor shall cause WTG Mechanical Completion with respect to each WTG to occur on or before the Guaranteed Mechanical Completion Date for the WTG Shipment of such WTG, and otherwise in accordance with the requirements of this Agreement. “**WTG Mechanical Completion**” means, as to a WTG, the achievement of the following:

- (a) Foundation Completion and valid delivery and acceptance by Owner of a Foundation Completion Certificate with respect to such WTG;
- (b) subject to Punch List Items, such WTG is assembled, erected and installed so as to be demonstrably completed in accordance with the Technical Specifications, the WTG Mechanical Completion Certificate set forth in **Exhibit U**, the Wind Turbine Supply Contract and the other requirements of this Agreement;
- (c) subject to Punch List Items, all materials and equipment associated with such WTG have been installed in accordance with the Technical Specifications and verified in accordance with the installation checklists set forth in **Exhibit F**;
- (d) Contractor has prepared and submitted a list of Punch List Items with respect to such WTG or other component;

- (e) the WTG is ready to commence Commissioning;
- (f) Electrical Works Completion with respect to the Electric Works circuit line to which the WTG is connected and valid delivery and acceptance by Owner of an Electric Works Completion Certificate with respect to such circuit;
- (g) Turbine Vendor acknowledges that all Work necessary for Turbine Vendor to commence to Commission the WTG has been successfully completed by Contractor; and
- (h) Owner has accepted or is deemed to have accepted a WTG Mechanical Completion Certificate with respect to such WTG pursuant to **Section 6.7**.

6.4.1 Commissioning of WTGs. Upon receipt by Owner of a WTG Mechanical Completion Certificate with respect to a WTG and promptly after Owner's countersignature thereof as provided in **Section 6.7**, Owner shall commence or shall cause to be commenced, with Contractor's cooperation and assistance, commissioning of such WTG; provided however, Contractor's obligation to provide assistance pursuant to this **Section 6.4.1** shall be limited to providing information, access, lockout/tagout and assistance solely relating to the interface between Contractor's Work and the work of the Turbine Vendor.

6.4.2 Punch List. In connection with and as a condition to the achievement of Electrical Works Completion for a particular circuit and the achievement of WTG Mechanical Completion as to each WTG, Contractor shall develop a list (each, an "**Interim Punch List**") setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of this Agreement. Contractor agrees that installation of the fiber optic cable and connection to the Project's SCADA system is not an Interim Punch List Item. In addition to Contractor providing the Interim Punch List to Owner in accordance with this **Article VI**, Contractor shall also promptly provide a copy of such list to Owner upon Owner's request. Contractor shall make such revisions to such list as and when requested by Owner from time to time.

As a condition to Project Mechanical Completion, Contractor shall prepare and submit to Owner a comprehensive list (the "**Punch List**") setting forth remaining Punch List Items, including any items from the Interim Punch Lists that have not been completed and also including a listing of Contractor deliverables required to be provided to Owner hereunder as a prerequisite to the achievement of Final Completion, including without limitation, Lien releases, As-Built Drawings, and other required documentation, as well as performance of Job Site clean-up and other post-construction activities, and also including Contractor's reasonable estimate of the cost to complete each such Punch List Item. Contractor shall make such revisions to the Punch List as and when reasonably requested by Owner from time to time.

The Owner shall reasonably estimate the cost to complete all items on the Punch List that have not been completed. The Parties agree that with respect to Punch List Items that remain uncompleted and which are preventing Final Completion, it may be more expedient for Owner to complete such Punch List Items, at its sole election and option. If Owner so elects, at its sole discretion, Owner may, in lieu of requiring Contractor to complete the Punch List Items, require

Contractor to pay to Owner an amount equal to one hundred percent (100%) of the commercial value of the remaining Punch List Items as established as provided above in this **Section 6.4.2**. Upon such election by Owner, such Punch List Items shall be deemed removed from the Punch List. Owner shall have the right to offset such amount owed by Contractor against any amounts owed by Owner to Contractor at Final Completion or otherwise under this Agreement.

6.5 Project Mechanical Completion. Contractor shall cause Project Mechanical Completion to occur timely following WTG Mechanical Completion of each of the WTGs and otherwise in accordance with the requirements of this Agreement. “**Project Mechanical Completion**” means the achievement of the following:

- (a) WTG Mechanical Completion has occurred with respect to each WTG;
- (b) except for Punch List Items, all WTGs have been properly assembled, erected, installed, is mechanically, electrically and structurally sound as set forth in the Technical Specifications, so that it can be used safely in accordance with this Agreement, Applicable Laws and Applicable Standards;
- (c) Contractor has prepared and submitted to Owner the final and complete Punch List in accordance with **Section 6.4.2**;
- (d) Contractor has delivered three (3) draft copies of the Job Books (which include Operating Manuals) in accordance with **Section 2.8.10**;
- (e) all quality assurance documentation has been provided to Owner in accordance with the Quality Assurance Plan and all non-conforming quality assurance issues have been resolved in accordance with the Quality Assurance Plan;
- (f) Contractor has provided appropriate and timely training as required hereunder; and
- (g) Owner has accepted or is deemed to have accepted a Project Mechanical Completion Certificate pursuant to **Section 6.7**.

6.5.1 Punch List Work. Notwithstanding achievement of Project Mechanical Completion, Contractor shall remain obligated to complete the Punch List Items in accordance with this Agreement. Contractor shall give Owner written notice at least five (5) Business Days prior to declaring that Project Mechanical Completion has occurred and shall provide on such date a written Punch List. Owner shall be entitled to verify and, if necessary, correct or add to, the list of Punch List Items provided by Contractor. Contractor agrees to update such Punch List from time to time (but not less often than monthly) after Project Mechanical Completion and until Final Completion.

6.6 Final Completion. Contractor shall cause Final Completion to occur on or before the Scheduled Final Completion Date. “**Final Completion**” means the achievement of the following as to the Project:

- (a) Project Mechanical Completion has been achieved in accordance with **Section 6.5**;
- (b) Contractor has performed all of the Work such that the Project may be operated as a fully-integrated wind-powered electricity generating plant and all the tests, electrical continuity and ground fault tests have been successfully completed and any Defects found have been corrected;
- (c) the Contractor Facilities are capable of being operated in a safe and proper manner in accordance with Applicable Laws and Applicable Permits (including for this purpose all variances or waivers of any Applicable Permits if such variances or waivers are final, irrevocable and permanent modifications to the requirements of Applicable Law or Applicable Permits);
- (d) Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof or bonds protecting Owner that are reasonably acceptable to Owner;
- (e) any and all Liens in respect to the Project, this Agreement, the Equipment, the Job Site or any fixtures, personal property or Equipment included in the Work created by, through or under, or as a result of any act or omission of, Contractor or any Subcontractor or other Person providing labor or materials in connection with the Work shall have been released or bonded in form satisfactory to Owner (provided that Contractor's final lien waiver, in substantially the form of **Exhibit AA** attached hereto from Contractor and Subcontractor's final lien waivers in the form of **Exhibit AA** attached hereto from each Major Subcontractor or bonds protecting Owner that are reasonably acceptable to Owner, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);
- (f) all of Contractor's supplies, personnel and waste have been removed from the Project Site and Contractor has satisfied all of its clean-up obligations hereunder;
- (g) all Punch List Items have been corrected or performed and all other Work required to be completed by Contractor has been performed in each case to Owner's reasonable satisfaction;
- (h) the Contractor Facilities have been constructed in accordance with this Agreement and the Design Documents and the final plans accurately reflect the Project as constructed;
- (i) Contractor shall have paid all Mechanical Completion Delay Liquidated Damages due under this Agreement, if any;
- (j) all As-Built Drawings and documentation shall have been delivered to, and accepted by, Owner; and
- (k) Owner has accepted or is deemed to have accepted a Final Completion Certificate pursuant to **Section 6.7**.

6.7 Achievement of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion, and Final

Completion. When Contractor believes that it has achieved any of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion or Final Completion, it shall deliver to Owner a completed Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, as the case may be. Such certificate shall include the results of all testing relevant to achievement of such milestone and otherwise contain sufficient detail to enable Owner to determine that Contractor has achieved Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion or Final Completion, as the case may be.

Owner shall, within five (5) Business Days, in the case of Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, or a WTG Mechanical Completion Certificate and ten (10) Business Days, in the case of a Project Mechanical Completion Certificate or Final Completion Certificate, following receipt of such certificate, either (a) deliver to Contractor a countersigned Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate, as the case may be, indicating its acceptance of the achievement of such milestone, or (b) if reasonable cause exists for doing so, notify Contractor in writing that such milestone has not been achieved, stating in detail the reasons therefor. If Owner fails to notify Contractor of its acceptance or rejection of any of the foregoing certificates within the relevant time frame set forth in this paragraph, such certificate shall be deemed accepted by Owner.

If Owner delivers the notice under the preceding clause (b), Contractor shall promptly either (i) notify Owner that Contractor disputes Owner's determination or (ii) take such action, including the performance of additional Work, to achieve such milestone, and upon completion of such actions shall issue to Owner another certificate with respect to such milestone pursuant to this **Section 6.7**. Such procedure shall be repeated as necessary until such milestone has been achieved (whether by Owner's affirmative acceptance or deemed acceptance or by a determination made pursuant to the dispute resolution procedures of this Agreement). For the purposes of this Agreement, the date of achievement of Access Road Completion, Foundation Completion, Electrical Works Completion, WTG Mechanical Completion, Project Mechanical Completion or Final Completion, as the case may be, shall be the date on which Contractor delivers to Owner, respectively, the Access Road Completion Certificate, Foundation Completion Certificate, Electrical Works Completion Certificate, WTG Mechanical Completion Certificate, Project Mechanical Completion Certificate or Final Completion Certificate that Owner ultimately accepts or is deemed to have accepted or, pursuant to a determination under the dispute resolution procedures, should have accepted. If Contractor disputes any rejection by Owner of a certificate submitted in accordance with this **Section 6.7**, Contractor shall proceed with further Work as directed by Owner under protest, reserving the right to submit a claim under **Section 9.6** for the additional Work required by Owner.

6.8 Completion Guarantees.

6.8.1 Guaranteed Access Road Completion Date. Contractor guarantees that it shall achieve Access Road Completion on or before the Guaranteed Access Road Completion Date.

6.8.2 Guaranteed Mechanical Completion Date. Contractor guarantees that it shall achieve WTG Mechanical Completion for each WTG on or before the Guaranteed Mechanical Completion Date applicable to the WTG Shipment to which such WTG belongs.

6.8.3 Mechanical Completion Delay Liquidated Damages.

a. Obligation to Pay. Owner and Contractor acknowledge and agree that in the event of any failure to achieve, as required by **Section 6.8.2**, WTG Mechanical Completion on or before the applicable Guaranteed Mechanical Completion Date, such failure will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor fails to achieve WTG Mechanical Completion for a WTG associated with each WTG Shipment on or before the applicable Guaranteed Mechanical Completion Date corresponding to that WTG Shipment, it shall pay to Owner, as liquidated and agreed damages and not as a penalty, an amount for each such WTG equal to the following: \$1,000/day (the “**Mechanical Completion Delay Liquidated Damages**”).

b. Reasonable Amount; Exclusive Remedy. It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this **Article VI** as Mechanical Completion Delay Liquidated Damages for failure to achieve the Guaranteed Mechanical Completion Dates are reasonable, considering the damages that Owner would sustain in any of such events, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained as a result of delay in achieving WTG Mechanical Completion for such WTG. Subject to Owner’s rights pursuant to **Sections 6.8 and 13.1**, payment of Mechanical Completion Delay Liquidated Damages is the exclusive remedy for delays in achieving WTG Mechanical Completion. Contractor hereby waives any rights or defenses that it may have under law that any liquidated damage payable hereunder is a penalty or otherwise void under law.

c. Accrual; Payment. Contractor’s obligation to pay Mechanical Completion Delay Liquidated Damages when and as provided in this Section is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by (i) any default by Owner in the performance or observance of any of its obligations hereunder, or any offset rights of Contractor pursuant to **Section 17.19**, provided in either case that Owner has paid all undisputed amounts due at such time to Contractor hereunder, (ii) the assignment by Owner of this Agreement to any Person, or (iii) any other circumstances, happening, condition or event. Contractor shall pay such liquidated damages without deduction, set-off, reduction or counterclaim. Contractor shall continue to make such payments of Mechanical Completion Delay Liquidated Damages until achievement of WTG Mechanical Completion of such WTG. In no event shall the payment of Mechanical Completion Delay Liquidated Damages excuse Contractor from performance of any of its other obligations hereunder, including the obligation to cause WTG Mechanical Completion to occur with respect to each WTG.

d. Termination for Failure to Achieve Project Mechanical Completion within Sixty Days of Guaranteed Mechanical Completion Date. If and in the event Contractor fails to achieve Project Mechanical Completion within sixty (60) days of the last Guaranteed Mechanical Completion Date, then (i) Contractor shall be considered in default, and may, at Owner's sole and exclusive discretion, be terminated in accordance with **Section 13.1(g)** of this Agreement, and (ii) Contractor shall continue to pay the Mechanical Completion Delay Liquidated Damages described in this **Section 6.8** through any such termination of Contractor or until the exhaustion of the aggregate maximum amount of Mechanical Completion Delay Liquidated Damages payable by Contractor hereunder, whichever occurs first.

6.8.4 Access Roads Delay. If Contractor fails to achieve Access Road Completion on or before the Guaranteed Access Road Completion Date, Contractor shall be required to pay Owner all amounts that Owner pays the Turbine Vendor under the terms of the Wind Turbine Supply Contract resulting from such delay, and Contractor shall also be responsible for all costs and expenses of Owner or Contractor as a result of the failure to achieve Access Roads Completion on or before the Guaranteed Access Road Completion Date.

6.8.5 Offset Rights; Security for Obligations. Owner shall have the right to offset any amounts owing to Owner under this Article against Progress Payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.

ARTICLE WARRANTIES

VII

7.1 Warranty Provisions.

7.1.1 Warranty. Contractor warrants and guarantees to Owner during the Warranty Period that: (i) the Contractor Facilities and the Work shall be free from improper workmanship and Defects, new, unused and undamaged when installed, in compliance with Applicable Law, the Applicable Permits, the Applicable Standards, and the requirements of this Agreement, suitable for Owner's use as a wind-powered electrical generation facility (subject to normal wear and tear and maintenance and operation requirements and obsolescence that may result from advance in technology or other changes in needs or uses) under the climatic and normal operating conditions described in **Exhibit N**, and otherwise in compliance with the standards of performance set forth in **Article II**; (ii) the design, engineering, construction and procurement services related to the Contractor Facilities and the assembly, installation and erection of the WTGs and all aspects of the Work shall be performed with Contractor's best skill and judgment, in a good and workmanlike manner, conform to and be designed, engineered and constructed in accordance with the Design Documents, Scope of Work, Technical Specifications, all Applicable Laws, Applicable Standards and Applicable Permits and other terms of this Agreement, conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in wind power projects similar to the Project, and contain the Equipment, supplies and materials described in the Scope of Work; (iii) the completed Work shall perform as explicitly described or implied in this Agreement, except that the Contractor shall not be responsible for any failure of the completed Work to

perform its intended functions as a complete, integrated wind-powered electric generating facility which is caused by the failure of the Owner-Furnished Equipment; and (iv) none of the Work, the Contractor Facilities, the Equipment, the Design Documents, Technical Specifications, final plans and the design, engineering and other services rendered by Contractor hereunder, nor the use or ownership thereof by Owner in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks ((i), (ii), (iii) and (iv), collectively, the “**Warranty**”).

7.1.2 Warranty Period; Extensions Thereof. The Warranty shall commence on the Project Mechanical Completion Date and shall continue until and expire on the second (2nd) anniversary of the Project Mechanical Completion Date (such applicable period, the “**Warranty Period**”); provided, however, if: (a) Owner fails to observe any Defect during the Warranty Period; and (b) such Defect would not have been revealed during the Warranty Period, despite Owner’s operation of the Project in accordance with commercially reasonable practices, then the Warranty Period (and the corresponding rights and obligations identified in this **Article VII**) shall be extended to effect repair of such Defect, provided Owner delivers Contractor written notice of such Defect within twelve (12) months from the end of the Warranty Period. Provided further that if ten percent (10%) or more of any type of component of the Project requires repair or replacement within the Warranty Period, then the warranty for that type of component shall be automatically extended for all such components of that type for an additional two (2) years from the date of the failure that caused the percentage of failures to reach ten percent (10%).

7.1.3 Correction of Deficiencies. If during the Warranty Period the Work is found to contain Defects, or Contractor is otherwise in breach of any of the warranties set forth in this **Section 7.1** and Contractor receives written notice thereof during the Warranty Period or promptly after the end of the Warranty Period (or the later period as provided in **Section 7.1.2**), Contractor shall at its sole cost and expense (including the cost of labor and equipment), promptly correct, repair, replace such Defect or otherwise cure such breach as promptly as practicable upon being given written notice directing Contractor to correct such Work or remedy such breaches of Warranties with materials of new and good quality, or re-perform all such defective components of the Infrastructure Facilities or the Work (“**Warranty Service**”). Owner shall provide Contractor with reasonable access (with an object of minimizing revenue and operational disruption) to the Project in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Project. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including, without limitation, necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Owner’s reasonable satisfaction that there is not a risk of the reoccurrence of such problem. Contractor’s obligations under this Section shall not be impaired or otherwise

adversely affected by any actual or possible legal obligation or duty of any Subcontractor to Contractor or Owner concerning any Defect or breach of warranty.

7.1.4 Conformance of Warranty Service to Specifications. Contractor warrants in favor of Owner that all materials incorporated into the Work as part of repairs to and replacements of Work by Contractor or any Subcontractor, and repairs to and replacements of Work pursuant to the warranties set forth in this **Section 7.1** shall conform to the requirements of this Agreement and all applicable warranties for the foregoing and shall be free from Defects. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty complies with the requirements of the warranties set forth in this **Section 7.1**. The warranty period for the Warranty Services shall continue until and expire on the later of (i) the end of the Warranty Period or (ii) one year from the completion of such Warranty Service.

7.1.5 Warranty Service at Contractor's Cost; Survival. Contractor shall perform all Warranty Service at its own cost and expense. The provisions of this Section apply to Work performed by Subcontractors as well as Work performed directly by Contractor. Contractor's obligation to correct, repair, replace or re-perform defective Work pursuant to this **Article VII** shall survive the termination of this Agreement to the extent of Work performed by Contractor or any of its Subcontractors or paid for by Owner. Contractor shall not be excused from performing such Warranty Service after the end of the Warranty Period, if it receives notice of the Defect during the Warranty Period or as otherwise provided in this **Article VII**.

7.1.6 Risk of Loss or Damage. Whenever Warranty Service is required pursuant to this **Article VII**, Contractor shall bear the risk of physical loss or damage to the Project as a result of Contractor's activities performing Warranty Service, to the extent not covered by Owner's builder's risk insurance as required to be provided by Owner pursuant to **Section 12.2**, and in the event of any reimbursement by Owner's builder's risk insurance for such damage, Contractor shall be responsible for associated deductibles or retention. If any Work must be removed from the Project Site, transportation charges associated with any repair shall be borne by Contractor.

7.1.7 "Immediate Need" Corrective Actions. Where Owner determines that an "immediate need" exists, Owner may undertake corrective action, but Contractor reserves its right to investigate and determine the eligibility of such warranty claims. For the purposes of this **Section 7.1.7**, "immediate need" shall mean a situation where Owner reasonably believes that an imminent threat of harm to persons or property or a situation exists that could materially adversely impact the operation of the Project or the transmission system of the Utility. If the Owner has independently taken corrective action in the case of an "immediate need" pursuant to this **Section 7.1.7**, then Owner shall issue to Contractor: (i) a failure report, which shall contain technical and logistical information in sufficient detail to enable Contractor to evaluate (a) the Owner's representation of an "immediate need" and (b) the appropriateness of the Owner's corrective action, which shall be provided by Owner to Contractor within a reasonable period of time after the occurrence of such immediate need event; and (ii) copies of invoices received or prepared for costs and expenses claimed by Owner for reimbursement by Contractor (but only if such Owner work is due to a Defect in the Work or breach of the Warranty and not in relation to any defect or fault in the Utility's transmission system). Work performed by Owner in relation

to a warranty claim under this **Section 7.1.7** shall be billed on a “time and materials” basis (as further defined below) and such invoices shall be paid by Contractor within thirty (30) days (subject to review and approval by Contractor). For the purposes of this **Section 7.1.7**, “time and materials” shall mean: (a) with respect to “time,” the product of one hundred ten percent (110%) of the normal hourly wage (including fringe benefits, insurance and taxes) Owner pays with respect to its particular employee (not including overhead) multiplied times the number of hours each employee performed the particular work; and (b) with respect to “materials,” one hundred ten percent (110%) of the actual purchase price paid by Owner or an Affiliate to a third party for the materials incorporated or consumed in connection with the work; and (c) with respect to work performed by a subcontractor (other than an entity which is an Affiliate of Owner, work done by any such entity being deemed work done by Owner through its own employees for purposes of this **Section 7.1.7**), one hundred ten percent (110%) of the actual amount paid by Owner to the subcontractor for such work.

7.2 Delay. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified in writing of such noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than the date made available by Owner in such notice for performing the Warranty Service, which date shall be at least ten (10) Business Days after such notice. If, after notification of a Defect, Contractor shall delay past such date in commencing or continuing, or shall delay unnecessarily in completing, Warranty Service with respect to such Defect, then Owner may correct such Defect so that the defective component complies with the requirements of this Agreement, and Contractor shall be liable for all direct costs, charges and expenses reasonably incurred by Owner in connection with such repair or replacement and shall forthwith pay to Owner an amount equal to such costs, charges and expenses upon receipt of invoices with supporting documentation certified by Owner. Nothing in this **Section 7.2** shall in any way limit or relieve Contractor of its obligations under this Agreement.

7.3 Subcontractor Warranties.

7.3.1 Contractor shall, for the protection of Contractor and Owner, obtain from the Subcontractors such guarantees and warranties with respect to Work performed as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in **Section 7.1** and shall be made available and assignable to Owner to the full extent of the terms thereof upon the expiration of the Warranty Period. Owner shall be an express third-party beneficiary of all such guarantees and warranties. To the extent available, Owner shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Scope Change Order issued in accordance with the provisions of **Article IX**. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall deliver to Owner copies of all relevant contracts providing for such guarantees and warranties.

7.3.2 Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall assign to Owner all warranties received by it from Subcontractors or otherwise obtained under **Section 7.3.1**. Such assignment of warranties to Owner must also allow Owner

to further assign such warranties. However, in the event that Owner makes any warranty claim against Contractor with respect to services supplied in whole or in part by any Subcontractor, and Contractor fulfills its obligations with respect to such claim by Owner, Contractor shall be entitled to enforce for its own benefit any warranty given by such Subcontractor with respect to such services.

7.4 NO IMPLIED WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, FOR PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT. The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth in this Agreement.

7.5 End of Warranty Period. During the thirty-day period prior to the scheduled end of the Warranty Period, Contractor and Owner shall jointly conduct an inspection and test of the Work to determine if any additional warranty items are required to be repaired or replaced pursuant to the Warranty in order to develop a list of such items; provided, however, that such actions by Owner shall not constitute a waiver of Owner's rights with respect to latent Defects not discovered at such time.

7.6 Limitations. The provisions of this **Article VII** shall survive expiration or termination of this Agreement.

7.7 Proprietary Rights. Without limiting any of the provisions of this Agreement, if Owner or Contractor is prevented from completing the Work or any part thereof, or from the use, operation or enjoyment of the Work or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from Contractor's performance (or that of its Subcontractors) under this Agreement, including, without limitation, the Work, the Design Documents, the Technical Specifications or other items and services provided by Contractor or any Subcontractor hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its Affiliates or assigns, as applicable, the right to use such materials, Design Documents or Technical Specifications in connection with the operation and maintenance of the Project, without obligation or liability; or (b) replace such materials, Design Documents or Technical Specifications, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of the Contract Documents.

ARTICLE
FORCE MAJEURE; OWNER-CAUSED DELAY; AND WIND DAYS

VIII

8.1 Performance Excused. So long as the conditions set forth in this **Section 8.1** are satisfied, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations (other than payment obligations) under or pursuant to this Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

(a) the Party claiming a Force Majeure Event shall give the other Party notice describing the particulars of the cause and nature of the occurrence, with written notice given promptly after discovery and in no event more than five (5) Business Days after the affected Party becomes aware of such occurrence and as soon as reasonably practicable, but in any case within ten (10) Business Days after such initial notification, the Party claiming a Force Majeure Event shall give the other Party sufficient proof of the occurrence of such Force Majeure Event and written notice estimating the Force Majeure Event's expected duration and probable impact on the performance of such Party's obligations hereunder, and such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

(b) the performance of the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, provided the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the effects of the Force Majeure Event;

(c) any liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;

(d) the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

(e) the affected Party shall use all commercially reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance;

(f) when the affected Party is able to resume performance of the affected obligations under this Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Agreement; and

(g) in the event Contractor desires to claim a Force Majeure Event, it must submit a request for a Scope Change pursuant to **Section 9.6**, and Contractor shall be entitled to a Scope Change Order permitting a suspension of performance or extension of time (including an extension of the Critical Milestone Dates to the extent achievement thereof is affected) in accordance with **Section 9.6**.

8.1.1 A Party's failure to comply with the provisions of this **Section 8.1** shall constitute a waiver of any claim of a Force Majeure Event.

8.2 Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under **Section 8.1** shall be upon the Party claiming such Force Majeure Event.

8.3 Owner-Caused Delay. In the event Contractor desires to claim an Owner-Caused Delay, Contractor shall within five (5) Business Days after it becomes aware of the Owner-Caused Delay, give Owner written notice describing the details of the Owner-Caused Delay, the anticipated length of such delay and any other effect on Contractor's performance of its obligations hereunder. Within ten (10) days after initial notification, Contractor shall (i) provide to Owner demonstrable proof of the occurrence and duration of such Owner-Caused Delay and, if requested by Owner, such proof shall be provided, and in any event verified, by an independent third party reasonably acceptable to Owner and Contractor at the sole cost and expense of the Owner (in the event that the independent third party verifies Contractor's assertions) or the Contractor (in all other cases). So long as the conditions set forth in this **Section 8.3** are satisfied, Contractor shall not be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Critical Milestone on or before the Critical Milestone Date therefor to the extent that such failure has been caused by one or more Owner-Caused Delays, provided that: (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner-Caused Delay; (ii) Contractor provides timely notice of the Owner-Caused Delay, and (iii) Contractor provides all assistance reasonably requested by Owner for the elimination or mitigation of the Owner-Caused Delay; provided, however, any out-of-pocket costs incurred by the Contractor in connection with rendering such assistance shall be reimbursed by Owner. In the event Contractor desires to claim an Owner-Caused Delay, it must submit a request for Scope Changes pursuant to **Section 9.6** and Contractor shall be entitled to suspension of performance or extension of time (including an extension of any of the Critical Milestone Dates) together with demonstrated, justified and reasonable additional costs, including but not limited to, idle equipment costs, incurred by reason of such delay to the extent of the impact of the Owner-Caused Delay pursuant to a Scope Change Order in accordance with **Article IX**. Failure to comply with the terms of this **Section 8.3** shall constitute a waiver of any claims for an Owner-Caused Delay. The Parties acknowledge that Owner may direct a suspension of the Work pursuant to **Section 13.6** in order to minimize the cost to Owner of an Owner-Caused Delay.

8.4 Wind Days. The Parties acknowledge and agree that adherence to the Project Schedule may be impacted by Wind Days (and the delays resulting therefrom) during the period beginning on the commencement of the start of erection of Wind Turbine Generators and continuing through the WTG Mechanical Completion Date (the "**WTG Construction Period**"). If the number of Wind Days occurring during the WTG Construction Period exceeds eight (8) days at the Project Site during the WTG Construction Period (counting for purposes of this paragraph only Wind Days which affect the progress of Contractor at the Job Site), and as a sole result of such Wind Day, Contractor is required to extend the period that Contractor is leasing a large crane, thereupon, such occurrence shall be treated as a Force Majeure Event and Contractor shall

be entitled to a Scope Change for the amount of delay to the Guaranteed Mechanical Completion Date, which is caused by the excess Wind Days in respect thereof in accordance with **Article IX**.

ARTICLE SCOPE CHANGES

IX

9.1 Scope Changes at Owner's Request. Owner may, from time to time, without invalidating this Agreement, order or approve scope changes in all or a portion of the Work within the general scope of the Work, scope changes in the Project Schedule, and, pursuant to **Section 9.6** or in connection with deleting turbine sites from the Project and the Scope of Work, reductions in the Contract Price (collectively, "**Scope Changes**") by notification in writing to Contractor substantially in the form set forth as **Exhibit Q**. Contractor shall reasonably review and consider such requested Scope Change and shall make a written response thereto within ten (10) days after receiving such request. If Contractor believes that giving effect to any Scope Change requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in **Article VII** or require a modification of any other provisions of this Agreement, its response to the Scope Change request shall set forth such changes (including any amendments to this Agreement) that Contractor deems necessary as a result of the requested Scope Change and its justification therefor. If Contractor accepts the Scope Changes requested by Owner (together with any amendments to this Agreement specified therein) or if the Parties agree upon a modification of such requested Scope Changes, the Parties shall set forth the agreed upon Scope Change in the Work and agreed upon amendments to this Agreement, if any, in a written change order signed by all Parties (a "**Scope Change Order**"). Each Scope Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Scope Change Order, Contractor shall proceed with such Work upon Owner's written direction, and the dispute shall be resolved in accordance with the terms hereof.

9.2 No Unapproved Scope Changes. Contractor shall not perform any Scope Changes, nor shall Contractor undertake any change to the work until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Scope Change prior to such approval. If Owner does not approve the proposed adjustments or if Contractor or Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Contractor cancel the Scope Change. Upon receiving from Owner such written approval or such written authorization to perform, Contractor shall diligently perform the Scope Change in accordance with and subject to all of the terms of this Agreement. In the absence of written Scope Change Order, Contractor shall make any such changes to the Work at Contractor's sole risk and expense, and Contractor shall not be entitled to any payment hereunder for undertaking such change to the Work. Contractor shall not suspend, in whole or in part, performance of this Agreement during any good faith dispute over any Scope Change Order unless directed to do so by Owner, and if directed to proceed with a Scope Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Scope Change or disputed item) do so. Any technical or engineering dispute between Owner and Contractor with respect to any Scope Change Order shall be resolved in accordance with **Article XV**.

9.3 Presumption Against Scope Changes. It is the intent of Owner and Contractor that the Scope of Work attached hereto as **Exhibit A** includes all items necessary for the proper execution and completion of the Work. As more particularly described in **Section 2.3**, work not described in the Scope of Work attached hereto as **Exhibit A** shall not require a Scope Change Order if such work is consistent with and reasonably inferable from the Scope of Work, so that an engineering, procurement and construction contractor of Contractor's experience and expertise should have anticipated that the work would have been required.

9.4 Contractor Requested Scope Changes. Contractor shall obtain Owner's prior written approval of any Contractor initiated changes for convenience.

9.5 Scope Changes Due to Concealed Conditions. Owner may have previously conducted a geotechnical investigation at locations at or near the Project Site in connection with the project that has been constructed or that are in the process of being constructed, the results of which are disclosed in **Exhibit N**, (each a "**Geotechnical Investigation**"). If Contractor: (i) encounters any concealed subsurface conditions which a reasonable experienced contractor would not have taken into account at the Job Site and which vary materially from the conditions shown in this Agreement and as disclosed in **Exhibit N**; and (ii) any such condition causes a material increase or decrease in the Contract Price or time required for performance of Work or otherwise materially affects any provision of this Agreement, Contractor shall use reasonable diligence to verify the extent of the effect of such condition on the performance of the Work or the Contract Price, and shall notify Owner thereof no later than two (2) Business Days after verifying such condition, and Owner may either (x) issue a Scope Change Order to address such condition or (y) terminate this Agreement pursuant to **Section 13.3**.

9.6 Scope Changes Caused by a Force Majeure Event or Owner-Caused Delay.

9.6.1 Owner may at any time, by written notice to Contractor, propose Scope Changes in the Work or the Critical Milestones due to a Force Majeure Event or Owner-Caused Delay. If there is a material impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Date as a result of such Force Majeure Event or Owner-Caused Delay, then the Contractor shall be entitled to a Scope Change Order equitably adjusting the Contract Price (but only as a result of an Owner-Caused Delay) and any affected Critical Milestone Dates, but only to the extent that such Owner-Caused Delay increased the cost to perform the Work or such Force Majeure Event or Owner-Caused Delay adversely affect the completion of the applicable Critical Milestone by the Critical Milestone Date therefor; provided, further, that for the avoidance of doubt, Contractor shall not be entitled to an adjustment to the Contract Price with respect to a Force Majeure Event. The Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Scope Change Order to address the effects of such events or delays on the Contract Price and Critical Milestone Dates.

9.6.2 Contractor may at any time, by written notice to Owner, propose Scope Changes in the Work or the Critical Milestones: (i) due to a Force Majeure Event claimed by Contractor, provided that such Force Majeure Event has an impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the

applicable Critical Milestone Dates; further provided that Contractor complies with requirements provided in **Article VIII**; and further provided that no adjustment to the Contract Price shall be permitted for a Force Majeure Event claimed by Contractor; (ii) due to an Owner-Caused Delay, provided that such Owner-Caused Delay has a demonstrable cost increase to Contractor and/or schedule impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Dates and further provided that Contractor complies with the requirements set forth in **Article VIII**; (iii) due to certain unforeseeable subsurface conditions to the extent provided in **Section 9.5**; (iv) due to a modification of an Owner Permit or requirements regarding Owner Permits which are different from those set forth in the Owner Permits included as a part of **Exhibit H**, provided that such modification to an Owner Permit or additional requirement has a demonstrable cost increase to Contractor and/or schedule impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Dates; or (v) due to the presence or release of Pre-Existing Hazardous Material, provided that such presence or release is not caused by Contractor or its Subcontractors' negligent or intentional acts and that such presence or release has a demonstrable cost increase to Contractor and/or schedule impact that will actually, demonstrably and adversely affect Contractor's ability to complete one or more Critical Milestones by the applicable Critical Milestone Dates. Unless the foregoing conditions are met, Contractor may not request a Scope Change in the Work or Critical Milestones due to a Force Majeure Event, unforeseeable subsurface conditions or Owner-Caused Delay. If the foregoing conditions are met, then Contractor shall receive a Scope Change Order equitably adjusting the Contract Price (where eligible) and any affected Critical Milestone Dates, but only to the extent that such Force Majeure Events (with respect to schedule only and not with respect to a change in Contract Price), Owner-Caused Delay, or unforeseeable subsurface conditions increase the cost to perform the Work or adversely affect the completion of the applicable Critical Milestone by the Critical Milestone Date therefor; provided, however, Contractor shall not be entitled to an adjustment to the Contract Price with respect to an Owner-Caused Delay unless and to the extent that the Owner-Caused Delay continues for more than one (1) day. The Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Scope Change Order to address the effects of such events or delays on the Contract Price and Project Schedule. Any extension permitted under this Section shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's efforts to mitigate the same.

9.7 Minor Changes. Owner shall have the direct authority to issue clarifications and order minor changes in the Work, effected by written order, which do not involve any impact to the Contractor's cost or the Project Schedule, provided that such clarifications and changes are consistent with the intent of this Agreement. Such clarifications and changes shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly and Contractor shall receive no additional compensation therefor.

9.8 Changes to Contract Price. A Scope Change Order initiated by either Party may have the effect of either increasing or decreasing the Contract Price. Any Contractor response to a Scope Change Order under **Section 9.1** and any Contractor request for Scope Changes under **Section 9.4** or **Section 9.6**, shall be accompanied by a proposed all inclusive final lump sum cost (separating materials and labor) to Owner; provided however, Owner may elect, in its sole

discretion, to pay Contractor its direct time and materials plus ten percent (10%) in respect of such Scope Change. Absent such an election, in the event that the Parties are unable to reach an agreement on an all inclusive final lump sum cost to Owner or a not-to-exceed cost estimate as a result of a requested Scope Change, then Contractor agrees to perform the requested Scope Change at a price equal to the Owner's proposed lump sum amount and to resolve (in accordance with the dispute resolution procedures set forth in **Article XV**) the issue of any excess of the Contractor's proposed lump sum cost over that of the Owner. In addition, in the event that Owner and Contractor are unable to reach agreement on a Scope Change Order for a Scope Change requested by either Owner or Contractor, at the direction of Owner (and only at the direction of Owner), Owner's proposed Scope Changes shall become effective as a Scope Change Order and Contractor shall continue to perform the Work in accordance with such Scope Change Order and the proposed Scope Changes shall be performed by Contractor at its sole cost and expense pending resolution of the dispute pursuant to **Article XV**. For any Scope Change Order finalized on a cost-plus basis, Contractor shall maintain all records, invoices and other data verifying its costs for a period of two (2) years subsequent to the date of the Scope Change Order.

ARTICLE INDEMNIFICATION

X

10.1 Indemnities.

10.1.1 Contractor's General Indemnity. Contractor shall defend, indemnify and hold harmless Owner and each of its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (each, an "**Owner-Indemnified Party**") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any Owner-Indemnified Party as a result of any and all of the following:

- (a) any bodily injury, death or damage to property (including bodily injury, death or property claims by or on behalf of any employee of an Owner-Indemnified Party) arising out of or in connection with the Work that are caused wholly, or in part, by any act or omission (including negligent acts or omissions) of the Owner or an Owner-Indemnified Party, or any act or omission of Contractor, any Affiliate thereof, or any Subcontractor, including the employees, representatives, and agents thereof (except that the foregoing indemnification provisions shall not cover the sole negligence of the Owner or an Owner-Indemnified Party);
- (b) any claims resulting in bodily or property damage arising out of defective and/or nonconforming Work relating to or arising out of the performance of the Work;
- (c) claims by any Governmental Authority for any Taxes payable by Contractor;
- (d) any pollution or contamination caused by Contractor, its Subcontractors, including, without limitation, any pollution or contamination resulting from Hazardous Materials brought onto the Project Site or generated (excluding that generated from Pre-Existing Hazardous Materials) by Contractor, any of its Subcontractors;

(e) except to the extent caused by the failure of Owner to pay any undisputed amounts due pursuant to this Agreement, any Lien, on the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing labor or materials in connection with the Work;

(f) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from (i) Contractor's performance (or that of its Affiliates, Subcontractors) under this Agreement, including, without limitation, the Work, Equipment (but not including the WTGs or other Owner-Furnished Equipment), Design Documents, final plans or other items and services provided by Contractor or any Subcontractor hereunder, (ii) the design, use or ownership of the Design Documents and final plans, or (iii) the design, construction, use, operation or ownership of the Work or any portion thereof. Without limiting the provisions of **Section 7.1**, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to Owner;

(g) any vitiation of any insurance policy procured under **Article XII** as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor in violation of the requirements set forth in such policy;

(h) any failure of the Work, including Contractor Facilities, as designed, constructed and completed by Contractor, to comply with, or be capable of operating in compliance with, Applicable Laws or the conditions or provisions of Applicable Permits;

(i) any failure of Contractor to comply with Applicable Laws or the conditions or provisions of Applicable Permits; and

(j) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors.

10.1.2 Owner's Indemnity. Owner shall defend, indemnify and hold harmless Contractor and its directors, officers, agents, employees, successors and assigns (the "**Contractor Indemnified Parties**") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred or asserted by any such Person as a result of injury or death of any Person, including employees of Owner or loss or damage to property, in each case resulting from the sole negligence of Owner or an Owner-Indemnified Party.

10.2 Indemnification Procedure.

10.2.1 Notice of Proceedings. Within fourteen (14) days (or such earlier time as might be required to avoid prejudicing the indemnifying Party's position) after receipt of notice of

commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, the Person claiming to be indemnified under the terms of this **Article X** (the “**Indemnified Person**”) shall give the Party from which indemnification is sought (the “**Indemnifying Party**”) written notice thereof, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this **Article X**.

10.2.2 Conduct of Proceedings. Each Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys’ fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person, and such Indemnifying Party shall conduct with due diligence and in good faith the defense of any claim against such party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party’s right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (a) the employment of counsel by such Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such claim or (b) the Indemnifying Party shall not have employed counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person shall have reasonably concluded and specifically notified the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party. In each of such cases the Indemnifying Party shall not have the right to control the defense or settlement of such claim, and the reasonable fees and expenses of counsel engaged by the Indemnified Person shall be at the expense of the Indemnifying Party.

10.3 Survival of Indemnities. The indemnities set forth in this **Article X** shall survive the termination or expiration of this Agreement.

ARTICLE

XI

LIMITATION OF LIABILITY

11.1 Limitation of Certain Contractor Liabilities. Contractor’s liability to Owner under this Agreement for Mechanical Completion Delay Liquidated Damages in the aggregate shall be limited to an amount equal to twenty percent (20%) of the Contract Price. Contractor’s liability

for all damages (including Mechanical Completion Delay Liquidated Damages) under this Agreement shall be limited to a maximum aggregate amount equal to one hundred percent (100%) of the Contract Price, provided however, such limitation of liability shall not apply to: (i) Contractor's indemnification obligations under **Section 10.1.1**; (ii) costs incurred by Contractor in achieving Project Mechanical Completion; (iii) any loss or damage arising out of or connected with Contractor's gross negligence, fraud, willful misconduct or illegal or unlawful acts; and (iv) damages for which insurance proceeds are received from insurance required to be provided pursuant to this Agreement, it being the Parties' specific intent that the limitation of liability shall not relieve the insurers' obligations for such insured risks.

11.2 Consequential Damages. Subject to the next sentence, neither Owner nor Contractor nor any of either of their successors or assigns, or the respective shareholders, partners, assigns, directors, officers, agents or employees or representatives of either of them, shall be liable to the other for consequential, special, exemplary, indirect or incidental losses or damages, including loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit, and Owner and Contractor each hereby releases the other and each of such Persons from any such liability. The foregoing exclusion shall not (i) preclude recovery, where applicable, of Mechanical Completion Delay Liquidated Damages or damages payable for delays in completing the access roads as provided in **Section 6.8.4**, (ii) be construed to limit recovery of amounts owed by Owner or Contractor to third parties (i.e., Persons which are not Affiliates of the Owner or Contractor respectively) that may be recoverable from the other Party under any indemnity in **Article X** or (iii) limit liability arising from the gross negligence or willful misconduct of a Party.

11.3 Releases Valid in All Events. The waivers, limitations and disclaimers of liability, indemnities, releases from liability and limitations on liability or damages expressed in this Agreement shall survive cancellation or expiration of this Agreement, and shall apply (unless otherwise expressly indicated under this Agreement) irrespective of whether a Party or any Affiliate thereof, or any partner, shareholder, officer, director or employee of a Party or an Affiliate thereof, asserts a theory of liability in contract, equity or tort, even in the event of fault, misrepresentation (including negligent misrepresentation), negligence (including sole negligence), foreseeable damages, strict liability, breach of warranty or any other theory of liability, of the party indemnified, released or whose liabilities are limited, and, to the extent permitted by Applicable Law, shall extend to the partners, principals, directors, officers and employees, agents and Affiliates of such party, and their partners, principals, directors, officers and employees.

11.4 Owner Limitation of Liability. In no event shall the aggregate damages payable by Owner hereunder exceed the Contract Price (as the same may increase from time to time in accordance with the terms of this Agreement), provided such limitation of liability shall not apply to Owner's indemnification obligations under **Section 10.1.2**. Contractor's sole recourse for any damages or liabilities due to Contractor by Owner pursuant to this Agreement shall be limited to the assets of Owner (which include the Project). Neither Party shall have recourse individually or collectively to the assets of the members or the Affiliates of the other Party or their respective officers, directors, employees or agents of the other Party, its members or their Affiliates.

**ARTICLE
INSURANCE**

XII

12.1 Contractor's Insurance. Contractor, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect all insurance coverages specified in **Exhibit M** to be provided by Contractor and shall otherwise comply with the other provisions set forth in **Exhibit M**.

12.2 Owner's Insurance. Owner, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect all insurance coverages specified in **Exhibit M** to be provided by Owner and shall otherwise comply with the other provisions set forth in **Exhibit M**.

**ARTICLE
DEFAULT, TERMINATION AND SUSPENSION**

XIII

13.1 Contractor Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Contractor hereunder ("Contractor Event of Default"):

(a) any of the following occurs: (i) Contractor consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than sixty (60) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than sixty (60) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing;

(b) Contractor fails, for any reason, (i) to pay when due Mechanical Completion Delay Liquidated Damages as required herein or (ii) to make any other payment or payments required to be made to Owner under this Agreement within ten (10) Business Days after receipt of written notice from Owner of Contractor's failure to make such other payment or payments (except, in the case of payments other than Mechanical Completion Delay Liquidated Damages, to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

- (c) any of the following occurs: (i) Contractor fails to supply skilled workers or suitable materials or equipment sufficient to meet the Critical Milestone Dates and to prosecute the Work in accordance with this Agreement; (ii) Contractor fails to make prompt payments when due to Subcontractors for labor, materials or equipment; (iii) Contractor suspends performance of a material portion of the Work (other than as permitted under **Article VIII, Section 13.2.1, Section 13.6**, or pursuant to a Scope Change Order); or (iv) Contractor disregards any provision of any Applicable Law, and if in each of sub-clauses (i) through (iv) of this Section, such condition remains unremedied for thirty (30) days following written notice thereof by Owner (or for such longer period, not to exceed ninety (90) days, during which time Contractor diligently pursues the cure of such material breach, if such material breach is capable of being cured);
- (d) Contractor disregards the instructions of Owner delivered in accordance with this Agreement and does not commence to cure its noncompliance therewith within thirty (30) days after written notice from Owner;
- (e) Contractor is in breach in any other agreement between Contractor (or one of its Affiliates) and Owner (or one of its Affiliates) and pursuant to the terms of such agreement Owner (or the Owner Affiliate) has the right to terminate such agreement;
- (f) any breach by Contractor of any representation or warranty contained in **Article XVI** which Contractor fails to cure within thirty (30) days following written notice from Owner;
- (g) Contractor fails to show adequate progress of the Work toward completion of a Milestone by the Milestone Date therefor, or fails to achieve a Milestone by the Milestone Date therefor, and such failure continues for thirty (30) days after notice from Owner, provided that, if Contractor has delivered and is diligently and continuously implementing a recovery plan in accordance with **Section 2.6.3**, such failure shall not constitute a Contractor Event of Default unless it remains uncured after sixty (60) days from the date of the original written notice of such failure from Owner;; or Contractor fails to achieve Project Mechanical Completion within sixty (60) days of the last Guarantee Mechanical Completion Date.
- (h) the dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations (including any potential indemnification obligations) under this Agreement;
- (i) the transfer by Contractor of (x) all or a substantial portion of the rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (y) all or a substantial portion of the assets or obligations of Contractor, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of Contractor or the transferee, as applicable, to perform its obligations under this Agreement;

(j) any failure by Contractor to maintain the insurance coverages required of it in accordance with **Article XII**, unless such failure is cured within five (5) Business Day of the earlier of written notice from Owner or from the date Contractor becomes aware of such failure;

(k) any abandonment of the Work by Contractor, where “abandonment” for the purposes of this Section shall mean that Contractor has substantially reduced personnel at the Site or removed required equipment from the Site such that, in the opinion of an experienced construction manager, Contractor would not be capable of completing the Critical Milestones in accordance with the Project Schedule as adjusted; or

(l) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under this Agreement (other than those breaches specified in this **Section 13.1 (a) through (k)** above) and (i) such breach is not cured by Contractor within fifteen (15) days after written notice thereof from Owner, or (ii) if such breach is not capable of being cured within such fifteen (15) day period, Contractor (A) fails to commence to cure such breach within such fifteen (15) day period, (B) fails to thereafter diligently proceed to cure such breach or (C) fails to cure such breach within sixty (60) days after notice thereof from Owner.

13.1.1. Termination for Cause. Upon the occurrence and during the continuation of any Contractor Event of Default hereunder, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (an “**Owner Termination for Cause**”). An Owner Termination for Cause shall be effective upon delivery of Owner’s notice with respect thereto. In the event of a termination by Owner under this Section, Owner shall have the right, subject to paying any amounts thereafter due in connection with any leased Contractor Equipment, to take possession of and use all of the Contractor Equipment located at the Job Site on the date of such termination for the purpose of completing the Work and may employ any other Person to complete the Work by whatever method that Owner may deem necessary. In addition, Owner may make such expenditures as in Owner’s reasonable judgment will accomplish the timely completion of the Work in accordance with the terms hereof. Owner shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement contractors, determine the total cost to Owner for completing the Work in accordance with the Technical Specifications and the other requirements of this Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In contracting with such replacement contractors, Owner shall, to the extent practicable, cause the Work to be completed in accordance with this Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the Contract Price is less than the sum of (i) all costs and expenses incurred by Owner (either itself or by engaging one or more substitute contractors) to complete (or cure deficiencies in) the Work, including, without limitation, additional reasonable overhead and legal, engineering and other professional expenses, (ii) all other reasonable costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of this Agreement and the termination of this Agreement as a result thereof, (iii) all amounts previously paid to Contractor pursuant to this Agreement, and (iv) any liquidated damages due and payable hereunder, Contractor shall pay to Owner on demand the amount of such difference. Any amount owed by Owner to Contractor for the level of completion of the Work shall be

retained by Owner until after completion of the Work and applied by Owner to pay any amounts and damages owed by Contractor pursuant to this **Section 13.1** or otherwise. Any excess of the amount retained over the amount due under this **Section 13.1.1** shall be remitted to Contractor within sixty (60) days after the Project is finally completed.

13.2 Owner Default. The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder ("**Owner Event of Default**"):

(a) any of the following occurs: (i) Owner consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Owner files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Owner's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than sixty (60) days; or (iv) Owner is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than sixty (60) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing; or

(b) Owner fails to make payment of any amount when due (other than amounts disputed in good faith) as required to be made by Owner to Contractor, which failure continues for thirty (30) days after written notice from Contractor of such non-payment.

13.2.1 Upon the occurrence and during the continuation of any Owner Event of Default under **Section 13.2(b)**, Contractor shall have the right to suspend its performance hereunder (and such suspension will entitle Contractor to a Scope Change to the extent permitted by **Article IX**). Upon the occurrence and during the continuation of any Owner Event of Default hereunder, Contractor shall have the right to terminate this Agreement by written notice to Owner (the latter, a "**Contractor Termination for Cause**"). A Contractor Termination for Cause shall be effective upon delivery of Contractor's notice with respect thereto. In the event of a termination by Contractor of this agreement, Owner shall pay Contractor the Termination Payment within thirty (30) days of such notice of termination.

13.3 Termination Without Cause. Owner may for its convenience terminate this Agreement after giving written notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment under **Section 4.9**. As a condition to any termination by Owner pursuant to this **Section 13.3** (a "**Termination Without Cause**"), Owner must provide written notice to Contractor of the Termination Without Cause at least three (3) Business Days prior to the effective date of such termination. If, at the date of termination under this **Section 13.3**,

Contractor has properly performed services or purchased, prepared or fabricated off the Project Site any materials or equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or equipment or that portion of Infrastructures Facilities prepared or fabricated by Contractor delivered to the Project Site or to such other place as Owner shall reasonably direct.

13.4 Termination Due to Force Majeure. If: (i) Owner wholly suspends the Work on the Project for one hundred and eighty (180) consecutive days due to the occurrence of a Force Majeure Event suffered by Owner; or (ii) Contractor is entirely prevented from performing the Work for a period of one hundred and eighty (180) consecutive days as a result of the occurrence of a Force Majeure Event, then either Party may terminate this Agreement at no cost (except as provided in the following sentence) or penalty, other than the payment of all accrued payment obligations due and payable through such date, upon not less than thirty (30) days' prior written notice to the other Party; provided, however, that nothing in this **Section 13.4** shall relieve or excuse either Party from its obligations under **Article VIII** in respect of the occurrence of a Force Majeure Event. Upon a termination pursuant to this Section, Owner shall pay Contractor as full compensation for its services hereunder the Termination Payment pursuant to **Section 4.9**.

13.5 Actions Required Following Termination.

13.5.1 Discontinuation of Work. Upon termination of this Agreement, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in **Section 4.9**, **Section 13.2.1** or **Article X**, if applicable and to perform any obligations which survive this Agreement), Contractor immediately shall discontinue the Work and remove from the Job Site its personnel, all Contractor Equipment (subject to Owner's rights to use Contractor Equipment under **Section 13.1.1**), waste, rubbish and Hazardous Materials brought onto the Job Site by Contractor or its Subcontractors or for which Contractor is otherwise responsible, as Owner may request, and Owner shall be entitled to take exclusive possession of Job Site and any and all Equipment (including without limitation materials delivered or en route to the Project Site). Contractor immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Site, stored off-site, or in transit.

13.5.2 Cancellation and Transfer of Subcontracts and Other Rights. If requested by Owner upon termination of this Agreement, Contractor will make every reasonable effort to cancel existing contracts with Subcontractors upon terms satisfactory to Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor. In the event of a termination due to a Contractor Event of Default, Contractor shall also, upon request by Owner, irrevocably assign and deliver to Owner any and all Subcontracts, purchase orders, bonds, warranties and options made by Contractor in performance of the Work (but in no event shall Owner be liable for any action or default of Contractor occurring prior to such delivery and assignment). In the event of any termination of this Agreement, Contractor shall (i) provide to Owner without additional charge an irrevocable non-exclusive right to use patented, copyrighted, licensed or proprietary materials of Contractor, Subcontractors or any other Person in connection

with the Work for the Project, and (ii) deliver to Owner originals of all Contract Documents, originals of all Design Documents, to the extent available, final plans in process (except that Contractor may keep for its records copies, and, an original set, of this Agreement executed by Owner), all other materials relating to the Work, and all papers and documents relating to Applicable Permits, orders placed, bills and invoices, Lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner. Except as provided herein, no action taken by Owner or Contractor after the termination of this Agreement shall prejudice any other rights or remedies of Owner or Contractor provided by Applicable Laws, this Agreement or otherwise upon such termination. In addition, Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Job Site, and Contractor shall take such other action as required hereunder upon such termination of this Agreement.

13.5.3 Surviving Obligations. Termination or expiration of this Agreement (a) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in **Section 17.1**, (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Owner or Contractor of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work completed and paid for or other services hereunder already performed and paid for or of obligations assumed by Contractor prior to the date of termination. This **Article XIII** shall survive the termination or expiration of this Agreement.

13.6 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (i) immediately discontinue the Work on the date and to the extent specified in the notice; (ii) place no further orders or subcontracts for Equipment, services or facilities with respect to suspended Work, other than to the extent required in the notice; (iii) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (iv) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (v) take any other reasonable steps to minimize costs and expenses associated with such suspension. As full compensation for any suspension under this Section, Contractor will be reimbursed by Owner pursuant to a Scope Change submitted and agreed to as provided in **Article IX**.

ARTICLE TITLE AND RISK OF LOSS

XIV

14.1 Title to Infrastructure Facilities and the Work. Contractor warrants and guarantees that

legal title to and ownership of the Work (including, without limitation, all Equipment) shall pass to Owner, free and clear of any and all Liens, upon payment to Contractor of the portion of the Contract Price then actually due to Contractor in connection with the Request For Payment as provided in this Agreement; provided that for all Equipment, title shall pass to Owner upon such payment only if title has previously been transferred to Contractor, otherwise, title shall pass to Owner at such time as Contractor has acquired title to the Equipment. Notwithstanding anything to the contrary, legal title to the Work shall pass to the Owner not later than delivery of the Equipment to the Project Site. Notwithstanding anything to the contrary, the costs of unloading and transporting to the Job Site are included in the Contract Price.

14.2 Title to Design Documents. Except as otherwise provided in **Article XIII**, title to Design Documents, drawings, specifications and like materials (including the Job Books contents) which are owned by Contractor shall be transferred to Owner upon the earlier of: (i) delivery of such material to the Owner and (ii) Project Mechanical Completion, except Contractor may retain copies of such documents for its records. In addition, Contractor grants to Owner an irrevocable, non-exclusive, royalty-free license to use and reproduce such drawings, specifications and other design documentation to which Contractor does not have title but has the right to grant sub-licenses solely for the purpose of completing construction of, operating and maintaining, rebuilding and expanding the Project. Contractor shall bear no liability for the use of such documentation for the purpose of expansion of the Project. Owner shall have the right to assign the benefit of such license to any lender in connection with granting a security interest in the Project, to a purchaser or Utility in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this **Section 14.2**. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Project. Any costs to register such licenses in the United States shall be paid by Owner.

14.3 Risk of Loss. Notwithstanding passage of title as provided in **Section 14.1**, from the date hereof until the Project Mechanical Completion Date, Contractor hereby assumes the risk of loss for the Project and the Work, including: (a) any Equipment whether on or off the Job Site, (b) all other Work completed on or off the Job Site and (c) all Work in progress. All Equipment not yet incorporated into the Project shall be stored in secured areas. Contractor shall bear the responsibility of preserving, safeguarding, and maintaining such Equipment and any other completed Work and Work in progress (including spare parts provided by Owner). If any loss, damage, theft or destruction occurs to the Work, on or off the Job Site, for which Contractor has so assumed the risk of loss, Contractor shall, at its cost, promptly repair or replace the property affected thereby, but shall be entitled to reimbursement under Owner's builder's risk insurance required to be provided by Owner in accordance with **Section 12.2** to the extent coverage is provided, so long as Contractor assumes any deductibles or retention amounts in connection with insurance reimbursement. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Project Mechanical Completion Date. Subject to the foregoing, from and after the date of the transfer of risk of loss (a) Owner shall assume all risk of physical loss or damage thereto, and all responsibility for compliance by the Project with applicable safety and environmental laws, and all other Applicable Laws and (b) Owner shall,

and does hereby, release Contractor for loss or damage to the Project which may thereafter occur; provided, however, Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Warranty Services, or from negligent acts or omissions, and/or failure to comply with the requirements of this Agreement of Contractor or any Subcontractor or their respective agents or employees or any Person for whose acts they are responsible. Notwithstanding the foregoing, if Contractor is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, Contractor shall bear the risk of loss and damage with respect to such Work until Contractor's obligation to perform the additional Work is satisfied. Nothing in this **Section 14.3** shall be deemed to make Contractor responsible for loss or damage caused by the sole negligent acts of Owner or Owner's Subcontractors or Persons under contract with any of them or for whom they are responsible.

ARTICLE DISPUTE RESOLUTION

XV

15.1 Senior Representatives Discussion. Any dispute between the Parties relating to the prosecution of the Work, including without limitation, the scheduling thereof, the achievement of Critical Milestones, timing of the achievement of the Critical Milestones, and the entitlement of Contractor for payment in accordance with the Milestone Payments, shall be referred to on-site project managers for prompt resolution. Any such dispute between the Parties that cannot be resolved by on-site project managers within five (5) Business Days and any other dispute arising out of or relating to this Agreement, including without limitation, disputes concerning the breach, termination or invalidity hereof (collectively, "**Disputes**"), shall be reviewed by senior representatives of each of the Parties designated by such Party, for resolution on an informal basis as promptly as practicable. If such consultations do not result in a resolution of the Dispute within twenty (20) Business Days after notice of a Dispute is delivered by either Party, then either Party may pursue all of its remedies available pursuant to this Agreement. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to such Dispute.

15.2 Litigation.

15.2.1 If a Dispute cannot be resolved pursuant to **Section 15.1**, and in the event of litigation arising hereunder, the Parties agree that the exclusive venue for such litigation shall be the courts of the State of Oregon, located in Multnomah County, except as otherwise provided in **Section 15.2.5**. The Parties irrevocably waive any objection which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in *personam* jurisdiction.

15.2.2 IN ANY LITIGATION ARISING FROM OR RELATED TO THIS AGREEMENT, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND

INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OWNER AND CONTRACTOR TO ENTER INTO THIS AGREEMENT. EACH PARTY AGREES THAT FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAW.

15.2.3 Interest calculated in accordance with **Section 4.10** shall be due and payable to the prevailing Party from the date the amount in dispute was first due until the date of payment.

15.2.4 The rights and obligations of the Parties under this **Article XV** shall not be impaired, reduced or otherwise affected as a result of the assignment or transfer by either Party of any or all of its rights and/or obligations under this Agreement as permitted hereunder.

15.2.5 Notwithstanding **Sections 15.2.1 and 15.2.2.** to the contrary, this **Section 15.2.5** shall apply in the event of a dispute that involves the Turbine Vendor (whether a Party is sued by the Turbine Vendor or sues the Turbine Vendor). The Parties hereto agree that all such actions or proceedings shall be tried and litigated exclusively in the United States District Court for the Southern District of New York, and if jurisdiction does not lie in that court, then the Supreme Court for the State of New York in New York County. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties and involving the Turbine Vendor in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the United States District Court for the Southern District of New York, and, if jurisdiction does not lie in that court, then the Supreme Court for the State of New York in New York County, shall have a *personam* jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement and involving the Turbine Vendor. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph, by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices, as set forth in this Agreement. In the event an action is pending in Oregon in accordance with **Section 15.2.1** and a Party desires to sue the Turbine Vendor or is sued by the Turbine Vendor on claims for which the other Party may be liable under this Agreement, then in such event the Parties hereby agree to consent to any motion to stay the action in Oregon and the suit involving the other Party and the Turbine Vendor shall be brought in New York upon the motion for stay being granted by the Oregon court. In any action or proceeding under this **Section 15.2.5**, the governing law shall be the law as specified in the Wind Turbine Supply Contract.

15.3 Continued Performance. During the continuation of any Dispute, so long as the dispute resolution procedures set forth in this **Article XV** are continuing, subject to each Party's right, if

any, to suspend its performance pursuant to **Articles IX and XIII**, the Parties shall continue to perform their respective obligations under this Agreement including continuation of Work under the Project Schedule and prompt and timely payment of all amounts due hereunder until a final non-appealable resolution is reached.

15.4 Tolling Statute of Limitations. All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this **Article XV** are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this **Article XV**, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this **Article XV**.

15.5 Audit Rights. In the event of a claim by Owner under this Agreement involving an amount greater than ten thousand dollars (\$10,000), Contractor shall grant audit rights to Owner with respect to all relevant documentation pertaining to such claim.

15.6 Costs. The substantially prevailing Party in any action or proceeding shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action or proceeding, including reasonable attorneys' fees and costs at the trial court and all appellate levels.

15.7 Specific Performance. Notwithstanding anything to the contrary contained in this **Article XV**, if, due to a material breach or threatened material breach or default or threatened default, a Party is suffering irreparable harm for which monetary damages are inadequate, such Party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief.

ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

16.1 Contractor Representations. Contractor represents and warrants that:

16.1.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the State of _____, and is duly authorized and qualified to do business in the State of _____, and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

16.1.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or permits or judgments entered by any Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal, administrative or arbitration proceedings or actions, controversies, investigations, actions or other proceedings, now pending or (to the best knowledge of Contractor) threatened against Contractor which, if adversely determined, could reasonably be expected to have an effect on the

ability of Contractor to perform under this Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.

16.1.3 Licenses. It is (or will be prior to performing any Work on the Project Site) the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by this Agreement, other than Applicable Permits which will be obtained in accordance with the terms of the this Agreement.

16.1.4 No Breach. None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Contractor, or any Applicable Law or regulation, order, writ, injunction, award, judgment or decree of any court, or any agreement, contract, indenture or other instrument to which Contractor is a party or by which it or its assets is bound or to which it or its assets is subject, or constitute a default under any such agreement or instrument.

16.1.5 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Contractor of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

16.1.6 Investigation. It has: (i) by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including without limitation to construct the Contractor Facilities and to unload, erect and install the WTGs and (ii) ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions and Applicable Laws (including labor) which might affect its performance of the Work or the cost thereof and has performed such testing or examined the results of such testing as would normally be conducted by a contractor considering entering into an agreement such as this Agreement.

16.1.7 Operating Manuals. The Operating Manuals delivered hereunder will contain all of the materials provided by relevant Subcontractors and fairly present all manufacturers' procedures, specifications and requirements.

16.1.8 Review of Agreement. It has examined this Agreement, including all Exhibits attached hereto, thoroughly and become familiar with all its terms and provisions.

16.1.9 Review of Additional Documents. It has reviewed all other documents and information necessary and available to it in order to ascertain the nature, location and scope of the Work, the

character and accessibility of the Project Site, the existence of obstacles to construction of the Project and performance of the Work, the availability of facilities and utilities, and the location and character of existing or adjacent work or structures.

16.1.10 Intellectual Property. It owns or has the right to use and license or sublicense all patents, trademarks, service marks, trade names, copyrights, licenses, franchises, permits and intellectual property rights necessary to perform the Work without conflict with the rights of others, and to transfer the same to Owner as required by this Agreement.

16.1.11 Solvency. It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement. There have been no material adverse changes to the financial condition of the Contractor since [_____, 2007].

16.1.12 Studies and Reports. Owner or Owner's representatives may provide or may have provided Contractor with copies of certain studies, reports or other information (including oral statements) and it represents and acknowledges that except as provided below (A) all such documents or information have been or will be provided as background information and as an accommodation to Contractor, (B) Owner makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed and (C) Contractor is not relying on Owner for any other information, data, inferences, conclusions, or other information with respect to the Project Site. Notwithstanding the foregoing, Contractor is entitled to rely upon the completeness and accuracy of the following provided or to be provided by Owner:

- (i) Owner Permits and requirements of Owner Permits;
- (ii) Owner design requirements, specifications and other information regarding Owner-Furnished Equipment to the extent set forth in **Exhibits F and G**;
- (iii) switching procedures, as set forth in **Exhibit L**; and
- (iv) Real Property Rights as set forth in **Exhibit K**.

16.1.13 Certifications. All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement.

16.1.14 Site Access. The access rights granted herein to, or obtained by, Contractor to the Project Site are adequate for the performance of the Work and operation of the Project.

16.2 Owner Representations. Owner represents and warrants that:

16.2.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the State of Oregon, and is duly authorized and qualified to do business in the State of Oregon and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

16.2.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to the best knowledge of Owner) threatened against Owner which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Owner to perform its obligations under this Agreement.

16.2.3 Licenses. It is (or will be prior to performing any Work on the Project Site) the holder of all governmental consents, licenses, permissions and other authorizations and permits required to operate and conduct its business now and as contemplated by this Agreement, other than Applicable Permits which will be obtained in accordance with the terms of this Agreement.

16.2.4 No Breach. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof, conflicts with or will result in a breach of, or require any consent under, the charter or by-laws of Owner, or any Applicable Law or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

16.2.5 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

16.3 Survival of Representations and Warranties. The representations and warranties of Contractor herein shall survive execution and termination of this Agreement.

ARTICLE MISCELLANEOUS PROVISIONS

XVII

17.1 Confidentiality and Publicity.

17.1.1. Confidential Information and Permitted Disclosures. Except as set forth in this **Section 17.1**, Owner and Contractor shall hold in confidence the contents of this Agreement and any information provided pursuant to this Agreement and any other information supplied by either Party to the other that is marked or otherwise indicated to be confidential (collectively, "**Confidential Information**"). Each Party shall inform its Affiliates, Subcontractors, suppliers, vendors and employees of its obligations under this **Section 17.1** and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, Owner and Contractor may disclose the following categories of information or any combination thereof:

- (i) Confidential Information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;
- (ii) Confidential Information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;
- (iii) Confidential Information received by such Party from a third party having no obligation of confidentiality with respect thereto;
- (iv) Confidential Information at any time developed independently by such Party providing it is not developed from otherwise Confidential Information;
- (v) Confidential Information disclosed pursuant to and in conformity with Applicable Law or a judicial order or regulatory proceeding or in connection with any legal proceedings described in **Article XV**, provided that the Party required to disclose such information shall give prior notice to the other of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;
- (vi) Confidential Information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries; and
- (vii) Confidential Information disclosed to Affiliates, Subcontractors, employees directors, officers, agents, advisors or representatives of each party as necessary; provided that such Persons are informed of the confidential nature of the Confidential Information, and the Party disclosing such information shall be liable to the other for any disclosure by such Person in violation of the terms of this Section.

17.1.2 Additional Owner Permitted Disclosures.

17.1.2.1 Owner may disclose Confidential Information to financial institutions or other investors expressing interest in providing debt or equity financing or refinancing or other credit or financial support to Owner, and the agent or trustee of any of them or to any Person that is a potential or actual successor in interest or a purchaser of Owner's assets to which this Agreement relates; provided, however, that such disclosures shall be subject to the agreement of such Persons to keep such information confidential pursuant to the terms of this **Section 17.1**.

17.1.2.2 Notwithstanding the preceding **Section 17.1.1** and **Section 17.1.2.1**, the Parties acknowledge that Owner is subject to numerous regulatory proceedings and that Confidential Information may be disclosed if required by any Governmental Authority or court or otherwise by law; provided, however, that such Confidential Information is submitted under applicable provisions for confidential treatment. If Owner intends to disclose Confidential Information

under the provisions of this **Section 17.1.2.2** and Owner is unable to obtain confidential treatment for such information, Owner shall notify Contractor of the same in writing prior to such disclosure.

17.1.3 Intentionally Omitted.

17.1.4 Consent. Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably withheld.

17.1.5 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including, but not limited to injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section, without proof of any actual or special damages.

17.1.6 Application of Additional Confidentiality Provisions. In addition, Contractor acknowledges and agrees that it is subject to the confidentiality provisions set forth in the Wind Turbine Supply Contract.

17.1.7 Ownership of Confidential Information. All right and title to, and interest in, Owner's Confidential Information shall remain with Owner. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. Contractor shall deliver the Confidential Information, including all copies thereof, to Owner upon request, subject to Contractor's right to retain copies for its records.

17.1.8 Public Announcements. Contractor shall not issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby, without the prior consent, which shall not be unreasonably withheld or delayed, of Owner, unless required by Applicable Law or order of a court of competent jurisdiction, provided, however, that Contractor shall have the right without obtaining such consent to include public information concerning the Project in Contractor's marketing materials following the initial public announcement by Owner. In the event of a breach of this **Section 17.1.8**, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, Owner may, in its sole discretion, issue public announcements that Owner shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the Contractor.

17.2 Control of Software and Other Proprietary Material. Owner recognizes that proprietary software provided by Contractor to Owner as part of the Work carries with it certain restrictions on use and copying of software and that such software shall not be duplicated and provided to a third party without the express prior written authorization of Contractor (except as otherwise provided in this **Section 17.2**). Owner acknowledges that under the terms of this Agreement it is being provided and shall have access to certain intellectual property rights owned, used or licensed by Contractor, including software, trade secrets, patents, and other proprietary information relating to the specification, design, construction, installation, operation or

maintenance and repair of the Work, as well as training processes, and the contents of service and maintenance manuals and test and inspection procedures (collectively, “**Intellectual Property Rights**”). Owner and Contractor agree that the Agreement provides Owner and its representatives with an irrevocable, permanent, transferable, nonexclusive, royalty-free license to use the Intellectual Property Rights (a) in connection with the Project and (b) in connection with the operation, maintenance, repair, modification or alteration of any other power generating facility to be owned, operated, constructed or developed by Owner or any Affiliate of Owner; provided that, Contractor makes no representation or warranty with respect to the Intellectual Property Rights to the extent that such Intellectual Property Rights is used in any facility other than the Project and; provided, further, that Contractor makes no representation that the Intellectual Property Rights are suitable for reuse by Owner or others on extensions of the Project or on any other project and provided, further, that any such reuse will be at Owner’s sole risk and without liability or legal exposure to Contractor. Owner agrees (i) not to use any such Intellectual Property Rights for any purpose other than as set forth in this **Section 17.2**, and (ii) not to disclose any such Intellectual Property Rights which Contractor expressly notifies Owner in writing are confidential except (a) to the extent such information is generally available to the public other than as a result of a disclosure by Owner, (b) in connection with the permitted uses of such Intellectual Property on a need-to-know basis, (c) upon the written consent of Contractor, or (d) as otherwise expressly permitted by this Agreement; provided, that such Intellectual Property Rights shall not be used to manufacture wind turbine generators or auxiliary equipment other than the WTGs in accordance with the terms of the escrow agreement between Owner and Turbine Vendor. To the extent any of the licensors or other owners of the Intellectual Property Rights may reasonably require, Owner shall execute such confidentiality and nondisclosure agreement or agreements as such licensors or owners may reasonably require.

17.3 Notice. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received when actually received by the Party to whom it is sent, at the address and/or facsimile numbers of such party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with the Section):

If to Owner:

PacifiCorp Energy
1407 West North Temple
Salt Lake City, Utah 84116
Attention: [_____]
Facsimile: (801) 220-4615
Telephone: (801) 220-4209
Email: [_____]

With a copy to:

PacifiCorp Energy
1407 West North Temple

Salt Lake City, Utah 84116
Attention: [_____]
Facsimile: (801) 220-4615
Telephone: (801) 220-4213
Email: [_____]

If to Contractor:

17.4 No Rights in Third Parties. Except with respect to the rights of indemnitees under **Article X** (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

17.5 Conflicting Provisions. In the event of any inconsistencies between this Agreement and the other Contract Documents, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (a) Amendments, addenda or other modifications to this Agreement (including Scope Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;
- (b) **Articles I through XVII** of this Agreement;
- (c) The Exhibits hereto; and
- (d) Design Documents produced and delivered pursuant hereto (in respect of which, precedence shall be given to Design Documents of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Where an irreconcilable conflict exists among Applicable Laws, this Agreement, the drawings included in the Design Documents, and the specifications in the Design Documents, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict. Notwithstanding the foregoing provisions of this **Section 17.5**, if a conflict exists within or between parts of this Agreement, or between this Agreement and Applicable Laws, or among Applicable Laws themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under this Agreement or under Applicable Laws or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an “irreconcilable conflict.” Where a conflict exists among codes and standards applicable to the Infrastructure

Facilities or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

17.6 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

17.7 Amendments. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties.

17.8 Governing Law. Except as provided in **Section 15.2.5**, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD CALL FOR THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION).

17.9 Right of Waiver. No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

17.10 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

17.11 Assignment. This Agreement or any right or obligation contained herein may be assigned by Owner to any of its Affiliates that has a direct or indirect interest in the Project. This Agreement may be otherwise assigned by the Parties only upon the prior written consent of the other Party, not to be unreasonably withheld or delayed. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; any other assignment shall be void and without force or effect. With respect to any lender or other Person providing debt financing for the Project (a "**Lender**"), Contractor agrees

to (i) the collateral assignment of this Agreement to the Lender or any designee of Lender, (ii) the performance prior to collateral assignment of Owner's obligations under this Agreement, (iii) provide concurrent notice to Lender of any notice of default by Owner under this Agreement, (iv) provide as requested documentation, information, access and other assistance requested from time to time by Lender or its representatives, and (v) enter into a customary direct agreement with Lender if so requested.

17.12 Successors and Assigns. Subject to **Section 17.11**, this Agreement shall be binding upon the Parties, their successors and permitted assigns.

17.13 No Partnership Created. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Contractor and Owner.

17.14 Survival. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including **Articles VII and X**, shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of Contractor contained herein or in any other Contract Document shall survive the execution and delivery hereof and thereof.

17.15 Effectiveness. This Agreement shall be effective on, and binding upon each of the Parties, on the Effective Date.

17.16 Expenses and Further Assurances. Each Party shall pay its own costs and expenses in relation to the negotiation, preparation execution and carrying into effect this Agreement. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.

17.17 Financial Assurances. If Owner determines that Contractor's financial condition has deteriorated so as to create a risk of loss to Owner, then Owner may inform Contractor in writing of such insecurity, and as Owner shall direct in its reasonable discretion, Contractor shall immediately: (a) provide written assurance within five (5) days that the Contractor is capable of performing and completing the Work and its obligations under this Agreement; (b) increase the forms and/or amounts of security; (c) require direct payment or co-payment to Subcontractors; (d) adjust the amount of Work to be performed by Contractor with corresponding adjustments in the Contract Price; and/or (e) to assign to Owner any agreement or purchase order with a Subcontractor, provided that Contractor shall remain responsible for its obligations under such agreement or purchase order.

17.18 Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument.

17.19 Offset. Notwithstanding any other provision hereof, any and all amounts owing or to be paid by Owner or Contractor to the other hereunder or otherwise, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time. Further, for the

avoidance of doubt, with respect to any provision of this Agreement that allows Owner to offset, set-off or draw against a bond any amount then owed to Contractor, Owner shall have the express right to include in the amount offset, set-off or drawn under a bond all of the reasonable costs and expenses it incurs in connection with enforcing such provision (including attorneys' and other consultants' fees).

17.20 Time of the Essence. Time is of the essence in the performance of the Work by Contractor hereunder.

17.21 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

17.22 Equal Employment Opportunity. Contractor represents and warrants that the Work will be performed in compliance with all Applicable Laws, including all applicable executive, judicial and administrative orders. Upon Owner's reasonable request(s), Contractor will (and/or will cause its Subcontractors to) provide such information as may be required by Owner in order to respond to any Governmental Authority with respect to matters involving compliance with the Applicable Laws described above in this paragraph.

17.23 Contractor Performance Security.

17.23.1 Parent Guaranty. Concurrently with execution of this Agreement, Contractor shall cause [_____] ("**Guarantor**") to guaranty all of the Contractor's obligations under this Agreement in a form acceptable to Owner in its sole discretion.

17.23.2 Letter of Credit. Concurrently with execution of this Agreement, Contractor shall cause to be issued a letter of credit in a form acceptable to Owner in its sole discretion from a bank acceptable to Owner in its sole discretion in the amount of [_____].

17.24 Federal Security Registry. Contractor warrants that Contractor, its employees and Subcontractors are not on Federal Government's list of suspected terrorists or suspected terrorist organizations.

17.25 Criminal Background Check. If requested by the Owner, the Contractor shall conduct, at Contractor's cost and expense, criminal background checks for the current and past counties of residence on all employees, agents, or Subcontractors and the employees, agents or representatives of Subcontractors, that have electronic or physical access to Work or Owner's facilities. At a minimum, a social security number verification and seven-year criminal background check, including felony or misdemeanor convictions involving: (a) violence to persons/property; (b) theft/fraud; (c) drug/alcohol; or (d) traffic/other are required. Employment history, education verification, and professional certifications may also be required by the Owner. All background checks will be conducted in accordance with federal, state, provincial, and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. Contractor shall not allow persons who have not met the Owner's criteria to perform Work, unless Contractor has received written consent from the Owner. Contractor shall supply a certification that meets Owner's criteria for each Contractor employee, agent or representative

and for employees, agents or representatives of any Subcontractor employed by Contractor. Contractor shall ensure that employees, agents, or Subcontractors and the employees of Subcontractors sign an appropriate authorization form prior to criminal background checks being conducted, acknowledging the background check is being conducted and authorizing the information obtained to be provided to Owner. It is understood and agreed that Owner may review Contractor's policies, background checks and related documentation upon request, subject to applicable federal, state and/or local statutes or regulations. Owner may also request that Contractor provide an ongoing and updated list of persons that have been denied access to Owner's facilities.

17.26 Drivers Licenses. Contractor shall ensure DOT compliance, including but not limited to valid drivers license, equipment inspections, hours of service and all appropriate documentation.

17.27 Business Ethics. Contractor, its employees, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the conduct of Work for the Owner.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

Owner:

PACIFICORP, an Oregon corporation

By: _____

Its: _____

Contractor:

_____,
a _____ corporation

By: _____

Its: _____

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE TOLLING AGREEMENT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

WIND DEVELOPMENT ASSETS ACQUISITION AND SALE AGREEMENT

Dated as of [Date]

By and between

PACIFICORP

as Purchaser

and

[SELLER]

as Seller

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WIND DEVELOPMENT ASSETS ACQUISITION AND SALE AGREEMENT

THIS WIND DEVELOPMENT ASSETS ACQUISITION AND SALE AGREEMENT (this “Agreement”) is dated as of _____, 2008 between PacifiCorp, an Oregon corporation (“Purchaser”) and [SELLER], [State and form of entity] (“Seller”).

RECITALS

A. Purchaser desires to acquire a windfarm development site in the State of [SITE LOCATION] and construct on such site wind energy generation facilities having an output of not less than [OUTPUT] megawatts (____ MW) (the “Project”).

B. Seller is in the process of developing a site in [SITE LOCATION] (the “Site”) which includes the Property, for a wind energy generation project and in connection therewith has acquired certain real estate rights and other assets and commenced certain development activities.

C. Purchaser desires Seller to continue its development activities respecting the Site and, subject to the conditions set forth herein, to acquire Seller’s wind energy development assets related to the Site and to engage Contractor to construct wind energy generation facilities at the Site in accordance with the terms of the EPC Agreement.

D. Seller desires to continue its development activities with respect to the Site and to transfer its development assets related to the Site to Purchaser in accordance with the terms hereof.

AGREEMENT

NOW THEREFORE, in consideration of the sums to be paid to Seller by Purchaser and the covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Defined Terms.

For purposes of this Agreement, the following terms shall have the following meanings:

“Acquired Assets”. All of Seller’s and its Affiliates’ right, title and interest in and to all properties, assets and rights of any kind, whether tangible or intangible, real or personal, owned (or hereafter acquired) by Seller or its Affiliates or in which Seller or its Affiliates has (or hereafter acquires) any interest whatsoever in connection with the Project, including without limitation, the Wind Data, the Contracts, the Permits, the Permit Applications, the Land Contracts, and all other rights of Seller or its Affiliates of any kind or nature in connection with the Project; provided, however, that the Acquired Assets shall not include (i) any corporation, limited liability company or other legal entity formed by or constituting Seller or its Affiliates, qualifications to conduct business as a foreign corporation or other entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, and other documents relating to the organization, maintenance, and existence of Seller or its Affiliates as business entities, and (ii) any of the rights of Seller under this Agreement, or under any agreement between Seller and Contractor relating to this Agreement or the EPC Agreement, and (iii) those items listed on Schedule 1.1; provided, further, that the Acquired Assets shall specifically include all right, title and interest of Seller and their Affiliates in and to the following assets:

- (i) the Wind Data;
- (ii) the Physical Assets;
- (iii) the Land Contracts;
- (iv) the Contracts;
- (v) the Permit Applications and Permits;
- (vi) the Reports;
- (vii) the Interconnection Rights;
- (viii) the Substation Fee Parcel; and
- (ix) Books and Records.

“Additional Development Services”. The term shall have the meaning set forth in Section 3.12.

“Affiliate”. With respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise.

“After Tax Basis”. Means: (1) for purposes of any provision of this Agreement that requires a payment to be made on an After-Tax Basis, such payment shall be made in an amount equal to the sum of (i) the payment to be made before adding the amounts referred to in clause (ii) of this sentence (the base payment) and (ii) an amount equal to the sum of any and all Taxes paid or required to be paid by or on behalf of the payee as a result of receipt or recognition of such payment (including, without limitation, any Taxes on such additional amounts) (the “additional payment”); *provided, however*, that no additional payment shall be payable if (a) the base payment is not includible in the payee’s gross income, (b) the base payment is being made to compensate the recipient for a loss or expense that is deductible or non-taxable for federal income tax purposes, or (c) the base payment compensates the payee for failure to receive an amount, other than a base payment, that would have been includible in the recipient’s gross income, had such amount been received, so that the net amount actually received and retained by the payee after payment of all Taxes on the base amount and the additional amount is equal to the payment otherwise required to be made to the payee under any provision of this Agreement; and (2) for purposes of determining the After-Tax Basis, Seller and Purchaser shall each be deemed to be subject to a marginal tax rate of forty-one percent (41%).

“Agreement”. This Wind Development Assets Acquisition and Sale Agreement, including all Exhibits and Schedules (as such Schedules may be updated in accordance with Section 6.19) hereto, as the same may be modified, amended or supplemented from time to time in accordance with Section 12.5.

“Assignment and Assumption Agreements”. The term shall have the meaning set forth in Section 3.1.1.1.

“Assumed Liabilities”. (a) Only those obligations of Seller or its Affiliates accruing or arising from and after the Closing Date under the Land Contracts, Permits, Permit Applications and Contracts (including any liability for Taxes for such Land Contracts, Permits, Permit Applications and Contracts) and (b) without in any way broadening the scope of Assumed Liabilities as described in the preceding clause, Assumed Liabilities shall not include (i) any Liability of Seller or its Affiliates for Taxes accruing or arising before the Closing Date (unless subject to proration pursuant to Section 2.5.1.2), (ii) any Liability of Seller or its Affiliates for the unpaid Taxes of any Person under Reg. § 1.1502-6 (or any similar provision of state or local Law), as a transferee or successor, by contract, or otherwise, (iii) any Liability of Seller or its Affiliate for costs and expenses incurred in connection with this Agreement and the transactions

contemplated hereby, or (iv) any Liability or obligation of Seller or its Affiliates under this Agreement entered into on or after the Closing Date.

“Authority”. Any federal, state, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof having legal jurisdiction over the matter or Person in question.

“Bankruptcy Code”. The United States Bankruptcy Code, as in effect from time to time.

“Beam Path Study”. The Beam Path Study prepared by a consultant selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that demonstrates that the construction and operation of the Project will not materially and adversely interfere with any microwave or other regulated point to point electromagnetic path.

“Bill of Sale”. The term shall have the meaning set forth in Section 3.1.1.2.

“Books and Records”. Any and all data, reports, correspondence, maps, surveys and other business records relating to the Project that are generated or obtained by Seller prior to Closing.

“Business Day”. Any day other than Saturday or Sunday or holiday, on which banks are generally open for business in Portland, Oregon.

“Claim”. Any indemnity, demand, demand letter, claim, cause of action, notice of noncompliance or violation, or other proceeding relating to the Project.

“Closing”. The term shall have the meaning set forth in Section 2.4.1.1.

“Closing Date”. The term shall have the meaning set forth in Section 2.4.1.1.

“Code”. The Internal Revenue Code of 1986, as the same may be amended from time to time, including any amendments or any substitute or successor provisions thereto.

“Collection System Easements”. Easements for the construction and operation of the electrical collection system required to transmit power from the wind turbines to the substation, that provide for a one-time payment of no greater than \$[___] per foot/per electrical collector feeder line of easement and cover such property as approved by Purchaser (such approval not to be unreasonably withheld), and that are in the form set out in Exhibit C and with such additional modifications requested by the grantors of such easements, such approval not to be unreasonably withheld by Purchaser.

“Consents”. The term shall have the meaning set forth in Section 8.2.

“Contract”. Any of the agreements or contracts to which Seller or its Affiliates is a party and which are described in Schedule 6.14 of this Agreement.

“Contractor”. [_____]

“Corporate Documents”. Articles of Incorporation and bylaws of a corporation or the equivalent documents of a limited liability company or other legal entity.

“Cultural and Biological Study”. The cultural and biological study with respect to the Property to be prepared by a consultant selected by Seller and approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that could have a Material Adverse Impact on the Project, as such cultural and biological study may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Development Costs”. The term shall have the meaning set forth in Section 10.2.2.

“Encumbrances”. Any claim, lien, pledge, mortgage, option, charge, easement, security interest, right-of-way, encumbrance, lease, interest, mineral reservations, covenant, conditional sales contract, title retention arrangement, adverse claim or restriction of any kind or other right of third parties.

“Environmental Laws”. All Laws that regulate or relate to (i) the protection or clean-up of the environment; (ii) the Handling of Hazardous Substances; (iii) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources; and (iv) the health and safety of persons or property as it pertains to the environment, including, without limitation, protection of the health and safety of employees. Environmental Laws shall include, without limitation, the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Comprehensive Environmental Response, Compensation and Liability Act, Emergency Planning and Community Right-to-Know Act, Hazardous Materials Transportation Act, and Centers for Disease Control guidelines, policies and procedures, and all analogous or related Laws.

“EPC Agreement”. That certain Turnkey Engineering, Procurement and Construction Services Agreement, dated as of the Closing Date, between Purchaser and Contractor, pursuant to which Contractor shall perform certain services in respect of the further development of the Project, the form of which is attached hereto as Exhibit A.

“Extension Payment”. The term shall have the meaning set forth in Section 11.1.1.1.

“FAA”. The U.S. Federal Aviation Administration.

“FAA No-Hazard Determinations”. The FAA No-Hazard Determinations related to the Project issued by the FAA.

“Facilities”. The wind power generating facilities (including the foundations, towers, wind turbine generators, electrical collection system, access roads and other equipment, materials and improvements associated therewith), for a total of [OUTPUT] megawatts (___ MW) nameplate capacity, which are planned for development on the Property in connection with the Project.

“Geotechnical Report”. The geotechnical report prepared by a consultant selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that demonstrates that, on the basis of representative sampling, there are no material adverse soil or other geologic conditions at the Site that would interfere with construction and operation of the Project.

“Guarantor”. _____, a _____.

“Governmental Approval”. Any authorization, approval, consent, waiver, exception, variance, order, publication, license, filing, registration, ruling, permit, tariff, certification, exemption and other action, requirement by or with, and notice to and declarations of or with, any Governmental Authority that are required in connection with the development, construction, ownership and operation of the Project.

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

“Guaranty”. The Guaranty Agreement in the form of Exhibit B executed by Guarantor and delivered concurrent with the full and mutual execution of this Agreement.

“Handling”. The production, use, treatment, storage, transportation, generation, manufacture, processing, distribution, disposal, emission, discharge, Release or threatened Release.

“Hazardous Substances”. All pollutants, contaminants, chemicals, wastes (including, without limitation, medical and infectious wastes), and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances or materials (whether solids, liquids or gases), including but not limited to any substances, materials, or wastes subject to regulation, control, or remediation under Environmental Laws. By way of example only, and without limitation, the term Hazardous Substances includes petroleum, urea, formaldehyde, flammable, explosive, and radioactive materials, PCBs, pesticides, herbicides, asbestos, sludge, slag, acids, metals, and solvents.

“Indebtedness”. With respect to any Person, means any indebtedness, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or representing the balance deferred and unpaid of the purchase price of any property (including pursuant to capital leases), including any such balance that constitutes an accrued expense or a trade payable, and shall also include, to the extent not otherwise included, the guaranty of items which would be included within this definition.

“Interconnection Agreement”. The agreement to be entered into between Seller and the transmission provider and assigned to Purchaser at Project Substantial Completion providing for the interconnection of the Project with the transmission provider’s transmission system.

“Interconnection Rights”. Any and all of Seller’s rights and interests in the Project’s transmission interconnection queue position, the application for Project interconnection filed by Seller with the transmission provider, any studies, reports or other documents provided by the transmission provider, and any and all other rights relating to the interconnection of the Facility to the transmission grid with respect to this Project.

“Land Contracts”. The Windfarm Easements, the Collection System Easements and the Substation Agreement.

“Laws”. Any law, statute, rule, regulation, ordinance, standard, code, order, judgment, decision, writ, injunction, decree, certificate of need, award or other governmental restriction including, without limitation, policy or procedure issued or enforced by any Authority.

“Liabilities”. Any and all direct or indirect liability, Indebtedness, obligation, commitment, losses, damages, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other.

“Long Stop Date”. [_____, 200_].

“Material Adverse Impact”. Any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results of operations or condition (financial or otherwise) of the Project or the Project Site. Without limiting the foregoing, Material Adverse Impact includes any change in condition that actually has, or is reasonably likely to have, a significant adverse effect on (i) Purchaser’s ability to own, control, or operate the Project (financial or otherwise), (ii) the Project’s ability to operate and deliver energy, (iii) Seller’s ability, Contractor’s ability, or the Guarantors’ ability, to perform its respective obligations in accordance with the Contracts and/or Land Contracts to which it is, respectively, a party, (iv) Contractor’s ability to perform its respective obligations in accordance with the Contracts (v) the ability of Purchaser to enforce any of its material rights and remedies under the Contracts or the Land Contracts; or (vi) Seller fails to meet the requirements of ARTICLE 9 (“Credit Requirements”).

“Meteorological Stations”. The _____ meteorological stations currently installed (temporary) each of which shall include a wind anemometer, wind vanes, a guy-wired tower and a logger.

“Necessary Governmental Approvals”. All Governmental Approvals required in connection with (i) the due execution, delivery and performance by any party of the this Agreement and/or any Contract or Land Contract and (ii) the development, construction, operation and ownership of the Project.

“Non-disclosure Period”. The term shall have the meaning set forth in Section 8.5.1.

“Party”. Purchaser or Seller individually; and “Parties” means Purchaser and Seller collectively.

“Permit Applications”. Any application, petition or request made to any Authority on or before the Closing Date in order to obtain a Permit.

“Permits”. All licenses, consents, certificates (including permanent unconditional certificates of occupancy), approvals, permits and any authorizations of any sort whatsoever by or from any Authority, including, without limitation, any certificates of need, provider numbers and accreditation necessary, useful or incidental to the Acquired Assets and the development, construction and operation of the Project as described as “Obtained Permits” or “Required Permits” on Schedule 6.15 of this Agreement. The Permits do not include the Permit Applications.

“Permitted Liens”. “Permitted Liens” means: (a) liens for property taxes and installments of assessments and charges of Authorities not yet due and payable as of the Closing Date, (b) liens incurred in the ordinary course of business (including inchoate workman’s and mechanics liens and inchoate liens incurred in connection with worker’s compensation, unemployment insurance, social security and other Laws) which do not secure any amounts currently due and which do not currently present any risk of sale of the property subject to the lien, (c) prior to the Closing Date, liens incurred in the ordinary course of business which are discharged in full by the Closing Date, (d) liens created by the act or omission of Purchaser, and (e) the liens set forth on Schedule 3.8 to the extent they are acceptable to Purchaser in its sole discretion, reasonably exercised.

“Permitting Opinion”. A permitting opinion from [STATE] legal counsel selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that describes all Permits required to develop, construct and operate the Project.

“Person”. Any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, decedent’s estate, organization, entity, or unincorporated organization or any Authority.

“Phase I Avian Risk Assessment”. The Phase I Avian Risk Assessment (which shall include but not be limited to bats) with respect to the Property to be prepared by a consultant selected by Seller and Approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that could have a Material Adverse Impact on the Project, as such Phase I Avian Risk Assessment may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Phase I Environmental Assessment”. The Phase I Environmental Assessment with respect to the Property to be prepared by a consultant selected by Seller and approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that could have a Material Adverse Impact on the Project, as such Phase I Environmental Assessment may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Physical Assets”. The term shall mean the Meteorological Stations and the Books and Records.

“Project”. The complete integrated wind-powered electricity generating plant (including the Facilities) with a nameplate capacity of [OUTPUT] megawatts (___ MW) to be located on

the Property to be developed, designed, procured, constructed, tested and commissioned by Seller under this Agreement and by Contractor under the EPC Agreement.

“Project Substantial Completion”. The term shall have the meaning set forth in the EPC Agreement.

“Property”. All property that is the subject of the Land Contracts as further described in Schedule 6.16 and the Substation Fee Parcel as further described in Schedule 6.16.

“Purchase Price”. The term shall have the meaning set forth in Section 2.2, subject to modification pursuant to Section 11.2.

“Purchaser”. PacifiCorp, an Oregon corporation.

“Purchaser Affirmative Coverage”. The term shall have the meaning set forth in Section 3.8.

“Purchaser Conditions”. The term shall have the meaning set forth in Section 2.4.1.3.

“Purchaser Confidential Information”. The term shall have the meaning set forth in Section 8.3.1.

“Purchaser Damages”. The term shall have the meaning set forth in Section 10.3.1.

“Purchaser Documents”. The term shall have the meaning set forth in Section 7.2.

“Purchaser Indemnified Parties”. The term shall have the meaning set forth in Section 10.3.1.

“Purchaser’s Knowledge”. The actual and current knowledge, after reasonable inquiry, of any of the following Persons: _____.

“Release”. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment or the workplace of any Hazardous Substance, and otherwise as defined in any Environmental Law.

“Reports”. The Phase I Environmental Assessment, the Phase I Avian Risk Assessment, Cultural and Biological Study, the Beam Path Study, the RFI Report, the Geotechnical Report, the Wetlands Study, the Survey, the Title Abstracts, the Wind Study, the Permitting Opinion and any other study or report prepared by or for Seller in connection with the Project.

“Representative”. With respect to any Person, any officer, director, employee, principal, attorney-in-fact, agent, or other representative of such Person.

“RFI Report”. The radio frequency interruption engineering study prepared by a consultant selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that demonstrates that the construction and operation of the Project will not materially and adversely interfere with any radio or other similar frequencies.

“Seller”. [SELLER], [Organizational type and State].

“Seller Conditions”. The term shall have the meaning set forth in Section 2.4.1.2.

“Seller Confidential Information”. The term shall have the meaning set forth in Section 8.4.1

“Seller Damages”. The term shall have the meaning set forth in Section 10.3.2.

“Seller Documents”. The term shall have the meaning set forth in Section 6.1.

“Seller Endorsements”. The term shall have the meaning set forth in Section 3.8.

“Seller Indemnified Parties”. The term shall have the meaning set forth in Section 10.3.2.

“Seller’s Knowledge”. The actual and current knowledge, after reasonable inquiry, of any of the following Persons: _____.

“Site”. The term shall have the meaning set forth in the recitals hereof.

“Substation Fee Parcel”. A parcel held in fee ownership by the Seller of at least five (5) acres at the Site that, in Purchaser’s reasonable opinion, will satisfy the transmission provider’s requirements for the property for an interconnection substation.

“Survey”. The ALTA-ACSM survey to be provided by Seller for the Property, which survey shall (i) be prepared by a surveyor reasonably acceptable to Purchaser, (ii) be prepared in conformance with the Minimum Standard Detail Requirements adopted in 1___ by the American Land Title Association, the American Congress on Surveying and Mapping, and the National Society of Professional Surveyors, (iii) be certified to Purchaser as provided in such Minimum Standard Detail Requirements, (iv) certify (in addition to the foregoing certifications) that all access and other roads within the Site are public, (v) contain Table A Optional Surveyor Responsibilities and Specifications Nos. 2, 3, 4, 6, 8, 10, 11, 14 and 16, and (iv) show: (a) an overlay of the proposed Facilities on the Property; (b) any beam paths indicated from the Beam Path Study; (c) the tax assessor number(s) for each parcel of Property; (d) the boundaries of each parcel of the Property; (e) the boundaries of each Windfarm Easement or Collection System Easement that consists of less than an entire such parcel, (f) the name of the landowner(s) of each such parcel as currently vested; and (g) the property purchased pursuant to the Substation Agreement. Notwithstanding the foregoing, the Survey shall not be required to show any third party improvements except for those within 1,000 feet of the Facilities (or in the case of the electrical collection system, within 100 feet on both sides of the centerline).

“Taxes”. All federal, state, local, foreign and other net income, gross income, estimated, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property taxes and assessments, windfall profits, value added, commercial rent, customs duties, capital gain, social security, royalty, documentary or other taxes, fees, assessments, duties or charges of

any kind whatever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, and the term “Tax” means any one of the foregoing Taxes.

“Title Abstracts”. Either a full abstract, title report or pro forma policy showing all Encumbrances for each parcel of Property covered by a separate Land Contract and including a copy of all underlying report of liens (if a title report or pro forma policy) and all listed documents.

“Title Company”. The term shall have the meaning set forth in Section 3.8.

“Title Insurance”. The term shall have the meaning set forth in Section 3.8.

“Update Certificates”. The term shall have the meaning set forth in Section 6.21.

“Wetlands Study”. The Wetlands Study with respect to the Property to be prepared by a consultant selected by Seller and approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that would prevent the construction of the Project pursuant to a nationwide Section 404 permit, as such Wetlands Study may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Wind Data”. Any and all wind data included, or included by reference, on Schedule 6.13 of this Agreement, provided by Seller or its Representatives to Purchaser in respect of the Project.

“Windfarm Easements”. Easements for the construction and operation of the Facilities with respect to parcels sufficient to construct and operate a [OUTPUT] megawatt (___ MW) windfarm meeting the Wind Study output requirement and which is generally located within the boundary of the area shown in Exhibit D, and in the form set out in Exhibit C and with such additional modifications requested by the grantors of such easements, with approval of such requested modifications not to be unreasonably withheld by Purchaser.

“Wind Study”. A Project Wind Study prepared by _____ and verified by Purchaser’s wind consultant within 20 Business Days after receipt, which study concludes that, at 95% availability, the Project will have an expected average annual output of not less than _____ megawatt hours, as delivered to the point of interconnection with the transmission provider’s transmission system.

1.2 Rules of Interpretation

Unless otherwise expressly provided or unless required by the context in which any term appears:

- (a) capitalized terms used in this Agreement have the meanings specified in this Article;
- (b) the singular shall include the plural and the plural shall include the singular;

(c) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” (if any) shall be to articles, sections, schedules or exhibits (if any) of this Agreement;

(d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement;

(f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;

(g) references to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;

(h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(i) the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered;

(j) relative to the determination of any period of time, “from” means “including and after,” “to” means “to but excluding” and “through” means “through and including”; and

(k) references to applicable Laws shall mean a reference to such applicable Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated thereunder.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE 2. PURCHASE AND SALE OF ACQUIRED ASSETS

2.1 Purchase and Sale of Acquired Assets.

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, convey, transfer, assign, and deliver to Purchaser, and Purchaser shall purchase from Seller, all of the Acquired Assets, which Acquired Assets shall be sold, conveyed, transferred, assigned and delivered to Purchaser for the consideration specified in Section 2.2 below.

2.2 Purchase Price; Assumption of Liabilities.

2.2.1.1 Purchase Price. Subject to the adjustments set forth in Sections 2.5 and 11.2(b). Purchaser agrees to pay to Seller pursuant to this Agreement a total price of _____ Dollars (\$ _____) (the "Purchase Price"), as follows:

2.2.1.2 upon execution and delivery of this Agreement, in consideration of Seller's provision of exclusive Closing rights to Purchaser hereunder and the continuing efforts of Seller as provided hereunder _____ Dollars (\$ _____);

2.2.1.3 upon the execution of Windfarm Easements and Collection System Easements required for the Project, _____ Dollars (\$ _____);

2.2.1.4 upon obtaining all of the Permits, _____ Dollars (\$ _____);

2.2.1.5 upon receipt of the final Wind Study, _____ Dollars (\$ _____);

2.2.1.6 upon execution of the EPC, _____ Dollars (\$ _____);

2.2.1.7 at Closing, _____ Dollars (\$ _____); and

2.2.1.8 upon receipt of the signed Interconnection Agreement, _____ Dollars (\$ _____);

2.2.1.9 at Project Substantial Completion the balance of the Purchase Price, adjusted as specified in Sections 2.5, and/or 11.2(b).

The Purchase Price shall be payable by wire transfer or, if so requested in writing by Seller, by delivery of other immediately available funds, and shall be due and payable as follows: the payment in Section 2.2.1.2 shall be due and payable on the date hereof, the payments in Section 2.2.1.3, 2.2.1.4, 2.2.1.5, 2.2.1.6 and 2.2.1.8 shall be due and payable within ten (10) Business Days after receipt by Purchaser of notice from Seller stating that the action has been completed together with copies of the Windfarm Easement and Collection System Easements, Substation Fee Parcel, Permits, the final Wind Study, _____, or the EPC Agreement, as the case may be, the payment in Section 2.2.1.7 shall be payable on or before the Closing Date, and the payment in Section 2.2.1.9 shall be payable within ten (10) Business Days after achievement of Project Substantial Completion.

2.2.1.10 Assumption of Liabilities. Subject to the terms and conditions of this Agreement, the Purchaser agrees to assume and become responsible for all of the Assumed Liabilities as of and after the Closing Date. Other than as set forth in the Purchaser Documents, the Purchaser is not assuming and shall not assume or have any responsibility, however, with respect to any present or future debt, liability or other obligation or Liability of Seller or its Affiliates not included within the definition of Assumed Liabilities.

2.2.1.11 Allocation of Purchase Price. Purchaser shall prepare an allocation of the Purchase Price (and all other capitalized costs) among the Acquired Assets in accordance with section 1060 of the Code and Treasury Regulations thereunder (and any similar provisions of Law, as appropriate), which allocation shall be to Seller, provided that the allocation is in

accordance with Laws. Purchaser shall deliver such allocation to Seller within thirty (30) Business Days after the Closing Date. Seller and Purchaser and their Affiliates shall report, act, and file all Tax returns, form or reports (including, but not limited to, IRS Form 8594) in all respects and for all purposes consistent with such-prepared by Purchaser. Seller shall timely and properly prepare, execute, file and deliver all such documents, forms, returns (including, but not limited to, IRS Form 8594) and other information as Purchaser may reasonably request in preparing such allocation. Neither Seller nor Purchaser shall take any position (whether in audit, Tax returns, or otherwise or with any Authority) that is inconsistent with such allocation unless required to do so by applicable Law.

2.3 Conditions to Making Payments.

The obligation of Purchaser to make payments as set out in Section 2.2 (including payment of the Purchase Price at the Closing), is subject to the satisfaction on each date on which payment is due (each a “Payment Date”) of each the following conditions precedent:

2.3.1.1 Payments on Business Days. The Payment Date shall be a Business Day. If any Progress Payment becomes payable on a day that is not a Business Day, the Progress Payment shall be paid on the next succeeding Business Day. Seller shall bear the cost of any and all banking charges imposed by Seller’s bank with respect to any Progress Payment.

2.3.1.2 Representations and Warranties. (i) The representations and warranties made by Seller in each Contract and Land Contract to which it is a party shall be true and correct in all material respects on such Payment Date both before and after giving effect to the making of such payment, and (ii) the representations and warranties made by each counterparty in the Contract or Land Contract shall be true and correct in all material respects on such Payment Date both before and after giving effect to the making of such Payment. In each case such representations and warranties shall be deemed renewed and re-stated as of the date of such payment.

2.3.1.3 No Default. (i) No circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller to withhold payment under any Contract or Land Contract; (ii) no breach, violation or default shall have occurred and be continuing under (A) this Agreement (B) any Guaranty; or (C) any Governmental Approval; and (iii) to the extent not already set forth in this Section 2.3.1.3, no circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller’s counterparty to terminate any Contract or Land Contract.

2.3.1.4 No Proceeding or Litigation. No action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator shall be pending or to Seller’s knowledge threatened against or affecting the Property or the Project which would result in a Material Adverse Impact, unless such action, suit, proceeding or investigation has been initiated or threatened by Purchaser.

2.3.1.5 Material Adverse Impact. Since the date hereof, no Material Adverse Impact shall have occurred, except and to the extent that such Material Adverse Impact is a result of an act or omission of Purchaser.

2.3.1.6 Notice of Request for Progress Payment. Purchaser shall have received From Seller a notice of request for payment, together with all supporting documents reasonably requested by Purchaser.

2.3.1.7 Governmental Approvals. Except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals required to be obtained by such time shall have been obtained and shall be in full force and effect.

2.4 Mechanics of Closing.

2.4.1.1 Closing. The consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Purchaser in Portland, Oregon, at 10:00 a.m., local time, on the third Business Day following the date on which all of the conditions to each Party’s obligations set forth in ARTICLE 3 and ARTICLE 4, and Sections 5.1, 5.4, 5.6, 5.7, and 5.8 and have been satisfied or waived, or at such other place or time as the Parties may agree. The date and time at which the Closing actually occurs is hereinafter referred to as the “Closing Date.”

2.4.1.2 Failure to Satisfy All Seller Conditions. The conditions precedent to Seller’s obligations to perform hereunder are set forth in ARTICLE 4 (“Seller Conditions”). Only Seller has the right to waive any of Seller Conditions. If Purchaser and Seller are unable, despite their reasonable efforts, to satisfy all of Seller Conditions, Seller may elect to consummate the transactions contemplated herein in whole or not at all.

2.4.1.3 Failure to Satisfy All Purchaser Conditions. The conditions precedent to Purchaser’s obligations to perform hereunder are set forth in ARTICLE 3 and Sections 5.1, 5.4, 5.6, 5.7, and 5.8 (“Purchaser Conditions”). Only Purchaser has the right to waive any of the Purchaser Conditions. If Purchaser and Seller are unable, despite their reasonable efforts, to satisfy all of the Purchaser Conditions, Purchaser may elect to consummate the transactions contemplated herein in whole or not at all.

2.5 Closing Costs.

2.5.1.1 Expenses. Except as otherwise specified herein, each Party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement and to any action taken by such Party in preparation, negotiation, execution and performance of this Agreement.

2.5.1.2 Prorations. All property Taxes, rent, insurance premiums and other costs and expenses relating to the ownership and operation of the Land Contracts shall be prorated between Seller and Purchaser as of the Closing Date, so that Seller pays the prorated amounts for the period of time prior to the Closing Date, and Purchaser pays the prorated amounts from and after the Closing Date. Seller shall have the sole responsibility to pay past-due amounts prior to the Closing Date.

2.5.1.3 Transfer Taxes. Seller shall be responsible for paying any transfer taxes and any sales, use or other taxes imposed on Seller by applicable Law by reason of the transfer of the Acquired Assets to Purchaser as provided herein and any deficiency, interest, penalty or addition asserted with respect thereto, and Purchaser shall be responsible for paying any transfer taxes and any sales, use or other taxes imposed on Purchaser by applicable Law by reason of the transfer of the Acquired Assets to Purchaser as provided herein and any deficiency, interest, penalty or addition asserted with respect thereto.

ARTICLE 3. PURCHASER'S CONDITIONS PRECEDENT TO THE CLOSING

The obligation of Purchaser to purchase all of the Acquired Assets from Seller shall be subject to fulfillment at or prior to the Closing of each of the following conditions:

3.1 Deliveries by Seller. Upon the terms and subject to the conditions set forth in this Article 3, on or before the Closing Date Seller shall deliver, cause to be delivered, or concurrently with Purchaser's deliveries under Section 4.1, deliver, to Purchaser the following:

3.1.1.1 Assignment and Assumption Agreements. (i) two (2) original counterparts of the Assignment and Assumption Agreement in substantially the form of Exhibit E hereto (the "Assignment and Assumption Agreements"), in respect of the sale by Seller of all of its right, title and interest in the Contracts and Permits to Purchaser and the assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of Seller, (ii) such other instruments of assignment and assumption as Purchaser and its counsel may reasonably request, (iii) two (2) original counterparts of the Assignment and Assumption Agreement in substantially the form of Exhibit E hereto (the "Assignment and Assumption Agreements"), in respect of the sale by Seller of all of its right, title and interest in the Contracts and Land Contracts to Purchaser and the assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of Seller, (iv) two (2) original counterparts of the Assignment and Assumption Agreement in substantially the form of Exhibit E hereto (the "Assignment and Assumption Agreements"), in respect of the sale by Seller of all of its right, title and interest in the Contracts and Interconnection Rights to Purchaser and the assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of Seller; and (v) two (2) original counterparts of a Consent to Assignment and Novation substantially in the form of Exhibit E-2 hereto between Seller and the applicable counterparty to each of the Contracts, Land Contracts and Interconnection Rights, each such counterpart being properly executed by an authorized representative of Seller and the applicable counterparty.

3.1.1.2 Bills of Sale and Warranty Deeds. (i) two (2) original counterparts to the Bill of Sale in substantially the form of Exhibit F hereto (the "Bill of Sale"), each such counterpart being properly executed by an authorized representative of Seller in respect of the sale by Seller of all of its right, title and interest in the Physical Assets, the Wind Data and the Reports; (ii) for owned real property and interest in owned real property, including the Substation Fee Parcel, special warranty deeds in recordable form, properly executed and acknowledged, confirming to an conveying such real property interests held by or on behalf of

Seller, each such deed being properly executed by an authorized representative of Seller; and (iii) such other instruments of transfer as Purchaser and its counsel may reasonably request.

3.1.1.3 Guaranty. An original counterpart to the Guaranty properly executed by an authorized representative of Guarantor and the legal opinion required to be provided pursuant to such Guaranty.

3.1.1.4 Consents. Original executed copies of the Consents that may be requested by Purchaser to be provided by Seller in accordance with Section 8.2, each substantially in the form attached hereto as Exhibit H or otherwise in a form reasonably satisfactory to Purchaser; provided, however, that if requested by Seller Purchaser shall countersign such Consents to evidence Purchaser's assumption of the relevant Assumed Liability.

3.1.1.5 Certificates. Such certificates of Seller's officers and others as may be reasonably requested by Purchaser, which shall include, but not be limited to:

(a) A certificate executed by the President of Seller, certifying as of the Closing Date (a) a true and correct copy of the corporate action of Seller authorizing the execution, delivery and performance of this Agreement and the other Seller Documents to be executed by it, and the consummation of the transactions contemplated hereby and thereby and (b) incumbency matters.

3.1.1.6 An affidavit from Seller, stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, pursuant to section 1445(b)(2) of the Code and Treasury Regulation 1.1445-2(b)(2)(iii)(B) (or any similar provision of state or other Tax Law).

3.1.1.7 Tax Matters. Any document(s) that may be reasonably requested by Purchaser and required by any state taxing Authority in order to relieve Purchaser of any obligation to withhold Taxes with respect to any portion of the payments to Seller pursuant to this Agreement.

3.1.1.8 Additional Documents. All other documents which are reasonably necessary to consummate the transactions contemplated hereby or reasonably necessary to demonstrate or evidence the delivery of the items required to be delivered under ARTICLE 3 and Sections 5.1, 5.4, 5.6, 5.7, and 5.8.

3.2 Meteorological Stations. Seller shall have constructed the Meteorological Stations in accordance with industry practice.

3.3 Interconnection Study. Seller shall have obtained from the transmission provider to which the Project will be interconnected a completed interconnection study that shall have been approved by [TRANSMISSION PROVIDER] and shall be satisfactory to Purchaser.

3.4 Transmission Study. Purchaser shall have obtained from the transmission provider(s) which interconnect the Project to Purchaser's transmission grid, transmission service to be able to deliver not less than ___ MW to Purchaser's transmission grid and which shall be in form and substance satisfactory to Purchaser. If the transmission service request requires an additional

study, Seller shall reimburse Purchaser for any and all costs associated with such additional study.

3.5 Tax Abatement. Seller shall have obtained from each county in which the Project is located, the necessary actions such that the Project will be eligible for tax abatement in accordance with_____.

3.6 FAA No Hazard Determination. Seller shall have obtained from the FAA a No Hazard Determination for the Project.

3.7 Reports. Seller shall have delivered to Purchaser each Report in final form each such Report (and all Reports in the aggregate) shall not indicate any issues that would have a Material Adverse Impact on the further development, construction or operation of the Facilities. In the event there is a change in any findings or conclusions of a Report delivered and accepted as satisfactory by Seller prior to the Closing, Seller shall redeliver such Report to Purchaser in final form as revised to address such changes. Purchaser shall then have the right to determine, in the exercise of Purchaser's reasonable discretion, whether changes in such Report would have a Material Adverse Impact and, if Purchaser determines there would be a Material Adverse Impact, this condition shall be deemed not to have been met.

3.8 Title Abstracts and Title Insurance. Seller, at Seller's expense, shall deliver or cause to be delivered the Title Abstracts (and any amendments, updates and supplements thereto) to Purchaser promptly following the issuance of each such Title Abstract (or any such amendment, update or supplement) and shall deliver or cause to be delivered to Seller the last of such Title Abstracts (and the last of any such amendments, updates and supplements) no later than thirty (30) Business Days prior to the Closing. At Closing, Seller shall also cause Stewart Title Company (or another title insurance company mutually acceptable to the Parties (the "Title Company")) to issue an ALTA extended coverage owner's policy of title insurance (or a commitment to issue the same) that in each case (i) is in form and substance and contains such requirements, modifications and endorsements as Purchaser may reasonably approve, (ii) contains such additional affirmative coverage as Purchaser may reasonably request (the "Purchaser Affirmative Coverage"), (iii) is in such amount as Purchaser shall negotiate with the Title Company, but in no event greater than the expected value of Project, (iv) insures (or commits to insure, as applicable) that the Purchaser is the sole holder of all rights, title and interest granted under the Land Contracts, (v) names Purchaser as the insured, (vi) is issued as of the date of Closing by Title Company, (vii) specifies such reinsurance carriers and such reinsurance amounts as may reasonably be acceptable to Purchaser, and (viii) shows as exceptions only the Permitted Liens (as identified in Schedule 3.8 attached hereto).

3.9 Authorizations. The parties shall have or shall have caused to be delivered, made or obtained all notices to, declarations, designations, registrations, filings or submissions with, and authorizations, approvals, orders, consents or waivers from Governmental Authorities and other parties listed on Schedule 3.9, and the same shall not have been withdrawn, suspended or modified.

3.10 Representations, Warranties and Covenants of Seller. Seller shall have performed all agreements and covenants required hereby to be performed by it prior to, on or as of the Closing

Date and the representations and warranties of Seller set forth in ARTICLE 6 of this Agreement and in any document to be furnished to Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, shall be true and complete in all material respects as of the date hereof and as of the Closing as if made as of such time.

3.11 Permits. Each of the Permits delivered to Purchaser pursuant to Section 3.1.1.1 shall be in a form and substance reasonably satisfactory to Purchaser; provided, however, that discretionary Permits shall either run with underlying land or be otherwise freely assignable to Purchaser without consent or other action (other than such consent or action which Seller shall have obtained prior to Closing) required by the applicable Authority.

3.12 Additional Development Services. In addition to the aforementioned development actions and recognizing that certain additional development actions and services (including, without limitation, obtaining assets, contracts, licenses, permits, approvals and rights in addition to those set forth above) will be required for a fully operational wind energy generation facility (“Additional Development Services”), Seller shall perform such Additional Development Services.

3.13 EPC Agreement. Contractor shall have delivered or, concurrently with Purchaser’s deliveries under Section 4.1, shall deliver to Purchaser two (2) original counterparts to the EPC Agreement, each property executed by an authorized representative of Contractor, along with the guaranty to be provided by Guarantor pursuant to the terms of the EPC Agreement.

ARTICLE 4. SELLER’S CONDITIONS PRECEDENT TO THE CLOSING

The obligation of Seller to sell, convey, transfer, assign, and deliver to Purchaser all of the Acquired Assets shall be subject to fulfillment at or prior to the Closing of each of the following conditions:

4.1 Deliveries by Purchaser. Upon the terms and subject to the conditions set forth in this ARTICLE 4, on or before the Closing Date, Purchaser shall deliver, shall cause to be delivered, or concurrently with Seller’s deliveries under Section 3.1, deliver to Seller, the following:

4.1.1.1 Assignment and Assumption Agreement. (i) two (2) original counterparts to the Assignment and Assumption Agreement in respect of the sale by Seller of all of its right, title and interest in the Contracts, the Land Contracts and the Permits to Purchaser and the Assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of the Purchaser and (ii) such other instruments of assignment and assumption as Seller and its counsel may reasonably request.

4.1.2 Consideration. The Purchase Price.

4.1.2.1 Certificates. A certificate executed by the Secretary or Assistant Secretary of Purchaser, certifying as of the Closing Date (a) a true and correct copy of the corporate action of the Purchaser authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby, and (b) incumbency matters.

4.1.2.2 Additional Documents. All other documents which are reasonably necessary to consummate the transactions contemplated hereby or reasonably necessary to demonstrate or evidence the delivery of the items, required to be delivered under this ARTICLE 4.

4.2 Representations, Warranties and Covenants of Purchaser. Purchaser shall have performed all agreements and covenants required hereby to be performed by it prior to, on or as of the Closing Date and the representations and warranties of Purchaser set forth in ARTICLE 7 of this Agreement shall be true and complete in all material respects as of the date hereof and as of the Closing as if made as of such time.

ARTICLE 5. PURCHASER'S AND SELLER'S COVENANTS

5.1 Seller Pre-Closing Actions. Seller covenants to obtain all Land Contracts and such other Windfarm Easements and Collection System Easements as may be identified by Seller or Purchaser as reasonably necessary or convenient for the construction or operation of the Project as soon as reasonably possible. For the avoidance of doubt, nothing in this Section 5.1 shall be construed as modifying Purchaser's closing condition hereunder that all of the Windfarm Easements and Collection System Easements be obtained and recorded and copies thereof delivered to Purchaser on or before the Closing Date. Seller shall be responsible for all costs associated with commencing, pursuing and obtaining all Windfarm Easements and Collection System Easements. Seller shall also cause its abstractor or the Title Company to deliver to Purchaser Title Abstracts (and any amendments, updates and supplements thereto) delivered to Seller concurrently with delivery of the same to Seller, but in any event no later than the deadline set forth in Section 3.8. Seller shall promptly disclose to Purchaser all information in its possession related to any of the Acquired Assets, as requested by Purchaser.

5.2 Purchaser Pre-Closing Actions. _____.

5.3 Notification of Status of Pre-Closing Actions. Each Party shall keep the other Party reasonably apprised with respect to the status of each of the actions set forth in Section 5.1 or Section 5.2 above undertaken by such Party as the case may be. Seller also agrees to provide Purchaser with copies of revised and updated wind data and reports when such data and reports become available (with the final report 20 Business Days prior to Closing) and to provide Purchaser with any additional information and access to Seller's employees or any Person performing Seller's obligations under Section 5.1 for Seller as may be reasonably requested by Purchaser. Notwithstanding the generality of the foregoing, Seller shall provide to Purchaser a bi-weekly status report that describes all actions completed by the Seller with respect to the easements, the Reports, and such other activities of Seller being performed in connection with this Agreement.

5.4 Other Seller Actions. Throughout the period prior to Closing, Seller shall continue to diligently perform those Project development activities necessary to timely obtain (i) final Reports, including a final Wind Study and (ii) any other Project-related conditions to Closing. After Closing, Seller shall execute and perform its obligations under the Interconnection

Agreement, and shall assign and transfer the Interconnection Agreement to Purchaser upon achievement of Project Substantial Completion.

5.5 Completion of Additional Development Services After Closing. To the extent any Additional Development Services are not completed on or before the Closing and the failure to complete such Additional Development Services on or before the Closing does not have a Material Adverse Impact on the further development, construction or operation of the Facilities or the Project, then Purchaser may, in its sole, absolute and unfettered discretion, permit Seller to perform such Additional Development Services after Closing on terms and conditions acceptable to Purchaser.

5.6 Notification of Completion or Failure of Conditions. Each Party to this Agreement will promptly notify the other Party of any satisfaction or failure of conditions under this Agreement; and Seller shall keep Purchaser reasonably apprised with respect to the status of Seller's satisfaction of the Purchaser Conditions. If Seller fails to satisfy the conditions under this Agreement, Purchaser shall have the rights set forth in Section 11.2.

5.7 Update Schedules. Pursuant to Section 6.21, Seller shall have the right and obligation to update the Schedules on a periodic basis (no less frequently than monthly) and with the delivery of each such update to Purchaser in accordance with Section 12.3, Seller shall make the same representation and warranty as made by it under Section 6.19.

5.8 Insurance. Seller shall maintain and shall require and cause its contractors, agents, and assigns to provide, pay for and continuously maintain in full force and effect with insurers having an A.M. Best insurance Reports rating of A-:VII or better the insurance coverages identified in Schedule 5.8 attached hereto and incorporated herein by reference.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser, as of the date hereof and subject to Seller's right to update the Schedules (but subject to Section 6.21) and thereby qualify the affected representations and warranties as of the Closing Date, as follows:

6.1 Organization. Seller is a [FORM OF ENTITY] duly formed, validly existing and in good standing under the Laws of the State of [_____].

6.2 Authorization. Seller has all requisite power and authority to execute and deliver this Agreement, and each other agreement, document or instrument to be executed by it in connection herewith (collectively, the "Seller Documents") and to perform the obligations hereunder and thereunder. Neither Seller's interest in any of the Acquired Assets nor Seller's performance of its obligations under Seller Documents requires any qualification, licensing or approval by any foreign jurisdiction

6.3 Organizational Documents. Seller has made available to Purchaser true and complete copies of its certificate of incorporation from the Secretary of State of [STATE]. Seller's Corporate Documents are in full force and effect. Seller is not in violation of its articles of incorporation or bylaws in any manner that would have a Material Adverse Impact on the Project

or on the completion of the transactions contemplated by this Agreement or by the Purchaser Documents

6.4 Right and Title to Acquired Assets. Except as set forth in Schedule 6.4, at Closing, Seller will have good and marketable title to all of the Acquired Assets, except to the extent that title to any Permits and Permit Applications may not be marketable by their express terms and the sale of the Acquired Assets to Purchaser hereunder will transfer title to Purchaser free and clear of all encumbrances and to Seller's Knowledge, there will exist no rights or interests of any third party relating to the Acquired Assets that are not expressly contemplated by Seller Documents and Seller has the full right, power and authority to transfer and deliver to Purchaser all right, title and interest in the Acquired Assets, except to the extent that title to any Permits and Permit Applications may not be transferable by their express terms.

6.5 Authorization and Enforceability. Seller has taken all action necessary to execute and deliver this Agreement and the other Seller Documents, as applicable, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder, and except as described in the Schedules to this Agreement no other action or proceeding on the part of Seller is necessary to authorize this Agreement and the other Seller Documents and the transactions contemplated hereby and thereby. This Agreement and the other Seller Documents have been or, as applicable, at Closing, will have been duly executed and delivered by Seller. Assuming the due authorization, execution and delivery by the Purchaser of this Agreement and of the Seller Documents by the other counterparties to such Seller Documents, this Agreement and the other Seller Documents constitute legally valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and equitable principles.

6.6 Violation; Conflicts. Neither the execution, delivery and performance by Seller of this Agreement or the other Seller Documents nor the transfer of rights and consummation of the transactions contemplated hereby or thereby will result in (a) a violation of or a conflict with any provision of Seller's Corporate Documents; (b) except as set forth in Schedule 6.6, a breach or violation of, a conflict with or a default under, or the creation of any right of any Person to accelerate, terminate or cancel, any Contract, whether oral or written, express or implied; (c) a violation by Seller of any Laws, or (d) an imposition of any encumbrance on the business of Seller or on any of the Acquired Assets.

6.7 Consents and Approvals. Other than as set out in Schedule 6.7, no consent, approval or authorization of, permit from, declaration, filing or registration with, or notice to, any Authority, any third party payor or any other Person, is required to be made or obtained by Seller in connection with the execution, delivery, performance and validity of this Agreement and the other Seller Documents and the consummation of the transactions contemplated hereby and thereby.

6.8 Brokers. Neither Seller nor its Affiliates has any contract, arrangement or understanding with any broker, finder, agent or other intermediary with respect to the transactions contemplated by this Agreement.

6.9 Litigation. Other than as described in Schedule 6.9, there are no actions, suits or proceedings pending or, to Seller's Knowledge, threatened, against or affecting the Project or any of the Acquired Assets or Seller's transfer of rights and consummation of the transactions contemplated hereby, at law or in equity or before or by any Authority or instrumentality or before any arbitrator of any kind, and, to Seller's Knowledge, there is no valid basis for any such action, proceeding or investigation. Purchaser is assuming no liability with respect to any such action, suit or proceeding arising out of transactions, acts or omissions occurring prior to the Closing Date.

6.10 Compliance with Law. Other than as described in Schedule 6.10, Seller has not received any notification indicating any violation of, and to Seller's Knowledge, there is no violation of, or non-compliance with, any applicable Law, license, franchise, permit, authorization or concession, as such would apply to the Acquired Assets, the Project or the transactions contemplated hereby.

6.11 Tax Matters. Other than as set forth on Schedule 6.11, there are no liens for Taxes on Acquired Assets (other than liens on real property), other than for Taxes not yet due and payable as of the Closing Date. To Seller's Knowledge, there are no pending or threatened proceedings with respect to Taxes relating to Seller or the Acquired Assets. To Seller's Knowledge, there are no matters under discussion between Seller and any Authority with respect to Taxes relating to Seller or the Acquired Assets, and no extensions of the statute of limitations have either been requested or granted with respect to Taxes relating to Seller or the Acquired Assets.

6.12 No Other Agreements to Sell the Acquired Assets. Seller has no legal obligation, absolute or contingent, to any other Person or any nonbinding agreement in principle, letter of intent or similar understanding with any Person to sell or effect a sale of all or any portion of the Acquired Assets or to enter into any agreement or cause the entering into of any agreement with respect to the foregoing.

6.13 Wind Data. Schedule 6.13 of this Agreement is a true and complete list of the Wind Data. Seller will have delivered to Purchaser correct and complete copies of Wind Data listed on Schedule 6.13 in the format identified on said Schedule 6.13 at least twenty (20) Business Days prior to Closing and at Closing. With respect to each item of Wind Data identified on Schedule 6.13 of this Agreement:

6.13.1.1 Seller possesses all right, title, and interest in and to the item, free and clear of any lien, security interest, encumbrance, claim, license, or other restriction;

6.13.1.2 Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in such item;

6.13.1.3 there are no disputes, oral agreements, or forbearance programs in effect as to such item;

6.13.1.4 the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

6.13.1.5 no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to Seller's Knowledge, is threatened which challenges the legality, validity, enforceability, use, or ownership of the item; and

6.13.1.6 Seller has not agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

6.14 Contracts. Schedule 6.14 of this Agreement contains a true and complete list of all Contracts (other than the Permits) that are included in the Acquired Assets. Seller has delivered to Purchaser a correct and complete copy of each Contract listed on Schedule 6.14 of this Agreement. With respect to each Contract identified on Schedule 6.14 of this Agreement and except as set forth on Schedule 6.14:

6.14.1.1 the Contracts are legal, valid, binding, and enforceable in accordance with their terms, and in full force and effect;

6.14.1.2 the consummation of the transactions contemplated by this Agreement (including the assignments and assumptions referred to in Articles 3 and 4 above) will not affect the legality, validity, binding nature or enforceability or force and effect of the Contract except with respect to the identity of the parties thereto as a result of the assignments and assumptions referred to in Articles 3 and 4 above;

6.14.1.3 no party to such Contract is in breach or default, and, to Seller's Knowledge, no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under the Contract; and

6.14.2 no party has repudiated any provision of the Contract.

6.15 Permits. Except for (a) the licenses, consents, certificates, permits and authorizations listed on Schedule 6.15 as (i) "Excluded Permits (to be obtained by Contractor)" and (ii) "Required Permits (not yet obtained)" that may be acquired as Additional Development Services that Purchaser has consented to Seller undertaking under the EPC Agreement pursuant to Section 5.5 above; and (b) any "Required Permits (not yet obtained)" that has not been obtained and such failure has a Material Adverse Impact and that Purchaser has, nonetheless, waived and elected to proceed to Closing in accordance with Section 11.2 (a), as of Closing Seller possesses all licenses, consents, certificates, approvals, permits and any authorizations of any sort whatsoever by or from any Authority, including, without limitation, any certificates of convenience and necessity, provider numbers and accreditation necessary, for the Acquired Assets and the construction and operation of the Project at the locations and in the manner contemplated by this Agreement, other than those which by their terms are and are to be appropriately procured and maintained by Purchaser and which are listed on Schedule 6.15 (Purchaser Permits). Schedule 6.15 of this Agreement is a true and complete list of such Permits. Seller has delivered to Purchaser a correct and complete copy of each Permit listed on Schedule 6.15 of this Agreement. With respect to each Permit identified on Schedule 6.15:

6.15.1.1 the Permit is legal, valid, binding and enforceable in accordance with its terms, and in full force and effect;

6.15.1.2 the consummation of the transactions contemplated by this Agreement (including the assignments and assumptions referred to in Articles 3 and 4 above) will not affect the legality, validity, binding nature, enforceability or force and effect of such Permit except with respect to the identity of the parties thereto as a result of the assignments and assumptions referred to in Articles 3 and 4 above;

6.15.1.3 no party to such Permit is in non-compliance with the terms and conditions of such Permit, and, to Seller's Knowledge, no event has occurred which with notice or lapse of time would constitute non-compliance with such terms and conditions;

6.15.1.4 no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to Seller's Knowledge, is threatened which challenges the legality, validity, or enforceability of the Permit.

6.16 Land Contracts.

6.16.1.1 As of the Closing Date, except for (i) Additional Development Services after Closing that Purchaser has consented to Seller undertaking pursuant to Section 5.5, and (ii) any items that have a Material Adverse Impact and that Purchaser has, nonetheless, waived and elected to proceed to Closing in accordance with Section 11.2 hereof, the Land Contracts:

6.16.1.2 comprise all of the property interests and other rights necessary in connection with the acquisition, development, construction, installation, completion, operation and maintenance of the Project in accordance with all Laws;

6.16.1.3 are sufficient to enable the Project to be located, constructed and operated as contemplated hereunder and under the EPC Agreement; and

6.16.1.4 provide legal and practical ingress and egress rights for any reasonable purpose in connection with the construction and operation of the Project.

6.16.1.5 For all Land Contracts, as of Closing, Seller has delivered to Purchaser correct and complete copies of the Land Contract and with respect thereto except as set forth in Schedule 6.16:

6.16.1.6 each Land Contract is legal, valid, binding and in full force and effect;

6.16.1.7 each Land Contract will continue to be legal, valid, binding and in full force and effect on identical terms immediately following the consummation of the transactions contemplated hereby (including any assignments and assumptions referred to in Articles 3 and 4 above);

6.16.1.8 to Seller's Knowledge, no party to any Land Contract is in breach or default, and to Seller's Knowledge, no event has occurred which, with notice or lapse of time and without a cure being completed, would constitute a breach or default or permit termination, or modification thereof, or acceleration thereunder;

6.16.1.9 to Seller's Knowledge, no party to any Land Contract has repudiated any provision thereof;

6.16.1.10 there are no disputes, oral agreements or representations, or forbearance programs in effect as to any Land Contract;

6.16.1.11 no Land Contract has been assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered by Seller; and

6.16.1.12 Schedule 6.16 of this Agreement contains a true and complete list of all Land Contracts that will be included in the Acquired Assets.

6.17 Environmental Provisions.

6.17.1 Seller has provided Purchaser or its representatives with all environmental reports, assessments and audits, including reports, assessments and audits relating to wetlands, air and emissions or discharges, and studies relating to threatened or endangered species, prepared by or on behalf of Seller in connection with the Project or otherwise in Seller's possession or control with respect to the Site or the Project.

6.17.2 Other than as set out in Schedule 6.17, there has not been a Release of Hazardous Material on or otherwise affecting the Property that: (i) has imposed any material release-reporting obligations on Seller under any Environmental Law; or (ii) has imposed or would, if identified to appropriate authorities impose, any obligations on Seller under any Environmental Law to investigate, assess, monitor, clean-up, contain, remediate, mitigate, remove, store, transport, dispose and/or treat any contamination, prepare or implement any work plans related thereto, or respond to or prepare for, any inquiry, order, hearing or other proceeding by or before any Authority with respect to any contamination.

6.17.3 Other than as set out in Schedule 6.17, there has not been a Release of Hazardous Material on or otherwise affecting the Property that: (i) has imposed any material release-reporting obligations on Seller under any Environmental Law; or (ii) has imposed or would, if identified to appropriate authorities impose, any obligations on Seller under any Environmental Law to investigate, assess, monitor, clean-up, contain, remediate, mitigate, remove, store, transport, dispose and/or treat any contamination, prepare or implement any work plans related thereto, or respond to or prepare for, any inquiry, order, hearing or other proceeding by or before any Authority with respect to any contamination.

6.17.4 Except as set out in Schedule 6.17, Seller has not received any currently-outstanding written notice of any material proceedings, action, or other claim or liability arising under any Environmental Law (including notice of potentially responsible party status under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. or any state counterpart) from any Person or Authority regarding the Property.

6.17.5 Except as set forth in Schedule 6.17, no portion of the Property contains or has ever contained any underground storage tank, surface impoundment or similar device used for the management of wastewater, or other waste management unit dedicated to the disposal, treatment, or long-term storage (greater than 30 Business Days) of waste materials.

6.18 Complete Project. Except (i) as set forth in Section 5.5, (ii) for any items that have a Material Adverse Impact and that Purchaser has, nonetheless, waived and elected to proceed to Closing in accordance with Section 11.2 hereof, and (iii) for any assets, contracts, licenses, permits, approvals and rights that Contractor is undertaking under the EPC Agreement, the Acquired Assets constitute all of the assets, contracts, licenses, permits, approvals and rights necessary for Purchaser to construct and operate the Project and no other land rights, permits, assets, approvals or rights are required in order to construct and/or operate such a Project.

6.19 Schedules. The Schedules to this Agreement are true, complete and contain all such information required with respect to such Schedule that is necessary to develop and complete the Project.

6.20 Reports. Except as set forth in the Schedules hereto, there has been no change in circumstances in any material matters described in a Report that would have a Material Adverse Impact on the further development, construction or operation of the Facilities.

6.21 Material Misstatements or Omissions. Subject to Seller's rights to revise the Schedules prior to the Closing Date under this Section 6.21, each representation and warranty set forth in this ARTICLE 6 is made as of, and is and will be true and complete as of, the Closing Date. No representation or warranty by Seller in this Agreement or any document furnished or to be furnished to Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain, as of the Closing Date, any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make the statements or facts contained therein, as of the Closing Date, not misleading. At any time prior to Closing, Seller may revise and update the Schedules and provide exceptions thereto by providing a written certificate (each, an "Update Certificate") to Purchaser in accordance with Section 12.3 setting forth such information. At Closing, all representations and warranties shall be deemed modified by all such Update Certificates.

Seller shall be required to provide such Update Certificates to Purchaser not later than fifteen (15) Business Days prior to the earlier of (i) the proposed Closing Date and (ii) the Long-Stop Date. Upon receipt of the Update Certificate Purchaser shall have until the earlier of (i) ten (10) Business Days from receipt of the notice of the Update Certificates or (ii) the Long-Stop Date to determine whether such Update Certificate discloses a Material Adverse Impact and to notify Seller of such determination.

Notwithstanding the foregoing, in the event an Update Certificate delivered to Purchaser by Seller disclose a Material Adverse Impact, Purchaser shall have the rights set forth in Section 11.2.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

7.1 Organization. Purchaser is a corporation validly existing and in good standing under the Laws of the State of Oregon.

7.2 Authorization. Purchaser has all requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument to be executed by it in connection herewith identified in Schedule 7.2 (collectively with this Agreement, the “Purchaser Documents”) and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Purchaser Documents and the consummation of the transactions contemplated hereby by Purchaser have been duly authorized by all necessary action. This Agreement and the other Purchaser Documents to which Purchaser is a party have been duly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery by Seller of this Agreement and of the Purchaser Documents by the other counterparties to such Purchaser Documents, this Agreement and the other Purchaser Documents to which Purchaser is a party constitute legally valid and binding obligation of Purchaser, enforceable against it in accordance with the respective terms thereof, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors’ rights generally and equitable principles.

7.3 No Conflict or Violation. Neither the execution, delivery and performance of this Agreement or the other Purchaser Documents nor the transfer of rights and consummation of the transactions contemplated hereby or thereby will result in a violation of or a conflict with any provision of the Purchaser’s Corporate Documents.

7.4 Consents and Approvals. Other than _____, and other than as set out in Schedule 7.4, no consent, approval or authorization of, permit from, declaration, filing or registration with, or notice to, any Authority, any third party payor or any other Person, is required to be made or obtained by Purchaser in connection with the execution, delivery, performance and validity of this Agreement and the other Purchaser Documents and the consummation of the transactions contemplated hereby and thereby.

7.5 Brokers. Purchaser does not have any contract, arrangement or understanding with any broker, finder, agent or other intermediary with respect to the transactions contemplated by this Agreement.

7.6 Litigation. Other than _____, and other than as described in Schedule 7.4, there are no actions, suits or proceedings pending or, to Purchaser’s Knowledge, threatened, that would prevent the Purchaser from performing under this Agreement, at law or in equity or before or by any Authority or instrumentality or before any arbitrator of any kind, and, to Purchaser’s Knowledge, there is no valid basis for any such action, proceeding or investigation.

ARTICLE 8. CERTAIN COVENANTS

Each of the following covenants are made by Purchaser or Seller, as applicable.

8.1 No Breach of Representations and Warranties by Seller. Seller shall not engage in any practice, take any action, embark on any course of inaction or enter into any transaction or

agreement that would violate any provision of this Agreement or any of the other Seller Documents or would cause or result in any of the representations and warranties set forth in ARTICLE 6 to be untrue as of the Closing Date or after giving effect to any such practice, action, course of inaction, transaction or agreement, nor take any action which would hinder the transactions contemplated by this Agreement or the other Seller Documents, as applicable, or render such transactions materially less desirable to Purchaser.

8.2 Consents and Reasonable Efforts. Purchaser and Seller shall use their respective commercially reasonable efforts to obtain, or to assist in obtaining, all consents, approvals, transfers, permissions, waivers, orders, reissuances and authorizations of (and make all necessary filings or registrations with) all Authorities and other third parties which are required to be obtained or made by them in connection with the consummation of the transactions contemplated by this Agreement or in connection with the Project (collectively, the “Consents”). At the request of Purchaser, Seller shall promptly execute and deliver, or cause to be executed and delivered as applicable, such other documents, instruments of transfer or assignment, estoppels, files, books and records and do all such further acts and things as may be reasonably requested by Purchaser to carry out or evidence the terms and provisions of this Agreement. At the request of Seller, Purchaser agrees to promptly execute and deliver, or cause to be executed and delivered as applicable, such other documents, instruments of transfer of assignments, estoppels, files, books and records and do all such further acts and things as may be reasonably requested by Seller to carry out or evidence the terms and provisions of this Agreement.

8.3 Purchaser Confidential Information.

8.3.1 Seller acknowledges that the Purchaser Confidential Information (as defined below) is valuable and proprietary to the Project and Seller agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Purchaser Confidential Information in respect of the Project without the prior written consent of Purchaser. For purposes of this Agreement, “Purchaser Confidential Information” shall mean (i) any and all information provided by Purchaser to Seller and identified by Purchaser as confidential and (ii) any and all information provided by Purchaser to Seller with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Purchaser Confidential Information if (i) it has become generally known or available within the industry or the public through no act or omission of Seller, (ii) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (iii) it was rightfully received by Seller from a third party who became aware of it through no act or omission of Seller and who is not under an obligation of confidentiality to Seller, or (iv) Seller can demonstrate it was independently developed by employees or consultants of Seller. The Wind Data, the Reports and the Books and Records are being acquired by Purchaser pursuant to this Agreement shall be considered Purchaser Confidential Information and Seller may not use, publish, disseminate, describe or otherwise disclose any Wind Data, or disclose any information from the Reports or Books and Records without the prior consent of Purchaser; provided however, Seller shall be permitted to use the Wind Data for its own internal use in connection with reviewing the wind resource of other potential projects.

8.3.2 Seller shall maintain any Purchaser Confidential Information which has been or will be disclosed directly or indirectly to Seller by or on behalf of Purchaser or their Affiliates in confidence and shall not disclose or cause to be disclosed by them or any third person without Purchaser's prior express written consent; provided, however, that Seller may disclose the Purchaser Confidential Information to persons who provide legal, accounting, or other services to Seller in connection with Seller's evaluation or implementation of the transactions contemplated by this Agreement, provided that such persons have first been provided with a copy of this Agreement and has been informed of the duties required hereby, and that Seller shall remain liable for any misuse or disclosure of Purchaser Confidential Information by such party or parties. If Purchaser Confidential Information is disclosed under the provisions of this Section 8.3.2, Seller shall notify Purchaser of the same in writing not later than five (5) Business Days following the disclosure.

8.3.3 Notwithstanding the preceding clause (b), Purchaser Confidential Information may be disclosed if required by any governmental or regulatory Authority or court or otherwise by Law; provided, however, that: (i) such Purchaser Confidential Information is submitted under any and all applicable provisions for confidential treatment and (ii) if Seller is permitted to do so, Purchaser is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure. If Purchaser Confidential Information is disclosed under the provisions of this Section 8.3.3, Seller shall notify Purchaser of the same in writing not later than five (5) Business Days following the disclosure.

8.3.4 Seller agrees that it will not make any use of any Purchaser Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Seller to utilize the Purchaser Confidential Information except for such purpose.

8.3.5 Upon Purchaser's request, Seller shall return to Purchaser or destroy as promptly as practicable, but in a period not to exceed ten (10) Business Days, (a) all Purchaser Confidential Information provided to Seller, including without limitation, all copies of such Purchaser Confidential Information, and (b) all notes or other documents in digital or other format in its possession or in the possession of other persons to whom Purchaser Confidential Information was properly provided by Seller. Non-destruction of electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel, and those contained in official records that must be retained for audit or compliance with laws or regulation, shall not be deemed to violate this Agreement, so long as the Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

8.3.6 Seller acknowledges that a breach of the covenants contained in this Section 8.3 will cause irreparable damage to Purchaser, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if Seller breaches any of the covenants contained in this Section 8.3, in addition

to any other remedy that may be available at law or in equity, Purchaser shall be entitled to specific performance and injunctive relief, without posting bond or other security.

8.4 Seller Confidential Information.

8.4.1 Purchaser acknowledges that Seller Confidential Information (as defined below) is valuable and proprietary to Seller and Purchaser agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Seller Confidential Information in respect of the Project without the prior written consent of either Seller. For purposes of this Agreement, “Seller Confidential Information” shall mean (i) any and all information provided by Seller to Purchaser and identified by Seller as confidential and (ii) any and all information provided by Seller to Purchaser with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Seller Confidential Information if (i) the Closing has occurred and such information is also an Acquired Asset under this Agreement; (ii) it has become general known or available within the industry or the public through no act or omission of Purchaser; (iii) Purchaser can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Purchaser; (iv) it was rightfully received by Purchaser from a third party who became aware of it through no act or omission of Purchaser and who is not under an obligation of confidentiality to Purchaser; or (v) Purchaser can demonstrate it was independently developed by employees or consultants of Purchaser.

8.4.2 Purchaser shall maintain any Seller Confidential Information which has been or will be disclosed directly or indirectly to Purchaser by or on behalf of Seller in confidence by it and shall not disclose or cause to be disclosed by Purchaser or any third person without either Seller’s prior express written consent; provided, however, that Purchaser may disclose Seller Confidential Information to persons who provide financial analysis, banking, legal, accounting, or other services to Purchaser in connection with Purchaser’s evaluation or implementation of the transactions contemplated by this Agreement, provided that such persons have first been provided with a copy of this Agreement and has been informed of the duties required hereby. If Seller Confidential Information is disclosed under the provisions of this Section 8.4, Purchaser shall notify Seller of the same in writing not later than five (5) Business Days following the disclosure.

8.4.3 Notwithstanding the preceding clause (b), Seller Confidential Information may be disclosed if required by any governmental or regulatory Authority or court or otherwise by Law; provided, however, that such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment.

8.4.4 Purchaser agree that they will not make any use of any Seller Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Purchaser to utilize Seller Confidential Information except for such purpose.

8.4.5 Upon Seller’s request, the Purchaser shall return or destroy as promptly as practicable, but in a period not to exceed ten (10) Business Days, (a) all Seller Confidential

Information or Purchaser Confidential Information (as applicable) provided to Purchaser, as appropriate, including, without limitation, all copies of such Seller Confidential Information, and (b) all notes or other documents in digital or other format in their possession or in the possession of other persons to whom Seller Confidential Information was properly provided by Purchaser. Non-destruction of electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel, and those contained in official records that must be retained for audit or compliance with laws or regulation, shall not be deemed to violate this Agreement, so long as the Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

8.5 Confidentiality Re: Tax Matters. Notwithstanding anything to the contrary in this Agreement or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, each Party to this Agreement has been and is permitted to disclose the federal tax treatment and federal tax structure of the purchase of the Acquired Assets. This permission to disclose includes the ability of each Party to this Agreement to consult, without limitation of any kind, any tax advisor (including a tax advisor independent from all other entities involved in the Transaction) regarding the federal tax treatment or federal tax structure of the Transaction; provided, however, that this Section 8.5 shall not be deemed to authorize the disclosure of any information relating to the federal tax treatment or federal tax structure of the purchase of the Acquired Assets to the extent that such information is required to be kept confidential pursuant to, or in order to comply with, any applicable federal or state securities Laws. This provision is intended to qualify for the exception from confidential transaction status set forth in Section 1.6011-4(b)(3)(ii)(B) of the Treasury Regulations and shall be interpreted to authorize disclosure only to the extent necessary to so qualify.

8.5.1 Non-Disparagement. From the date hereof until the earlier of the termination date of this Agreement or the third anniversary of the Closing Date (the "Non-Disclosure Period") neither Seller nor Purchaser shall make any statement or other communication that impugns or attacks the reputation or character of the Project or each other or any of Seller's or Purchaser's respective Affiliates or Representatives, or that damages the goodwill of the Project or each other or any of Seller's or Purchaser's respective Affiliates or Representatives, take any action that would interfere with any contractual or customer relationships of the Project or each other or any of Seller's or Purchaser's respective Affiliates or Representatives, including but not limited to any action that would result in a diminution of business, or otherwise take any action detrimental to the interests of the Project, or each other or any of Seller's or Purchaser's respective Affiliates or Representatives (except to assert Seller's rights or Purchaser's rights, as applicable, under this Agreement).

8.6 Access to Properties, Information and Employees. Through the Closing Date, Seller will afford to Purchaser and its employees and other representatives full and free access to the Acquired Assets and related records during normal working hours in order for Purchaser to make such due diligence investigation as it shall determine and to satisfy itself with respect to the conditions precedent contained in ARTICLE 3 and ARTICLE 4, and Sections 5.1, 5.4, 5.6, 5.7, and 5.8.

**ARTICLE 9.
CREDIT REQUIREMENTS**

9.1 Credit Requirements

9.1.1 Seller is to provide credit assurances in the amount of \$_____, which shall be determined by PacifiCorp in its sole and reasonable discretion and will be based upon the Credit Rating of Seller or the entity providing credit assurances on behalf of Seller, and the size of the Project.

9.1.2 The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's (S&P), or (y) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If Option (x) or (y) is not available, the Credit Rating will be determined by Purchaser's Credit Dept. through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

9.1.3 If requested by Purchaser, Seller shall, within thirty (30) days, provide Purchaser with copies of its most recent annual and quarterly financial statements prepared in accordance with GAAP.

9.2 Credit Assurances

(a) The form of credit assurances required shall include, but not be limited to, a guaranty in a form acceptable to Purchaser or a Letter of Credit.

(b) If required by Purchaser, Seller shall, within five (5) Business Days after the Effective Date, submit to Purchaser a Letter of Credit in the amount as set forth in Section 9.1.1. The terms of the Letter of Credit shall meet the requirements of the attached Exhibit K as well as the requirements of this Agreement and be issued by a bank satisfactory to Purchaser. The Letter of Credit shall provide for payment to Purchaser of the Letter of Credit face value if Seller defaults under the terms of this Contract. Purchaser shall have the right to call the entire amount of the Letter of Credit if Seller has not renewed the Letter of Credit by thirty (30) days prior to its expiration date. Seller's expenses of complying with this Letter of Credit requirement shall be paid by Seller.

**ARTICLE 10.
ACTIONS BY SELLER AND PURCHASER AFTER THE CLOSING DATE**

10.1 Records. Seller and Purchaser agree that each will cooperate with and make available to the other Party, during normal business hours after reasonable advance notice, all books and records retained and remaining in existence after the Closing Date that are necessary in connection with any Tax inquiry, audit, investigation or dispute, any litigation or investigation or any other matter requiring any such books and records. The Party requesting any such books and records shall bear all of the out-of-pocket costs and expenses (including without limitation, attorneys' fees) reasonably incurred in connection with providing such books and records.

10.2 Survival. Sections 8.3,8.4, 8.5, 8.6 and 10.3, and ARTICLE 12 shall survive closing or termination of this Agreement.

10.3 Indemnifications.

10.3.1 By Seller. From and after the Closing Date, Seller shall indemnify, save and hold harmless, on an After Tax Basis, Purchaser, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “Purchaser Indemnified Parties”) from and against any and all costs, losses (excluding, however, diminution in value and any other damages other than direct damages payable to third parties), liabilities (including, without limitation, liabilities arising under principles of strict or joint and several liability), damages, lawsuits, deficiencies, claims and expenses arising out of third-party claims, including without limitation, interest, penalties, additions, travel expenses, wages allocable to loss of employee time, reasonable attorneys’ fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, the “Purchaser Damages”), incurred in connection with or arising out of or resulting from (i) any material breach of any representation, warranty, covenant or agreement made by Seller in this Agreement or any other Seller Document, or (ii) any liability, obligation or commitment of Seller of any nature (absolute, accrued, contingent or otherwise) relating to the Acquired Assets and not assumed by Purchaser pursuant to this Agreement. Any indemnity payment required hereunder shall be accompanied by a statement, certified to by an officer of Purchaser, showing in reasonable detail the calculation of the amount of the indemnity payment.

10.3.2 By Purchaser. From and after the Closing Date, Purchaser shall indemnify, save and hold harmless, on an After Tax Basis, Seller, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “Seller Indemnified Parties”) from and against any and all costs, losses (excluding, however, diminution in value and any other damages other than direct damages payable to third parties), liabilities (including, without limitation, liabilities arising under principles of strict or joint and several liability), damages, lawsuits, deficiencies, claims and expenses arising out of third-party claims, including without limitation, interest, penalties, additions, travel expenses, wages allocable to loss of employee time, reasonable attorneys’ fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, the “Seller Damages”), incurred in connection with or arising out of or resulting from incurred in connection with or arising out of or resulting from (i) any material breach of any representation, warranty, covenant or agreement made by Purchaser in this Agreement or any other Purchaser Document, or (ii) if the Closing occurs, the Assumed Liabilities. Any indemnity payment required hereunder shall be accompanied by a statement, certified to by an officer of Seller, showing in reasonable detail the calculation of the amount of the indemnity payment. The foregoing indemnity shall survive until the date provided in Section.

10.3.3 Defense of Claims. If any action or proceeding (including any governmental investigation or inquiry) shall be brought or asserted or threatened to be brought or asserted against an indemnified party in respect of which indemnity may be sought from an indemnifying party, such indemnified party shall promptly notify the indemnifying party in writing as promptly as practicable (and in any event within ten (10) Business Days after the service of the citation or summons); provided, however, that the failure of the indemnified party to give timely

notice hereunder shall relieve the indemnifying party of its indemnification obligations hereunder only if, and only to the extent that, such failure caused the Purchaser Damages or Seller Damages (as applicable) for which the indemnifying party is obligated to be greater than they would have been had the indemnified party given timely notice, and the indemnifying party promptly shall assume the defense thereof, including the employment of counsel satisfactory to such indemnified party and the payment of all expenses. Such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be the expense of such indemnified party unless (i) the indemnifying party has agreed to pay such fees and expenses or (ii) the indemnifying party shall have failed to assume the defense of such action or proceeding or shall have failed to employ counsel reasonably satisfactory to such indemnified party in any such action or proceeding in either case, promptly and no more than five (5) Business Days after the receipt of notice pursuant to the preceding sentence or such shorter period of time as shall be reasonable under the circumstances, or (iii) the named parties to any such action or proceeding (including any impleaded parties) include both such indemnified party and the indemnifying party, and such indemnified party shall have been advised by counsel that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party (in which case, if such indemnified party notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action or proceeding on behalf of such indemnified party). The indemnifying party shall not be liable for any settlement of any such action or proceeding effected without its written consent (unless such consent is unreasonably withheld), but if settled with its written consent or without its written consent (if such written consent is unreasonably withheld), or if there be a final judgment for the plaintiff in any such action or proceeding, the indemnifying party shall indemnify and hold harmless such indemnified parties from and against any loss or liability by reason of such settlement or judgment. The indemnified party shall not be required to consent to the settlement of any action or proceeding if such settlement involves anything other than the payment of money by the indemnifying party in full settlement of such action or proceeding.

10.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS AND IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED. THE SELLER'S LIMITATION OF LIABILITY SHALL BE LIMITED TO THE PURCHASE PRICE.

10.5 Further Assurances.

10.5.1 Each of the Parties hereto shall use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement. Seller shall cooperate in the preparation and audit of any financial statements required to be filed with any Person, including by giving Purchaser and their independent certified public accountants reasonable access to work papers and other records, documents and written information of Seller and Seller's independent certified public accountants used to prepare or audit, or reasonably related to the preparation or audit of, all

financial statements of Seller to the extent reasonably required for the preparation of such financial statements.

10.5.2 Each Party hereto agrees to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books and records) relating to Seller and the Project as is reasonably necessary for the preparation of any return with respect to Taxes, claim for refund or audit, and the prosecution or defense of any claim, suit or proceeding relating to any proposed adjustment with respect to Taxes.

ARTICLE 11. EXTENSION AND TERMINATION

11.1 Termination After Long Stop Date or for Material Breach; Extension.

11.1.1 Except as otherwise provided in this Article 11, this Agreement shall terminate:

11.1.1.1 by either Purchaser, on the one side, or Seller, on the other side, upon written notice to the other Party of such termination, in the event the Closing Date has not occurred on or before the Long Stop Date; provided, however, Purchaser shall have the option to extend such Long Stop Date to _____ by providing notice of the exercise of such option to Seller on or before _____.

11.1.1.2 by either Purchaser, on the one side, or Seller, on the other side, upon written notice to the other Party if there has been a material violation or breach by such other Party of its agreements, representations or warranties contained in this Agreement which (x) are not susceptible to cure (or if so susceptible are not the subject of diligent efforts on the part of the breaching Party to cure) or (y) are susceptible to cure but continue unremedied for a period of ten (10) Business Days from the date on which notice of such material violation or breach shall have been received by such other Party.

11.1.1.3 In the event of termination of this Agreement by either Seller or Purchaser as provided in Section 11.1.1.1 above, there will be no liability or obligation on the part of either Party to the other. In the event of termination of this Agreement by either Seller or Purchaser as provided in Section 11.1.1.2 above, the non-breaching Party shall be entitled to equitable relief, injunctive relive and specific performance, as well as all other rights and remedies available at law or in equity.

11.2 Seller's Failure to Timely Satisfy Conditions; Purchaser's Right to Terminate or to Close with Adjusted Purchase Price

If (i) the conditions set forth in ARTICLE 3 and Sections 5.1, 5.4, 5.6, 5.7, and 5.8 are not timely satisfied on or before the Long Stop Date, subject to extension pursuant to Section 11.1.1 or (ii) Update Certificates are delivered to Purchaser in accordance with Section 6.21 which disclose a Material Adverse Impact, then Purchaser may elect one of the following courses of action:

(a) Purchaser may waive the requirement of compliance with such conditions and proceed to consummate the transactions contemplated hereby provided that Contractor has

agreed to deliver the EPC Agreement and Guarantor has agreed to deliver the guaranty required under the EPC Agreement; and in such event, Seller shall be entitled to the full Purchase Price as set forth in Section 2.2.1.1 above; or

(b) Purchaser may elect to close on the acquisition of the Acquired Assets hereunder; provided, however, that in the event of any such election, (i) the Purchase Price shall be reduced to \$_____ (which shall be the adjusted Purchase Price (and not liquidated damages or a penalty) agreed to by Purchaser and Seller to reflect that one or more material conditions to Closing were not timely satisfied by Seller), and (ii) the Acquired Assets will be sold by Seller to Purchaser on an “AS-IS, WHERE-IS” basis, without representation or warranty of any kind, or

(c) Purchaser may elect to terminate the Agreement and receive the return of any portion of the Purchase Price previously paid.

11.3 Default; Remedies

In the event that either Party (a) fails to use its commercially reasonable efforts to cause the conditions to closing to occur, if and to the extent, such Party is required to do so under this Agreement, (b) following or upon satisfaction of the conditions of such Party’s performance hereunder, such Party fails to perform, or (c) at or following Closing a breach of a representation or warranty of a Party occurs or is first discovered by the other Party, and such matter remains uncured for a period of ten (10) Business Days after written notice from the other Party, it shall constitute an “Event of Default” hereunder. Subject to the other provisions of ARTICLE 10 and this ARTICLE 11, upon the occurrence of an Event of Default, the non-defaulting party shall have all remedies at law and in equity, including solely with respect to any failure of Seller to transfer the Acquired Assets at Closing (whether the Closing was to occur pursuant to Section 2.3, 11.2 (a) or 11.2(b)), the remedy of specific performance, it being acknowledged and agreed that the remedy of specific performance or mandatory injunction shall not be available in any other circumstance.

ARTICLE 12. MISCELLANEOUS

12.1 Payment Instructions. All amounts under this Agreement which are payable to Seller shall be made by Purchaser to Seller pursuant to payment instructions provided by Seller to Purchaser in writing on or before the Closing Date.

12.2 Assignment. Seller may not assign any of its rights or obligations under this Agreement. Purchaser may not assign any of its rights or obligations under this Agreement; provided, however, that upon prior notice to Seller, Purchaser may assign its rights or obligations under this Agreement to any Affiliate of Purchaser.

12.3 Notices; Transfer of Funds. All notices, requests, demands and other communications which are required or may be given under this Agreement, including, without limitation, all documents delivered pursuant to this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express or

UPS); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to Seller, to:

[SELLER]

Facsimile:
Telephone:

with a copy to:

If to Purchaser, to:

PacifiCorp
825 NE Multnomah
Portland OR 97232
Attention: _____
Facsimile: (503) 813-_____
Telephone: (503) 813-_____

with a copy to:

or to such other place and with such other copies as a Party may designate as to itself by written notice to the other Party.

12.4 Choice of Law; Consent to Jurisdiction; Service of Process.

12.4.1 This Agreement shall be construed, interpreted and the rights of the Parties determined in accordance with the Laws of the State of Oregon without reference to its choice of law provisions.

12.4.2 The Parties hereto agree that prior to the initiation of any claim or law suit, the Parties shall undertake reasonable efforts to reach amicable settlement within forty-five (45) Business Days of notification by one Party to the other that a dispute or controversy arising out of or relating to the performance or interpretation of this Agreement has arisen.

12.4.3 The Parties hereto hereby irrevocably submit to the jurisdiction of the federal or state courts located in Multnomah County, Oregon, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each Party hereby irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such court. Each Party hereby irrevocably waives, to the fullest extent permitted

by applicable Law, any objection which it may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum.

12.4.4 Each of the Parties hereto hereby consents to process being served by the other Party to this Agreement in any suit, action or proceeding of the nature specified in Section 12.4.3 above by mailing of a copy thereof in accordance with the provisions of Section 12.3 hereof.

12.5 Entire Agreement; Amendments and Waivers. This Agreement and all exhibits and schedules hereto and any other written agreements entered into herewith shall constitute the entire understanding of the Parties as to the subject matter hereof and thereof and fully supersede all prior oral and written agreements and understandings between the Parties with respect to such subject matter. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.6 Multiple Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.7 Expenses. Except as set forth below or as otherwise specified herein, each Party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement and to any action taken by such Party in preparation for carrying this Agreement into effect.

12.8 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein (other than a requirement to make payments hereunder), shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

12.9 Titles. The titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.10 Burden and Benefit. This Agreement shall be binding upon and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. The Purchaser Indemnified Parties and Seller Indemnified Parties shall be third party beneficiaries of this Agreement and shall be entitled to indemnification, with full rights of enforcement as though each such person was a signatory to this Agreement. Except as provided in this Section 12.10, there shall be no third party beneficiaries of this Agreement.

12.11 Cumulative Remedies. All rights and remedies of either Party hereto are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

12.12 No Partnership or Joint Venture. The Parties hereto do not intend to create a partnership or joint venture by virtue of this Agreement. No Party shall owe any fiduciary duty to any other Party by virtue of this Agreement or any other Seller Document or Purchaser Document or otherwise.

12.13 No Merger. This Agreement is a fully integrated complete agreement and is not merged with or extinguished by any other agreement.

12.14 Public Announcements. Seller shall not issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby without the prior consent, which shall not be unreasonably withheld or delayed, of the Purchaser, unless required by applicable Law or order of a court of competent jurisdiction. In the event of a breach of this Section 12.14, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, Purchaser may, in its sole discretion, issue public announcements. Purchaser shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the Seller.

12.15 Non-Compete. Seller agrees that as long as the Project is operating it will not develop, construct or operate a wind-powered electricity generating project within a distance of fifteen rotor blade diameters of the turbines in the Project.

12.16 Time of the Essence. Time is of the essence in the performance of Seller's actions to complete the development of the Project and to satisfy the Purchaser Conditions.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the day and year first above written.

PURCHASER:

PACIFICORP

By: _____
Name:
Title:

SELLER:

[SELLER]

By: _____
Name:
Title:

Schedule 1.1.1
Excluded Assets

Schedule 3.8
Permitted Liens

Mortgages and tenancies that have been subordinated to the affected Land Contracts using a form of subordination agreement in substantially the form attached hereto.

When recorded return to:

Prepared by:

Name	Street Address	City, State, Zip	Telephone
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**SUBORDINATION, NONDISTURBANCE AND
ATTORNMENMENT AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2008, by and between _____ (“**Lender**”), and _____, a _____, the Developer (“**Developer**”) under the Easement defined below.

RECITALS

A. Lender is the sole current holder of that certain mortgage (the “**Mortgage**”) granted by _____ in favor of _____, on _____, _____, and recorded on _____, _____, under Document Reference No. _____, [and assigned to Lender on _____, _____, under assignment recorded on _____, _____, under Document Reference No. _____], in _____ County, [STATE], encumbering all or a portion of the real property described in Exhibit A attached hereto (the “**Property**”), together with the Promissory Note or other evidence of indebtedness secured thereby.

B. Developer is the dominant estate holder under that certain Windpark Easement Agreement pertaining to the Property (the “**Easement**”) dated as of _____, _____, and recorded in the official records of _____ County [STATE] as Document No. _____ by and between _____, as Owner and Developer.

C. The Easement provides for an option on the part of Developer to develop portions of the Property for wind resource evaluation, wind energy development, energy transmission and related wind energy uses (the “**Windpark**”).

D. Developer would not develop the Windpark on the Property without obtaining assurances from Lender that Developer’s rights under the Easement and to operate the Windpark will not be disturbed by Lender’s exercise of its rights under the Mortgage.

E. Lender desires the Property to be improved with the Windpark and understands that its execution and delivery of this Agreement is a necessary prerequisite therefor.

AGREEMENT

1. Nondisturbance of Easement. Lender agrees for the benefit of Developer, its successors and assigns, that the lien of the Mortgage and any amendments thereto and extensions thereof (a) does not

and shall not encumber the Windpark or other interests of Developer therein, and (b) is and shall be subordinate to Developer's interests in the Property under the Easement and any amendments thereto and extensions thereof with the effect that in the event of any foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale of the Mortgage, Developer shall not be named as a defendant therein, Developer's rights and interests under the Easement shall not be affected or impaired thereby and the Easement shall continue in effect in accordance with its terms. Except for the lien of the Mortgage, this Agreement shall not affect or subordinate any of the terms or provisions of the Mortgage and shall not apply to any lien granted to Developer in the Easement or any amendment thereof.

2. Attornment. Developer agrees that if Lender acquires title to the Property by foreclosure or trustee's sale of the Mortgage or any conveyance in lieu thereof it shall recognize Lender as the Owner under the Easement so long as Lender continues to hold such title and that during that period Lender shall have all of the rights of the Owner under the Easement.

3. Lender's Liability. Developer agrees that this Agreement shall not impose upon Lender any liability under the Easement, and if Lender acquires title to the Property it shall have no liability for the defaults, breaches, acts or omissions of any prior owner, including any of the persons who executed the Easement as Owner, and Lender shall only be responsible for the performance of Owner's obligations that are attributable to the period during which it holds title to the Property. Upon the conveyance of such title to any third party, Lender shall automatically be released from any liability under the Easement, which pertains to any period following the date of such conveyance.

4. Enforcement. The parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

5. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

6. Successors. The terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns and are specifically intended to be relied upon and enforceable by any person holding a mortgage or deed of trust against the Lease.

7. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements with respect to the priority of the Mortgage and the Easement, the effect of a foreclosure on the Mortgage on the Easement, and the extent of the Lender's liability under the Easement, and comprises the entire agreement of the parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the party to be charged therewith.

8. Execution in Counterparts. This Agreement may be executed in counterparts, both of which shall constitute but one and the same contract.

9. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE].

IN WITNESS WHEREOF, Lender and developer have executed this Agreement as of the day and year first above written.

LENDER:

DEVELOPER:

By _____

By _____

Name Title

Name Title

Address: _____

Address: _____

Date Executed

Date Executed

STATE OF [STATE], COUNTY OF _____, ss:

On this ____ day of _____, 2008 before me, the undersigned, a Notary Public in and for the State of [STATE], personally appeared _____ to me personally known, who being by me duly sworn did say that he/she is the _____ of the corporation executing the within and foregoing instrument and that _____ as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

Notary Public, State of [STATE]

STATE OF [STATE], COUNTY OF _____, ss:

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public, State of [STATE].

When recorded return to:

Prepared by:

Name Street Address City, State, Zip Telephone

TENANT SUBORDINATION AGREEMENT

THIS TENANT SUBORDINATION AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____, 2008, by and among _____ (“**Owner**”), _____ (“**Tenant**”), and _____, a _____, the Developer (“**Developer**”) under the Easement defined below.

RECITALS

A. Owner and Tenant entered into a lease agreement (the “**Lease**”) dated _____, _____ [and recorded on _____, _____ in the Official Records of _____ County, [STATE] as Document Reference No. _____], whereby Owner, as landlord, granted certain rights to Tenant, as tenant, over all or a portion of the real property located in _____ County, [STATE], as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”).

B. Developer is the dominant estate holder under that certain Windpark Easement Agreement pertaining to the Property (the “**Easement**”) dated as of _____, _____, and recorded in the official records of _____ County, [STATE], as Document Reference No. _____ by and between Owner and Developer.

C. The Easement provides for an option on the part of Developer to develop portions of the Property for wind resource evaluation, wind energy development, energy transmission and related wind energy uses (the “**Windpark**”).

D. The parties hereto desire to expressly subordinate the leasehold interest under the Lease to the Easement and the rights and benefits of Developer thereunder.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that, subject to the terms hereof, the Lease, the leasehold interests and estates created thereby, and the rights, privileges and power of the Tenant and Owner thereunder, be and the same are hereby, and with full knowledge and understanding of the effect thereof, made subject and subordinate to the Easement, the interests and estates created thereby, and the rights, privileges and powers of the Developer thereunder, subject to the following terms:

1. Subordination of Lease. Owner and Tenant declare and acknowledge for the benefit of Developer, its successors and assigns, that each hereby intentionally waives, relinquishes and subordinates the priority and superiority of the Lease, the leasehold interests and estates created thereby, and the rights, privileges and powers thereunder, in favor of the Easement and the interests and estates created thereby, and that each understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, Developer may be developing the Property for wind energy production and the transmission of electricity, which development would not be made but in said reliance upon this waiver, relinquishment and subordination. Tenant consents to the use of the Property by Developer as provided in the Easement, and Tenant agrees and acknowledges that Tenant's use of the Property shall not in any way interfere with the quiet use and enjoyment by Developer of the rights and easements granted to Developer pursuant to the Easement. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, any provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby.

2. Enforcement. The parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement, the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

3. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

4. Successors. The terms and provisions of this Agreement shall run with the land and shall be binding upon inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors and assigns and are specifically intended to be relied upon and enforceable by any person holding a mortgage or deed of trust against the Easement.

5. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements with respect to the priority of the Lease and the Easement and comprises the entire agreement of the parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the party to be charged therewith.

7. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute but one and the same contract.

8. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE].

IN WITNESS WHEREOF, Owner, Tenant and Developer have executed this Agreement as of the day and year first above written.

OWNER:

By _____

Name

Address: _____

Date Executed

DEVELOPER:

By _____

Name Title

Address: _____

Date Executed

TENANT:

By _____

Name Title

Address: _____

Date Executed

STATE OF [STATE], COUNTY OF _____, ss:

On this ____ day of _____, 2008 before me, the undersigned, a Notary Public in and for the State of [STATE], personally appeared _____ to me personally known, who being by me duly sworn did say that he/she is the _____ of the corporation executing the within and foregoing instrument and that _____ as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

Notary Public, State of [STATE]

STATE OF [STATE], COUNTY OF _____, ss:

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public, State of [STATE].

STATE OF [STATE], COUNTY OF _____, ss:

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public, State of [STATE]

Schedule 5.8 Insurance

- a. Employers' Liability insurance with a minimum limit of \$1,000,000.
- b. Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 with \$3,000,000 annual aggregate to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this Agreement.
- c. Umbrella or Excess Liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 annual aggregate to cover claims in excess of the underlying limits for Employer's Liability, General Liability, and Automobile Liability.
- d. Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used by Seller in the performance of the work.
- e. Professional Liability insurance (Errors and Omissions) with a minimum single limit of \$1,000,000 to cover claims arising out of Consultant's professional services hereunder. This policy shall be maintained until one year after Purchaser's acceptance of Consultant's work.
- f. Transit and Installation insurance with a minimum single limit of \$500,000 to cover damage to property and other claims arising out of the loading, unloading, transportation, lifting, lowering, or other handling of such property.
- g. For Commercial General Liability insurance, the policy shall include:
 1. Provisions or endorsements naming Purchaser, its Board of Directors, officers and employees as additional insured;
 2. Cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.
- h. All policies, except professional liability and transit and installation, shall include provisions that such insurance is primary insurance with respect to the interests of Purchaser and that any other insurance maintained by Purchaser is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without:
 1. Ten (10) days' prior written notice to Purchaser if canceled for nonpayment of premium; and
 2. Thirty (30) days' prior written notice to Purchaser if canceled for any other reason.

i. A certificate in a form satisfactory to Purchaser certifying to the issuance of such insurance shall be furnished to Purchaser and included at Exhibit ___.

j. Commercial general liability coverage written on a “claims-made” basis, if any, shall be specifically identified on the certificate.

j. If requested by Purchaser, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Purchaser.

k. Insurance coverage provided on a “claims-made” basis shall be maintained by Seller for a minimum period of five (5) years after the completion of any award and for such other length of time necessary to cover liabilities arising out of the work.

l. Insurance coverage provided on a “claims-made” basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the Work.

Schedule 6.4
Marketable Title to Acquired Assets

Schedule 6.6
Violation: Conflicts

Schedule 6.7
Seller Consents and Approvals

Schedule 6.9
Seller Litigation

Schedule 6.10
Compliance with Law

Schedule 6.11
Tax Matters

Schedule 6.13
Wind Data

The Wind Data includes all data collected from the Meteorological Stations. Wind Data information will be updated at closing and will include all data downloaded and saved from the Meteorological Stations, all Wind Studies, and any other Project associated wind information

As of the Closing Date, Purchaser and Seller agree to the following with regard to ownership of and disposition of rights to the Wind Data:

- (1) Seller shall provide all Wind Data in Seller's or its Affiliates' possession collected through the Closing Date to Purchaser within ten (10) Business Days of the Closing Date;
- (2) Seller, at no cost to Purchaser, shall continue to collect and administer wind data from the Property up to the Closing Date.

Schedule 6.14
Contracts

Schedule 6.15
Permits

I. Permits

A. Obtained Permits

None.

B. Required Permits (not yet obtained)

Local/County

Federal

C. Excluded Permits (to be obtained by Contractor)

Local/County

State

Federal

D. Purchaser Permits

II. Permit Applications

See Item B above

Schedule 6.16
Land Contracts

Schedule 6.17
Environmental Matters

Schedule 6.18
Substation Fee Parcel

Schedule 7.4
Purchaser Consents and Approvals

Schedule 7.6
Purchaser Litigation

EXHIBIT A
to Acquisition Agreement

EPC Agreement.

EXHIBIT B
to Acquisition Agreement

GUARANTY

EXHIBIT C
to Acquisition Agreement

See attached Forms of Easement Agreements

EXHIBIT D
to Acquisition Agreement

MAP SHOWING PROJECT BOUNDARY

EXHIBIT E
to Acquisition Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT F
to Acquisition Agreement

BILL OF SALE

EXHIBIT G
to Acquisition Agreement

FORM OF INTERCONNECTION AGREEMENT

EXHIBIT H
to Acquisition Agreement

CONSENT TO ASSIGNMENT BY [THIRD PARTY]

APPENDIX A

Notice of Intent to Bid

This is to declare that the undersigned intends to respond to PacifiCorp's:

Request for Proposals, Renewable Electric Resources (RFP 2008R-1)

Company _____
(legal entity of intended signatory to a contract)

Mailing Address/Phone/Fax/Email _____

Contact Person _____

Resource Type (Wind, Solar, Geothermal, etc) _____

Structure of bid: BOT ___ or PPA ___

If a PPA, indicate term _____ (years) and whether backed by an asset _____

Size of bid in nameplate MW capacity _____

Estimated commercial online date (month/year) _____

PacifiCorp Affiliate Certification

Bidder does not have an affiliate relationship (whether by ownership, joint venture or other association) with PacifiCorp or any PacifiCorp affiliate; and the proposed bid is for power generated by facilities that are not owned by, or otherwise associated with PacifiCorp, or any PacifiCorp affiliate. PacifiCorp affiliates include any MidAmerican Energy Holdings Company affiliate as well as affiliates of Berkshire Hathaway, Inc. A list of affiliates will be provided upon request.

Authorized Signature and Date _____

Print Name _____ **Title** _____

Return by mail, email, or fax by _____ to:

RFP 2008R-1
PacifiCorp
825 NE Multnomah St., Suite 600
Portland, OR 97232
E-mail: RFP2008R-1@PacifiCorp.com
Fax: 503-813-6260

APPENDIX B

Information required in bid proposals

This appendix describes PacifiCorp's expectations and requirements for RFP bids. In general, PacifiCorp expects bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. Bids from a PacifiCorp affiliate, or for power from generating facilities owned in part or in whole by PacifiCorp or a PacifiCorp affiliate will not be accepted for evaluation in this RFP.

In the event a bidder is proposing a transaction that does not require the construction of a resource, or if the bidder is proposing a PPA, much of the following information may not apply. PacifiCorp believes these resource attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output - If a proposed generator output will vary with ambient conditions; capability, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient air conditions of 20°F and 75% humidity. In the event summer and winter daily design conditions are different, bidder shall identify those conditions. To the extent pricing, capability and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the bidder shall clearly identify that relationship in tabular form.

Impact of Other Factors on Output - PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed facility and any related energy and green tags provided to PacifiCorp is without restriction related to:

- Environmental permits or other environmental limitations or environmental forfeitures
- Hours of operation
- Sales to other parties
- Interruption of primary fuel supply (if applicable)
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.)
- Non-environmental or technology factors that could encumber the facility
- Failure to meet the target in-service date.

Bidders shall describe in detail any such limitations in their Proposal.

Siting - Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the bidder should clarify the following information with respect to any proposed facility:

1. List of studies conducted, required environmental, construction, and other regulatory permits and timelines.
2. Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
3. Proposed site plans, layouts, elevations, or other aspects of the facility.
4. Types of transportation access required.
5. Characterization of the area surrounding the site including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
6. Proximity and extent of nearest wetlands and description of types of all types of all nearby wetlands and water bodies, including any proposed impacts.
7. Information on fish, wildlife and vegetation inhabiting the area of the Project.
8. Proximity to nearest endangered or threatened or critical species habitat and information on all nearby endangered or threatened species which could potentially be impacted.
9. Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
10. Location and distance to population centers which could be impacted.
11. Expected site ambient temperature extremes and verification that freeze protection will be provided if necessary.

Proposal Format –PacifiCorp is requesting that bidders conform to the following format for presenting their bid information:

Section 1 - Executive Summary of Proposal - The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective. The Executive Summary shall be accompanied by one or more Bid Summary sheets (see Appendix C-1 or Appendix C-2), characterizing the bid or bid options.

Section 2 – Resource Description - This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Date of manufacture or age of major equipment

- Hours of operation and major maintenance performed for any previously owned/operated equipment
- Description of financing plan
- Description of operation and maintenance plan
- Estimated annual unit availability and any guaranteed minimum annual availability
- Plan for site control
- Site layout description
- Description of technology and configuration
- Operating Limits - Any limits on the number of hours that a unit may be operated per year or unit of time
- Expected Annual Energy production (see Appendix E).
- Expected Generation on heavy load hours (hours ending 07:00-22:00, Monday through Saturday), and light load hours by month.
- Guaranteed Output (minimum annual energy production, see Appendix E)
- Primary fuel supply and backup alternatives
- Wind proposals must include a minimum of one year of on-site meteorological tower data, converted to estimated MWh of production on an hourly time scale. Please provide explanation if average of hourly estimated MWh of production is different from the Expected Annual Energy production.
- Electrical interconnection (location, transmission provider, and control area)
- Information regarding location and transmission availability
- Project schedule, listing tasks and milestones with estimated completion dates
- Terms of warranties and/or guarantees on major equipment

Section 3 - Bidder's Qualifications – Information in this section should be submitted with information that the Bidder supplies from Appendix D. This section should include, but not be limited to, the following information:

- Corporate structure and primary and secondary businesses.
- Location of offices
- Biographies of key officers
- Developer projects and independent power supply ventures participated in over the last three to five years.
- At least one contact (name and telephone number) for each project or power supply venture (for reference purposes).
- Description of any current or previous contract dispute(s) involving similar projects in which the bidder is or was involved during the last five years.
- Separate descriptions, as appropriate, for each member of a consortium or partnership of two or more firms and the relationship between the firms for this Proposal.

Section 4 - Financial Information – Briefly summarize information provided pursuant to Appendix D.

Section 5 - Pricing Proposal and Pro Forma Project Financing – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Provide pro forma financial projections showing cash flow, income statement, and balance sheet, sources and uses of funds, construction draw schedule, and including all financing assumptions. At a minimum the pro forma should include the following:

- ¹Expected Annual Energy production and revenue
- Annual operating expenses including operations and maintenance costs, G&A expenses, land leases, property taxes, insurance and other expenses
- Transmission and ancillary services costs (if any)
- Debt service
- Debt coverage ratios (by year)
- Depreciation
- Taxes and tax credits
- Working capital requirements
- Net income
- Equity rate of return

Section 6 – Transmission - Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 7 – Environmental and Siting - The bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and /or variances that are required to assure physical delivery of capacity and associated energy in accordance with any PPA or turn-key sale. Bidders must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk, and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Applicant should provide information on scoping, feasibility or other associated studies conducted to assess environmental impacts and to obtain necessary permits. This information should include all studies related to wildlife (including endangered species), archeological, vegetation, hydrological, geotechnical, visual, noise, air quality, and other environmental impacts related to the project. Impacts to designated wilderness, national and state parks, and other protected areas should be noted. Applicant should describe methodologies for such studies and identify the person(s) or firm(s) who conducted and completed the work. If such studies are in progress, applicant should describe the scope and schedule for completion and identify the person(s) or firm(s) doing the studies and

¹ Expected Annual Energy production must be the same value used in other parts of this proposal.

methodologies to be employed. Applicant should describe measures that will be taken to minimize the potential for environmental, visual and cultural impacts of the project. Finally, applicant should discuss plans to engage community and environmental stakeholders to support the proposed project

Section 8 – Contract Terms - Bidder shall provide a comprehensive listing/description of all contract terms that the bidder would seek during contract negotiations. Bidder may supply a markup of the documents found in Appendix E (PPA option) or Appendix F (BOT option) with their proposal, although conformity to those documents is strongly encouraged.

APPENDIX C-1

BID SUMMARY – POWER PURCHASE AGREEMENT

Project Name _____

Unique Bid Name (i.e, ACME-1, etc) _____

Resource Type (Wind, Solar, Geothermal, Hydro, etc.) _____

Control Area:

PacifiCorp West _____

PacifiCorp East _____

Other (describe): _____

Estimated Commercial Operation Date (dd/mm/yy) _____

Net Capacity (at 95°F, 20% Relative Humidity, and at Site Conditions) _____ MW

Expected Gross Annual Energy Production (net of station load) _____ MWh/yr

Expected Net² Annual Energy Production () _____ MWh/yr

Minimum Guaranteed Annual Energy Production _____ MWh/yr

Number of Years of on-site data relied on for the above MWh projections _____

Name of firm who prepared the energy analysis³ _____

Expected On Peak Monthly Energy Production:

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

January MWh/month _____	Maximum MW/hour _____
February MWh/month _____	Maximum MW/hour _____
March MWh/month _____	Maximum MW/hour _____
April MWh/month _____	Maximum MW/hour _____
May MWh/month _____	Maximum MW/hour _____
June MWh/month _____	Maximum MW/hour _____
July MWh/month _____	Maximum MW/hour _____
August MWh/month _____	Maximum MW/hour _____

² Net means as delivered to the point of interconnection with the transmission provider and, if a wind plant, using an assumption at the 50 percent probability level and a wind turbine availability of 95%.

³ PacifiCorp requires that the analysis be made available to PacifiCorp for review.

September MWh/month_____	Maximum MW/hour_____
October MWh/month_____	Maximum MW/hour_____
November MWh/month_____	Maximum MW/hour_____
December MWh/month_____	Maximum MW/hour_____

Expected Off Peak Monthly Energy Production:

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

January MWh/month_____	Maximum MW/hour_____
February MWh/month_____	Maximum MW/hour_____
March MWh/month_____	Maximum MW/hour_____
April MWh/month_____	Maximum MW/hour_____
May MWh/month_____	Maximum MW/hour_____
June MWh/month_____	Maximum MW/hour_____
July MWh/month_____	Maximum MW/hour_____
August MWh/month_____	Maximum MW/hour_____
September MWh/month_____	Maximum MW/hour_____
October MWh/month_____	Maximum MW/hour_____
November MWh/month_____	Maximum MW/hour_____
December MWh/month_____	Maximum MW/hour_____

Expected Annual availability (% of hours able to produce max/hour): _____

Guaranteed Annual availability (% of hours able to produce max/hour): _____

Project Location (State, County, Range and Township of transmission interconnection)

Point of Interconnection with, or Delivery to PacifiCorp’s Transmission System

Quality of Delivery (Check All that Apply):

- _____ As Generated, Unit Contingent, Interconnected to PacifiCorp System
- _____ As Generated, Unit Contingent, Telemetered into PacifiCorp System
- ___ WSPP Schedule C Firm Scheduled Deliveries (ISAS Scheduling Protocols) to PacifiCorp Transmission System
- _____ Other (describe): _____

Does delivery include operating reserves? (yes or no) _____

Will PacifiCorp incur third-party transmission expenses? (yes or no) _____

If yes, check all that apply:

- Third party transmission wheeling _____
- Third party transmission losses _____
- Third party imbalance charges _____
- Third party operating reserves _____
- Third party scheduling/dispatch _____
- Third party voltage support _____

Power Purchase Agreement Pricing

Year	On Peak Price	Off Peak Price
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Additional Information

To the extent that pricing, capacity and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the bidder shall clearly identify that relationship in tabular form.

PacifiCorp reserves the right to further request information similar to that required in Appendix C-2.

APPENDIX C-2

BID SUMMARY – BUILD OWN TRANSFER

Project Name _____

Unique Bid Name (i.e, ACME-1, etc) _____

Resource Type (Wind, Solar, Geothermal, Hydro, etc.) _____

Control Area:

PacifiCorp West _____

PacifiCorp East _____

Other (describe): _____

Estimated Commercial Operation Date (dd/mm/yy) _____

Net Capacity (at 95°F, 20% Relative Humidity, and at Site Conditions) _____ MW

Expected Gross Annual Energy Production (net of station load) _____ MWh/yr

Expected Net⁴ Annual Energy Production () _____ MWh/yr

Minimum Guaranteed Annual Energy Production _____ MWh/yr

Number of Years of on-site data relied on for above MWh projections _____

Name of firm who prepared the energy analysis⁵ _____

Expected On Peak Monthly Energy Production:

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

January MWh/month _____	Maximum MW/hour _____
February MWh/month _____	Maximum MW/hour _____
March MWh/month _____	Maximum MW/hour _____
April MWh/month _____	Maximum MW/hour _____
May MWh/month _____	Maximum MW/hour _____
June MWh/month _____	Maximum MW/hour _____
July MWh/month _____	Maximum MW/hour _____
August MWh/month _____	Maximum MW/hour _____

⁴ Net means as delivered to the point of interconnection with the transmission provider and, if a wind plant, using an assumption at the 50 percent probability level and a wind turbine availability of 95%.

⁵ PacifiCorp requires that the analysis be made available to PacifiCorp for review.

September MWh/month_____	Maximum MW/hour_____
October MWh/month_____	Maximum MW/hour_____
November MWh/month_____	Maximum MW/hour_____
December MWh/month_____	Maximum MW/hour_____

Expected Off Peak Monthly Energy Production:

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

January MWh/month_____	Maximum MW/hour_____
February MWh/month_____	Maximum MW/hour_____
March MWh/month_____	Maximum MW/hour_____
April MWh/month_____	Maximum MW/hour_____
May MWh/month_____	Maximum MW/hour_____
June MWh/month_____	Maximum MW/hour_____
July MWh/month_____	Maximum MW/hour_____
August MWh/month_____	Maximum MW/hour_____
September MWh/month_____	Maximum MW/hour_____
October MWh/month_____	Maximum MW/hour_____
November MWh/month_____	Maximum MW/hour_____
December MWh/month_____	Maximum MW/hour_____

Expected Annual availability (% of hours able to produce max/hour): _____

Guaranteed Annual availability (% of hours able to produce max/hour): _____

Project Location (State, County, Range and Township of transmission interconnection)

Point of Interconnection with, or Delivery to PacifiCorp’s Transmission System

Quality of Delivery (Check All that Apply):

- _____ As Generated, Unit Contingent, Interconnected to PacifiCorp System
- _____ As Generated, Unit Contingent, Telemetered into PacifiCorp System
- _____ WSPP Schedule C Firm Scheduled Deliveries (ISAS Scheduling Protocols) to PacifiCorp Transmission System
- _____ Other (describe): _____

Does delivery include operating reserves? (yes or no) _____

Will PacifiCorp incur third-party transmission expenses? (yes or no) _____

If yes, check all that apply:

- Third party transmission wheeling _____
- Third party transmission losses _____
- Third party imbalance charges _____
- Third party operating reserves _____
- Third party scheduling/dispatch _____
- Third party voltage support _____

Permits to be Transferred: _____

Land Rights to be Transferred: _____

Purchase Price: _____

Wind Turbine Technical Description: _____

Wind Information:

1. How was the wind data collected, certified, and correlated to the reference points?
2. Who provided the wind data analysis service?
3. What is reference height, or heights, of the meteorological data?
4. What is the assumed turbine type, hub height, and rotor diameter?
5. How was the wind data adjusted for the turbine hub height?
6. What is the estimated wind shear and how was the wind shear calculated?
7. What is the accuracy of your wind and energy forecast?
8. What is the basis year of the underlying data? Are the references years high, low, or average years?
9. How was generation output calculated from the meteorological data?
10. What specific de-ratings are included in your energy forecast (wind array losses, line losses, blade degradation, site elevation, etc.)?

In anticipation of a potential need to perform comparison among bids, PacifiCorp also requests the following more detailed information:

A. Site Wind Data

1. Raw hourly or ten-minute wind speed and direction data
2. Description of equipment used to record data
3. Available calibration certificates for equipment
4. Conversion factors (e.g. m/s per Hz) applied in recording wind speeds
5. Maintenance records for the monitoring work
6. Location, height and orientation relative to mast of all sensors

B. Reference Wind Data

1. Hourly or ten-minute wind speed and direction data
2. Description of equipment used to record data
3. Available calibration certificates for equipment
4. Maintenance records for the monitoring work
5. Location, height and orientation relative to mast of all sensors

C. Wind Turbine Information

1. Turbine make and model
2. Turbine rotor diameter
3. Turbine hub height
4. Turbine power curve

D. Wind Project Information

1. Layout of wind project turbine array using latitude and longitude co-ordinates
2. Detailed topographic maps of project area with all mast and turbine locations

E. Verification and Analysis

1. Details of instrument configurations and measurement periods for each site mast and reference station
2. Summary of mast maintenance records and explanations for significant periods of missing data
3. Data recovery rates and measured monthly means for masts employed in the assessment

F. Prediction of Wind Regime

1. Description of methodology employed to adjust measured wind speeds on site to the long-term
2. Correlation plots and coefficients for relevant correlations in the assessments
3. Predicted long-term mean wind speeds at measurement heights and hub height at all masts employed in the assessment
4. Annual wind speed and direction frequency distribution for long-term site masts
5. Plot of annual wind rose for long-term site masts
6. Description of methodology employed to extrapolate mean wind speeds at measurement heights to hub height

G. Prediction of Wind Speed Variations

1. Description of methodology employed to predict wind speed variations across the site
2. Details of wind flow modeling employed and any inputs to the model (where applicable)

H. Energy Production Estimate

1. Predicted hub height mean wind speed and gross and net energy production for the full project
2. Predicted long-term site air density
3. Turbine power curve employed and description of any adjustments made to the power curve
4. Description of methodology employed to calculate energy losses due to array effects
5. Clear breakdown of applied energy loss factors
6. Monthly and diurnal pattern of predicted energy production with an explanation of the variation
7. Analysis of the uncertainty associated with the predictions provided in the assessment

Operating Expenses: Please provide complete information on the following, including any assumptions you make on a forward basis (e.g., escalation rates)

Operating Expense Assumptions

Turbine Warranty Period and Characteristics

Turbine O&M – by year \$ per WTG

O&M Sales Tax Rate

Annual O&M – Facilities \$000

O&M - Substation/Interconnection \$000

Electric Usage \$000

Land Lease costs (describe)

Property Tax

Expected Rate %

Rate Escalation %

Initial Cost Assessed Value \$000

Replacement Cost Escalation %

Depreciation

Year 2007 - Partial Year % %

Method

Insurance

Property (per \$100 assessed value)

General & Excess Liability \$000

General & Admin. Expenses \$000

Other (wind forecasting service) \$000

Additional Information

Please provide any other information you believe germane to PacifiCorp's analysis of your submittal.

APPENDIX D

BIDDER'S CREDIT INFORMATION

Please provide the following information to enable PacifiCorp to evaluate the financial viability of the Bidder and any entity(ies) providing credit assurances on behalf of the Bidder, if applicable.

Bidder's Credit Information

1. Credit information for Bidder

A. Exact legal name and address of Bidder:

B. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

C. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.

Fiscal Year End:

D. Identify pending legal disputes (describe):

E. Please state whether Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

F. If Bidder is unable to provide audited financial statements or is relying upon another entity(ies) to provide credit assurances on its behalf, Bidder must indicate so here and complete the following section.

Is Bidder unable to provide audited financial statements?

Is Bidder relying upon another entity(ies) to provide credit assurances on Bidder's behalf?

G. Bidder should demonstrate its ability (and/or the ability of its credit support provider(s)) to provide the required security, including its plan for doing so (including type of security, sources of security, and a description of its credit support provider).

H. Bidder should provide a reasonable demonstration of its ability to finance the proposed project based on past experience and a sound financial plan identifying the proposed sources for debt and equity and evidence that the project is financeable.

2. Credit information for entity(ies) providing credit assurances on behalf of Bidder (if applicable)

A. Exact legal name and address of entity(ies) providing credit assurances on behalf of Bidder:

B. Describe relationship to Bidder and describe type of credit assurances to be provided (e.g., parental guaranty, letter of credit, etc.). Bidder must provide to Company a letter(s) of commitment acceptable to Company from the entity(ies) providing the credit assurances on behalf of the Bidder executed by an authorized signatory and indicating the amount and form of credit assurances it will provide. It should be noted that more than one commitment letter, or more than one form of commitment letter, may be necessary.

C. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

D. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.

Fiscal Year End:

E. Pending legal disputes (describe):

F. Please state whether entity(ies) providing credit assurances on behalf of the Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

CREDIT MATRIX

The Bidder should utilize the applicable credit matrix to determine the estimated amount of credit assurances required for the applicable bid categories of Build Own Transfer (BOT) or Power Purchase Agreement (PPA) backed by an asset, or for a PPA not backed by an asset, and based upon the online date (the “Credit Matrix”). If necessary, the Bidder will be required to demonstrate the ability to post any required credit assurances in the form of a commitment letter(s) from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. PacifiCorp will require each Bidder to provide an acceptable commitment letter (s) (if applicable), twenty (20) business days after the Bidder is notified that the Bidder has been selected for the final shortlist. Bidder will be required to provide any necessary guaranty commitment letter from the entity providing guaranty credit assurances on behalf of the Bidder and/or any necessary letter of credit commitment letter from the financial institution providing credit assurances in the form of a Letter of Credit.

Forms of commitment letters are part of this Appendix D. The timing of when credit security must be posted is detailed in the Credit Security Requirements Methodology section, which is also part of this Appendix D.

The Credit Security Requirements Methodology section of Appendix D explains how the Credit Matrix will be used to determine the amount of credit assurances required. The use of the Credit Matrix requires a sequence of checks against it. The Bidder must first check its Credit Rating in the Credit Matrix in order to determine the amount of total credit assurances required. If the amount of credit assurances required from the prior sentence is an amount other than \$0, the Bidder must next check the Credit Rating of its proposed credit support provider in the Credit Matrix. The difference in the amounts of credit assurances required using the Bidder’s Credit Rating and amount of credit assurances required using its proposed credit support provider’s Credit Rating is the maximum amount that the credit support provider will be required to commit to in its commitment letter. For any residual amount of credit assurances required, the Bidder must obtain a commitment letter from a second credit support provider with a higher Credit Rating than the first credit support provider, committing to provide credit assurances in the residual amount.

Note that the higher Credit Rating of any second credit support provider will need to be high enough such that any ultimate residual amount will be \$0. An example of using the Credit Matrix in this sequence of checks is described in the Credit Security Requirements Methodology section of Appendix D. It is important that Bidders realize that more than one commitment letter from the entity(ies) providing credit assurances on behalf of the Bidder may be required. If the Bidder’s initial proposed credit support provider’s Credit Rating is high enough such that the amount of credit assurances required is \$0, then only a single commitment letter from that entity is needed, and the amount required will be the difference between what is required based on the Bidder’s Credit Rating and \$0.

The amount of any credit assurances to be provided will be determined based upon:

a) the Credit Rating of the Bidder and the entity(ies) providing credit assurances on behalf of the Bidder, if applicable, b) the size of the project, c) the expected energy delivery start date, and c) type of Renewable Resource agreement including asset-backed characteristics.

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

All Bidders will receive a Credit Rating which will be used in determining the amount of any credit assurances to be posted. Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to those outlined in the Credit Matrix.

The timing of when credit security must be posted is outlined in the Credit Security Requirements Methodology section of Appendix D.

Credit Matrix Notes

- Columns contain maximum value of credit assurances to be posted for each range of delivered MWs for a resource coming online in years 2009, 2010 or 2011.
- The amount of credit assurances is based on the online date, the size, whether a BOT or PPA bid option, or a PPA not backed by an asset.
- For PPAs not backed by an asset with a term of less than five (5) years, the amount of credit assurances required may be adjusted.
- The amount of credit assurances required in the Credit Matrix is based upon the amount of MW to be delivered. This is the size of the project in nameplate MW multiplied by the capacity factor.

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Credit Matrix

Maximum Value of Credit Assurances to be Posted for each range of MW

For a Build Own Transfer or a PPA Backed by an Asset with an online date no later than 12-31-2009

Number of MW to be delivered (size of project in nameplate MW multiplied by the capacity factor) ==>												
	Up to 25	26 to 50	51 to 75	76 to 100	101 to 125	126 to 150	151 to 175	176 to 200	201 to 225	226 to 250	251 to 275	276 to 300
Credit Rating												
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,090,400
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,317,800	\$14,242,000	\$23,166,200	\$32,090,400
Below BBB-/Baa3	\$8,924,200	\$17,848,400	\$26,772,600	\$35,696,800	\$44,621,000	\$53,545,200	\$62,469,400	\$71,393,600	\$80,317,800	\$89,242,000	\$98,166,200	\$107,090,400

For a PPA not backed by an Asset with an online date no later than 12-31-2009 (TERM LIMITED TO 5 YEARS)

Number of MW to be delivered (size of project in nameplate MW multiplied by the capacity factor) ==>												
	Up to 25	26 to 50	51 to 75	76 to 100	101 to 125	126 to 150	151 to 175	176 to 200	201 to 225	226 to 250	251 to 275	276 to 300
Credit Rating												
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,173,300
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,977,750	\$16,575,525	\$27,173,300
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$9,782,200	\$20,379,975	\$30,977,750	\$41,575,525	\$52,173,300
Below BBB-/Baa3	\$10,597,775	\$21,195,550	\$31,793,325	\$42,391,100	\$52,988,875	\$63,586,650	\$74,184,425	\$84,782,200	\$95,379,975	\$105,977,750	\$116,575,525	\$127,173,300

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Credit Matrix

Maximum Value of Credit Assurances to be Posted for each range of MW

For a Build Own Transfer or a PPA Backed by an Asset with an online date no later than 12-31-2010

Number of MW to be delivered (size of project in nameplate MW multiplied by the capacity factor) ==>												
	Up to 25	26 to 50	51 to 75	76 to 100	101 to 125	126 to 150	151 to 175	176 to 200	201 to 225	226 to 250	251 to 275	276 to 300
Credit Rating												
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,679,450	\$17,559,400
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,919,550	\$18,799,500	\$30,679,450	\$42,559,400
Below BBB-/Baa3	\$11,879,950	\$23,759,900	\$35,639,850	\$47,519,800	\$59,399,750	\$71,279,700	\$83,159,650	\$95,039,600	\$106,919,550	\$118,799,500	\$130,679,450	\$142,559,400

For a PPA not backed by an Asset with an online date no later than 12-31-2010 (TERM LIMITED TO 5 YEARS)

Number of MW to be delivered (size of project in nameplate MW multiplied by the capacity factor) ==>												
	Up to 25	26 to 50	51 to 75	76 to 100	101 to 125	126 to 150	151 to 175	176 to 200	201 to 225	226 to 250	251 to 275	276 to 300
Credit Rating												
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,219,600
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$12,683,000	\$25,451,300	\$38,219,600
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$12,146,400	\$24,914,700	\$37,683,000	\$50,451,300	\$63,219,600
Below BBB-/Baa3	\$12,768,300	\$25,536,600	\$38,304,900	\$51,073,200	\$63,841,500	\$76,609,800	\$89,378,100	\$102,146,400	\$114,914,700	\$127,683,000	\$140,451,300	\$153,219,600

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Credit Matrix

Maximum Value of Credit Assurances to be Posted for each range of MW

For a Build Own Transfer or a PPA Backed by an Asset with an online date no later than 12-31-2011

Number of MW to be delivered (size of project in nameplate MW multiplied by the capacity factor) ==>	Up to 25	26 to 50	51 to 75	76 to 100	101 to 125	126 to 150	151 to 175	176 to 200	201 to 225	226 to 250	251 to 275	276 to 300
Credit Rating												
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10,287,875	\$24,859,500
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,144,625	\$20,716,250	\$35,287,875	\$49,859,500
Below BBB-/Baa3	\$14,571,625	\$29,143,250	\$43,714,875	\$58,286,500	\$72,858,125	\$87,429,750	\$102,001,375	\$116,573,000	\$131,144,625	\$145,716,250	\$160,287,875	\$174,859,500

For a PPA not backed by an Asset with an online date no later than 12-31-2011 (TERM LIMITED TO 5 YEARS)

Number of MW to be delivered (size of project in nameplate MW multiplied by the capacity factor) ==>	Up to 25	26 to 50	51 to 75	76 to 100	101 to 125	126 to 150	151 to 175	176 to 200	201 to 225	226 to 250	251 to 275	276 to 300
Credit Rating												
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,457,400
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,093,050	\$21,214,500	\$36,335,950	\$51,457,400
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$0	\$5,850,150	\$20,971,600	\$36,093,050	\$51,214,500	\$66,335,950	\$81,457,400
Below BBB-/Baa3	\$15,121,450	\$30,242,900	\$45,364,350	\$60,485,800	\$75,607,250	\$90,728,700	\$105,850,150	\$120,971,600	\$136,093,050	\$151,214,500	\$166,335,950	\$181,457,400

CREDIT SECURITY REQUIRMENTS METHODOLOGY

Methodology Overview

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

1. Type of Renewable Resource agreement including asset-backed characteristics
2. Size of Renewable Resource
3. Expected energy delivery start date
4. Term of underlying contract
5. Creditworthiness of Bidder and Bidder's credit support providers(s), if applicable

Acquisition of an Asset

For all resources that involve a physical asset with appropriate step-in rights, PacifiCorp views potential credit exposure as the cost it would incur in the event the resource failed to come on-line when expected. PacifiCorp believes it could take up to 18 months to either step in and complete the project or cause the project to be completed on its behalf. If the failure occurred near the expected on-line date, PacifiCorp would have to procure energy in the open market at then-prevailing market prices.

In determining where prices for replacement power might be between contract execution and the replacement period, PacifiCorp employs standard statistical analysis to estimate future price levels within a certain confidence interval. Once the "stressed" forward price is determined, the expected cost to procure energy, had the project not been delayed, based on contract terms and conditions is subtracted. The difference between these prices is then multiplied by the number of megawatt hours for the replacement period to estimate the expected replacement cost, or damages, PacifiCorp might sustain due to Bidder nonperformance.

To illustrate, for the 2009 resource the forward price for power delivered at PACE for 18 months starting December 1, 2009, as indicated by the market on April 16, 2008 was \$67.56/MWh. Market-implied volatility of prices for those same delivery months was 28.4%⁶ on the same observation date. Using this data, PacifiCorp estimated – with 84% confidence – that prices for that delivery point and replacement period are expected to be no higher than \$94.76/MWh. Subtracting the cost of power PacifiCorp expects to pay had the resource been operational (e.g. \$67.56/MWh) results in a potential replacement cost to PacifiCorp of \$27.19/MWh, or \$356,968⁷ for a 1 MW resource.

⁶ Execution of contracts related to the RFP is expected to occur on or about April 1, 2009. Therefore, volatility for the 2008 period was used as the best estimate of where volatility levels would be in 2009 as viewed on April 1, 2009.

⁷ Assumes 13,127 hours during December 2009-May 2011.

With regard to a calculation for the estimate of the price of PACE power for the replacement period of \$94.76/MWh, PacifiCorp estimated, with 84% confidence, how high power prices could be in the event PacifiCorp had to procure replacement energy between December 2009 and May 2011 in the event of a bidder default. PacifiCorp used the forward price curve and the price volatility level observed on April 16, 2008 as inputs to its statistical analysis. Using a 7x24 delivery pattern, PacifiCorp nominally leveled power prices for each of the individual months to arrive at a single strip price of \$67.56/MWh. The price was then multiplied by a stress factor to generate a potential forward price based on the desired confidence level:

Stress factor = $\exp^{(1 \text{ standard deviation} * 28.4\% \text{ annualized volatility} * \sqrt{(\text{mid point date of replacement period} - \text{contract signing date})/365.25})} = 1.4025$.

Stressed price = 1.4025 stress factor * \$67.56/MWh leveled price = \$94.76/MWh

Using a similar assessment for the 2010 and 2011 resources, the potential credit exposure was estimated to be \$475,198 and \$582,865, respectively, for a 1 MW resource.

Asset-Backed Agreements

For other resources that are backed by an asset with appropriate step-in rights, PacifiCorp views its potential credit exposure as the cost it would incur in the event the Bidder failed at any time during the life of the contract. However because the resource is backed by an attachable asset, PacifiCorp believes it can have the project operational, or cause to have the project operational on its behalf, within 18 months from the date of nonperformance. PacifiCorp acknowledges that the potential for prices to change is greater for this resource group due to the term of the underlying contract but will treat the potential replacement costs the same as that of an asset acquisition. PacifiCorp may hold any credit security for a longer period, however, due to the length of contract related to this resource group.

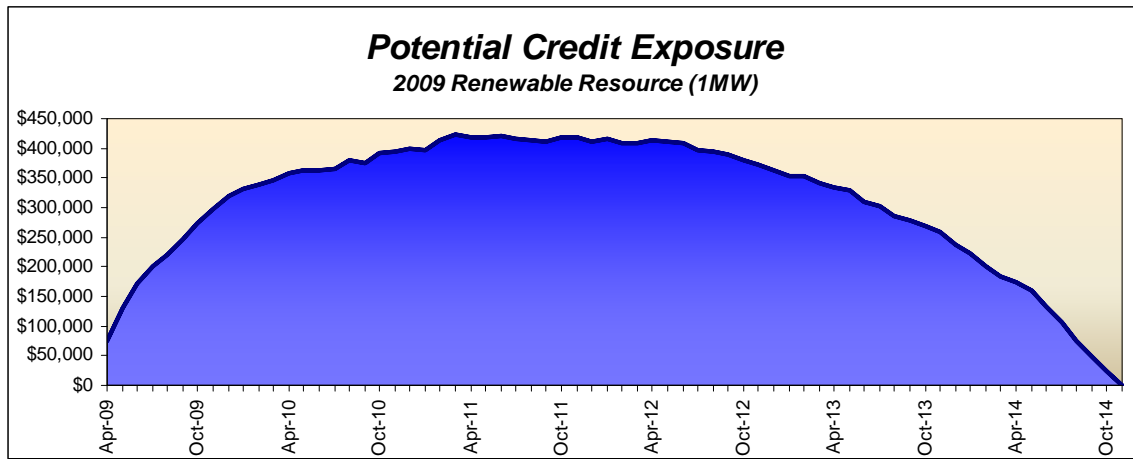
This discussion of the credit requirements for Power Purchase Agreements and Build Own Transfer Agreements assumes, for these credit requirements to be comparably analyzed, that each of these types of agreement is backed by its respective physical asset. In order for this to be the case, the agreements by their terms must put that physical resource behind the agreement, which would include, but not be limited to, the following: allowing PacifiCorp meaningful and actual exercise of step-in rights and a second lien (behind only the project lenders) on the assets and the special purpose entity equity, limiting the amount of leverage on the project by way of a cap on the debt to equity ratio, and other financial covenants for the life of the Power Purchase Agreement.

Non-Asset Backed Agreements

For resources that are not backed by an asset, PacifiCorp estimates potential credit exposure on not just 18 months worth of replacement volume but on the entire remaining volume at any point a Bidder might default during the term of a contract. PacifiCorp also takes into account the entire time horizon of the contract from contract execution. To estimate potential credit

exposure at any possible point of default, PacifiCorp performs a Monte Carlo simulation⁸ using a software program purchased from a third-party vendor⁹ that factors in forward prices, forward price volatility, temporal correlations, and asset correlations. The simulation steps through time, removing delivered volumes from the valuation while revaluing remaining, undelivered volumes. The result is a distribution of potential credit exposures from which PacifiCorp uses those at the 84th percentile.

The following chart shows the potential credit risk profile of a 1 MW, five year, non asset-backed Renewable Resource for 2009:



For the 2009, 2010 and 2011 resources that are not backed by an asset, the potential credit exposure was estimated to be \$423,911, \$510,732, and \$604,858 respectively, for a 1 MW resource.

Once the potential credit exposures were estimated for all resources, the exposures then were inserted into a series of credit matrices (each a “Credit Matrix”). Each Credit Matrix lists various sizes of resources in 25 MW increments (columns) for each possible Credit Rating of Bidder and Bidder’s credit support provider(s), if applicable (rows). A Credit Matrix for each Resource Alternative is shown for each Eligible Online Date.

Next, PacifiCorp applied its internal credit risk tolerance specific to this RFP to each potential credit exposure in every cell of every Credit Matrix. The results are the amounts of excess credit risk that PacifiCorp requests be secured through third-party guaranties, cash, letters of credit, or other collateral, or combinations thereof.

To interpret a Credit Matrix, a Bidder needs to select the type of Renewable Resource agreement, the size of the resource, and the Eligible Online Date. Depending on the Credit Rating of the Bidder and the Bidder’s credit support provider, if applicable, the value in the

⁸ A Monte Carlo simulation incorporates randomness into the revaluation process while mindful of the boundaries imposed by volatility and correlation assumptions.

⁹ Risk Capital Management Partners, LLC, acquired by Towers Perrin on June 19, 2006.

applicable Credit Matrix represents the maximum value of credit security the Bidder and the Bidder’s credit support provider(s), if applicable, must provide.

Using the sample Credit Matrix excerpt below for illustration purposes only, credit security required for an asset-backed 225 MW build own transfer agreement for 2009 with a ‘BBB+’ rated Bidder would be \$0 (row 8). If the Bidder was not rated or was rated less than investment grade, the Bidder would be required to provide \$80,317,800 (row 11) in credit security to cover the potential credit exposure. Security could include a third-party guaranty from an investment grade entity, but in that event additional security may be required depending on the security amounts listed in the Credit Matrix corresponding to the rating of the guarantor. For instance, if the third-party guarantor was rated ‘BBB-’, PacifiCorp would require a guaranty in the amount of \$75.0m (\$80,317,800 (row 11) minus \$5,317,800 (row 10)) from the guarantor and additional security (i.e. a letter of credit) in the amount of \$5,317,800 (row 10) from the Bidder.

Number of Delivered MWs==>	201 to 225	
Credit Rating		
AAA/Aaa and above	\$0	row1
AA+/Aa1	\$0	row2
AA/Aa2	\$0	row3
AA-/Aa3	\$0	row4
A+/A1	\$0	row5
A/A2	\$0	row6
A-/A3	\$0	row7
BBB+/Baa1	\$0	row8
BBB/Baa2	\$0	row9
BBB-/Baa3	\$5,317,800	row10
Below BBB-/Baa3	\$80,317,800	row11

In the event the Bidder’s Credit Rating and Bidder’s credit support provider’s Credit Rating, if applicable, adversely changes during the contract term, the amount of credit security must be adjusted commensurate with the amounts listed in the Credit Matrix.

For resource sizes that fall inside a MW range on the Credit Matrix, the exact amount of credit security is determined by taking the actual MW size of the resource and dividing it by the upper range boundary MW size. That result is then multiplied by the security amounts shown in the Credit Matrix for that size range to produce the credit security amount. For example, using the sample Credit Matrix excerpt above, for a 210 MW resource the amount of credit security required for a non-investment grade Bidder would be:

$$\mathbf{\$74,963,280} = 210 \text{ MW} / 225 \text{ MW} * \$80,317,800$$

Posting of Credit Security

For all Renewable Resources that are backed by an asset that can be attached by PacifiCorp, credit security must be posted in accordance with the following schedule (this includes a Power Purchase Agreement that is backed by an asset):

Cumulative Value of Credit Security*	2009 Resource	2010 Resource	2011 Resource
10%	-	Effective Date (ED)	Effective Date (ED)
25%	-	ED+3 months	ED+15 months
50%	-	ED+6 months	ED+18 months
75%	-	ED+9 months	ED+21 months
100%	Effective Date (ED)+10 business days	The earlier of COD and ED+12 months	The earlier of COD and ED+24 months

* When the Bidder receives project development financing, 100% of the required credit security is then immediately due, regardless of the deadlines contained in the schedule.

The Effective Date is the date the contract is approved by the Oregon Public Utility Commission or the date the contract is executed by the parties, whichever is later.

A Bidder may select to either post the initial security, which must be in the form of cash or letter of credit only, or alternatively, a Bidder may post the full amount of credit security using *any* form of security acceptable to PacifiCorp (e.g. a third-party guaranty.)

For Renewable Resources not backed by an asset, 100% of credit security is due within ten (10) business days after the Effective Date.

Reduction in Credit Security

For Build Own Transfer agreements, any credit security posted will be returned to the counterparty at a reasonable time period after PacifiCorp has assumed complete ownership of the resource and any necessary indemnification period has passed.

For Power Purchase Agreements, posted credit security will be reduced according to the following schedule: starting at the mid-point of the term of the contract, the amount of credit security will be amortized over the remaining term of the contract and may be reduced in equal installments at the end of each successive contract year until the amount of credit security to be posted is \$0. PacifiCorp reserves the right to hold credit security for a longer period if the potential credit exposure at the time of collateral return warrants such an action.

As an example, assume the counterparty has posted \$10,000,000 in credit security for a Power Purchase Agreement with a term of 1/1/2010 to 12/31/2035, or 25 years. After 12.5 years, the credit security amount of \$10,000,000 will be divided by the 12.5 years remaining (\$10,000,000/12.5, or \$800,000) such that the amount of security may be reduced by \$800,000 at

the end of each successive contract year until the balance of the credit security reaches \$0 at the end of the contract term.

Note that the above examples assume that the creditworthiness of the counterparty and/or its credit support provider remains the same over time. If the creditworthiness of the counterparty and/or its credit support provider changes at any point before or after the contract is executed, the amount of credit security required may change.

FORM OF GUARANTY COMMITMENT LETTER

Must be on letterhead of Bidder's guarantor)

PacifiCorp
825 NE Multnomah Street, Suite 700
Portland, OR 97232
Attn: Credit Dept.

Dear Sirs:

The undersigned bears the following relationship to the Bidder _____ (insert Bidder name) ("Bidder") in your RFP process: (NOTE: insert nature of relationship, e.g., parent company, etc.). Bidder and the undersigned have their own, separate agreement with respect to the undersigned's promise set forth in this letter.

This will indicate our promise to you that, should you enter into a transaction with Bidder arising out of any bid submitted by Bidder in the RFP, with terms and conditions mutually acceptable to you and Bidder, that we will at that time issue an unconditional guaranty in form and substance reasonably satisfactory to you, and that we will guarantee all obligations of payment and performance of Bidder to you as our independent obligation, (up to a maximum amount of \$_____, plus expenses of enforcing the guaranty).

We understand that you will not enter into a transaction with Bidder without said guaranty. We understand that you are under no obligation to enter into any transaction with Bidder, under the RFP or otherwise.

Yours truly,

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

FORM OF LETTER OF CREDIT COMMITMENT LETTER

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

PacifiCorp
825 NE Multnomah Street, Suite 700
Portland, OR 97232
Attn: Credit Dept.

Dear Sirs:

The undersigned bears the following relationship to Bidder _____ (insert Bidder name) ("Bidder") in your RFP process: (NOTE: insert nature of relationship). Bidder and the undersigned have reached their own agreement with respect to the undersigned's promise set forth in this letter.

This will indicate our promise to you that, should you enter into a transaction with Bidder arising out of any bid submitted by Bidder in the RFP, that we will at that time issue an irrevocable standby letter of credit in a form and substance reasonably acceptable to you, up to a maximum amount of \$_____.

We understand that you will not enter into a transaction with Bidder without said letter of credit. We understand that you are under no obligation to enter into any transaction with Bidder, under the RFP or otherwise.

Yours truly,

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

APPENDIX E

Power Purchase Agreement

[INCLUDED AS A SEPARATE ATTACHMENT]

APPENDIX F

Build Own Transfer Documents

- 1. Wind Development Asset Acquisition and Sale Agreement**
- 2. Balance of Plant Wind Energy Project Agreement**

[INCLUDED AS SEPARATE ATTACHMENTS]

APPENDIX G

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of the ____ day of ____, 2008, by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and _____ (collectively with all its subsidiaries, officers, directors, members, managers, employees, agents, accountants and attorneys, "Recipient"); with reference to the following:

WHEREAS, PacifiCorp and Recipient are discussing a potential transaction relating to PacifiCorp's Request for Proposals Renewable Electric Resources ("RFP"), and in connection therewith Recipient wishes to receive certain Confidential Information (as hereinafter defined), but requires as a condition precedent Recipient's execution of this Agreement;

NOW, THEREFORE, in consideration of the above and the mutual promises herein contained, the parties hereto agree as follows:

1. Confidential Information. "Confidential Information" means any oral or written information which is made available to Recipient by PacifiCorp or any of its corporate affiliates or its or their officers, directors, employees, agents, accountants or attorneys (a "Disclosing Party") before or after the date hereof, regardless of the manner furnished, and includes without limitation: (i) compilations and analyses prepared by Recipient; (ii) names of current and potential manufacturers, suppliers, customers and marketing relationships of any Disclosing Party, (iii) the nature, terms, conditions or other facts respecting any discussions between PacifiCorp and Recipient (including their existence and status). Confidential Information does not include information which at the time of disclosure is generally available to the public (other than as a result of disclosure by Recipient) or was available to Recipient on a nonconfidential basis from a source other than a Disclosing Party not under a duty of confidentiality to a Disclosing Party.

2. Confidentiality; Disclosure. The Confidential Information will be kept confidential by each Recipient and will not be used for any purpose by its Recipient other than for the purpose set forth above. Recipient will be responsible for any breach of this Agreement by any of its officers, directors, employees, agents, accountants and attorneys. Recipient shall restrict the dissemination of the Confidential Information to its employees who have a need to see it, and shall cause any agent, accountant or other non-employee to whom it wishes to show the Confidential Information sign an agreement in the form hereof in advance thereof. Recipient will keep confidential any Confidential Information contained in any analyses, compilations, studies or other documents prepared by Recipient that contain or reflect any Confidential Information. Upon request from PacifiCorp, Recipient promptly will return all copies of the Confidential Information.

3. Protective Order. If Recipient becomes legally compelled to disclose any Confidential Information, it shall provide PacifiCorp with prompt prior written notice so that PacifiCorp may seek a protective order or other appropriate remedy. If such protective order or

other remedy is not obtained, Recipient shall (i) furnish only that portion of the Confidential Information which, in accordance with the advice of its own counsel, is legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

4. No Representation or Warranty. Recipient acknowledges that no Disclosing Party is making any representation or warranty as to the accuracy or completeness of any information furnished (except specifically to the extent and only to such extent as shall be expressly set forth in an executed and delivered definitive agreement). No Disclosing Party or any of its officers, directors, employees, agents or controlling persons (including, without limitation, parent and subsidiary companies) shall have any liability to a Recipient or any other person relating to or arising from the use of the Confidential Information provided by a Disclosing Party.

5. Conduct of Process. Except for any confidentiality agreements, none of PacifiCorp or any Disclosing Party is under any obligation to Recipient, and PacifiCorp is free to elect not to consummate an agreement or to furnish or receive information. Nothing contained in this Agreement shall prevent PacifiCorp from negotiating with or entering into a definitive agreement with any other person or entity without prior notice to Recipient. Until PacifiCorp and Recipient enter into a definitive agreement, no contract or agreement or other investment or relationship shall be deemed to exist between any Disclosing Party or any Recipient as a result of this Agreement, the issuance of a term sheet, the issuance, receipt, review or analysis of information, the negotiation of definitive documentation, or otherwise, and none of the foregoing shall be relied upon as the basis for an implied contract or a contract by estoppel.

6. Intellectual Property Rights. Nothing contained herein grants any rights respecting any intellectual property (whether or not trademarked, copyrighted or patented) or uses thereof.

7. Costs and Expenses. Except as otherwise provided in any other written agreement between the parties, the parties shall bear their own costs and expenses, including without limitation fees of counsel, accountants and other consultants and advisors.

8. Remedies. PacifiCorp shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to all other remedies available to PacifiCorp at law or in equity. No failure or delay by PacifiCorp in exercising any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

9. Venue and Choice of Law. This Agreement **is governed by the laws of the State of Oregon.** Any suit, action or proceeding arising out of the subject matter hereof, or the interpretation, performance or breach hereof, shall be instituted in any State or Federal Court in Multnomah County, Oregon (the "Acceptable Forums"). Each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, and waives any and all objections to jurisdiction or venue that it may have any such suit, action or proceeding.

10. Miscellaneous. This Agreement constitutes the entire agreement of the parties relating to its subject matter, and supersedes all prior communications, representations, or agreements, verbal or written. This Agreement may only be waived or amended in writing. Notices hereunder shall be in writing and be effective when actually delivered. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same original instrument. Neither party may assign or otherwise transfer its rights or delegate its duties hereunder without prior written consent, and any attempt to do so is void.

IN WITNESS WHEREOF, the undersigned parties have executed this Confidentiality Agreement as of the date first written above.

PACIFICORP
an Oregon corporation

a _____

By: _____
Its: _____

By: _____
Its: _____

APPENDIX H

825 N.E. Multnomah
Portland, Oregon 97232
(503) 813-5000

Date

[Name]

[Address]

Re: PacifiCorp's Request For Proposals Renewable Electric Resources

Dear [_____]:

This letter clarifies PacifiCorp's rights relating to its further evaluation and discussion of your possible involvement with _____ ("Counterparty") proposal submitted in response to PacifiCorp's Request for Proposals ("RFP") (collectively with Counterparty's proposal and all matters relating thereto, the "Project") and any subsequent negotiations regarding the terms of any agreement or agreements entered into with you or any other party in connection with the Project. PacifiCorp will agree to enter into further discussions with you only upon your prior acknowledgement of these rights. "You" and similar words (whether or not capitalized) refer to the addressee of this letter, Counterparty, and any Project development entity or other affiliate of the addressee in any way involved in the Project.

PacifiCorp is committed to following a fair process in selecting the winning proposal. However, PacifiCorp reserves the right, in its sole discretion, to terminate the consideration of the Project and any discussions with you or any other parties (such as your lenders) relating to the Project at any time and for any reason without incurring any liability for costs or expenses incurred by you in the course of, or as a result of, your participation in the bidding process or negotiations respecting the Project, including but not limited to any costs or expenses related to or arising from the preparation or submission of your proposal, your legal fees, transmission or environmental studies or reviews, expenses of any third party incurred at your behest, your participation in discussions with PacifiCorp, the Project, or any development costs incurred by you in connection with this process. The submission of a proposal by Counterparty and PacifiCorp's decision to engage in further discussions with you does not constitute acceptance of the Project, and shall not obligate PacifiCorp to accept or to proceed further with the Project. The acceptance of any proposal and the commencement of the Project are contingent on a number of factors, including but not limited to financial and creditworthiness considerations, strategic decisions, resource planning, regulatory approvals, and the approval of PacifiCorp's board of directors and/or shareholders. PacifiCorp makes no representation as to the likelihood of Counterparty's proposal being accepted or of the Project being commenced and, if PacifiCorp decides not to accept Counterparty's proposal or the Project, you hereby fully and forever release

and discharge PacifiCorp of all liability whatsoever, whether arising from your alleged reliance on PacifiCorp's acceptance of the Project or any part thereof or whether based upon any other action or claim in tort, contract, promissory estoppel, equity, negligence or intentional conduct, and PacifiCorp shall not be liable for any amount of liability or damages, including but not limited to any amounts for incidental, special, consequential or punitive damages.

PacifiCorp reserves the right to engage in discussions with multiple parties simultaneously with respect to this RFP or any other matter, and to accept or reject any type of proposal of any party in its sole discretion. PacifiCorp also reserves the rights to reject all proposals relating to this RFP, and to pursue any other course it deems appropriate, including without limitation the development of a cost-base self build alternative.

PacifiCorp shall have no obligations to you with respect to the Project unless and until the execution by all applicable parties of one or more definitive written agreements (the "Definitive Agreements") in form and substance satisfactory to the parties entering into such Definitive Agreements and then only to the extent stated therein. No contract will nor will be deemed to exist, whether by estoppel or otherwise, in any other way than execution and delivery (if ever) of the Definitive Agreements. The execution (if any) of any Definitive Agreements would be subject, among other things, to the satisfactory completion of due diligence by such parties as well as the satisfaction of applicable financial, environmental and other regulatory requirements as determined by PacifiCorp. If PacifiCorp selects the Project, then except as specifically set forth in the Definitive Agreements, PacifiCorp shall have no obligations to you in the event that the Project or any part thereof is discontinued, cancelled, stopped, or terminated for any reason whatsoever, including without limitation financial or creditworthiness considerations concerning you or any contemplated source of Project-related funds, third-party delay or failure (with PacifiCorp's transmission function constituting a third party for purposes hereof), regulatory restrictions, gas or transmission infrastructure restrictions, environmental or community challenges, or the Project is embargoed, restrained, subject to labor strike or lockout, destroyed, subject to terrorist attack or any other force beyond your control, is incapable of receiving required gas or electricity transmission or network service, or is otherwise rendered impossible to complete by the times set forth in the Definitive Agreements for any other reason, whether your fault or not.

Whether or not the Project is commenced and Definitive Agreements executed, you will be responsible to pay your own fees and expenses, including without limitation legal fees and expenses, incurred in connection with the preparation, discussion and negotiation of the Project as well as the preparation, negotiation, execution and delivery of the Definitive Agreements and any other agreements or documents contemplated thereby, and PacifiCorp will not be responsible for any of those fees and expenses.

If the foregoing is acceptable, please indicate so by executing and dating both originals of this letter in the space indicated below, returning one original to the undersigned within three days of the date hereof and retaining the other original for your files.

Sincerely,

PacifiCorp

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED:

[Insert Name of Party]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX I

RFP 2008R-1 Company Benchmark(s)

PacifiCorp Energy's planned renewable resource benchmark(s) are the addition of:

- up to three wind projects,
- located on up to three wind sites,
- with a size of up to three hundred (300) megawatts per project.

Locations being considered include sites the Company is currently developing in Wyoming. In addition, project sites may be considered that the Company may acquire from developers prior to the time when the benchmark resource(s) are finalized.

The sites being considered have been selected on the basis of site specific characteristics including, but not limited to, expected wind resource characteristics, proximity to transmission, and commercial considerations for the acquisition of the rights to construct one or more wind projects on the site(s).

The benchmarks will be based on the expected cost to develop, construct, own, and operate the benchmark(s) using prudent industry practices, established vendors, and experienced constructors. The suitability of each site to result in a valid benchmark project will be based on the Company's then-current assessment of the site's ability to accommodate the timing requirements of RFP 2008R-1 with respect to permitting, interconnection timing and capability, availability of long lead time equipment, constructability, and regulatory cost recovery risk, and the size.

APPENDIX J

Pricing Input Sheet

[INCLUDED AS A SEPARATE ATTACHMENT]

APPENDIX K

ROLE OF THE INDEPENDENT EVALUATOR AND THE CONSULTANT

1) The role and function of the Oregon Independent Evaluators (“IEs”) and the Utah Consultant are outlined as follows:

a. The Utah Consultant shall validate that the affected electrical utility is:

i. following the bidder pre-approval process developed pursuant to Utah Code 54-17-502 (2)(c)(i) and make recommendations for changes to the pre-approval process for future solicitations;

ii. monitor and document all material aspects of the bids, bid evaluations, and bid negotiations between the affected electrical utility and any bidders in the solicitation process;

iii. maintain adequate documentation of each bid, including the solicitation, evaluation, and negotiation processes and the reason for the conclusion of negotiations, which documentation shall be transmitted to the Public Service Commission of Utah at the conclusion of all negotiations in the solicitation; and

iv. be available to testify under oath before the Public Service Commission of Utah in any relevant proceeding concerning all aspects of the public solicitation process.

Oregon Independent Evaluator shall facilitate and monitor communications between the Soliciting Utility and Bidders, including the Company’s Benchmark Team.

a. Review and validate the assumptions and calculations of any Company Benchmark Resources.

b. Analyze the Company’s Benchmark Resources, if any, for reasonableness and consistency with the Solicitation Process.

c. Access all important models in order to analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of Bids and Benchmark Resources.

d. Receive Benchmark Resources and Bid responses.

e. Provide input to the Soliciting Utility on:

i. the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the

- Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating Benchmark Resources and Bids;
- ii. the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility's most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update;
 - iii. whether a Bidder has met the criteria specified in any bidding process and whether to reject or accept non-conforming bid responses;
 - iv. whether and when data and information should be distributed to Bidders and the Benchmark Team when it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by Bidders;
 - v. whether to reject non-conforming bids for any reason or accept conforming changes;
 - vi. whether to return bid fees.
- f. Ensure that all bids are treated in a fair and non-discriminatory manner.
- g. Monitor, observe, validate and offer feedback to the Soliciting Utility and the regulators on all aspects of the Solicitation and Solicitation Process, including:
- i. content of the Solicitation;
 - ii. evaluation and ranking of bid responses;
 - iii. creation of a short list(s) of Bidders for more detailed analysis and negotiation;
 - iv. post-bid discussions and negotiations with, and evaluations of, shortlisted Bidders; and
 - v. negotiation of proposed contracts with successful Bidders.
- h. The IE will evaluate the unique risks and advantages associated with any Company Benchmark Resources, including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.
- i. Once the competing bids have been evaluated by the Soliciting Utility and the IEs, the Soliciting Utility and the IE will compare results.
- j Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of bid responses received.

- k. Solicit additional information on bids necessary for screening and evaluation purposes.
 - l. Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process.
 - m. Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or Bidders, and present recommendations for resolution of unresolved disputes to the Commission.
 - n. Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or acknowledgement of the final shortlist.
 - o. Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility.
- 2) The Communications between the IEs, the Company and the Bidders shall be conducted in the following manner:
- a. The Soliciting Utility may not communicate with any Bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a Bidder to the Solicitation, except through or in the presence of the IEs.
 - b. The Soliciting Utility shall provide timely and accurate responses to any request from the IEs, including requests from Bidders submitted by the IEs, for information regarding any aspect of the Solicitation or the Solicitation Process.
- 3) The IEs shall prepare at least the following confidential reports and provide them to the Regulators and the Soliciting Utility:
- a. Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest.
- 4) Communication between the Evaluation Team and the Company's Benchmark Team:
- a. The Evaluation Team, may not be members of the Company Benchmark Team, nor communicate with members of such team during the Solicitation Process about any aspect of the Solicitation Process, except that internal company attorneys and credit analysis personnel may deliver legal or credit advice, as applicable, to either or both teams, or except as authorized herein.
 - b. The IEs must participate in any communications between members of the Company Benchmark Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings.

- c. The Evaluation Team shall have no direct or indirect contact or communication with any Bidder other than through the IEs until such time as a final shortlist is selected by the Soliciting Utility.
- d. Should any Bidder or a member of the Company Benchmark Team attempt to contact a member of the Evaluation Team, such Bidder or member of the Company Benchmark Team shall be directed to the IEs for all information and such communication shall **promptly** be reported to the IEs by the Evaluation Team.

APPENDIX L

Code of Conduct Governing PacifiCorp's Intra-Company Relationships for RFP Process

As part of the RFP process, PacifiCorp will commit to abide by a self-imposed code of conduct which will govern PacifiCorp's intra-company business relationships in order to ensure a fair and unbiased RFP evaluation and selection process. As part of the RFP process, PacifiCorp has identified various teams and work groups who will be responsible for the evaluation of the proposals and the development of any Company Benchmark Resource. The Evaluation Team and the Company Benchmark Team will have separate responsibilities and be required to adhere to the self-imposed code of conduct.

Bidders will provide an Intent to Bid Form that will not be blinded. The Evaluation Team and the Benchmark Team will comply with this code of conduct during the RFP evaluation process.

EVALUATION TEAM

The Evaluation Team will be made up of seven separate work groups. Consistent with PacifiCorp's identification of shared employees under FERC's Standards of Conduct, the IRP work group will be treated as a shared resource to perform work for the Evaluation Team and the Benchmark Team. The IRP work group will not share any information it obtains from either Team with the other Team and the IRP work group will not share any non-public transmission system information with either Team at any point in this process.

As set forth below in the Information Status, no members of the Evaluation Team will have contact or communication with any Bidder or the Benchmark Team other than through the IEs. If any Bidder or member of the Benchmark Team attempts to contact a member of the Evaluation Team, such Bidder or member of the Benchmark Team shall be directed to the IEs for all information and such communication shall promptly be reported to the IEs by the Evaluation Team.

The roles and responsibilities of the members of the Evaluation Team work groups are set forth below, along with the individual member's name and title and information status restrictions for each work group.

Evaluation Team: Origination, Structuring and Pricing, and Environmental

1. Origination

Roles: Members of the Origination work group will be responsible for overall coordination of the RFP process, including bid process management for all proposals. The Origination work group will also have responsibility to coordinate with the IEs and all of the Evaluation Team work groups. The Origination work group will also perform the evaluation of the non-price

components of the bid analysis. The Origination group will also participate on the Intent to Bid Team.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the Evaluation Team will have contact or communication with any Bidder other than through the IEs.

2. Structuring and Pricing

Roles: Members of the Structuring and Pricing work group will be responsible for the economic analysis and modeling for the initial shortlist including the validation on the inputs to the risk assessment of the bid.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the Evaluation Team will have contact or communication with any Bidder other than through the IEs.

3. Environmental

Roles: The Environmental work group will be responsible for evaluation and acquisition of necessary air, water supply and discharge, emission credits, and siting and facilities permits.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the Evaluation Team will have contact or communication with any Bidder other than through the IEs.

4. Credit

Roles: The Credit work group will be responsible for credit screening, evaluation and monitoring throughout the entire RFP process.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: No members of the Evaluation Team will have contact or communication with any Bidder other than through the IEs. The Credit group will also participate on the Intent to Bid Team.

5. Legal

Roles: The Legal work group will be responsible for confirming compliance of bids to the RFP requirements, including the forms, attachments and appendices. The Legal work group will conduct the legal process and due diligence inquiries, and will have responsibility for legal review of any documentation entered into as part of the RFP process.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: The Legal group must not reveal contact or communication with any Bidder other than through the IEs. The Legal group will also participate on the Intent to Bid Team.

INTEGRATED RESOURCE PLANNING TEAM (IRP)

The IRP Team will be responsible for running the capacity expansion model and the planning at risk model to determine the portfolios. The IRP Team will receive inputs from the Benchmark Team which will be required to model the Benchmark portfolios subject to the information sharing restrictions set forth below. The IRP Team will not be responsible for making an economic determination about the bids.

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

Information Status: Any information the IRP group obtains from the Benchmark Team on Benchmark Resources will not be shared with the Origination or Structuring and Pricing work groups until after the final shortlist is determined. The Evaluation Team will not have contact or communication with any Bidder other than through the IEs.

BENCHMARK TEAM

The Benchmark Team will consist of members from PacifiCorp Energy's Generation unit. A third-party engineering consultant may be retained by Generation as needed and if retained, will be considered a member of the Benchmark Team. No member of the Evaluation Team will be a member of the Benchmark Team; however, the Benchmark Team will provide inputs to the IRP work group to allow the IRP work group to model Benchmark proposals. This is not intended to be an iterative process. The IRP work group may not share any information received from the Benchmark Team with the Evaluation Team.

Roles: The Benchmark Team will be responsible for development of PacifiCorp's Benchmark resources.

Individual Members and Titles: Generation and/or Third Party Engineering Consultant names to be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

INTENT TO BID TEAM

The Intent to Bid form is not blinded; however, PacifiCorp will identify a separate Intent to Bid Team comprised of members from PacifiCorp legal, origination and credit who will work with the IEs to assess the Bidders' qualifications. Following this assessment, the IEs will provide each Bidder who has completed the information required to evaluate the qualifications under the Intent to Bid Forms (Appendices A and B).

Individual Members and Titles: To be submitted to the IEs upon issuance of the RFP and updated if there are any changes.

FERC'S STANDARDS OF CONDUCT

In addition to this self-imposed code of conduct, as a transmission provider, PacifiCorp is required to comply with FERC's Standards of Conduct which govern interactions between PacifiCorp's Transmission Function and its Marketing Affiliate. Under the Standards of Conduct, PacifiCorp's Transmission Function employees must function independently of PacifiCorp's Marketing Affiliate employees. Marketing Affiliate employees cannot have access to transmission control center or other transmission facilities or information systems that differ in any way from the access provided to non-affiliated transmission customers. The Standards of Conduct prohibit Marketing Affiliate employees from gaining access to any information about PacifiCorp's transmission system that is not posted on the OASIS or otherwise made publicly-available to all other market participants.

Under the Standards of Conduct, FERC will allow certain non-operating employees to be shared between the Transmission Function and Marketing Affiliate. Under FERC's "no-conduit rule", shared employees may receive confidential transmission system or marketing information, but they are prohibited from sharing such information with Marketing Affiliate employees through any non-public or off-OASIS communications.

Marketing Affiliate Employees

PacifiCorp has identified the following business groups as Marketing Affiliate Business Units of PacifiCorp:

PacifiCorp Energy, Commercial & Trading:
 Energy Trading
 Marketing & Trading Contracts
 Short-term Origination and Contracts
 Structuring and Pricing
 Long-Term Origination and Strategy

Transmission Function Employees

PacifiCorp's Transmission Function includes: employees, contractors, consultants or agents of PacifiCorp who conducts transmission system operations or reliability functions, including, but

not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, or carrying out transmission-related operations.

Shared Employees

PacifiCorp has identified Integrated Resource Planning, Environmental, Credit, Legal, and Risk Management as shared employee functions under FERC's Standards of Conduct.

Information Status

PacifiCorp's Marketing Affiliate (as defined above) will not be involved in a Bidder's transmission interconnection and integration with the control area. PacifiCorp's employees will at all times abide by FERC's Standards of Conduct. If an issue arises about compliance with FERC's Standards of Conduct, PacifiCorp's FERC Standards of Conduct Compliance Officer, Colt Norrish at 503-813-5545, should be contacted immediately.

**RFP
ATTACHMENTS**

APPENDIX E
POWER PURCHASE AGREEMENT

APPENDIX F
BUILD OWN TRANSFER DOCUMENTS

**1. WIND DEVELOPMENT ASSET ACQUISITION AND SALE
AGREEMENT**

APPENDIX F
BUILD OWN TRANSFER DOCUMENTS

2. BALANCE OF PLANT WIND ENERGY PROJECT AGREEMENT

APPENDIX J
PRICING INPUT SHEET

Form 1 Pricing Input Sheet

PacifiCorp RFP 2008R-1: CONFIDENTIAL and PROPRIETARY

Directory

For PacifiCorp use only.

Filename

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ID	Input Description	Bidder Input
0	Bid Number	121212
1	Contract Category	Power Purchase Agreement
2	Resource Type	Geothermal, Wind, Solar, Biomass, Hydro
3	Project Name	
4	Control Area	
5	Delivery to PacifiCorp Start Date (mm/dd/yyyy)	1/1/2009
6	Delivery to PacifiCorp End Date (mm/dd/yyyy)	7/1/2042
7	Net Capacity	
8	New or Existing Resource?	
9	Project Location	
10	Point of Power Delivery	
11	Quality of Delivery (Check all that apply)	
12	As Generated, Unit contingent, Interconnected to Pacificorp System	
13	As Generated, Unit contingent, Telemetered into Pacificorp System	
14	WSPP Schedule C Firm Scheduled Delivery to Pacificorp Transmission System	
15	Other	
16	Does delivery include operating reserves (Yes or No)?	
17	Will Pacificorp incur third-party transmission expenses (Yes or No)? If Yes, check following that applies	
18	Third Party Scheduling/Dispatch (Schedule 1) Charges (\$/KW-mo)	
19	Third Party Voltage Support (Schedule 2) Charges (\$/KW-mo)	
20	Third Party Regulation and Frequency Response (Schedule 3) Service (\$/KW-mo):	
21	Third Party Operating Reserve (Schedule 5&6) Charges (\$/MWh)	
22	Third Party Firm PTP Transmission (Schedule 7) Charge to PacifiCorp (\$/KW-mo)	
23	Third Party Losses Transmission (%) Charge to PacifiCorp	
24	Transmission Interconnection Credit Assigned to PacifiCorp (\$)	
25	Life of the Asset	
Resource Inputs		
26	Date of Purchase Option	
27	Asset Purchase Price for the Purchase Option (\$)	
28	Expected On Peak Monthly Energy Production (HLH)	
29	January (MWh/mo)	
30	February (MWh/Mo)	
31	March (MWh/Mo)	
32	April (MWh/Mo)	
33	May (MWh/Mo)	
34	June (MWh/Mo)	
35	July (MWh/Mo)	
36	August (MWh/Mo)	
37	September (MWh/Mo)	
38	October (MWh/Mo)	
39	November (MWh/Mo)	
40	December (MWh/Mo)	
41	Expected Off Peak Monthly Energy Production (LLH)	
42	January (MWh/mo)	
43	February (MWh/Mo)	
44	March (MWh/Mo)	
45	April (MWh/Mo)	
46	May (MWh/Mo)	
47	June (MWh/Mo)	
48	July (MWh/Mo)	
49	August (MWh/Mo)	
50	September (MWh/Mo)	
51	October (MWh/Mo)	
52	November (MWh/Mo)	
53	December (MWh/Mo)	
54	Power Purchase pricing	On-Peak Price
55	Year 1	
56	Year 2	
57	Year 3	
58	Year 4	
59	Year 5	
60	Year 6	
61	Year 7	
62	Year 8	
63	Year 9	
64	Year 10	
65	Year 11	
66	Year 12	
67	Year 13	
68	Year 14	
69	Year 15	
70	Year 16	
71	Year 17	
72	Year 18	
73	Year 19	
74	Year 20	
75	Year 21	
76	Year 22	
77	Year 23	
78	Year 24	
79	Year 25	
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ID	Input Description	Bidder Input
0	Bid Number	121212
1	Contract Category	Build Own Transfer
2	Resource Type	Geothermal, Wind, Solar, Biomass, Hydro
3	Project Name	
4	Control Area	
5	Estimated Commercial Operation Start Date (mm/dd/yyyy)	1/1/2009
6	Estimated Commercial Operation End Date (mm/dd/yyyy)	7/1/2042
7	Net Capacity	
8	Project Location	
9	Point of Power Delivery	
10	Quality of Delivery (Check all that apply)	
11	As Generated, Unit contingent, Interconnected to PacifiCorp System	
12	As Generated, Unit contingent, Telemetered into PacifiCorp System	
13	WSPP Schedule C Firm Scheduled Delivery to PacifiCorp Transmission System	
14	Other	
15	Does delivery include operating reserves (Yes or No)?	
16	Will PacifiCorp incur third-party transmission expenses (Yes or No)? If Yes, check following that applies	
17	Third Party Scheduling/Dispatch (Schedule 1) Charges (\$/KW-mo)	
18	Third Party Voltage Support (Schedule 2) Charges (\$/KW-mo)	
19	Third Party Regulation and Frequency Response (Schedule 3) Service (\$/KW-mo):	
20	Third Party Operating Reserve (Schedule 5&6) Charges (\$/MWh)	
21	Third Party Firm PTP Transmission (Schedule 7) Charge to PacifiCorp (\$/KW-mo)	
22	Third Party Losses Transmission (%) Charge to PacifiCorp	
23	Transmission Interconnection Credit Assigned to PacifiCorp (\$)	
24	Life of the Asset	
Resource Inputs		
25	Expected On Peak Monthly Energy Production (HLH)	
26	January (MWh/mo)	
27	February (MWh/Mo)	
28	March (MWh/Mo)	
29	April (MWh/Mo)	
30	May (MWh/Mo)	
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43	May (MWh/Mo)	
44	June (MWh/Mo)	
45	July (MWh/Mo)	
46	August (MWh/Mo)	
47	September (MWh/Mo)	
48	October (MWh/Mo)	
49	November (MWh/Mo)	
50	December (MWh/Mo)	
Asset Transfer Price		
51	Asset Purchase Installment	Month
52	Payment 1	
53	Payment 2	
54	Payment 3	
55	Payment 4	
56	Payment 5	
57	Payment 6	
58	Payment 7	
59	Payment 8	
60	Payment 9	
61	Payment 10	
62	Payment 11	
63	Payment 12	
64	Payment 13	
65	Payment 14	
66	Payment 15	
67	Payment 16	
68	Payment 17	
69	Payment 18	
70	Payment 19	
71	Payment 20	
72	Payment 21	
73	Payment 22	
74	Payment 23	
75	Payment 24	
76	Payment 25	
77		