



October 15, 2021

Dear Chair Decker and Commissioners Tawney and Thompson,

As Oregonians, we share the urgent need to reduce greenhouse gas (GHG) emissions and deliver a clean energy future for our customers. With the passage of HB 2021 and our own climate goals set last year, we are fully committed to reducing GHG emissions from the power served to customers by at least 80% by 2030, 90% by 2035, and achieving zero GHG emissions by 2040.

We are making three filings today in service to achieving those goals, while also continuing to focus on delivering safe, reliable and affordable electric service that benefits all PGE customers:

1. initiating our request for proposals (RFP) from our 2019 IRP Action Plan to procure renewables and non-emitting capacity resources;
2. part one of our inaugural Distribution System Plan (DSP) laying out our vision for building the equitable two-way grid of the future in partnership with our customers; and
3. a waiver requesting an extension of our 2022 Integrated Resource Plan (IRP) to 2023 in order to more fully bring to life the vision of HB 2021.

We are taking the opportunity with these three filings to more clearly articulate what it will take to meet our 2030 emissions reduction target and our plans to get there. Specifically, we are advancing plans to add more renewables and non-emitting resources - partnering with our customers and communities to build a clean, equitable, upgraded grid.

We know we need more clean and renewable resources, faster. We agree with the comments your staff shared in response to our draft RFP this summer: we must move thoughtfully, and with intention, to procure the approximately 1,500 - 2,000 MW of clean and renewable resources we estimate we will need between now and 2030 to meet our target. We also estimate we will need approximately 800 MW of non-emitting capacity resources by 2030 to help ensure continued reliable service is available for all. To make necessary progress to meet the 2030 GHG reduction target and the clean energy expectations of our customers, we are seeking through our RFP approximately 400 - 500 MW of clean and renewable resources, approximately 375 MW of non-emitting capacity resources and an additional 100 MW of clean and renewable resources to meet customer demand in support of PGE's Green Tariff Phase 2 PSO option. We hear our customers clearly: they want cleaner, greener and affordable energy as quickly as possible. If beneficial to customers and in balance with affordability and reliability, we will work with the Commission to evaluate the opportunity to procure additional resources through this RFP, with a potential target of getting up to 1/3 of the clean resources needed to meet the 2030 emissions reduction target. We will work with the Independent Evaluator, Staff and stakeholders in examining paths forward to ensure our system remains reliable and affordable as we decarbonize.

We also know the future grid looks different and involves all of us. We thank you for setting expectations for a human-centered planning approach to the DSP because building a reliable, affordable and equitable clean energy future requires us to partner with customers on how we re-think the electric grid of the future. We are proud to announce our Community Engagement Plan that we co-developed with community-based organizations (CBOs) through our DSP process. Meeting our 2030 goal means partnering with our customers in new and exciting ways, as we estimate that as much as



25% of the flexibility we need to achieve the decarbonized future could come from customers and distributed energy resources (DERs). PGE plans to make strategic investments in its distribution system to enable this transition to a more decentralized, two-way power grid. Key improvements include interconnection process improvement and making the necessary investments in protective equipment and digital sensing devices that can monitor the state of the grid to maintain visibility, security and operational control in a high-DER future. For example, we evolved our net-metering map to our new Distributed Generation Evaluation Map, which integrates U.S. Census demographic data & PGE DER readiness data. This provides greater transparency and visibility to customers who wish to interconnect clean energy technologies to the grid.

Further thoughtful planning and robust engagement is needed to reach the 2030 target. We value the planning process and the ongoing collaboration with the Commission, OPUC staff, customers and key stakeholders as we bring HB 2021 to life. We requested the extension of our IRP to March 2023 in order to make HB 2021-related updates, including formation of the Community Benefits and Impacts Advisory Group, which will help inform development and equitable implementation of our inaugural Clean Energy Plan. We took a critical step toward social and environmental justice in our DSP filing, working with key community groups to ensure that we address and acknowledge disparities and impacts within all the communities we serve. We look forward to expanding this work with the Community Benefits and Impacts Advisory Committee in the months ahead.

We appreciate your and your staff's leadership as we make progress towards the affordable, reliable and equitable clean energy future that we all want.

Sincerely,

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October 15, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street Southeast, Suite 100
Post Office Box 1088
Salem, Oregon 97308-1088

Re: UM 2166 – In the Matter of Portland General Electric Company, Application for Approval of an Independent Evaluator for 2021 All-Source Request for Proposals

Dear Filing Center:

Enclosed for filing today in the above-referenced docket is Portland General Electric Company's ("PGE") 2021 All-Source RFP – Final Draft. This document is being filed by electronic mail with the Filing Center.

PGE worked with Staff and stakeholders to develop and adopt the remaining schedule in this proceeding. The adopted schedule was developed to allow for final shortlist acknowledgement by mid-June which would be key for projects to have an opportunity to take advantage of the Production Tax Credit (PTC). Pursuant to OAR 860-089-0250(6) PGE requests that Commission approve PGE's filing on an expedited basis that recognizes the progress made to date in UM 2166 following the approval of PGE's Scoring and Methodology application.

Thank you in advance for your assistance.

Sincerely,

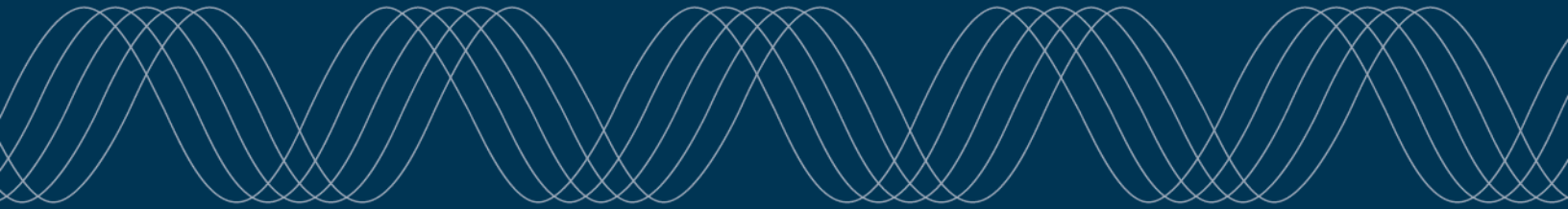
A handwritten signature in black ink that reads "Loretta Mabinton".

Loretta Mabinton
Managing Assistant General Counsel

LM:dm
[Enclosure]

Portland General Electric

2021 All-Source RFP – *Final Draft*



To Be Finalized December 2021



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Purpose and Scope

PGE has issued a 2021 All-Source RFP to make an important step in decarbonizing Oregon's grid. In accordance with the 2019 IRP Action plan and updated according to the Oregon Public Utility Commission's (OPUC) Order No. 21-320, this RFP will look to procure renewable energy and non-emitting dispatchable resources to meet identified 2025 capacity needs. The recent passage of HB 2021 by the Oregon State Legislature mandates and reinforces PGE's commitment to further decarbonize PGE's portfolio. PGE is committed to reduce our emissions by 80% by 2030 and procurements resulting from this 2021 All-Source RFP will provide necessary progress to meet this imperative.

Procurement Targets

PGE is conducting this RFP to contract for resources to meet its long-term energy and capacity needs identified in the 2019 IRP and recently updated. To meet PGE's long-term energy and capacity resource needs PGE will look to procure approximately 150 MWa of qualifying renewable energy resources and sufficient dispatchable capacity resources to meet the remainder of PGE's 375 MW capacity need. PGE will consider procuring more renewable resources to ensure necessary progress in achieving HB 2021 requirements. Specifically, PGE will explore procuring approximately 65 MWa of additional renewable resources beyond the 150 MWa target, positioning PGE to have procured approximately one third of its forecasted renewable needs to achieve the HB 2021 2030 goal. Following renewable resource procurement on behalf of PGE's cost of service customers, PGE will look to procure 100 MW of renewable resources in support of PGE's Green Energy Affinity Rider (GEAR) program's PGE supply option.

PGE's 2021 All-Source RFP will differentiate between renewable resources and non-emitting dispatchable resources. Renewable resources must be RPS eligible and qualify for the federal Production Tax Credit (PTC) or the federal Investment Tax Credit (ITC). Non-emitting dispatchable resources must be able to be called upon by PGE to dispatch at controlled times. Non-emitting dispatchable resources include energy storage facilities such as battery storage and pumped hydro. Hybrid resources that combine storage and a renewable resource will be considered renewable resources. All resources (dispatchable or renewable) must be online by the end of 2024, with the exception of long-lead-time pumped hydro resources.

The timing of the 2021 All-Source RFP promotes affordable outcomes through the capture of available federal energy tax credits while allowing PGE to manage and respond to a challenging planning environment. Notably, PGE's RFP schedule allows bidders to take advantage of the Internal Revenue Service's (IRS) construction timeline extension for the 80% Production Tax Credit (PTC). The availability of federal energy tax credits including the PTC affords PGE the opportunity to decarbonize affordably and reliably. In addition, the case for resource procurement has further solidified as uncertainties regarding the COVID-19 pandemic clear, the likelihood of extreme weather increases, and the retirement of regional capacity resources continues.

About PGE

Headquartered in Portland, Oregon, PGE serves just over 900 thousand retail customers in 51 incorporated cities (see territory in Figure 1).

PGE owns generation assets including five gas-fired thermal plants, the Biglow Canyon, Tucannon River and Wheatridge I wind farms, and joint ownership in two units at Colstrip, a Montana based coal plant. PGE also holds long-term contracts for energy from the Mid-Columbia hydroelectric projects on the Columbia River as well as several wind and solar facilities, and regularly enters into short and mid-term wholesale power supply contracts.

Figure 1: PGE's Service Territory



For more information, see PGE's website: www.portlandgeneral.com.

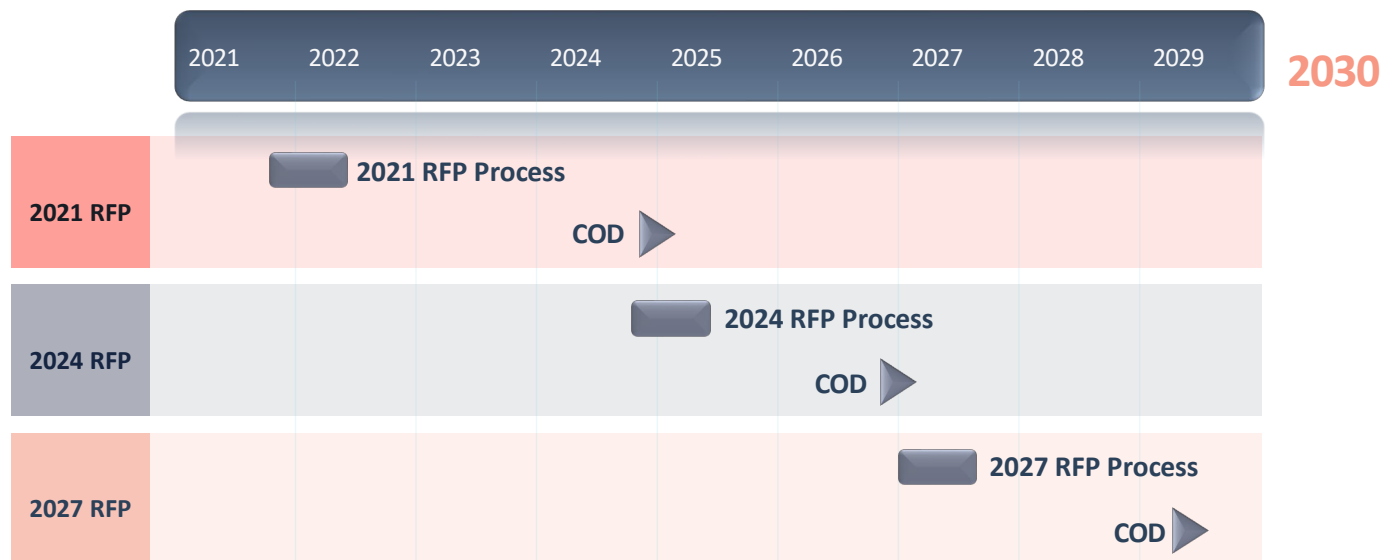
Resource Needs

PGE currently forecasts a shortfall of capacity and non-emitting energy necessary to meet forecasted capacity needs and emission reduction requirements. Current estimates forecast a 372 MW capacity need by 2025 to meet planned capacity adequacy standards. In addition, the passage of Oregon HB 2021 requires PGE to reduce greenhouse gas emissions by 80% relative to baseline levels by 2030. Initial estimates indicate a need for at least 650 MWa of renewable resources and an additional 800 MW of non-emitting capacity resources incremental to PGE's current portfolio. For more information on PGE's resource needs, refer to Appendix Q.

PGE has requested a waiver to file PGE's subsequent Integrated Resource Plan in 2023 inclusive of PGE's HB 2021 compliance plan. If acknowledged, any competitive solicitation arising from that future Action Plan filing is likely not to commence before 2024. As such, it remains important for PGE to make direct and meaningful progress toward HB 2021's 2030 compliance mandate through resource procurement performed in this 2021 All-Source RFP. For this reason, PGE will target procuring approximately 150 MWa of renewable resources in this solicitation and will consider procuring more renewable

resources if warranted to further progress toward PGE’s 2030 compliance requirement. Figure 1, displays a feasible procurement timeline that could allow PGE to procure sufficient resources to meet PGE’s approaching compliance and capacity needs.

Figure 1: Feasible Procurement Pathway Timeline



Independent Evaluator

The Oregon Public Utility Commission has selected Bates White as the independent, third-party evaluator (IE), to help ensure the RFP is conducted in accordance with the OPUC Competitive Bidding Rules and that all bids are evaluated consistently and impartially. The IE will report to the OPUC. During the remaining portions of the RFP process Bates White will:

- Review PGE’s 2021 All-Source RFP screening for bidder eligibility.
- Participate in any pre-bid conferences and workshops and present on the role of the IE in the competitive solicitation.
- Monitor all aspects of the solicitation process for the final short-list of bids, including the following:
 - 2021 All-Source RFP(s) screening
 - Communications between bidders and PGE before and after proposals are due
 - Any requested bidder updates
 - Any amendments to the 2021 All-Source RFP issued by PGE
 - Evaluation and ranking of responses
 - Selection of the initial short-list of bids
 - Evaluation of capacity factor verification report (to be provided by independent third-party expert) for variable energy resource bids
 - Selection of the final short-list of bids
- Audit the bid evaluation process and validate that evaluation criteria, methods, models, and other solicitation processes have been applied consistently and appropriately to all bids. Verify assumptions, inputs, and results are appropriate and reasonable.

- Provide supplemental reports, scores, and evaluations for the following:
 - An assessment of the reasonableness of the score(s) for PGE's benchmark resources.
 - An independent score of PGE benchmark resource(s) and all or a sample of bids to determine whether the selections for the initial and final short-lists are reasonable.
 - An evaluation of the unique risks and advantages associated with available ownership structures (including the benchmark resource(s)) as well as third party bids where applicable.
 - An assessment of the design and results of sensitivity analyses of bid rankings performed by PGE and final short list sensitivities.
 - An assessment of consistency with PGE's acknowledged IRP.
- Compare the IE's and PGE's scoring and evaluation of the competing bids and attempt to reconcile and resolve any scoring differences.
- In consultation with OPUC Staff, participate in additional meetings and/or workshops with parties, hosted by Staff, related to final short-list selection and request for acknowledgment of final short-list.
- Identify and communicate conflicts of interest between bidders, the IE, and the Company as soon as they are identified. The IE shall summarize all known conflicts in its closing report.
- Participate in OPUC proceedings on acknowledgment of the final short-list of bids. Participation would include written comments filed with the OPUC and oral comments at an OPUC public meeting or hearing. This could include a formal presentation.
- Issue a Closing Report assessing the company's selection of the final short-list of bids, including all aspects of the solicitation process and the IE's involvement, observations, conclusions, and recommendations.
- Maintain involvement through negotiation process if required by Commission at the request of Staff.

Staffing Principles

In accordance with OAR 860-089-0300 PGE has ensured that any individual participating in the development of the RFP or the evaluation of bids was not involved with the preparation of a benchmark or affiliate bid and was screened from that process. PGE has designated individuals with the appropriate levels of expertise and technical knowledge to RFP and bid development teams that do not interact on RFP related matters.

In addition, as a transmission provider, PGE complies with the Standards of Conduct adopted by the Federal Energy Regulatory Commission (FERC) which govern interactions between PGE's Transmission Function Employees (TFEs) and PGE's Marketing Function Employees (MFEs) and requires these employees to function independently of each other. Also, employees who are neither MFEs nor TFEs cannot share transmission information with MFEs under FERC's "no-conduit rule."

PGE's senior leadership team will continue to provide oversight and guidance but will not directly participate in either the development of the Benchmark Resource(s) or the RFP.

RFP Schedule

In partnership with OPUC Staff and Stakeholders PGE has developed the following schedule. The RFP schedule is designed to make timely progress toward PGE's capacity and HB 2021 compliance requirements. PGE will also monitor any change to federal tax policy and will consider their impacts on the timing of PGE's solicitation.

- April 28, 2021 - PGE initiates IE selection process
- June 15, 2021 - PGE requests approval of RFP Scoring and Methodology Proposal
- July 13, 2021 - Commission selects IE
- October 5, 2021 - Commission approves RFP Scoring and Methodology Proposal
- October 15, 2021 - PGE submits final draft Renewable RFP to OPUC for approval.
- December 6, 2021 - PGE issues Final RFP.
- December 10, 2021 - Post-issuance bidder conference.
- January 4, 2021 - Benchmark bid due.
- January 17, 2022 - RFP proposals from Bidders due.
- February 11, 2022 - Initial short list identified.*
- February 18, 2022 - Best and final price update.*
- April 5, 2022 - PGE submits request for acknowledgment of short list to OPUC.*
- June 2022 - Final contracts executed with winning Bidders as applicable.*

*These dates are subject to change depending on the quantity and complexity of bids received and should circumstances require.

Guidelines for Submitting Proposals

This section describes the guidelines that parties submitting bids (Bidders) under this RFP must follow when submitting proposals.

Registration on PGE's RFP Website

PGE's RFP website is the platform for communication and bid materials exchanges between Bidders and PGE. The Independent Evaluator has full access to and control of this site. All prospective Bidders, stakeholders, and other interested parties may register on PGE's RFP website at www.PortlandGeneralRFP2021.com. The website is secure and password protected so that confidential information can be posted on and exchanged via the site.

Other features of the site include:

- The ability to download all public RFP documents, including copies of this document and all related contracts, term sheets and appendices.
- An announcement board for posting of information for the public and Bidders.
- The capability for Bidders to anonymously post questions and comments that can be seen by all users.
- Confidential bid folders for each bid, for the retention and exchange of bid-specific data.

- Confidential evaluation folders for bid evaluation and retention of data for use during regulatory proceedings.

Procedural and Commercial Questions

All correspondence regarding procedural questions, bid submissions and questions related to product characteristics, terms and conditions should be submitted to PGE's RFP website at www.PortlandGeneralRFP2021.com. PGE, in consultation with the IE, as appropriate, will post answers to questions from Bidders, stakeholders, and other interested parties on the site.

Submitting Bids

Bidders may submit one or more bids responding to the requested energy product(s). All bids must be submitted online no later than 12:00 p.m. Pacific Time on January 17, 2022, using the bid form that PGE will provide on the RFP website www.PortlandGeneralRFP2021.com. The bid form will require Bidders to submit information in support of their bids, including but not limited to project description, transaction type and price, project development criteria and developer experience, interconnection and scheduling services, tax benefits, permitting, project resource characteristics, operating costs, credit and financial, etc. Bidders may edit their online bid form until the bid submission deadline at 12:00 p.m. Pacific Time on January 17, 2022 at which time bid forms will be closed to edits, and will be considered to be final submissions.

PGE's Benchmark Bid must be submitted no later than 12:00 p.m. Pacific Time on January 4, 2022, and will be evaluated, scored, and delivered to the IE prior to the receipt of third party bids.

All Bidders with bids on the initial short list will be invited to provide best and final price updates no later than February 18, 2022. Best and final price updates will only be accepted if the offer's total price is reduced relative to the initial offer.

Bid Fee

To help defray the costs of the IE and encourage high quality proposals and qualified Bidders, each Bidder in this RFP must pay a non-refundable 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 technology, volume, contract term, in-service date, and/or pricing structure for the same resource at the same location.

A proposal for a different bid at a different site will be considered a separate proposal and will be subject to a separate bid fee.

Fees are to be remitted via electronic funds transfer to PGE. For purposes of assessing bid fees, the IE, in consultation with PGE, shall confirm whether a Bidder's submission constitutes one or more proposals based on the criteria described above.

Submitting a Confidentiality and Non-Disclosure Agreement

The Confidentiality and Non-Disclosure Agreement is available for completion at www.PortlandGeneralRFP2021.com (and is included as Appendix L to this RFP). Bidders are required to complete and sign the confidentiality agreement prior to the bid submission deadline. The confidentiality agreement is to be submitted to PGE through the RFP website. Due to the need to

ensure uniform treatment of all confidential information, PGE will not accept changes to the Confidentiality and Non-Disclosure Agreement.

PGE will treat any proprietary and confidential information contained in a bid, in a manner consistent with the terms of the Confidentiality and Nondisclosure Agreement and any Protective Orders issued by the OPUC, provided that such information is clearly identified by the Bidder on each confidential page as "Confidential" or "Confidential Information." Each Bidder must execute and deliver a copy of the Confidentiality and Nondisclosure Agreement, as soon as possible, but no later than the time of the submission of its bid or bids. Any Confidentiality and Non-Disclosure Agreement received by PGE prior to December 13th, 2021 will be countersigned and returned to the bidder before January 4th, 2022. It is the Bidder's responsibility to indicate clearly in its proposal what materials and what pages it deems to be "confidential" and subject to the Confidentiality and Nondisclosure Agreement.

Validity of Price and Offer

By submitting a bid, the Bidder acknowledges and agrees that the terms of its proposal shall remain irrevocable for the earlier of 250 days after the bid responses are due or when PGE issues a written release of the bid at or before the time the initial or final, as applicable, short list is issued. Pricing may be conditional on a commercial contingency, but all commercial contingencies must be satisfied or waived to remain a candidate bid on the final short-list. Pricing may not be contingent on another offtake agreement for a portion of a facility to guarantee pricing. For Bidders that are participating in the 2022 BPA Cluster Study Process, PGE requests that such Bidders incorporate estimated costs associated with those upgrades in their bids. PGE will not accept revisions to the price based on study results.

Bid Evaluation Criteria

Bids will be assessed by PGE and the IE on the project's economic competitiveness, project specific commercial and performance risks, and portfolio economic risk. All bids will be evaluated within an individual offer analysis to assign a bid price and non-price score. PGE's price score comprises 70 percent of our evaluation criteria, reflecting PGE's desire and commitment to obtain the best possible value for our customers. Non-price factors comprise the other 30 percent and reflect commercial and performance risks in addition to operational attributes of the bid proposals. Additional description of the bid evaluation criteria is provided in the Bid Evaluation Process section below and in Appendix N.

Reservation of Rights

This RFP is not, and shall not be construed to be, an offer by PGE. PGE is not bound to enter into negotiations or execute an agreement with, or purchase any products from, any Bidder as a result of this RFP. No rights shall be vested in any Bidder, individual or entity by virtue of its preparation to participate in, or its participation in, this RFP. No binding commitment shall arise on the part of PGE to any Bidder under this RFP until and unless the parties execute definitive agreements that become effective in accordance with their terms.

Each Bidder shall be solely responsible for all costs it incurs in preparing to participate in, participating in, or responding to this RFP.

The bids received will be evaluated and selected based on the information supplied by each Bidder pursuant to this RFP. PGE reserves the right to modify or withdraw from this RFP process, or modify the schedule and any provisions contained herein, for any reason. PGE also reserves the right, consistent

with the Competitive Bidding Rules, to make purchase commitments at any time to suppliers not participating in this RFP process.

PGE reserves to itself:

- The selection of final short-listed bids and the awarding of contracts, if any, in the exercise of its sole discretion.
- The right to include projects on the final shortlist with energy and nameplate capacity amounts in excess of its target to ensure sufficient back-up proposals are available should some bidder(s) materially depart from their bid(s) during the negotiation phase.
- The right to reject any and all bids, and any portion of a specific bid for any reason.
- The right to waive any immaterial non-conformity in any bid received.
- The right to prioritize negotiating with bids on the final shortlist most likely to overcome, in PGE's discretion, remaining development and delivery risk.
- The right to award a contract to a Bidder based on a combination of price and non-price factors, a quantitative and qualitative assessment of portfolio fit, and post-bid negotiations.

Document Retention

All bids and exhibits supplied to PGE during the RFP process will become the property of PGE. PGE will retain all bid materials supplied to it and pertinent information generated internally by it in connection with the RFP process in accordance with PGE's document retention policies.

Requested Products

Through this RFP, PGE is looking to meet its identified 2025 capacity need of approximately 375 MWs with new renewable and non-emitting capacity resources. All resources participating in this solicitation must be online by 12/31/2024 with the exception of pumped hydro resources that must be online by 12/31/2027.¹ Bidders may propose additional phases for development, but PGE will only evaluate those phases proposed to be online by 12/31/2024.

Renewable resources must qualify for Oregon's RPS, and they must include all environmental attributes, including Renewable Energy Certificates (RECs). Bidders will be responsible for ensuring RECs from projects are bundled as defined in ORS 469A.005, and that they are established through Western Renewable Energy Generation Information System (WREGIS) consistent with OAR 330-160-0020. Consistent with the 2019 IRP Action Plan PGE anticipates procuring approximately 150 MWa of renewable resources for all cost-of-service customers, and per Order No. 21-091² PGE may procure up to 100 MWs of renewable resources for the PGE supplied option of the GEAR. In compliance with Order

¹ PGE will also consider other long-lead time technologies that satisfy the remainder of PGE's eligibility requirements, have been commercially proven, and can be shown to require additional construction time beyond what is possible by 2024.

² Order No. 21-091 Available at: <https://apps.puc.state.or.us/orders/2021ords/21-091.pdf>



No. 21-320³, PGE will also specifically evaluate procuring an additional 65 MWa of renewable resources beyond those above listed volumes.⁴

Non-emitting dispatchable resources must have the capability to dispatch at specified times when called upon by PGE. Examples of these resources include pumped hydro, lithium ion battery storage, and geothermal resources. PGE will utilize portfolio analysis to identify the optimal combination of non-emitting dispatchable resources and renewable resources to procure.

For renewable resources and non-emitting dispatchable resources PGE will consider both physical purchases through a Power Purchase Agreement (PPA) as well as ownership positions through structures including the acquisition of development rights, joint ownership, and build-own-transfer agreements. PGE will also consider a combination of these agreement types.

PGE reserves the right to vary from the procurement sized targets based on its evaluation of the price and risk of the bids. This could include not procuring any resources as part of this RFP.

Table 1

Product	Minimum Size	Target Size	Commercial Online Date	Minimum Agreement Term	Maximum Agreement Term
Renewable Resource	3 MW for solar resources and 10 MW for all other resources	150 MWa ⁵ for all Cost of Service Customers and 100MW for the Green Future Impact program	12/31/2024	PPA: 15 years	PPA: 30 years
Non-Emitting Dispatchable Resource	10 MW for all storage resources	PGE's remaining capacity need after renewables acquisitions	12/31/2024, but pumped storage can come online by 12/31/2027	PPA: 15 years	PPA: 30 years

³ Order No. 21-320 Available at: <https://apps.puc.state.or.us/orders/2021ords/21-320.pdf>

⁴ Order No. 21-320 Appendix A Page 13.

PGE forecasts 650 MWa of additional renewable resources by 2030. 65 MWa approximately is one third of 650MWa less 150 MWa.

⁵ PGE will separately consider a target procurement volume of 215 MWa and the 100 MW GFI volume.



Minimum Requirements

As part of the RFP PGE has the following requirements for participating resources. For additional discussion of these requirements please see Appendix N, PGE's approved scoring and modeling methodology.

Entity

As applicable, entities must be authorized under the law to sell power, and able to schedule power and operate under industry standards established by the Federal Energy Regulatory Commission (FERC), Western Electricity Coordinating Council (WECC), and the North American Energy Reliability Council (NERC), or other applicable regulatory body or government agency.

Financing

As applicable, Bidders must provide a reasonable plan to obtain project financing. Those Bidders who are unable to internally or balance sheet finance the proposed project (supported by appropriate financial statements) must provide evidence of a good faith commitment from a financial institution or lender prior to placement on PGE's final short list.

Technology

PGE will accept bids for resource core technologies that are commercially proven and deployed at large scales within the North American utility industry. Renewable resources bid into the solicitation must be RPS eligible. Dispatchable resources must be non-emitting technologies that can dispatch when called upon.

Bidders are responsible for ensuring and demonstrating that solar panels associated with any bid are not sourced from listed entities on the Department of Commerce - Bureau of Industry and Security's Entity List to ensure that projects do not include polysilicon produced with forced labor.

For energy storage facilities, Bidders must provide a list of major US installations of this storage technology. Storage medium, chemistry and power conversion systems of these installations must be of like kind to what is being proposed. Such installations must be in proved commercial operation beyond R&D demonstrations.

Online Date

All components of resources must be online no later than the end of 2024. For example, in the instance of a solar & storage resource, both the solar and storage components need to be online by 12/31/2024. PGE has made an exception for pumped hydro resources that have long lead times due to the unique

value that they offer.⁶ PGE is prepared to accept bids for those resources participating as long as all components of those resources come online by the end of 2027.

Qualifying Product

PGE shall be the sole offtake for all output from the facility or portion of the facility bid into this RFP. Projects must include all power attributes including associated renewable energy credits, environmental attributes, energy benefits, and capacity benefits.

Bidders with renewable resource bids will be responsible for ensuring RECs from renewable resources are bundled as defined in ORS 469A.005, and that they are established through Western Renewable Energy Generation Information System consistent with OAR 330-160-0020.

Nameplate Size

Resources that are bid into this RFP must be large enough to qualify for contracting under PGE's Schedule 202 for qualifying facilities.⁷ Solar resources must be larger than 3 MW and all other facilities must be larger than 10 MW. If a Bidder has an existing Schedule 202 contract with PGE, PGE does not make any commitments to allow the Bidder to exit the existing agreement.

Term Length

For bids that include a power purchase agreement structure, PGE requests that bids have term lengths that are no shorter than 15 years and no longer than 30 years.

Tax Credits

Renewable resources must be eligible for the federal PTC or ITC and all renewable resource bids must demonstrate achievable qualification qualities and plan to establish how the project will obtain the tax credits.

Credit

Bidders must meet PGE's credit eligibility thresholds. For investment grade Bidders, their long-term, senior unsecured debt must be rated BBB- or higher by Standard & Poor's and Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody's Investor Services, Inc. For non-investment grade Bidders, they must demonstrate, prior to final short list, that a qualified institution will secure the Bidder's performance obligations through a letter of credit and guaranty, in a form acceptable to PGE.

Additional detail on PGE's credit requirements is included in Appendix K.

⁶ PGE will also consider other long-lead time technologies that satisfy the remainder of PGE's eligibility requirements, have been commercially proven, and can be shown to require additional construction time beyond what is possible by 2024.

⁷ This requirement is consistent with OAR 860-089-0250(4).



Site Control

Bidders must support the bid by demonstrating dependable site control, for both the location of the resource and any gen-tie path that is required. At the time of bid submission, Bidders must possess at least one of the following:

- title to the site
- an executed lease agreement
- an executed easement
- an executed option agreement applicable to a minimum of 80% of the project site

The site control documents should reflect the resource type bid into this RFP.

Prior to placement on PGE's final short list, bidders will be required to demonstrate site control for 100% of the project site.

Permitting

Please see Exhibit A in the Scoring and Modeling Methodology document included as Appendix N to this larger RFP document. The chart in Appendix N lists environmental permits and surveys commonly required for construction and operation of an energy project. For each permit and survey, the chart illustrates when the permit must be obtained, or survey must be completed - by bid, final shortlist, or construction - for different technologies. "By bid" requirements necessitate that the project receives the permit from the authorizing agency or the survey has been completed by the time of bid submission. "By final shortlist" requirements necessitate that the project receives the permit from the authorizing agency by the time PGE announces the final shortlist. "By construction" requirements necessitate that the project receives the permit from the authorizing agency before construction begins.

In the event a specific permit is not required at all or during the RFP process for the resources that are bid into this RFP, the Bidder may provide a narrative explanation on the bid form regarding why it is not applicable.

Delivery points

PGE will accept delivery within PGE's balancing authority area and at BPAT.PGE. PGE will not accept delivery at Pelton Round Butte or at PacifiCorp West.

The BPAT.PGE Point of Delivery (POD) is associated with the following substations or "sinks":

- PGE Contiguous
- Pearl 230 kV (Sherwood)
- McLoughlin 230 kV
- Keeler 230 kV (St. Marys)
- Rivergate 230 kV

- Bethel 230 kV ⁸
- Troutdale 230 kV (Blue Lake)

Interconnection

For a bid to qualify for the initial short list it must have the following:

- An active generation interconnection request in the transmission provider's interconnection queue
- A completed system impact study
- If interconnection involves a 3rd party other than the transmission provider, the bid must also include an interconnection request to the 3rd party and all associated studies.

To qualify for the final short list, the Bidder must have a completed facilities study.

Bidders proposing to interconnect a resource within PGE's Balancing Authority Area will need to include all incremental costs to deliver, or sink, energy from the resource to PGE's load. Bidders can determine these costs by requesting Network Resource Interconnection Service and Network Integration Transmission Service under PGE's Open Access Transmission Tariff (OATT) from PGE's Transmission and Reliability Services Department (T&RS) or Bidders can request Energy Resource Interconnection Service and Point-to-Point Transmission Service under PGE's OATT from T&RS. Either process will enable T&RS to study whether any system upgrades are needed to accommodate transmission service for the bid. Questions concerning the various types of Interconnection and Transmission Service available under PGE's OATT should be directed to T&RS.

Transmission - Renewable Resources

To qualify for this RFP as a renewable resource, a Bidder must have an achievable plan for long-term transmission service for 80% of the interconnection limit of the facility. Short term firm services may be used for the remaining 20% of the facility's interconnection limit. Eligible long-term transmission services include long-term firm, long-term conditional firm bridge, or long-term conditional firm reassessment. For long-term transmission services, Bidders relying on BPA for transmission service are required to have either previously been granted eligible transmission service or have an eligible and active OASIS status Transmission Service Request (TSR) participating in the BPA TSR Study and Expansion Process (TSEP)⁹. The eligible transmission service must originate at the resource POR/POI and provide delivery to one of the acceptable Points of Delivery, listed above, prior to the project's Commercial Operation Date (COD). Long-term rights must match the duration of the contract term or include rollover rights.

⁸ At this time the Bethel 230 kV POD has been determined to have insufficient available capacity and is unavailable for new transmission service requests. However, Bidders that have already been granted long-term service at this POD may use this POD.

⁹ See BPA TSR Study and Expansion Process Business Practice, dated 4/2/2021, available at: <https://www.bpa.gov/transmission/Doing%20Business/bp/tbp/TSR-Study-Expansion-Process-BP.pdf>



PGE's evaluation process will determine if there are additional costs or risks to deliver the resource to PGE load.

If a Bidder has a TSR that utilizes Newpoint as the Point of Receipt (POR), the TSR must reference the specific Generation Interconnection Request number for the resource in the comments field.

Transmission -Dispatchable Resources

To qualify for this RFP as a dispatchable resource, a bidder must have Long-Term Firm transmission service for 100 percent of the facility's interconnection limit. Bidders relying on BPA for transmission service are required to have either previously been granted eligible transmission service or have an eligible and active OASIS status Transmission Service Request (TSR) participating in the BPA TSR Study and Expansion Process¹⁰. The transmission service must originate at the resource point of receipt (POR)/point of interconnection (POI) and provide delivery to one of the acceptable Points of Delivery, defined below, prior to project COD. Long-term rights must match the duration of the contract term or include rollover rights.

PGE's evaluation process will determine if there are additional costs or risks to deliver the resource to PGE load.

If a Bidder has a TSR that utilizes Newpoint as the POR, the TSR must reference the specific Generation Interconnection Request number for the resource in the comments field.

Integration

For projects located outside of PGE's Balancing Authority Area, Bidder will procure, and PGE will reimburse Bidder for all integration services from an entity, mutually agreed upon by the parties, that may be required to ensure delivery of energy as scheduled to the Delivery Point. Integration Services include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Integration Services do not include ancillary service costs associated with the transmission provider's provision of firm transmission service.

Labor

Union labor must be utilized for major construction activities related to the resource and must include a Project Labor Agreement (PLA) requirement in any related executed Engineering, Procurement and Construction Agreements.

PGE requires that the labor group has policies in place that are designed to limit or prevent workplace harassment and discrimination.

¹⁰ See BPA TSR Study and Expansion Process Business Practice, dated 4/2/2021, available at: <https://www.bpa.gov/transmission/Doing%20Business/bp/tbp/TSR-Study-Expansion-Process-BP.pdf>



PGE will be asking that the labor group has policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least 15 percent of the total work hours performed by individuals from those communities.

PGE requires that Bidders recognize this requirement upon bidding and affirm their commitment to meet the requirement. However, PGE does not expect a Bidder to have secured a PLA prior to contract execution with PGE as it is customary to negotiate such labor agreements closer to construction activities.

Equipment manufacturer

For agreement structures that contemplate utility ownership, all major equipment manufacturers must be PGE preferred vendors. A list of PGE's preferred vendors is supplied in Appendix M, PGE's technical specifications.

Technical specifications

For agreement structures that contemplate utility ownership, concurrent with supplying the best and final offer the Bidder must supply redlines to PGE's technical specifications.

Service agreement

For resources that contemplate a utility ownership structure, bids must include quoted vendor costs for long-term service agreements (LTSA) for a minimum of five years. For battery-energy storage resources, LTSAs must include commitments to maintain the capacity performance through augmentation or alternative mechanisms.

Usable Energy Storage Bidding

Bidders are required to bid energy storage resources on a contract capacity basis and must account separately for minimum and maximum system state of charge. PGE will only accept bids that express cost and performance on a usable state of charge basis that allows PGE to dispatch the project from a 0%-100% state of charge without commercial or performance consequence.

Contract Terms and Conditions

Utility Owned Commercial Structures

PGE invites Bidders to submit proposals for various types of asset sale and ownership transfer or service agreements. Form Asset Purchase Agreement (APA) and Engineering Procure Construction (EPC) term sheets are included in Appendix D. Form APA and EPC Agreements are included in Appendix H and Appendix I. AT THE TIME OF BID SUBMISSION, BIDDERS ARE REQUIRED TO IDENTIFY, THROUGH REDLINES, EXCEPTIONS TO ANY TERM OR CONDITION IN THE TERM SHEET. For terms the Bidder does not intend to accept, the Bidder is required to propose alternative terms and conditions in redline format to the form term sheets. Should proposed revisions to highlighted terms and conditions increase



PGE's exposure to risks related to project schedule, performance or cost then PGE will adjust the bid's non-price score consistent with Appendix N. PGE will evaluate all proposed revisions, but is under no obligation to accept any revisions or adopt any changes.

Bidders are not required to mark form agreements, which are included for reference to further characterize the terms and conditions that PGE expects to initiate its negotiations preceding contract execution.

Ownership proposals may include (but are not limited to) sales of existing assets, acquisition of project development rights, APA & EPC agreements, BTA agreements or joint ownership. PGE asks that for Build Transfer Agreements (BTA) proposals Bidder should mark both APA and EPC term sheets in addition to adding additional principal terms to describe the requested structure. PGE will also consider hybrid structures that include both an ownership component and a power purchase agreement (e.g., the sale of a phase or portion of a project with an off-take agreement for the balance or a PPA with purchase option or obligation). In addition, PGE will consider affiliate ownership opportunities delivered to PGE customers through a power purchase agreement.

Lastly, bids for new, utility ownership resources are expected to be procured and constructed in accordance with PGE's established technical requirements. Appendix M details PGE's technical requirements for the purchase of new wind, solar, storage, and hybrid facilities in addition to general specifications applicable to all new generation technologies. Bidders submitting ownership bids must review the technical specifications to ensure that the bid and associated price reflects PGE's identified requirements. Should a Bidder wish to offer a product different than that suggested by the technical specifications, the Bidder is required to identify through a template exception log which specifications the Bidder takes exception to and identify a cost estimate necessary to align the Bid with the technical specifications. PGE will consider whether the proposed exception is acceptable before applying any owner's cost adjustment necessary to align the Bid with the technical specifications.

Third Party Owned Commercial Structures

PGE invites Bidders to submit proposals for various types of power purchase agreement. The form Renewable PPA Term Sheet is included in Appendix A. The form Storage Capacity Agreement Term Sheet is included in Appendix B. The form Renewable and Storage PPA Term Sheet is included in Appendix C. Form Renewable PPA and Storage Capacity Agreements are included in Appendix E and Appendix F. Bidders must review the Form PPA term sheet for their resource type included in this RFP. AT THE TIME OF BID SUBMISSION, BIDDERS ARE REQUIRED TO IDENTIFY, THROUGH REDLINES, EXCEPTIONS TO ANY TERM OR CONDITION IN THE TERM SHEET. For terms the Bidder does not intend to accept, the Bidder is required to propose alternative terms and conditions in redline format to the form term sheets. Should proposed revisions to highlighted terms and conditions increase PGE's exposure to risks related to project schedule, performance or cost then PGE will adjust the bid's non-price score consistent with Appendix N. PGE will evaluate all proposed revisions, but is under no obligation to accept any revisions or adopt any changes.

Bidders are not required to mark form agreements, which are included for reference to further characterize the terms and conditions that PGE expects to initiate its negotiations preceding contract execution.



PGE recognizes that alternative firm energy sale structures may be available and Bidders proposing such alternatives must offer revisions to the term sheet or propose a new term sheet.

Bid Evaluation Process

Overall Process

Bid Submission (described Above)

As described above in the guidelines for submitting proposals, bids will be submitted via PGE's RFP website at www.PortlandGeneralRFP2021.com. Bids for benchmark resources are due on January 4th, 2022 and bids for all other resources are due on January 17th, 2022. To have the resource evaluated Bidders must provide PGE with all data requested in the bid evaluation form. PGE will score the benchmark resources first before scoring any other resources. In the instance that PGE has a question regarding a submission, PGE will issue a question to the Bidder and require a response from the Bidder within three business days. In the instance that PGE does not receive a response, the bid may not pass the bid screening or might be subject to a scoring adjustment due to lack of pertinent information.

Initial Bid Screening

PGE will screen each bid based on the minimum qualification criteria described above. Bids that do not sufficiently meet PGE's minimum qualification criteria will not receive a price and non-price score and will not be considered for the initial shortlist. Bidders should note that there are different minimum criteria for the initial shortlist and the final shortlist as it pertains to credit, site control, permitting, interconnection and transmission.

Initial Shortlist Determination

After PGE determines that a bid meets the minimum qualification criteria to be considered for the initial shortlist the bid will be evaluated to determine a price and non-price score in accordance with the scoring and modeling methodology included in Appendix N. At this stage each bid will be evaluated individually and will receive a score that is specific to that bid. Price and non-price scores for renewable resources will be determined separately from the scores for non-emitting dispatchable capacity resources.

Initial Shortlist Notification & Additional Actions

Once PGE has determined which resources are on the initial shortlist it will notify bidders and ask for additional documentation or updates regarding letters of credit for non-investment grade bidders, site control, permitting, the completed facilities study for interconnection and any updates on the transmission plan of service and/or the BPA TSR Study and Expansion Process. Bidders must provide these updates to be considered for the final shortlist. For a Bidder that is including utility owned resources PGE will also require that the Bidder supplies reasonable redlines to the technical specifications to be on the final shortlist. PGE plans to reach out to Bidders on the Initial Shortlist on February 11, 2022 and requires that Bidders reply by February 18, 2022. Please note that PGE has

already provided its technical specifications within this RFP and recommends that Bidders including a utility owned structure for all of or a portion of their bid start to look at the technical specifications so that they can provide necessary redlines when requested.

Final Shortlist Bid Screening

Once PGE receives the requested information from the Bidder with project(s) on the initial shortlist PGE will examine the information to determine if the resource still meets the minimum qualification criteria for the RFP. If the criteria are still met, PGE will include the bid in its portfolio analysis.

Final Shortlist Determination

PGE will use portfolio analysis to develop updated price scores that look at combinations of bids and will update the non-price scores accordingly to reflect the combination of those resources. The final shortlist will be selected based on the portfolios of resources that perform the best. PGE will include projects on the final shortlist that are in excess of its target procurement amounts to ensure sufficient back-up proposals are available should some bidder(s) materially depart from their bid(s) during the negotiation phase.

Notification and Negotiation

Once the final shortlist has been determined PGE will notify Bidders if their bids are selected. PGE will then proceed with negotiations with top performing bids. PGE reserves its discretion to end negotiations and move on to remaining Bidders if entities are unable to guarantee the bid price, have unresolved commercial contingencies, or are otherwise unable to reach agreement with PGE.

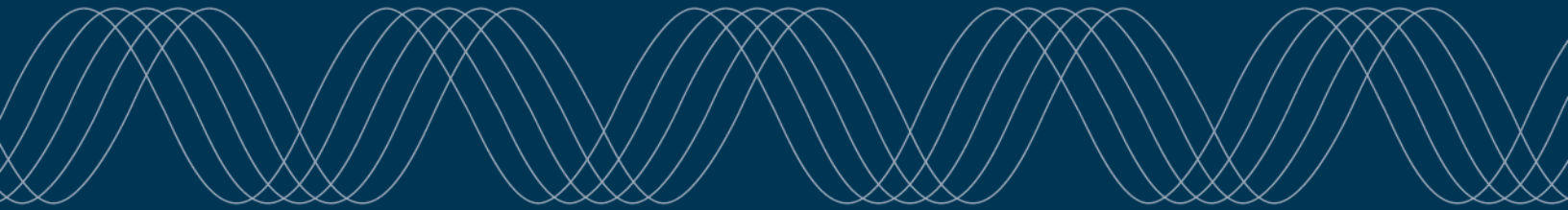
Bidder Feedback

Upon request, PGE will offer feedback to unsuccessful Bidders on the competitiveness of their proposals. PGE will make available this feedback after executing all agreements with successful Bidders, or after announcing the termination of the solicitation. PGE will not disclose any third-party confidential information through this voluntary feedback process. PGE will identify the relative performance of their bid by identifying a bid's quartile performance in price, non-price and total score. Furthermore, as appropriate, PGE will identify all minimum thresholds the bid did not achieve.

Appendix A – Renewable Resource PPA Form Term Sheet
Appendix B – Storage Capacity Agreement Form Term Sheet
Appendix C – Renewable and Storage PPA Form Term Sheet
Appendix D – APA & EPC Form Term Sheets
Appendix E – Renewable Resource Form PPA
Appendix F – Form Storage Capacity Agreement
Appendix G – Renewable and Storage PPA Form
Appendix H – Form APA
Appendix I – Form EPC
Appendix J – Form Parent Guaranty
Appendix K – Credit Guidance
Appendix L – Non-Disclosure Agreement
Appendix M – Technical Specifications
Appendix N – Approved Scoring and Modeling Methodology
Appendix O – Bid Form
Appendix P – Benchmark Details
Appendix Q – Resource Need Details

Appendix A

Renewable PPA Form Term Sheet



2021 All-Source RFP



Portland General Electric Company

Non-Binding Indicative Term Sheet for Renewable Energy PPA

Subject to Mutual NDA

Note: The following represents a summary of certain material terms and conditions for Bidders to PGE’s 2021 All-Source RFP (RFP) seeking to execute a Renewable Energy Power Purchase Agreement (PPA). The following is not an exhaustive list of all material terms, nor does it purport to comprehensively express PGE’s expectations for any of the terms herein mentioned. Full-form, definitive terms shall be set forth in PGE’s form PPA issued in connection with the RFP. Capitalized terms not otherwise defined in this Term Sheet will be defined in the PPA.

Buyer:	Portland General Electric Company (“PGE”)
Seller:	[Name of Seller]
Description of Facility:	[type of technology] generating facility (the “Facility”), located in [Name of County] County, in the State of [Name of State].
	The Storage Facility will have an initial Storage Contract Capacity of [XX] MW _{AC} for [XX] hour discharge. The Storage Contract Capacity shall be adjusted during the Delivery Term in accordance with periodic storage capacity tests.
Facility Nameplate Capacity:	[For solar resources: ____MW_{DC}] [For non-solar resources: ____MW_{AC}]
Net Available Capacity:	“ <u>Net Available Capacity</u> ” means the full (maximum) net Energy the Facility is capable of delivering to the interconnecting Balancing Authority Area continuously for at least sixty (60) minutes; which is equivalent to the Nameplate Capacity of the Facility’s generating unit less station service (parasitic power and electrical losses) and inverter limitations, expressed in MW _{AC} .
Product:	The Product includes the following: <ol style="list-style-type: none"> 1. “Energy”: any Energy generated by the Facility, scheduled in hourly increments, and delivered by Seller to Buyer on eligible long-term firm, conditional firm, or short-term firm transmission from the Facility to the Delivery Point, during the Delivery Term, including all necessary Ancillary Services. Energy shall be delivered to Buyer pursuant to the Scheduling Procedures set forth below. 2. “Environmental Attributes”: any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical,



	<p>or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Facility, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Delivery Term. Environmental Attributes include but are not limited to: (a) 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; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions, such as the carbon content of the energy generated by the Facility and REC Reporting Rights. Environmental Attributes do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Facility or the electric power output of the Facility.</p> <p>3. "Capacity Attributes": any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Capacity Attributes do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Facility or the electric power output of the Facility.</p>
<p><i>Delivered Energy Quantity:</i></p>	<p>"<u>Delivered Energy Quantity</u>" means the sum of the Energy delivered to Buyer by or on behalf of Seller to the Delivery Point each hour during the Delivery Term as represented on the final e-Tag.</p>
<p><i>No Sales to third parties:</i></p>	<p>Seller shall sell one hundred percent (100%) of the Facility Output to Buyer and may not sell any Energy, Capacity Attributes, Environmental Attributes or any other Facility capability to Buyer and may not sell the same to any other party or purchaser, unless such sale is expressly allowed by the PPA.</p>



	<p>“Facility Output” means all electric energy, produced by the Facility, less station service (parasitic power and electrical losses), if any, all as measured at the Facility meter. Facility Output does not include energy used to charge the Storage Facility or lost due to round trip efficiency at the Storage Facility.</p>
<i>Delivery Term:</i>	<p>“Delivery Term” means no less than fifteen (15) Contract Years after the Commercial Operation Date. “Contract Years” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at the end of the day prior to the anniversary of the Commercial Operation Date.</p>
<i>Interconnection Point:</i>	<p>The Facility shall interconnect to [XX substation] (the “Interconnection Point”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.</p>
<i>Delivery Point:</i>	<p>PGE scheduling point [BPAT.PGE or PGE BA] PGE will not accept delivery at PacifiCorp West or at Pelton Round Butte.</p>
<i>Commercial Operation Date:</i>	<p>“Commercial Operation Date” means the date on which the total Nameplate Capacity of the Facility is fully operational and reliable, and the Facility is fully interconnected, fully integrated, and synchronized with the transmission system.</p>
<i>Scheduled Commercial Operation Date:</i>	<p>“Scheduled Commercial Operation Date” means [Date]. In no event shall the Scheduled Commercial Operation Date be later than December 31, 2024. If the Commercial Operation Date is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including the first to occur of (i) the date on which the Facility achieves Commercial Operation, and (ii) the Guaranteed Commercial Operation Date.</p> <p>“Delay Damages” are equal to \$100 per MW of Nameplate Capacity per day beginning on the first day through the 30th day after the Scheduled Commercial Operation Date, \$200 per MW of Nameplate Capacity of the Facility per day beginning on the 31st day through the 60th day after Scheduled Commercial Operation Date, and \$300 per MW of Nameplate Capacity of the Facility per day beginning on the 61st day after Scheduled Commercial Operation Date until the Commercial Operation Date is actually achieved or the Guaranteed Commercial Operation Date, whichever occurs first.</p>
<i>Guaranteed Commercial Operation Date:</i>	<p>“Guaranteed Commercial Operation Date” means the date that is one hundred twenty (120) days after the Scheduled Commercial Operation Date.</p>



	Buyer shall have the right to terminate the PPA if the Commercial Operation Date is not achieved by the Guaranteed Commercial Operation Date and Seller shall forfeit the development security.
<i>Pre- COD Progress Reporting:</i>	Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Facility development milestones set forth in the PPA; (b) identifies any missed Facility development milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Facility development milestones and all subsequent Facility development milestones by the Guaranteed Commercial Operation Date.
<i>Contract Price:</i>	_____ (\$/MWh) Control Area Service costs may not be included in the Contract Price.
<i>Market Index Price:</i>	The EIM real-time pre-dispatch nodal price for the Delivery Point. In the event Buyer is participating in an organized market other than the EIM, then the Market Index Price will mean the Locational Marginal Price associated with the Pricing Node or Aggregate Pricing Node for the Delivery Point within such organized market.
<i>Test Energy:</i>	"Test Energy" means all Facility Output generated by the Facility prior to achieving the Commercial Operation Date. Seller may elect to sell Test Energy to its transmission provider, to a third-party or to an organized market via its transmission provider's system. Seller shall be entitled to any and all compensation received from its transmission provider or any third-party or organized market for such Test Energy. Otherwise, Seller shall Schedule in accordance with the Scheduling Procedure and deliver Test Energy to Buyer in order to complete Start-Up Testing. In such case, the parties shall coordinate in good faith to Schedule deliveries of Test Energy to Buyer that minimizes the burden to each of the parties, and Buyer shall receive the Test Energy. The price for such Test Energy received by Buyer shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for Buyer to receive the Test Energy, including but not limited to reimbursement for negative pricing and any necessary capacity costs or reserves costs.
	Seller shall procure and Buyer will reimburse Seller for all Control Area Services from an entity that is mutually agreed upon by the parties that may be required by the transmission provider or balancing authority area as a condition of interconnection. "Control Area Services" include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Control Area Services do not include ancillary service costs associated with the transmission provider's



	<p>provision of firm transmission service. For off-system resources, Control Area Services do not include real power losses.</p>
	<p>If during any month during the Delivery Term, the Actual Round-Trip efficiency for such month is less than the Guaranteed Round-Trip Efficiency, the Seller shall pay the Buyer the following amount: (i) the total Charging Energy for such month, multiplied by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, multiplied by (iii) average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical On-Peak (bilateral) indices.</p>
	<p>In the event Seller fails to deliver Facility Output, Seller shall pay Buyer the following damages ("Failure to Deliver Damages"):</p> <ul style="list-style-type: none"> (a) The replacement cost for such deficiency calculated by multiplying the amount of the deficiency by the positive difference, if any, of the Replacement Price less the Generation Contract Price; provided, however, such amount shall not be less than zero dollars (\$0.00). The "Replacement Price" shall be the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices ("ICE DA Indices") for such month; plus (b) The incremental cost associated with Capacity Attributes, and/or carbon emissions costs incurred by the Buyer as a result of Seller's failure to deliver Facility Output; plus (c) Any incremental Ancillary Services and transmission costs incurred by Buyer; plus (d) Any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver. <p>"Reliability Entity" may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.</p> <p>In the event Seller fails to deliver Environmental Attributes, including Bundled RECs, associated with the Facility Output, Seller shall settle any such shortfall as follows:</p> <ul style="list-style-type: none"> (a) deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or (b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs and Buyer elects in its sole discretion to purchase Qualifying Replacement RECs, Seller



	<p>shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or</p> <p>(c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs and Buyer does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe Buyer the Qualifying Replacement REC Price identified by Buyer, multiplied by the number of Bundled RECs Seller failed to deliver.</p> <p>“Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to Buyer bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.</p> <p>“Qualifying Replacement REC Price” means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.</p>
	<p>Within thirty (30) days after the Effective Date of the PPA, Seller shall deliver development security to Buyer in an amount equal to \$200/kW of Generating Facility Nameplate and \$200/kW of Storage Facility Nameplate Capacity and shall maintain such development security until the Commercial Operation Date.</p> <p>On or before Commercial Operation Date, Seller shall deliver delivery term security to Buyer in an amount equal to \$100/kW of Generating Facility Nameplate and \$100/kW of Storage Facility Nameplate Capacity and shall maintain such delivery term security through the end of the Delivery Term. Within five (5) Business Days following any draw by Buyer on the delivery term security, Seller shall replenish the amount drawn such that the delivery term security is restored to the full amount.</p>



	<p>All security shall be in the form of cash or a letter of credit from a Qualified Institution as defined below and in a form reasonably acceptable to Buyer.</p> <p>“Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located. On a case by case basis PGE will accept banks that do not meet the above criteria as Qualified Institutions if they have received an endorsement from an institution that does meet the criteria in the Qualified Institution definition.</p>
	<p>In the event the PPA is terminated due to an event of default, the non-defaulting party shall calculate the Settlement Amount. The defaulting shall pay the Settlement Amount to the non-defaulting party.</p> <p>The Gains or Losses resulting from the termination of the PPA shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the PPA. The Gains or Losses shall be calculated for a period equal to the remaining Term (“Settlement Period”). The quantity of Energy in each month of the Settlement Period associated with Generating Facility shall be equal to the Expected Output for such month. The storage capacity in each month of the Settlement Period shall be equal to the Storage Contract Capacity as of the Termination Date.</p> <p>“<u>Settlement Amount</u>” means the Losses or Gains, and Costs, expressed in USD, which the non-defaulting party incurs as a result of the termination and liquidation of the PPA. If the non-defaulting party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the non-defaulting party. If the non-defaulting party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.</p> <p>“<u>Gains</u>” means, with respect to a party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to the PPA determined in a commercially reasonable manner.</p> <p>“<u>Losses</u>” means, with respect to a party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to the PPA determined in a commercially reasonable manner.</p>



	<p>“Costs” means, with respect to a party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under the Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.</p>
<p><i>Transmission Requirements:</i></p>	<p>For Off-system Facilities:</p> <p>Seller shall pay for and maintain eligible Long-Term Transmission, for a minimum of 80% of the Net Available Capacity, for delivery of Energy from the Facility’s point of interconnection/point of receipt (POR) identified in the Interconnection Agreement to the Delivery Point for the entire Delivery Term, commencing on the Commercial Operation Date.</p> <p>Seller may deliver up to 20% of the Net Available Capacity on short term firm transmission.</p> <p>If the Seller has a transmission service request that utilizes Newpoint as the POR, the transmission service request must reference the specific generation interconnection request number for the resource in the comments field.</p> <p>Curtailment or a transmission provider’s cancelation of conditional firm reassessment transmission service shall not be a Force Majeure event.</p> <p>If the reassessment service is terminated or the number of curtailment hours is increased, Seller default and failure to perform provisions would be triggered would be triggered.</p> <p>If Seller is participating in a BPA TSEP process which includes completing any and all actions necessary to keep the transmission service request(s) in an active OASIS status, Seller has the commercial obligation to participate in and fund all requirements in the TSEP process necessary to be granted long term firm or conditional firm bridge if those are the services elected. Seller with conditional firm reassessment does not have any participation requirements beyond the cluster study.¹¹</p> <p>Seller shall be responsible for making all arrangements and paying all costs related to transmission, including but not limited to Ancillary</p>

¹¹ See BPA TSEP Business Practice Manual: <https://www.bpa.gov/transmission/Doing%20Business/bp/tbp/TSR-Study-Expansion-Process-BP.pdf>



	<p>Services costs and EIM costs, required to deliver the Product(s) to the Delivery Point.</p> <p>For On-System Facilities:</p> <p>Seller must have requested NRIS interconnection service for Facility Output and Buyer must be able to designate the Facility as a network resource and. In such case, Buyer will be responsible for all costs associated with the delivery of Facility Output to PGELOAD.</p>
<p><i>Control Area Services and other costs:</i></p>	<p>Seller shall procure and Buyer will reimburse Seller for all Control Area Services from an entity that is mutually agreed upon by the parties that may be required by its transmission provider or balancing authority area as a condition of interconnection.</p> <p>Control Area Services include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Control Area Services do not include ancillary service costs associated with the transmission provider's provision of firm transmission service.</p> <p>For off-system resources, Control Area Services do not include real power losses.</p>
<p><i>Forecasting:</i></p>	<p>Seller shall provide Buyer with (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) a rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and fifteen (15) minutes respectively, for the next 24 hours, and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day (collectively, "Generation Forecast"). Each Generation Forecast shall be performed by a third-party forecasting agent that is mutually agreed to by Buyer and Seller ("Forecasting Agent"). At Buyer's request, Seller will cause the Forecasting Agent to provide Buyer with an application program interface from which Buyer may access raw forecasting files. Seller shall ensure that the Forecasting Agent provides Buyer real time access to information and forecasts concerning the Facility's availability status.</p>
<p><i>Scheduling:</i></p>	<p>Seller shall schedule and deliver Energy to Buyer at the Delivery Point, commencing on the Commercial Operation Date and continuing through the end of the Delivery Term. Seller's Energy delivery may not intentionally exceed the Generation Forecast.</p> <p>For On-System Facilities:</p> <p>For each day during the Delivery Term, Seller shall comply with the following scheduling procedure:</p> <ul style="list-style-type: none"> - Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day, communicate to Buyer's pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the expected Energy to be delivered each hour at the Delivery



Point for the delivery day, consistent with the Generation Forecast.

- Seller shall communicate to Buyer's real-time desk via API, or as otherwise directed by Buyer, Energy deliveries consistent with the Generation Forecast no later than ninety (90) minutes prior to the flow hour.
- Seller and Buyer agree that the intent of these scheduling provisions is for Seller to schedule and deliver Energy resembling actual production from the Facility for each interval.

For Off System Facilities:

For each day during the Delivery Term, Seller shall comply with the following scheduling procedure:

- Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day, communicate to Buyer's pre-schedule desk via an application program interface (API) or as directed by Buyer, the expected Energy to be delivered each hour at the Delivery Point for the delivery day, consistent with the Generation Forecast.
- Seller shall schedule the Energy by submitting a NERC e-Tag ("e-Tags") prior to 1:00 p.m. PPT of the applicable WECC pre-scheduling day for all hours of the applicable delivery day(s); and
- Seller shall schedule the Energy with e-Tags according to prevailing WECC pre-scheduling provisions and protocols. Seller shall schedule the Facility as the identified e-Tag source. Seller may not net or otherwise combine schedules from resources other than the Facility, except as necessary for Ancillary Services.

Seller shall not schedule any energy to be delivered to Buyer using a dynamic or pseudo-tie e-tag as such terms are defined and used by NERC.

Seller shall make adjustments to the pre-scheduled energy scheduled from the Facility each hour in real-time ("Real-time Adjustments") consistent with the Generation Forecast. For such Real-time Adjustments, Seller will:

- Submit and receive approval of e-Tag adjustment no later than seventy-five (75) minutes prior to the flow hour, in accordance with the requirements of the applicable transmission provider.
- Make all NERC e-Tag adjustments.
- Seller's e-tag shall match the adjustment communicated to the Buyer.
- Be responsible for any costs, charges, or fees associated with adjustments to the e-tag after seventy-five (75) minutes prior to the flow hour.

In the event that the regional market design, balancing authority, reliability entity or regulatory entity (e.g., PGE Transmission, BPA, WECC, NERC, RC West, FERC) causes or otherwise reasonably requires Buyer's scheduling practices to change after the effective date of the PPA, Buyer and Seller shall meet within thirty (30) days after written notice to Seller of such proposed change and mutually agree on updated Scheduling

	<p>Procedures. Seller shall not unreasonably withhold agreement to proposed changes to the Scheduling Procedures.</p>
<p><i>Output Guarantee:</i></p>	<p>Seller guarantees that during the Delivery Term, the Delivered Energy Quantity, shall meet or exceed the Guaranteed Output Threshold.</p> <p>The "Guaranteed Output Threshold" is equal to [90%] of the Annual Expected Output.</p> <p>The "Performance Measurement Period" is equal to a monthly period. The initial Performance Measurement Period will commence on the Commercial Operation Date.</p> <p>The "Expected Output" is equal to the Facility's P50 expected monthly output.</p> <p>After each Performance Measurement Period, Seller shall provide Buyer sufficient detail of the Facility's performance to substantiate its calculation of Energy deliveries for the Guaranteed Output Threshold. The Guaranteed Output Threshold shall be adjusted for energy that was not delivered during Excused Hours. "Excused Hours" means hours when the Facility was not available due to Force Majeure, excused curtailments, or Buyer's failure to perform.</p> <p>It shall be a Seller event of default if, commencing on the Commercial Operation Date, Seller fails to deliver [for wind resources: seventy-five percent (75%) of the annual sum of the Guaranteed Output Threshold to Buyer during two (2) out of three (3) Contract Years during the Delivery Period] [for non-wind resources: fifty percent (50%) of the annual sum of the Guaranteed Output Threshold to Buyer during any Contract Year during the Delivery Period].</p>
<p><i>Mechanical Availability Guarantee:</i></p>	<p>Beginning with the first full calendar year following the Contract Year in which the Commercial Operation Date has occurred, Seller's failure to maintain a minimum Mechanical Availability Percentage for the Facility of [ninety-seven percent (97%)] for any two (2) out of three (3) Contract Years on a rolling basis. The Mechanical Available Percentage of the Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year [non-solar resources: by the total number of hours in the calendar year][solar resources: by the total number of daylight hours in the calendar year.] On or before January 31st of each year, Seller shall provide Buyer written documentation, which shall be subject to audit by</p>



	<p>Buyer, to verify or otherwise substantiate Seller’s calculation of the Mechanical Available Percentage of the Facility for the prior calendar year. The operational hours for the Facility shall be the hours that the Facility is potentially capable of producing power at Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the point of interconnection with the Transmission Provider.</p>
<p><i>Failure to Deliver Facility Output:</i></p>	<p>In the event Seller fails to deliver Facility Output, Seller shall pay Buyer the following damages:</p> <ul style="list-style-type: none"> (a) The replacement cost for such deficiency calculated by multiplying the amount of the deficiency by the positive difference, if any, of the Replacement Price less the Contract Price; provided, however, such amount shall not be less than zero dollars (\$0.00). The “Replacement Price” shall be the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices (“ICE DA Indices”) for such month; plus (b) The incremental cost associated with Carbon Emissions costs incurred by the Buyer as a result of Seller’s failure to deliver Facility Output; plus (c) Any incremental Ancillary Services and transmission costs incurred by Buyer; plus (d) Any penalties or fines imposed by a Reliability Entity as a result of Seller’s failure to deliver. <p>“Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.</p> <p>In the event Seller fails to deliver Environmental Attributes, including Bundled RECs, associated with the Facility Output, Seller shall settle any such shortfall as follows:</p> <ul style="list-style-type: none"> (a) deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or (b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs and Buyer elects in its sole discretion to purchase Qualifying Replacement RECs, Seller shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or



	<p>(c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs and Buyer does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe Buyer the Qualifying Replacement REC Price identified by Buyer, multiplied by the number of Bundled RECs Seller failed to deliver.</p> <p>“Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to Buyer bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.</p> <p>“Qualifying Replacement REC Price” means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.</p>
<i>Excess Energy:</i>	<p>If during the Performance Measurement Period, the Delivered Energy Quantity is in excess of [110%] of the Guaranteed Output Threshold, then for each MWh of Delivered Energy Quantity in excess of [110%] of the Guaranteed Output Threshold (“Excess Energy”), the applicable price paid by Buyer for such Excess Energy shall be equal to the lesser of (a) [93%] of the Market Index Price applicable to the interval in which such Excess Energy was delivered, or (b) [75%] of the Contract Price.</p>
<i>Curtailment:</i>	<p>In the event the Facility is curtailed due to a System Emergency, Force Majeure, or by the transmission provider (excluding curtailment hours as a result of Seller’s utilization of conditional firm transmission), Seller shall not be liable for failure to deliver such curtailed Energy and Buyer shall not be obligated to pay for such curtailed Energy.</p> <p>Notwithstanding the foregoing, Buyer shall have the right to curtail deliveries of scheduled Energy, up to [400 hours] each Contract Year (or a prorata amount for any partial Contract Year during the Delivery Term) without compensation, and all such events shall be defined as “Buyer Curtailment”.</p>



	The Guaranteed Output Threshold will be reduced by the number of MWhs subject to Buyer Curtailment.
<i>REC Tracking System:</i>	Seller shall transfer RECs associated with the Facility Output from the Facility for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules.
<i>Negative Price Event:</i>	When the Market Index Price is less than zero ("Negative Price Event"), Seller shall have the right, but not the obligation, to suspend part or all of its Energy deliveries ("Seller Curtailment"). Seller's obligation to deliver the Guaranteed Output Threshold shall be reduced by one (1) MWh for each substantiated MWh reduced due to a Negative Price Event.
<i>Monthly Settlement and Invoice:</i>	<p>All invoices shall be due on the tenth (10th) day of each month and payable on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.</p> <p>The payment for each month during the Delivery Term is equal to the sum of:</p> <ul style="list-style-type: none"> (a) the lesser of (i) the hourly Delivered Energy Quantity, or (ii) hourly Facility Output, each up to [110%] of the Guaranteed Output Threshold, multiplied by the Contract Price; plus (b) hourly Excess Energy multiplied by the lesser of (i) [93%] of the Market Index Price, or (ii) [75%] of the Contract Price; plus (c) for each hour that the Market Index Price is negative, the hourly Delivered Energy Quantity multiplied by [107%] of the Market Index Price.
<i>Operations and Maintenance:</i>	<p>Seller shall not schedule any non-emergency maintenance that reduces the energy generating capability of the Facility by more than ten percent (10%) during the months of June through September, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the parties agree otherwise in writing.</p> <p>Seller shall provide its outage schedule no later than September 1st of each year preceding such outage(s).</p> <p>The outage schedule for each Contract Year shall not exceed 200 hours.</p>
<i>Labor Requirements:</i>	<p>Union labor must be utilized for major construction activities related to the Facility and must include a Project Labor Agreement requirement in any related construction agreements.</p> <p>The labor group that constructs and maintains the Facility must have policies in place that are designed to limit or prevent workplace</p>



	<p>harassment and discrimination. Additionally, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least fifteen percent (15%) of the total work hours performed by individuals from those communities.</p>
<i>Buyer Conditions Precedent:</i>	<p>Buyer’s obligations shall be conditioned and will become effective only upon the occurrence of each and every one of the following conditions:</p> <p>[(i) receipt of approval from the Oregon Public Utility Commission, in form and substance satisfactory in Buyer’s sole discretion; and</p> <p>(ii) written approval of the PPA by Buyer’s Board of Directors.]</p>
<i>Seller Conditions Precedent</i>	[CPs TBD]
<i>Security Requirements:</i>	<p>Within thirty (30) days after the Effective Date of the PPA, Seller shall deliver development security to Buyer in an amount equal to \$200/kW of Nameplate Capacity and Seller shall maintain such development security until COD.</p> <p>On or before COD, Seller shall deliver delivery term security to Buyer in an amount equal to \$100/kW of Nameplate Capacity and shall maintain such delivery term security through the end of the Delivery Term. Within five (5) Business Days following any draw by Buyer on the delivery term security, Seller shall replenish the amount drawn such that the delivery term security is restored to the full amount.</p> <p>All security shall be in the form of cash or a letter of credit from a Qualified Institution as defined below and in a form reasonably acceptable to Buyer.</p> <p>“Qualified Institution” means a major U.S. commercial bank or a U.S. ibranch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located. On a case by case basis, PGE will accept banks as Qualified Institutions if they have received an endorsement from an institution that meets the criteria in the Qualified Institution definition.</p>
<i>Termination Settlement Amount:</i>	<p>In the event the PPA is terminated due to an event of default, the non-defaulting party shall calculate the Settlement Amount. The defaulting shall pay the Settlement Amount to the non-defaulting party.</p>



	<p>The Gains or Losses resulting from the termination of the PPA shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the PPA. The Gains or Losses shall be calculated for a period equal to the remaining Term ("Settlement Period"). The quantity of Energy in each month of the Settlement Period shall be equal to the Expected Output for such month.</p> <p>"Settlement Amount" means the Losses or Gains, and Costs, expressed in USD, which the non-defaulting party incurs as a result of the termination and liquidation of the PPA. If the non-defaulting party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the non-defaulting party. If the non-defaulting party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.</p> <p>"Gains" means, with respect to a party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to the PPA determined in a commercially reasonable manner.</p> <p>"Losses" means, with respect to a party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to the PPA determined in a commercially reasonable manner.</p> <p>"Costs" means, with respect to a party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys' fees and expenses incurred by a Party in connection with enforcing its rights under the Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.</p>
<i>Compliance with Law</i>	<p>Seller shall comply with all applicable local, state and federal laws, including but not limited to obtaining and maintaining all requisite legal authority to sell power and be able to schedule power and operate under industry standards established by FERC, WECC, NERC and all other applicable regulatory and government agencies.</p>
<i>RPS Compliance:</i>	<p>Seller shall ensure the Facility obtains Oregon RPS Certification within ninety (90) days after the Commercial Operation Date and shall maintain such certification during the Delivery Term. If a change in law occurs after execution of the PPA that impacts the Facility's Oregon RPS Certification,</p>

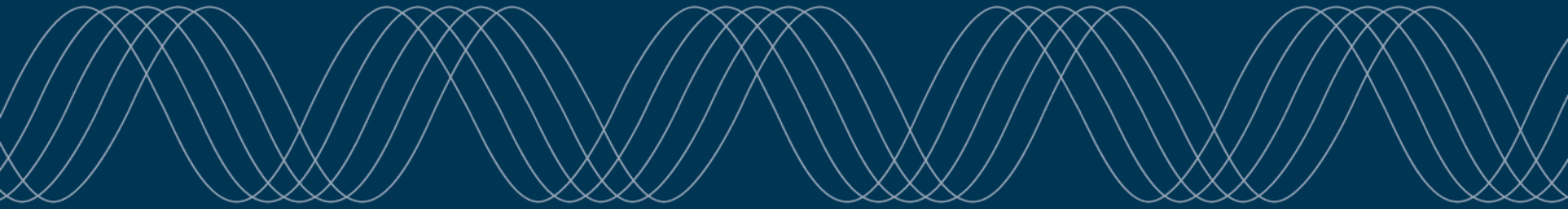


	then the Seller shall use commercially reasonable efforts to comply with such change of law as necessary to maintain the Oregon RPS Certification.
<i>Assignment:</i>	<p>Neither party may assign the PPA without prior written consent of the other party, which consent may not be unreasonably withheld or delayed.</p> <p>Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the Buyer.</p> <p>Seller shall pay Buyer’s reasonable expenses incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility.</p>
<i>Other Standard Contract Terms to be included in the PPA:</i>	The PPA will include additional terms and conditions that are usual and customary in transactions of its nature. This Term Sheet and all information exchanged during negotiations of the PPA are confidential, subject to the Non-Disclosure Agreement between Buyer and Seller dated [Date].
<i>Confidentiality:</i>	This Term Sheet and all information exchanged during negotiations of the PPA are confidential, subject to the Non-Disclosure Agreement between Buyer and Seller dated [Date].



Appendix B

Storage Capacity Form Term Sheet



2021 All-Source RFP



Portland General Electric Company

Non-Binding Indicative Term Sheet for Storage resources

Subject to Mutual NDA

Note: The following represents a summary of certain material terms and conditions for Bidders to PGE's 2021 All-Source RFP (RFP) seeking to execute a Storage Capacity Agreement (SCA). This term sheet is tailored for an on-system battery storage resource. To the extent a bidder would like to propose an off-system or non-battery storage resource, certain terms and conditions will need to be updated (e.g., interconnection and transmission requirements, scheduling requirements, procurement of charging energy, etc.). The following is not an exhaustive list of all material terms, nor does it purport to comprehensively express PGE's expectations for any of the terms herein mentioned. Full-form, definitive terms shall be set forth in PGE's form SCA issued in connection with the RFP. Capitalized terms not otherwise defined in this Term Sheet will be defined in the SCA.

Buyer:	Portland General Electric Company ("PGE")
Seller:	[Name of Seller]
Facility:	The [XX] MW _{AC} grid-connected energy storage facility [<i>insert location and description of energy storage facility, and any other relevant identifying details, including technology, e.g., lithium ion</i>] ["Facility"], located in in [Name of County] County, in the State of [Name of State].
Storage Contract Capacity:	[XX] MW _{AC} for [XX] hour discharge. The Storage Contract Capacity shall be adjusted during the Delivery Term in accordance with a Storage Capacity Test set forth in the SCA.
Facility Nameplate Capacity:	[XX] MW _{AC}
Duration:	[_4+_] hours
Product(s):	The Product includes the following: <ol style="list-style-type: none">1. "Capacity Attributes": Any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, or accounting construct, associated with the electric charge and discharge capability and capacity of the Facility or the Facility's capability and ability to discharge or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Capacity Attributes do not include: (i) any



	<p>PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Facility;</p> <ol style="list-style-type: none"> 2. Storage Capacity: All rights, products and attributes associated with the maximum dependable operating capability of the Facility to charge, sort and discharge electric energy; and 3. Ancillary Service Attributes: All ancillary services, products and other attributes, if any that may be obtained from or generated by the Facility.
<i>No Sales to third parties:</i>	Seller shall sell one hundred percent (100%) of the Storage Capacity to Buyer.
<i>Delivery Term:</i>	"Delivery Term" means no less than fifteen (15) Contract Years after the Commercial Operation Date. "Contract Years" means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at the end of the day prior to the anniversary of the Commercial Operation Date.
<i>Interconnection Point:</i>	The Facility shall interconnect to [XX substation] (the "Interconnection Point"). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.
<i>Delivery Point:</i>	Interconnection Point.
<i>Commercial Operation Date (COD):</i>	"Commercial Operation Date" means the date on which the total nameplate storage capacity of the Facility (expressed in MW AC) is fully operational, reliable and available to Buyer, and the Facility is fully interconnected, fully integrated, and synchronized with the transmission system.
<i>Scheduled Commercial Operation Date:</i>	<p>"Scheduled Commercial Operation Date" means [Date]. In no event shall the Scheduled Commercial Operation Date be later than December 31, 2024. If the Commercial Operation Date is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including the first to occur of (i) the Commercial Operation Date, or (ii) the Guaranteed Commercial Operation Date.</p> <p>"Delay Damages" are equal to \$150 per MW of Storage Contract Capacity of the Facility per day beginning on the first day through the 30th day after the Scheduled Commercial Operation Date, \$250 per MW of Storage Contract Capacity of the Facility per day beginning on the 31st day</p>



	through the 60 th day after Scheduled Commercial Operation Date, and \$350 per MW of Storage Contract Capacity of the Facility per day beginning on the 61 st day after Scheduled Commercial Operation Date until the Commercial Operation Date is actually achieved or the Guaranteed Commercial Operation Date, whichever occurs first.
<i>Guaranteed Commercial Operation Date:</i>	<p>“Guaranteed Commercial Operation Date” means the date that is one hundred twenty (120) days after the Scheduled Commercial Operation Date.</p> <p>Buyer shall have the right to terminate the SCA if the Commercial Operation Date is not achieved by the Guaranteed Commercial Operation Date.</p>
<i>Contract Price:</i>	Fixed monthly capacity payment for the entire Delivery Term equal to [(\$/kW-month of Storage Contract Capacity)]. Such payment constitutes the entirety of the amount due to the Seller from Buyer for the Product.
<i>Testing:</i>	Prior to the Commercial Operation Date, Seller shall schedule a complete a storage capacity test. Thereafter, at least once per year, Seller shall schedule and complete a storage capacity test. Buyer may require a storage capacity retest at any time during the Delivery Term. The Parties shall coordinate all storage capacity tests in good faith to minimize the burden to each of the Parties. Buyer may witness all storage capacity tests of the Facility. Buyer shall pay for the Charging Energy used to charge the Facility in connection with the first storage capacity test during any Contract Year. All other costs related to a storage capacity test, including costs for Charging Energy for subsequent storage capacity tests in the same Contract Year (unless such subsequent retest is initiated by Buyer), shall be borne by Seller.
<i>Transmission Requirements:</i>	Buyer must be able to designate the Facility as a network resource and Seller must have requested NRIS interconnection for Facility Output. In such case, Buyer will be responsible for all costs associated with the delivery of energy to the PGELOAD.
<i>Charging Energy:</i>	During the Delivery Term, Buyer shall be responsible, at its sole cost, for managing, purchasing, scheduling and delivering all energy necessary to charge the Facility to supply its Discharge Request (defined in the Scheduling Procedure).
<i>Control Area Services and other costs:</i>	<p>Seller shall procure and pay for all Control Area Services that may be required by its transmission provider(s) or balancing authority area as a condition of interconnection.</p> <p>Control Area Services include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Control Area Services do not include ancillary service costs associated with the transmission provider’s provision of firm transmission service.</p>



<p><i>Scheduling of Charging Energy and Discharge Energy:</i></p>	<p>For each day during the Delivery Term:</p> <p>Buyer shall, by 12:00 p.m. PPT of the customary WECC Pre-Schedule Day communicate to Seller’s pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the expected charging energy to be delivered to the Facility by Buyer and the amount of energy Seller shall discharge and deliver each hour at the Delivery Point for the delivery day to Buyer.</p> <p>The SCA shall include charging and discharging protocols based on the technology and software communication available to the Seller, but at a minimum the Buyer shall communicate intraday adjustments no later than one-hundred and twenty (120) minutes prior to the flow hour.</p>
<p><i>Storage Capacity Guarantee:</i></p>	<p>During the Delivery Term, Seller shall maintain the Facility with guaranteed storage contract capacity of not less than [__MW, representing 90% of the Storage Contract Capacity as of the Commercial Operation Date] (“Guaranteed Storage Contract Capacity”). If the Storage Contract Capacity for the Facility is determined during a storage capacity test to be less than the Guaranteed Storage Contract Capacity, Seller shall pay to Buyer as liquidated damages for such deficiency an amount determined by multiplying the number of months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed) by (i) Contract Price multiplied by [125%] multiplied by (ii) the difference between the Guaranteed Storage Contract Capacity and the Storage Contract Capacity for the Facility as determined during the most recent storage contract capacity test (“Guaranteed Storage Contract Capacity LDs”). Payment of Guaranteed Storage Contract Capacity LDs is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the Storage Contract Capacity being less than the Guaranteed Storage Contract Capacity for a Contract Year.</p> <p>(ii) Additionally, it will be an event of default if the Storage Contract Capacity, as determined by the most recent Storage Contract Capacity Test, is less than the Guaranteed Storage Contract Capacity, which remains uncured for a period of thirty (30) days as shown by a new Storage Capacity Test.</p>
<p><i>Actual Round-Trip Efficiency:</i></p>	<p>The round-trip efficiency for each month is calculated as a percentage, based on the amount of MWhs used to charge the Facility and the amount of MWhs discharged from the Facility, as measured by the Storage Facility meter at the Interconnection Point.</p>



<p><i>Guaranteed Round-Trip Efficiency:</i></p>	<p>("Guaranteed Round-Trip Efficiency") means [ninety percent (90%)].</p> <table border="1" data-bbox="667 247 1227 543"> <thead> <tr> <th data-bbox="667 247 906 317">Contract Year</th> <th data-bbox="906 247 1227 317">Guaranteed Round-Trip Efficiency</th> </tr> </thead> <tbody> <tr> <td data-bbox="667 317 906 365">1</td> <td data-bbox="906 317 1227 365">90.0%</td> </tr> <tr> <td data-bbox="667 365 906 449">2 - XX</td> <td data-bbox="906 365 1227 449">[Seller to fill out rest of table]</td> </tr> <tr> <td data-bbox="667 449 906 497"></td> <td data-bbox="906 449 1227 497"></td> </tr> <tr> <td data-bbox="667 497 906 543"></td> <td data-bbox="906 497 1227 543"></td> </tr> </tbody> </table> <p>It will be an event of default if the Round-Trip Efficiency is less than the Guaranteed Roundtrip Efficiency and such failure continues for [90] days after Seller's receipt of written notice or discovery of such failure.</p>	Contract Year	Guaranteed Round-Trip Efficiency	1	90.0%	2 - XX	[Seller to fill out rest of table]				
Contract Year	Guaranteed Round-Trip Efficiency										
1	90.0%										
2 - XX	[Seller to fill out rest of table]										
<p><i>Guaranteed Round-Trip Efficiency Adjustment:</i></p>	<p>If during any month during the Delivery Term, the Actual Round-Trip efficiency for such month is less than the Guaranteed Round-Trip Efficiency, the Seller shall pay the Buyer the following amount: (i) the total Charging Energy for such month, multiplied by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, multiplied by (iii) average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical On-Peak (bilateral) indices.</p>										
<p><i>Maximum Annual Discharge MWh:</i></p>	<p>Buyer may discharge a maximum of [MWhs] per year, subject to the Facility Operating Limits and Parameters.</p>										
<p><i>Daily Dispatch Limits:</i></p>	<p>Full Charging limits (if any): [XX] times per day Full Discharging limits (if any): [XX] times per day Partial Charging limits (if any): [XX] times per day Partial Discharging limits (if any): [XX] times per day</p>										
<p><i>Other Operating Limits and Parameters:</i></p>	<p>[Seller to describe all applicable operating limits on charging and discharging from the Facility, if any]</p>										
<p><i>Guaranteed Monthly Availability:</i></p>	<p>Seller guarantees the Facility availability shall be no less than [98 %] for each month during the Delivery Period. Facility availability shall be calculated using a methodology set forth in the SCA that is generally consistent with the method prescribed by the Facility's equipment manufacturers. The Contract Price shall be adjusted if the Facility fails to meet the Minimum Monthly Availability in any month during the Delivery Term.</p>										



	In the event Seller fails to meet the Guaranteed Monthly Availability during [2] months during any [12] month rolling period during the Delivery Term, Buyer may terminate the SCA.
<i>Guaranteed Monthly Availability Adjustment:</i>	<p>If the Facility does not meet the Guaranteed Monthly Availability, the Contract Price shall be adjusted by multiplying it by the following adjustment, which shall be calculated after any Guaranteed Round-Trip Efficiency Adjustment, if any, has been applied to the Contract Price:</p> <p>(i) If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then: $AA = 100\% - [(98\% - \text{monthly storage availability}) \times 2]$</p> <p>(ii) If the monthly storage availability is less than 70%, then: $AA = 0\%$</p>
<i>Failure to Deliver Damages:</i>	<p>In the event Seller fails to deliver energy in accordance with the Scheduling Procedure, which is not excused by Force Majeure or by Buyer's failure to perform, Seller shall compensate Buyer for such failure to deliver, for the following costs:</p> <p>(a) The replacement cost, calculated by multiplying (x) amount of energy not delivered, by (y) the positive difference, if any, of the Replacement Price less the Contract Price; provided, however, such amount shall not be less than zero dollars (\$0.00). The "Replacement Price" shall be the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices ("ICE DA Indices") for such month; plus</p> <p>(b) The cost associated with incremental, Capacity Attributes, Environmental Attributes and/or carbon emissions costs borne by the Buyer; plus</p> <p>(c) Any incremental ancillary services and transmission costs. Seller shall pay Buyer an amount equal to the costs incurred by Buyer; plus</p> <p>(d) Any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver.</p> <p>"Reliability Entity" may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.</p>
<i>Curtailment:</i>	In the event the Facility is curtailed due to Force Majeure, by the transmission provider, or for any reason other than Seller's action or



	<p>inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.</p>
<p><i>Monthly Settlement and Invoice:</i></p>	<p>Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to the Buyer for the amount due during such month. The invoice shall include all information necessary to confirm the amount due.</p> <p>Payment shall be due ten (10) days after the invoice date.</p> <p>The payment for each month will be equal to:</p> <ul style="list-style-type: none"> (i) the Contract Price multiplied by the Storage Capacity; (ii) adjusted by the Guaranteed Round-Trip Efficiency Adjustment and Guaranteed Monthly Availability Adjustment, if any; (iii) minus any Guaranteed Storage Contract Capacity LDs, Duration LDs, and Failure to Deliver Damages.
<p><i>Operations and Maintenance:</i></p>	<p>Seller shall not schedule any non-emergency maintenance that reduces the Facility charging or discharging capability by more than ten percent (10%) during the months of June through September, unless (i) such outage is required to avoid significant and material damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the parties agree otherwise in writing.</p> <p>Seller shall provide its outage schedule no later than September 1st of each Contract Year preceding such outage(s).</p> <p>The outage schedule for each Contract Year shall not exceed 200 hours.</p>
<p><i>Progress reporting:</i></p>	<p>Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Facility development milestones set forth in the SCA; (b) identifies any missed Facility development milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Facility development milestones and all subsequent Facility development milestones by the Guaranteed Commercial Operation Date.</p>
<p><i>Labor Requirement:</i></p>	<p>Union labor must be utilized for major construction activities related to the resource and must include a Project Labor Agreement requirement in any related executed engineering, procurement and construction agreements.</p> <p>The labor group that is responsible for construction and maintenance of the Facility must have policies in place that are designed to limit or</p>



	<p>prevent workplace harassment and discrimination. Additionally, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least 15 percent of the total work hours performed by individuals from those communities.</p>
<i>Buyer Conditions Precedent:</i>	<p>Buyer’s obligations shall be conditioned and will become effective only upon the occurrence of the each and every of the following conditions:</p> <p>[(i) receipt of approval from the Oregon Public Utility Commission, in form and substance satisfactory in Buyer’s sole discretion; and</p> <p>(ii) written approval of the SCA by Buyer’s Board of Directors.]</p>
<i>Seller Conditions Precedent:</i>	[CPs TBD]
<i>Security Requirements:</i>	<p>Within thirty (30) days after the Effective Date of the SCA, Seller shall deliver development security to Buyer in an amount equal to \$200/kW of Facility Nameplate Capacity and shall maintain such development security until the Commercial Operation Date.</p> <p>On or before the Commercial Operation Date, Seller shall deliver delivery term security to Buyer in an amount equal to \$100/kW of Facility Nameplate Capacity and shall maintain such delivery term security through the end of the Delivery Term. Within five (5) Business Days following any draw by Buyer on the delivery term security, Seller shall replenish the amount drawn such that the delivery term security is restored to the full amount.</p> <p>All security shall be in the form of cash or a letter of credit from a Qualified Institution as defined below and in a form reasonably acceptable to Buyer.</p> <p>“Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located. On a case by case basis PGE will accept banks as Qualified Institutions if they have received an endorsement from an institution that does meet the criteria in the Qualified Institution definition.</p>
<i>Termination Payment:</i>	<p>Upon termination of the SCA in connection with an event of default, the non-defaulting party shall calculate, in a commercially reasonable manner without the obligation of either party to enter into any replacement</p>



	<p>transaction in order to determine any losses, the termination payment due to such party (each a "Termination Payment").</p> <p>If the termination of this Agreement due to a Seller event of default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Buyer and shall be equal to (i) all amounts due and owing to Buyer as of the termination of the SCA plus (ii) the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under transactions replacing the SCA minus (y) the present value of the payments Buyer would be required to make for Product under the SCA, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Buyer in a commercially reasonable manner plus (iii) Buyer's Costs less (iv) all amounts due to the Seller under the SCA.</p> <p>If termination of the SCA is due to a Buyer event of default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Seller and shall equal (i) all amounts due and owing to Seller as of the termination of the SCA (ii) the positive amount, if any, equal to (x) the present value of the payments Seller would receive under the SCA for Product less (y) the present value of the payments Seller would receive for Product under transactions replacing the SCA, in each case for the period from the early termination date through the scheduled end of Delivery Term and determined by Seller in a commercially reasonable manner plus (iii) Seller's Costs less (iv) all amounts due to the Buyer under the SCA as of the date of such termination.</p> <p>"Costs" means, with respect to the non-defaulting party, the commercially reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the non-defaulting party to a person other than a party in connection with terminating any arrangement pursuant to which it has hedged its obligations under the SCA or in entering into new arrangements to replace the SCA, and all reasonable attorneys' fees and expenses incurred by the non-defaulting party in connection with the termination of the SCA.</p>
<p><i>Assignment:</i></p>	<p>Neither party may assign the SCA without prior written consent of the other party, which consent may not be unreasonably withheld or delayed.</p> <p>Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the Buyer.</p> <p>Seller shall pay Buyer's reasonable expenses incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing for the Facility.</p>



Other Standard Contract Terms to be included in the SCA:

The SCA will include additional terms and conditions that are usual and customary in transactions of its nature.

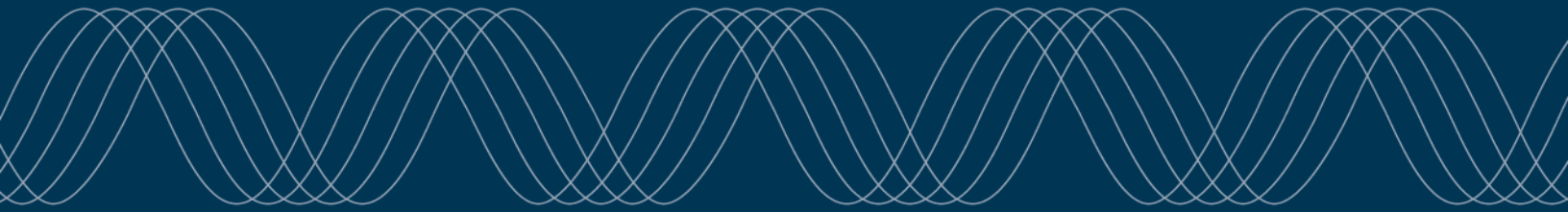
Confidentiality:

This Term Sheet and all information exchanged during negotiations of the SCA are confidential, subject to the Non-Disclosure Agreement between Buyer and Seller dated [Date].



Appendix C

Renewable Storage PPA Form Term Sheet



2021 All-Source RFP



Portland General Electric Company

Non-Binding Indicative Term Sheet for Renewable Energy & Storage PPA

Subject to Mutual NDA

Note: The following represents a summary of certain material terms and conditions for Bidders to PGE’s 2021 All-Source RFP (RFP) seeking to execute a Renewable Energy and Storage Power Purchase Agreement (PPA). The following is not an exhaustive list of all material terms, nor does it purport to comprehensively express PGE’s expectations for any of the terms herein mentioned. Full-form, definitive terms shall be set forth in PGE’s form PPA issued in connection with the RFP. Capitalized terms not otherwise defined in this Term Sheet will be defined in the PPA.

Buyer:	Portland General Electric Company (“PGE”)
Seller:	[Name of Seller]
Description of Facility:	A [XX] MW _{AC} [type of technology] generating facility (the “Generating Facility”), which includes a [XX] MW/[XX] MWh [co-located][hybrid] battery energy storage facility (the “Storage Facility”), located in [name of County] County, in the State of [Name of State]. The Generating Facility and the Storage Facility are collectively referred to herein as the “Facility.”
Generating Facility Nameplate Capacity:	[For solar resources: ____MW_{DC}] [For non-solar resources: ____MW_{AC}]
Storage Facility Nameplate Capacity:	[XX] MW _{AC}
Storage Contract Capacity:	The Storage Facility will have an initial Storage Contract Capacity of [XX] MW _{AC} for [XX] hour discharge. The Storage Contract Capacity shall be adjusted during the Delivery Term in accordance with periodic storage capacity tests.
“Net Available Capacity:	“Net Available Capacity” means the full (maximum) net Energy the Facility is capable of delivering to the interconnecting Balancing Authority Area continuously for at least sixty (60) minutes, expressed in MW _{AC} ; limited by the interconnection limit identified in the interconnection agreement.
Product:	The Product includes the following:



1. "Energy": Energy generated and/or discharged by the Facility, scheduled in hourly increments, and delivered by Seller to Buyer on eligible firm, conditional firm or short-term firm transmission from the Facility to the Delivery Point, during the Delivery Term, including all necessary Ancillary Services. Energy shall be delivered to Buyer pursuant to the Scheduling Procedures set forth below;
2. "Environmental Attributes": any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Facility, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Delivery Term. Environmental Attributes include but are not limited to: (a) 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; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions, such as the carbon content of the energy generated by the Facility and REC Reporting Rights. Environmental Attributes do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Facility or the electric power output of the Facility;
3. "Capacity Attributes": any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Capacity Attributes do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Facility or the electric power output of the Facility;



	<p>4. Storage Capacity: All rights and products and attributes associated with the maximum dependable operating capability of the Storage Facility to be charged with, store and discharge electric energy; and</p> <p>5. Ancillary Services: All ancillary services, products and other attributes, if any that may be obtained from the Facility.</p>
<i>Delivered Energy Quantity:</i>	" <u>Delivered Energy Quantity</u> " means the sum of the Energy delivered to Buyer by or on behalf of Seller to the Delivery Point each hour during the Delivery Term as represented on the final e-Tag.
<i>No Sales to third parties:</i>	<p>Seller shall sell one hundred percent (100%) of the Facility capability and Facility Output to Buyer and may not sell any Energy, Storage Capacity, Capacity Attributes, Environmental Attributes or any other Facility capability to any other party or purchaser, unless such sale is expressly allowed by the PPA.</p> <p>"Facility Output" means all electric energy, generated and/or discharged by the Facility, less station service (parasitic power and electrical losses), if any, all as measured at the Facility meter. Facility Output does not include energy used to charge the Storage Facility or lost due to round trip efficiency at the Storage Facility.</p>
<i>Delivery Term:</i>	"Delivery Term" means no less than fifteen (15) Contract Years after the Commercial Operation Date. "Contract Years" means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at the end of the day prior to the anniversary of the Commercial Operation Date.
<i>Interconnection Point:</i>	The Facility shall interconnect to [XX substation] (the "Interconnection Point"). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.
<i>Delivery Point:</i>	<p>PGE scheduling point [BPAT.PGE or PGELOAD]</p> <p>PGE will not accept delivery at PacifiCorp West or at Pelton Round Butte.</p>
<i>Commercial Operation Date:</i>	"Commercial Operation Date" means the date on which the total Nameplate Capacity of both the Generating Facility and Storage Facility is fully operational and reliable, and the Facility is fully interconnected, fully integrated, and synchronized with the transmission system.
<i>Scheduled Commercial Operation Date:</i>	"Scheduled Commercial Operation Date" means [Date]. In no event shall the Scheduled Commercial Operation Date be later than December 31, 2024. If the Commercial Operation Date is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including the first to occur of (i) the date on



	<p>which the Facility achieves the Commercial Operation Date, and (ii) the Guaranteed Commercial Operation Date.</p> <p>“Delay Damages” are equal to \$100 per MW of Nameplate Capacity for each of the Generating Facility and the Storage Facility per day beginning on the first day through the 30th day after the Scheduled Commercial Operation Date, \$200 per MW of Nameplate Capacity for each of the Generating Facility and the Storage Facility per day beginning on the 31st day through the 60th day after Scheduled Commercial Operation Date, and \$300 per MW of Nameplate Capacity for each of the Generating Facility and the Storage Facility per day beginning on the 61st day after Scheduled Commercial Operation Date until the Commercial Operation Date is actually achieved or the Guaranteed Commercial Operation Date, whichever occurs first.</p>
<i>Guaranteed Commercial Operation Date:</i>	<p>“Guaranteed Commercial Operation Date” means the date that is one hundred twenty (120) days after the Scheduled Commercial Operation Date.</p> <p>Buyer shall have the right to terminate the PPA if the Commercial Operation Date is not met by the Guaranteed Commercial Operation Date and Seller shall forfeit the development security.</p>
<i>Pre-COD Progress Reporting:</i>	<p>Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Facility development milestones set forth in the PPA; (b) identifies any missed Facility development milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Facility development milestones and all subsequent Facility development milestones by the Guaranteed Commercial Operation Date.</p>
<i>Contract Price:</i>	<p>The Contract Price shall be the sum of the Generation Contract Price and the Storage Contract Price.</p> <p>The Generation Contract Price shall be \$(XX) /MWh. Control Area Services costs may not be included in the Generation Contract Price.</p> <p>The Storage Contract Price shall be \$(XX)/kW.</p>
<i>Test Energy:</i>	<p>For the Generating Facility:</p> <p>Generating Facility Test Energy means energy generated by the Generating Facility prior to achieving the Commercial Operation Date. Seller may elect to sell Generating Facility Test Energy to its transmission provider, to a third-party or to an organized market via its transmission provider’s system. Seller shall be entitled to any and all compensation received from its transmission provider or any third-party or organized market for such Generating Facility Test Energy. Otherwise, Seller shall Schedule in accordance with the Scheduling Procedure and deliver</p>



	<p>Generating Facility Test Energy to Buyer in order to complete Start-Up Testing of the Generating Facility. In such case, the parties shall coordinate in good faith to Schedule deliveries of Generating Facility Test Energy to Buyer that minimizes the burden to each of the parties, and Buyer shall receive the Generating Facility Test Energy. The price for such Generating Facility Test Energy received by Buyer shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for Buyer to receive the Generating Facility Test Energy, including but not limited to reimbursement for negative pricing and any necessary capacity costs or reserves costs.</p> <p>For the Storage Facility:</p> <p>Seller is responsible for all energy necessary for charging the Storage Facility in order to complete Start-Up Testing for the Storage Facility. Storage Facility Test Energy means all energy discharged by the Storage Facility prior to achieving the Commercial Operation Date. Seller may elect to sell Storage Facility Test Energy to its transmission provider, to a third-party or to an organized market via its transmission provider's system. Seller shall be entitled to any and all compensation received from its transmission provider or any third-party or organized market for such Storage Facility Test Energy. Otherwise, Seller may schedule and deliver Storage Facility Test Energy to Buyer in accordance with the Scheduling Procedure in order to complete Start-Up Testing for the Storage Facility. In such case, the parties shall coordinate in good faith to schedule deliveries of Storage Facility Test Energy to Buyer that minimizes the burden to each of the parties, and Buyer shall receive the Storage Facility Test Energy. The price for such Storage Facility Test Energy received by Buyer shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for Buyer to receive the Storage Facility Test Energy, including but not limited to reimbursement for negative pricing, and any necessary capacity costs or reserves costs.</p>
<p><i>Transmission Requirements:</i></p>	<p>For Off-System Facilities:</p> <p>Seller shall pay for and maintain eligible Long-Term Transmission, for a minimum of 80% of the Net Available Capacity, for delivery of Energy from the Facility's point of interconnection/point of receipt (POR) identified in the interconnection agreement to the Delivery Point for the entire Delivery Term, commencing on the Commercial Operation Date.</p> <p>Seller may deliver up to 20% of the Net Available Capacity on short term firm transmission.</p> <p>If the Seller has a transmission service request that utilizes Newpoint as the POR, the transmission service request must reference the specific Generation Interconnection Request number for the resource in the comments field.</p>



	<p>Curtailement or a transmission provider’s cancelation of conditional firm reassessment transmission service shall not be a Force Majeure event.</p> <p>If the reassessment service is terminated or the number of curtailment hours is increased, default and failure to perform provisions in the PPA would be triggered.</p> <p>If Seller is participating in a BPA TSEP process, which includes completing any and all actions necessary to keep the transmission service request(s) in an active OASIS status, Seller has the commercial obligation to participate in and fund all requirements in the TSEP process necessary to be granted long term firm or conditional firm bridge if those are the services elected. If Seller has a conditional firm reassessment, its participation requirements do not extend beyond the cluster study.¹²</p> <p>Seller shall be responsible for making all arrangements and paying all costs related to transmission, including but not limited to Ancillary Services costs required to deliver the Product(s) to the Delivery Point.</p> <p>For On-System Facilities:</p> <p>PGE must be able to designate the Facility as a network resource and Seller must have requested NRIS interconnection for Facility Output. In such case, Buyer will be responsible for all costs associated with the delivery of Facility Output to PGELOAD.</p>
<p><i>Control Area Services and Other Costs:</i></p>	<p>Seller shall procure and Buyer will reimburse Seller for all Control Area Services from an entity that is mutually agreed upon by the parties that may be required by the transmission provider or balancing authority area as a condition of interconnection.</p> <p>“Control Area Services” include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Control Area Services do not include ancillary service costs associated with the transmission provider’s provision of firm transmission service. For off-system resources, Control Area Services do not include real power losses.</p>
<p><i>Forecasting:</i></p>	<p>Seller shall provide Buyer with: (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) a rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and</p>

¹² See BPA TSEP Business Practice Manual: <https://www.bpa.gov/transmission/Doing%20Business/bp/tbp/TSR-Study-Expansion-Process-BP.pdf>



	<p>fifteen (15) minutes respectively, for the next 24 hours, and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day ("Generation Forecast"). Each Generation Forecast shall be performed by a third-party forecasting agent that is mutually agreed to by Buyer and Seller ("Forecasting Agent"). At Buyer's request, Seller will cause the Forecasting Agent to provide Buyer with an application program interface from which Buyer can access raw forecasting files. Seller shall ensure that the Forecasting Agent provides Buyer real time access to information and forecasts concerning the Facility's availability status.</p>
<p><i>Charging Energy:</i></p>	<p>During the Delivery Term, Seller shall be responsible, at its sole cost, for generating, managing, and delivering all Charging Energy (as measured at the Storage System metering point) necessary to charge the Storage Facility to supply the discharge schedule (defined in the Scheduling Procedure).</p>
<p><i>Scheduling:</i></p>	<p>Seller shall schedule and deliver Energy to Buyer at the Delivery Point commencing on the Commercial Operation Date and continuing through the end of the Delivery Term. Seller's Energy delivery may not intentionally exceed the Generation Forecast plus discharge Energy. For each day during the Delivery Term, Seller shall comply with the following scheduling procedure:</p> <ul style="list-style-type: none"> - Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day, communicate to Buyer's pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the expected Energy to be delivered each hour at the Delivery Point for the delivery day, consistent with the Generation Forecast net of Charging Energy; • Seller shall schedule the Energy by submitting a NERC e-Tag ("e-Tags") prior to 5:00 a.m. PPT of the applicable WECC pre-scheduling day for all hours of the applicable delivery day(s); and • Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day communicate to Buyer's pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, Seller's optimal charging schedule for the WECC Pre-Schedule Day. At a minimum, the charging schedule will include: <ol style="list-style-type: none"> 1. the hours in which Seller proposes to charge the Storage System; and 2. the total capacity and state-of-charge Seller proposes to charge the Storage System to, by the end of the last hour in which Seller shall charge the Storage System. • Buyer shall, by 8:00 a.m. PPT of the customary WECC Pre-Scheduling Day communicate to Seller via an Application Program Interface (API) or as directed by Buyer, Buyer's adjusted discharge schedule for the WECC Pre-Schedule Day if different from the discharge schedule in Seller's expected Energy communicated to Buyer by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day. At a minimum, the discharge schedule will include:



1. the hours in which Seller shall discharge the Storage System; and
 2. the MW amount at which Seller shall discharge the Storage System for each hour.
- Seller shall Schedule the Energy with e-Tags according to prevailing WECC pre-scheduling provisions and protocols and the terms of the PPA. Seller shall schedule the Facility as the identified e-Tag source. Seller may not net or otherwise combine schedules from resources other than the Facility, except as necessary for Ancillary Services.

Seller shall make adjustments to the pre-scheduled energy scheduled from the Facility each hour in real-time ("Real-time Adjustments") consistent with the Generation Forecast net of charging energy and account for Facility Net Available Capacity. For such Real-time Adjustments:

- Buyer reserves the right to adjust its discharge schedule. To make Real-time Adjustments, the Buyer shall communicate to Seller's real-time desk via API, or as otherwise directed by Buyer, Buyer's revised discharge schedule. Buyer shall communicate the Real-time Adjustments no later than one-hundred and twenty (120) minutes prior to the flow hour.
- Seller will submit and receive approval of e-Tag adjustment no later than seventy-five (75) minutes prior to the flow hour, in accordance with the requirements of the applicable Transmission Provider(s).
- Seller will make all NERC e-Tag adjustments.
- Seller's e-tag shall match the adjustment communicated to the Buyer.
- Seller will be responsible for any costs, charges, or fees associated with adjustments to the e-tag after seventy-five (75) minutes prior to the flow hour.

Buyer discharge schedule shall be followed by Seller so long as such discharge schedule remains feasible and total Facility Output does not exceed Net Available Capacity.

Seller shall not schedule any energy to be delivered to Buyer pursuant to this Agreement using a dynamic or pseudo-tie e-tag as such terms are defined and used by NERC.

In the event that the regional market design, balancing authority, reliability entity or regulatory entity (e.g., PGE Transmission, BPA, WECC, NERC, RC West, FERC) causes or otherwise reasonably requires Buyer's scheduling practices to change after the Effective Date, Buyer and Seller shall meet and mutually agree on updated Scheduling Procedures within thirty (30) days after written notice to Seller of such proposed change. Seller shall not unreasonably withhold agreement to proposed changes to the scheduling practices.



<p><i>Output Guarantee:</i></p>	<p>Seller guarantees that during the Delivery Term, the Delivered Energy Quantity, shall meet or exceed the Guaranteed Output Threshold.</p> <p>The “Guaranteed Output Threshold” is equal to [90%] of the Expected Output.</p> <p>The “Performance Measurement Period” is equal to a monthly period. The initial Performance Measurement Period will commence on the Commercial Operation Date.</p> <p>The “Expected Output” is equal to the Facility’s P50 expected monthly output.</p> <p>After each Performance Measurement Period, Seller shall provide Buyer sufficient detail of the Facility’s performance to substantiate its calculation of Energy deliveries for the Guaranteed Output Threshold. The Guaranteed Output Threshold shall be adjusted for energy that was not delivered during Excused Hours. “Excused Hours” means hours when the Facility was not available due to Force Majeure, excused curtailments, or Buyer’s failure to perform.</p> <p>It shall be a Seller event of default if, commencing on the Commercial Operation Date, Seller fails to deliver [for wind resources: seventy-five percent (75%) of the annual sum of the Guaranteed Output Threshold to Buyer during two (2) out of three (3) Contract Years during the Delivery Term] [for non-wind resources: fifty percent (50%) of the annual sum of the Guaranteed Output Threshold to Buyer during any Contract Year during the Delivery Term].</p>
<p><i>Generating Facility Mechanical Availability Guarantee:</i></p>	<p>Beginning with the first full calendar year following the Contract Year in which the Commercial Operation Date has occurred, Seller’s failure to maintain a minimum Generating Facility Mechanical Availability Percentage for the Generating Facility of [ninety-seven percent (97%)] for any two (2) out of three (3) Contract Years on a rolling basis. The Generating Facility Mechanical Available Percentage of the Generating Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year [non-solar resources: by the total number of hours in the calendar year] [solar resources: by the total number of daylight hours in the calendar year.] On or before January 31st of each year, Seller shall provide Buyer written documentation, which shall be subject to audit by Buyer, to verify or otherwise substantiate Seller’s calculation of the Generating Facility Mechanical Available Percentage of the Generating Facility for the prior calendar year. The operational hours for the Generating Facility shall be the hours that the Generating Facility is potentially capable of producing power at Generating Facility Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially</p>



	capable of delivering such power to the point of interconnection with the transmission provider.
<i>Excess Energy:</i>	If during the Performance Measurement Period, the Delivered Energy Quantity is in excess of [110%] of the Guaranteed Output Threshold, then for each MWh of Delivered Energy Quantity in excess of [110%] of the Guaranteed Output Threshold (“Excess Energy”), the applicable price paid by Buyer for such Excess Energy shall be equal to the lesser of (a) [93%] of the Market Index Price applicable to the interval in which such Excess Energy was delivered, or (b) [75%] of the Generation Contract Price.
<i>Curtailement:</i>	<p>In the event the Facility is curtailed due to a System Emergency, Force Majeure, by the transmission provider (excluding curtailment hours as a result of utilization of conditional firm transmission), Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.</p> <p>Notwithstanding the foregoing, Buyer shall have the right to curtail deliveries of Energy, up to [400 hours] each calendar year (or a prorata number of hours for any partial year during the Delivery Term) without compensation, and all such events shall be defined as “Buyer Curtailment”.</p> <p>The Guaranteed Output Threshold will be reduced by the number of MWhs subject to Buyer Curtailment. Curtailment hours as a result of utilization of conditional firm transmission do not qualify as a Buyer Curtailment.</p>
<i>Storage Capacity Guarantee:</i>	During the Delivery Term, Seller shall maintain the Storage Facility with guaranteed storage contract capacity of not less than [__MW, representing 90% of the Storage Contract Capacity as of the Commercial Operation Date] (“Guaranteed Storage Contract Capacity”). If the Storage Contract Capacity for the Facility is determined during a storage capacity test to be less than the Guaranteed Storage Contract Capacity, Seller shall pay to Buyer as liquidated damages for such deficiency an amount determined by multiplying the number of months since the last storage capacity test (including the month in which the most current storage capacity test was completed) by (i) Storage Contract Price multiplied by [125%] multiplied by (ii) the difference between the Guaranteed Storage Contract Capacity and the Storage Contract Capacity for the Storage Facility as determined during the most recent storage contract capacity test (“Guaranteed Storage Contract Capacity LDs”). Payment of Guaranteed Storage Contract Capacity LDs is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the Storage Contract Capacity being less than the Guaranteed Storage Contract Capacity for a Contract Year.



	Additionally, it will be an event of default if the Storage Contract Capacity, as determined by the most recent storage contract capacity test, is less than the Guaranteed Storage Contract Capacity, which remains uncured for a period of thirty (30) days as shown by a new Storage Capacity Test.						
<i>Actual Round-Trip Efficiency:</i>	The round-trip efficiency for each month is calculated as a percentage, based on the amount of MWhs used to charge the Facility and the amount of MWhs discharged from the Facility, as measured by the Storage Facility meter at the Interconnection Point.						
<i>Guaranteed Round-Trip Efficiency:</i>	<p>"Guaranteed Round-Trip Efficiency" means [ninety percent (90%)].</p> <table border="1" data-bbox="664 590 1227 777"> <thead> <tr> <th>Contract Year</th> <th>Guaranteed Round-Trip Efficiency</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>90.0%</td> </tr> <tr> <td>2 - XX</td> <td>[Seller to fill out rest of table]</td> </tr> </tbody> </table> <p>It will be an event of default if the Round-Trip Efficiency is less than the Guaranteed Roundtrip Efficiency and such failure continues for [90] days after Seller's receipt of written notice or discovery of such failure.</p>	Contract Year	Guaranteed Round-Trip Efficiency	1	90.0%	2 - XX	[Seller to fill out rest of table]
Contract Year	Guaranteed Round-Trip Efficiency						
1	90.0%						
2 - XX	[Seller to fill out rest of table]						
<i>Guaranteed Round-Trip Efficiency Adjustment:</i>	If during any month during the Delivery Term, the Actual Round-Trip efficiency for such month is less than the Guaranteed Round-Trip Efficiency, the Seller shall pay the Buyer the following amount: (i) the total Charging Energy for such month, multiplied by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, multiplied by (iii) average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical On-Peak (bilateral) indices.						
<i>Maximum Annual Discharge MWh:</i>	Buyer may discharge a maximum of [MWhs] per year, subject to the Daily Dispatch Limits.						
<i>Daily Dispatch Limits:</i>	<p>Full Charging limits (if any): [XX] times per day</p> <p>Full Discharging limits (if any): [XX] times per day</p> <p>Partial Charging limits (if any): [XX] times per day</p> <p>Partial Discharging limits (if any): [XX] times per day</p>						
<i>Other Operating Limits and Parameters:</i>	[Seller to describe all applicable operating limits on dispatch of the Storage Facility, if any]						
<i>Guaranteed Storage Monthly Availability:</i>	Seller guarantees the Storage Facility availability shall be no less than [98%] for each month during the Delivery Term. Storage Facility availability shall be calculated using a methodology that is generally consistent with the method prescribed by the Storage Facility's equipment manufacturers. The Storage Contract Price shall be adjusted						



	<p>if the Storage Facility fails to meet the Guaranteed Storage Monthly Availability in any month during the Delivery Term.</p> <p>In the event Seller fails to meet the Guaranteed Storage Monthly Availability during [2] months during any [12] month rolling period during the Delivery Term, Buyer may terminate the PPA.</p>
<i>Guaranteed Storage Monthly Availability Adjustment:</i>	<p>If the Storage Facility does not meet the Storage Guaranteed Monthly Availability, the Storage Contract Price shall be adjusted by multiplying it by the following adjustment, which shall be calculated after any Guaranteed Round-Trip Efficiency Adjustment, if any, has been applied to the Storage Contract Price:</p> <p>(i) If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:</p> $AA = 100\% - [(98\% - \text{monthly storage availability}) \times 2]$ <p>(ii) If the monthly storage availability is less than 70%, then:</p> $AA = 0\%$
<i>Grid Charging of Storage Facility:</i>	<p>The Storage Facility shall not receive charging energy from any source other than the Generating Facility prior to [the expiration of the ITC recapture period]. Following the ITC recapture period, if the Storage Facility is capable of receiving charging energy from the Generating Facility and in the form of grid energy and Buyer elects to provide charging energy from a source other than the Generating Facility, including grid energy (i) Buyer will be responsible for all costs relating to the charging of the Storage Facility from a source other than the Generating Facility, including the cost of energy used to charge the Storage Facility and (ii) the Parties will amend the PPA to the extent necessary so that Generating Facility Energy delivered by Seller to the Delivery Point is fully paid for by Buyer (unless Buyer is otherwise not required to pay for such Generating Facility Energy hereunder).</p>
<i>Failure to Deliver Facility Output:</i>	<p>In the event Seller fails to deliver Facility Output, Seller shall pay Buyer the following damages ("Failure to Deliver Damages"):</p> <p>(a) The replacement cost for such deficiency calculated by multiplying the amount of the deficiency by the positive difference, if any, of the Replacement Price less the Generation Contract Price; provided, however, such amount shall not be less than zero dollars (\$0.00). The "Replacement Price" shall be the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices ("ICE DA Indices") for such month; plus</p> <p>(b) The incremental cost associated with Capacity Attributes, and/or carbon emissions costs incurred by the Buyer as a result of Seller's failure to deliver Facility Output; plus</p>

- (c) Any incremental Ancillary Services and transmission costs incurred by Buyer; plus
- (d) Any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver.

"Reliability Entity" may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.

In the event Seller fails to deliver Environmental Attributes, including Bundled RECs, associated with the Facility Output, Seller shall settle any such shortfall as follows:

- (a) deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or
- (b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs and Buyer elects in its sole discretion to purchase Qualifying Replacement RECs, Seller shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or
- (c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs and Buyer does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe Buyer the Qualifying Replacement REC Price identified by Buyer, multiplied by the number of Bundled RECs Seller failed to deliver.

"Qualifying Replacement RECs" means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to Buyer bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.

"Qualifying Replacement REC Price" means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying



	Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.
<i>Monthly Settlement and Invoice:</i>	<p>All invoices shall be due on the tenth (10th) day of each month and payable on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.</p> <p>The payment for all Products shall be the sum of the Energy Payment and Storage Capacity Payment.</p> <p>The Energy Payment for each month during the Delivery Term is equal to the sum of:</p> <ul style="list-style-type: none"> (a) the lesser of (i) the hourly Delivered Energy Quantity, or (ii) hourly Facility Output, each up to [110%] of the Guaranteed Output Threshold, multiplied by the Generation Contract Price; plus (b) hourly Excess Energy multiplied by the lesser of (i) [93%] of the Market Index Price, or (ii) [75%] of the Generation Contract Price; plus (c) for each hour that the Market Index Price is negative, the hourly Delivered Energy Quantity multiplied by [107%] of the Market Index Price. <p>The Storage Capacity Payment for each month during the Delivery Term will be equal to:</p> <ul style="list-style-type: none"> (iv) the Storage Contract Price multiplied by the Storage Contract Capacity; (v) adjusted by the Guaranteed Round-Trip Efficiency Adjustment and Guaranteed Storage Monthly Availability Adjustment, if any; (vi) minus any Guaranteed Storage Contract Capacity LDs and Failure to Deliver Damages.
<i>Market Index Price:</i>	The EIM real-time pre-dispatch nodal price for the Delivery Point. In the event Buyer is participating in an organized market other than the EIM, then the Market Index Price will mean the Locational Marginal Price associated with the Pricing Node or Aggregate Pricing Node for the Delivery Point within such organized market.
<i>Negative Price Event:</i>	When the Market Index Price is less than zero ("Negative Price Event"), Seller shall have the right, but not the obligation, to suspend part or all of its deliveries, via a reduction in Energy. Seller's obligation to deliver the Guaranteed Output Threshold shall be reduced by one (1) MWh for each substantiated MWh reduced due to a Negative Price Event.



<i>REC Transfer:</i>	Seller shall transfer all RECs generated by the Facility during each month of the Delivery Term to Buyer via WREGIS pursuant to the timelines in WREGIS Operating Rules.
<i>Operations and Maintenance:</i>	<p>Seller shall not schedule any non-emergency maintenance that reduces the energy generation and/or storage capability of the Facility, as applicable, by more than ten percent (10%) during the months of June through September, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the parties agree otherwise in writing.</p> <p>Seller shall provide its outage schedule no later than September 1st of each year preceding such outage(s).</p> <p>The outage schedule for each Contract Year shall not exceed 200 hours.</p>
<i>RPS Compliance:</i>	Seller shall ensure the Facility obtains Oregon RPS Certification within ninety (90) days of the Commercial Operation Date and shall maintain such certification during the Delivery Term.
<i>Labor Requirement:</i>	<p>Union labor must be utilized for major construction activities related to the Facility and must include a Project Labor Agreement requirement in any related executed Engineering, Procurement and Construction Agreements.</p> <p>The labor group that constructs and maintains the Facility must have policies in place that are designed to limit or prevent workplace harassment and discrimination.</p> <p>Additionally, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least fifteen (15) percent of the total work hours performed by individuals from those communities.</p>
<i>Buyer Conditions Precedent:</i>	<p>Buyer's obligations shall be conditioned and will become effective only upon the occurrence of each and every one of the following conditions:</p> <p>[(i) receipt of approval from the Oregon Public Utility Commission, in form and substance satisfactory in Buyer's sole discretion; and</p> <p>(ii) written approval of the PPA by Buyer's Board of Directors.]</p>
<i>Seller Conditions Precedent:</i>	[Seller CPs]



<p>Security Requirements:</p>	<p>Within thirty (30) days after the Effective Date of the PPA, Seller shall deliver development security to Buyer in an amount equal to \$200/kW of Generating Facility Nameplate and \$200/kW of Storage Facility Nameplate Capacity and shall maintain such development security until the Commercial Operation Date.</p> <p>On or before Commercial Operation Date, Seller shall deliver delivery term security to Buyer in an amount equal to \$100/kW of Generating Facility Nameplate and \$100/kW of Storage Facility Nameplate Capacity and shall maintain such delivery term security through the end of the Delivery Term. Within five (5) Business Days following any draw by Buyer on the delivery term security, Seller shall replenish the amount drawn such that the delivery term security is restored to the full amount.</p> <p>All security shall be in the form of cash or a letter of credit from a Qualified Institution as defined below and in a form reasonably acceptable to Buyer.</p> <p>“Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located. On a case by case basis PGE will accept banks that do not meet the above criteria as Qualified Institutions if they have received an endorsement from an institution that does meet the criteria in the Qualified Institution definition.</p>
<p>Assignment:</p>	<p>Neither party may assign the PPA without prior written consent of the other party, which consent may not be unreasonably withheld or delayed.</p> <p>Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed as an assignment and will require the prior written consent of the Buyer.</p> <p>Seller shall pay Buyer’s reasonable expenses incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility.</p>
<p>Other Standard Contract Terms and Conditions to be included in the PPA:</p>	<p>The PPA will include additional terms and conditions that are usual and customary in transactions of its nature.</p>
<p>Termination Settlement Amount:</p>	<p>In the event the PPA is terminated due to an event of default, the non-defaulting party shall calculate the Settlement Amount. The defaulting shall pay the Settlement Amount to the non-defaulting party.</p>

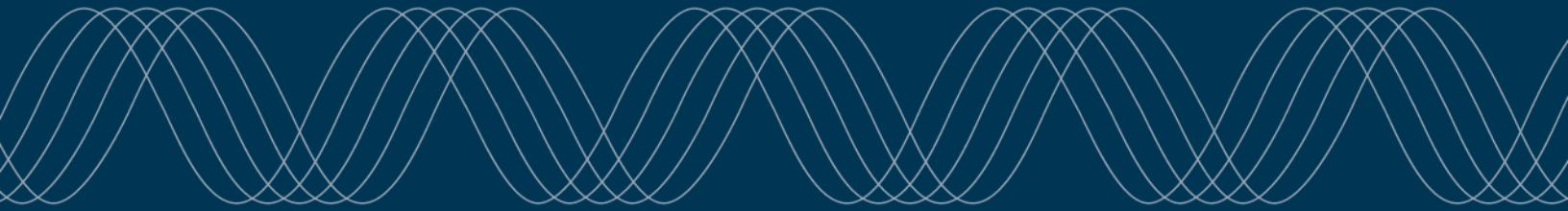


	<p>The Gains or Losses resulting from the termination of the PPA shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the PPA. The Gains or Losses shall be calculated for a period equal to the remaining Term ("Settlement Period"). The quantity of Energy in each month of the Settlement Period associated with Generating Facility shall be equal to the Expected Output for such month. The storage capacity in each month of the Settlement Period shall be equal to the Storage Contract Capacity as of the Termination Date.</p> <p>"Settlement Amount" means the Losses or Gains, and Costs, expressed in USD, which the non-defaulting party incurs as a result of the termination and liquidation of the PPA. If the non-defaulting party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the non-defaulting party. If the non-defaulting party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.</p> <p>"Gains" means, with respect to a party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to the PPA determined in a commercially reasonable manner.</p> <p>"Losses" means, with respect to a party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to the PPA determined in a commercially reasonable manner.</p> <p>"Costs" means, with respect to a party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys' fees and expenses incurred by a Party in connection with enforcing its rights under the Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.</p>
Confidentiality:	This Term Sheet and all information exchanged during negotiations of the PPA are confidential, subject to the Non-Disclosure Agreement between Buyer and Seller dated [Date].



Appendix D

APA and EPC Form Term Sheet



2021 All-Source RFP



Note: The following represents a summary of certain material terms and conditions for Bidders to PGE's 2021 All-Source RFP (RFP) seeking to execute an Asset Purchase Agreement (APA) with PGE to sell an asset under development and prior to issuance of notice to proceed, as well as an Engineering, Procurement and Construction Contract (EPC) for such asset. The following is not an exhaustive list of all material terms, nor does it purport to comprehensively express PGE's expectations for any of the terms herein mentioned. Full-form, definitive terms shall be set forth in PGE's form APA and EPC documents issued in connection with the RFP. Further modifications to each of the APA and EPC terms may be necessary to the extent that the asset is at a different level of development than assumed above. Capitalized terms not otherwise defined in this Term Sheet will be defined in the APA and EPC, as applicable.

Seller	[Name of Seller]
Buyer (under the APA); Owner (under the EPC)	Portland General Electric Company.
Contractor	[Name of Contractor], the contractor responsible for constructing the Project under the EPC.
Project	[Description of the project.]
Project Nameplate Capacity	[] MW
Project Assets	[List or description of material Project assets.]
Project Site	[Description and location of the Project site.]
Assumed Liabilities	Buyer shall assume the following liability related to the Project: [Enumerated list of liabilities and obligations of Seller that will be assumed by PGE.] Seller shall retain all other liabilities of every kind or nature, other than the Assumed Liabilities.
Closing Date	[Closing Date]
Purchase Price under APA	[\$]
Fixed Price under EPC	[\$]
Payments	The Purchase Price under the APA shall be paid in full on the Closing Date, and subject to default rate of Federal Funds Effective Rate <i>plus</i> 2%. The Fixed Price under the EPC shall be paid on a milestone-stone based payment schedule. Retainage of five percent (5%) will be withheld from each milestone payment, and will be released at Project Substantial Completion, less 200% of the projected punch list costs through Final Completion.
Credit Support under EPC	On or before a notice to proceed is provided to Contractor under the EPC, to secure its obligation under the EPC, Contractor shall provide performance assurance in the form of cash or a Letter of Credit from a Qualified Institution as defined below in the amount of \$100/kW of Nameplate Capacity. "Qualified Institution" means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders' equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody's, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located. On a case by case basis PGE will accept banks as Qualified Institutions if they



	have received an endorsement from an institution that does meet the criteria in the Qualified Institution definition.
Project Assets subject to APA	<p>a. Seller holds 100% of the ownership interest in the Project Assets and does not own any other asset necessary for PGE to be able after Closing to develop, construct, own, operate or maintain the Project in accordance with Prudent Utility Standards.</p> <p>b. Seller has good, valid and marketable title to all the Project Assets, which are free and clear of any and all Liens, other than Permitted Liens.</p>
Seller Contracts subject to APA	<p>a. Seller shall assign the following contracts entered into by Seller or Seller's affiliate for the benefit of the Project or otherwise related to the Project (the "Seller Contracts"): [Enumerate Seller Contracts].</p> <p>b. Each Seller Contract has been duly authorized, executed and delivered, and is in full force and effect and constitutes the legal, valid, binding and enforceable agreement as to Seller, or Seller's affiliate, and the respective counterparties thereto, and will not be rendered invalid or unenforceable as a result of the transactions contemplated by this transaction.</p>
No Dispositions under the APA	Seller shall not, without PGE's prior written consent, (a) sell, transfer or otherwise dispose of, or agree to sell, transfer or otherwise dispose of, any of the Project Assets, or (b) lease, mortgage or pledge any of the Project Assets and which such lease, mortgage or pledge would remain in effect for any period after the Closing Date.
Environmental Attributes under APA	<p>Neither Seller nor any of Seller's affiliates, as the case may be, has sold or transferred, or agreed to sell or transfer, or granted any options or rights to purchase energy or Environmental Attributes related to the electric power to be generated by the Project for any period after Closing Date.</p> <p>"Environmental Attributes" include any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Project, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Delivery Term. Environmental Attributes include but are not limited to: (a) 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; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions, such as the carbon content of the energy generated by the Project and REC Reporting Rights. Environmental Attributes do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Project, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Project or the electric power output of the Project.</p>

Force Majeure	<p>The parties' obligations under the EPC or APA, as applicable, shall be excused for the duration of a Force Majeure Event, but in no event exceeding 180 days.</p> <p>A "Force Majeure Event" shall occur for any event or circumstance, or combination of events or circumstances, that meets all of the following criteria: (a) arises after the effective date of the APA or EPC, as applicable (b) was not caused by and is unforeseeable and beyond the reasonable control of the party claiming the Force Majeure Event, (c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence (including the expenditure of commercially reasonable sums) of the party claiming the Force Majeure Event, and (d) has an impact which will actually, demonstrably and adversely affect the ability of the affected party to perform its obligations (other than payment obligations) in accordance with the terms of the underlying agreement.</p> <p>The following shall be excluded from the definition of Force Majeure as being foreseeable: (i) COVID-19 (and its variants) and pandemics of a similar nature and intensity are excluded from Force Majeure relief; and (ii) extreme weather events attributable to climate change, such as smoke, extreme temperatures.</p>
Work to be Performed under EPC (Turnkey Nature)	<p>Contractor shall perform all required work under the EPC, on a turnkey basis in connection with (a) the design, procurement, engineering, specified permitting, construction, assembly, installation and the start-up and testing, of the Project to Final Completion, (b) the provision, management and supervision of all labor, transportation, administration and other services as required in connection with any of the foregoing, (c) the inspection and furnishing of all materials, equipment, machinery, tools, temporary structures, temporary utilities as required in connection with the foregoing, and (d) the performance of Contractor's warranty obligations thereunder (collectively, the "Work").</p>
Contractor Review of Project Site Condition under EPC	<p>Contractor must represent that it has ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions including applicable laws, and the availability and productivity of labor which might affect its performance of the Work or the cost thereof and that, based upon the same, but subject to rights to change relief, commits that it can complete the Work for the Fixed Price in accordance with the Project schedule.</p>
Procurement of Materials, Equipment and Supplies;	<p>Except to the extent provided by Owner, Contractor shall procure and supply, at its own expense, all equipment required to complete the Work, including without limitation all equipment as necessary for performance and completion of its obligations under the EPC (whether on or off the Project Site).</p>
Permits Required for Work under EPC	<p>Contractor shall timely obtain and maintain all permits required to complete the Work. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain required Owner permits.</p>
Labor and Personnel Requirements under EPC	<p>Contractor will provide all labor and personnel required to perform the Work.</p>



	<p>Union labor must be utilized for all Work pursuant to a Project Labor Agreement.</p> <p>The labor group must have policies in place that are designed to limit or prevent workplace harassment and discrimination.</p> <p>The labor group must also have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least 15 percent of the total work hours performed by individuals from those communities.</p>
Liens under EPC	<p>Contractor shall, at Contractor's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond, any lien in respect to the Work, the equipment, the Project 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.</p>
Progress Reports and Meetings under EPC	<p>Contractor will be required to submit, on a monthly basis, reports that detail the progress of the Work and projections for future progress. Reports will include, without limitation, status schedules showing comparison of actual Work progress against the Project Schedule and budget.</p>
Owner Inspection and Re-Performance Rights under EPC	<p>Owner and its representatives will have the right to inspect the Work at any time during its progress and to direct Contractor to correct and re-perform any Work that does not conform with the requirements of the Agreement. If a portion of the Work is covered contrary to Owner's written advance request, Owner may cause Contractor to uncover such Work at Contractor's expense. If a portion of the Work is covered that was not the subject to prior Owner request for inspection, Owner may direct such Work to be uncovered for inspection. If the inspection reveals non-conformities, the costs of uncovering/recovering will be charged to the account of Contractor, otherwise they will be charged to the account of Owner.</p>
Project Substantial Completion; Scheduled Substantial Completion Date	<p>"Project Substantial Completion" will occur when: (a) all major equipment has been installed; (b) the Project has been connected and synchronized with the grid; (c) punch list has been agreed to by the Parties; (d) all Work is complete (other than the punch list); (e) known defects have been corrected; (f) performance guarantee(s) has been met, or Contractor has paid all required performance liquidated damages; (g) all permits have been delivered; (h) spare parts have been delivered; (i) all Delay LDs have been paid; (j) all required documentation and certifications have been delivered to Owner.</p> <p>"Scheduled Substantial Completion Date" means [Date]. In no event shall the Scheduled Substantial Completion Date be later than December 31, 2024. If Substantial Completion is not achieved on or before the Scheduled Substantial Completion Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Substantial Completion Date up to, but not including the first to occur of (i) the date on which the Facility achieves Substantial Completion, and (ii) the Guaranteed Substantial Completion Date.</p>

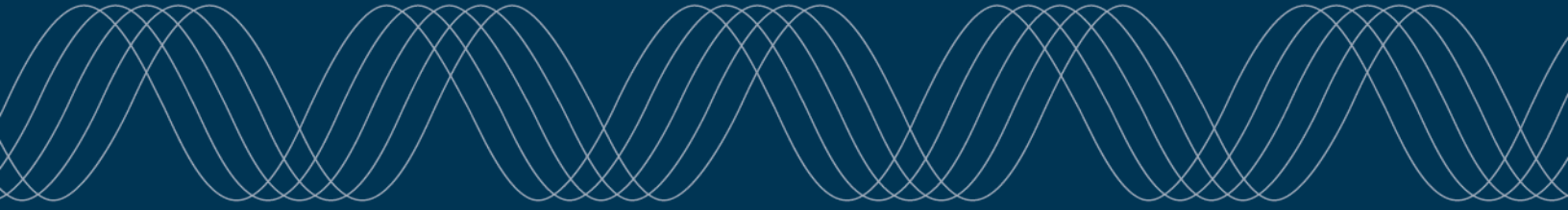


	<p>Delay Damages for failure to achieve Substantial Completion by the Scheduled Substantial Completion Date shall be equal to \$100 per MW of Nameplate Capacity per day beginning on the first day through the 30th day after the Scheduled Substantial Completion Date, \$200 per MW of Nameplate Capacity of the Facility per day beginning on the 31st day through the 60th day after Scheduled Substantial Completion Date, and \$300 per MW of Nameplate Capacity of the Facility per day beginning on the 61st day after Scheduled Substantial Completion Date until Substantial Completion is actually achieved or the Guaranteed Substantial Completion Date, whichever occurs first ("Substantial Completion Delay Liquidated Damages").</p>
Guaranteed Substantial Completion Date	<p>Contractor will guarantee that Substantial Completion will be achieved by no later than [date] (the "Guaranteed Substantial Completion Date").</p> <p>Owner shall have the right to terminate the EPC if the Commercial Operation Date is not achieved by the Guaranteed Substantial Completion Date and Contractor shall forfeit the development security.</p>
Final Completion	<p>"Final Completion" will occur when: (a) Substantial Completion has been achieved; (b) Contractor has delivered to Owner all required final lien releases and waivers related to the Work; (c) Contractor has completed all Punch-List Items; (d) All work has been completed to remedy any existing warranty claims since agreement on the Punch List; (e) Delivery of all remaining documentation to Owner (including record "as built" drawings of the Project and other documentation as will be described in the Agreement); and (f) Owner has accepted and certified in writing that the foregoing criteria have been achieved.</p>
Transfer of Title; Risk of Loss under EPC	<p>Contractor warrants and guarantees that legal title to and ownership of the Work (including all major equipment) shall pass to Owner, free and clear of any and all Liens upon the earlier of (a) payment to Contractor of the portion of the Fixed Price attributable to such Work and major equipment, and (b) in the case of major equipment, the delivery of such major equipment to the Project Site.</p> <p>Until the Project Substantial Completion Date, Contractor will assume the risk of loss for all Work and equipment upon delivery. Contractor shall, at the option of Owner and at Contractor's cost, promptly repair or replace any lost or damaged Work or equipment. In such event, Contractor shall have access to Owner's Builder's All Risk Policy, provided that in the event of a covered loss, Contractor shall pay any applicable deductible amount. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor's equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Project Substantial Completion Date.</p>
Warranties under EPC	<p>Contractor warrants that: (a) all equipment and spare parts shall be new, unused and undamaged when installed; (b) all such equipment, spare parts and all Work shall (i) be free from defects, (ii) conform to all applicable requirements of all Applicable Laws, applicable standards and the EPC, and (iii) be in strict compliance with the Scope of Work; (c) the services comprising the Work will be performed with Contractor's best skill and judgment in a good and workmanlike manner; (d) the Work will conform to, and be performed in accordance with Prudent Industry Practices; and (e) none of the Work violates any Intellectual Property Rights.</p>

	The Warranty Period shall be agreed to between the Parties, depending on the nature of the Bidder's technology. The Warranty Period shall be extended for any component of the Work that is repaired or replaced pursuant to the Warranty, or for all components of a type where 15% or more of such components required repair or replacement. Specific major equipment warranties shall be set forth in the EPC, depending on the nature of the Project's technology.
Termination for Contractor Default under EPC	In the event of a termination by Owner for a Contractor Event of Default, Owner may use whatever means it deems necessary to complete the Work. Contractor shall pay to Owner as damages (i) all costs and expenses incurred by Owner to complete the Work, including overhead and legal, engineering and other professional expenses, (ii) all other costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of the EPC, to the extent such sums exceed the Fixed Price under the EPC less amounts already paid to Contractor at the time of termination.
Aggregate Limitation on Liability under the APA	Aggregate limit on liability for each party under the APA shall be 100% of the Purchase Price under the APA, excluding liability for (a) Seller's representations regarding organization and authority, project assets, solvency, or any third party claims, or fraud/willful misconduct and (b) PGE's representations regarding organization and authority or any third party claims.
Limitation on Contractor's Aggregate Liability under EPC	Contractor's total aggregate liability under the Agreement will be limited to one hundred percent (100%) of the Fixed Price under the EPC. This limitation shall not apply to liability arising from fraud, gross negligence, or willful misconduct, third-party indemnity claims, Contractor taxes, or costs incurred by Contractor in completing the Work. Liability arising from third party claims for which Contractor is obligated to indemnify Owner shall not count toward or be limited by the foregoing cap. Costs expended to complete the Work (including achievement of must-make/minimum performance guarantee values) do not constitute "liability" for purposes hereof.
Confidentiality	This Term Sheet and all information exchanged during negotiations of the APA and EPC are confidential, subject to the Non-Disclosure Agreement between Buyer and Seller dated [Date].
Buyer Conditions Precedent:	Buyer's obligations shall be conditioned and will become effective only upon the occurrence of each and every one of the following conditions: [(i) receipt of approval from the Oregon Public Utility Commission, in form and substance satisfactory in Buyer's sole discretion; and (ii) written approval of the APA/EPC by Buyer's Board of Directors.]
Seller Conditions Precedent	[Enumerate Seller Conditions Precedent]
Entity Requirements	Seller and Project must have met all applicable legal requirements, including but not limited to FERC, WECC and NERC requirements.
Tax Credit Eligibility	Project to be eligible for Production Tax Credit / Investment Tax Credit, as applicable.
Miscellaneous Provisions	The APA and EPC Agreement will include other typical boilerplate provisions for contracts of that nature.

Appendix E

Renewable PPA Form Agreement



2021 All-Source RFP



WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT

Between

Portland General Electric Company

And

[*Seller*]

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- Exhibit L Forecast Methodology**
- Exhibit M Optimal Conditions/Nameplate Capacity**
- Exhibit N Operational Hours and Mechanical Availability Methodology**

This WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT (“Agreement”) is entered into effective as of the _____ day of _____, 20__ (“Effective Date”), by and between [Seller], a [State] [Entity Type] (“Seller”), and Portland General Electric Company, an Oregon corporation (“PGE”). PGE and Seller are also referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions.

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

1.1.1 “AAA Procedures” has the meaning set forth in Section 18.2.

1.1.2 “Affiliate” means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.1.3 “Agreement” means this Wholesale Renewable Power Purchase Agreement entered into between Seller and PGE and all incorporated appendices, exhibits, schedules and attachments to this Agreement, as the same may be amended by the Parties from time to time.

1.1.4 “Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, energy imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, operating spinning reserve services, and operating supplemental reserve services.

1.1.5 “Balancing Authority Area” means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generators within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Industry Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice, and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Industry Practice.

1.1.6 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or

commenced against it is not dismissed after one hundred and eighty (180) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.1.7 “Bundled REC” means a REC that, subject to the terms and conditions of this Agreement, is generated by the Facility and delivered simultaneously and directly to PGE together with the equivalent quantity of Energy generated by the Facility as a single bundled Product, as represented by the lesser of the final e-Tag or the actual Facility Output on an hourly basis.

1.1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

1.1.9 “Capacity Attributes” means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Notwithstanding any other provision of this Agreement, “Capacity Attributes” do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Facility, or (ii) any state, federal, local, or private cash payments or grants relating in any way to the Facility or the electric power output of the Facility.

1.1.10 “Claiming Party” has the meaning set forth in Section 4.2.

1.1.11 “Commercial Operation” means that not less than the Nameplate Capacity is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the Transmission System, all of which shall be Seller’s responsibility to receive or obtain. Without limiting Seller’s other obligations under this Agreement, Commercial Operation occurs when all of the following events (a) have occurred, and (b) remain simultaneously true and accurate as of the time at which Seller gives PGE notice that Commercial Operation has occurred:

(i) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that the Nameplate Capacity of the Facility is able to generate electric power reliably in amounts and quality expected by this Agreement and in accordance with all other terms and conditions hereof;

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

(iii) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the applicable Transmission System in conformance with the Interconnection Agreement and is able to deliver energy at no less than the Nameplate Capacity.

(iv) PGE has received confirmation from the Transmission Provider(s) that (a) the Facility has successfully achieved interconnected operations, and (b) Seller has paid all amounts due under the interconnection agreement, including, but not limited to required network upgrades.

(v) PGE has received confirmation from Seller and the applicable Transmission Provider(s) that Seller has obtained for the Facility transmission service in accordance with Section 3.8, sufficient to enable Energy to be transmitted from the Facility and delivered to the Delivery Point.

(vi) PGE has received (1) a certificate addressed to PGE from an authorized officer of Seller stating that Seller has obtained or entered into all Facility Documents, and (2) copies of any Facility Documents requested by PGE; provided, however, that Seller may redact or omit confidential or commercial terms from non-public Facility Documents.

(vii) PGE has received an opinion from a Licensed Professional Engineer, or an attorney, licensed to practice in the state in which the Site is situated stating that Seller has all Permits and all other rights and agreements required to operate the Facility as contemplated by this Agreement in accordance with Law.

(viii) PGE shall have received all Performance Assurance required by this Agreement.

Seller shall provide written notice to PGE stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the certificates described above. PGE shall have ten (10) days after receipt of Seller's notice 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 PGE reasonably believes has not been satisfied. If, within such ten (10) day period, PGE 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 PGE notifies Seller within such ten (10) day period that PGE reasonably believes the Facility has not achieved Commercial Operation, the Commercial Operation Date shall not occur until Seller has addressed the concerns stated in PGE's notice to the mutual satisfaction of both Parties.

1.1.12 "Commercial Operation Date" means the date on which the Facility achieves Commercial Operation.

1.1.13 “Contract Termination Damages” has the meaning set forth in Section 3.1.12.

1.1.14 “Contract Year” means the period of consecutive twelve (12) months, commencing on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and continue through December 31st of such year and the last Contract Year shall continue through the day prior to the anniversary of the Commercial Operation Date.

1.1.15 “Control Area Services” are those services required by the Transmission Provider or balancing authority as a condition of interconnection, including, but not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Control Area Services do not include Ancillary Service costs associated with the Transmission Provider’s provision of firm transmission service.

1.1.16 “Costs” means, with respect to a Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.

1.1.17 “Credit Rating” means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

1.1.18 “Credit Requirements” means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB or greater from S&P, or (b) Baa2 or greater from Moody’s, and if such ratings are split, the lower of the two ratings must be at least BBB or Baa2 from S&P or Moody’s, respectively.

1.1.19 “Critical Milestone” has the meaning set forth in Section 3.1.9.

1.1.20 “Daily” means any 24-Hour period commencing at 00:00:00 Hours.

1.1.21 “Delay Damages” for any given day are equal to (a) \$100 per MW of Nameplate Capacity per day beginning on the first day after the Scheduled Commercial Operation Date through the 30th day after the Scheduled Commercial Operation Date, (b) \$200 per MW of Nameplate Capacity per day beginning on the 31st day after the Scheduled Commercial Operation Date through the 60th day after the Scheduled Commercial Operation Date, and (c) \$300 per MW of Nameplate Capacity per day beginning on the

61st day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first.

1.1.22 “Delivered Energy Quantity” means the sum of the Energy delivered to PGE by or on behalf of Seller to the Delivery Point each hour during the Delivery Period as represented on the final e-Tag. The Delivered Energy Quantity shall not exceed Net Available Capacity in any given hour.

1.1.23 “Delivery Period” has the meaning set forth in Section 2.3.

1.1.24 “Delivery Period Security” has the meaning set forth in Section 9.2.1.

1.1.25 “Delivery Point” means PGE’s scheduling point [BPAT.PGE point of delivery on the BPA side of the BPA-PGE interface or PGE BA].

1.1.26 “Dispute” has the meaning set forth in 18.1.

1.1.27 “Early Termination Date” has the meaning set forth in Section 5.2.1.

1.1.28 “Effective Date” has the meaning set forth in the first paragraph of this Agreement.

1.1.29 “EIM” means the western Energy Imbalance Market, of which PGE is a participating entity.

1.1.30 “Emissions Reduction Credit” is any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under the Clean Power Plan promulgated by the Environmental Protection Agency under the Clean Air Act.

1.1.31 “Energy” means all electric energy, expressed in MWh, generated by the Facility.

1.1.32 “Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Facility, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) 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; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat

in the atmosphere; and (3) the reporting rights to these avoided emissions, such as the carbon content of the Energy generated by the Facility and REC Reporting Rights. Environmental Attributes do not include (i) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (ii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

1.1.33 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.1.34 “EWG” means an “exempt wholesale generator,” as defined under Public Utility Holding Company Act of 1935.

1.1.35 “Event of Default” has the meaning set forth in Section 5.1.

1.1.36 “Excess Energy” means Delivered Energy Quantity in excess of [110%] of the Guaranteed Output Threshold.

1.1.37 “Expected Output” means the generation profile associated with a 50% probability of exceedance.

1.1.38 “Facility” means the *[describe renewable energy technology]* facility more fully described in Exhibit D, and includes all generators, equipment, devices and associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of Product to PGE in accordance with this Agreement (including the Interconnection Facilities).

1.1.39 “Facility Documents” means the Permits and other written authorizations, rights and agreements now or hereafter necessary for (i) construction, ownership, operation, and maintenance of the Facility in accordance with Prudent Electric Industry Practices, and (ii) transmission of Energy from the Facility to the Balancing Authority Area (including documents with respect to Balancing Authority Area services). Facility Documents include the Permits and other written authorizations, rights and agreements listed in Exhibit E; provided, however, that nothing set forth in Exhibit E limits the obligations of Seller to obtain all Facility Documents required to enable Seller to perform its obligations under this Agreement in accordance with its terms.

1.1.40 “Facility Meter” means the metering equipment designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Interconnection Agreement.

1.1.41 “Facility Output” means all electric energy, produced by the Facility, less station service (parasitic power and electrical losses), if any, all as measured at the Facility Meter.

1.1.42 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.1.43 “FIN 46” has the meaning set forth in Section 19.11.

1.1.44 “Fixed Price” means [_____](\$/MWh).

1.1.45 “Forecasting Agent” shall have the meaning set forth in Section 3.8.3.

1.1.46 “Force Majeure” is defined in Section 4.1.

1.1.47 “Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.48 “Generation Forecast” shall have the meaning given to that term in Section 3.4.1.

1.1.49 “Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof; provided, however, that “Governmental Authority” shall not in any event include either Party.

1.1.50 “Governmental Charges” means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product contemplated by this Agreement, or any component of the Product, either directly or indirectly.

1.1.51 “Guaranteed Commercial Operation Date” means the date that is 120 days after the Scheduled Commercial Operation Date.

1.1.52 “Guaranteed Output Threshold” means 90% of the monthly Expected Output of the Facility.

1.1.53 “Imbalance Energy” means Energy, measured in MWh, that (i) was not generated by the Facility but is delivered to PGE as a result of Ancillary Services provided by a Balancing Authority Area or Transmission Provider, or other entity, as applicable, and (ii) is generated by the Facility in excess of Facility Output and delivered to a balancing authority or Transmission Provider or other entity, as applicable.

1.1.54 “Indemnitee” has the meaning set forth in Section 12.2.

1.1.55 “Indemnitor” has the meaning set forth in Section 12.2.

1.1.56 “Indemnity Claims” means all third party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether resulting from a settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.1.57 “Interconnection Agreement” means the generator interconnection agreement between Seller and *[identify applicable Transmission Provider]* *[if already executed: dated [____, 20__].]*

1.1.58 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), or (b) the maximum rate permitted by applicable law. Notwithstanding the foregoing, in no case shall the Interest Rate be less than zero (0).

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

1.1.60 “ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

1.1.61 “Law” means any act, statute, law, regulation, permit (including applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority with jurisdiction over Seller, PGE, the Site, the Facility, or the performance of the obligations under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

1.1.62 “Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to PGE. The costs of a Letter of Credit shall be borne by Seller.

1.1.63 “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign

commercial bank with such bank having shareholders' equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within fifteen (15) Business Days of expiration or termination, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

1.1.64 "Licensed Professional Engineer" means a Person proposed by Seller and acceptable to PGE in its reasonable judgment who (a) to the extent mandated by Law 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 Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of PGE, services previously or currently being rendered to Seller or its members or Affiliates, and (d) 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 seller of any equipment installed in the Facility.

1.1.65 "Long-Term Firm Point-To-Point Service" has the meaning provided for it in the Transmission Provider's Open Access Transmission Tariff that is posted on OASIS.

1.1.66 "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.67 "Market Index Settlement Prices" means the production-weighted sum of the Market Index Price for each hour during the delivery month. Exhibit I sets forth an accurate and indicative example of a Market Index Settlement Price calculation under certain stated assumptions.

1.1.68 "Market Price Index" means the EIM real-time pre-dispatch nodal price for the Delivery Point. In the event PGE is participating in an organized market other than EIM, then the Market Price Index will mean the Locational Marginal Price associated with the Pricing Node or Aggregate Pricing Node for the Delivery Point within such organized market.

1.1.69 “Material Adverse Change” means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Seller, Seller shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Seller is rated by only one service, a Material Adverse Change shall occur if the rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

1.1.70 “Maximum Annual Volume” means the maximum annual amount Energy that PGE is required to purchase from Seller under this Agreement, equal to [] MWh for each Contract Year during the Delivery Period, prorated for any partial Contract Year during the Delivery Period.

1.1.71 “Merger Event” means, with respect to a Party or an Affiliate of a Party that such Party or Affiliate consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or Affiliate under this Agreement or under any Letter of Credit or other Performance Assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Letter of Credit or other Performance Assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations under this Agreement, or (iii) the Credit Rating (from any of S&P or Moody’s) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or Affiliate immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.72 “Milestone” and “Milestones” have the meaning assigned to those terms in Section 3.1.9(a)(i).

1.1.73 “Month” means a calendar month commencing at hour ending 01:00:00 PPT on the first day of such month through hour ending 24:00:00 PPT on the last day of such month.

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

1.1.75 “MW” means megawatt.

1.1.76 “MWh” means megawatt hour.

1.1.77 “Nameplate Capacity” means [] *[solar: MW_{DC}] [other resources: MW_{AC}]*, which is the full (maximum) gross power capability of the Facility’s electric power production equipment under optimal conditions designated by the manufacturer and described on Exhibit M. **[Note to bidders: the optimal conditions based on manufacturer designation and the equipment used by the Facility to be agreed upon and included in Exhibit M]**

1.1.78 “Negative Price Event” shall have the meaning given to that term in Section 3.4.7.

1.1.79 “NERC” means the North American Electric Reliability Corporation.

1.1.80 “Net Available Capacity” means the full (maximum) net Energy the Facility is capable of delivering to the interconnecting Balancing Authority Area continuously for at least sixty (60) minutes; which is equivalent to the Nameplate Capacity Rating of the Facility’s generating unit less station service (parasitic power and electrical losses) and inverter limitations, expressed in MW_{AC}.

1.1.81 “Non-Defaulting Party” has the meaning set forth in Section 5.2.1.

1.1.82 “Off-Peak” shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

1.1.83 “On-Peak” shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

1.1.84 “Oregon Renewable Portfolio Standard” means the renewable portfolio standard contemplated by ORS Chapter 469A, and its implementing regulations, in each case as amended from time to time.

1.1.85 “Party” or “Parties” are defined in the preamble of this Agreement.

1.1.86 “Performance Assurance” means collateral in the form of cash or Letter(s) of Credit from a Qualified Institution.

1.1.87 “Permits” shall mean permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Law in connection with the development, construction, operation, occupancy, use and/or maintenance of the Site or Facility, including those specified in Exhibit E, and all amendments, modifications, supplements, general conditions and addenda thereto.

1.1.88 “Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

1.1.89 “PGE Representatives” has the meaning set forth in Section 3.10.

1.1.90 “PPT” means Pacific Prevailing Time (i.e., prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone).

1.1.91 “Pre-COD Security” has the meaning set forth in Section 9.1.1.

1.1.92 “Pre-Scheduled Energy” has the meaning set forth in Section 3.8.4(i).

1.1.93 “Product” means Energy scheduled, delivered and sold by Seller and received and purchased by PGE pursuant to this Agreement, together with all associated Environmental Attributes (including Bundled RECs) and Capacity Attributes.

1.1.94 “Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility’s equipment sellers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the Western Interconnection, during the relevant period, as described in the immediately preceding sentence.

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

1.1.96 “QF” means “Qualifying Facility,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.1.97 “PTCs” means production tax credits under Section 45 of the Internal Revenue Code, as such law may be amended or superseded.

1.1.98 “Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the Facility located.

1.1.99 “Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to PGE bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.

1.1.100 “Qualifying Replacement REC Price” means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.

1.1.101 “REC” means the Environmental Attributes and the REC Reporting Rights associated with Facility Output, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Certified,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes made available by the generation of one MWh of Facility Output, as represented by the lesser of the final e-Tag or the actual metered Facility Output on an hourly basis. All RECs delivered to PGE under this Agreement must comply with the Oregon Renewable Portfolio Standard.

1.1.102 “REC Reporting Rights” are the right of a buyer to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at such buyer's discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

1.1.103 “Regulatory Event” has the meaning given to that term in Section 19.6.

1.1.104 “Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.

1.1.105 “Remedial Action Scheme” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows.

1.1.106 “S&P” means the Standard & Poor’s, a division of McGraw-Hill Companies, Inc., or any successor thereto.

1.1.107 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by PGE in breach of PGE’s obligations under this Agreement, deducting from such proceeds any (i) Costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party

purchasers. “Costs” shall not include any negative price amounts for the Product, penalties, ratcheted demand or similar charges. In no event shall the Sales Price be less than zero dollars (\$0.00).

1.1.108 “Schedule,” “Scheduled” or “Scheduling” means the actions of Seller, PGE, a Transmission Provider and all other impacted entities, or their representatives, of notifying, requesting, and confirming/implementing the quantity and type of Product, transmission arrangements, and timing of delivery, subject to the prevailing Western EIM, NAESB, WECC and NERC scheduling requirements.

1.1.109 “Scheduled Commercial Operation Date” means [____, 20__].

1.1.110 “Scheduling Agent” has the meaning set forth in Section 3.8.3.

1.1.111 “Seller” is defined in the Preamble of this Agreement.

1.1.112 “Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to Article 5. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.

1.1.113 “Settlement Period” has the meaning set forth in Section 5.2.2.

1.1.114 “Settlement Energy” has the meaning set forth in Section 5.2.2.

1.1.115 “Short-Term Firm Point-To-Point Service” has the meaning provided for it in the Transmission Provider’s Open Access Transmission Tariff that is posted on OASIS.

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

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

1.1.118 “Taxes” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.1.119 “Term” means the period of time referenced in Section 2.1.

1.1.120 “Test Energy” means electric energy generated by the Facility during periods before the Commercial Operation Date, and all RECs, Environmental Attributes and Capacity Attributes associated with such electric energy.

1.1.121 “Termination Payment” has the meaning set forth in Section 5.3.

1.1.122 “Transmission Provider(s)” means any entity (including any FERC-authorized regional transmission organization) transmitting Energy on behalf of Seller to and at the Delivery Point; or on behalf of PGE at and from the Delivery Point.

1.1.123 “Transmission Services” means any and all services (including but not limited to Ancillary Services and control area services) required for the transmission and delivery of Energy to the Delivery Point or at and from the Delivery Point.

1.1.124 “Transmission System(s)” means the transmission system(s) of the Transmission Provider(s) to be used by Seller for the purpose of transmitting Energy to and at, the Delivery Point; or by PGE for the purpose of transmitting Energy at and from, the Delivery Point.

1.1.125 “Transmission Upgrade Cost Cap’ has the meaning set forth in Section 3.8.1.

1.1.126 “USD” means United States Dollars.

1.1.127 “WECC” means the Western Electricity Coordinating Council or any successor thereto.

1.1.128 “Western Interconnection” means the network of subsystems of generators, transmission lines, transformers, switching stations, and substations owned or operated by members of the WECC, to the extent located in the continental United States.

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

1.2 Rules of Interpretation.

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to Article 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 A reference to writing includes typewriting, printing, lithography, photography, email and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.5 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.6 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.7 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.8 References in this Agreement to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or").

1.2.9 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.3 Technical Meanings.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in this Agreement in accordance with such recognized meanings.

ARTICLE 2 CONTRACT TERM; DELIVERY PERIOD; PRICE; SALE OF FACILITY

2.1 Term; [Conditions Precedent].

2.1.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue through the [15th] anniversary of the Commercial Operation Date (the "Term"), unless earlier terminated in accordance with its terms; provided, however, that (a) such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, and (b) the terms and conditions of this Agreement and any other documents executed and delivered under this Agreement shall continue to govern with respect to obligations arising before termination until such obligations are fully discharged.

2.1.2 PGE's Conditions Precedent. PGE's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by PGE in its sole discretion:

- (a) [Project Specific Conditions: TBD]; and
- (b) All authorizations, approvals and consents of all Persons, including PGE's Board of Directors, that are required in connection with the execution, delivery, and performance of this Agreement have been received by PGE; and
- (c) All required regulatory approvals have been made and obtained.

If these conditions precedent have not been satisfied or waived by PGE on or before [_____, 20__], either Party shall have the right to terminate this Agreement by giving five (5) Business Days' prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.1.3 Seller's Conditions Precedent. Seller's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by Seller in its sole discretion: ***[Note to bidders: conditions precedent, if any, to Seller's obligations under the PPA should be set out here]***

If these conditions precedent have not been satisfied or waived by Seller on or before [_____, 20__], either Party shall have the right to terminate this Agreement by giving five (5) Business Days' prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.2 Test Energy. Seller shall use its best efforts to schedule and deliver Facility Test Energy to its Transmission Provider, to a third-party or to an organized market (to the extent PGE has consented to Seller participating in such organized market pursuant to Section 3.14) via its Transmission Provider's system. Seller shall be entitled to any and all compensation received from its Transmission Provider or any third-party or organized market for such Test Energy. Notwithstanding the forgoing, in the event that it is necessary for Seller to schedule and deliver Facility Test Energy to PGE in order to complete Start-Up Testing, Seller shall be entitled to do so pursuant to the Scheduling Procedure set forth in Section 3.8 (to the extent applicable). In such case, the Parties shall coordinate in good faith to schedule deliveries of Test Energy to PGE that minimizes the burden to each of the Parties, and PGE shall receive the Test Energy. The price for such Test Energy received by PGE shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for PGE to receive the Test Energy, including but not limited to reimbursement for negative pricing and procurement of any necessary capacity costs or reserves.

2.3 Delivery Period; Price and Adjustments.

2.3.1 Delivery Period. Starting on [***for a completed Facility:*** _____ [Date]] [***for a Facility under development:*** the Commercial Operation Date], Seller shall Schedule all of the Facility Output to PGE at the Delivery Point and shall continue such deliveries for the remainder of the Term (the "Delivery Period").

2.3.2 Price. For each calendar month during the Delivery Period, and except as otherwise provided herein, PGE shall pay Seller the sum of the following:–

(a) lesser of (i) hourly Delivered Energy Quantity, or (ii) hourly Facility Output, each up to [110%] of the Guaranteed Output Threshold, multiplied by the Fixed Price; plus

(b) hourly Excess Energy multiplied by the lesser of (i) [93%] of the Market Index Price, or (ii) [75%] of the Fixed Price; plus

(c) for each hour that the Market Index Price is negative, the hourly Delivered Energy Quantity multiplied by [107%] of the Market Index Price.

An indicative example illustrating the determination of payment due under this Section 2.3.2 is set forth in Exhibit I.

2.4 Notice of Sale of Facility. If Seller or an Affiliate of Seller desire to sell the Facility during the Term, either by a sale of the Facility’s assets or by a direct or indirect transfer of the membership interest(s) in Seller, Seller shall first, before it or its Affiliate enters into any substantive discussions with other parties, notify PGE of its desire to sell the Facility. PGE agrees to notify Seller if it is interested in acquiring the Facility within twenty (20) days following receipt of Seller’s notice. If PGE so notifies Seller, the Parties shall engage in exclusive good faith negotiations to reach agreement with respect to such a transaction for a period of ninety (90) days thereafter. If during this period the Parties execute a letter of intent, or other document similarly confirming the Parties’ intent to enter into a transaction for the purchase and sale of the Facility, then such exclusive negotiation period shall be automatically extended for an additional ninety (90) day period, during which time the Parties may execute a purchase and sale agreement for the Facility. Any purchase and sale agreement executed within the time frame stated in this Section 2.4 shall remain subject to regulatory approval beyond such time frame, as applicable. Seller may pursue any transaction for the sale of the Facility with one or more third parties at any time and from time to time and shall have no obligation to PGE under this Section 2.4 following an occurrence of any of the following: (i) PGE expressly declines interest in acquiring the Facility after receipt of Seller’s notice provided pursuant to the first sentence of this Section 2.4, (ii) PGE fails to respond to Seller’s notice pursuant to the first sentence of this Section 2.4, within twenty (20) days after receipt thereof; (iii) PGE and Seller fail to execute a letter of intent or other similar document with respect to the sale of the Facility within ninety (90) days after PGE’s receipt of notice from Seller provided pursuant to the first sentence of this Section 2.4; or (iv) PGE and Seller fail to execute a purchase and sale agreement for the Facility within one hundred eighty (180) days after PGE’s receipt of notice from Seller provided pursuant to the first sentence of this Section 2.4; provided, however, that with respect to clause (iv), if Seller rejects a firm price delivered by PGE in the course of such negotiations, any sale of the Facility to a third party during the subsequent two (2)-year period must be at a price higher than such rejected price or Seller shall be required to

re-engage in negotiations with PGE as otherwise set forth in this Section 2.4 for the sale of the Facility.

2.5 [Option to Purchase/Option to Extend Term]

[Note to bidders: if a Bidder wishes to propose an end of Term or during Term option for PGE to purchase the Facility, or an option for PGE to extend the Term of the PPA, it should include its proposal here in its mark up of the Agreement.]

**ARTICLE 3
FACILITY DEVELOPMENT, CONSTRUCTION AND OPERATION**

3.1 Development and Construction of Facility. ***[Note to bidders: Section 3.1 will be “intentionally omitted” for a Facility that has already been built.]***

3.1.1 Facility Documents. Seller shall provide PGE with the documents listed below. To the extent they are available on the Effective Date, such documents have been attached to this Agreement as Exhibit E. With respect to any of the listed Facility Documents that become available or are reasonably required to be modified after the Effective Date, Seller shall provide such documents to PGE within ten (10) days after receiving them. Seller may not materially modify such documents or amend Exhibit E after the Effective Date without PGE’s prior written consent, which PGE may not unreasonably withhold, condition or delay.

- (a) Seller’s proposed Level 1 schedule, including significant Facility activities, milestones and deliverables.
- (b) A list of permits and approvals required for the construction and operation of the Facility.
- (c) Facility layout drawings, including all major equipment and balance of plant equipment.
- (d) An electrical single-line diagram for the Facility.
- (e) 12x24 net energy profile and, if available, 8760 net energy production estimate.

3.1.1 Labor Requirements. Union labor must be utilized for major construction activities related to the Facility and must include a Project Labor Agreement requirement in any related executed Engineering, Procurement and Construction Agreements for the Facility. The labor group that constructs and maintains the Facility must have policies in place that are designed to limit or prevent workplace harassment and discrimination. Additionally, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of

having at least fifteen percent (15%) of the total work hours performed by individuals from those communities.

3.1.2 Permitting. Seller shall obtain all Permits necessary to construct, own and operate the Facility in accordance with this Agreement.

3.1.3 Financing. Seller shall obtain any and all financing necessary to construct and operate the Facility during the Term on a schedule consistent with the requirements of this Agreement.

3.1.4 Facility Design. Seller shall be responsible for designing and building the Facility in compliance with all Permits and according to Prudent Electric Industry Practice with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Facility. At PGE's request, Seller shall provide PGE with copies of the site plan for the Facility and descriptions, for the project design of the Facility. Any review by PGE of the design, construction, operation or maintenance of the Facility is solely for PGE's information, and PGE shall have no responsibility to Seller or any third party in connection with such review. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability of the Facility.

3.1.5 Construction and Testing; Interconnection. Seller shall, at its cost, construct and test the Facility and obtain all necessary transmission and interconnection rights, all in compliance with the Permits, the Interconnection Agreement, any other agreements with any Transmission Provider, and Prudent Electric Industry Practice.

3.1.6 Monthly Reports. After the Effective Date, Seller shall provide PGE with monthly written reports regarding Seller's progress in completing the construction, testing and interconnection of the Facility and shall, at PGE's request, meet with PGE's representatives to discuss such progress. The monthly report shall include the following: (a) description of the progress toward meeting the Milestones, (b) identifies any missed Milestones, including the cause for the delay, and (c) detailed description of Seller's corrective actions to achieve the missed Milestones.

3.1.7 Equipment Supply. Not later than [_____] Seller shall provide PGE with written evidence of Seller's commitment from the parties identified on Exhibit E for the supply of all of the equipment required to construct and interconnect the Facility in a timeframe that reasonably would allow Seller to achieve the Commercial Operation Date of the Facility on or before the Scheduled Commercial Operation Date.

3.1.8 Milestones.

(a) Seller shall design, construct, own, operate, repair, and maintain the Facility in accordance and consistent with the Facility Documents and Prudent Electric Industry Practice so as to ensure the continuous ability of the Facility to meet Seller's obligations to PGE under this Agreement. Seller shall exercise its best efforts, consistent with Prudent Electric Industry Practice, to complete development of the Facility in accordance with the dates for each Milestones set

forth in this Section 3.1.9 (each, a “Milestone” and collectively “Milestones”). If Seller fails to meet a Milestone in any material respect by the date on which this Section 3.1.9 requires such Milestone to be achieved, Seller shall deliver to PGE the following no more than ten (10) Business Days after receiving notice from PGE: (i) further information concerning the status of Facility development; (ii) a written report containing Seller’s analysis of the reasons behind the failure to meet the original Milestone(s), including a description of the remedial actions that Seller agrees to undertake to complete the Facility by the Commercial Operation Date; and (iii) further assurances that the Facility will be completed consistent with the terms of this Agreement.

(i) Site Control. Seller shall demonstrate site control as of the Effective Date of this Agreement by ownership or lease of real property sufficient to enable Seller to finance, construct and operate the Facility, with any such lease having a term equal to or greater than the Term of this Agreement.

(ii) Pre-COD Security. On or before the 30th day following the Effective Date, Seller shall post the Pre-COD Security in the amount described in Section 9.1;

(iii) Interconnection Agreement. On or before the ninetieth (90th) day after the Effective Date, Seller shall provide to PGE a fully executed copy of the Interconnection Agreement confirming that the Facility will receive [Network Resource Interconnection Service] [Energy Resource Interconnection Service];

(iv) Permits. On or before the [] day after the Effective Date, Seller shall provide to PGE copies of all Permits in final, nonappealable form;

(v) Transmission Service Agreements. At least three hundred sixty five (365) days prior to Commercial Operation Date, Seller shall present PGE with copies of the transmission service agreement(s) contemplated by Section 1.1.12(v) and Section 3.8.2 (together with associated service tables).

(vi) [*For biomass facilities*]: Within thirty (30) days after the Effective Date, Seller shall have executed a delivered fixed-price fuel supply contract, that is acceptable to PGE (such acceptance not to be unreasonably withheld), for a term equal to or greater than the Term of this Agreement for the supply and delivery of not less than seventy-five percent (75%) of the maximum annual fuel requirements for the Facility, with an annual escalation rate not to exceed one and nine tenths percent (1.9%) per year.

(vii) [*For biomass facilities:* No later than sixty (60) days prior to the Commercial Operation Date, Seller shall have executed a delivered fixed-price fuel supply contract, that is acceptable to PGE (such acceptance not to be unreasonably withheld), for a term equal to or greater than the Term of this Agreement for the supply and delivery of not less than one hundred percent (100%) of the maximum annual fuel requirements for the Facility, with an annual escalation rate not to exceed one and nine tenths percent (1.9%) per year.]

(viii) Delivery Period Security. By the Commercial Operation Date, Seller shall provide Delivery Period Security required under Section 9.2;

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

provided, however, that the date for achieving each Milestone (other than the dates for posting Pre-COD Security and Delivery Security) shall be extended on a day for day basis for any delay due solely to (i) PGE's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement, or (ii) an event of Force Majeure.

(b) When Seller achieves a Milestone, Seller shall provide to PGE documentation reasonably satisfactory to PGE demonstrating completion of the Milestone. Seller shall provide such documentation to PGE within thirty (30) days of such completion but not later than the date specified above for such Milestone. PGE shall acknowledge receipt of the documentation provided under this Section 3.1.9 and shall provide Seller with written acceptance or denial of each Milestone within fifteen (15) Business Days of receipt of the documentation.

(c) Seller shall notify PGE promptly (and in any event within ten (10) Business Days) after Seller becomes aware of information that leads to a reasonable conclusion that a Milestone will not be met. Seller shall convene a meeting with PGE to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information.

(d) If any Milestone (other than a Critical Milestone identified in Section 3.1.9(e)) is not completed on or before the deadline specified for that Milestone in this Section 3.1.9, Seller shall (i) inform PGE of a revised projected date for the achievement of the Milestone, (ii) inform PGE of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide PGE with a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone deadline and describing the remedial actions that the Seller agrees to undertake to ensure the achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date and in any event no later than the Guaranteed Commercial Operation Date. If (1) Seller

fails to submit such a report and remedial action plan within thirty (30) days after a Milestone deadline is missed, or (2) Seller timely submits the required report and remedial action plan but thereafter fails to implement the remedial action plan with diligence, or (3) PGE reasonably concludes based on the report and proposed remedial action plan that the Facility is unlikely to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, a Seller Event of Default shall be deemed to have occurred.

(e) The Milestones described in Sections 3.1.9(a)(i), 3.1.9(a)(v), and 3.1.9(a)(ix) are “Critical Milestones” that are separately addressed in Section 5.1 (Events of Default) and Section 3.1.12 (failure to achieve the Guaranteed Commercial Operation Date).

3.1.9 Notice of Commercial Operation. Seller shall notify PGE not less than five (5) Business Days in advance of the anticipated date of Commercial Operation and shall confirm to PGE in writing when Commercial Operation has been achieved.

3.1.10 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including, the earlier date to occur of (a) the Facility achieves Commercial Operation, or (b) the Guaranteed Commercial Operation Date.

3.1.11 Contract Termination Damages. If Seller does not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, PGE shall have the right to terminate this Agreement upon ten (10) Days notice to Seller, and Seller shall pay to PGE, as liquidated damages, Contract Termination Damages equal to \$200 per kW of Nameplate Capacity (the “Contract Termination Damages”) in addition to all Delay Damages paid or payable pursuant to Section 3.1.11.

3.1.12 Damages Invoicing. By the tenth (10th) day following the end of the calendar month in which Delay Damages begin to accrue, as applicable, and continuing on the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PGE shall deliver to Seller an invoice showing PGE’s computation of such damages and any amount due PGE in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Section 7.2 and Section 7.3, Seller shall pay to PGE, by wire transfer of immediately available funds to an account specified in writing by PGE 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.

3.1.13 PGE’s Exclusive Remedies. PGE’s exclusive remedies for the Facility’s failure to achieve Commercial Operation by the Scheduled Commercial Operation Date or by the Guaranteed Commercial Operation Date, as applicable, shall be (i) the payment by Seller of Delay Damages and, if applicable, Contract Termination Damages, as provided in Sections 3.1.11 and Section 3.1.12, (ii) the right of first offer set forth in Section 3.1.15, and/or (iii) the exercise of step in rights under 9.4.

3.1.14 Right of First Offer.

(a) If PGE terminates this Agreement under Section 3.1.12 or this Agreement is otherwise terminated before the Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Product associated with or attributable to the Facility to a party other than PGE for a period of two (2) years following the termination date of this Agreement, unless before selling, marketing or delivering such Product, or entering into an agreement to sell, market or deliver such Product, Seller or Seller's Affiliates provide PGE with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and PGE fails to accept such offer within forty-five (45) days of PGE's receipt thereof.

(b) Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 3.1.15 apply, unless the transferee agrees to be bound by the terms set forth in this Section 3.1.15 pursuant to a written agreement approved by PGE.

(c) Seller shall indemnify and hold PGE harmless from all benefits lost and other damages sustained by PGE as a result of any breach by Seller of its covenants contained within this Section 3.1.15.

3.1.15 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs or other tax credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. Seller's obligations under this Agreement shall be effective regardless of whether the sale of Facility Output from the Facility, or the Facility itself, is eligible for, or receives, PTCs, ITCs or other tax credits during the Term.

3.2 Facility Operations.

3.2.1 Commitment. Seller hereby commits one hundred percent (100%) of the Facility Output to PGE as provided under this Agreement.

3.2.2 Site Control. At all times during the Term, Seller shall control the Site through ownership or lease and shall provide PGE with prompt notice of any change in control of the Site.

3.2.3 Operation and Maintenance. Seller shall operate and maintain the Facility, the Facility Meter and that portion of the Interconnection Facilities and related equipment and systems owned by Seller in accordance with Prudent Electric Industry Practice in a manner that is reasonably likely to: (i) maximize the Facility Output, and (ii) result in an expected useful life for such facilities of not less than thirty (30) years.

3.2.4 Facility Meter Inspection and Correction. PGE shall have the right to periodically inspect, test, repair and replace the Facility Meter, without PGE assuming any obligations under the Interconnection Agreement. If any of the inspections or tests

disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Facility Meter 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 Facility Meter 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 PGE arising out of such inaccuracy of metering equipment.

3.2.5 Inspection and Records. During the Term, Seller shall inspect, maintain and repair the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Electric Industry Practice and shall keep records with respect to inspections, maintenance and repairs thereto consistent with Seller's reasonable business judgment. The records of such activities shall be available for inspection by PGE during Seller's regular business hours upon reasonable notice.

3.2.6 Scheduled Maintenance. Seller shall notify PGE, on or before September 1 preceding the Commercial Operation Date and on or before September 1 of each subsequent calendar year, of the Facility's scheduled maintenance for the next calendar year and shall use commercially reasonable efforts to plan scheduled maintenance to maximize the productive output of the Facility. Seller shall not schedule maintenance that reduces the energy generating capability of the Facility by more than ten percent (10%) during the months of June through September, unless (i) such maintenance is required to avoid material damage to the Facility, (ii) necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, or (iii) such outage is required in accordance with Prudent Electrical Practices, or (iv) the Parties have agreed otherwise in writing. Seller's scheduled maintenance shall not exceed 200 hours per Contract Year. .

3.2.7 Oregon Renewable Portfolio Standard. Seller shall ensure the Facility obtains Oregon RPS Certification within ninety (90) days after the Commercial Operation Date and shall maintain such certification during the Delivery Period.

3.3 Intentionally Left Blank.

3.4 Energy Delivery. Seller shall schedule and deliver Energy to PGE at the Delivery Point, commencing on the Commercial Operation Date and continuing through the end of the Delivery Period, subject to the terms and conditions herein.

3.4.1 Seller shall provide PGE with (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) a rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and fifteen (15) minutes respectively, for the next 24 hours, and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day ("Generation Forecast"). Each Generation Forecast shall be performed by the Forecasting Agent. The

Forecasting Agent shall utilize methodology consistent that the requirements set forth in Exhibit L. At PGE's request, (a) Seller shall provide PGE with all reasonably requested information required to facilitate the Parties' compliance with Reliability Entity requirements, and (b) Seller will cause the Forecasting Agent to provide PGE with an Application Program Interface from which PGE can access raw forecasting files. The Forecasting Agent and PGE shall have real time access to information and forecasts concerning the Facility's availability status.

3.4.2 Seller shall schedule the Product in accordance with Section 3.8.4 for delivery to PGE at the Delivery Point in the amount of Energy expected to be generated by the Facility consistent with the Generation Forecast. Seller's Energy delivery Schedule may not intentionally exceed the Generation Forecast in any hour. Seller and PGE agree that the intent of this Section 3.4.2 is for Seller to schedule and deliver Energy resembling actual production for each hour.

3.4.3 Seller shall provide PGE with a real-time ICCP and EIDE communications link to the Facility metered output.

3.4.4 If Seller or its agent reasonably anticipates that Market Index Prices will be less than zero, and Seller expects to receive little or no net payment for its output ("Negative Price Event"), Seller shall have the right, but not the obligation, to suspend part or all of its deliveries, via a reduction in Facility Output, for the anticipated duration of the Negative Price Event. In the event the Market Index Price is less than zero during the Negative Price Event, Seller's obligation to deliver Facility Output shall be reduced by one (1) MWh and Seller's Guaranteed Output Threshold shall be reduced by one (1) MWh.

3.5 Environmental Attributes Delivery. Unless excused by Force Majeure, Seller shall convey to PGE all Environmental Attributes, including Bundled RECs, associated with all Facility Output. Seller represents and warrants that Seller will hold good title, free and clear of any liens or encumbrances, to all Environmental Attributes from the Facility, including all Bundled RECs, conveyed to PGE.

3.5.1 Title to RECs transferred by Seller to PGE pursuant to this Agreement shall be settled through WREGIS.

3.5.2 Unless otherwise specified herein or by written notification by PGE, for each month of the Delivery Period after the Commercial Operation Date, Seller shall deliver and convey the Bundled RECs associated with the Facility Output delivered to PGE within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Bundled RECs are created. Seller shall be responsible for attaching, in accordance with all current WREGIS operating rules, all available and applicable NERC e-tags pertaining to the corresponding Bundled REC before such Bundled REC is transferred to PGE in WREGIS.

3.6 Carbon Emissions. Seller is responsible for and shall pay for all future costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Delivered Energy Quantity delivered by Seller to the Delivery Point in accordance with

this Agreement. Additionally, Seller is responsible for and shall pay for all costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Imbalance Energy delivered to the Delivery Point. Seller may provide PGE with carbon emissions offsets that are reasonably satisfactory to PGE in lieu of a monetary settlement. Within ten (10) Business Days after PGE's request, Seller shall provide PGE with the carbon emissions data for the Product that is delivered during the Delivery Period.

3.7 PGE's Purchase Obligations. PGE shall purchase and receive the Energy delivered by Seller to the Delivery Point in an amount not to exceed the Net Available Capacity for each hour during the Delivery Period in accordance with and subject to the terms of this Agreement. PGE shall pay Seller the applicable price for all Energy delivered to the Delivery Point as set forth in Article 6. PGE shall be responsible for any costs or charges imposed on or associated with the Energy or its receipt, provided such costs or charges are imposed at or on PGE's side of the Delivery Point and not the result of Seller's actions, except any EIM charges resulting from Seller's scheduling adjustments described in Sections 3.4.7 and 3.9.4(c).

3.8 Transmission and Scheduling of Energy.

3.8.1 Transmission Capability to PGE's Sink Point. Within sixty (60) Business Days after the Effective Date, PGE will submit a request to designate the Facility as a Network Resource, as defined in Section 1.59 of PGE's Open Access Transmission Tariff (OATT), following the procedures set forth in Section 30 of PGE's OATT and any associated business practices, up to the amount of Net Available Capacity subject to Long-Term Firm Point-To-Point Service required under Section 3.8.2 ("NR Cap"). Seller shall be responsible for performing all actions necessary for PGE to designate the Facility as a Network Resource up to the NR Cap. Such actions may include, but are not limited to, reimbursing PGE for any necessary studies, funding of any necessary transmission upgrades, additions to or upgrades of Facility equipment, sharing of technical or operational data. If the costs of such actions is reasonably projected to exceed [\$_____] (the "Transmission Upgrade Cost Cap"), Seller may terminate this Agreement by providing notice to PGE; provided, however, that such termination shall be void if, within thirty (30) days after PGE receives notice of termination, PGE agrees in its sole discretion to bear costs in excess of the Transmission Upgrade Cost Cap. Once the Facility is successfully designated as a Network Resource up the NR Cap, PGE will arrange, be responsible for, and make available transmission service from the Delivery Point to the designated sink point. If PGE, as a Transmission Provider, determines that due to insufficient transfer capability, consistent with PGE's OATT requirements, the requested Network Resource designation for the NR Cap cannot be achieved, regardless of any proposed upgrades, by the Guaranteed Commercial Operation Date for the Net Available Capacity then PGE may terminate this Agreement by providing notice to Seller.

3.8.2 Firm Transmission Service Agreement. No later than [] days after Effective Date, Seller shall deliver to PGE copies of transmission service agreements with associated service tables between Seller and its Transmission Provider for transmission service between the Facility's point of interconnection and the Delivery Point for the entire Delivery Period in the form of either: i) a fully executed copies of Cluster Study Agreements for Long-Term Firm Point-To-Point Service for a minimum of eighty percent

(80%) of the Net Available Capacity, or ii) a fully executed copy of a Long-Term Firm Point-To-Point Service Transmission Service Agreement for a minimum of eighty percent (80%) of the Net Available Capacity, in each case commencing no later than the Commercial Operation Date. Seller may not satisfy the requirements of this Section 3.8.2 by acquiring transmission rights currently held by a third party, or its affiliates, engaged in the development of a Qualifying Facility if such party or its affiliates has contractual obligations to PGE for the delivery of energy under PGE's Tariff Schedule 201, unless it can be reasonably determined that the transmission rights are in excess of such third party's contractual obligations to PGE. During the Delivery Period, Seller may reserve and procure Short-Term Firm Transmission Service from the Transmission Provider for up to twenty percent (20%) of the Net Available Capacity. Seller is required to utilize firm transmission service for one hundred percent (100%) of the Net Available Capacity. In the event Seller fails to comply with the transmission requirements in this Section 3.8.2, and attempts to Schedule energy utilizing non-firm transmission, the following shall occur: (a) PGE may reject the e-tag for such Energy and Seller shall be responsible for any costs or penalties imposed by a Reliability Entity that are related to such rejected delivery; (b) in the event PGE does not reject the e-tag for such Energy, the price for such Energy shall be adjusted to the lesser of (i) [93%] of the Market Index Price and (ii) [75%] of Fixed Price (which such price adjustment shall be additive to any other price adjustments that may be applicable to such Energy delivery; (c) in the event PGE does not reject the e-tag for such Energy, PGE shall not be required to reimburse Seller for Control Area Service costs and Seller shall provide an updated Generation Forecast to the Transmission Provider, excluding such Energy. Any curtailment of conditional firm transmission or non-firm transmission does not constitute a Force Majeure.

Seller shall pay for and maintain the transmission service set forth in this Section 3.8.2 for delivery of Energy from the Facility's point of interconnection to the Delivery Point during the entire Delivery Period, commencing on the Commercial Operation Date. Seller is responsible for making all arrangements and for paying all transmission costs for delivery of the Energy to the Delivery Point, including but not limited to all Ancillary Services and EIM costs required by the Transmission Provider(s) to deliver Energy to the Delivery Point. Seller shall procure and PGE will reimburse Seller for all Control Area Services, except for Persistent Deviation Penalties and Intentional Deviation Penalties, provided by an entity that is mutually agreed upon by the Parties that may be required by the Transmission Provider or balancing authority as a condition of interconnection. Seller's Long-Term Firm Point-To-Point Transmission Service Agreements shall have a term of no less than five (5) years and must have reservation priority for the Delivery Period. A copy of Seller's long-term transmission plan, as of the Effective Date, is attached to this Agreement as Exhibit J. Within five (5) days of execution of any new or replacement Transmission Service Agreement(s), Seller shall provide PGE with a copy of Seller's transmission agreement and generation interconnection agreements, and the Parties shall amend Exhibit J to include copies of such agreements.

3.8.3 Seller to Designate Forecasting and Scheduling Agents. At least thirty (30) days before it begins to Schedule Test Energy under this Agreement, Seller shall engage at its expense a third-party Scheduling Agent (the "Scheduling Agent") and a third-party forecasting agent (the "Forecasting Agent"), subject in each case to PGE's prior

approval. The Scheduling Agent shall perform Seller's pre-scheduling and Scheduling obligations under this Section 3.8.3 based exclusively on forecasts supplied by the Forecasting Agent.

3.8.4 Scheduling Procedure. Seller shall comply with the following "Scheduling Procedure" during the Delivery Period:

(a) "Pre-Scheduled Energy" means Product scheduled under the following conditions for each day during the Delivery Period:

(i) Seller shall communicate to PGE's Pre-schedule Desk, as directed by PGE, the Facility's Generation Forecast to be delivered at the Delivery Point for the Pre-Scheduling Day(s) by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Period;

(ii) [*for off-system projects*: Seller shall schedule the Energy by submitting a NERC e-Tag ("e-Tags") prior to 1:00 p.m. PPT of the applicable WECC Pre-Scheduling Day for all hours of the applicable delivery day(s)]; [*for on-system projects*: Seller shall communicate to PGE's real time desk via API, or as otherwise directed by PGE, Energy deliveries consistent with the Generation Forecast no later than ninety (90) minutes prior to the flow hour] and

(iii) [*for off-system projects*: Seller shall schedule the Energy with e-Tags as "firm energy" according to prevailing WECC Pre-scheduling provisions and protocols and the terms of this Agreement. Seller shall schedule the Facility as the identified e-Tag source. Seller may not net or otherwise combine schedules from resources other than the Facility, except as necessary for Ancillary Services, subject to the terms of this Agreement.] [*for on-system projects*: Seller and PGE agree that the intent of these scheduling procedures is for Seller to schedule and deliver Energy that resembles actual generation from the Facility for each hour.]

(b) Seller shall not schedule any Energy to be delivered to PGE pursuant to this Agreement using a Dynamic or Pseudo-Tie e-Tag as such terms are defined and used by NERC.

(c) Seller may make adjustments to the Pre-Scheduled Energy scheduled from the Facility each hour in Real-Time ("Real-time Adjustments"). If Seller elects to make Real-time Adjustments, Seller will:

(i) communicate to PGE's Real-time Desk, as directed by PGE, its intent to adjust the Pre-Scheduled Energy no later than seventy-five (75) minutes prior to the flow hour; and

(ii) submit and receive approval of e-Tag adjustment no later than seventy-five (75) minutes prior to the flow hour. Seller will make all

NERC e-Tag adjustments. Seller's e-tag shall match the adjustment communicated to PGE pursuant to Section 3.8.4(c)(i). Seller shall be responsible for any costs, charges, or fees associated with deviations to the e-tag after seventy-five (75) minutes prior to the flow hour.

(d) In the event that the regional market design, Balancing Authority, Area, Reliability Entity or Regulatory Entity (e.g. PGE Transmission, BPA Transmission, WECC, NERC, RC West, FERC) causes PGE's scheduling practices to change after the Effective Date, PGE shall have the right but not the obligation to update the Scheduling Procedure by giving thirty (30) days prior written notice to Seller of such update. Seller shall not unreasonably withhold agreement to proposed changes to these Scheduling Procedures.

3.8.5 Authorized Scheduling Representatives. Each Party shall designate by notice to the other Party its authorized representatives responsible for Scheduling. The initial authorized representatives responsible for Scheduling are set forth on Exhibit A.

3.8.6 Maximum Delivery Amounts. Seller shall sell and deliver, and PGE shall buy and receive, the Delivered Energy Quantity delivered pursuant to this Agreement, up to the Net Available Capacity. If Seller, after the Effective Date, increases (i) the Facility's ability to deliver Facility Output, (ii) Nameplate Capacity, or (iii) Net Available Capacity through any means, including but not limited to replacement or modification of equipment or related infrastructure, such increased output or capacity shall not be considered Delivered Energy Quantity. PGE and Seller may by mutual agreement separately contract for such increased output or capacity under such terms and conditions that the Parties may agree to. For the avoidance of doubt, nothing in this Agreement shall be construed to obligate PGE to purchase such increased output or capacity.

3.8.7 Title to Energy. Title to Energy shall pass to PGE at the Delivery Point.

3.8.8 Reliability Entity Curtailment. PGE shall not be liable to Seller if curtailment of Scheduled or unscheduled Energy is due to the action of a Reliability Entity and such action shall not be considered a Force Majeure or a Buyer Curtailment under Section 3.8.10. Seller shall pay PGE the replacement cost for such Energy. The replacement cost during a Reliability Entity curtailment shall be the greater of zero or the amount calculated as: ((Market Index Price – Fixed Price) multiplied by curtailed Energy based on the Facility's potential generation for periods of the Reliability Entity curtailment. The Forecasting Agent shall calculate the potential generation during periods of the Reliability Entity curtailment.

3.8.9 Buyer Curtailment. PGE shall have the right to curtail deliveries of scheduled Energy, up to 400 hours each Contract Year (or prorata amount for any partial Contract Year) without compensation to Seller. The Guaranteed Output Threshold will be reduced by the number of MWhs subject to such a curtailment by PGE.

3.8.10 Approval for Seller to Join Organized Markets. During the Term of this Agreement, Seller shall not register as a participating resource in any energy imbalance market, independent system operator market or other organized market without prior written consent from PGE, which consent may be granted in PGE's sole discretion.

3.9 Measurement and Transfer of RECs. Bundled RECs shall be deemed sold and delivered to PGE under this Agreement as they are produced and measured by the Facility Meter. Title to such Bundled RECs shall pass to PGE when generated. PGE shall own or be entitled to claim all Bundled RECs during the Term (including any value in the ownership, use or allocation of Bundled RECs created by legislation or regulation after the Effective Date). The Facility Meter shall serve as the record source for purposes of calculating, certifying, and auditing Bundled RECs. 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 cause delivery and transfer of the Bundled RECs to PGE's WREGIS account to be perfected in accordance with WREGIS rules. Seller shall hold the Bundled RECs in trust for PGE until such delivery and transfer is perfected. Each Party shall take such steps and further actions as may be required by WREGIS or applicable Law in order to effect and confirm the sale and delivery of the Bundled RECs to PGE for all purposes.

3.10 Access. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Law relating to workplace health and safety, Seller shall provide PGE and its authorized agents, employees and inspectors ("PGE Representatives") 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) to provide tours of the Facility to customers and other guests of PGE (not more than twelve (12) times per year), (d) for purposes of implementing Section 17.2 (Audit Rights), and (e) for other reasonable purposes at the reasonable request of PGE. PGE shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PGE Representatives in connection with their access to the Facility, except to the extent that such damages are caused by the intentional or negligent act or omission of Seller.

3.11 Facility Remedial Action Scheme. To the extent the Facility is not otherwise subject to Seller's Transmission Provider's Remedial Action Scheme, PGE shall have the right to utilize the Facility for PGE's Transmission Provider's Remedial Action Scheme. Before the Commercial Operation Date, Seller shall at its expense make necessary arrangements, including installing any required equipment and entering into any applicable agreements, to enable the Facility to participate in a Remedial Action Scheme for PGE's benefit.

ARTICLE 4 FORCE MAJEURE

4.1 Definition.

"Force Majeure" means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,

(b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,

(c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and

(d) either (i) as with respect to PGE as the impacted Party, has an impact which will actually, demonstrably and adversely affect PGE's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Seller as the impacted Party, has an impact which will actually, demonstrably and adversely affect Seller's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Facility caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party; 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 or in relation to or resulting from Seller's non-compliance with Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work completed by a subcontractor of Seller on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Governmental Authority in respect of or in relation to or resulting from Seller's compliance or non-compliance with Laws; (ix) any failure by Seller to obtain and maintain any Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor of Seller or other personnel of Seller; (xi) loss of PGE's markets; (xii) PGE's inability economically to use or resell the Product purchased under this Agreement; (xiii) the loss or failure of Seller's fuel supply or equipment; (xiv) either Party's inability to pay when due any amounts owed under this Agreement; or (xv) Seller's ability to sell the Product at a price greater than the Fixed Price. Seller may not raise a claim of Force Majeure with respect to the unavailability of Energy or Bundled RECs from the Facility based on any of the following: (i) routine or scheduled maintenance of the Facility; (ii) any unscheduled outage undertaken to address normal wear and tear of the Facility during the Term; (iii) any outage caused by Seller's failure to design, construct, operate or maintain the Facility consistent with Prudent Electric Industry

Practice; (iv) changes in climactic conditions; (v) environmental obstructions caused by events or circumstances that may impact the Facility's generation output but without causing a Facility outage (e.g., forest fire or volcanic eruption located outside of the Facility site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (ix) strikes or labor disturbances involving the employees of Seller or any of its subcontractors unless such strike or labor disturbance has a national impact making it impossible for Seller to perform its obligations with respect to the Facility.

4.2 Occurrence and Notice.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations related thereto. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform its obligations to the Claiming Party that correspond to the obligations of the Claiming Party that are excused by Force Majeure.

4.3 Obligations. No Party shall be relieved by operation of this Article 4 of any liability to pay for Products delivered hereunder or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

4.4 Right to Terminate. If a Force Majeure event prevents a Party from performing its material obligations under this Agreement for a period exceeding 180 consecutive days before the Commercial Operation Date or, after the Commercial Operation Date, for a period exceeding 240 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 Force Majeure event, with respect to its obligations under this Agreement, 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 periods following the effective date of such termination, except for the right of first offer set forth in Section 3.1.15 and as otherwise expressly provided in this Agreement; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

5.1.1 in the case of the Seller, the occurrence of a Material Adverse Change with respect to Seller; provided, such Material Adverse Change shall not be considered an Event of Default if Seller establishes, delivers to PGE and maintains for so

long as the Material Adverse Change is continuing, Performance Assurance in an amount equivalent to the Termination Payment as determined under Section 5.3;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

5.1.3 any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if such inaccuracy is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of default;

5.1.4 if a Party fails to deliver or receive Product as required by this Agreement, and such failure occurs for (i) more than five (5) consecutive Days, or (ii) ten (10) Days out of any Contract Year (it being the intent of the Parties that other failures to deliver or receive Product in any Contract Year will be governed by Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the occurrence of a Merger Event with respect to such Party that is not cured within ten (10) Business Days of notice by the other Party;

5.1.7 in the case of Seller, Seller's failure to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.8 commencing on the Commercial Operation Date, Seller's failure to deliver [**for wind resources:** seventy-five percent (75%)] of the annual sum of the Guaranteed Output Threshold to PGE during two (2) out of three (3) Contract Years during the Delivery Period] [**for non-wind resources:** fifty percent (50%) of the annual sum of the Guaranteed Output Threshold to PGE during any Contract Year during the Delivery Period] ;

5.1.9 beginning with the first full calendar year following the Contract Year in which the Commercial Operation Date has occurred, Seller's failure to maintain a minimum Mechanical Availability Percentage for the Facility of [ninety-seven percent (97%)] for any two (2) out of three (3) Contract Years on a rolling basis. The Mechanical Available Percentage of the Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year [**non-solar resources:** by the total number of hours in the calendar year] [**solar resources:** by the total number of daylight hours in the calendar year.] On or before January 31st of each year, Seller shall provide PGE written documentation, which shall be subject to audit by PGE, to verify or otherwise substantiate Seller's calculation of the Mechanical Available Percentage of the Facility for the prior calendar year. The operational hours for the Facility shall be the hours that the Facility is potentially capable of producing power at Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the point of interconnection with the Transmission Provider. The methodology for calculating Operational Hours and the resulting Mechanical Availability Percentage is set forth in Exhibit N [**Note to bidders: the**

Parties would agree to a more detailed methodology consistent with this Section 6.1.9 and attached it as Exhibit Nj;

5.1.10 in the case of Seller, the occurrence of a Letter of Credit Default;

5.1.11 in the case of Seller, Seller Schedules Energy for delivery utilizing non-firm transmission service that fails to comply with Section 3.8.2 for [200] or more hours during any Contract Year (or a prorata number of hours for any partial Contract Year);

5.1.12 in the case of Seller, the occurrence of an Event of Default under Section 3.1.9(d);

5.1.13 the failure to perform any material covenant or obligation set forth in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not addressed in any other Event of Default, if the failure is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a sixty (60) day cure period, the Defaulting Party will have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the Defaulting Party provides the Non-Defaulting Party a remediation plan, the Non-Defaulting party approves such remediation plan, and the Defaulting Party promptly commences and diligently pursues the remediation plan.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Term and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date. The Non-Defaulting Party shall calculate the Termination Payment payable hereunder in accordance with Section 5.2.2 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Gains or Losses shall be calculated for a period equal to the remaining Term (“Settlement Period”). The quantity of Energy in each month of the Settlement Period shall be equal to the Expected Output for such month (“Settlement Energy”). The Non-Defaulting Party (or its agent) may determine

its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. However, it is expressly agreed that (a) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment and (b) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges.

5.3 Termination Payment. The "Termination Payment" shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

5.4 Notice of Payment of Termination Payment. As soon as practicable after calculating the Termination Payment, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) 180 days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall pay the non-disputed amount of the Termination Payment as provided in Section 5.4 and transfer, within two (2) Business Days, Performance Assurance to the Non-Defaulting Party in an amount equal to the disputed amount of the Termination Payment.

5.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which the Non-

Defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.8 Post-Termination PURPA Status. If this Agreement is terminated because of a default by Seller, and Seller has subsequently remedied the default after such termination, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Site, on whose behalf Seller acts herein as agent, may thereafter require or seek to require PGE to make any purchases from the Facility or any electric generation facility constructed on the Site under PURPA, or any other Law, under terms and conditions different from those set forth in this Agreement (including rates higher than those set forth in this Agreement) 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 PGE 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 Site is situated, and any federal agency as applicable, a memorandum in form acceptable to PGE to provide constructive notice to third parties of Seller's agreements under this Section 5.8. In no event will PGE be required to make any purchases from the Facility or any electric generation facility constructed on the Site in the event the default that caused the termination is still in effect.

ARTICLE 6 REMEDIES FOR FAILURE TO DELIVER/RECEIVE

6.1 Seller Failure to Deliver Facility Output Energy. If Seller fails to deliver Facility Output as required by this Agreement or the associated Environmental Attributes, including Bundled RECs, and such failure is not excused by Force Majeure, or by PGE's breach of this Agreement, Seller shall owe PGE an amount as calculated below:

6.1.1 Seller shall owe PGE an amount for such deficiency equal to the positive difference (if any) of the applicable Market Index Settlement Price minus the Fixed Price multiplied by the positive difference (if any) of the Facility Output Seller failed to deliver for the applicable monthly On-Peak and Off-peak period minus the Delivered Energy Quantity delivered during that monthly On-Peak and Off-peak period; and

6.1.2 Seller shall owe PGE any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver; and

6.1.3 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Facility

Output results in incremental Carbon Emissions costs to PGE, consistent with Section 3.6; and

6.1.4 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Facility Output results in incremental ancillary services and transmission costs; and

6.1.5 Seller shall be obligated to settle any shortfall in the delivery of Environmental Attributes (including Bundled RECs) as follows:

(a) Seller shall, within 120 days after the end of the shortfall month, deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or

(b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.4(a) and PGE elects in its sole discretion to purchase Qualifying Replacement RECs, Seller shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or

(c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.4(a) and PGE does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe PGE the Qualifying Replacement REC Price identified by PGE multiplied by the number of Bundled RECs Seller failed to deliver. PGE shall use commercially reasonable efforts to mitigate the amount owed by Seller under this Section 6.1.4(c).

6.1.6 Any amount owed by the Seller to PGE under this Section 6.1 shall be netted against PGE's payment obligation for the month pursuant to Section 6.5 below.

6.1.7 An example illustrating the calculation of amounts due to PGE under this Section 6.1 under certain stated assumptions is set forth in Exhibit I.

6.2 PGE's Failure to Accept. If PGE fails to accept Energy that is scheduled in accordance with Section 3.8, and Seller is ready willing and able to deliver Energy to the Delivery Point, and such failure is not excused by a reliability or transmission constraint, Force Majeure or by Seller's failure to perform, then PGE shall owe Seller an amount for such deficiency equal to the positive difference between the applicable purchase price as set forth in Section 7.1 for the amount of Energy PGE fails to accept minus the Sales Price associated with the amount of Energy PGE fails to accept. Any such amount owed by PGE to Seller shall be added to the calculation of PGE's payment obligation for the month pursuant to Section 7.1. For each MWh of Energy not accepted by PGE pursuant to this Section 6.2, Seller's obligation to deliver the Guaranteed Output Threshold shall be reduced by one (1) MWh. An example illustrating the calculation of amounts due to Seller under this Section 6.2 under certain stated assumptions is set forth in Exhibit I.

6.3 Duty 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 of this Agreement.

6.4 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as an unreasonable penalty. If either Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties for the failure of Seller to sell and deliver, and PGE to purchase and receive the Product and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 may be submitted by either Party for resolution in accordance with Article 18 and with applicable Law.

6.5 Survival. The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 7 PAYMENT AND NETTING

7.1 Billing Period. Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement (other than for Seller or PGE failure under Sections 6.1 and 6.2 respectively and for termination under Section 5.4). On or before the tenth (10th) day of each Month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the

basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by one Party to the other Party during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article 5 (unless one of the Parties elects to accelerate payment of such amounts as permitted by Section 5.2.1), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article 5, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 8 LIMITATIONS

8.1 Essential Purposes. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES OF THIS AGREEMENT.

8.2 Exclusive Remedies. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

8.3 Direct Damages. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

8.4 No Consequential Damages. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

8.5 Causes Disregarded. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS AGREEMENT ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

8.6 Liquidated Damages. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS

9.1 Pre-COD Security.

9.1.1 Amount of Pre-COD Security. On or before the date specified in Section 3.1.9(a)(i), Seller shall post and maintain Performance Assurance in favor of PGE, equal in each case to \$200 per kW of Nameplate Capacity (the “Pre-COD Security”).

9.1.2 Use of Pre-COD Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Expected Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 3.1.13, PGE shall be entitled to and shall draw upon the Pre-COD Security an amount equal to the Delay Damages until such time as the Pre-COD Security is exhausted. PGE shall also be entitled to draw upon the Pre-COD Security for Contract Termination Damages.

9.1.3 Termination of Pre-COD Security. Seller shall no longer be required to maintain the Pre-COD Security (or the remaining balance thereof) after the Commercial Operation Date, if at such time no damages are owed to PGE under this Agreement. PGE shall release the Pre-COD Security to Seller upon PGE’s receipt of the Delivery Period Security under Section 9.2. However, as of the Commercial Operation Date, Seller may elect to apply the Pre-COD Security toward the Delivery Period Security required by Section 9.2, including by the automatic continuation (as opposed to the replacement) thereof.

9.2 Delivery Period Security.

9.2.1 Duty to Post Delivery Period Security. Beginning on the Commercial Operation Date, at any time during the Term when Seller does not satisfy the

Credit Requirements, Seller shall post and maintain Performance Assurance in favor of PGE as provided in this Section 9.2 (the “Delivery Period Security”).

9.2.2 Amount of Delivery Period Security. The amount of the Delivery Period Security required by Section 9.2.1 shall be \$100/kw of Nameplate Capacity.

9.2.3 Replenishment of Delivery Period Security. Within five (5) Business Days following any draw by PGE on the Delivery Period Security, Seller shall replenish the amount drawn such that the Delivery Period Security is restored in the full amount.

9.3 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance, Seller hereby grants to PGE a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PGE, and Seller agrees to take such action as PGE reasonably requires in order to perfect PGE’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting the Seller, PGE may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against any and all property of the Seller in the possession of PGE or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of PGE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. PGE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remaining liable for any amounts owing to PGE after such application), subject to PGE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.4 Step-In Rights.

9.4.1 Notice. At any time after the Facility has achieved Commercial Operation, and if at such time PGE has the right to terminate this Agreement due to an Event of Default, then prior to and in lieu of exercising the termination right related to such Event of Default, PGE shall have the right, but not the obligation, to assume control of and operate the Facility as agent for Seller under the terms and conditions set forth herein (“Step-In Rights”). If PGE contemplates exercising its Step-In Rights under this Section 9.4, PGE shall give Seller at least ten (10) Days’ advance notice thereof.

9.4.2 Books and Records. After notice is given and during the relevant notice period, Seller shall collect and have available at a convenient central location at the Facility and shall make available to PGE, at PGE’s request, all documents, contracts,

books, manuals, reports, records, plans, tools, equipment, inventories and supplies necessary or convenient to construct, operate and maintain the Facility in accordance with Prudent Electric Industry Practice.

9.4.3 Application of Proceeds. During any period that PGE is in control of and operating the Facility pursuant to exercise of its Step-In Rights, PGE shall perform and comply with all of the obligations of Seller under this Agreement and shall apply the Fixed Price that Seller would otherwise be entitled to receive hereunder in respect of the sale of Product and any other revenues of the Facility received by PGE from any source attributable to the Facility operation as follows:

- (a) first, to reimburse PGE for any and all out-of-pocket expenses reasonably incurred by PGE in taking possession of and operating the Facility, including PGE's personnel time and expenses, such operation to be subject to the operating budget and any operating agreement if such agreements are applicable;
- (b) second, to pay any unpaid amounts owed to PGE under this Agreement;
- (c) third, to satisfy any payments due and owing to any Lenders, arising after PGE's exercise of its Step-In Rights, and
- (d) fourth, to Seller.

9.4.4 Title and Possession. During any period that PGE is in control of and operating the Facility pursuant to the exercise of its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and PGE shall assume possession, operation and control solely as agent for Seller, provided that PGE shall operate the Facility in conformance with Prudent Electric Industry Practice (including operation and maintenance of the Facility in accordance with manufacturer's recommendations), the provisions and covenants set forth herein and in the Interconnection Agreement between Seller and the Transmission Provider, all leases, subleases, rights-of-way, easements and rights of ingress and egress used in connection with the Facility and Law (including all material permits, consents, licenses, approvals or authorizations from any Governmental Authority pertaining to the Facility). PGE's exercise of its Step-In Rights shall not be deemed an assumption by PGE of any liability of, or attributable to, Seller; provided, however, during the time PGE is operating the Facility, PGE shall indemnify and hold Seller harmless for any third party claims against Seller arising out of PGE's negligence or willful misconduct.

9.4.5 Seller's Resumption of Operations. If PGE is in control of the Facility pursuant to the exercise of its Step-In Rights, Seller may resume operation and PGE shall relinquish its right to control and operate the Facility under this Section 9.4 at such time as Seller has demonstrated to PGE's reasonable satisfaction that it possesses the resources to perform its duties under this Agreement.

9.4.6 PGE's Return of Control. If at any time after exercising its Step-In Rights and taking control of and operating the Facility, PGE elects to return control and operation to Seller, PGE shall give Seller thirty (30) Business Days' advance notice of the

date that PGE intends to return such control to Seller. Upon receipt of such notice, Seller shall take all actions necessary or appropriate to resume control and operation of the Facility on such date in accordance with the terms of this Agreement.

9.4.7 Purpose. PGE and Seller agree that (i) the Step-In Rights are intended solely to provide further assurance that the terms of this Agreement will be achieved, and accordingly that the purpose of the Step-In Rights is the same as the purpose of this Agreement; (ii) there is no separate or additional consideration for the Step-In Rights; and (iii) Seller's obligations in respect of the Step-In Rights are inextricably interrelated to PGE's obligations under the terms of this Agreement.

9.6 Holding Performance Assurance.

PGE will be entitled to hold Performance Assurance in the form of cash provided that the following conditions are satisfied: (i) PGE is not a Defaulting Party and a Material Adverse Change has not occurred and is continuing with respect to PGE and (ii) Performance Assurance is held only in a jurisdiction within the United States.

9.7 Interest Rate on Cash Collateral.

Performance Assurance in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be paid to the Seller on the third Business Day of each Month. "Interest Rate on Cash Collateral" means the lesser of (i) the maximum amount allowed by applicable Law and (ii) the Federal Funds Rate for the holding period. The "Federal Funds Rate" means the effective Federal Funds Rate as published daily by the Federal Reserve Bank H.15 Statistical Release website for each day of the holding period. Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days.

9.8 Performance Assurance is Not a Limit on Seller's Liability.

The Performance Assurance contemplated by this Article 9: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PGE's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PGE draws on any Pre-COD Security or Delivery Period Security, Seller shall replenish or reinstate the Pre-COD Security or Delivery Period Security to the full amount then required under this Article 9.

9.9 Waiver.

This Agreement sets forth the entire agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including this Article 9, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 9 of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 10 GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Non-Sale Related Governmental Charges and Taxes.

Seller shall pay or cause to be paid all charges or taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product arising prior to the Delivery Point. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than those related to the sale of the Product, which are the responsibility of Seller). In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are PGE’s responsibility hereunder, PGE shall promptly reimburse Seller for such Governmental Charges. If PGE is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, PGE may invoice Seller for the amount of any such Governmental Charges or, in its sole discretion, deduct the amount of any such Governmental Charges from the sums due to Seller under Article 7 of this Agreement. Nothing in this Agreement shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, Seller shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Product sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Product to the Delivery Point.

10.4 Indemnification.

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Product sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article 10.

ARTICLE 11
RATES AND TERMS BINDING;
FERC STANDARD OF REVIEW

11.1 Mobile-Sierra Doctrine.

11.1.1 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, proposed by a Party (to the extent that any waiver in subsection 11.2 below is unenforceable or ineffective as to such Party), or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 527 (2010).

11.1.2 Waiver of FERC Rights. In addition, and notwithstanding Section 11.1.1, to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. If it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection Section 11.1.1 shall not apply, provided that, consistent with Section 11.1.1, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 11.1.1.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES; INDEMNITY

12.1 Representations and Warranties.

On the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

12.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

12.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

12.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

12.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

12.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

12.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

12.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

12.1.9 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

12.1.10 the material economic terms of this Agreement were subject to individual negotiation by the Parties;

12.1.11 it is an “eligible contract participant” within the meaning of the Commodity Exchange Act.

12.2 Indemnity.

To the fullest extent permitted by Law, each Party (the “Indemnitor”) hereby indemnifies and agrees to defend and hold harmless the other Party (the “Indemnitee”) from and against any Indemnity Claims caused by, resulting from, relating to or arising out of any act or incident involving or related to the Product and occurring at any time when such Product is under the Indemnitor’s possession and control; provided, however, that the Indemnitor shall not have

any obligation to indemnify the Indemnitee from or against any Indemnity Claims caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee.

12.3 Additional Representations and Warranties of Seller.

On the Effective Date and throughout the Term, Seller hereby further represents and warrants to PGE that:

12.3.1 Seller has the right to sell the Product to PGE free and clear of liens of encumbrances;

12.3.2 Seller has title to the Product sold under this Agreement free and clear of liens and encumbrances;

12.3.3 Seller is authorized to sell power at market-based rates pursuant to FERC Dockets Number ER [_____];

12.3.4 The Facility is either an EWG or a QF;

12.3.5 Seller has obtained, or will obtain as and when required by this Agreement, all Permits and all other rights and agreements required to construct, own, operate and maintain the Facility, and they will be in full force and effect for the Term;

12.3.6 All leases of real property and other real property rights and agreements required for the operation of the Facility or the performance of any obligations of Seller under this Agreement have been obtained and are owned by Seller, free and clear of liens and encumbrances;

12.3.7 Except as disclosed on Exhibit E, neither Seller nor any Affiliate of Seller has entered into any document, arrangement, understanding, promise or agreement or the like with any Person concerning, with respect to the Facility, (i) remediation or mitigation of environmental impacts, (ii) endangered species, (iii) migratory birds (including eagles), (iv) wildlife and species of conservation concern (state and federal), (v) environmentally, culturally or historically sensitive property or resources, (vi) a military facility, or (vii) national security. In addition, neither Seller nor any Affiliate of Seller has entered into any agreement where public disclosure of the agreement or the subject matter of the agreement could reasonably be expected to negatively affect the Facility's reputation.

12.3.8 Except as disclosed in Exhibit K, there is no litigation, legal action or administrative action pending with respect to the Facility nor, to Seller's knowledge, is any such litigation, legal action or administrative action threatened.

12.3.9 Seller has at all times been fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated in any communication concerning Facility Output, the Facility or the Bundled RECs.

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

ARTICLE 13 INSURANCE

13.1 Insurance. During the Term, Seller shall secure and continuously carry the following insurance coverage:

13.1.1 Commercial general liability insurance with a minimum combined single limit of \$1,000,000 per occurrence and in the annual aggregate, with coverage for bodily injury, personal injury and broad form property damage, contractual liability, products and completed operations.

13.1.2 Workers' compensation insurance to cover statutory limits of the worker's compensation laws and employers liability insurance with a minimum limit of \$1,000,000.

13.1.3 Business automobile liability insurance (including coverage for owned, non-owned, and hired automobiles) used in connection with the Facility in an amount not less than \$1,000,000 per accident for combined bodily injury, property damage or death. To the extent that the Seller does not own automobiles, coverage for non-owned and hired automobiles may be combined with commercial general liability.

13.1.4 Umbrella/excess insurance covering claims in excess of the underlying insurance described in Sections 13.1.1, 13.1.2 (employers liability only) and 13.1.3 with a \$5,000,000 minimum per occurrence and annual aggregate.

13.1.5 All-risk property insurance including boiler & machinery coverage insuring Seller's property at replacement cost value.

13.2 Seller to Provide Certificate of Insurance. All policies required, with the exception of workers' compensation employers liability and business automobile liability, shall include (i) endorsement(s) naming PGE as an additional insured but only to the extent of Indemnitee's indemnifications as stated in Section 13.1, and (ii) a cross-liability and severability of interest clause. Said policies shall also contain provisions that such insurance is primary insurance without right of contribution of any other insurance carried by or on behalf of PGE with respect to its interests as additional insured. A certificate of insurance showing that the above-required insurance is in full force and effect (on Accord or similar form) shall be furnished to PGE. All policies shall be placed with companies with a minimum A.M. Best rating of A- IX. Seller shall deliver copies of all certificates of insurance to PGE within thirty (30) days of the Effective Date.

13.3 Seller to Notify PGE of Loss of Coverage. Seller or Seller's insurers shall endeavor to provide PGE thirty (30) days notice (or ten (10) days in the case of cancellation due to non-payment of premiums) in the event of any material change to, cancellation or non-renewal of the required insurance.

**ARTICLE 14
TITLE AND RISK OF LOSS**

Title and risk of loss related to the Product shall transfer from Seller to PGE at the Delivery Point, except that title to Bundled RECs shall transfer to PGE when generated and shall be measured at the Facility Meter. Seller represents and warrants that it will deliver all Product to PGE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point.

**ARTICLE 15
ASSIGNMENT; BINDING EFFECT**

15.1 Assignment.

Neither Party may assign this Agreement or its rights hereunder to any entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any direct or indirect change in control of Seller (whether voluntary or by operation of law) will be deemed an assignment of this Agreement and will require prior written consent of PGE pursuant this Section 15.1. Seller shall pay Buyer's reasonable expenses incurred to provide consents, estoppels or other required documentation in connection with Seller's financing of the Facility.

15.2 Change in Control.

No direct or indirect change in the control of Seller may occur without PGE's prior written consent, not to be unreasonably withheld, conditioned or delayed.

15.3 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

**ARTICLE 16
GOVERNING LAW**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW.

ARTICLE 17 RECORDS AND AUDIT

17.1 Records.

Each Party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings in relation to this Agreement in accordance with generally accepted accounting principles, consistently applied.

17.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Product delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

ARTICLE 18 DISPUTE RESOLUTION

18.1 Referral to Senior Management

In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“Dispute”), either Party may notify the other of the existence of the Dispute. Upon receipt of a notice of Dispute, the Parties’ representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so within ten (10) Business Days after the date on the notice of Dispute was given, then within a further three (3) Business Day period following an additional written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

18.2 Mediation.

Any Dispute that is not resolved pursuant to Section 18.1 within thirty (30) days after the Dispute notice was given may be submitted for mediation by either Party before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“AAA Procedures”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from each of the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the

Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, (c) two unexcused absences by either Party from the mediation sessions, or (d) failure to resolve the Dispute on or before the sixtieth (60th) day after the date on which the notice of Dispute was given (unless the Parties otherwise agree in writing to extend such date). The mediator will never participate in any claim or controversy covered by this Article as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

18.3 Legal Action.

If the Parties are still unable to resolve their differences through mediation pursuant to Section 18.2 within sixty (60) days after the date on which notice of the Dispute was originally given, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by Law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by Law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Exhibit A, or at such other address of which the Parties have been notified. The dispute resolution process contemplated by this Agreement shall not prevent a Party from seeking temporary or preliminary equitable relief to prevent irreparable damage to that Party or to preserve the status quo pending resolution of a Dispute, and this Section 18.3 shall apply with respect to any application for such relief.

18.4 Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18.5 Attorneys' Fees. If either Party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, whether incurred before suit, during suit, or at the appellate level, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

18.6 Survival. The provisions set forth in this Article 18 shall survive the termination or expiration of this Agreement.

ARTICLE 19 GENERAL PROVISIONS

19.1 Entire Agreement.

This Agreement (including the attached exhibits and schedules), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

19.2 Joint Efforts.

This Agreement shall be considered for all purposes as prepared through the joint efforts of both Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.3 Amendments in Writing.

No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

19.4 No Third Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement), it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

19.5 Non-Waiver.

No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.6 Severability.

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

19.7 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

19.8 Bankruptcy Matters.

The Parties acknowledge and intend that this Agreement, the transactions contemplated in this Agreement, and any instruments that may be provided by either Party under this Agreement will each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, and that PGE and Seller are “forward contract merchants” within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, or otherwise take any position to the effect that this Agreement, the transactions contemplated under this Agreement, and any instrument(s) that may be provided by either Party under this Agreement do not each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, or that PGE and Seller are not “forward contract merchants” within the meaning of the Bankruptcy Code.

19.9 Relationships of Parties.

The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be deemed an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

19.10 Headings.

The headings used for the Sections and Articles herein are for convenience and reference purposes only and shall not affect the meaning or interpretation of this Agreement.

19.11 Consolidation of Variable Interest Entities.

If PGE or one of its Affiliates determines that, under Accounting Standards Codification 810 (“ASC 810”) Consolidation of Variable Interest Entities (“VIE’s”), formerly referred to as the Financial Accounting Standards Board’s revised Interpretation No. 46 (“FIN 46”), it may hold a controlling financial interest in Seller, but it lacks

the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and ownership information so that PGE or its Affiliate may assess whether a controlling financial interest in a VIE does exist under FIN 46. If PGE or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and other information to PGE or its Affiliates so that PGE may properly consolidate the entity in which it holds the controlling financial interest and present the required disclosures. PGE shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PGE's requests for information under this Section 19.11.

ARTICLE 20 CONFIDENTIALITY

Neither Party shall disclose the terms or conditions of this Agreement to a third party except (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, or accounting disclosure rule or standard, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure, (iv) to an index publisher or rating agency who has executed a confidentiality agreement with such Party, (v) in order to comply with any applicable law, regulation, order, or directive, including an order or directive of the Oregon Public Utility Commission, or (vi) in connection with any court or regulatory proceeding, including a proceeding of the Oregon Public Utility Commission; provided, however, that in the case of a disclosure under paragraphs (ii), (v) or (vi), each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. Before Seller issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility or PGE, Seller shall first provide a copy thereof to PGE for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 21 NOTICES AND COUNTERPARTS

21.1 Notices.

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications and notifications of changes in

availability of the Facility sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1.

21.2 Counterparts.

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Renewable Energy Purchase and Sale Agreement to be duly executed as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**PORTLAND GENERAL ELECTRIC
COMPANY**

[Seller]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A

EXHIBIT A

Notices

Portland General Electric Company (“PGE”)

All Notices:

Street: 121 SW Salmon Street
City: Portland, Oregon 97204
Attn: Power Contracts; 3WTCBR06
Phone: (503) 464-_____
Facsimile: (503) 464-2605
Duns: 00-790-9054
Federal Tax ID Number: 93-0256820

Invoices:

Attn: Accounts Payable
Phone: (503) 464-7126
Facsimile: 464-7006

Scheduling:

Attn: Manager Power Coordination
Phone: (503) 464-7241
Facsimile: (503) 464-2605

Wire Transfer:

BNK: United States National Bank of Oregon-
Portland
ABA: 123000220
ACCT: #153600063512
NAME: Portland General Electric Company

Credit and Collections:

Attn: Credit Manager
Phone: (503) 464-_____
Facsimile: (503) 464-2605

With additional Notices of an Event of Default to:

Attn: General Counsel
Phone: (503) 464-7822
Facsimile: (503) 464-2200

Seller (“Seller” or “Name”)

All Notices:

Street: _____
City: _____ Zip: _____
Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

EXHIBIT B

Fixed Price

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EXHIBIT C

Intentionally Left Blank

EXHIBIT D
Facility Description

EXHIBIT E
Facility Documents

EXHIBIT F

Site

EXHIBIT G
Start-Up Testing

EXHIBIT H
Intentionally Left Blank

APPENDIX A

EXHIBIT I

Examples

Exhibit provided for example purposes only and may not be representative of information included in final contract

Market Index Settlement Price Example

(A)	(B)	(C)	(D) = (C)*(B)/Production Total
Hour	Production (MWh)	Market Index Price (\$/MWh)	Production-Weighted Market Index Price (\$/MWh)
HE01			
HE02			
HE03			
HE04			
HE05			
HE06			
HE07			
HE08			
HE09			
HE10			
HE11			
HE12			
HE13			
HE14			
HE15			
HE16			
HE17			
HE18			

APPENDIX A

HE19			
HE20			
HE21			
HE22			
HE23			
HE24			
Production Total			
Market Index Settlement Price			

APPENDIX A

Example Illustrating Determination of Amount Due to Seller under Section 6.2

EXHIBIT J

Long-Term Transmission Plan

APPENDIX A

EXHIBIT K

Litigation

APPENDIX A

EXHIBIT L

Forecast Methodology

APPENDIX A

EXHIBIT M

Optimal Conditions/Nameplate Capacity

APPENDIX A

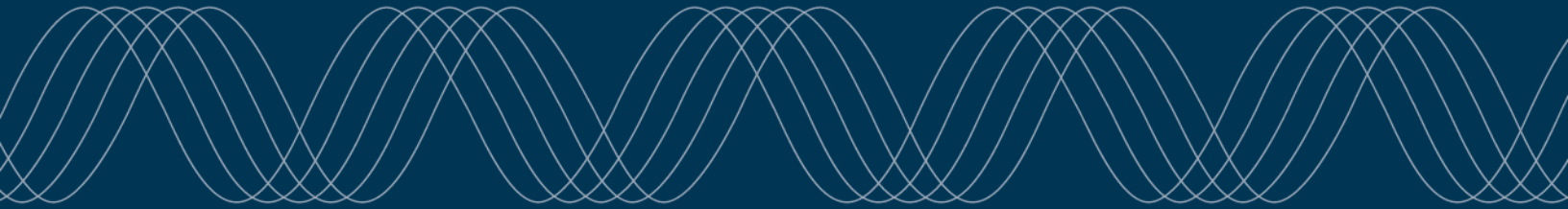
EXHIBIT N

Operational Hours and Mechanical Availability Methodology

Appendix F

Storage Capacity Form Agreement

-



2021 All-Source RFP



STORAGE CAPACITY AGREEMENT

between

Portland General Electric Company

and

[SELLER]

dated as of

[] [], 20[]

STORAGE CAPACITY AGREEMENT¹

This Storage Capacity Agreement (this “Agreement”), dated as of [_____] [____], 20[____] (the “Effective Date”), is between Portland General Electric Company, an Oregon corporation (“Buyer”), and [____], a [____] (“Seller”). Each of Buyer and Seller are referred to in this Agreement as a “Party”, and collectively as the “Parties”.

1. Seller intends to construct, own, and operate a [_____] MW_{AC} grid-connected energy storage system (as more particularly described in Exhibit A) (together with all materials, systems, structures, features, and improvements necessary to store and deliver electricity at such facility, the “Storage Facility,” and together with the Site (defined below), and related land rights and interests in land, the “Project”); and

2. Seller desires to sell and deliver exclusively for the benefit of Buyer, and Buyer desires to provide the electricity to charge the Storage Facility and purchase and receive, the capacity of the Project, together with the other Products (defined below) from the Project, in each case pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

Article 1 DEFINITIONS

1.1 Defined Terms

Unless otherwise required by the context in which it appears, terms used in this Agreement have the meanings set forth in this Section 1.1.

“AAA Procedures” has the meaning set forth in Section 11.10(b).

“Abandoned” means that (i) Seller has permanently relinquished all possession or control of the Project other than pursuant to a transfer permitted under this Agreement; (ii) prior to the Commercial Operation Date, Seller has ceased the development, construction planning, construction, and testing of the Project for thirty (30) consecutive days; or (iii) following the Commercial Operation Date, Seller has ceased to schedule the Facility Energy or otherwise ceased to operate or perform maintenance at the Project for thirty (30) consecutive days, in each case, unless caused by or attributable to a Force Majeure Event or a Unplanned Outage.

“AC Capacity” and the subscript use of “AC” mean the peak alternating current Energy that the Storage Facility is capable of delivering, expressed in kW or MW, as applicable.

¹ **Note to Bidders:** This Agreement is drafted for an on-system battery storage resource. To the extent Seller is proposing an off-system or non-battery storage resource, various provisions will need to be updated (e.g., interconnection point, transmission requirements, scheduling requirements, procurement of charging energy, etc.).

“Actual Availability” means for any Settlement Interval, the product of (i) the Storage Contract Capacity *multiplied by* (ii) the Availability Factor.

“Actual Round-Trip Efficiency” means the percentage, calculated monthly, based on the amount of MWhs discharged from the Storage Facility divided by the amount of MWhs used to charge the Storage Facility, as measured by the Metering Facilities at the Interconnection Point, multiplied by 100.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person.

“Agreement” has the meaning set forth in the preamble.

“A.M. Best” means A.M. Best Company, Inc.

“Ancillary Service Attributes” means [all ancillary services, products and other attributes, if any that may be obtained from or generated by the Storage Facility.]

“Applicable Law” means any act, statute, law, regulation, Permit, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority, in each case having jurisdiction over (a) any Person or any of its property, (b) the Facility or (c) the Project.

“Availability Factor” means, for any Settlement Interval, the ratio, equal to (i) the lowest capacity in MW provided by the Storage Facility during such Settlement Interval (not to exceed the Storage Contract Capacity) *divided by* (ii) the Storage Contract Capacity; *provided* that, if the Availability Factor for any Settlement Interval is less than 70%, then the Availability Factor for such Settlement Interval shall be deemed to be 0; and *provided further* that, if the Storage Facility is incapable of providing the Storage Contract Capacity during such Settlement Interval due to Force Majeure or a Planned Outage, then the Availability Factor for such Settlement Interval shall be deemed to be 1.00.

“Bankrupt” means with respect to a Person (i) such Person 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 as they become due, or makes a general assignment for the benefit of creditors; (ii) such Person 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 of any jurisdiction, whether now or hereafter in effect, or files 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 of any jurisdiction, whether now or hereafter in effect, providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with creditors; (iii) such Person’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) such Person 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.

“Business Day” means a day on which national banks are not required or authorized by law or executive order to close in Portland, Oregon.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer’s Customer” means a direct or indirect retail electric customer of Buyer or any of its Affiliates.

“Capacity Attributes” means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, or accounting construct, associated with the electric charge and discharge capability and capacity of the Project or the Project’s capability and ability to discharge or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Capacity Attributes do not include: (i) any production tax credits, investment tax credits, or any other tax credits, deductions, or tax benefits associated with the Project, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Project.

“Cash” means U.S. Dollars.

“Change of Control” means (i) a conveyance, transfer or other disposition, directly or indirectly, of equity interests of Seller or voting rights with respect thereto, whether in one transaction or a series of transactions, as a result of which the Controlling Person of Seller shall cease to Control Seller or (ii) a merger or consolidation as a result of which the Controlling Person of Seller immediately prior to such merger or consolidation shall cease to Control Seller; but excluding any such acquisition or agreement (y) to which Buyer has provided its prior written consent, which consent may not be unreasonably delayed, conditioned, or withheld.

“Charging Energy” means all Energy delivered to the Interconnection Point in accordance with a Charge Request.

“Charge Request” means an electronic operating instruction sent by Buyer to charge the Storage Facility at a specific MW rate to a specified Stored Energy Level, delivered in accordance with the procedures set forth on Schedule I, together with any subsequent updates to such notification.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions, as determined pursuant to Section 7.4(c).

“Commercial Operation Conditions” has the meaning set forth in Section 7.4(d).

“Commercial Operation Date” means the later of (x) the date specified by Seller as the anticipated Commercial Operation Date in the Commercial Operation Notice delivered to Buyer, and (y) the date on which Commercial Operation is actually achieved, and the Storage Contract Capacity of the Storage Facility is otherwise fully operation, reliable, and available to Buyer at the Delivery Point.

“Commercial Operation Notice” has the meaning set forth in Section 7.4(c).

“Confidential Information” means (i) any and all information provided by one Party to the other in connection with this Agreement and (ii) any and all information provided by one Party to the other with respect to the Project or the transactions contemplated hereby, but excluding information (a) that has become generally known or available within the industry or the public through no act or omission of such Party; (b) a Party can demonstrate, prior to disclosure in connection with the transactions contemplated

hereby, was already in the possession of such Party; (c) that was rightfully received by a Party from a third party who became aware of it through no act or omission of such Party and who is not under an obligation of confidentiality to the other Party; or (d) a Party can demonstrate was independently developed by employees or consultants of Seller.

“Contract Price” means \$[•] per kW of Storage Contract Capacity, as adjusted pursuant to this Agreement.

“Contract Year” means the calendar year, a 12-month period commencing on January 1st and continuing through and including December 31st of each year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall continue through and include the last day of the Delivery Term.

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise. Instances of “Controls”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Control Area Services” means generation imbalance, variable energy resource balancing service and any EIM costs associated with the Interconnection Agreement. Control Area Services do not include ancillary service costs associated with the Transmission Provider’s provision of firm transmission service.

“Costs” means, with respect to the Non-Defaulting Party, the commercially reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the Non-Defaulting Party to a Person other than a Party in connection with terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements to replace this Agreement, and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“Credit Rating” means with respect to a Person, on any date of determination, the respective rating then assigned to such Person’s senior unsecured long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s or, in the absence of such a rating, the current corporate family rating or, if applicable, issuer rating then assigned to such Person by S&P or Moody’s.

“Credit Support” means Cash or a Letter of Credit.

“Credit Support Amount” means (x) the Pre-COD Credit Support Amount, or (y) the Operating Period Credit Support Amount, whichever is then applicable.

“Customer Marks” has the meaning set forth in Section 7.9(a).

“Default” means an event or condition that would, after giving effect to any applicable notice requirement or grace period, constitute an Event of Default.

“Defaulting Party” means the Party with respect to which an Event of Default has occurred and is continuing.

“Delay Condition” has the meaning set forth in Section 7.2(d).

“Delay Damages” has the meaning set forth in Section 7.3(b).

“Delivery Point” means the Interconnection Point.

“Delivery Term” has the meaning set forth in Section 2.1.

“Discharging Energy” means all Energy discharged by the Storage Facility delivered to the Delivery Point, as measured by the Project’s Metering Facilities.

“Discharge Request” means an electronic operating instruction sent by Buyer to discharge the Storage Facility at a specific MW rate to a specified Stored Energy Level delivered in accordance with the procedures set forth on Schedule I, together with any subsequent updates to such notification.

“Dispatchable Capacity” means the product of (a)(i) the Maximum Usable State of Charge *minus* (ii) the Minimum Usable State of Charge *multiplied by* (b) the Storage Contract Capacity.

“Dispute” has the meaning set forth in Section 11.10(a).

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of the Storage Facility that performs tasks essential to the charge, discharge and storage of electricity.

“DOE” means the United States Department of Energy.

“Duration” means the time, in hours, required to discharge the Storage Facility from the Maximum Usable State of Charge to the Minimum Usable State of Charge at a discharge level equal to the Dispatchable Capacity.

“Duration LDs” means, with respect to a single discharge event, an amount equal to the product of (i) (A) the Guaranteed Duration *minus* (B) the Duration for such discharge event *multiplied by* (ii) the Storage Contract Capacity *multiplied by* (iii) the average Distribution Point Price for the hours when the Storage Facility would have been discharged but for the shortfall in Duration. In no event may Duration LDs be less than \$0.00.

“EA Transfer Deadline” means the reporting deadline that applies to the applicable Environmental Attribute so that such Environmental Attribute may be recorded, retired, or otherwise reported for the year in which it was generated.

“e-Tags” shall have the meaning set forth in Section 7.8(a)(iv)(A).

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Energy” means all electrical energy produced, flowing or supplied by, discharged and stored by the Project, measured in kilowatt-hours or multiple units thereof. Energy shall include any energy-based products and services that may be developed by or evolve from the Project from time to time during the Term.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Project, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants

to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions, such as the carbon content of the Energy generated by the Project and REC Reporting Rights. Environmental Attributes do not include any Energy; Ancillary Service Attributes; capacity; reliability or other power attributes from a renewable energy project or any production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation; filed rates; or feed-in tariffs for the storage of Energy.

“EPC Contract” means the engineering, procurement, and construction agreement (whether styled as a balance of plant; balance of systems; engineering, procurement, and construction; or other agreement) entered into by Seller for the engineering, procurement, and construction of the Project.

“EPC Contractor” means the contractor retained by Seller under the EPC Contract.

“ESS Supplier” means the supplier retained by Seller or its applicable Affiliate to supply energy storage systems for the Project under the ESS Supply Agreement.

“ESS Supply Agreement” means the agreement entered into by Seller or its applicable Affiliate for the supply and, if applicable, installation of energy storage systems for the Project, as such agreement may be amended, restated, supplemented, or otherwise modified from time to time.

“Event of Default” has the meaning set forth in Section 9.1(b).

“Facility Energy” means with respect to a Settlement Interval, the Discharging Energy and/or the Charging Energy for such Settlement Interval.

“Failure to Deliver Damages” has the meaning set forth in Section 7.8(a)(vi).

“Fed Funds Rate” means with respect to any day, the rate for that day opposite the caption “Federal Funds (Effective)” in the statistical release designated as H.15 (Selected Interest Rates (Daily)) or any successor publication, published by the Board of Governors of the Federal Reserve System, but not less than 0%.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure Event” has the meaning set forth in Section 8.1(b).

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory or quasi regulatory autonomous entities (including FERC, NERC, DOE and WECC) or taxing authorities or any department, municipality or other political subdivision thereof.

“Guaranteed Charging Rate” has the meaning set forth in Section 7.7(c).

“Guaranteed Commercial Operation Date” means the date that is 120 days after the Scheduled Commercial Operation Date, as such date may be extended pursuant to Section 7.2(d).²

“Guaranteed Duration” has the meaning set forth in Section 7.7(d).

“Guaranteed Monthly Availability” has the meaning set forth in Section 7.7(b).

“Guaranteed Monthly Availability Adjustment” has the meaning set forth in Section 7.7(b).

“Guaranteed Round-Trip Efficiency” has the meaning set forth in Section 7.7(d).

“Guaranteed Round-Trip Efficiency Adjustment” has the meaning set forth in Section 7.7(d).

“Guaranteed Storage Contract Capacity” has the meaning set forth in Section 7.7(a).

“Guaranteed Storage Contract Capacity LDs” has the meaning set forth in Section 7.7(a).

“Heavy Load Hours” means each hour included in the period from hour ending 0700 PPT through and including hour ending 2200 PPT, Monday through Saturday of each week.

“Interconnection Agreement” means the agreement between Seller and the Transmission Provider to interconnect the Project with the Transmission System, including any local utility distribution system to which the Project is connected.

“Interconnection Point” means the Project’s point of interconnection with [XX substation] as identified in the Interconnection Agreement, owned and operated by the Transmission Provider.

“Interest Rate” means, for any day, the lesser of (x) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) *plus* 2% and (y) the maximum rate permitted by Applicable Law.

“kW” mean a kilowatt of electric capacity.

“kWh” means a kilowatt-hour of Energy.

“LDs” has the meaning set forth in Section 7.7(a).

“Letter of Credit” means an irrevocable standby letter of credit issued by a Qualified Issuer substantially in the form attached as Exhibit F or in such other form as may be required by the applicable Qualified Issuer, with such modifications thereto as Buyer may in its reasonable discretion require.

“Letter of Credit Default” means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of the Letter of Credit ceases to be a Qualified Issuer; (ii) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of the Letter of Credit disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, the Letter of Credit; (iv) the Letter of Credit expires, terminates, or otherwise fails or ceases to be in full force and effect at any time while required to be maintained pursuant to the terms of this Agreement; (v) Seller fails to provide an extended or replacement Letter of Credit prior to thirty (30) days before the Letter of Credit expires or terminates; or (vi) the issuer of the Letter of Credit becomes

² **NTD:** Such date to be set at 120 days after the Scheduled Commercial Operation Date.

Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” occurs with respect to the issuer of the Letter of Credit.

“Loss Event” means (i) any property casualty, loss, or other similar event affecting the Project or (ii) any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Project, by any Governmental Authority or otherwise pursuant to Applicable Law.

“Loss Event Buy-Down Amount” has the meaning set forth in Section 7.5(b)(i).

“Losses” has the meaning set forth in Section 9.4.

“Marks” has the meaning set forth in Section 7.9(a).

“Maximum Usable State of Charge” means a Usable State of Charge equal to [\bullet]³%.

“Meters” means the meters associated with the Project’s Metering Facilities.

“Metering Facilities” means the [interchange] meter at the Interconnection Point and all associated ancillary equipment that are required to measure Charging Energy and Discharging Energy at the Interconnection Point.

“Milestone” means each of the events set forth in Exhibit C.

“Milestone Date” means the date by which a Milestone is expected to be achieved, as set forth in Exhibit C, as may be extended pursuant to Section 7.2(d).

“Minimum Usable State of Charge” means a Usable State of Charge equal to [\bullet]⁴%.

“Monthly Actual Availability” means the average of the Actual Availability of all of the Settlement Intervals occurring in a calendar month.

“Moody’s” means Moody’s Investors Service, Inc.

“Monthly Payment” has the meaning set forth in Section 3.1(b).

“MW” means 1,000 kW, or a megawatt of electric capacity.

“MWh” means 1,000 kWh, or a megawatt-hour of electric energy.

“NERC” means the North American Electric Reliability Corporation.

“Non-Buyer Charge” has the meaning set forth in Section 3.5(d).

“Non-Defaulting Party” has the meaning set forth in Section 9.2(a).

³ **Note to Bidders:** - To be determined on a Project-by-Project basis. Bidders to propose.

⁴ **Note to Bidders:** - To be determined on a Project-by-Project basis. Bidders to propose.

“O&M Service Provider” means the Person or Persons retained to perform operation and maintenance services with respect to the Project, including under any long-term service and maintenance agreement (however defined or described) and including any subcontractor thereof.

“Operating Period Credit Support Amount” has the meaning set forth in Section 6.1(a)(ii).

“Operating Procedures” means the operating procedures as described in Appendix A.

“Outage” means a Unplanned Outage or Planned Outage.

“Party” and “Parties” have the meanings set forth in the preamble of this Agreement.

“Permits” means all permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Applicable Laws in connection with the development, construction, operation, use and/or maintenance of the Project, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.

“PGE Marks” has the meaning set forth in Section 7.9(a).

“Planned Outage” has the meaning set forth for such term in in Section 7.8(b)(i).

“PPT” means Pacific Prevailing Time.

“Pre-COD Credit Support Amount” has the meaning set forth in Section 6.1(a)(i).

“Products” means the Storage Contract Capacity, the Capacity Attributes, the Ancillary Service Attributes, and any Environmental Attributes from time to time available from, or that may be generated by, the Storage Facility.

“Project” has the meaning set forth in the first recital paragraph.

“Project Labor Agreement” means a collective bargaining agreement with one or more labor unions that establishes the terms and conditions of employment for a specific construction project.

“Project Lender” means any Person (including any trustee, arranger, or agent on behalf of such Person) lending money or extending credit to Seller in connection with the development, construction, ownership, operation, or maintenance of the Project, including any refinancing thereof.

“Project QSE” has the meaning set forth in Section 7.8(a)(i).

“Prudent Utility Standards” shall mean those practices, methods, equipment, specifications and standards of care, skill, safety and diligence and acts as the same may change from time to time, but applied in light of the facts known at the time, as are generally applied or utilized under comparable circumstances by experienced and prudent professionals in respect of the interconnection, transmission, ownership, operation or maintenance of energy storage facilities of comparable type and complexity to the Project and which would have been expected to accomplish the desired result in a manner consistent with Applicable

Law, safety, environmental protection, economy and expedition. Prudent Utility Standards are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather, refer to a range of actions reasonable under the circumstances.

“Qualified Issuer” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank that is acceptable to Buyer, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholder equity of at least Ten Billion U.S. Dollars (\$10,000,000,000.00) and a credit rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of Two Billion U.S. Dollars (\$2,000,000,000.00) or greater with an A.M Best financial strength rating of A or greater and that authorized to issue surety bonds in the state in which the Facility is located.

“REC” means the Environmental Attributes and the REC Reporting Rights associated with Energy generated from a renewable generating resource, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Eligible,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes made available by the generation of one MWh of Energy generated from a renewable generating resource.

“REC Reporting Rights” means the right of a buyer to report the ownership of accumulated RECs in compliance with Applicable Law, and to a federal or state agency or any other party at such buyer’s discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present Applicable Law, regulation or bill, and international or foreign emissions trading program.

“Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Facility or delivery of the Product.

“Replacement EA Damages” has the meaning set forth in Section 3.3(c).

“Replacement EA Value” means [Five Dollars per MWh (\$5.00/MWh)]; provided, if, after the Effective Date, a liquid market for RECs emerges in a form and location that a Party determines reasonably states the market value of the RECs delivered hereunder, then either Party shall have the right to notify the other Party requesting that a designated market price report will be used to determine the Replacement EA Value. The notice must include a proposed method for calculating three (3) years of projected REC replacement costs for purposes of determining the Replacement EA Damages. The proposed use of the designated market price report and the proposed calculation method shall be subject to such other Party’s consent. If the other Party does not consent to the notifying Party’s designation of the market price report and proposed calculation method within thirty (30) days, the matter will be subject to dispute resolution under Section 11.10.

“Replacement Price” means the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices (“ICE DA Indices”) for any particular month.

“Round-Trip Efficiency” means the ratio, expressed as a percentage, of Discharging Energy output from the Storage Facility to Charging Energy input into the Storage Facility.

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“Scheduled Commercial Operation Date” means [____].⁵

“Scheduling Procedure” means those procedures described in Sections 7.8(a)(iii) and 7.8(a)(iv).

“Seller” has the meaning set forth in the preamble of this Agreement.

“Seller Agent” means any Person acting for the benefit of or at Seller’s direction, including the EPC Contractor, the O&M Service Provider, and any subcontractor of any of the foregoing.

“Settlement Interval” means any one hourly time interval beginning on any hour and ending on the next hour

“Site” means the real property on which the Project is to be built and located, as more particularly described in Exhibit A.

“Station Service” has the meaning set forth in Section 3.5(d).

“Storage Contract Capacity” means the actual total installed nameplate AC Capacity of the Storage Facility as determined by the then-current Storage Contract Capacity Test, as the same may be adjusted from time to time pursuant to Section 7.6(a)(iv).

“Storage Contract Capacity Test” has the meaning set forth in Section 7.6(a)(i).

“Storage Facility” has the meaning set forth in the Recitals.

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

“Tax Equity Investor” means an investor in the Seller who through a transaction or series of transactions is seeking a return that is enhanced by tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without leverage)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass through lease).

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative, minimum, estimated or similar tax, levy or assessment and any related interest or penalty.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 9.2(b).

“Test Energy” means all energy discharged by the Storage Facility prior to achieving the Commercial Operation Date.

⁵ NTD: Such date may not to be later than December 31, 2024.

“Transmission Provider” means the Person that owns and operates the Energy transmission facilities to which the Project is or will be, as applicable, interconnected at the Interconnection Point.

“Transmission System” means the facilities used for the transmission of electricity in [___], including any modifications or upgrades made to such facilities, that are owned and operated by the Transmission Provider.

“Unplanned Outage” means any period of time during which the Project is offline other than during a Planned Outage.

“Usable State of Charge” means the amount of dischargeable electrical energy in the Storage Facility, expressed as a percentage of the Storage Contract Capacity.

“WECC” shall mean Western Electricity Coordinating Council.

1.2 **Construction**

Headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement. For purposes of this Agreement:

(a) A reference to an Exhibit, Schedule, Article, Section or other provision shall be, unless otherwise specified, to exhibits, schedules, articles, sections or other provisions of this Agreement, which exhibits and schedules are incorporated herein by reference.

(b) Any reference in this Agreement to another agreement or document shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated, assigned or otherwise transferred.

(c) Any reference in this Agreement to “this Agreement,” “herein,” “hereof” or “hereunder” shall be deemed to be a reference to this Agreement as a whole and not limited to the particular Article, Section, Exhibit, Schedule or provision in which the relevant reference appears and to this Agreement as varied, amended, supplemented, substituted, novated, assigned or otherwise transferred from time to time.

(d) References to any Party shall, where applicable, include any successors, transferees and permitted assigns of the Party.

(e) References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

(f) Words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders.

(g) If the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day.

(h) References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

(i) References to any amount of money shall mean a reference to the amount in United States Dollars.

Article 2

TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Term and Delivery Term⁶

This Agreement is effective on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement or by written agreement of the Parties, will remain in effect through the 15th anniversary of the Commercial Operation Date (as may be extended by mutual agreement of the Parties, the “Term”). The delivery term under this Agreement (the “Delivery Term”) includes the period from and including the Commercial Operation Date and continuing through the end of the Term.

2.2 Effect of Termination - Survival of Obligations

(a) Generally. Except as set forth in Section 2.2(b) or as otherwise set forth in this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.

(b) Survival of Obligations. In addition to any other provisions of this Agreement that, by their terms, survive the termination of this Agreement, the following rights, obligations, and provisions survive the termination of this Agreement:

- (i) the provisions of this Section 2.2;
- (ii) all applicable provisions to the extent necessary to provide for final billings and adjustments related to the period prior to termination and repayment of any money due and owing to either Party pursuant to this Agreement;
- (iii) the payment related provisions set forth in Section 5.2;
- (iv) limitation of liability provisions set forth in Section 9.3 and the warranty limitations set forth in Section 10.3;
- (v) the indemnifications specified in this Agreement; and
- (vi) the provisions of Article 11.

Article 3

PURCHASE AND SALE

3.1 Purchase and Sale

(a) Generally. In accordance with the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the Delivery Term, Seller shall sell and deliver,

⁶ **Note to PGE:** Please confirm if you wish to include in the form a Buyer ROFO to purchase the facility.

and Buyer shall purchase and accept from Seller, all of the Products associated with or otherwise available from the Project in accordance with the terms of this Agreement.

(b) Monthly Payment. Buyer shall pay Seller the Contract Price on a monthly basis in accordance with Article 5 for the Storage Contract Capacity, less (i) the Guaranteed Monthly Availability Adjustment for such month, if any, less (ii) Guaranteed Round-Trip Efficiency Adjustment for such month, if any, less the Guaranteed Storage Contract Capacity LDs, Duration LDs, and Failure to Deliver Damages, in each case if any are due and owing for such month (such payment, the “Monthly Payment”); *provided* that in the event the Storage Facility is curtailed due to Force Majeure, by direction of the Transmission Provider, or for any reason other than the Buyer’s action or inaction, Buyer shall not be obligated to pay for any such curtailed energy and Seller shall not be liable for any related Failure to Deliver Damages.

(c) No Other Payments. The Storage Payment constitutes the full compensation due to Seller for the Products associated with the Project.

3.2 Title and Risk of Loss

(a) Allocation of Costs and Risks. Other than as expressly provided for in this Agreement, Seller is responsible for all costs and charges imposed on or associated with the Products (excluding, for the avoidance of doubt, costs or charges associated with Charging Energy as established herein) up to the Delivery Point, or its receipt, at the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss for all Products delivered to Buyer transfers from Seller to Buyer upon Delivery at the Delivery Point. Buyer shall have title to Charging Energy, Energy stored in the Storage Facility, and Discharging Energy. Risk of loss for Buyer’s deliveries of Charging Energy for storage by Seller shall pass from Buyer to Seller at the Interconnection Point. Risk of loss for Seller’s deliveries of Discharging Energy to Buyer shall pass from Seller to Buyer at the Delivery Point.

(c) Exclusive Rights to all Products. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis, the Products associated with or otherwise available from the Project, including all Ancillary Service Attributes generated by or otherwise available from the Project or any future Environmental Attributes or Capacity Attributes associated with or otherwise available from the Project, in each case during the Delivery Term to any Person other than Buyer.

3.3 Environmental Attributes

(a) Future Environmental Attributes. The Parties acknowledge that Buyer shall be entitled to receive (without any increase in any amount due from Buyer hereunder) and Seller shall at the direction of Buyer obtain and transfer to Buyer any future Environmental Attributes generated by or with respect to the Project; *provided* that Buyer shall bear all documented and reasonable third party costs associated with the transfer, qualification, verification, registration, and ongoing compliance for such future Environmental Attributes. Upon Seller’s receipt of notice from Buyer of Buyer’s intent to claim such future Environmental Attributes, Buyer and Seller shall determine the necessary actions and additional costs to be reimbursed by Buyer associated with such future Environmental Attributes. Seller shall have no obligation to alter the Project unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration required to be reimbursed as described above. If Buyer elects to receive future Environmental Attributes pursuant to this Section 3.3(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such future Environmental Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation

of any additional costs in accordance with the above; provided, that Buyer and Seller each acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

(b) No Assignment. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis or otherwise, any portion of any future Environmental Attributes associated with the Project during the Delivery Term to any Person other than Buyer.

(c) Failure to Deliver Environmental Attributes. If Seller fails to transfer to Buyer any Environmental Attributes required to be transferred by this Section 3.3 and such failure is not excused under the terms of this Agreement or by Buyer's failure to perform or if any representation made by Seller with respect to such Environmental Attributes is determined to have been incorrect in any material respect when made, then Seller shall, with respect to the quantity of Environmental Attributes that Seller failed to transfer or to which such representation applied, as applicable, pay to Buyer as damages ("Replacement EA Damages") an amount equal to (x) the Replacement EA Value for the vintage year in which the Discharging Energy associated with such Environmental Attributes was delivered *multiplied by* (y) the quantity of Environmental Attributes that Seller failed to transfer or that were adversely affected by the inaccuracy of such representation, as applicable. Buyer will invoice Seller for any Replacement EA Damages within thirty (30) days following discovery of such inaccurate representation, as applicable, which invoice will be due and payable by Seller in accordance with Section 5.2.

3.4 Tax Credits

Except as expressly stated herein, all current or future tax credits, deductions, cash grants, or other benefits or financial incentives applicable to the Project are retained by Seller, the owners of the Site, or both, as applicable.

3.5 Charging Energy

(a) Seller shall procure and take any and all action necessary to cause the Charging Energy to be delivered to and received at the Interconnection Point, including maintenance repair or replacement of equipment in Seller's possession or control used to deliver or receive the Charging Energy at the Interconnection Point. Charging Energy shall be measured at the Interconnection Point by the Metering Facilities.

(b) Buyer shall direct the scheduling of the Charging Energy via Charge Requests, including the Charging Energy necessary for Seller to conduct any tests required under this Agreement. Buyer shall schedule the Charging Energy in a manner consistent with the requirements of Schedule II, Prudent Utility Standards and Applicable Law.

(c) Buyer will have the right to charge the Storage Facility seven days per week and twenty-four (24) hours per day (including NERC holidays) using Energy from any source; provided that Buyer shall pay for all such Energy, subject to Section 7.6(a)(ii).

(d) Buyer will have no obligation to purchase, schedule or deliver any of the Energy (i) required to serve the ancillary electric needs of the Project, including for lighting, security, cooling towers, draft fans, climate control, ventilation mechanisms, control systems, operation and other auxiliary systems necessary for operation, and maintenance of the Project ("Station Service") and (ii) charged or dispatched by Seller and not initiated by a Charge Request or Discharge Request. Seller will be required to procure, meter separately, and pay for all Energy for Station Service and will be responsible for all fees and costs associated with establishing and use of electricity for Station Service, including transmission and distribution fees and charges assessed by any utility or wires company in connection with Station Service.

If Seller (i) charges the Project to a Stored Energy Level greater than the Stored Energy Level provided for in a Charge Request or (ii) charges the Project without a Charge Request (each, a “Non-Buyer Charge”), then (x) Seller shall be responsible for all energy costs associated with such charging, and (y) Buyer shall be entitled to discharge such energy without notice and entitled to all of the benefits associated with such discharge, without credit to Seller. Seller shall be responsible and pay for charges, sanctions, or penalties associated with a Non-Buyer Charge, any failure to charge the Project consistent with a Charge Request, and any deviations from a Charge Request.

Article 4 METERING

4.1 Metering Requirements

(a) Meters. The amount of Discharging Energy to be transferred from Seller to Buyer at the Delivery Point with respect to a Settlement Interval will be determined based on measurements at the Interconnection Point made by the Project’s Metering Facilities. The amount of Charging Energy to be transferred from Seller to Buyer at the Interconnection Point with respect to a Settlement Interval will be determined based on measurements at the Interconnection Point made by the Project’s Metering Facilities. Seller shall ensure that the Metering Facilities are selected, provided, installed, owned, maintained, and operated in accordance with the Interconnection Agreement at Seller’s or the Transmission Provider’s sole cost and expense, as applicable and in accordance with the requirements of Buyer set forth on Schedule I, subject to any modifications provided by Buyer in writing from time to time. Seller shall ensure that (i) the Metering Facilities are maintained and operated in accordance with Prudent Utility Standards, and (ii) the Meters are tested at least once per Contract Year, Seller’s obligation with respect to clauses (i) and (ii) will be limited to enforcing its rights and remedies under the Interconnection Agreement. Seller shall provide reasonable prior notice to Buyer of the time and date of each test of the Meters and shall permit Buyer to be present at such tests. Seller shall provide Buyer with a copy of the results of any test of the Meters.

(b) DCS. Seller shall install and maintain the Distributed Control System equipment and data circuits necessary to determine and transmit real time data from the Project’s Metering Facilities to [____], and shall submit to [____], or allow [____] to retrieve, all data required by [____] related to the Project and its Products in accordance with the [____].⁷.

(c) Other Equipment and Remote Access by Buyer. Seller shall, at its cost and expense, (i) provide Buyer (or its designee) with real-time access to all monitored DCS points, and (ii) install and maintain all communications, hardware, and software applications and related intellectual property necessary to provide such access to Buyer, including such applications, and intellectual property set forth on Schedule I, subject to any modifications provided by Buyer in writing from time to time. Without limiting the foregoing obligation, Buyer has the right, at its cost and expense, to install any updates or upgrades to the Meters, as well as to install and maintain check meters and related measuring equipment necessary to permit an accurate determination of the quantities of Facility Energy delivered under this Agreement, in each case subject to the condition that such updates, upgrades, or other equipment will not interfere with Seller’s Meters or the Project and are not prohibited by the Interconnection Agreement. Seller shall upon reasonable advance notice permit Buyer or Buyer’s representatives access to the Project and interconnection facilities at reasonable times for the purpose of installing and maintaining such check meters. Buyer shall ensure that its representatives at all times while at the Site comply with safety and security rules provided by Seller.

⁷ **Note to PGE:** Please confirm what regional transmission authority reporting and control obligations may apply.

4.2 **Meter Inaccuracies and Retroactive Adjustments**

(a) If any inspections or tests of the Metering Facilities disclose an error exceeding 0.5 percent, 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 Facilities 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 Facilities were in service since last tested, but not exceeding six (6) months, in the amount the Metering Facilities 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.

4.3 **Records and Audits**

(a) **Records.** Seller shall keep complete and accurate records necessary for the purposes of proper administration of this Agreement, including all records necessary for billing and payments, records of the Charging Energy and Discharging Energy and such other records as may be required by applicable Governmental Authorities or Prudent Utility Standards. Seller shall retain all such records for a period of not less than two (2) years following their creation or such longer period as may be required by Applicable Law. Seller shall upon request provide Buyer with copies of such records and with such other information as Buyer may require in connection with the performance of its obligations under this Agreement or Applicable Law.

(b) **Audit Rights.** Each Party has the right (at its sole expense during normal working hours and provided that such Party has given reasonable prior notice) to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Energy delivered at the Delivery Point or Interconnection Point, as applicable. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

Article 5 BILLING AND PAYMENT

5.1 **Billing**

On or before the 10th day following the end of each month included in the Delivery Term, Seller shall provide to Buyer an invoice specifying (i) the fees due to Seller pursuant to Section 3.1 during the ended month and (ii) any other amounts due between the Parties with respect to such ended month (other than amounts separately invoiced by Buyer). Each such invoice provided by Seller must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice, and if applicable, a statement of any transfers of Environmental Attributes made during the ended month. Seller must deliver each invoice in accordance with the notice requirements of Section 11.1.

5.2 **Payments**

(a) **Generally.** Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Subject to Section 5.2(c), Seller shall pay all amounts due

to Buyer under this Agreement, including any liquidated damages, or otherwise in respect of any Seller indemnities, within ten (10) Business Days following receipt of Buyer's invoice for such amount. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments.

(b) Late Payments and Interest Rate. Any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.

(c) Disputes and Adjustments of Invoices. Each Party may, in good faith, Dispute the correctness of any invoice or invoice adjustment provided by the other Party by providing written notice within thirty (30) days of receipt of an invoice or invoice adjustment, stating the basis for the dispute. Subject to Section 5.3 or manifest error, the disputing Party shall make payment of the entire amount due under the disputed invoice. Any amounts to be paid to the disputing Party shall be made within ten (10) Business Days of resolution of the Dispute, together with interest accrued at the Interest Rate, from and including the date of such overpayment until the date of repayment. In no event shall Buyer be obligated to pay amounts to which it exercises its right of setoff under Section 5.3.

5.3 Netting and Setoff

In addition to other legal remedies available to Buyer under Applicable Laws, Buyer reserves the right to net any amounts that would otherwise be due to Seller hereunder against any amount Seller owes to Buyer under this Agreement.

5.4 Allocation of Taxes

Seller shall pay or cause to be paid all Taxes on or with respect to the Product sold and delivered hereunder arising prior to transfer of title of such Product pursuant to Section 3.2(b). Buyer shall pay or cause to be paid all Taxes on or with respect to the Product purchased and received hereunder arising after the transfer of title of such Product pursuant to Section 3.2(b) (other than ad valorem, franchise or income Taxes that are related to the sale of the Product which are the responsibility of Seller). In the event Seller is required by Applicable Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly upon written demand reimburse Seller for such Taxes. If Buyer is required by Applicable Law to remit or pay Taxes that are Seller's responsibility hereunder, Seller shall promptly upon written demand reimburse Buyer for such Taxes or, at Buyer's option, Buyer may deduct the amount of any such Taxes from amounts due to Seller under this Agreement. Nothing in this Agreement obligates or requires a Party to pay or be liable to pay any Taxes for which it is exempt under Applicable Law.

Article 6 CREDIT REQUIREMENTS

6.1 Seller Credit Support

(a) Credit Support Amount.

(i) Within thirty (30) days following the Effective Date, Seller shall transfer Credit Support to Buyer having an aggregate value equal to (A) \$200 *multiplied by* (B) the Guaranteed Storage Contract Capacity, expressed in kW (the "Pre-COD Credit Support Amount"). The Pre-COD Credit Support Amount will apply with respect to Seller until the Commercial Operation Date.

(ii) By no later than the Commercial Operation Date, Seller shall transfer Credit Support to Buyer in substitution of the Credit Support delivered pursuant to Section 6.1(a)(i) having an aggregate value equal to (A) \$100 *multiplied by* (B) the Storage Contract Capacity, expressed in kW (the “Operating Period Credit Support Amount”).

(b) Maintenance of Seller Credit Support. Seller shall maintain Credit Support for the benefit of Buyer having an aggregate value at least equal to the Credit Support Amount then applicable to Seller until the later of (x) the end of the Delivery Term and (y) the date on which all of Seller’s obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Buyer has not made a claim). If the resolution of any disputed amount may result in a payment due from Seller, Seller’s payment obligations under this Agreement will not be deemed to have been satisfied until such Dispute is resolved and the amount, if any, payable by Seller upon such resolution has been paid in full. If following the Commercial Operation Date any portion of the Credit Support provided by Seller is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement, then Seller shall within five (5) Business Days following Buyer’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Buyer is not less than the Operating Period Credit Support Amount.

6.2 General Provisions Applicable to Credit Support

(a) Credit Support in the form of Cash.

(i) Seller pledges to Buyer, as security for its obligations under this Agreement, and grants to Buyer a first priority continuing security interest in, lien on and right of set-off against all Credit Support in the form of Cash transferred to or received by Buyer under this Agreement. Upon the transfer by Buyer to Seller of Cash held by Buyer as Credit Support, the security interest and lien granted hereunder on that Cash will be released immediately, and to the extent possible, without any further action by either Party.

(ii) Buyer shall maintain all Credit Support in the form of Cash transferred to or received by Buyer with a Qualified Issuer for the purpose of holding Credit Support provided to Buyer by Seller.

(iii) In lieu of any interest paid or deemed to have been paid with respect to Credit Support in the form of Cash (all of which may be retained by Buyer), Credit Support in the form of Cash will accrue interest on a daily basis at the Fed Funds Rate for the actual number of days elapsed based on a year of 365 days. Seller shall include the amount of the accrued interest, if any, payable by Buyer with respect to a month in the invoice provided with respect to such month pursuant to Section 5.1.⁸ Any accrued interest will constitute Credit Support in the form of Cash and will be subject to the security interest granted under Section 6.2(a)(i).

(iv) For purposes of this Agreement, the value of Credit Support in the form of Cash is equal to the sum of the amount of such Cash plus any interest accrued with respect to such Cash held by Buyer as Credit Support.

(b) Credit Support in the form of a Letter of Credit.

(i) Each Letter of Credit must provide that Buyer may, and Buyer has the right to, in the following situations and upon presentation to the issuer of such Letter of Credit of the

⁸ **Note to PGE:** Consider alternatively having all interest accrue until the Operating Period Credit Support is released following the Term.

certificates or other documentation required by the terms of the Letter of Credit, draw upon the Letter of Credit in an amount up to the amount due and unpaid by Seller (including any amounts due in connection with the termination of this Agreement) in the case of clause (A), or up to the entire amount available to be drawn thereunder in the case of clause (B):

(A) Either (x) an Event of Default has occurred and is continuing with respect to Seller or (y) this Agreement has terminated or an early termination date in respect of this Agreement has been designated in connection with the occurrence of an Event of Default with respect to Seller.

(B) A Letter of Credit Default has occurred with respect to the Letter of Credit or sixty (60) or fewer days remain until the expiration date of the Letter of Credit and Seller has failed to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), establish one or more additional Letters of Credit, or otherwise transfer sufficient Credit Support to Buyer as required by this Agreement.

(ii) With respect to each outstanding Letter of Credit, Seller shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least sixty (60) days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, Seller shall within five (5) Business Days following receipt of Buyer's notice of the Letter of Credit Default, as applicable, transfer to Buyer substitute Credit Support. For purposes of this clause (ii), the aggregate value of substitute Credit Support that Seller is required to transfer to Buyer must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated excluding the value of (x) the expiring Letter of Credit, or (y) the Letter of Credit to which the Letter of Credit Default applies, as applicable, to be at least equal to the Credit Support Amount then applicable to Seller.

(iii) Upon the occurrence of a Letter of Credit Default of the type described in clauses (ii), (iii), or (vi) of the definition thereof, the issuer of the affected Letter of Credit will no longer be a Qualified Issuer for purposes of the definition of the term "Letter of Credit" unless otherwise agreed by Buyer.

(iv) Proceeds received by Buyer from any draw on a Letter of Credit will, to the extent not applied to the outstanding obligations of Seller under this Agreement, constitute Credit Support in the form of Cash.

(v) For purposes of this Agreement the value of Credit Support in the form of Letter of Credit is equal to the amount available to be drawn by Buyer under such Letter of Credit.

(vi) All costs and expenses associated with establishing, maintaining, renewing, substituting, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of Seller.

(c) Substitution and Return.

(i) Upon notice to Buyer specifying the items of Credit Support to be exchanged, Seller may on any Business Day transfer to Buyer substitute Credit Support, and so long as no Event of Default or Default with respect to Seller has occurred and is continuing, Buyer shall return to Seller the items of Credit Support identified by Seller in its notice by not later than the fifth (5th) Business Day following the date on which Buyer receives the substitute Credit Support, except that

Buyer will only be required to return Credit Support with a value as the date of transfer equal to the value of the substitute Credit Support as of the same date.

(ii) Upon (A) the reduction of the Credit Support Amount applicable to Seller and (B) the later to occur of (x) the end of the Delivery Term and (y) the satisfaction in full of all of Seller's obligations under this Agreement (other than contingent obligations with respect to which Buyer has not made a claim), Buyer shall, within five (5) Business Days following receipt of Seller's demand, return to Seller in the case of clause (A), the applicable portion of the Credit Support of the Seller then outstanding in favor of Buyer, and in the case of clause (B) all Credit Support of Seller then outstanding in favor of Buyer. In connection with any such return, Buyer shall at Seller's expense take such actions as may be reasonably requested by Seller to evidence the release and termination of the applicable Credit Support.

(d) Buyer's Rights and Remedies. If at any time a default or Event of Default with respect to Seller has occurred or if an early termination date in respect of this Agreement has occurred or been designated as a result of an Event of Default with respect to Seller, then, and in addition to the other rights and remedies set forth in the Agreement, Buyer may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under Applicable Law with respect to Credit Support in the form of Cash held by Buyer; (ii) any rights and remedies available to Buyer under the terms of any Letter of Credit provided for its benefit, if any; and (iii) the right to set off any present or future amounts payable by Seller under this Agreement against any Credit Support held by Buyer (or any obligation of Buyer to transfer that Credit Support to Seller).

Article 7 ADDITIONAL OBLIGATIONS

7.1 Construction, Operation and Maintenance of the Project

(a) Generally. Seller shall design, develop, finance, construct, own, operate, and maintain the Project in accordance with this Agreement, the Interconnection Agreement, Applicable Law, Permits, and Prudent Utility Standards.

(b) Design and Location. Exhibit A includes (i) a detailed description of the Project, including the anticipated number and manufacturer of the energy storage systems comprising the Project, and (ii) a map of the Site that depicts the Project location and the location of ancillary facilities, including the Interconnection Point. Seller may not modify Project's design as set forth in Exhibit A unless such modification could not reasonably be expected to (x) have a material and adverse effect on either Party's ability to perform its obligations under this Agreement; (y) materially move the Project's location or the Interconnection Point; or (z) materially affect the Storage Contract Capacity, the charging rate, the Round-Trip Efficiency or the Duration of the Storage Facility during each Contract Year. If a proposed modification could reasonably be expected to have a consequence specified in clause (x), (y) or (z) of this Section 7.1(b), then Seller shall not implement such modification without Buyer's prior written consent, which may be withheld by Buyer in its sole discretion. Seller shall deliver to Buyer an updated version of Exhibit A promptly following completion of any modification that changes the Project's design as set forth in Exhibit A.

(c) Compliance. Seller shall, in its own name and at its own cost and expense obtain, maintain, comply with, renew and modify, as necessary, all Permits and other authorizations required by Applicable Law or by any Governmental Authority for Seller to satisfy its obligations under this Agreement.

(d) Disclosure. Seller shall provide Buyer with all information concerning permitting, engineering, construction, maintenance, and operations of the Project that Buyer may reasonably request unless Seller reasonably demonstrates to Buyer that Seller is prohibited from providing such information due to confidentiality, disclosure, or use restrictions binding on Seller.

(e) Insurance. Seller shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit D. All such insurance policies must: (i) be issued by companies that (A) are authorized to issue policies in the state in which the Project is located, (B) have a financial strength rating of at least “A-” from A.M. Best, and (C) satisfy the requirements of A.M. Best financial size category [“ ”]⁹ or larger; (ii) not permit cancellation or reduction in coverage prior to providing Buyer at least 30 days’ prior written notice; (iii) for commercial general liability, umbrella/excess liability, all risk property, builders risk, and auto liability policies, name Buyer, its Affiliates, and its and their respective officers, directors, members, managers, employees, successors, assigns, licensees, contractors, and agents as additional insureds; (iv) provide coverage on an “occurrence” basis for commercial general liability and umbrella/excess liability policies; (v) waive any insurer right of subrogation against Buyer, its Affiliates, and its and their respective officers, directors, members, managers, employees, successors, assigns, licensees, contractors, and agents; (vi) provide primary coverage, without any right of contribution from any insurance of Buyer; and (vii) add Buyer as a loss payee to the extent of Buyer’s interest in any claim proceeds under operational all risk property policies, including business interruption. Seller shall provide Buyer with certificates of insurance for the coverages set forth in Exhibit D on the Effective Date (or when the insurance is otherwise required to be in place) and annually upon renewal of each such policies.

7.2 Construction

(a) Generally. Seller shall use commercially reasonable efforts to (i) cause each Milestone set forth in Exhibit C to be achieved by the corresponding Milestone Date, (ii) cause the Commercial Operation Date to occur on or before the Scheduled Commercial Operation Date; and (iii) cause the Storage Contract Capacity to equal or exceed the Guaranteed Storage Contract Capacity by not later than the Scheduled Commercial Operation Date. Further, Seller shall, at its own cost and expense, negotiate, enter into, and perform its obligations under, the Interconnection Agreement and such other agreements with the Transmission Provider as may be needed to enable Seller to receive Charging Energy at and discharge Discharging Energy from the Interconnection Point. Seller shall comply with the transmission requirements set forth in Appendix C.

(b) Union Labor. Union labor must be utilized for major construction activities related to the Project and must include a Project Labor Agreement requirement in any related engineering, procurement and construction agreements. The labor group that is responsible for construction and maintenance of the Storage Facility must have policies in place that are designed to limit or prevent workplace harassment and discrimination. In addition, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and black, indigenous and people of color, with an aspirational goal of having at least 15 percent of the total work hours performed by individuals from those communities.

(c) Monthly Reports. Seller shall deliver to Buyer a monthly progress report by no later than the 10th Business Day of each month until Commercial Operation is achieved, which reports will be in a form reasonably acceptable to Buyer and must include an updated schedule, a Gantt chart, and a description of progress toward the achievement of each of the Milestones (or any missed Milestones, including the

⁹ **Note to PGE:** Please identify the standard here.

cause of the delay) and the Commercial Operation Date (with supporting photographic evidence). Each report must (A) include such information as Buyer may reasonably request in advance, and must contain reasonable detail and supporting documentation, and (B) information related to:

- (i) a detailed description of corrective actions to address any missed Milestones and all subsequent Milestones prior to the Guaranteed Commercial Operation Date,
- (ii) status of permitting and other required approvals,
- (iii) financing for construction and operation of the Project,
- (iv) interconnection matters,
- (v) labor and contracting matters, and
- (vi) environmental, health, safety, and security matters.

(d) Milestone Date Extensions. In the event that Seller's achievement of any Milestone by the applicable Milestone Date or of the Commercial Operation Date by the Guaranteed Commercial Operation Date is prevented due to a Delay Condition, the applicable Milestone Date or the Guaranteed Commercial Operation Date, as applicable, will be extended on a day-for-day basis by the number of days by which the occurrence or continuance of the Delay Condition prevented Seller from achieving, as applicable, the affected Milestone or the Commercial Operation Date. For purposes of this Agreement, "Delay Condition" means (i) the occurrence of a Force Majeure Event, or (ii) Buyer's breach of its obligations under this Agreement. In no event will any Milestone Date or the Guaranteed Commercial Operation Date be extended, in the aggregate, by more than 120 days pursuant to this Section 7.2(d).

(e) Buyer's Access and Inspection Rights. Buyer may have its representatives present at the Site to monitor the construction, commissioning, and testing of the Project and its systems. Seller shall provide Buyer with reasonable advance notice of all commissioning and testing of the Project and its systems. Seller shall permit physical inspections of the Project upon the reasonable request of Buyer at any point during or after construction. Buyer shall ensure that all persons visiting the Project on behalf of Buyer comply with all of the applicable safety and health rules and requirements of Seller that are provided to such persons. Buyer's inspection of the Project or technical reviews shall not to be construed as an endorsement of the Project design or as any warranty of safety, durability, or reliability.

7.3 Delay Damages

(a) Milestone Related Notices.

(i) Seller shall provide written notice to Buyer of the achievement of each Milestone, which notice must include a certification from an officer of Seller, as applicable, that is familiar with the Project, stating that Seller has achieved the applicable Milestone.

(ii) If Seller determines that it is more probable than not that it will not achieve a Milestone by the applicable Milestone Date or the Commercial Operation Date by the Guaranteed Commercial Operation Date, or if it becomes aware of any Delay Condition that could reasonably be expected result in the extension of the applicable Milestone Date or the Guaranteed Commercial Operation Date as described in Section 7.2(d), then Seller shall promptly provide written notice thereof to Buyer, which notice must be accompanied by an explanation in reasonable detail of the basis for such determination or the Delay Condition, as applicable, and the actions Seller is taking

and will take in order to address any resulting delay in the achievement of either or both, as applicable, the affected Milestone and the Commercial Operation Date. If Seller fails to achieve a Milestone (other than the achievement of the Commercial Operation Date) on or prior to applicable Milestone Date, Buyer's sole and exclusive remedy for such failure is the right to receive the information required pursuant to the foregoing provisions of this Section 7.3(a)(ii).

(b) Failure to Timely Achieve Commercial Operation.

(i) If Seller fails to cause the Commercial Operation Date to occur on or before the Scheduled Commercial Operation Date, Seller shall pay to Buyer delay liquidated damages ("Delay Damages") for each day of delay occurring from and after the Scheduled Commercial Operation Date through the earlier to occur of (x) the date the Commercial Operation Date occurs, and (y) the Guaranteed Commercial Operation Date, at a rate equal to \$150 per MW of the Storage Contract Capacity per day beginning on the Scheduled Commercial Operation Date through the thirtieth (30th) day after the Scheduled Commercial Operation Date, \$250 per MW of the Storage Contract Capacity per day beginning on the thirty first (31st) day through the sixtieth (60th) day after Scheduled Commercial Operation Date, and \$350 per MW of the Storage Contract Capacity per day beginning on the sixty first (61st) day after Scheduled Commercial Operation Date until the first to occur of (i) Seller's achievement of the Commercial Operation Date; and (ii) the Guaranteed Commercial Operation Date.

(ii) If Seller fails to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date, then Buyer will thereafter have the right, until the Commercial Operation Date has occurred, to terminate this Agreement by providing written notice of termination to Seller. The Parties agree that actual damages that would be suffered by Buyer as a result of such termination are difficult to determine, and that Buyer may therefore draw on and retain all Credit Support (including interests thereon, if any) provided by Seller as liquidated damages, and not a penalty, representing a reasonable pre-estimate of the damages that would be incurred by Buyer as a result such failure. Payment of such liquidated damages shall be Seller's sole and exclusive liability, and Buyer's sole and exclusive remedy, in connection with the termination of this Agreement by Buyer due to Seller's failure to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date. Such liquidated damages payment shall constitute a Termination Payment in accordance with Section 9.2(b).

(c) Exclusive Remedies. Unless this Agreement is terminated by Buyer in accordance with Section 7.3(b)(ii), receipt of Delay Damages is Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

7.4 Commercial Operation Procedure

(a) Agreement with Transmission Provider. Seller shall be responsible for all costs of interconnecting the Storage Facility to the Interconnection Point in accordance with the Interconnection Agreement, and for all Control Area Services that may be required by the Transmission Provider as required in the Interconnection Agreement or as may be necessary to ensure delivery of Charging Energy to the Delivery Point.

(b) Guaranteed Storage Contract Capacity. Seller shall use commercially reasonable efforts to cause the Storage Contract Capacity to be equal to or exceed the Guaranteed Storage Contract Capacity by no later than the Commercial Operation Date.

(c) Procedure for Achieving Commercial Operation. Seller shall deliver to Buyer a written notice that describes in reasonable detail Seller's schedule for achieving any remaining Commercial Operation Conditions and the anticipated Commercial Operation Date (the "Commercial Operation Notice") thirty (30) days prior to the anticipated Commercial Operation Date. When Seller believes the requirements of the Commercial Operation Conditions have been met, Seller shall provide Buyer with written notice certifying the satisfaction of the Commercial Operation Conditions, together with reasonable documentation and such other information as Buyer may reasonably request for Buyer to evaluate whether or not Seller has satisfied the Commercial Operation Conditions. If Buyer disagrees with Seller's determination, Buyer must provide Seller notice of such disagreement, together with an explanation of the basis for such disagreement, within ten (10) Business Days following its receipt of Seller's notice and supporting documentation. If Buyer so notifies Seller of such disagreement, the Parties shall review the supporting documentation and promptly resolve the dispute and determine whether or not the Commercial Operation Conditions have been satisfied. In the event the disagreement remains unresolved within thirty (30) days, either party may initiate the dispute resolution procedures in Section 11.10.

(d) Commercial Operation Conditions. Commercial Operation will occur once all of the following conditions (the "Commercial Operation Conditions") are, subject to Section 7.4(d), satisfied by Seller or waived by Buyer in its sole and absolute discretion:

(i) The Storage Facility has been fully installed, connected to and synchronized with the interconnected high voltage transmission facilities that are a part of the Transmission System to which the Project connects in accordance with the Interconnection Agreement, and is fully capable of charging, storing, and discharging Energy up to the Guaranteed Storage Contract Capacity in accordance with the requirements of all Applicable Law and this Agreement.

(ii) The Storage Facility meets the Guaranteed Charging Rate, the Guaranteed Round-Trip Efficiency, and the Guaranteed Duration.

(iii) Seller has obtained all Permits necessary for Seller to perform its obligations under this Agreement in compliance with Applicable Law, this Agreement, and Prudent Utility Standards, and all such Permits are in final form and in full force and effect.

(iv) Seller has delivered to Buyer a certificate of an independent engineer acceptable to Buyer in its reasonable discretion certifying that, as of the Commercial Operation Date:

(A) the Project is complete in all material respects (other than punch list items that will not materially and adversely affect the safe operation, performance, or maintenance of the Project), and

(B) the Storage Facility is capable of reliably (I) receiving and storing Charging Energy at the Interconnection Point, (II) delivering Discharging Energy to the [Delivery Point], and (III) the Storage Facility meets the Guaranteed Charging Rate, the Guaranteed Round-Trip Efficiency, and the Guaranteed Duration.

(v) Seller has delivered to Buyer a certificate of an officer of Seller certifying in writing that (A) the Project is, as of the Commercial Operation Date, (I) complete in all material respects (other than punch list items that will not materially and adversely affect the safe operation,

performance or maintenance of the Project), (II) consists of the equipment and characteristics described in Exhibit A (as such equipment and characteristics may be modified in accordance with Section 7.1(b)), and (III) is sufficient to permit Seller to satisfy its obligations under this Agreement, (B) the Storage Facility is capable of reliably receiving and storing Charging Energy at the Interconnection Point in an amount equal to the Guaranteed Storage Contract Capacity and reliably delivering Discharging Energy to the Delivery Point in an amount equal to the Storage Contract Capacity, (C) the Storage Facility meets the Guaranteed Charging Rate, the Guaranteed Round-Trip Efficiency, and the Guaranteed Duration, (D) Seller is not in breach of its obligations under the Interconnection Agreement, (E) Seller has completed all arrangements necessary for the supply of required electric services to the Project, including the supply of start-up and shutdown power, house power, and maintenance power and such required electric services are in effect and available to supply the Project, (F) Seller has obtained all Permits required to be obtained by Seller to construct and operate the Project in compliance with Applicable Law, this Agreement, and Prudent Utility Practice, and all such Permits are in full force and effect, (G) Seller is in compliance with the terms and conditions of this Agreement in all material respects.

(vi) Seller has installed and commissioned all Meters and DCS system equipment, data circuits, and other communication systems necessary to allow for remote monitoring of the Project.

(vii) Seller has transferred Credit Support to Buyer having a value equal to the Operating Period Credit Support Amount.

7.5 Loss Events

(a) Generally. Seller will promptly provide written notice to Buyer of any Loss Event, specifying in reasonable detail its cause, any Storage Contract Capacity affected thereby, the steps Seller plans to take to repair and restore the Project and the time required to complete such repair and restoration. Seller will promptly provide Buyer with such additional information as Buyer may reasonably request in connection with such Loss Event and updates relating to any significant changes in the information previously delivered. Buyer will not be required to make any payment to Seller as a result of any Loss Event.

(b) Loss Event Affecting Storage Contract Capacity.

(i) If Seller is unable to restore any Storage Contract Capacity affected by a Loss Event, then Seller shall (A) continue to deliver the Products to Buyer to the extent possible from as much of the unaffected Storage Contract Capacity as is possible, and (ii) for any portion of the Project impacted by the Loss Event and from which Seller cannot deliver Products to Buyer, for the applicable Products that are not expected to be delivered as a result of the Loss Event from date of the Loss Event through the end of the Delivery Term, Seller will buy-down the portion of Seller's obligation to provide Products that Buyer cannot supply from the Project at a price equal to the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under a replacement agreement to obtain such undelivered Products, at a price determined based on then prevailing market prices for such Products, *minus* (y) the present value of the payments Buyer would be required to make under this Agreement for such undelivered Products, as determined by Buyer in a commercially reasonable manner (the "Loss Event Buy-Down Amount");

(ii) Seller will have ninety (90) days following any Loss Event to elect to either restore the portion of Storage Contract Capacity affected by the Loss Event or determine that it is unable or unwilling to do so. If during such ninety (90) day period, Seller elects to restore the portion of

Storage Contract Capacity affected by the Loss Event, then Seller will be afforded a period of 180 days following the occurrence of the Loss Event in which to complete such restoration before the Section 7.6-5(b)(i) buy-down is required. If prior to the end of such 180 day period, Seller delivers to Buyer a certificate of an independent engineer reasonably acceptable to Buyer certifying that any remaining restoration of the Project can be completed within an additional one eighty (180) days, then the period for restoration shall be three sixty (360) days before the Section 7.6-5(b)(i) buy-down will be required; and

(iii) Upon payment of any Loss Event Buy-Down Amount, or if the calculation of the Loss Event Buy-Down Amount does not result in amount owing from Seller, Seller's obligation to deliver applicable Products under this Agreement shall be reduced to the extent bought down by the Loss-Event Buy Down Amount and will enter into an amendment to this revising the Product quantities deliverable under this Agreement pursuant to this Section.

7.6 **Testing**

(a) **Performance Testing.**

(i) Prior to the Commercial Operation Date, Seller shall schedule and complete a test of the Storage Facility in accordance with the testing procedures, requirements and protocols set forth in Appendix B (a "Storage Contract Capacity Test"). Thereafter, at least once per year, Seller shall schedule and complete a Storage Contract Capacity Test in accordance with Appendix B. Buyer shall have the right to require a retest of the Storage Contract Capacity Test in accordance with Appendix B.

(ii) Seller may schedule and deliver Test Energy to Buyer in accordance with the Scheduling Procedure in order to complete the Storage Contract Capacity Test prior to achievement of the Commercial Operation Date. In such case, the Parties shall coordinate in good faith to schedule deliveries of Test Energy to Buyer that minimizes the burden to each of the Parties, and Buyer shall receive the Test Energy. Buyer shall not be required to pay for the Test Energy and Seller shall pay any costs or additional expenses that are required for Buyer to receive the Test Energy, including but not limited to reimbursement for negative pricing, and any necessary capacity costs or reserves costs.

(iii) Buyer shall have the right to send one or more representative(s) to witness all Storage Contract Capacity Tests, but Buyer will bear all costs, expenses and fees payable or reimbursable to its representative(s). Buyer shall pay for the Charging Energy used to charge the Storage Facility in connection with the first Storage Contract Capacity Test during any Contract Year. Any other costs of any Storage Facility Test, including costs for Charging Energy for subsequent Storage Contract Capacity Tests, shall be borne by Seller .

(iv) Following each Storage Contract Capacity Test, Seller shall submit a testing report to Buyer in accordance with Appendix B, together with reasonable support data. If the actual capacity determined pursuant to a Storage Contract Capacity Test is less than the then-current Storage Contract Capacity, then the actual capacity determined pursuant to such Storage Contract Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Operational Readiness Testing.** If the Storage Facility has not been operated at full power for a period of six weeks, Seller shall reasonably demonstrate operational readiness of the Storage Facility to ensure that it is ready to respond to a dispatch instruction from Buyer.

7.7 Performance Guarantees

(a) Storage Capacity. During the Delivery Term, Seller shall maintain the Storage Facility with a Storage Contract Capacity of not less than the [•] MW_{AC} (the “Guaranteed Storage Contract Capacity”). If the Storage Contract Capacity for the Storage Facility is determined during a Storage Contract Capacity Test to be less than the Guaranteed Storage Contract Capacity, Seller shall pay to Buyer as liquidated damages for such deficiency an amount determined by *multiplying* the number of months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed) by (i) Contract Price *multiplied by* [125%] *multiplied by* (ii) the difference between the Guaranteed Storage Contract Capacity and the Storage Contract Capacity for the Storage Facility as determined during the most recent Storage Contract Capacity Test (“Guaranteed Storage Contract Capacity LDs”). Payment of Guaranteed Storage Contract Capacity LDs is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the Storage Contract Capacity being less than the Guaranteed Storage Contract Capacity for a Contract Year.

(b) Availability Adjustment. Each month during the Delivery Term, Seller shall ensure that the Storage Facility has an Monthly Actual Availability of no less than ninety-eight percent (98%) (the “Guaranteed Monthly Availability”). If the Storage Facility has Monthly Actual Availability less than the Guaranteed Monthly Availability during any month, then the Contract Price that would be owed to Seller for such month shall be adjusted as follows, after any adjustments have been made to the Contract Price due to the Guaranteed Round-Trip Efficiency Adjustment pursuant to Section 7.7(e) (the “Guaranteed Monthly Availability Adjustment”):

(i) If the Monthly Actual Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then the Contract Price for such month will equal the product of (i) the Contract Price multiplied by (ii) $100\% - [(98\% - \text{Monthly Actual Availability}) \times 2]$; and

(ii) If the Monthly Actual Availability is less than 70%, then the Contract Price for such month will equal the product of (i) the Contract Price multiplied by (ii) 0.0%.

(c) Charging Rate. During the Delivery Term, Seller shall maintain the Storage Facility with the ability to charge at a rate of greater than [•] MW per hour (the “Guaranteed Charging Rate”). If the Storage Facility does not satisfy the Guaranteed Charging Rate as determined by the most recent Storage Contract Capacity Test, then Seller will be required to place the Storage Facility into an Unplanned Outage and repair the Storage Facility such that it satisfies the Guaranteed Charging Rate within thirty (30) days.

(d) Duration. During the Delivery Term, Seller shall maintain the Storage Facility with a Duration not less than four hours (the “Guaranteed Duration”). If, for any single discharge event, the actual Duration is less than the Guaranteed Duration, then Seller will pay Buyer the Duration LDs as liquidated damages. Payment of Duration LDs is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the actual Duration being less than the Guaranteed Duration for such single discharge event.

(e) Round-Trip Efficiency. During the Delivery Term, Seller shall maintain the Storage Facility with a Round-Trip Efficiency not less than the applicable guaranteed Round-Trip Efficiency amount set forth on Appendix D (the “Guaranteed Round-Trip Efficiency”). If the Round-Trip Efficiency of the Storage Facility in any month, as determined by the most recent Storage Contract Capacity Test, is less than the Guaranteed Round-Trip Efficiency, then the Contract Price shall be reduced by the product of (i) the total Charging Energy for such month, *multiplied by* (ii) the difference between the Guaranteed Round-Trip Efficiency and the Actual Round-Trip Efficiency, *multiplied by* (iii) [average day-ahead

Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical On-Peak (bilateral indices)](the “Guaranteed Round-Trip Efficiency Adjustment”).

7.8 **Obligation to Schedule and Deliver**

(a) Scheduling Related and Discharging Obligations.

(i) To the extent applicable, Seller shall designate Buyer (or an Affiliate of Buyer) as the qualified scheduling entity for the Project (the “Project QSE”) during the Delivery Term. As between Buyer and Seller, Buyer will be responsible for performing the services of a qualified scheduling entity with respect to the Project.

(ii) At least 30 days prior to the beginning of testing, Seller shall take all actions necessary to irrevocably authorize or designate Buyer as the Project QSE during the Delivery Term, effective as of the start-up, testing and commissioning of the Project. Seller shall not authorize or designate any other party to act as the Project QSE, nor shall Seller perform the duties of the Project QSE, and Seller shall not revoke Buyer’s authorization to act as the Project QSE unless agreed to by Buyer.

(iii) The following Scheduling Procedures shall apply for the Project:

(A) For each day during the Delivery Term, Buyer shall, by 12:00 p.m. PPT of the customary WECC Pre-Scheduling Day communicate to Seller’s pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the expected Charging Energy to be delivered to the Interconnection Point by Buyer and the amount of Discharging Energy the Seller shall discharge and deliver to Buyer each hour at the Delivery Point for the delivery day (“Discharge Request”).

(B) For Test Energy, Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day, communicate to Buyer’s pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the amount of Test Energy to be delivered each hour at the Delivery Point for the delivery day.

(C)

(iv) Subject to the Operating Procedures, Buyer may dispatch the Storage Facility for not more than [] MWh per Contract Year. In the event Buyer dispatches the Storage Facility for more than [] MWh in any Contract Year (or a prorata amount for any partial Contract Year), it shall not be deemed an Event of Default under this Agreement. In such event, Buyer shall pay Seller [\$ ___/MWh) for each additional MWh of discharge.

(v) Seller shall timely comply with any instruction received from Buyer or the Transmission Provider with respect to the operation of the Project. If Seller fails to deliver Discharging Energy in accordance with the Scheduling Procedures, which is not excused by Force Majeure or by Buyer’s failure to perform its obligations under this Agreement, Seller shall pay to Buyer for such failure to deliver the in amount of (the “Failure to Deliver Damages”):

(A) The replacement cost of the Discharging Energy, calculated by multiplying (x) the amount of Discharging Energy not delivered, by (y) the positive difference, if any, of the Replacement Price for such Discharging Energy less the Contract Price; provided, however, such amount shall not be less than zero dollars (\$0.00); *plus*

(B) The cost associated with incremental Capacity Attributes, Environmental Attributes and/or carbon emissions costs borne by the Buyer, which shall equal to the costs incurred by Buyer to procure equivalent, Buyer-approved carbon compliance instruments; *plus*

(C) Any incremental ancillary services costs and transmission costs, which shall equal the actual costs incurred by Buyer for such items; *plus*

(D) Any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver.

(vi) Buyer will have the right to direct the scheduling or other offering of Storage Contract Capacity in connection with any future applicable capacity market, and Seller shall pay to Buyer any amounts received on account of the Project in connection with such capacity market. Seller shall cooperate with Buyer (including the filing of any necessary documents) in order to obtain any such payments. Seller shall only discharge the Storage Facility as directed by a Discharge Request from Buyer. Each Discharge Request will be effective unless and until Buyer modifies such Discharge Request by providing Seller with an updated Discharge Request. If an electronic submittal is not possible for reasons beyond Buyer's control, Buyer may provide Discharge Requests by electronic mail, facsimile transmission or telephonically to Seller's personnel designated in Section 11.1 to receive such communications.

(b) Outage Planning.

(i) No later than ninety (90) days prior to the Commercial Operation Date, and no later than September 1 of each year during the Delivery Term, Seller shall provide to Buyer a proposed schedule of outages planned for maintenance of the Project (each such outage a "Planned Outage"). The maximum number of hours of Planned Outage permitted in a Contract Year shall be 200 hours. Seller shall not schedule any Planned Outage that reduces the Storage Facility charging or discharging capability by more than ten percent (10%) during the months of June, July, August, and September unless (i) such outage is required to avoid significant and material damage to the Storage Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with Prudent Utility Practices, or (iv) the Parties agree otherwise in writing.

(ii) Seller shall use commercially reasonable efforts to minimize the impact of any Outage, including by scheduling or completing, as applicable, such Outage during hours other than Heavy Load Hours and by minimizing the portion of Storage Contract Capacity subject to an Outage at any time.

(iii) Seller shall promptly provide Buyer with notice of any Unplanned Outage, including the amount of the Storage Contract Capacity that is not available because of such Unplanned Outage and the expected return date and time of such capacity. Seller shall update such report as necessary to advise Buyer of changed circumstances. Seller shall in writing confirm any oral notice of a Unplanned Outage as soon as practicable following such notice.

(c) Operation of the Project.

(i) Seller shall operate and maintain the Project in accordance with Prudent Utility Practice and Applicable Law in order to maximize the Storage Contract Capacity and the Discharging Energy available from the Project. If the Storage Facility is curtailed due to Force

Majeure, by the Transmission Provider or Reliability Entity, or for any reason other than Buyer's actions or omissions, Buyer shall not be obligated to pay for any curtailed Discharging Energy and Seller will not be liable for any failure to deliver such Discharging Energy.

(ii) Seller shall ensure that personnel capable of starting, operating, and stopping the Project are either available at the Project or capable of remotely starting, operating, and stopping the Project within 10 minutes, and capable of being physically present at the Project with no more than two hours' notice. In all cases, Seller shall ensure that personnel capable of starting, operating, and stopping the Project can be reached by phone at all times.

7.9 **Project Naming Rights and Publicity**

(a) **Marketing and Naming Rights.** Buyer has the exclusive right during the Term to name the Project including the right to use information related to the Project in connection with its and its Affiliates' marketing activities. Such rights include the right to (i) require Seller to post reasonable signage at the Project identifying Buyer (or Buyer's Customers) as a purchaser of the Products, (ii) require that Seller use the logos, trade dress, graphics, and other marks of Buyer and its Affiliates (the "PGE Marks") or of Buyer's Customers and its Affiliates (the "Customer Marks" and together with the PGE Marks, the "Marks") in connection with such signage and the name of the Project, and upon Buyer's request, on any websites, advertisements, presentations, or descriptive materials, in any medium where the Project's name would usually and customarily be employed, and (iii) use, disclose, and permit others to use and disclose, general information regarding the Project (including its name, resource type, capacity, location, and commercial operation date) and images of the Project in connection with the marketing materials (whether print, video, online, or otherwise) of Buyer, its Affiliates, and Buyer's Customers. Seller shall in good faith cooperate with Buyer to develop mutually agreeable signage and other materials that reflect the Marks.

(b) **PGE Marks and Customer Marks.** Buyer and its Affiliates are the sole owners of the PGE Marks and Buyer's Customers and its Affiliates are the sole owners of their respective Customer Marks, and Seller shall not take any actions that are inconsistent with that ownership. All goodwill arising out of the use of the Marks in connection with the Project or this Agreement will inure to the sole benefit of Buyer, its Affiliates, or Buyer's Customers, as applicable, as the owners of such Marks. Buyer grants Seller a non-exclusive, non-transferable, non-assignable, revocable right and license for the duration of the Term to use the PGE Marks in accordance with the terms of this Section 7.9. To the extent permitted to do so under any applicable right and license received by Buyer from Buyer's Customers, Buyer further grants Seller a non-exclusive, non-transferable, non-assignable, revocable sublicense for the duration of the Term to use the Customer Marks in accordance with the terms of this Section 7.9. If Buyer (or, in the case of the Customer Marks, Buyer's Customer) revokes any such right or license during the Term, Seller will have no further right or obligation under this Agreement to use the applicable Marks. Upon the termination of this Agreement or if one or both of the foregoing licenses are revoked, Seller shall immediately cease and discontinue all further use of the applicable Marks. Notwithstanding the foregoing, the use of the Marks by Seller is in all cases subject to the prior written consent of Buyer, which consent may be granted in Buyer's sole discretion.

(c) **Publicity.** Before Seller issues any news release or publicly distributed promotional material regarding the Project that mentions the Project or Buyer, Seller shall first provide a copy thereof to Buyer for its review and approval.

Article 8
FORCE MAJEURE EVENTS

8.1 Force Majeure Events

(a) Excuse. Subject to Section 8.2 below, and except as expressly set forth herein, neither Party will be considered to have breached its obligations under this Agreement if performance of such obligations is prevented due to a Force Majeure Event.

(b) Definition. For purposes of this Agreement, “Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (i) arises after the Effective Date,
- (ii) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,
- (iii) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and
- (iv) has an impact which will actually, demonstrably and adversely affect the Party’s ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Project caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party, national, regional and area-wide strikes and other national, regional and area-wide labor disputes (including collective bargaining disputes and lockouts) involving Seller or its subcontractor and not directed exclusively at Seller or such subcontractor; a severe inclement weather condition not mentioned above, which prevents the safe performance of work at the Site; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, pandemics, and actions of a Governmental Authority (other than in respect of or in relation to or resulting from Seller’s acts or omissions). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work by a subcontractor on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Government Authority in respect of or in relation to or resulting from Seller’s acts or omissions; (ix) any failure by Seller to obtain and maintain any Applicable Permit it is required to obtain or maintain hereunder; (x) the unavailability of labor and supplies, disruptions of supply chains, limitations imposed by a Government Authority on allowing Personnel on the Site, or other hindrance to the Work caused by the impact of COVID-19, any of its variants or pandemics of a similar nature and intensity (xi) the failure of the EPC Contractor, ESS Supplier, or any other contractor or subcontractor to deliver, or any delay in the

delivery of, any equipment or materials critical for the construction, commissioning, operation, or maintenance of the Project, except to the extent that such failure was caused by an event or condition that would otherwise be a Force Majeure Event (and for purposes of the definition of Force Majeure Event, as if such Person were a Party); (xii) Seller's failure to timely (A) procure or otherwise arrange for financing necessary for the construction or operation of the Project, (B) enter into the Interconnection Agreement, or (C) procure energy storage systems or any other component of the Project for any reason (the risk of which is assumed by Seller); (xiii) any action or inaction of a Governmental Authority, including the enactment of any changes to Applicable Law; (xiv) any other act, omission, delay, default or failure (financial or otherwise) of a Seller subcontractor or other Seller personnel.

8.2 **Conditions; Resolution**

(a) **Claims of Force Majeure.** In addition to the conditions set forth in Section 8.1(a) above and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

(i) provides prompt notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement and, if applicable, the construction and operation of the Project;

(ii) provides weekly updates during the continuance of the Force Majeure Event that (A) summarize the measures taken by the affected Party and that the affected Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the affected Party of its material obligations under this Agreement will be prevented or the construction or operation of the Project, as applicable, will be adversely affected due to the Force Majeure Event;

(iii) exercises all commercially reasonable efforts to continue to perform its obligations under this Agreement and to mitigate or limit damages to the other Party; and

(iv) expeditiously, and at its sole cost and expense, takes all commercially reasonable actions necessary to correct or cure the Force Majeure Event or impact thereof so that any suspension of performance or adverse impact on the construction or operation of the Project, as applicable, is no greater in scope and no longer in duration than is necessary based on the Force Majeure Event.

(b) **Resumption of Performance.** The affected Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Project resulting from such Force Majeure Event is resolved, as applicable.

8.3 **Termination Due To Force Majeure Event**

If a Party is prevented from performing its material obligations under this Agreement for a period of 180 consecutive days or more due to a Force Majeure Event, the unaffected Party may terminate this Agreement early by providing written notice of termination to the affected Party. Other than for obligations that arose prior to termination and any payment of the Loss Event Buy-Down Amount owing by Seller pursuant to Section 7.5, if applicable, neither Party will be liable to the other Party in connection with the termination of this Agreement pursuant to this Section 8.3. Notwithstanding the forgoing, this Section 8.3 does not apply in connection with a Force Majeure Event that results in the occurrence of a Loss Event, and

the rights and obligations of the Parties with respect to the buy-down or, if applicable, termination of this Agreement in connection with such Loss Event will be as set forth in Section 7.5.

Article 9

DEFAULT, REMEDIES, AND TERMINATION

9.1 Events of Default Generally

(a) Mutual Events of Default. The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party:

(i) The failure of such Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the failing Party's receipt of written notice of such failure.

(ii) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such failure, if capable of being remedied, is not remedied within thirty (30) days after such Party's receipt of written notice thereof.

(iii) The failure of such Party to perform any material covenant or obligation set forth in this Agreement (except (A) to the extent constituting a separate Event of Default, (B) for Seller's obligation to deliver any Environmental Attributes, the exclusive remedy for which is provided in Section 3.3(c), and (C) subject to Section 9.1(b), Seller's failure to satisfy the Guaranteed Monthly Availability, the Guaranteed Charging Rate, the Guaranteed Duration or the Guaranteed Round-Trip Efficiency, the exclusive remedies for which are provided in Section 7.7), if such failure is not remedied within thirty (30) days after the failing Party's receipt of written notice of such failure, except that if such failure is not capable of being remedied within such period, then for such longer period as is reasonably needed to effect the remedy, not to exceed a total period of ninety (90) days, on the condition that a recovery plan to effect such remedy has been reviewed and accepted by the non-failing Party and the failing Party diligently pursues such remedy.

(iv) Such Party becomes Bankrupt.

(v) Such Party fails to perform any of its obligations under Article 6.

(b) Seller Events of Default. In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an event of default with respect to such Seller (the events and conditions set forth in Section 9.1(a) and this Section 9.1(b), each an "Event of Default"):

(i) The Project is Abandoned.

(ii) The Monthly Actual Availability of the Storage Facility fails to satisfy the Guaranteed Monthly Availability for [] or more months within a rolling [] month period.

(iii) The Storage Contract Capacity, as determined by the most recent Storage Contract Capacity Test, is less than the Guaranteed Storage Contract Capacity, which remains uncured for a period of thirty (30) days as shown by a new Storage Capacity Test.

(iv) The Duration as measured by the applicable Storage Contract Capacity Tests is less than [•]¹⁰ hours on average in any Contract Year.

(v) The Round-Trip Efficiency is less than the Guaranteed Roundtrip Efficiency and such failure continues for [•]¹¹ days after Seller's receipt of written notice or discovery of such failure.

(vi) Seller fails to maintain in effect (A) the Interconnection Agreement or (B) any other agreement or any Permit required to receive Charging Energy at the Interconnection Point and deliver Discharging Energy to the Delivery Point in accordance with Applicable Law, and in either case such failure continues for 15 days after Seller's receipt of written notice or discovery of such failure.

(vii) Seller sells to a Person other than Buyer or diverts for the use of any Person other than Buyer, any of the Product during the Delivery Term.

9.2 **Termination for Default**

(a) **Termination for Default.** If an Event of Default occurs with respect to a Defaulting Party and is continuing, the other Party (the "**Non-Defaulting Party**") may, subject to **Section 9.3**, (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party, designate a date not earlier than the effective date of such notice as the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.

(b) **Termination Payment.** Upon termination of this Agreement in connection with an Event of Default, the Non-Defaulting Party shall calculate, in a commercially reasonable manner without the obligation of either Party to enter into any replacement transaction in order to determine any losses, the termination payment due to such Party (each a "**Termination Payment**") in accordance with this **Section 9.2(b)**.

(i) **Termination Payment Prior to Commercial Operation Date.**

(A) If the termination of this Agreement due to a Seller Event of Default occurs before the Commercial Operation Date, then the Termination Payment shall be owed to Buyer and shall be calculated in accordance with **Section 7.3(b)(ii)**.

(B) If termination of this Agreement due to a Buyer Event of Default occurs before the Commercial Operation Date then the Termination Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the date of termination in connection with the Project, *less* the fair market value (determined in a commercially reasonable manner) of (1) the individual assets acquired by Seller for the Project, or (2) the entire Project,

¹⁰ Note to Bidder – To be determined on a Project-by-Project basis.

¹¹ Note to Bidder – To be determined on a Project-by-Project basis.

whichever is greater, regardless of whether or not any Seller asset or the entire Project is actually sold or disposed of.

(ii) Termination Payment After the Commercial Operation Date.¹²

(A) If the termination of this Agreement due to a Seller Event of Default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Buyer and shall be equal to (i) all amounts due and owing to Buyer as of the termination of this Agreement *plus* (ii) the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under transactions replacing this Agreement minus (y) the present value of the payments Buyer would be required to make for Product under this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Buyer in a commercially reasonable manner *plus* (iii) Buyer's Costs *less* (iv) all amounts due to the Seller under this Agreement.

(B) If termination of this Agreement due to a Buyer Event of Default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Seller and shall equal (i) all amounts due and owing to Seller as of the termination of this Agreement (ii) the positive amount, if any, equal to (x) the present value of the payments Seller would receive under this Agreement for Product *less* (y) the present value of the payments Seller would receive for Product under transactions replacing this Agreement, in each case for the period from the early termination date through the scheduled end of Delivery Term and determined by Seller in a commercially reasonable manner *plus* (iii) Seller's Costs *less* (iv) all amounts due to the Buyer under this Agreement as of the date of such termination.

(c) Notice of Termination Payment. As soon as practicable after a termination date is declared, the Non-Defaulting Party shall provide notice to the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If Buyer is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the Transmission Provider, any other Governmental Authority, then Buyer may estimate the amount of those penalties and fines and include them in the Termination Payment amount. The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after the Notice is provided.

(d) Effect of Termination. Termination of this Agreement shall not operate to discharge any liability that has been incurred by either Party prior to the effective date of such termination.

9.3 Limitations

(a) GENERAL LIMITATION. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE

¹² **Note to PGE:** Please confirm if this payment arrangement is commensurate with your typical PPA termination structure, or if another arrangement is preferred commercially at PGE. A more aggressive approach for Termination Payments owed to Buyer is to require payment of [a flat dollar amount per MW multiplied by the Contract Capacity, which such figure represents the NPV of the entire project to the buyer] *multiplied* by [the proportion of the remaining days in the Delivery Term to the total days in the Delivery Term]. This method, however, does not recognize the reality of market prices (and their volatility).

OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED AND EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 9.4, NEITHER PARTY IS LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND ARE NOT A PENALTY.

(b) PRE-COD LIMITATION. PRIOR TO THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR DAMAGES IS LIMITED TO THE CREDIT SUPPORT AMOUNT THEN APPLICABLE TO SELLER, EXCEPT THAT SUCH LIMITATION WILL NOT APPLY TO THE EXTENT THAT SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER OR BY THE INTENTIONAL BREACH BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

9.4 Indemnification

To the maximum extent permitted by Applicable Law, Seller and Buyer shall defend, indemnify, and hold each other, and their respective officers, directors, employees, and agents, harmless from and against all third party claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) (collectively, "Losses") for personal injury or death to persons and damage to the physical property or facilities of any Person other than a Party to the extent arising out of, resulting from, or caused by the negligent or intentional and wrongful acts, errors, or omissions of the indemnifying Party or any Person retained by or acting for such Party. This obligation to indemnify, defend, and hold harmless applies notwithstanding any negligent or intentional acts, errors, or omissions of the applicable indemnitee, but the indemnifying Party's liability to pay Losses to the indemnitee will be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors, or omissions caused the Losses. Each Party's obligation to indemnify, defend, and hold harmless does not apply to Losses resulting from the sole negligence or willful misconduct of the indemnitee. An indemnitee that becomes entitled to indemnification or defense under this Section 9.4 must notify the indemnifying Party of any claim or proceeding in respect of which it is to be indemnified or defended as soon as reasonably practicable after the indemnitee obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice will not excuse the obligation to indemnify or defend except to the extent failure to provide notice adversely affects the indemnifying Party's interests in a material respect. The indemnifying Party shall, within thirty (30) days after the date the indemnifying Party is notified of any such claim, assume the defense thereof with counsel designated by the indemnifying Party but reasonably acceptable to the indemnitee; except that if the defendants in any such action include both the indemnitee and the indemnifying Party or if the claim seeks an order of injunctive relief or other equitable remedies, involves criminal liability, or involves any Governmental Authority, then the indemnitee will have the right to select

and be represented by separate counsel designated by the indemnitee, at the expense of the indemnifying Party. If the indemnifying Party fails to assume the defense of a claim as required under this Agreement, the indemnitee may, at the expense of the indemnifying Party, contest, settle, or pay such claim and the indemnifying Party will be bound by the results obtained by the indemnitee with respect to such claim. These indemnity provisions are not to be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

Article 10 REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations and Warranties

(a) General Representations. Seller represents and warrants to Buyer as of the Effective Date that:

(i) Seller is duly organized and validly existing as a [_____] under the laws of the State of [_____] , has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary.

(ii) Seller has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.

(iii) This Agreement has been duly and validly executed and delivered by Seller, constitutes the legal, valid, and binding obligations of Seller, and is enforceable against Seller in accordance with its terms (except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity).

(iv) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority that individually or in the aggregate are reasonably likely to have a materially adverse effect on Seller's ability to perform its obligations under this Agreement.

(v) The execution, delivery and performance of this Agreement by Seller does not conflict with: its governing documents; any Applicable Laws; or any material covenant, agreement, understanding, decree, or order to which Seller is a party or by which it is bound or affected.

(vi) There are no proceedings under applicable bankruptcy or insolvency law contemplated by Seller or, to Seller's knowledge, threatened against it.

(b) Additional Seller Representations and Warranties. Seller further represents and warrants to Buyer as of each delivery of any Product under this Agreement that:

(i) Seller has the right to sell and deliver the Product to Buyer.

(ii) The Product is delivered to Buyer free and clear of any liens, other encumbrances, or defects in title; and

(iii) To the extent delivered to Buyer:

(A) any Environmental Attributes (including any RECs) delivered to Buyer meet the requirements of Applicable Law and any certifying or registering entity having jurisdiction over such Environmental Attributes as of the date of such delivery; and

(B) any Environmental Attributes have not been sold, retired, claimed, or represented as a part of any electric product or sales, or used to satisfy any renewable energy, greenhouse gas, or other environmental attributes obligation under any applicable voluntary program or Applicable Law in any jurisdiction.

10.2 **Buyer Representations and Warranties**

Buyer represents and warrants to Seller as of the Effective Date that:

(i) Buyer is duly organized and validly existing as a corporation under the laws of the State of Oregon, has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement.

(ii) Buyer has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.

(iii) This Agreement has been duly and validly executed and delivered by Buyer, constitutes the legal, valid, and binding obligations of Buyer, and is enforceable against Buyer in accordance with its terms (except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity).

(iv) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority that individually or in the aggregate are reasonably likely to have a materially adverse effect on Buyer's ability to perform its obligations under this Agreement.

(v) The execution, delivery and performance of this Agreement by Buyer does not conflict with: its governing documents; any Applicable Laws; or any material covenant, agreement, understanding, decree, or order to which Buyer is a party or by which it is bound or affected.

(vi) There are no proceedings under applicable bankruptcy or insolvency law contemplated by Buyer or, to Buyer's knowledge, threatened against it.

10.3 **Limitation on Representations**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

**Article 11
MISCELLANEOUS**

11.1 Notices

All written notices, requests, statements, demands, and other communications under this Agreement must, unless otherwise specified herein, be delivered in person or sent by facsimile, commercial overnight delivery service, or registered or certified mail, postage prepaid, to the address of the Party specified below. Notice by facsimile, United States mail, or hand delivery is effective at the close of business on the day actually received, if received during a Business Day, and otherwise will be effective at the beginning of the next Business Day. Notice by commercial overnight delivery service is effective on the next Business Day after it was sent. A Party may change its address for notices and other communications by providing notice to the other Party specifying its new address.

(a) If notice is to be provided to Buyer:

Address: []
Attn: []
Facsimile: []
Email: []

For purposes of scheduling:

Attention: []
Phone: []
Alternate Phone: []
Email: []

With a copy to:

Attention: []
Phone: []
Alternate Phone: []
Email: []

(b) If notice is to be provided to Seller:

Address: []
Attention: []
Phone: []
Email: []

With a copy to:

Address: []
Attention: []
Phone: []
Email: []

Billing and Payment:

Address: []

Attention: []
Phone: []
Email: []

Designated Operating Representative:

Address: []
Attention: []
Phone: []
Email: []

11.2 Regulatory Compliance

Each Party shall at all times comply with all Applicable Laws except to the extent such non-compliance is unrelated to or would not have a material adverse effect on such Party's ability to perform its obligations under this Agreement. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

11.3 Confidentiality

(a) Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form, and whether or not designated or marked as confidential at the time exchanged.

(b) Permitted Disclosure. Each Party, as the receiving Party, has the right to disclose Confidential Information of the other Party to (i) a Governmental Authority to the extent legally required by the Governmental Authority or Applicable Law or to the extent necessary for the receiving Party to enforce its rights and remedies under this Agreement, in each case on the condition that, if appropriate, the receiving Party has taken commercially reasonable efforts to receive confidential treatment by such Governmental Authority of the Confidential Information disclosed; (ii) its advisors, auditors, legal counsel, and insurers; (iii) its Affiliates and its and their respective officers, directors, members, managers, employees and agents that have a need to know such information; (iv) its service providers to the extent required in connection with the performance of the receiving Party's obligations under this Agreement; (v) its partners, investors, lenders and bona fide potential investors and lenders; (vi) bona fide potential purchasers and their representatives of an interest in the receiving Party or, with respect to Seller, the Project; and (vii) with respect to Buyer, to actual and potential Buyer's Customers, but only to the extent necessary in connection with the negotiation or administration of the agreement between such Buyer's Customer and Buyer or its Affiliate, as applicable. The right of the receiving Party to disclose Confidential Information pursuant to clauses (ii) through (vii) is subject to the condition that the recipient has agreed, or otherwise has an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

(c) Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section 11.3.

(d) **Remedies.** The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained in this Section 11.3.

(e) **Prior Agreements.** To the extent that (i) the Parties are party to any confidentiality or non-disclosure agreement related to the subject matter of this Agreement, any such agreement between the Parties is replaced by the confidentiality provisions of this Section 11.3, and (ii) the Parties are otherwise bound by or subject to the terms of an agreement regarding confidentiality or non-disclosure, as between the Parties, such other agreement will no longer apply to this Agreement, and the obligations of the Parties regarding confidentiality will instead be replaced by the obligations under this Section 11.3.

11.4 **Assignment**

(a) **Consent Required.** Except as provided in this Section 11.4, neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned, or withheld. Any assignment or other transfer in violation of this provision is null and void. In addition, Seller shall not undergo a Change of Control unless Buyer has provided its prior written consent to such Change of Control, which consent may not be unreasonably delayed, conditioned or withheld.

(b) **Permitted Assignment.** Buyer may, without the consent of Seller, assign this Agreement to an Affiliate of Buyer, so long as such assignee has assumed in writing all of the obligations of Buyer under this Agreement and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment.

(c) **Accommodation of Project Lenders and Tax Equity Investors.** To facilitate Seller's efforts to obtain financing to construct and operate the Project, Buyer shall provide such consents to assignments, certifications, estoppels, representations, information, and other documents as may be reasonably requested by Seller, a Project Lender, or a Tax Equity Investor in connection with the financing of the Project. In responding to any such request, Buyer will have no obligation to provide any consent, or enter into any agreement, that includes terms that adversely affect any of Buyer's rights, benefits, risks, or obligations under this Agreement. Seller shall reimburse Buyer for the reasonable, out-of-pocket costs and expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution, or delivery of any documents requested by Seller or a Project Lender or Tax Equity Investor pursuant to this Section 11.4(c).

11.5 **Waiver of Rights**

Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing.

11.6 **Section Headings**

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

11.7 **No Third Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to create a contractual relationship with, or cause of action or other rights in favor of, any Person other than the Parties.

11.8 **Forward Contract**

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code (Title 11, United States Code).

11.9 **Governing Law**

THE LAWS OF THE STATE OF OREGON (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

11.10 **Dispute Resolution Process**

(a) **Avoidance and Mediation.** The Parties agree to cooperate with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“Dispute”), within five (5) Business Days following the date of delivery of a written request by either Party, (a) each Party shall appoint as its representative a senior officer, and (b) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

(b) **Mandatory Mediation.** Any Dispute that is not resolved pursuant to Section 11.10(a) may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“AAA Procedures”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures, the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as Confidential Information. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article as a witness, collateral contract or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

(c) If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 11.10(b), then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, and (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Article 11.1, or at such other address of which the Parties have been notified.

(d) EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(e) If either Party institutes any legal suit, action or proceeding against the other Party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing Party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

11.11 **Nature of Relationship**

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

11.12 **Severability**

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement will not be affected and will continue in full force and effect. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision with a legally acceptable clause that corresponds as closely as possible to the sense and purpose of the affected provision.

11.13 **Change in Law**

The Contract Price will not be affected by any change in any Applicable Law that alters either Buyer's or Seller's costs in connection with this Agreement, Seller's operation of the Project, or the value

of the Product, including any Environmental Attributes, delivered or transferred under this Agreement, or affects in any other material way the purpose or economics of this Agreement.

11.14 **Counterparts**

This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually-executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an “original” for all purposes.

11.15 **Construction**

This Agreement was jointly prepared by the Parties by and through their respective legal counsel, and any uncertainty or ambiguity existing herein will not be interpreted against either Party on the basis that such Party drafted the language.

11.16 **Entire Agreement; Integration**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. Except as provided in Sections 4.1 (with respect to Schedule I), 7.1(b) and 11.1, no amendment, addition to, or modification of any provision hereof is binding upon the Parties, and neither Party will be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification, or waiver is in writing and signed by a duly authorized officer or representative of each Party.

[signature page follows]

The Parties have caused this Storage Capacity Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

BUYER:

**PORTLAND GENERAL ELECTRIC
COMPANY**

By: _____
Name: _____
Title: _____

SELLER:

[_____]

By: _____
Name: _____
Title: _____

APPENDICES AND EXHIBITS

Appendix A Operating Parameters and Operating Procedures

Appendix B Storage Contract Capacity Test

Appendix C Transmission Requirements

Appendix D Guaranteed Round-Trip Efficiency

Exhibit A Description of the Project

Exhibit B [Reserved]

Exhibit C Milestone Information

Exhibit D Insurance Requirements

Exhibit E Notice Information

Exhibit F Form of Letter of Credit

Schedule I Communications and Other Equipment

Schedule II QSE Performance Requirements

Appendix A

OPERATING PARAMETERS AND OPERATING PROCEDURES¹³

[Seller to provide]

Note to Bidders: Operating Parameters and Operating Procedures to Include Daily Dispatch Limits for the following uses:

Full Charging: [XX] times per day

Full Discharging: [XX] times per day

Partial Charging: [XX] times per day

Partial Discharging: [XX] times per day

Please describe all other applicable operating limits on charging and discharging from the Storage Facility, if any.

Maximum annual dispatch quantity: [_____]MWh

¹³ Note – Seller to include proposed Minimum Usable State of Charge and proposed Maximum Usable State of Charge as part of this Exhibit.

Appendix B

STORAGE CONTRACT CAPACITY TEST

Appendix C

TRANSMISSION REQUIREMENTS

Buyer must be able to designate the Storage Facility as a network resource and Seller must have requested NRIS interconnection for Storage Facility Output. In such case, except in the event of Seller's Failure to Deliver or a Seller breach, Buyer will be responsible for all costs associated with the delivery of energy to the Delivery Point.

Appendix D

GUARANTEED ROUND-TRIP EFFICIENCY

Contract Year	Guaranteed Round-Trip Efficiency
1	90.0%
2 - XX	<i>[Seller to fill out rest of table]</i>

Exhibit A

DESCRIPTION OF THE PROJECT

Project Name: []

Guaranteed Storage Contract Capacity: []

Seller: []

Location: []

Operator: []

Map: See attached

Description of the Site: []

Description of Equipment: []

Exhibit B

[RESERVED]

Exhibit C

MILESTONE INFORMATION¹⁴

Milestone	Date
Execution of the Interconnection Agreement for the Project	[] [], 202[]
Closing of tax equity and construction financing for the Project	[] [], 202[]
Commercial Operation Date	[] [], 202[]

¹⁴ **Note to Bidder** – Parties to agree on relevant milestones based on Project requirements.

Exhibit D

SELLER INSURANCE REQUIREMENTS

1. Acceptable Insurers. All insurance required herein must be obtained from insurers duly authorized to do business in Oregon and which maintain a minimum financial strength rating of “A- VIII” by the A. M. Best Key Rating Guide.
2. Required Insurance and Minimum Limits. During the term of this Agreement, Seller must obtain and maintain, at its sole expense, the following insurance coverage:

A. Workers’ Compensation and Employer’s Liability Insurance

i. Scope. Workers’ Compensation and Employer’s Liability to cover claims under applicable State or Federal workers’ compensation laws. Coverage must include Employer’s Liability to cover claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of the applicable workers’ compensation law.

ii. Minimum Required Limit.

Workers’ Compensation:	Statutory
Employer’s Liability:	\$2,000,000 each accident, bodily injury by
accident	
	\$2,000,000 each employee, bodily injury by
disease	
	\$2,000,000 policy limit, bodily injury by disease

iii. Navigable Waters. If any Work or Services under this Agreement involve work in, over or alongside any navigable waters, then Seller’s workers’ compensation coverage must cover liability under U.S. Longshoremen and Harbor Workers’ Compensation Act, The Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.

iv. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

B. Commercial General Liability Insurance

i. Scope. Commercial General Liability Insurance written on the current ISO occurrence form (or a substitute form providing equivalent coverage) and must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If any Work or Services under this Agreement involve or require blasting, explosive conditions, or underground operations, the coverage must not

contain any exclusion relative to blasting, explosion, collapse of buildings, or damage to underground structures.

ii. Minimum Required Limit. \$2,000,000 Each Occurrence

iii. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

iv. Additional Insured. To the fullest extent permitted by law, the insurance must include PGE, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured.

v. Completed Operations. Seller must purchase completed operations coverage for a period of two (2) years after termination or expiration of this Agreement.

C. Automobile Liability Insurance

i. Scope. Automobile Liability insurance to cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the Work or Services under this Agreement.

ii. Minimum Required Limit. \$2,000,000 Each Accident

iii. Pollution. If Seller is transporting chemicals, hazardous materials, or similar pollutants, then the Automobile Liability Insurance must include pollution liability coverage at least as broad as the coverage provided under the ISO endorsement CA 99 48 "Pollution Liability—Broadened Coverage For Covered Autos".

iv. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

vi. Additional Insured. To the fullest extent permitted by law, the insurance must include PGE, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

D. Professional Liability Insurance (Errors and Omission Insurance)

i. Scope. If Work or Services under this Agreement involves the rendering of professional services then Seller must obtain and maintain Professional Liability (Errors and Omissions) insurance to cover claims arising from Seller's acts, errors or omissions. Seller will require Professional Liability (Errors and Omissions) insurance in the same amounts from any and all third parties Seller utilizes in performing its design responsibilities under this Agreement.

ii. Minimum Required Limit. \$1,000,000 Per Claim

iii. Extended Reporting Period. The insurance must contain an extended reporting period of five (5) years.

E. Pollution Legal Liability

i. Scope. If the Work under this Agreement includes cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants, Seller shall provide at its expense Pollution Legal Liability Insurance appropriate to cover such activities against the risk of bodily injury and property damage. Such policy must be endorsed to specifically provide coverage for Work performed under this Agreement and must extend to all Subcontractors engaged in cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants.

ii. Minimum Required Limit. \$5,000,000 Per Claim

iii. Additional Insured. To the fullest extent permitted by law, the insurance must include PGE, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

iv. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

F. Aircraft Liability

i. Scope: **PRIOR TO USING AN AIRCRAFT OF ANY KIND IN PERFORMING THE WORK UNDER THIS AGREEMENT, SELLER SHALL NOTIFY PGE AND OBTAIN ITS PRIOR WRITTEN CONSENT.** If an aircraft is to be used in performing the Work under this Agreement, Aircraft Liability insurance covering fixed wing and rotorcraft aircraft whether owned, hired or non-owned.

ii. Minimum Required Limit: \$10,000,000 Each Occurrence

G. Network Security & Privacy Liability

i. Scope: If the Work or Services under this Agreement involves the rendering of IT services including, but not limited to software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connected to PGE network(s); or if Seller in any way collects, obtains, maintains or in any way uses PGE customer information, then Seller shall maintain Network Security & Privacy Liability, including Technology Errors & Omissions.

ii. Minimum Required Limit: \$5,000,000 Each Claim

H. Cargo/Transit

i. Scope: If the Work or Services involves the transportation of PGE property, by any form of conveyance, Seller shall maintain Cargo and/or Transit coverage for the duration of such transportation.

ii. Minimum Required Limit: Full replacement value of the shipment

3. Excess or Umbrella Insurance. The required minimum limits may be met through any combination of primary and excess insurance policies.
4. Certificates of Insurance. Prior to commencement of the Work or Services, Seller must furnish PGE with a Certificate of Insurance evidencing compliance with these requirements. Without penalty or default, PGE has the right, but not the obligation, to prohibit commencement of the Work or Services until such Certificate of Insurance or other evidence satisfactory to PGE is received and approved by PGE. The Certificate of Insurance must list as the certificate holder:

Portland General Electric Co.
c/o Global Risk Management Solutions
4447 N. Central Expressway, Suite 110-433
Dallas, TX 75205
5. No Waiver. PGE's failure to demand the Certificate of Insurance or to identify a deficiency from the Certificate of Insurance or other evidence provided will not be deemed a waiver of PGE's rights or Seller's obligations. Furthermore, these insurance requirements must not be construed in any manner as waiving, restricting or limiting PGE's rights or Seller's obligations under this Agreement.
6. Primary Insurance: The insurance required of Seller under this Exhibit shall be primary and may not seek contribution from any insurance or self-insurance maintained by PGE.
7. Notice of Cancellation. No insurance policy may be canceled or materially modified unless Seller or insurer(s) provide at least thirty (30) days prior written notice to PGE.
8. Failure to Maintain Required Insurance. If at any time during the term of this Agreement Sellers fails to maintain any required insurance, PGE may, at its sole discretion, either suspend the Work or Services or terminate this Agreement.
9. Seller Responsible for Deductibles or Retentions. With respect to any insurance required herein, Seller must bear all costs of all deductibles or Self-Insured Retentions.
10. No Representation of Coverage Adequacy. PGE does not represent that coverage and limits required herein will be adequate to protect Seller. Seller remains responsible for any liability not paid by insurance.
11. Seller's Property. Seller is responsible for any loss or damage to its property, however caused, and any insurance covering such property will be at Sellers expense and must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.
12. No Violation of Insurance Policies. Seller must not knowingly violate or knowingly permit any violation of any warranties, representations, declarations or conditions contained in the policies of insurance.

13. No Claims. As of the execution date of this Agreement, Seller is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance required herein.
14. Other Insurance. If there is any material change to the nature or scope of the Work or Services under this Agreement, PGE may require Seller to obtain and maintain additional insurance.
15. Subcontractors. If subcontractors or third parties are used in the performance of any Work or Services, then Seller must cause each of its subcontractors or third parties to comply with the same insurance requirements imposed on Seller herein. If requested by PGE, Seller must furnish certificates of insurance evidencing compliance with these requirements for each subcontractor or third party.
16. Owner's Insurance

A. In order to protect Owner, Seller and any other party to the extent of their respective financial interests, Owner will procure and maintain in effect or cause to be maintained All Risk Insurance or Builder's All Risk Insurance (BAR). The BAR policy may include the following requirements:

- i. Owner may provide Seller with proof of insurance at least thirty (30) days prior to the scheduled commencement of the Work;
- ii. The policy will be in effect from the planned start of any Work at the Project Site through the date of Substantial Completion;
- iii. The policy will include as additional insured, Seller, any additional parties to the Contract and all Subcontractors (regardless of tier) of Seller performing Work at the Project;
- iii. The policy will cover risks of physical loss or damage to the Project not otherwise excluded, including mechanical and electrical breakdown during the course of construction, start-up, testing and commissioning, including materials, equipment and furnishings which will become part of the Project, up to the value of the Project.

Consistent with Article 1.7 Risk of Loss, Seller shall be responsible for the deductible under the BAR policy; provided, however, that Seller's responsibility shall not exceed .5% of the project value, subject to a minimum deductible responsibility of five thousand dollars (\$5,000.00).

Exhibit E

Intentionally Left Blank

Exhibit F

Form of Letter of Credit

[to be attached]

Schedule I

COMMUNICATIONS AND OTHER EQUIPMENT¹⁵

¹⁵**Note to Bidders:** To be developed in light of Project specifications

Schedule II

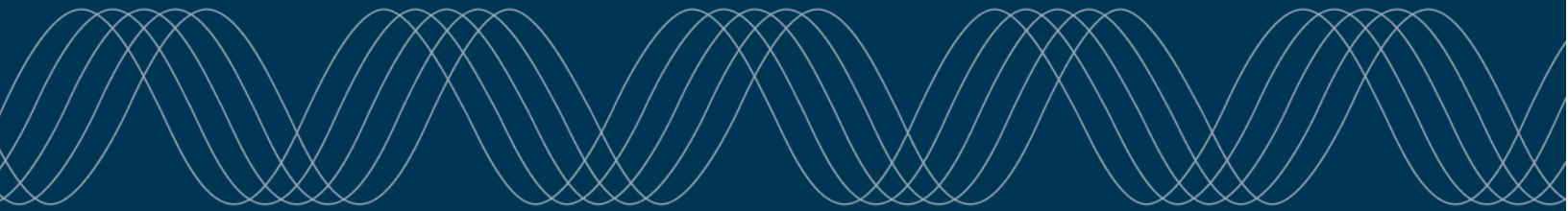
QSE PERFORMANCE REQUIREMENTS¹⁶

[Note: The SCA shall include charging and discharging protocols based on the technology and software communication available to the Seller, but at a minimum the Buyer shall communicate intraday adjustments no later than one-hundred and twenty (120) minutes prior to the flow hour.]

¹⁶**Note to Bidders:** To be developed in light of Project specifications

Appendix G

Renewable and Storage PPA Form



2021 All-Source RFP



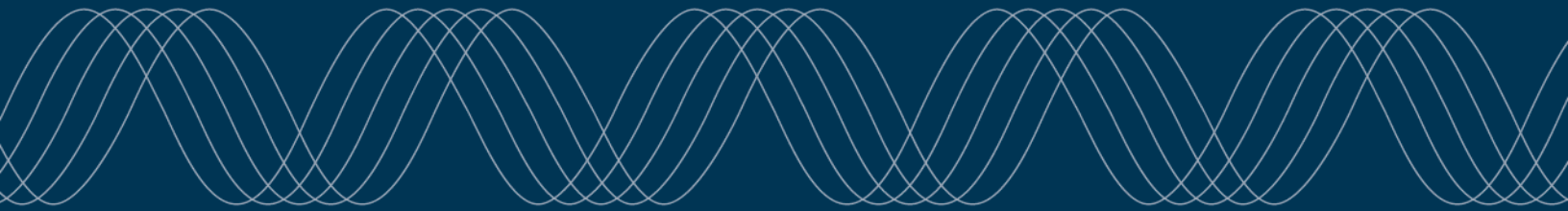
Renewable and Storage PPA Form Agreement

PGE's 2021 All-Source RFP does not include a Renewable and Storage PPA Form Agreement. Please make reference to Appendix C: Renewable and Storage PPA Form Term Sheet. Please also refer to Appendix E and Appendix F for Renewable PPA and Storage Capacity Form Agreements whose terms together reflect those that PGE would expect to adopt in a fully negotiated Renewable and Storage PPA.

Appendix H

APA Form Agreement

-



2021 All-Source RFP



APPENDIX H

ASSET PURCHASE AGREEMENT

by and between

PORTLAND GENERAL ELECTRIC COMPANY

and

Dated _____

APPENDIX H

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¹ NTD: The type of project assets being conveyed to PGE will dictate the appropriate forms of these exhibits.

APPENDIX H

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (together with all exhibits and schedules appended hereto, this “*Agreement*”), dated as of [DATE] (the “*Effective Date*”), is made by and between [COUNTERPARTY], [STATE] [ENTITY TYPE] (“*Seller*”), and Portland General Electric Company, an Oregon corporation (“*PGE*”). PGE and Seller each may be referred to herein as a “*Party*”, and collectively as the “*Parties*”.

RECITALS

WHEREAS, Seller owns [and operates] the Project and owns all right, title and interest in and to the Project Assets.

WHEREAS, in accordance with the terms and conditions set forth in this Agreement, Seller desires to sell and transfer to PGE, and PGE desires to purchase from Seller, the Project and the Project Assets.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE 1

DEFINITIONS AND CONSTRUCTION

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

“*AAA*” shall mean the American Arbitration Association.

“*AAA Procedures*” shall have the meaning given to it in Section 11.4.2.

“*Account*” shall have the meaning given to it in Section 2.3.2.

“*Affiliate*” of a specified Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the immediately preceding sentence, “control” shall mean the ability to control or affect, directly or indirectly, through ownership interests, contract or otherwise, the day-to-day management and control of the Person or a fifty percent (50%) or greater beneficial ownership interest in the partnership interests, membership interests or voting stock of the Person. For purposes of this Agreement, any Person owning an interest in Seller shall be considered an “Affiliate” of Seller.

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“*Affiliate Contracts*” shall have the meaning given to it in Section 5.10.1.

“*Agreement*” shall have the meaning given to it in the Preamble.

“*Allocation*” shall have the meaning given to it in Section 10.1.

“*Applicable Law*” shall mean any act, statute, law, regulation, Permit, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority having jurisdiction over (a) any Party, (b) the Project Assets or (c) the Project.

“*Applicable Survival Period*” shall have the meaning given to it in Section 9.2.

“*Assumed Liabilities*” shall mean those Liabilities and obligations of Seller set forth on Schedule 2.1, which shall be assumed by PGE.

“*Benefit Plan*” means all written and unwritten "employee benefit plans" within the meaning of Section 3(3) of ERISA, and any other written and unwritten profit sharing, pension, savings, deferred compensation, fringe benefit, insurance, medical, medical reimbursement, life, disability, accident, post-retirement health or welfare benefit, stock option, stock purchase, sick pay, vacation, employment, severance, termination or other plan, agreement, contract, policy, trust fund or arrangement.

“*Business Day*” shall mean a day on which national banks are not required or authorized by law or executive order to close in Portland, Oregon.

“*Claim*” shall have the meaning given to it in Section 9.5.

“*Claim Notice*” shall have the meaning given to it in Section 9.5.

“*Closing*” shall have the meaning given to it in Section 4.1.

“*Closing Date*” shall have the meaning given to it in Section 4.1.

“*Code*” shall mean the Internal Revenue Code of 1986, as amended.

“*Contracts*” shall have the meaning given to it in Section 5.10.1.

“*Controlled Group Liability*” means any and all liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, (iii) Sections 412 and 4971 of the Code, or (iv) the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code.

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“**Debt**” of any Person at any date means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all monetary liabilities of such Person under contracts, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, and (h) all obligations of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty.

“**Dispute**” shall have the meaning given to it in Section 11.4.1.

“**DOE**” means the United States Department of Energy.

“**Effective Date**” shall have the meaning given to it in the Preamble.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to an electric generating facility or the electric energy, capacity or other generator-based products produced therefrom, including (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (b) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and (c) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

“**Environmental Laws**” shall mean all laws that regulate or relate to (a) the protection or clean-up of the environment, (b) the handling of Hazardous Substances, (c) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, and (d) 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

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Act and Centers for Disease Control guidelines, policies and procedures, and all analogous or related laws.

“Federal Funds Effective Rate” shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal fund brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not published for any day that is a Business Day, the weighted average (rounded upwards if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with the members of the Federal Reserve System arranged by federal fund brokers, as published on the next succeeding Business Day by the Federal Reserve of New York.

“FERC” means the Federal Energy Regulatory Commission or its successor Governmental Authority.

“Final Order” shall mean, with respect to a Seller Required Regulatory Approval or PGE Required Regulatory Approval, as the case may be, that such Seller Required Regulatory Approval or PGE Required Regulatory Approval has not been reversed, stayed, set aside, annulled or suspended, with respect to which any waiting period prescribed by Applicable Laws before the transactions contemplated hereby may be consummated has expired (but without the requirement for expiration of any applicable rehearing period), and as to which all conditions to the consummation of such transactions prescribed by Applicable Laws have been satisfied.

“Forced Labor” means the use of physical force, coercion, threats, intimidation, social, legal or financial pressure or other means to force a person to work against his or her own will or freedom.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Hazardous Material” shall mean (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, lead containing paints or coatings, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, (b) any chemicals or other materials or substances which are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants” or words of similar

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import under any Environmental Law, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority under any Environmental Law.

“Indemnified Party” shall have the meaning given to it in Section 9.5.

“Indemnifying Party” shall have the meaning given to it in Section 9.5.

“Instruments of Conveyance” shall have the meaning given to it in Section 2.2.

“Knowledge” when used in a particular representation in this Agreement with respect to Seller, means the actual knowledge of the individuals listed on Schedule 1.1-K, after reasonable inquiry of their direct reports.

“Liabilities” shall mean, with respect to any Person, any and all Debts, liabilities, payables, obligations, commitments, losses, damages, expenses, claims, deficiencies, guarantees or endorsements, of any kind whatsoever, in each case requiring a payment (including a potential payment of damages for non-performance), including those of a contingent or deferred nature.

“Lien” shall mean mortgages, deeds of trust, liens, pledges, charges, security interests, assessments, reservations, hypothecations, restrictive covenants, easements or encumbrances.

“Losses” shall have the meaning given to it in Section 9.3.1.

“Material Adverse Effect” shall mean any event, occurrence, change or effect that, individually or in the aggregate, (a) with respect to Seller, that has or could reasonably be expected to have a material adverse effect on the ability of Seller to consummate the transactions contemplated by this Agreement and to satisfy its obligations contemplated by this Agreement, and (b) with respect to the Project or the Project Assets, could reasonably be expected to have a material adverse effect on the Project or the Project Assets, including the development, interconnection, ownership, operation or maintenance of the Project, (the **“Business”**) or on the fair market value of the Project Assets; *provided, however*, that a “Material Adverse Effect” shall not include any adverse change, effect or circumstance directly or indirectly resulting from or arising out of (i) actions taken or omissions made by a Party at the request or with the consent of the other Party, or the failure to take any action prohibited by this Agreement, (ii) changes in the renewable power development industry or in renewable energy markets generally or (iii) changes in economic conditions or financial markets in any country or region or globally, including changes in interest or exchange rates and changes in currency and credit markets; *provided, further*, that the exceptions stated in clauses (ii) and (iii) above shall not apply to the extent the changes, effects or occurrences described therein disproportionately affect the Project, or the Project Assets compared to other similarly situated businesses or assets in [*the state of Oregon*]; and *provided, further*, that a matter as described in a Schedule hereto will not in and of itself constitute an

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Material Adverse Effect (but it may be possible that a change, effect or occurrence resulting from or arising out of such a matter could constitute an Material Adverse Effect).

“Material ESG Incident” means any event or condition, for which Seller has Knowledge, relating to environmental, social, or governance factors that could reasonably be expected to have a material adverse impact on the Project Assets or PGE, including, but not limited to: (i) any incident or accident that could reasonably be expected to have a material adverse impact on health, safety, or the environment, (ii) any accident resulting in death or serious or multiple injury (including amputations), (iii) any material community or worker related grievance or protest, including instances of Forced Labor, (iv) any failure to materially comply with applicable Laws, including any such material failure to comply that is required to be disclosed to a Governmental Authority, (v) the receipt of any formal complaints of discrimination or harassment in the past year that were repeated, substantiated, involved a member of management, or were otherwise significant, (vi) any incidents of fraud, corporate misconduct, bribery, corruption, or ethics violations, including violations of any applicable anti-corruption laws, (vii) any material data breaches or privacy incidents, including any such breaches or incidents that resulted in the disclosure of PGE’s Confidential Information, and (viii) any instances of contractors or suppliers of Seller alleging or being involved in any of the foregoing.

“NERC” means the North American Electric Reliability Corporation or its successor Governmental Authority, and includes any applicable regional entity (such as Reliability First Corporation) having authority over Seller or the Project.

“OPUC” shall mean the Public Utility Commission of Oregon.

“Ordinary Course of Business” means the ordinary course of business consistent in material respects with past practices and Prudent Utility Standards.

“Party” or **“Parties”** shall have the meaning given to it in the Preamble.

“Permits” shall mean permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Applicable Laws in connection with the development, construction, operation, use and/or maintenance of the Project, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Permitted Liens” shall mean all of the following: (a) liens for property Taxes and installments of assessments and charges of Governmental Authorities not yet due and payable as of the Closing Date; (b) liens created by the act or omission of PGE; (c) any other encumbrances created or permitted with the prior written consent of PGE; and (d) any encumbrances that will not

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have an adverse effect on the construction, ownership, operation or performance of the Project and/or Project Assets.

“**Person**” shall mean any natural person, corporation, limited liability company, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

“**PGE**” shall have the meaning given to it in the Preamble.

“**PGE Conditions Precedent**” shall have the meaning given to it in Section 3.2.

“**PGE Confidential Information**” shall have the meaning given to it in Section 7.1.

“**PGE Indemnified Party**” shall have the meaning given to it in Section 9.3.1.

“**PGE Indemnity Cap**” shall have the meaning given to it in Section 9.7.2.

“**PGE Required Regulatory Approvals**” shall mean those items listed on Part II of Schedule 6.5.

“**Placed in Service**” means placed in service for purposes of (a) Sections 48(b)(2) and (3) of the Code (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and (b) Section 168 of the Code.

“**Project**” shall mean that certain [[_____] MW [solar] [wind] [hydroelectric] [OTHER TECHNOLOGY]² energy generating project [under development] [located in _____]].

“**Project Assets**” shall mean the assets, other than Retained Contracts, set forth on Schedule 5.7, which shall include all assets and rights of any kind, related to the ownership, operation or maintenance of the Project and owned by Seller, whether tangible or intangible, real or personal, including land and properties (or interests therein including rights of way, leaseholds and easements), buildings, equipment, machinery and associated equipment, improvements, fixtures, agreements, contracts, renewable resource data, reports and studies (including those related to interconnection, environmental, cultural, resource and market matters), the ownership of Environmental Attributes created on or after the Closing Date, Permits, software and intellectual property, inventory, books and records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

² NTD: Bidder to include appropriate technology descriptor.

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“Prudent Utility Standards” shall mean those practices, methods, equipment, specifications and standards of care, skill, safety and diligence and acts as the same may change from time to time, but applied in light of the facts known at the time, as are generally applied or utilized under comparable circumstances by experienced and prudent professionals in respect of the interconnection, transmission, ownership, operation or maintenance of renewable resource generating facilities of comparable type and complexity to the Project and which would have been expected to accomplish the desired result in a manner consistent with Applicable Law, safety, environmental protection, economy and expedition. Prudent Utility Standards are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather, refer to a range of actions reasonable under the circumstances.

“Purchase Price” shall have the meaning given to it in Section 2.3.

[**“Real Property Agreements”** shall mean the agreements set forth on Schedule 5.8 evidencing the Real Property Interests.]

[**“Real Property Interests”** shall mean, collectively, [_____].]

“Renewable Resource Data” means any and all renewable resource data measured by Seller at the Site and collected by the meteorological towers on the Site through the Closing Date and which are included as part of the Project Assets.

“Representatives” shall mean, with respect to a Person, such Person’s directors, partners, officers, managers, employees, members, agents and representatives, including attorneys, accountants, consultants, potential lenders, lenders, potential investors, investors and financial advisors.

“Retained Contracts” shall have the meaning given to it in Section 5.10.5.

“Retained Liabilities” shall mean all Liabilities of Seller or its Affiliates of every kind or nature whatsoever other than Assumed Liabilities.

“RFP” shall mean that certain request for proposals for renewable energy resources issued by PGE in _____ 2021 and conducted in accordance with the OPUC Competitive Bidding Guidelines set forth in [OPUC Order _____ (Docket UM-_____)], dated _____].

“Seller” shall have the meaning given to it in the Preamble.

“Seller Conditions Precedent” shall have the meaning given to it in Section 3.3.

“Seller Confidential Information” shall have the meaning given to it in Section 7.2.1.

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“***Seller Contracts***” shall have the meaning given to it in Section 5.10.1.

“***Seller’s Exclusivity Obligations***” shall have the meaning given to it in Section 8.2.

“***Seller Indemnified Party***” shall have the meaning given to it in Section 9.4.1.

“***Seller Indemnity Cap***” shall have the meaning given to it in Section 9.7.1.

“***Seller Required Regulatory Approvals***” shall mean those items listed on Part II of Schedule 5.6.

“***Site***” shall mean [_____]³.

“***Tax***” or “***Taxes***” shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative, minimum, estimated or similar tax, levy or assessment and any related interest or penalty.

“***Tax Return***” shall mean any return, report, statement, claim for refund, information return or other document (including any amendments thereto and any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of Taxes or the administration of any Applicable Law relating to Taxes.

“***Third-Party Claim***” shall have the meaning given to it in Section 9.6.

“***Title Company***” means [_____].

“***Title Policy***” means [_____].

“***Treasury***” shall mean the United States Department of Treasury, including any successor agency.

“***Treasury Regulations***” shall mean the Treasury regulations promulgated under the Code, including any successor regulations.

“***WECC***” shall mean Western Electricity Coordinating Council.

³ NTD: Bidder to provide description of project site.

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1.2 Construction. Headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement.

1.2.1 A reference to an Exhibit, Schedule, Article, Section or other provision shall be, unless otherwise specified, to exhibits, schedules, articles, sections or other provisions of this Agreement, which exhibits and schedules are incorporated herein by reference.

1.2.2 Any reference in this Agreement to another agreement or document shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated, assigned or otherwise transferred.

1.2.3 Any reference in this Agreement to “this Agreement,” “herein,” “hereof” or “hereunder” shall be deemed to be a reference to this Agreement as a whole and not limited to the particular Article, Section, Exhibit, Schedule or provision in which the relevant reference appears and to this Agreement as varied, amended, supplemented, substituted, novated, assigned or otherwise transferred from time to time.

1.2.4 References to any Party shall, where applicable, include any successors, transferees and permitted assigns of the Party.

1.2.5 References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

1.2.6 Words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders.

1.2.7 If the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day.

1.2.8 References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

1.2.9 References to any amount of money shall mean a reference to the amount in United States Dollars.

ARTICLE 2

PURCHASE AND SALE OF ASSETS; PURCHASE PRICE AND PAYMENT

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2.1 Purchase and Sale. Subject to and upon the terms and conditions of this Agreement, including (a) the satisfaction or written waiver by PGE of the PGE Conditions Precedent, and (b) the satisfaction or written waiver by Seller of the Seller Conditions Precedent, on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to PGE, and PGE shall purchase, acquire and accept from Seller, all of the Project Assets, free and clear of any and all Liens other than Permitted Liens. Upon the consummation of the purchase by PGE of the Project Assets, PGE agrees to assume and become responsible for, and shall pay, discharge or perform when due, all of the Assumed Liabilities as of and after the Closing Date. PGE and its Affiliates shall not assume or incur any Liability in respect of, and Seller shall remain bound by and be liable for, and shall pay, discharge or perform when due, the Retained Liabilities.

2.2 Instruments of Conveyance. The sale, conveyance, assignment, transfer and delivery of the Project Assets will be effected by the execution and delivery by Seller and PGE of (a) the Bill of Sale, substantially in the form of Exhibit A, (b) the Assignment and Assumption Agreement substantially in the form set forth in Exhibit B, [(c) assignments of the Real Property Interests in recordable form, substantially in the form set forth in Exhibit C,] and (d) such other agreements or documents requested by PGE, with the items described in clauses (a) through (d) of this Section 2.2 collectively referred to herein as the “*Instruments of Conveyance*.”

2.3 Payments. As consideration for the sale, transfer, assignment, conveyance and delivery by Seller to PGE of the Project Assets, PGE will pay to Seller the “*Purchase Price*” in an amount equal to [_____] as further described and on the terms and conditions contained in this Agreement.⁴

2.3.1 [Payment Terms.]⁵ [_____].

2.3.2 Wiring Instructions. PGE shall pay the Purchase Price, to the extent due pursuant to the terms of this Agreement, to Seller by depositing the applicable amount for Seller’s account into the account listed below (the “*Account*”) by the date due (as provided in this Article 2) in accordance with the following transfer instructions, or such other instructions as Seller may provide to PGE in writing:

⁴ NTD: Post-closing adjustments determined by Buyer, and settled by an independent account, to be included where appropriate.

⁵ NTD: Bidder to propose additional payment terms, as applicable.

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TO: [_____]

Account No.: [_____]

ABA Routing No.: [_____]

Bank Name: [_____]

Branch Address: [_____]

Contact: [_____]

2.4 Late Payments. Unless otherwise specified herein, the amount of any payment due by either PGE or Seller pursuant to the terms of this Agreement that is not paid when due hereunder shall bear interest at an annual rate equal to the lower of the Federal Funds Effective Rate plus two percent (2%) or the maximum rate allowed by Applicable Law, from the date such payment was required to have been made through and including the date such payment is actually received by the Party to whom such payment is due.

2.5 Further Assurances; Cooperation. At any time, and from time to time after the Closing Date, at either Party's reasonable request, the other Party shall promptly execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation, as are reasonably required, and take all such other action as the requesting Party may reasonably request, in connection with the performance of such Party's obligations under this Agreement. From and after the Effective Date until the Closing Date, each Party shall reasonably cooperate with the other Party in connection with the performance of such Party's obligations under this Agreement.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Conditions Generally. For purposes of this Agreement, there shall be conditions which must be satisfied or waived prior to the Closing. PGE's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by PGE, of each of the PGE Conditions Precedent, and Seller's obligation to cause the Closing to occur is subject to the satisfaction or waiver in writing by Seller, of each of the Seller Conditions Precedent, in each case within the applicable time periods herein. Seller and PGE expressly acknowledge and agree that each of the (a) PGE Conditions Precedent are for the sole benefit of and may only be waived by PGE in writing, and (b) Seller Conditions Precedent are for the sole benefit of and may only be waived by Seller in writing.

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3.2 PGE Conditions Precedent to the Closing. PGE shall not be obligated to effect the Closing hereunder if the following conditions precedent (the “*PGE Conditions Precedent*”) are not satisfied (or waived in writing by PGE) on or prior to the Closing Date:

3.2.1 [Project Specific Conditions. _____] ⁶.

3.2.2 Third-Party Consents. All authorizations, approvals and consents of all Persons, including Governmental Authorities, that are required in connection with the execution, delivery, and performance of this Agreement by each of PGE and Seller shall have been received.

3.2.3 Certificates. PGE shall have received a certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to PGE, of a duly authorized officer of Seller certifying that attached thereto are the following: (a) the incumbency of Seller’s officers executing this Agreement and any other agreement delivered on the Closing Date and any certificate delivered in connection with the Closing; (b) true, accurate and complete copies of the certificates issued by the Secretary of State of the State of [_____] within ten (10) days of the Closing Date certifying that Seller is duly [organized] [incorporated] [formed] and validly existing under the laws of the State of [_____] and is current in payment of Taxes in such state; (c) true, accurate and complete resolutions of Seller duly authorizing the execution, delivery and performance of this Agreement and all other related agreements and transactions contemplated hereby and thereby, and that such resolutions are in full force and effect as of the Closing Date; (d) the certificate of formation of Seller, as certified by the Secretary of State of the State of [_____]; and (e) the [operating agreement] [by-laws] of Seller (as amended through the Closing Date).

3.2.4 Representations and Warranties. Each of the representations and warranties of Seller in this Agreement shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except to the extent such representations and warranties are made as of a particular date, in which case such representations and warranties shall be true and correct as of such date).

3.2.5 UCC Search Report. PGE shall have received Uniform Commercial Code search reports from the relevant jurisdictions covering the Seller with respect to the Project Assets, the results of which shall be satisfactory to PGE in its sole discretion.

⁶ NTD: PGE reserves the right to require additional conditions precedent to be met prior to the Closing, based on the nature and state of development of Bidder’s project. Such conditions may include, but are not limited to, delivery of a title insurance policy, survey, Permits and environmental reports.

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3.2.6 Performance. Seller shall have performed, in all material respects, each and all of the covenants and obligations required to be performed by it prior to the Closing Date, on or prior to the Closing Date.

3.2.7 Litigation. No action or proceeding by or before any court or other Governmental Authority shall have been instituted or threatened by any Governmental Authority or Person whatsoever that (a) could result in the impairment, restraint, prohibition or invalidation of the Closing, (b) could reasonably be expected to have a Material Adverse Effect on Seller, the Project or the Project Assets, (c) challenges any Permit in a way that could reasonably be expected to invalidate, impair or restrain, in a material way, such Permit, in PGE's reasonable discretion, or (d) could reasonably be expected to have a material adverse effect on PGE's ability to consummate the Closing.

3.2.8 No Material Adverse Effect. As of the Closing Date, no Material Adverse Effect shall have occurred with respect to Seller, the Project or the Project Assets.

3.2.9 Regulatory Approvals. The Seller Required Regulatory Approvals in Schedule 5.6 and the PGE Required Regulatory Approvals in Schedule 6.5 shall have been made or obtained and shall have become Final Orders.

3.2.10 FIRPTA Certificate. Seller shall have executed and delivered an affidavit, dated as of the Closing Date, 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 under other applicable Tax law).

3.2.11 Assignment of Project Contracts and Real Property Interests.⁷ PGE shall have received an assignment of each Contract (as set forth on Schedule 5.10) and each Real Property Interest (as set forth on Schedule 5.8), executed by all parties thereto, all in form and substance reasonably acceptable to PGE, and an estoppel letter from each counterparty to each Contract executed and delivered no earlier than ten (10) days prior to the Closing Date substantially similar to the form set forth in Exhibit D.

3.2.12 Completion of Due Diligence. PGE shall have completed its due diligence review of the Project and the Project Assets to its satisfaction.

⁷ NTD: Any assignment of a Real Property Interest must be in recordable form and shall be recorded at Closing.

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3.2.13 Orders and Laws. There shall be no effective injunction, writ or restraining order or any order of any nature issued by a Governmental Authority of competent jurisdiction that prevents the consummation of the transactions contemplated by this Agreement.

3.2.14 Title Insurance. PGE shall have received a copy of the Title Policy from the Title Company in form and substance acceptable to PGE.⁸

3.3 Seller Conditions Precedent to the Closing. Seller shall not be obligated to effect the Closing hereunder if the following conditions precedent (the “*Seller Conditions Precedent*”) are not satisfied (or waived in writing by Seller) on or prior to the Closing Date:

3.3.1 Certificates. Seller shall have received a certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Seller, of a duly authorized officer of PGE certifying that attached thereto are the following: (a) the incumbency of PGE’s officers executing this Agreement and any other agreement delivered on the Closing Date and any certificate delivered in connection with the Closing; (b) true, accurate and complete copies of the certificates issued by the Secretary of State of the State of Oregon within ten (10) days of the Closing Date certifying that PGE is duly organized and validly existing under the laws of the State of Oregon and is current in payment of Taxes in such state; (c) true, accurate and complete resolutions of PGE duly authorizing the execution, delivery and performance of this Agreement and all other related agreements and transactions contemplated hereby and thereby, and that such resolutions are in full force and effect as of the Closing Date; and (d) the certificate of formation of PGE, as certified by the Secretary of State of the State of Oregon.

3.3.2 Representations and Warranties. Each of the representations and warranties of PGE in this Agreement shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except to the extent such representations and warranties are made as of a particular date, in which case such representations and warranties shall be true and correct as of such date).

3.3.3 Performance. PGE shall have performed, in all material respects, each and all of the covenants and obligations required to be performed by it prior to the Closing Date, on or prior to the Closing Date.

3.3.4 Litigation. No action or proceeding by or before any court or other Governmental Authority shall have been instituted that seeks to impair, restrain, prohibit or

⁸ NTD: Bidders must possess at least one of proof of title to the Site, an executed lease agreement, and executed easement, and execution option agreement applicable to a minimum of 80% of the project site.

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invalidate the Closing (other than an action or proceeding commenced by Seller or an Affiliate of Seller).

3.3.5 Regulatory Approvals. The Seller Required Regulatory Approvals and the PGE Required Regulatory Approvals shall have been made or obtained and shall have become Final Orders. The PGE Required Regulatory Approvals shall have been made or obtained at PGE's cost.

3.4 Term; Termination.

3.4.1 Term. This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement, shall remain in full force and effect until the obligations of each of the Parties under the Agreement shall have been satisfied in full or waived in writing by the other Party, as applicable.

3.4.2 [Termination]. This Agreement may be terminated prior to the Closing as follows:

- (a) By the mutual written consent of the Parties;
- (b) by PGE upon written notice to Seller of such termination, in the event the Closing has not occurred on or before [_____]; provided, that the failure to consummate the transactions contemplated by this Agreement did not result from the failure by PGE to fulfill in any material respect any undertaking or commitment provided for herein that is required to be fulfilled by it prior to the Closing; or⁹
- (c) By PGE in the event any of the Project Assets is taken by condemnation, or any of the Project Assets is damaged or destroyed by fire, storm, explosion or other casualty loss.
- (d) by either Party, upon written notice to the other Party of such termination due to a breach of or default under this Agreement which breach or default continues for thirty (30) days after the non-breaching Party has delivered written notice of the default or breach to the breaching Party.]¹⁰

3.5 Effect of Termination; Remedies.

⁹ NTD: PGE termination rights may be expanded depending upon the nature of the project and the asset. For instance, where pre-closing deliverables include completion of certain diligence reporting to PGE's satisfaction, PGE will require a termination right to the extent the findings in such reports are is not acceptable.

¹⁰ NTD: This Section can be omitted for any transaction that contemplates a simultaneous signing and closing.

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3.5.1 In the event that this Agreement is validly terminated in accordance with Section 3.4, this Agreement shall forthwith have no further force and effect and, except as set forth in this Agreement to the contrary, there shall be no further liability or obligation on the part of PGE or Seller under this Agreement. No such termination shall serve (a) to release any Party from any liability with respect to any breach of its duties and obligations hereunder prior to such termination, or (b) to void or terminate the limitations on liability expressly set forth in this Agreement.

3.5.2 Notwithstanding the foregoing, Article 7 (Confidential Information) shall survive the termination of this Agreement for a period of two (2) years from the date on which such termination occurs.

ARTICLE 4 CLOSING

4.1 Place of Closing. Upon the terms and conditions set forth in this Agreement, the sale of the Project Assets (the “**Closing**”) shall take place no later than the second Business Day after satisfaction or waiver of the conditions set forth in Article 3, unless this Agreement has been terminated prior to such date in accordance with the provisions of Section 3.4 (the actual time and date of the Closing being referred to herein as the “**Closing Date**”). The Closing shall take place at PGE’s offices or at such other location as the Parties may agree, on the Closing Date.

4.2 Closing Deliveries. On the Closing Date, the following shall occur:

4.2.1 Payment of Purchase Price. PGE shall deliver to Seller the Purchase Price in accordance with Section 2.3.1.

4.2.2 Delivery of Certificates by Seller. On the Closing Date, Seller shall deliver to PGE a certificate, dated as of the Closing Date, in form and substance satisfactory to PGE, stating that (a) the conditions set forth in Section 3.3 have been satisfied or waived in writing by Seller, and (b) that all representations and warranties of Seller set forth in Article 5 are true and correct as of the Closing Date (except to the extent such representations and warranties are made as of a particular date in which case such representations and warranties shall be true and correct as of such date).

4.2.3 Delivery of Certificates by PGE. On the Closing Date, PGE shall deliver to Seller one or more certificates of PGE, in form and substance satisfactory to Seller, stating that (a) the conditions set forth in Section 3.2 have been satisfied or waived in writing by PGE, and (b) that all representations and warranties of PGE set forth in Article 6 are true and correct as of the Closing Date (except to the extent such representations and warranties are made as of a particular date in which case such representations and warranties shall be true and correct as of such date).

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4.2.4 Other Items. All other items required to be delivered or received as a Seller Condition Precedent or as a PGE Condition Precedent shall have been delivered to, or received by, Seller or PGE, as applicable, unless waived. Without limiting the generality of the foregoing, unless already delivered or unless waived by the relevant Party, the following documents, instruments and certificates shall be delivered at Closing: (a) by each Party to the other Party, executed counterparts of the Instruments of Conveyance; (b) by PGE to Seller, all documents, instruments and certificates required to be delivered by PGE to Seller pursuant to this Agreement; (c) by Seller to PGE, all documents, instruments and certificates required to be delivered by Seller to PGE pursuant to this Agreement; and (d) by Seller to PGE, all books, records[and operating logs] relating to the Project and the Project Assets, in the possession of, or subject to the control of, Seller.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to PGE that, as of the Effective Date [and as of the Closing Date]¹¹, the following are true and correct:

5.1 Organization and Authority. Seller is a [_____] duly [organized] [formed], validly existing and is qualified to do business under the laws of the State of [_____] , and has all requisite power and authority to own the Project Assets, to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to carry on its business as now being conducted. Seller is duly qualified to do business and is in good standing in all other jurisdictions in which its ownership of property or the character of its business requires such qualification.

5.2 Binding Agreement. All necessary action on the part of Seller has been taken to authorize the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been, and the other documents and instruments required to be delivered by Seller in accordance with the provisions hereof at the Closing have been, or will be, duly and validly executed and delivered by Seller, and upon execution and delivery thereof by Seller, will constitute the valid and binding agreement and obligations of Seller, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such

¹¹ NTD: This item can be omitted for any transaction that contemplates a simultaneous signing and closing.

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enforceability is considered in any proceeding in equity or at law), including the availability of injunctive relief.

5.3 No Adverse Order or Injunctions. Seller is not a party to, nor is Seller subject to or bound by, nor does there exist any agreement, or any judgment, order, writ, prohibition, injunction or decree of any Governmental Authority with respect to Seller, which would prevent the execution, delivery or performance of this Agreement by Seller, or the transfer, conveyance and sale of all of the Project Assets to PGE pursuant to the terms hereof.

5.4 Litigation. There is no action, suit, investigation or proceeding pending in which Seller has been named or served as a party or threatened against Seller before any Governmental Authority.

5.5 No Conflicts. None of the execution, delivery nor performance by Seller of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the compliance by Seller with any of the provisions of this Agreement, will result in: (a) a violation of or a conflict with any provision of the formation documents of Seller or any law, judgment, order, writ, decree, determination, award or injunction applicable to Seller; (b) a breach or violation of, a conflict with or a default under, or the creation of a right of any Person to accelerate, terminate or cancel any Contract; (c) a violation by Seller of any Applicable Laws; or (d) a violation, or conflict with, or result in a breach of any provision of, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under, or result in the termination, cancellation, suspension, modification or acceleration of, or result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or result in the impairment, loss or forfeiture of any material benefit, rights or privilege under, or the creation of any Lien or other encumbrance upon any of the assets of Seller under any contract, note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Seller is a party.

5.6 Third-Party Consents. Part I of Schedule 5.6 sets forth a true, correct and complete list of all consents and approvals of all Persons, including Governmental Authorities, (other than any Permits) that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement. Part II of Schedule 5.6 sets forth a true, correct and complete list of all Seller Required Regulatory Approvals that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

5.7 Project Assets.

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5.7.1 Seller holds of record and owns beneficially one hundred percent (100%) of the ownership interests of the Project Assets. Seller does not currently own any asset necessary for PGE to be able after the Closing to develop, construct, own, operate or maintain the Project in accordance with Prudent Utility Standards, except such assets that are (or by the Closing, will be) included in the Project Assets. Schedule 5.7 sets forth a true, accurate and complete list of the Project Assets owned by Seller, which constitute all of the assets and rights of any kind necessary for PGE to develop, construct, own, operate and maintain the Project.

5.7.2 [The Project and the tangible personal property included in the Project Assets are in normal operational condition for a similar project and similar assets of a similar age, free of defects about which Seller has Knowledge and that could have a material adverse impact on such operation, and are in good working order, except for ordinary wear and tear and routine maintenance (in each case, consistent with Prudent Utility Standards), except where the failure to be in good working order would not reasonably be expected to have material adverse impact on any Project Asset. Seller has not operated the Project in a manner that violates the conditions of any warranty in any material respect. As of the Closing, the Project Assets are sufficient to enable PGE to [own, operate, interconnect and maintain the Project] immediately following the Closing in all material respects in the same manner as the Project was in the ordinary course of business previously [owned, operated and maintained by Seller.]

5.7.3 Seller has good, valid and marketable title to all the Project Assets, which are free and clear of any and all Liens, other than Permitted Liens.

5.7.4 [There are no existing or continuing claims against Seller, the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller (with respect to the Project Assets)).]

5.8 [Real Estate.

5.8.1 Schedule 5.8 sets forth a true, accurate and complete list of the Real Property Interests Seller holds with respect to the Project and that will be assigned to PGE at Closing.]

5.8.2 [Seller represents and warrants to PGE that the Real Property Agreements: (a) comprise all of the property interests and other rights necessary in connection with the ownership, operation and maintenance of the Project in accordance with Applicable Law and Permits; (b) with respect to the Real Property Agreements, Seller has delivered to PGE correct and complete copies of each of them; (c) provide legal and practical ingress and egress rights for any reasonable purpose in connection with the development, construction, ownership, operation and maintenance of the Project; (d) each of the Real Property Agreements constitute the legal, valid and binding obligations of Seller, and the counterparties thereto, and are in full force and effect

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except, in each case, as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles; (e) each of the Real Property Agreements 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 herein) except, in each case, as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles; (f) no party to any Real Property Agreements is in breach or default and, no event has occurred which, with notice or lapse of time or without a cure being completed, would constitute a breach or default or permit termination or modification thereof or acceleration thereunder; (g) no party to any Real Property Agreement has repudiated any provision thereof; (h) there are no disputes, oral agreements or representations or forbearance programs in effect as to any Real Property Agreements; (i) no Real Property Agreement has been assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered by Seller; and (j) except as set forth in the Real Property Agreements, there are no rents, royalties, fees or other amounts payable or receivable by Seller or any Person in connection with any Real Property Interests.]

5.9 Tax Matters. Seller represents and warrants with respect to itself:

5.9.1 All Tax Returns required to have been filed with respect to the Project and the Project Assets have been duly and timely filed and each such Tax Return was true, correct and complete in all material respects. All Taxes required to be paid (whether or not shown on any Tax Return) with respect to the Project and the Project Assets have been duly and timely paid. Seller has adequately provided for, in its books of account and related records, liability for all unpaid Taxes with respect to the Project and the Project Assets.

5.9.2 Solely with respect to the Project or any of the Project Assets: (a) there is no action, audit, dispute or claim now pending against, or any proposed or threatened action, audit, dispute or claim against, or with respect to, Seller in respect of any Taxes; (b) no Tax Return of Seller has been subject to examination or audit; (c) Seller has not received from any Governmental Authority any written (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any taxing authority; and (d) no written claim has been made by a Governmental Authority in any jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by such jurisdiction.

5.9.3 Neither the Project nor any of the Project Assets constitutes tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code. None of Seller or any of its Affiliates has applied for, claimed or received a Cash Grant, production tax credit pursuant to Code Section 45, or an investment tax credit pursuant to Code Section 48

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with respect to any of the Project Assets. At least 80% of the Project Assets constitutes “new Section 38 property,” as defined in Treasury Regulation Section 1.48-2. Neither the Project nor any Project Assets have been Placed in Service. Either: (a) the Project is a “qualified facility” that produces electricity using “qualified energy resources” within the meaning of Sections 45(d)(1) and 45(a)(2)(A)(i) or the Code, respectively; (b) the Project Assets are “energy property” within the meaning of Section 48(a)(3) of the Code; or (c) the Project Assets are “qualified property” or a “qualified investment credit facility” within the meaning of Section 48(a)(5) of the Code. In respect of any financial projections setting forth the amount of depreciation deductions available under Section 168 of the Code, or any tax credits available pursuant to either Section 45 or Section 48 of the Code, in each case in respect of the Project or any Project Assets, (i) the facts and information used to create such financial projections are true, complete and correct and (ii) such financial projections are based on reasonable assumptions and, to the Knowledge of Seller, fairly represent the expected performance of the Project and the Project Assets.

5.9.4 Seller is not a “foreign person” as defined in Section 1445(f)(3) of the Code, and Seller will provide to PGE the certification described in Section 1445(b)(2) of the Code and Treasury Regulations Section 1.1445-2(b).

5.9.5 There are no Liens (other than Permitted Liens) for unpaid or delinquent Taxes, assessments or other charges or deposits upon the Project or the Project Assets.

5.10 [Contracts.]

5.10.1 [Part I of Schedule 5.10] sets forth a true, accurate and complete list of all written agreements and contracts entered into by Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project (the “***Seller Contracts***”). [Part II of Schedule 5.10] sets forth a true, accurate and complete list of all written agreements and contracts entered into by Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be retained by Seller. [Part III of Schedule 5.10] sets forth a true, accurate and complete list of all written agreements and contracts entered into by an Affiliate of Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be assigned to PGE on the Closing Date (the “***Affiliate Contracts***” and together with the Seller Contracts, the “***Contracts***”). [Part IV of Schedule 5.10] sets forth a true, accurate and complete list of all written agreements and contracts entered into by an Affiliate of Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be retained by Seller.]

5.10.2 [Each Contract has been duly authorized, executed and delivered by Seller, is in full force and effect, and constitutes the legal, valid, binding and enforceable agreement as to Seller, the respective counterparties thereto, and will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement, except, in each case, as such

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enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.]

5.10.3 [Neither Seller (or its Affiliate with respect to the Affiliate Contracts), nor the counterparty thereto, is in material breach of or in default under any Contract, no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of material rights or permit termination or acceleration under, or result in the creation of any Lien (other than a Permitted Lien) under any Contract.]

5.10.4 [Neither Seller nor any of Seller's Affiliates, as the case may be, has sold or transferred, or agreed to sell or transfer, or granted any options or rights to purchase energy or Environmental Attributes related to the electric power to be generated by the Project for any period after the Closing.]

5.10.5 [Each of the Contracts listed on Parts II and IV of Schedule 5.10 (the "***Retained Contracts***") will not be assigned to PGE as part of the Project Assets. None of the Retained Contracts will provide any material ongoing benefit to the Project on or after the Closing Date, nor will their retention with Seller cause any material adverse effect with respect to the Project or its operation.]

5.11 Legal Compliance. Seller is in compliance with all Applicable Laws (other than Environmental Laws, which are the subject of Section 5.12) with respect to the Project and the Project Assets.

5.12 [Environmental Laws.]

5.12.1 [Seller has conducted its activities with respect to the development of the Project and the Project Assets in compliance with all Environmental Laws, and no action, suit, proceeding, hearing, investigation or written charge, complaint, claim, demand or notice has been filed or commenced or threatened against Seller (with respect to the Project Assets), the Project or the Site alleging any failure to comply with or any violation of any applicable Environmental Law.]

5.12.2 [All environmental investigations, studies, audits, tests, reviews or other analyses conducted on behalf of, or that are in the possession of, Seller in relation to the Site, the Project Assets and the Real Property Interests have been delivered to PGE prior to the Effective Date of this Agreement and there are no other such items.]

5.13 [Permits. Schedule 5.13 sets forth a true, correct and complete list of all Permits that Seller is required to obtain, and has obtained, in order to develop, construct, operate, and maintain the Project. All Permits set forth on Schedule 5.13 are properly in the name of Seller and are in full force and effect. Seller has provided PGE with a true and correct copy of each such

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Permit. Seller is in material compliance with all Permits set forth on Schedule 5.13 and Seller has not received any written notification from any Governmental Authority alleging that it is in violation of any such Permits. No material action, or written deficiency notice, demand or notice of any challenge is pending or, to Seller's Knowledge, threatened, which challenges the legality, validity or enforceability of any such Permit, or that attempts to modify in any adverse manner the requirements pertaining to any obtained Permit or application for a Permit.]

5.14 Renewable Resource Data. Schedule 5.14 of this Agreement sets forth a true, correct and complete list of the Renewable Resource Data, which data does not contain any material errors. Seller has the right to use and to validly transfer to PGE the Renewable Resource Data.]

5.15 Solvency. Seller is solvent and has sufficient assets and capital to carry on its business as it is now conducted and to perform its obligations hereunder. No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller, nor does Seller have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and has sufficient assets and capital to carry on its businesses as they are now conducted and to perform its obligations hereunder.

5.16 Brokers. Seller does not have any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement.

5.17 Investment Company. Seller is not an “investment company” or a company controlled by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

5.18 Intellectual Property. Seller has the right to use and to transfer to PGE all patents, trademarks, copyrights or other intellectual property rights used in connection with the Project Assets, and which constitute all intellectual property necessary for the operation, maintenance or use of the Project. Seller has not infringed nor has been claimed to have infringed the patent, trademark, copyright or other intellectual property rights of any Person. No Person is infringing the patent, trademark or other intellectual property rights of Seller.]

5.19 Material Misstatements or Omissions. None of the representations or warranties (a) given by Seller in this Agreement (including the Schedules hereto) or any certificate delivered by Seller at Closing, (b) included in any document, exhibit, written communication, certificate or schedule heretofore prepared by Seller, an Affiliate of Seller or a Representative (commissioned

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by Seller or an Affiliate of Seller) and furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement (including any and all materials delivered to and written communication made to any Governmental Authority), or (c) included in any document, exhibit, written communication, certificate or schedule heretofore furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement, that was not prepared by Seller, an Affiliate of Seller or a Representative (commissioned by Seller or an Affiliate of Seller) (including any and all materials delivered to and written communication made to any Governmental Authority), when taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained in such representations or warranties, in light of the circumstances in which they were made, not materially misleading.

5.20 Employees and Labor Matters.

5.20.1 [Seller does not have any employees with respect to the Project.

5.20.2 The persons identified on Schedule 5.20(b) provide full-time or recurring and continuous part-time on site services to the Business with respect to the Project and are employed by a third party vendor or Affiliate of Seller pursuant to an agreement with such third-party vendor or Affiliate of Seller (“Project Employees”).

5.20.3 Schedule 5.20(c) lists each Contract between a third-party vendor and Seller or any Affiliate of Seller pursuant to which Project Employees provide material on site employee services principally dedicated to Seller with respect to the Business. Each such Contract is governed by a collective bargaining agreement between such third-party vendor and Seller or its Affiliate, each of which is also disclosed in Schedule 5.20(c).

5.20.4 There are no presently occurring, nor, to Seller's Knowledge threatened, labor strikes, work stoppages, slowdowns, or lockouts or other labor disputes by or involving any of the Project Employees with respect to the Business.

5.20.5 Neither Seller nor any of its Affiliates have received any written notice that any petition respecting any Project Employees who are principally dedicated to the Business, has been filed with the National Labor Relations Board.

5.20.6 Neither Seller nor any of its Affiliates have received any written notice with respect to the Project Employees who are principally dedicated to the Business, of any charges before any Governmental Authority responsible for the prevention of unlawful employment practices.

5.20.7 Neither Seller nor any of its Affiliates have received any written notice of any investigation related to the Project Employees who are principally dedicated to the Business

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by a Governmental Authority responsible for the enforcement of labor or employment Laws and regulations and, to Seller's Knowledge, no such investigation is threatened.

5.21 Employee Benefit Plans

5.21.1 Seller does not have any Benefit Plans or any liability with respect to any Benefit Plans that would be a liability of Buyer following the Closing.

5.21.2 There does not now exist, nor do any circumstances exist that would result in, any Controlled Group Liability that would be a liability of Buyer following the Closing. Without limiting the generality of the foregoing, neither Seller nor any of its Affiliates are an ERISA Affiliate that has engaged in any transaction described in Section 4069 or Section 4204 of ERISA.

5.21.3 No Benefit Plan of any Affiliate of Seller with respect to the Project Assets or the Business contains any term or provision that would prohibit the transactions contemplated by this Agreement.

5.21.4 No Benefit Plans of any Affiliate of Seller with respect to the Project Assets or the Business are presently under audit or examination by the Internal Revenue Service, the Department of Labor, or any other governmental agency or entity that would result in liability to Buyer.

5.22 FERC/NERC/DOE/WECC/[] Matters.

5.22.1 Seller has made available to Buyer copies of all material written reports of assessments, investigations, compliance audits, remedial actions, or other investigative or response activities conducted at or with respect to the Project regarding any FERC, NERC-, DOE-, WECC- and/or [] requirements, including cyber security and testing requirements, that are in the possession of Seller.

5.22.2 Seller and the Project have operated in compliance in all material respects with all applicable FERC, NERC-, DOE-, WECC- and/or []-related requirements, including cyber security and testing requirements.

5.22.3 (i) Seller has not been served with written notice of any actual or threatened notice of violation of any FERC, NERC-, DOE-, WECC- and/or []-related requirements, or other action, proceeding, investigation, or inquiry pursuant to any FERC, NERC-, DOE-, MISO- and/or PJM-related requirements, and (ii) no Claim regarding any FERC, NERC-, DOE-, WECC- and/or []-related requirements is pending or, to Seller's Knowledge, threatened, against Seller, in each case including cyber security and testing requirements.

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5.23 Financial Statements.

5.23.1 Seller's has previously delivered to Buyer true, correct and complete copies of the audited Financial Statements of Seller as of [*insert date*] (the "**Seller's Audited Financial Statements**"). The Seller's Audited Financial Statements have been prepared in accordance with [GAAP] consistently applied throughout the periods involved (except as may be stated therein or in the notes thereto). The Seller Audited Financial Statements present fairly, in all material respects, the financial position, statements of operations and comprehensive income, members' equity and cash flows of Seller's as of the date thereof and for the applicable period covered thereby.

5.24 Absence of Certain Changes.

Since [*insert date*] and through the date hereof, (a) Seller has operated the Business and the Project Assets in the ordinary course of business and in a manner that is materially consistent with Prudent Utility Standards, (b) there has not been any Material Adverse Effect with respect to the Business or the Project Assets, and (c) there has not been any event or condition that would reasonably be expected to prevent or delay Seller from consummating the transactions contemplated by this Agreement.

5.25 Supply-Chain Ethics.

5.25.1 Seller neither currently engages in nor has previously engaged in the use of any Forced Labor, nor, to its Knowledge, do any of its suppliers or contractors currently engage in nor have they previously engaged in the use of any Forced Labor. Seller has implemented, and has made commercially reasonable efforts to ensure its contractors and suppliers implement, policies, procedures and monitoring programs to monitor, collect and mitigate the use or potential use of any Forced Labor or Material ESG Incidents.

5.25.2 As of [*insert date*], there is no unresolved Material ESG Incident relating to the Project Assets involving Seller that could materially and adversely impact the Project, the Business or the Owner.

5.26 [Project-Specific Representations.]¹²

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF PGE

¹² NTD: PGE reserves the right to require the inclusion of additional representations and warranties based on the nature and state of development of Bidder's project. Such representations may include, but are not limited to, representations regarding permitting, regulatory status, insurance, inventory, affiliate transactions and studies and reports.

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PGE represents and warrants to Seller that, as of the Effective Date [and as of the Closing Date], the following are true and correct:

6.1 Organization and Authority. PGE is a corporation duly organized, validly existing and is qualified to do business under the laws of the State of Oregon, and has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. PGE is duly qualified to do business and is in good standing in all other jurisdictions in which its ownership of property or the character of its business requires such qualification, except where the failure to be so qualified would not reasonably be expected to have a material adverse effect with respect to PGE.

6.2 Binding Agreement. All necessary company action on the part of PGE has been taken to authorize the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been, and the other documents and instruments required to be delivered by PGE in accordance with the provisions hereof have been, or will be, duly and validly executed and delivered by PGE, and upon execution and delivery thereof by PGE, will constitute the valid and binding agreement and obligations of PGE, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in any proceeding in equity or at law), including the availability of injunctive relief.

6.3 No Adverse Order or Injunctions. PGE is not a party to, and to PGE's knowledge, is not subject to or bound by, any agreement, or any judgment, order or injunction of any Governmental Authority, which would prevent or have a material adverse effect on the execution, delivery or performance of this Agreement by PGE, or the purchase of the Project Assets by PGE pursuant to the terms hereof.

6.4 No Conflicts. Neither the execution, delivery nor performance by PGE of this Agreement will result in (a) a violation of or a conflict with any provision of the articles of incorporation, bylaws or other corporate documents of PGE, or (b) a violation by PGE of any Applicable Laws, except any such conflict, breach or violation, acceleration, termination or cancellation that would not have or be expected to have a material adverse effect on PGE.

6.5 Third-Party Consents. Part I of Schedule 6.5 sets forth a true, accurate and complete list of all consents and approvals of all Persons, including Governmental Authorities, that are required in connection with the execution, delivery and performance of this Agreement or the consummation by PGE of the transactions contemplated by this Agreement. Part II of Schedule 6.55.6 sets forth a true, correct and complete list of all PGE Required Regulatory Approvals that are required in connection with the execution, delivery and performance of this

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Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

6.6 Brokers. Neither PGE nor its Affiliates has any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement.

ARTICLE 7 CONFIDENTIAL INFORMATION

7.1 PGE Confidential Information.

7.1.1 Seller acknowledges that PGE Confidential Information (as defined below) is valuable and proprietary and Seller agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any PGE Confidential Information without the prior written consent of PGE. For purposes of this Agreement, “***PGE Confidential Information***” shall mean (i) any and all information provided by PGE to Seller and identified by PGE as confidential and (ii) any and all information provided by PGE to Seller with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be PGE Confidential Information if: (a) it has become generally known or available within the industry or the public through no act or omission of Seller; (b) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (c) 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 PGE; or (d) Seller can demonstrate it was independently developed by employees or consultants of Seller. Notwithstanding the foregoing, from and after the Closing, PGE Confidential Information shall include any information that is a Project Asset, whether or not of the type referred to in clauses (b), (c) or (d) above.

7.1.2 Seller shall maintain any PGE Confidential Information which has been or will be disclosed directly or indirectly to Seller by or on behalf of PGE or its Affiliates in confidence and shall not disclose or cause to be disclosed by them or any third person without PGE’s prior express written consent; provided, however, that Seller may disclose the PGE 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 informed of the duties required hereby.

7.1.3 Notwithstanding the preceding Section 7.1.1 and Section 7.1.2, PGE Confidential Information may be disclosed if required by any Governmental Authority or court or otherwise by Applicable Law; provided, however, that: (a) such PGE Confidential Information is submitted under any and all applicable provisions for confidential treatment and (b) PGE is given

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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.

7.1.4 Seller agrees that it will not make any use of any PGE 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 by PGE, and this Agreement shall not be construed as a license or authorization to Seller to utilize the PGE Confidential Information except for such purpose.

7.1.5 Seller acknowledges that a breach of the covenants contained in this Section 7.1 will cause irreparable damage to PGE, 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 7.1, in addition to any other remedy that may be available at law or in equity, PGE shall be entitled to injunctive relief, without posting bond or other security and Seller shall have no right or power to raise the defense of adequate remedy at law.

7.2 Seller Confidential Information.

7.2.1 PGE acknowledges that Seller Confidential Information (as defined below) is valuable and proprietary to Seller and PGE 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 PGE and identified by Seller as confidential and (ii) any and all information provided by Seller to PGE with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Seller Confidential Information if: (a) the Closing has occurred and such information is also an a Project Asset and/or Post-Closing Asset under this Agreement; (b) it has become generally known or available within the industry or the public though no act or omission of PGE; (c) PGE can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of PGE; (d) it was rightfully received by PGE from a third party who became aware of it through no act or omission of PGE and who is not under an obligation of confidentiality to Seller; or (e) PGE can demonstrate it was independently developed by employees or consultants of PGE.

7.2.2 PGE shall maintain any Seller Confidential Information which has been or will be disclosed directly or indirectly to PGE by or on behalf of Seller in confidence by it and shall not disclose or cause to be disclosed by PGE or any third person without Seller’s prior express written consent; provided, however, that PGE may disclose Seller Confidential Information to its

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Representatives and to Persons who provide financial analysis, banking, legal, accounting or other services to PGE provided that such Persons have first been informed of the duties required hereby.

7.2.3 Notwithstanding the preceding Section 7.2.1 and Section 7.2.2, Seller Confidential Information may be disclosed (a) if required by any Governmental Authority or court or otherwise by Applicable Law and (b) to the OPUC and/or the independent evaluator retained by PGE and approved by the OPUC in connection with the RFP; provided, however, that (i) such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment and (ii) if PGE is permitted to do so, Seller 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.

7.2.4 PGE agrees that it 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 by Seller, and this Agreement shall not be construed as a license or authorization to PGE to utilize Seller Confidential Information except for such purpose.

7.2.5 PGE acknowledges that a breach of the covenants contained in this Section 7.2 will cause irreparable damage to Seller and Seller's Affiliates, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, PGE agrees that if PGE breaches any of the covenants contained in this Section 7.2, in addition to any other remedy that may be available at law or in equity, Seller and its Affiliates shall be entitled to injunctive relief, without posting bond or other security, and PGE shall have no right or power to raise the defense of adequate remedy at law.

ARTICLE 8 [COVENANTS OF PGE AND SELLER]¹³

8.1 [Conduct Pending the Closing.] Between the Effective Date and the earlier to occur of the termination of this Agreement and the Closing Date, Seller shall:¹⁴

8.1.1 [continue to operate the Project and conduct its business in the Ordinary Course of Business;]

¹³ NTD: This Article 8 can be omitted for any transaction that contemplates a simultaneous signing and closing.

¹⁴ NTD: Further Seller covenants may include, without limitation, (i) obligations to obtain certain regulatory approvals, including making required filings and providing best efforts and cooperation with PGE for the same, (ii) delivery of monthly operating reports and (iii) delivery of financial statements, as applicable.

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8.1.2 [maintain and keep the Project and the Project Assets in a state of repair and condition as good as at the Effective Date, ordinary wear and tear excepted, and in accordance with the Ordinary Course of Business;]

8.1.3 [maintain relationships with landowners and suppliers in accordance with the Ordinary Course of Business;]

8.1.4 [maintain the Permits and comply with Applicable Law affecting the Project or the Project Assets;]

8.1.5 [perform and comply in all material respects with [the Contracts, the Real Property Agreements and the Permits] and Seller shall not, without PGE's consent, (a) amend or modify, or consent to the amendment or modification of, any of the [Contracts, the Real Property Agreements and the Permits] which amendments, modifications or consents would remain in effect for any period after Closing, or (b) enter into any new or additional contracts, real property agreements or permits relating to the Project that would remain in effect for any period after the Closing;

8.1.6 [continue development of the Project as provided on Schedule 8.1.6;]

8.1.7 [not, without PGE's prior written consent, (a) sell, transfer or otherwise dispose of, or agree to sell, transfer or otherwise dispose of, any of the Project Assets, or (b) lease, mortgage or pledge any of the Project Assets h

8.1.8 and which such lease, mortgage or pledge would remain in effect for any period after the Closing;]

8.1.9 [not place or cause to be Placed in Service the Project or any of the Project Assets, in each case for purposes of Section 45 or Section 48 of the Code;

8.1.10 [not claim or permit any Person to claim any tax credit pursuant to Section 45 or Section 48 of the Code with respect to the Project or any Project Asset;]

8.1.11 [not cause or permit the Project or any Project Assets to become tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code;]

8.1.12 [not make any election or take any action that would limit, prevent or preclude the Project or any of the Project Assets from being classified in the hands of PGE as: (a) "qualified energy resources" and "qualified facilities" within the meaning of Sections 45(a)(2)(A)(i) and 45(d)(1) of the Code; (b) "energy property" in the hands of PGE within

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the meaning of Section 48(a)(3) of the Code; or (c) “qualified property” or a “qualified investment credit facility” within the meaning of Section 48(a)(5) of the Code]

8.1.13 [maintain all books and records of Seller relating to the Project Assets in the Ordinary Course of Business.]

8.2 [Exclusivity. From and after the Effective Date, Seller agrees that it shall not (and shall not permit or cause any of its Affiliates to) solicit, initiate, encourage, entertain, make or accept offers with respect to the sale of the Project or the Project Assets (the “*Seller’s Exclusivity Obligations*”).]

8.3 [Site and Project Access. From and after the Effective Date, Seller shall allow, permit or obtain the right of PGE to reasonable access to the Site and the Project (all in accordance with the limitations imposed by the Real Property Agreements and other Project safety rules and regulations and security limitations imposed by Seller or the relevant landowners), upon reasonable prior notice, in order to perform its due diligence review, including physical inspection and analysis of the Project Assets.]

8.4 [Due Diligence. From and after the Effective Date, Seller shall allow, permit or obtain the right of PGE (a) to access to the management, development and operational personnel of Seller and (b) to review and make copies of the books and records of Seller. Any and all such access to Seller’s management, development and operational personnel shall take place during normal business hours.]

8.5 [Notice of Developments. Seller shall, from time to time prior to the Closing, promptly (a) supplement or amend the Schedules referred to in Article 5, with respect to any matter that arises after the Effective Date, which if existing as of the Effective Date, would have been required to be set forth or described in such Schedules in order to make any representation or warranty set forth in Article 5 true and correct, and (b) notify PGE of any conditions, circumstances or events that could reasonably be expected to have a Material Adverse Effect.]

ARTICLE 9 INDEMNIFICATION

9.1 Survival. Except as set forth in Sections 9.1.1, all representations, warranties and related indemnification obligations contained in this Agreement and any Schedule, certificate or other document delivered pursuant to this Agreement at Closing, shall survive the Closing for a period of twenty-four (24) months.

9.1.1 The representations, warranties and related indemnification obligations of (a) Seller contained in Section 5.1 (Organization and Authority) and Section 5.7 (Project Assets), and (b) PGE contained in Section 6.1 (Organization and Authority) shall survive termination of

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this Agreement. The representations, warranties and related indemnification obligations of Seller contained in Section 5.9 (Tax Matters) and Section 5.12 (Environmental Laws) shall survive the Closing until the expiration of the applicable statute of limitations. The obligations of (i) Seller pursuant to Sections 9.3.1(d) and (e) or (ii) PGE pursuant to Sections **Error! Reference source not found.** and (c) shall survive the Closing indefinitely.

9.2 Applicable Survival Period. The period for which a representation, warranty or indemnification obligation survives the Closing is referred to herein as the “***Applicable Survival Period.***” In the event notice of claim for indemnification under Sections 9.3 or 9.4 is given within the Applicable Survival Period, the representation, warranty or indemnification obligation that is the subject of such indemnification claim (whether or not formal legal action shall have been commenced based upon such claim) shall survive with respect to such claim until such claim is finally resolved. All claims for indemnification shall be made no later than ninety (90) days after the Applicable Survival Period. In the event notice of claim for indemnification under Sections 9.3 or 9.4 is not given within ninety (90) days after the Applicable Survival Period, such claim shall be null and void and no remedy, relief or recourse will be available to the indemnified party with respect to such claim.

9.3 Indemnification by Seller.

9.3.1 Seller shall indemnify and defend PGE and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (each, a “***PGE Indemnified Party***”) against, and shall hold them harmless from, any and all losses, damages, claims (including third-party claims), charges, interest, penalties, Taxes, costs and expenses (including legal, consultant, accounting and other professional fees, costs of sampling, testing, investigation, removal, treatment and remediation of contamination and fees and costs incurred in enforcing rights under this Section 9.3) (collectively, “***Losses***”) resulting from, arising out of, or incurred by any PGE Indemnified Party in connection with, or otherwise with respect to:

- (a) the failure of any representation and warranty or other statement by Seller contained in this Agreement or any certificate or other document furnished to PGE, to be true and correct in all respects as of the Effective Date [or the Closing Date, as applicable];
- (b) any breach of any covenant or agreement of Seller contained in this Agreement or any certificate or other document furnished to PGE at the Closing;
- (c) any Retained Liabilities or Retained Contracts;
- (d) any fraud, intentional misrepresentation, willful misconduct by or gross negligence of Seller in connection with this Agreement or the transactions contemplated by this Agreement;

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(e) any claims, actions or suits made by third parties (before, on or after the Closing Date) against any PGE Indemnified Party arising from or as a result of the acts or omissions of Seller or any of its Affiliates in connection with the development, ownership or operation of the Project or the Project Assets; and

(f) any liability for Taxes (including Tax Liens) imposed on or incurred by PGE relating to any taxable period ending on or before the time of the Closing or the portion of any other taxable period beginning before and occurring on or before the time of the Closing relating to the Project or the Project Assets.

9.4 Indemnification by PGE.

9.4.1 PGE shall indemnify and defend Seller and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (each, a “***Seller Indemnified Party***”) against, and shall hold them harmless from, any and all Losses resulting from, arising out of, or incurred by any Seller Indemnified Party in connection with, or otherwise with respect to:

(a) the failure of any representation and warranty or other statement by PGE contained in this Agreement or any certificate or other document furnished to Seller at Closing, to be true and correct in all respects as of the Effective Date [and as of the Closing Date, as applicable;]

(b) any material breach of any covenant or agreement of PGE contained in this Agreement, or any certificate or other document furnished to Seller at the Closing;

(c) any fraud, intentional misrepresentation, willful misconduct by or gross negligence of PGE in connection with this Agreement or the transactions contemplated by this Agreement;

(d) any liability for Taxes (including Tax Liens) imposed on or incurred by Seller relating to any taxable period ending on or after the time of the Closing or the portion of any other taxable period beginning before and occurring on or after the time of the Closing relating to the Project and the Project Assets; and

(e) Assumed Liabilities.

9.5 Claims for Indemnification. A Party seeking indemnification (the “***Indemnified Party***”) under this Article 9 shall give written notice (a “***Claim Notice***”) to the other Party (the “***Indemnifying Party***”) as soon as practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Article 9 (a “***Claim***”). Except as set forth in Section 9.2, the failure of the Indemnified

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Party to timely give a Claim Notice to the Indemnifying Party hereunder shall not affect the Indemnified Party's rights to indemnification hereunder, except and only to the extent that the Indemnifying Party is materially prejudiced by such delay.

9.6 Defense. In the case of a Claim involving the assertion of a claim by a third party (whether pursuant to a lawsuit or other legal action or otherwise, a "**Third-Party Claim**"), the Indemnifying Party may, upon written notice to the Indemnified Party, take control of the defense and investigation of such Third-Party Claim if the Indemnifying Party acknowledges to the Indemnified Party in writing the obligation of the Indemnifying Party to indemnify the Indemnified Party with respect to all elements of such Third-Party Claim. If the Indemnifying Party assumes the defense of any such Third-Party Claim, the Indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party (and separate from counsel to the Indemnifying Party if there is any conflict or divergence of interest between the Indemnifying Party and the Indemnified Party) to conduct the defense of such claims or legal proceedings and, at the sole cost and expense of the Indemnifying Party, shall take all steps necessary in the defense or settlement thereof. The Indemnifying Party shall not consent to a settlement of or the entry of any judgment arising from any such Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed). The Indemnified Party shall be entitled to participate in (but not control) the defense of any such Third-Party Claim, with its own counsel and at its own expense; *provided, however*, that the Indemnified Party shall be entitled to settle any Third-Party Claim involving criminal penalties, civil fines or harm without the consent, but at the expense, of the Indemnifying Party if the Indemnifying Party shall unreasonably fail to do so after being requested to do so by the Indemnified Party. If the Indemnifying Party does not notify the Indemnified Party that it will assume the defense of such Third-Party Claim within thirty (30) days after the Indemnifying Party receives notice of such claim from the Indemnified Party: (a) the Indemnified Party may defend against such Third-Party Claim in such manner as it may deem reasonably appropriate, *provided* that the Indemnified Party shall not consent to a settlement of or the entry of any judgment arising from such Third-Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed); and (b) the Indemnifying Party shall be entitled to participate in (but not control) the defense of such action, with its counsel and at its own expense. Regardless of which Party shall assume the defense of the Third-Party Claim, the Parties agree to cooperate fully with one another in connection therewith. Such cooperation shall include the providing of records and information which are relevant to such Third-Party Claim and making employees and officers available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to act as a witness or respond to legal process, in each case to the extent that the Party being requested to provide records and information or to make employees and officers available can do so without waiving any evidentiary privileges to which it is entitled.

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9.7 Limitations on Liability.

9.7.1 Notwithstanding any provision in this Agreement to the contrary, the aggregate maximum liability of Seller for indemnity under this Agreement shall not exceed the sum of one hundred percent (100%) of the Purchase Price (the “***Seller Indemnity Cap***”); provided, however, that the Seller Indemnity Cap shall not apply to any breach by Seller of [Sections 5.1 (Organization and Authority), 5.5 (No Conflicts), 5.6 (Third-Party Consents), 5.7 (Project Assets), 5.9 (Tax Matters), 5.15 (Solvency), 5.16 (Brokers), or 5.17 (Investment Company),] any Third-Party Claim or any claims based upon fraud or willful misconduct of Seller.

9.7.2 Notwithstanding any provision in this Agreement to the contrary, the aggregate maximum liability of PGE for indemnity under this Agreement shall not exceed the sum of one hundred percent (100%) of the Purchase Price (the “***PGE Indemnity Cap***”); provided, however, that the PGE Indemnity Cap shall not apply to any breach by PGE of Section 6.1 (Organization and Authority) or any Third-Party Claim or any claims based upon fraud or willful misconduct of PGE.

9.7.3 No Indemnified Party shall be entitled to indemnification under Sections 9.3 or 9.4 for Losses to the extent directly or indirectly caused by the willful misconduct, fraud or a negligent act of such Indemnified Party, or any of its Affiliates, or a breach by such Indemnified Party, or any of its Affiliates, of any representation, warranty, covenant or other agreement set forth in this Agreement. Any Indemnified Party making a claim under Sections 9.3 or 9.4 shall take such commercially reasonable steps to mitigate its Losses upon becoming aware of any event which could reasonably be expected to give rise thereto.

9.7.4 Any Claim made or Losses claimed under this Article 9 shall be reduced to the extent the Seller Indemnified Party or PGE Indemnified Party, as applicable, recovers any insurance proceeds in respect of such Claim or Loss.

ARTICLE 10 TAX MATTERS

10.1 Allocation of Purchase Price. The allocation of the Purchase Price (the “***Allocation***”) shall be agreed between the Parties each acting reasonably as soon as practicable, but in no event later than sixty (60) days after the Closing Date. The Allocation agreed to by the parties shall be consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder, and any analogous provisions of state, local or foreign law. If any adjustment is subsequently made to the Purchase Price or other relevant items, the Parties shall reasonably cooperate with each other to promptly amend the Allocation to reflect such adjustment. The Allocation (as so adjusted) shall be binding on the Parties and each of their respective Affiliates for all purposes. The Parties and each of their respective Affiliates shall report, act and

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file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Allocation, to the extent permitted by Applicable Law. Neither the Parties nor their respective Affiliates shall take any position on any Tax Return, before any Governmental Authority or in any judicial proceeding, that is inconsistent with the Allocation, unless taking such a position is required by Applicable Law.

10.2 Sales, Transfer and Documentary Taxes. Seller shall be responsible for all federal, state and local sales, documentary and other transfer taxes, if any, due as a result of the purchase, sale or transfer of the Project Assets in accordance herewith, whether imposed by law on Seller or PGE.

10.3 Treatment of Indemnity Payments. The Parties shall treat all payments made by Seller to or for the benefit of PGE and all payments by PGE to or for the benefit of Seller under any indemnity provision of this Agreement, as adjustments to the Purchase Price, unless otherwise required by Applicable Law (taking into account all relevant facts and circumstances underlying such payment), in which case any such payment will be increased by any Tax cost actually incurred by the recipient or reduced by any Tax benefit actually realized by the recipient, as applicable.

ARTICLE 11 MISCELLANEOUS

11.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that PGE, on the one hand, and Seller, on the other hand, may not assign their respective obligations hereunder without the prior written consent of the other Party.

11.2 Entire Agreement; Amendments; Attachments. This Agreement, and all exhibits and schedules hereto, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties. PGE and Seller may amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by PGE and Seller. If the provisions of any exhibit or schedule are inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail. The exhibits and schedules attached hereto are hereby incorporated as integral parts of this Agreement.

11.3 Severability. Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate

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in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

11.4 Dispute Resolution Process; Consent to Jurisdiction.

11.4.1 Avoidance and Mediation. The Parties agree to cooperate with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“*Dispute*”), within three (3) Business Days following the date of delivery of a written request by either Party, (a) each Party shall appoint as its representative a senior officer, and (b) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

11.4.2 Mandatory Mediation. Any Dispute that is not resolved pursuant to Section 11.4.1 may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“*AAA Procedures*”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures, the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as Confidential Information. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article as a witness, collateral contract or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

11.4.3 If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 11.4.2, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this

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Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, and (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Article 12, or at such other address of which the Parties have been notified.

11.4.4 EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.4.5 If either Party institutes any legal suit, action or proceeding against the other Party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing Party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

11.4.6 The provisions set forth in this Section 11.4 shall survive the termination or expiration of this Agreement.

11.5 Consequential Damages. EXCEPT WITH RESPECT TO LOSSES DIRECTLY OR INDIRECTLY CAUSED BY A THIRD-PARTY CLAIM OR A PARTY'S WILLFUL MISCONDUCT OR FRAUD, IN NO EVENT SHALL SELLER OR PGE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST OR PROSPECTIVE PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO, IRRESPECTIVE OF WHETHER

APPENDIX H

SUCH DAMAGES ARE REASONABLY FORESEEABLE OR WHETHER SUCH CLAIMS ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE.

11.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts made and to be performed in the State of Oregon and without reference to the conflicts of laws rules thereof.

11.7 Section Headings. The Section headings are for the convenience of the Parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the Parties.

11.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

11.9 No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

11.10 Waiver. At any time prior to the Closing Date, any Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (b) waive any inaccuracies in the representations and warranties of the other Parties contained herein or in any document delivered pursuant hereto and (c) waive compliance by any other Party with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party or Parties to be bound thereby. The failure of any Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

11.11 Costs. Each Party shall pay all of its own costs and expenses, including the fees and costs of its attorneys, consultants, contractors and representatives and internal overhead costs, incurred in connection with the negotiation, authorization, execution and delivery of this Agreement and the agreements, Permits and other documents prepared or to be entered into in connection with the transactions contemplated herein. In the event of legal action to enforce or interpret any provision of this Agreement or the agreements, instruments or certificates delivered pursuant hereto, the prevailing Party shall be entitled to recover from the other Party its reasonable attorneys' fees and other costs of suit so incurred from the losing Party, at trial, on any appeal, and on any petition for review or other proceeding, in addition to all other sums provided by law.

11.12 Relationship of Parties.

11.12.1 The duties, obligations and Liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create

APPENDIX H

an association, joint venture, fiduciary relationship or partnership between Seller and PGE or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and PGE shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

11.12.2 The relationship between PGE and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of this Agreement, PGE shall have no general right to prescribe the means by which Seller shall meet its obligations under this Agreement.

ARTICLE 12
NOTICES

Any communications between the Parties hereto or regular notices provided herein to be given shall be given to the following addresses:

To PGE:

Portland General Electric Company
121 SW Salmon St.
1 WTC 1700
Portland, Oregon 97204
Attention: []
Facsimile: []

To Seller:

[]
[]
[]
[]
Attention: []
Facsimile: []

Any notice which is personally served shall be effective upon the date of service; any notice given by U.S. Mail shall be deemed effectively given, if deposited in the U.S. Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In addition, either Party may send notices by electronic mail, facsimile or by a nationally recognized overnight courier service which provides written proof of delivery (such as U.P.S. or Federal Express). Any notice sent by electronic mail or facsimile shall be effective upon confirmation of receipt in legible form,

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and any notice sent by a nationally recognized overnight courier shall be effective on the date of delivery to the Party at its address specified above as set forth in the courier's delivery receipt. Either Party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes.

[SIGNATURE PAGE FOLLOWS]

APPENDIX H

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of and on the date first above written.

SELLER:

PORTLAND GENERAL ELECTRIC
COMPANY

[_____]

By: _____

By: _____

Name:

Name:

Title:

Title:

By: _____

Name:

Title:

Appendix I

EPC Form Agreement

2021 All-Source RFP



APPENDIX I

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

by and between

PORTLAND GENERAL ELECTRIC COMPANY

as Owner

and

as Contractor

dated as of

_____ ,

for the

PROJECT

[Legal Notice: The drawings and specifications of this Agreement will contain the following requisite statutory notices: (i) "Notice of Alternative Billing Cycle" (O.R.S. 701.625(2)) (as applicable to the extent that any payments to Contractor as described in this Agreement are not considered monthly progress payments), (ii) "Notice of Extended Certification Period Provision" (O.R.S. 701.625(6)) (as with respect to Owner's making of progress payments and final payment as described in this Agreement), and (iii) "Notice of Extended Payment Provision" (O.R.S. 701.625(3)(b)) (as regards the timing of Owner's payments to Contractor as described in this Agreement).]

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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this “Agreement”), is made, entered into and is effective as of _____, 2018 (the “Effective Date”), by and between _____ (“Owner”), and _____ (“Contractor”).

RECITALS

Owner is developing a renewable energy generation facility (defined as the Project below) and all services and utilities related thereto, all to be located near the town of _____ in _____ County, _____.

In connection with such Project, Owner desires to obtain and Contractor desires to provide certain work, including, among other things, procurement, installation, construction and related services for the Project, all for the Contract Price (as hereinafter defined).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS

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

“AAA” means the American Arbitration Association.

“AAA Procedures” has the meaning set forth in Section 14.2.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word “controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“Agreement” has the meaning set forth in the preamble hereto, as the same 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 (including Applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or

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administration of, any of the foregoing by any Government Authority with jurisdiction over Contractor, Owner, the Project, the Project Site, the performance of the Work or other services to be performed under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

“Applicable Permits” means any and all Permits from or required by any Government Authority that are necessary for the performance of the Work or the completion or operation of the Project.

“As-Built Drawings” means final Drawings for the Work, as revised to reflect the changes in the Work during construction, and shall include as-built drawings that show the physical placement and location of all improvements, including the equipment, roads, overhead electric transmission line, underground collection lines, communication lines (both above and below ground), the Transformer Substation, electric one-line drawings, electric schematics and connection diagrams.

“Bankruptcy or Insolvency Event” has the meaning set forth in Section 12.1.(a).

“Builder’s Risk Policy” has the meaning set forth in Exhibit P-1.

“Business Day” means every day other than a Saturday, Sunday or a day which is a legal holiday in the state in which the Project is located.

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

“Change of Law” means the (a) enactment, adoption, imposition, promulgation, cancellation, modification or repeal, in each case after the Effective Date, of any Applicable Laws of (i) the State in which the Project is located (or any city, county or municipality therein) or (ii) the Federal Government of the United States to the extent such federal law, directly affects the Work to be performed at the Site or (b) the modification after the Effective Date of any Permit procured and held by Owner, and as to both (a) and (b) that establishes requirements that materially and adversely affect Contractor’s costs or schedule for performing the Work at the Site; provided, however, the following shall not constitute a Change of Law for purposes hereof: (x) the enactment, adoption, imposition, promulgation, cancellation, modification or repeal of (1) any Applicable Laws regarding Contractor’s Taxes, or (2) any Applicable Laws affecting the cost of Contractor’s or any of its Subcontractors’ labor, including increases in worker’s compensation rates or prevailing wage rates, (y) any modification to any Permit obtained by Contractor or Owner prior to the Effective Date that results from a change in design of the Project or any component thereof after the Effective Date, where such change in design is suggested or determined by Contractor in connection with its performance of design and engineering Work, including under Section 2.1, or (z) any changes to customs duties, export/import taxes and tariffs occurring after the Effective Date applicable to any Equipment or the Work.

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

“Change Order Request” has the meaning set forth in Section 9.4.

“Commence Construction” has the meaning as such term is defined in the US Tax Code.

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“Commencement of Construction Liquidated Damages” has the meaning set forth in Section 6.1.1.

“Confidential Information” has the meaning set forth in Section 16.1.1.

“Consequential Damages” has the meaning set forth in Section 16.2.

“Construction Documents” has the meaning set forth in Section 2.3.4(b).

“Consumable Parts” has the meaning set forth in Section 2.3.6.

“Contractor” has the meaning set forth in the preamble hereto and includes its legal successors and permitted assignees as may be approved by Owner, in writing, pursuant to the terms of the Agreement.

“Contractor Deliverables” means all Drawings, Job Books, Operating Manuals, all written comments, field changes, and redlined drawings for incorporation into the final As-Built Drawings, and other documents and similar information prepared or modified by Contractor or any of its Subcontractors and delivered or required to be delivered hereunder, including all subcontractor payment records as required by Section 3.3.

“Contractor Event of Default” has the meaning set forth in Section 12.1.1.

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

“Contractor Termination for Cause” has the meaning set forth in Section 12.2.

“Contractor’s 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 are not intended to be incorporated into the Project.

“Contractor’s Project Manager” means the Person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for design, construction, procurement, testing and start-up of the Work, as well as all matters relating to the administration of the provisions of the Agreement, and who will be primarily located at the Project Site on a daily basis.

“Contractor’s Taxes” has the meaning set forth in Section 4.2.1(a).

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

“Day” or “day” means a period of twenty-four (24) consecutive hours from 12:00 midnight, and shall include Saturdays, Sundays and all holidays.

“Defect” or “Defective” means, any condition, characteristic or item of the Work that (a) does not conform to the terms or requirements of the Agreement (including Prudent Industry Practices), (b) is not of uniform good quality, free from defects or deficiencies in design,

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manufacture or workmanship, or (c) would adversely affect (i) the performance of the Project under anticipated operating conditions, (ii) the continuous safe operation of the Project during the Project's design life, or (iii) the structural integrity of the Project.

“Delay Liquidated Damages” has the meaning set forth in Section 6.6.

“Design Development Documents” has the meaning set forth in Section 2.3.4(a).

“Direct Costs” has the meaning set forth in Section 9.5.3(c).

“Dispute” has the meaning set forth in Section 14.1.

“Dollar” or “§” means a dollar of the currency of the United States of America.

“Drawings” means (a) all specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Project, including the structure and foundation thereof, and (b) all technical drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-line's, 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, from time to time under the 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.

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items required to complete the Project excluding the Contractor's Equipment and Major Equipment. The Parties acknowledge that Contractor will provide, install and incorporate the Equipment into the Project as described in this Agreement.

“Final Completion” has the meaning set forth in Section 6.5.1.

“Final Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit Q.

“Final Completion Date” means the date on which Final Completion occurs as per Section 6.5.1.

“Final Punch List” has the meaning set forth in Section 6.4.1.

“Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,

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(b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,

(c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence (including the expenditure of commercially reasonable sums) of the Party claiming the Force Majeure Event, and

(d) either (i) as with respect to Owner as the impacted Party, has an impact which will actually, demonstrably and adversely affect Owner's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Contractor as the impacted Party, has an impact which will actually, demonstrably and adversely affect Contractor's ability to perform Work on the Project Site so as to achieve a Key Milestone by the scheduled completion date for such Key Milestone as set forth in the Project Schedule.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, employees or agents of the impacted Party, national, regional and area-wide strikes and other national, regional and area-wide labor disputes (including collective bargaining disputes and lockouts) involving Contractor or Subcontractors and not directed exclusively at Contractor or such Subcontractor; a severe inclement weather condition not mentioned above, which prevents or substantially hinders the safe performance of the Work at the Project Site; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a Government Authority (other than in respect of or in relation to or resulting from Contractor's compliance or non-compliance with Applicable Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the Work by a Subcontractor on the Project Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or Subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective Subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Government Authority in respect of or in relation to or resulting from Contractor's compliance or non-compliance with Applicable Laws; (ix) any failure by Contractor to obtain and maintain any Applicable Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor or other Personnel of Contractor; (xi) the unavailability of labor and supplies, disruptions of supply chains, limitations imposed by a Government Authority on allowing Personnel on the Site, or other hindrance to the Work caused by the impact of COVID-19, any of its variants or pandemics of a similar nature and intensity, and (xii) reasonably foreseeable inclement weather events, including those caused by, attributable to, or expected to result from climate change.

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“Force Majeure Notice” has the meaning set forth in Section 8.1.1.

“Forced Labor” means the use of physical force, coercion, threats, intimidation, social, legal or financial pressure or other means to force a person to work against his or her own will or freedom.

“Geotechnical Survey” means that certain geotechnical reports referenced in Exhibit F.

“Government Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Grid” means the interconnected high voltage transmission facilities that are a part of the transmission system to which the Project connects.

“Guaranteed Substantial Completion Date” shall mean _____, as set forth in the Initial Project Schedule.

“Hazardous Material” means any and all chemicals, constituents, contaminants, pollutants, materials, and wastes and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic or otherwise hazardous substances or mixtures (whether solids, liquids, gases), or any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under Applicable Laws, including those laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport, or other use of such substances.

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

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

“Initial Project Schedule” means the “Level 2” (as defined by the Association for the Advancement of Cost Engineering International) Gantt Chart that sets forth the schedule of dates and milestones (including Key Milestones) for timely completion of the Work as set forth in Exhibit C-1 with specific start and end dates for each activity comprising (or relating to) the Work.

“Intellectual Property Rights” has the meaning set forth in Section 2.11.

“Interconnect Switchyard” means the Utility-owned electric transmission switchyard to be located at the end of the Transmission Corridor, immediately adjacent to the connection to the Grid, including all necessary breakers, protection equipment, metering and associated control buildings and other infrastructure associated therewith.

“Job Book” means all documentation specified in the Scope of Work, which shall include all engineering, design, purchasing and other information relating to the Project, including: (a) a drawing index formatted in accordance with Exhibit E containing the Design Drawing Documents

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and Construction Documents; (b) a reference index; (c) copies of Contractor's and Subcontractors' Permits; (d) copies of all contracts and purchase orders for Major Subcontractor's equipment (non-priced); (e) Subcontractor information for equipment purchased (as received from Subcontractors) including instruction and maintenance manuals from Subcontractors; (f) one copy of the As-Built Drawings and documentation; (g) training manuals; (h) the Operating Manuals; (i) electrical one-line diagrams for the Project; (j) a cable and raceway schedule for the Project; (k) connection report/loop diagrams for the Project; and (l) a final list and summary of the work performed by all Subcontractors.

“Key Milestones” means the milestones identified as such in the Initial Project Schedule (Exhibit C-1).

“Key Personnel” means the persons designated as “Key Personnel” in Exhibit I-2.

“Labor” means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers (and including those provided by Subcontractors).

“Letter of Credit” means a letter of credit in substantially the form set forth in Exhibit P-5 issued by a United States bank (with a branch office in Portland, Oregon) rated at least ‘A’ by Standard & Poor's Rating Services or ‘A2’ by Moody's Investor Service.

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

“Lien Waiver and Release” means waivers to lien rights and may be conditional or unconditional. Lien Waiver and Releases will follow the form as set forth in Exhibit O-1, Exhibit O-2, Exhibit O-3, and Exhibit O-4, as required.

“Limited Notice to Proceed” or “LNTP” means a written notice, substantially in form as shown in Exhibit S-1, issued by Owner on or after the Effective Date to Contractor in accordance with this Agreement that is signed by both Parties and directing Contractor to commence the Work set forth in the LNTP in accordance with the terms of this Agreement in advance of the Notice to Proceed.

“Major Equipment” shall be as defined in the Scope of Work (Exhibit A).

“Major Equipment Warranties” shall be as defined in Section 7.4.

“Major Subcontract” means (i) (a) any single agreement or purchase order with a Subcontractor or (b) multiple agreements or purchase orders with a single Subcontractor, for performance of any part of the Work that, in each case, has an aggregate value in excess of _____ Dollars (\$ _____), or (ii) any agreement for the provision or supply of Major Equipment.

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“Major Subcontractor” means, any Subcontractor with whom Contractor will enter (or has entered) into a Major Subcontract.¹

“Material ESG Incident” means any event or condition, for which Contractor has actual knowledge, relating to environmental, social, or governance factors that could reasonably be expected to have a material adverse impact on the Work, the Project or Owner, including, but not limited to: (i) any incident or accident that could reasonably be expected to have a material adverse impact on health, safety, or the environment, (ii) any accident resulting in death or serious or multiple injury (including amputations), (iii) any material community or worker related grievance or protest, including instances of Forced Labor, (iv) any failure to materially comply with Applicable Laws, including any such material failure to comply that is required to be disclosed to a Government Authority, (v) the receipt of any formal complaints of discrimination or harassment in the past year that were repeated, substantiated, involved a member of management, or were otherwise significant, (vi) any incidents of fraud, corporate misconduct, bribery, corruption, or ethics violations, including violations of any applicable anti-corruption laws, (vii) any material data breaches or privacy incidents, including any such breaches or incidents that resulted in the disclosure of Owner’s Confidential Information, and (viii) any instances of Subcontractors of Contractor alleging or being involved in any of the foregoing.

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

[“Mechanical Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit Q.]

[“Mechanical Completion Checklist” means the checklist by this name as described in Exhibit Q.]

“Monthly Progress Report” means a monthly written report that complies with the requirements of Exhibit C-2 and includes a description of the progress and status of the Work compared to the Project Schedule, the Subcontractors’ activities, engineering and design progress, a summary of any Change Orders executed by the Parties as of the date of such report and a summary of any events that may affect the Project Schedule (including, without limitation, any Force Majeure Events, Owner-Caused Delays, Liens on the Project Site, or the Project, and any asserted violations of Applicable Laws).

“Notice to Proceed” means a written notice issued by Owner to Contractor pursuant to Section 2.1, and substantially in form as shown in Exhibit S-2, that is signed by both Parties directing Contractor to commence the Work in accordance with the terms of this Agreement.

“Notice to Proceed Date” or “LNTP Date” means the date on which Notice to Proceed occurs as per Section 2.1.

“O&M Personnel” has the meaning set forth in Section 2.3.12.

“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

¹ Note to Draft: “Major Equipment” manufacturers must be PGE preferred suppliers to be set out in Exhibit I-1.

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of Work, including Contractor's manufacturers', vendors', suppliers' and Subcontractors' recommended list of Spare Parts, all safety information, equipment and maintenance manuals and any precautionary measures therefor.

"Other Owner Contractors" means those Persons, other than Contractor, with whom Owner contracts or subcontracts to perform work in connection with the Project, including the Equipment Provider and the Owner Engineer. Owner Contractors may also include Owner in the event Owner elects to perform any work in connection with the Project.

"Owner" has the meaning set forth in the preamble hereto.

"Owner-Caused Delay" means a delay in Contractor's or a Subcontractor's performance of the Work or an increase in Contractor's or a Subcontractor's costs that has been demonstrably caused by the failure of Owner, Other Owner Contractors (other than Equipment Provider) to perform any material obligation of Owner under this Agreement (other than by exercise of rights under this Agreement, including the exercise by Owner of the right to have Defective or nonconforming Work corrected or re-executed) or by the acts or omissions of Owner, Other Owner Contractors (other than Equipment Provider). Any delay that is due in part to Contractor's or any of its Subcontractors' actions or inactions shall not be an Owner-Caused Delay.

"Owner Engineer" means _____.

"Owner Event of Default" has the meaning set forth in Section 12.2.

"Owner Indemnified Party" has the meaning set forth in Section 10.1.1.

"Owner Permits" means those Permits required to be obtained by Owner, as set forth on Exhibit H.

"Owner's Project Manager" means the individual appointed by Owner to act on its behalf in connection with this Agreement.

"Owner's Taxes" has the meaning set forth in Section 4.2.2(b).

"Party" or "Parties" means, respectively, a party or both parties to this Agreement.

"Payment and Performance Bond" has the meaning set forth in Section 2.12.1.

"Payment Schedule" means the milestone payment schedule attached as Exhibit B-2, which sets forth an allocation of the Contract Price to the milestones described therein.

"Performance Tests" has the meaning set forth in Section 2.13.3.

"Permit" means permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Applicable Laws in connection with the development, construction,

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operation, use and/or maintenance of the Project, and all amendments, modifications, supplements, general conditions and addenda thereto.

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

“Personnel” means, with respect to a Party or entity, such Party’s or entity’s employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third party independent contractors with whom such Party or entity has contracted, and its agents’, personnel’s, representatives’, invitees’, subcontractors’, vendors’ or third party independent contractors’ respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent contractors.

“Pre-Existing Hazardous Material” means any Hazardous Material (a) that existed on or in the Project Site prior to the date when Contractor or any of its Subcontractors or other representatives is present thereon following the Effective Date or (b) brought to the Project Site by Owner, any Other Owner Contractor or any third party other than Contractor or its Personnel after the Effective Date.

“Prime Rate” means _____.

“Project” means the electric generation project that is the subject of this Agreement, as described in the Scope of Work (Exhibit A).

“Project Labor Agreement” means the collective bargaining agreement between Contractor and [the labor union representing Contractor’s Labor and Personnel] in the form set forth in Exhibit T.

“Project Schedule” has the meaning set forth in Section 2.5.2.

“Project Site” means all those parcels of land subject to the Real Property Rights in favor of Owner including the Transmission Corridor on which the Work will be located as shown in Exhibit G-1.

“Project Substantial Completion” has the meaning set forth in Section 6.3.1.

“Project Substantial Completion Certificate” means the certificate by this name as described in, and in the form set forth in Exhibit Q.

“Project Substantial Completion Date” means the date on which the Project achieves Project Substantial Completion, per Section 6.3.2.

“Prudent Industry Practices” means, in connection with the design and construction of energy power generation systems of a type and size and having geographical and climatic attributes similar to the Project, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members in the United States as good and proper, and such other practices, methods or acts which, in the

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exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Punch List” means any punch list as described in Section 6.4.1, as applicable.

“Quality Assurance Procedures” means the quality assurance and quality control procedures as set forth in Exhibit N.

“Real Property Requirements” means the applicable covenants, agreements, restrictions, limitations, or requirements of the Real Property Rights imposed upon Owner or its assignees, contractors, licensees, or invitees regarding the use and possession of the Project Site, the construction, operation, and maintenance of the Project on the Project Site, and any other activities on or over the Project Site, a summary of which is attached hereto as Exhibit G-2.

“Real Property Rights” means all rights in or to real property (such as leasehold or other rights to use or access the Project Site), leases, agreements, Permits, easements, including 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 Grid, performance of the Work, or operation of the Project.

“Request for Payment” means the written requests from Contractor to Owner for payment, as described in Exhibit B-2.

“Retainage” has the meaning set forth in Section 4.4.1.

“Safety Plan” has the meaning set forth in Section 2.3.14(a).

“Schedule of Values” means that schedule set forth in Exhibit B-1 which apportions the Contract Price among all cost code divisions or portions of the Work.

“Scope of Work” means the services and work to be provided, or caused to be provided, by or through Contractor under the Agreement, as more particularly described in Exhibit A, and the other obligations of Contractor under the Agreement, 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 2.3.10.

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

“Subcontractor” means any Person other than Contractor performing any portion of the Work, including every tier of subcontractor, vendor or supplier of equipment, materials or services to Contractor or any subcontractor of any Person engaged or employed by Contractor or any subcontractor in connection with the performance of the Work, whether or not incorporated into the Project.

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“Substantial Completion of Liquidated Damages” has the meaning set forth in Section 6.1.2.

“Termination for Cause” has the meaning set forth in Section 12.1.2.

“Termination Payment” has the meaning set forth in Section 12.4.1.

“Termination Without Cause” has the meaning set forth in Section 12.3.

“Transmission Corridor” means, as part of the Project Site, those connected parcels of land subject to the Real Property Rights in favor of Owner on which certain Project, including transmissions lines, electrical works and the Interconnect Switchyard, will be located.

“Equipment Provider” means _____.²

“Unforeseen Subsurface Condition” has the meaning set forth in Section 2.3.1(b).

“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.

“Work” has the meaning set forth in Section 2.1 and includes Contractor Deliverables, the Project, the Equipment, and any other product or result of the Work, and further described in Exhibit A.

“Working Day” means the hours from 7:00 am to 7:00 pm, Monday through Saturday, excluding holidays, at the Project Site.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) unless otherwise specified, references to “Articles,” “Sections,” or “Exhibits” (if any) shall be to Articles, Sections, or Exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; (b) all references to a Person shall include a reference to such Person’s successors and permitted assigns; (c) 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; (d) the use of the word “including” or “include” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, with advice of legal counsel; 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.

² Note to Draft: Equipment Provider shall be a third-party supplier of equipment designated or agreed to by Owner.

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1.3 Order of Precedence. In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

1.3.1 Amendments, addenda or other modifications to the Agreement (including 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;

1.3.2 This Agreement (excepting Exhibits hereto);

1.3.3 Exhibit A through Exhibit S-2;

1.3.4 Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings 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).

Notwithstanding the foregoing provisions of this Section 1.3, if a conflict exists within a part of the Agreement as listed in a lettered subclause above, or between or among the Agreement and Applicable Laws, the Real Property Requirements, then the more stringent or higher quality requirements shall control. Where a conflict exists among codes and standards applicable to the Project or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

ARTICLE II

RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES

2.1 Work to be Performed.³ Commencing on the date specified in the Notice to Proceed, or earlier with respect to Work authorized pursuant to the Limited Notice to Proceed ("LNTP"), and except as otherwise expressly set forth in Article V or elsewhere in this Agreement as being the responsibility of Owner or Equipment Provider, Contractor shall perform or cause to be performed all necessary work and services (the "Work") required, on a turnkey basis through Final Completion in connection with (a) the design, procurement, engineering, specified permitting, construction, assembly, installation and, where applicable, the start-up and testing, of the Project to Final Completion, (b) the provision, management and supervision of all Labor, transportation, administration and other services as required in connection with any of the foregoing, (c) the inspection and furnishing of all materials, equipment, machinery, tools, temporary structures, temporary utilities as required in connection with the foregoing including the performance obligations described in this Article II and the Scope of Work, and (d) the performance of Contractor's warranty obligations hereunder. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed the Work in accordance with the terms and

³ Note to Draft: Depending on the technology and economics of the project, additional Work obligations may be required. For instance, BES systems will require recycling provisions, ESG provisions related to battery fires and chemical spills, interconnection provisions (before- or behind-the-meter provisions), and design obligations reflecting the BES system use case.

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conditions of this Agreement. Contractor hereby represents that it has ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions including Applicable Laws, and the availability and productivity of Labor which might affect its performance of the Work or the cost thereof and that, based upon the same, but subject to Section 9.5.1, commits that it can complete the Work for the Contract Price in accordance with the Initial Project Schedule.

2.2 Project. Contractor shall construct the Project and all other components of the Work that are set forth in Exhibit A as part of Contractor's Scope of Work.

2.2.1 Interconnection to Grid. As further described in the Scope of Work, Contractor shall be responsible for all interconnection up to and including provision of and connection to the Interconnect Switchyard. Contractor shall coordinate with and permit the Utility to install the interconnection works between such point and the Grid.

2.2.2 Start-up and Testing of Project. Contractor shall perform the start-up and testing of the Project, including the calibration and functional testing of all controls and equipment in accordance with Exhibit A. If the Scope of Work requires that any item comprising the Project be tested by Contractor, Contractor shall notify Owner in writing at least ten (10) Business Days prior to the commencement of any such test. Contractor shall coordinate with Owner the scheduling of any test and Owner shall coordinate such test with Equipment Provider, so as not to interfere, in either case, with either Party's obligations with respect thereto. Owner shall witness such tests and will, within three (3) Business Days after receipt of written results of such tests, deliver to Contractor a written notice either (a) accepting such tests as having been passed, or (b) rejecting such tests as having demonstrated that the tested item failed to comply with the performance requirements therefor under this Agreement. Any rejection shall include a detailed description of the basis for rejection.

2.3 Further Work Responsibilities and Commitments.

2.3.1 Site Clearance and Preparation.

(a) Topography. Contractor has visually surveyed the general surface conditions of the Project Site topography and represents that, subject to Unforeseen Subsurface Conditions, the same are sufficient for Contractor to construct the Project and perform the Work. Contractor will be responsible for clearance of the Project Site, including the removal of obstructions. Contractor will be responsible for access road construction as described in the Scope of Work. Contractor shall provide for the procurement of or disposal of, as necessary, all soil, gravel and similar materials required for the performance of or otherwise in connection with the Work. Contractor will provide adequate treatment of and protection against water runoff resulting from Contractor's and its Subcontractor's work. Contractor will provide for the collection, treatment and disposal of groundwater resulting from Contractor's and its Subcontractors' work.

(b) Geotechnical Survey; Subsurface Risk. "Unforeseen Subsurface Conditions" shall mean: (i) subsurface or latent physical conditions at the Project Site, differing materially from those indicated in the Geotechnical Survey, or (ii) previously unknown physical

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conditions at the Project Site of an unusual nature (including unknown and unexpected archaeological, paleontological or religious sites, places, monuments or areas) or conditions that differ materially from those ordinarily encountered and generally recognized as inherent in work similar to the Work, but excluding in all cases conditions that should have been reasonably known, inferable or discoverable by Contractor based upon the information in the Geotechnical Survey, Contractor's survey of the Site prior to the Effective Date, or other Owner-provided information. If Contractor encounters any condition that Contractor believes is or may be an Unforeseen Subsurface Condition, Contractor shall notify Owner of the same promptly, but in any event no later than three (3) days after becoming aware of the condition. If the condition at issue is indeed an Unforeseen Subsurface Condition as defined herein and Contractor has delivered such notice within such time period, then Contractor will be entitled to a Change Order to the extent so provided in Section 9.5.1(d). If Contractor fails to notify Owner of such a condition within such three (3) day period, then Contractor shall not be entitled to and will thereby be deemed to have waived its rights to receive any Change Order as with respect to such condition.

2.3.2 Storage. At all times prior to the date of Project Substantial Completion, Contractor shall provide appropriate storage for the Consumable Parts, Equipment, and all other materials, supplies and other equipment utilized in connection with the Work and all other personal property owned or leased by Contractor or any Subcontractor located at the Project Site. At a minimum, Contractor shall comply with all Equipment manufacturer recommendations and requirements and shall comply with requirements in the Scope of Work.

2.3.3 Transportation and Delivery Specification. *[To Be Discussed as appropriate to equipment.]*

2.3.4 Drawings and Documents.

(a) Design Development Documents. As further described in the Scope of Work, and in any further adjustments in the scope or quality of the Project authorized in writing by Owner, by the date specified in the Project Schedule, Contractor will prepare, for written approval by Owner, design development documents for the Project consisting of drawings, models, specifications, plans and other documents necessary to fix and describe the Project with respect to the civil engineering, structural, instrumentation, control, mechanical, electrical, plumbing, fire protection, acoustical and life safety systems to be incorporated therein (collectively, the "Design Development Documents"). As part of the development of the Design Development Documents, Contractor will propose to Owner, for Owner's review and approval, the list of systems that will be the subject of the as-built drawings submitted to the Owner pursuant to Section 2.3.4(d).

(b) Approved Construction Documents. As further described in the Scope of Work, the approved Design Development Documents, and any further adjustments in the scope or quality of the Project authorized in writing by Owner, Contractor will prepare, for written approval by Owner, by the date specified in the Project Schedule, drawings and specifications setting forth in detail the requirements for the complete construction of the Facility (as approved by Owner, the "Construction Documents"). Following Owner's written approval of the Construction Documents, Contractor will proceed with the remainder of the Work based upon the Scope of Work and Construction Documents.

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(c) Ownership of Drawings. All drawings, specifications and other documents prepared by or for Contractor in respect of the Project and all drawings, specifications, calculations, memoranda, data, notes and other materials containing information supplied by Owner which shall come into Contractor's possession during its performance hereunder, shall be the property of Owner, and such Owner documents and other materials shall be returned to Owner upon the earlier of the Project Substantial Completion Date or termination of this Agreement. Owner shall have the right to retain a reproducible set of all Contractor's proprietary drawings, specifications and other documents for use in respect of the Project. Review (or lack thereof) by Owner or its designees of any Project documents provided by Contractor, and the fact that Owner has not discovered any errors reflected in such Project documents, shall not relieve or release Contractor of any of its duties, obligations or liabilities under the terms of this Agreement.

(d) As-Built Drawings. During construction, Contractor shall keep on file one set of current as-built drawings reflecting all field deviations from the design drawings. As a condition to Final Acceptance, Contractor shall provide to Owner, for Owner's approval, a set of as-built drawings which have been fully conformed to the construction records as of the completion of the Work. Drawings shall be provided in AutoCAD DWG/DWF and Adobe PDF format.

2.3.5 Religious, Archaeological and Paleontological Resources. If any archaeological or religious sites, places, monuments or areas are discovered or identified by Contractor during the performance of Work under the Agreement, Contractor shall leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area and shall comply with any applicable Real Property Requirements. Contractor shall notify Owner of any such discovery as soon as practicable, and Contractor shall carry out Owner's reasonable instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, paleontological, religious, cultural or similar interest discovered on the Project Site shall, as between Owner and Contractor, be deemed to be the property of Owner. Contractor shall prevent its and its Subcontractors' Labor from removing or damaging any such article or thing.

2.3.6 Equipment, Consumables, Construction Utilities and Related Services. Except to the extent provided by Owner or Equipment Provider as described in Article V or as part of the Work, Contractor shall procure and supply, at its own expense, all Equipment required to complete the Work, including without limitation all Equipment as necessary for performance and completion of its obligations under this Agreement (whether on or off the Project Site). Contractor shall inspect or cause to be inspected all such Equipment and shall reject those items determined not to be in compliance with the requirements of this Agreement. 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 completion of the Work. All Equipment provided by Contractor shall be new and of suitable grade for its intended purpose. With the exception of those consumable items expressly stated to be provided by Equipment Provider as described in Exhibit D, Contractor shall supply all consumable parts and supplies required for the Work including, but not limited to, cable ties, cable wraps, splices, wire nuts, lubricants, greases and other consumable materials (collectively, the "Consumable Parts").

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2.3.7 Obtaining, Maintaining and Identifying Permits. Contractor shall 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. If any Applicable Permit is required for the Project or to perform the Work that is not identified in Exhibit H, 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 thereafter, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit, and Owner shall provide reasonable assistance and cooperation in accordance with Section 5.2, as necessary. If such Applicable Permit is of a nature typically obtained by contractors in similar projects, Contractor shall, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit. Otherwise, Owner shall obtain and maintain such Applicable Permit. All Applicable Permits (other than any building permits) designated as either "To be issued in the name of Owner" or "To be issued in the name of the Owner and Contractor" on Exhibit H shall be issued in the name of Owner or Owner and Contractor, as required, to the best of Contractor's ability 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 nor shall it be allowed to unreasonably delay the submittal of such application. Contractor shall deliver to Owner true and complete copies of all Permits obtained by Contractor upon its receipt thereof.

2.3.8 Real Property Requirements and Real Property Rights. Contractor shall comply with those Real Property Requirements as summarized in Exhibit G-2. In addition, Contractor shall provide such assistance as may be reasonably requested by Owner in connection with Owner's efforts to observe and maintain the Real Property Requirements, including efforts to obtain any necessary revisions or adjustments thereof. As of the date hereof, subject to Section 2.3.1(b) as regards Unforeseen Subsurface Conditions, Contractor represents and warrants that it has inspected and is fully familiar with the Project Site, including the boundaries thereof, and that (a) they are sufficient for Contractor to undertake and complete that portion of the Work to be located thereon in accordance with the Agreement, the Real Property Requirements and Applicable Laws, and (b) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming a Change. In the performance of the Work, Contractor and its Subcontractors shall abide by any restrictions in regard to the location of facilities that are part of the Real Property Requirements. Owner shall enforce the Real Property Requirements for the benefit of Contractor and shall indemnify Contractor with respect to any claims by the Owners other than those claims caused by Contractor or its Personnel. Contractor shall indemnify Owner from any claims or expenses arising out of the failure of Contractor or its Subcontractors to comply with the Real Property Requirements. Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking within the Project Site. 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

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result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall, at Owner's expense, cooperate with Owner in resolving all such problems.

2.3.9 Environmental Compliance. Contractor shall comply with all Environmental Assessment requirements applicable to Contractor or the Work as set forth in Exhibit R-1 and the Environmental Permit Matrix as set forth in Exhibit R-2.

2.3.10 Spare Parts. Set forth in Exhibit J-2 is a list of spare parts that are necessary to operate and maintain the Project (the "Spare Parts"). Owner may at any time prior to Project Substantial Completion notify Contractor in writing that Owner wishes to purchase certain Spare Parts, and therein request pricing for the Spare Parts in question and the quantities desired. Contractor will supply the pricing for such identified Spare Parts to Owner as soon as practicable after such request. Owner may thereafter order those of such Spare Parts as Owner desires. Contractor shall thereafter deliver such Spare Parts Duty Paid (DDP) (Incoterms 2000) to Project Site, using commercially reasonable efforts to complete such delivery within two (2) weeks after Owner's placement of such order. Title and risk of loss to such Spare Parts will transfer to Owner upon such delivery. After such delivery is completed, Contractor will invoice Owner for the Spare Parts (based upon the quoted pricing), and the undisputed portions of such invoice shall be payable by Owner within thirty (30) days after Owner's receipt of such invoice. Should a component of the Equipment fail during commissioning, start-up or testing, Contractor may utilize a Spare Part of that component from Owner's inventory in order to return the Equipment to operating condition. Contractor shall at its cost promptly replace any such Spare Parts so utilized.

2.3.11 Operating Manuals and Job Books.

(a) Operating Manuals. Within 30 days after finalizing the equipment selection the Contractor shall prepare and deliver to the Customer the following documents: (i) Operating Manuals in an electronic draft version, (ii) recommended spare parts list, and (iii) lubrication schedule. Prior to commencing commissioning activities, Contractor shall prepare and deliver to Owner the documentation as required in the Scope of Work. In the event of total or partial rejection or revisions of the draft Operating Manuals by Owner, within fifteen (15) days after receipt of notice of such revisions or rejection Contractor shall make appropriate changes to the drafts to respond to Owner's revisions or reasons for rejection and shall resubmit such draft to Owner or shall explain why such revisions are not necessary. Such procedure shall be repeated until receipt of Owner's written approval therefore. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall prepare in individually numbered bound volumes and deliver to Owner two (2) sets of such approved Operating Manuals (which may be combined with the other Operating Manuals) and shall also provide three (3) copies of the Operating Manuals to Owner in electronic format.

(b) Job Books. As a condition to Project Substantial Completion, Contractor shall deliver to Owner two (2) copies of the semi-final draft of the Job Books, either in job book format or in form and format then available as a result of the design and construction process, as appropriate. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Project by Persons generally familiar with machinery and

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equipment similar to that comprising the same. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall provide two (2) original hard copies and three (3) electronic copies (on CD Roms) of the final and complete Job Books to Owner. 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 electronic copy of such information.

2.3.12 Contractor-Provided Training. Commencing at least thirty (30) days prior to the then-scheduled date for achievement of Mechanical Completion, Contractor shall provide, at its own expense, a training program in the operation and maintenance of the Project for Owner's Project Personnel and the operation and maintenance contractor's Project Personnel (collectively, "O&M Personnel"). The training program provided by Contractor shall be as described on Exhibit J-1 and shall (a) include classroom and field training, (b) include all educational materials necessary for such training, and (c) establish quality controls so that O&M Personnel are suitably trained and capable of operating and maintaining the Project after Project Substantial Completion. Contractor shall make every reasonable effort to use the O&M Personnel during start-up and initial operation of the Project; provided, however, Owner shall not be obligated to supply (i) O&M Personnel for the construction of the Project or (ii) provide during Project start-up and initial operation more O&M Personnel than the number of O&M Personnel Owner an Operations and maintenance contractor would use during normal Project operation as determined by Owner. Contractor shall remain solely responsible for performing the Work in accordance with this Agreement, including Contractor's obligation to achieve Project Substantial Completion, and achieve Final Completion, subject to Contractor's right to a Change Order in the event of an Owner-Caused Delay. The cost of the O&M Personnel's salary, travel, lodging, food and other living expenses shall be borne by Owner.

2.3.13 Labor and Personnel.

(a) Engagement of Labor. Contractor shall provide and manage and transport all Labor and Personnel required in connection with the performance of the Work and of its obligations hereunder. Contractor shall retain only such Labor and Personnel that have experience with the equipment and who are competent to perform their assigned duties in a safe and secure manner, including: (i) Contractor's Project Manager; (ii) lead project engineer and field engineers, cost and schedule engineers. Contractor shall not change Contractor's Project Manager or any other member of Contractor's Key Personnel without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Contractor represents that its Labor and Personnel are subject to the Project Labor Agreement, and Contractor shall at all time comply with the terms of such Project Labor Agreement. Contractor shall require its Subcontractors to adhere to the same standard with respect to their Labor. Where required by Applicable Law, Contractor shall 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 with the degree of care, safety, skill and responsibility customary among such licensed Personnel provided such performance is in accordance with Applicable Law and Prudent Industry Practices. To the extent required by Applicable Law and Prudent Industry Practices, all Labor shall have received formal documented training in their area of expertise and certification.

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(b) Owner Review of Labor. Upon Owner's request, Contractor shall provide Owner with the resumes of all management and supervisory Personnel employed in connection with the Work and Owner may require the replacement of any Personnel, at Contractor's sole expense if, in Owner's reasonable opinion, such Person is (i) endangering life or limb on or near the Project Site or violates or breaches the Real Property Requirements, thereby adversely affecting Owner's relationship with the land owners, (ii) incompetent, or (iii) violating or has violated this Agreement, particularly the Safety Plan and Sections 2.3.13(c) through (e). 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 the Agreement.

(c) Alcohol and Drugs. Contractor shall comply with Owner's policies and practices regarding alcohol and drugs and 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) at the Project Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor. Subject to requirements of Applicable Law, Contractor shall perform random drug and alcohol testing on Persons employed by its Subcontractors and shall perform a drug and alcohol test on any Person employed by a Subcontractor who Owner or Contractor reasonably suspects 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 at the Project Site. Subject to requirements of Applicable Law, Contractor shall perform drug and alcohol testing on its Subcontractors, agents and Labor for purposes of such Person's hiring, treatment or annual physical. Additionally, Contractor shall perform, or cause its Subcontractors and agents to perform, a drug and alcohol test on each of their respective employees prior to any such employee first entering the Project Site to perform any Work. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Project Site any Person (whether in the charge of Contractor or any of its Subcontractors) 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, 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, including any Person using a prescription drug under supervision and approval from a medical doctor. Contractor's Drug and Alcohol Abuse Policy is attached as Exhibit L. This policy does not apply to Owner and its Personnel. Owner shall enforce its own drug and alcohol policy with respect to its Personnel.

(d) Arms and Ammunition. Contractor and its Personnel, shall not possess, give, barter or otherwise dispose of, to any Person or Persons, any arms or ammunition of any kind at the Project Site, or permit or suffer the same as aforesaid and shall at all times assure that the Project Site is kept free from arms and ammunition. No hunting of any kind by Contractor or its Personnel, or other invitees, shall be permitted on the Project Site. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Project Site any Person that violates this provision.

(e) Disorderly Conduct. Contractor shall be responsible for the conduct and deeds of its Labor and its Subcontractors' Labor relating to the Agreement and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any

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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 Project 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.

(f) 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 (in writing) labor dispute, of which Contractor has knowledge, that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.3.14 Safety and Emergencies.

(a) Safety. Contractor shall initiate and maintain safety precautions and programs to conform with Applicable Laws, Applicable Permits, Exhibit A, or other requirements 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 contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath, above, across or near the Project Site) that are at or near the Project Site that are in any manner affected by the performance of the Work. Such precautions and programs shall include prevention of damage or injury to local flora and fauna. Contractor shall erect and maintain reasonable safeguards for the protection of Labor 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 Labor, agents, invitees, and Subcontractors to follow the safety plan set forth in Exhibit L (the “Safety Plan”) and to follow all other reasonable safety measures and procedures implemented by the Owner at the Project Site.

(b) Compliance with Safety Plan. Contractor shall be responsible for and shall notify Owner as soon as Contractor becomes aware of any injury resulting from a failure of its agents, invitees, Labor, or Subcontractors to abide by the requirements of the Safety Plan set forth in Exhibit L, in each case in connection with performance of the Work.

(c) Emergencies. In the event of any emergency endangering Persons or property during performance of the Work, 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 practicable, 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, upon reasonable advance notice to Contractor and a reasonable opportunity to cure, take such action as is reasonably necessary under the circumstances. The

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taking of such action by Owner or Owner's failure to do so shall not limit Contractor's obligations or liability hereunder. Provided Contractor fails to timely act, Contractor shall reimburse Owner for any reasonable costs incurred by Owner in taking such actions in the event of an emergency.

2.3.15 Security. Contractor shall develop, subject to Owner's reasonable approval, a Project security plan within fifteen (15) days of issuance of the Notice to Proceed, which shall require the taking of reasonable precautions, consistent with Prudent Industry Practices, to provide for the security and protection: (a) of the equipment, machinery and components comprising the Equipment and the Project through the date of Project Substantial Completion, and (b) 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 use the same care to protect any of Owner's and Equipment Provider'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 damage to such property resulting from Contractor's failure to take such precautions or use such care.

2.3.16 Clean-up. Contractor shall at all times keep the Project Site reasonably free from waste materials, rubbish and Hazardous Materials produced by the Work. As part of the Work, Contractor will arrange and pay for disposal of sewage and wastes generated by Contractor or its Personnel as necessary to enable Contractor to perform the Work. Contractor shall maintain the Project Site in a neat and orderly condition throughout the performance of the Work. 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 XII, Contractor shall (i) remove all Contractor equipment from the Project Site, (b) tear down and remove all temporary structures on the Project Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed plant (including the re-grading and re-seeding of disturbed areas, which re-seeding may occur after Final Completion if Owner reasonably approves), (c) reclaim, in accordance with the applicable Real Property Requirements, laydown areas, and other construction areas as required by the applicable Real Property Requirements, and (d) remove and dispose of all waste and rubbish generated by Contractor and its Subcontractors from and around the Project Site. Contractor shall provide to Owner all legally required waste disposal manifests, if any, upon request.

2.3.17 Damage to Roads. Contractor shall abide by the maintenance provisions set forth in the Site Control Agreement (Exhibit K) and shall be responsible for (i) all damage it and its Subcontractors cause to state roads and highways (other than township roads) in violation of Applicable Law, (ii) all damage Contractor or its Subcontractors cause to County roads, (iii) all damage caused by it and its Subcontractors to private roads or property of third parties, in each case in connection with performance of the Work.

2.3.18 Fire Prevention. Contractor shall be responsible for providing adequate fire prevention and protection at the Project Site and shall take all reasonable precautions to minimize the risk of fire at the Project Site. Contractor shall provide instruction to the Labor in fire prevention control. Contractor shall provide appropriate fire-fighting and fire protection equipment and systems at the Project Site in a manner consistent with those as would be provided by a prudent contractor constructing a comparable project in comparable terrain and climate to that of the Project. Notwithstanding the foregoing sentence, this Agreement shall not, and does not

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obligate Contractor's or any of its Subcontractors' employees to fight any fires. In the event of a fire, Contractor's or any of its Subcontractors' employees shall immediately take steps to ensure the safety of themselves and others and shall contact the local fire department to report such fire and to determine the appropriate actions. Contractor shall promptly collect and remove combustible debris and waste material from the Project Site and shall not permit such debris and material to accumulate.

2.3.19 Other Work. As part of the Work (and except as otherwise stated in the Scope of Work, Article V or elsewhere in this Agreement as being the responsibility of Owner or Equipment Provider), Contractor shall provide any other services or items not specifically described in this Agreement if providing such additional work or item is necessary to make the Project operable, free from Defects and capable of performing as specified in this Agreement.

2.4 Prudent Industry Practices for the Work/Compliance. Contractor shall perform the Work in a manner that is (a) in conformance with Prudent Industry Practices and the Quality Assurance Procedures; (b) in compliance with the terms of the Agreement, and all interconnection requirements attached hereto; (c) compliant with all Applicable Laws, Applicable Permits; and (d) in compliance with and not in violation of the terms of the Real Property Requirements, including such that Owner would be in violation of the Real Property Requirements. In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or Permits contained in this Section 2.4 be interpreted to limit the applicability of all such standards, guidelines, practices, regulations, laws, and Permits to such provision.

2.5 Commencement of Work; Project Schedule; Acceleration.

2.5.1 Access to Project Site. Contractor will commence performance of all off-site Work promptly after the Effective Date and upon receipt of an LNTP, including ordering "long lead time" Equipment. Contractor will not perform any clearing Work on the Project Site until Owner issues to Contractor a Notice to Proceed.

2.5.2 Project Schedule; Monthly Progress Reports.

(a) [Within eight (8) weeks after the Effective Date,] Contractor shall prepare and submit to Owner for approval a complete "Level 3" working level critical path based in the Initial Project Schedule in sufficient detail acceptable to Owner, including identification of particular work tasks, durations and logical ties between activities (as further defined in the Scope of Work, the "Project Schedule"). Owner's approval of the Project Schedule, which shall not be unreasonably withheld, conditioned or delayed, shall be a condition precedent to Owner's approval of Contractor's initial Request for Payment. Contractor shall perform the Work in accordance with the Project Schedule.

(b) Contractor shall provide Owner with Monthly Progress Reports as further defined in Exhibit A, which shall include progress reports, as compared to the Project Schedule, including the incorporation of delay and acceleration analyses where appropriate. Such Monthly Progress Reports shall be presented electronically and shall address all material elements of the Work. Contractor shall provide Owner with appropriate work and meeting facilities at the

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Site and shall conduct weekly and monthly project meetings at mutually agreeable locations or by telephone between representatives of Owner, Equipment Provider 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 will 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 obligations under Article VI.

2.5.3 Acceleration of Work. If, at any time or from time to time, Contractor fails to achieve or is reasonably likely to fail to achieve a Key Milestone by the date required therefor in the Project Schedule for any reason not otherwise excused under the terms of this Agreement, then, upon written request of Owner, Contractor shall promptly, but in any event within five (5) Business Days of such date, submit a written recovery plan with specific steps, tasks and Contractor and subcontractor actions, including manpower and/or working-hour increases, as applicable, necessary to complete all necessary Work by the dates for the remaining Key Milestones. The recovery schedule shall also contain sufficient detail to demonstrate the feasibility of achieving Project Substantial Completion by the Guaranteed Substantial Completion Date. Owner shall either accept such recovery plan or provide comments to such plan, which such comments shall be implemented to such recovery plan. Contractor shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by Owner of such recovery plan nor Contractor's prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Contractor of its obligations under the Agreement relating to the failure to timely achieve any Key Milestone by the date required therefor, or (ii) be a basis for a Change Order or any other compensation or an increase in the Contract Price. Contractor shall not be entitled to a Change Order or any other compensation or increase in the Contract Price in connection with the implementation of a recovery plan or any acceleration thereunder.

2.6 Hazardous Materials.

2.6.1 Contractor Duties. Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Material. Without limiting the generality of the foregoing: (a) Contractor shall, and shall cause its Subcontractors to, have a release prevention and response plan to contain and clean up any spills or emissions of Hazardous Materials by Contractor or its Personnel (such plan to be made available to Owner upon Owner's request); (b) 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 Material that are necessary, customary or advisable for the performance of the Work; (c) Contractor shall, and shall cause its Subcontractors to have an independent Environmental Protection Agency identification number for disposal of Hazardous Material generated by Contractor if and as required under Applicable Laws; (d) Contractor shall conduct its activities under the 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 Material by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to any Applicable Law; (e) neither Contractor nor its Subcontractors shall cause the release or disposal of Hazardous Material at the Project Site, bring Hazardous Material to the Project Site, or transport Hazardous Material from the Project Site, except as required for performance under the Agreement and in accordance with Applicable Law; (f) Contractor shall be responsible for the management of and proper disposal of all Hazardous Material released, brought

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onto or generated at the Project Site by it or its Subcontractors, if any; (g) if any spillage, discharge, emission, or release should occur through Contractor's actions, Contractor shall immediately notify Owner and take all reasonable steps necessary to: (1) stop and contain the spillage, discharge, emission, or release, (2) make any report(s) of the spillage, discharge, emission, or release as required under Applicable Law, and (3) clean-up the spillage, discharge, emission, or release as required by the applicable Government Authority; (h) Contractor shall cause all such Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any, (1) to be transported only by carriers maintaining valid Hazardous Materials transportation permits (as required) and operating in compliance with such permits and laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or Person who arranged for waste disposal, and (2) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits (as required) regarding Hazardous Material; (i) Contractor shall submit to Owner a list of all Hazardous Material to be brought onto or generated at the Project Site prior to bringing or generating such Hazardous Material onto or at the Project Site; and (j) Contractor shall keep Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site.

2.6.2 Environmental Releases.

(a) If Contractor or any of its Subcontractors releases any Hazardous Material on, at, or from the Project Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Project Site during the Work, Contractor shall notify Owner in writing within one hour of becoming aware of such circumstance. If Contractor's Work is involved in the area where such release occurred, Contractor shall immediately stop any Work affecting the area.

(b) Contractor shall, at its sole cost and expense, diligently proceed to take all necessary and desirable remedial action to clean up and remediate fully and dispose of, in accordance with Applicable Laws and to Owner's reasonable satisfaction, any contamination caused by (i) any negligent release by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material (the Parties agree that simply discovering any Pre-Existing Hazardous Material or accidentally disturbing previously unknown Pre-Existing Hazardous Material is not a negligent release of such Pre-Existing Hazardous Material, but that Contractor will act reasonably and prudently with respect to same upon discovery), and (ii) any Hazardous Material that was brought onto or generated at the Project Site by Contractor or any of its Subcontractors, whether on or off the Project Site.

(c) If Contractor discovers any Pre-Existing Hazardous Material that has 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. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Contractor is instructed to resume performance of the Work (after disposal or other decision by Owner regarding treatment of such Hazardous Substance), Contractor will be entitled to a Change Order as set forth

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in Section 9.5.1(e). Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination.

(d) In addition to Contractor's obligations as set forth above, if Owner desires Contractor to perform all or part of any clean up or remediation that may become necessary as a result of the discovery of any such Pre-Existing Hazardous Material as described in Section 2.6.2(c) above, the clean up and remediation of which is not the responsibility of Contractor as set forth in Section 2.6.2(b)(i) above, it shall request a Change Order pursuant to Section 9.2. Further, if so requested by Owner, Contractor shall cooperate with and assist Owner in making the Project Site available for taking necessary remedial steps to clean-up/remediate any such contamination at Owner's expense as determined in accordance with Article IX; provided, however, that under no circumstances shall Contractor be required to participate in such clean-up/remediation of a Pre-Existing Hazardous Material if such release is not the responsibility of Contractor as set forth in Section 2.6.2(b)(i) above.

2.6.3 Recordkeeping. Contractor shall minimize the use of Hazardous Materials in performance of the Work and shall not utilize, or permit or cause 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 safety data sheets for all Hazardous Materials used in connection with performance of the Work or at or near the Project Site or at any construction area related to the Project and shall update such file at least monthly and make it available on site in accordance with Applicable Law. Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in performance of the Work on at or near the Project Site or at any construction area related to the Project and the record shall identify quantities, location of storage, use and final disposition of such Hazardous Materials.

2.6.4 Owner's Self-Help Rights. If Contractor fails or refuses to remove from the Project Site (or any areas adjacent thereto or any other areas where Contractor performs the Work) or properly dispose of such Hazardous Materials as required pursuant to Section 2.7, Owner may, after providing Contractor with reasonable notice and opportunity to cure, at its discretion perform such removal or disposal as it may deem to be reasonably necessary or appropriate and charge Contractor with the full cost of performing such work either directly or by offset of such cost from any payment then or thereafter due to Contractor. The taking of any action by Owner in connection with the removal or disposal of such Hazardous Materials shall not relieve Contractor of its obligations under this Agreement and any Applicable Laws or Applicable Permits.

2.7 Owner's Right to Inspect; Correction of Defects.

2.7.1 Right to Inspect. Owner and its representatives shall have the right to inspect the Work and Contractor's records of inspections and quality control/quality assurance and shall have the right to maintain Personnel at the Project Site for such purpose. Owner shall have the right to communicate with any and all Subcontractors in connection with its inspection of the Work. Contractor shall use commercially reasonable efforts to include rights in all Subcontracts to permit Owner and any of their authorized representatives to audit, inspect, test and observe the Equipment at the facilities of any Subcontractor and the manufacturer of Equipment, and, if permitted, Contractor shall ensure reasonable, adequate and safe access to such facilities for such purposes, subject to any reasonable safety rules or restrictions imposed by such Subcontractor. If

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any portion of the Work should be covered contrary to the timely request of Owner or contrary to requirements specifically expressed in the Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Contractor shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost 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 pursuant to an appropriate Change Order in accordance with Article IX. Such inspection of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work in accordance with this Agreement. If Contractor covers any portion of the Work after offering Owner the opportunity to inspect, then if Owner later requests Contractor to uncover such Work then Owner shall pay the costs to uncover unless such Work is found to contain a Defect.

2.7.2 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 compliance with the terms and requirements of the Agreement. Defective Equipment that has been replaced, if situated on the Project Site, shall be removed by Contractor at Contractor's sole cost and expense. If Contractor fails within a reasonable period of time, not to exceed ten (10) Business Days after it knows of such Defect or noncompliance or neglects to commence and continue correction of such Defect or noncompliance with diligence and promptness, Owner may upon notice to Contractor, without prejudice to other remedies Owner may have under the Agreement, correct such Defect or noncompliance. In such event, an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such Defect or noncompliance, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such 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 ten (10) Business Days from Owner's request.

2.8 Inspection Not Approval. Owner will not be responsible for and will not have control over or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with this Agreement. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, any Subcontractor, or any of their agents or employees. No inspection made, failure to inspect, acceptance of Work, payment of money or approval given by Owner shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Owner may reject any Work with Defects or which is not in accordance with the requirements of the Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise, except to the extent such discovery occurs after expiration of the Warranty Period. No approval given by Owner, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

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2.9 Liens. Provided that Owner has paid Contractor in accordance with the requirements of this Agreement, 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 Work, the Equipment, the Project 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 services or materials within the scope of Contractor's Work. Upon the failure of Contractor to promptly discharge or cause to be released any Lien as required by this Section 2.9, within ten (10) days after notice to Contractor, 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 therefore, 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. Contractor shall notify Owner of the filing of any Lien against the Project, the Equipment, the Project Site, or any fixtures or personal property included in the Work promptly upon learning of the existence or filing of such Lien. Acceptance by Contractor of the final payment shall constitute a release by Contractor of Owner, Affiliates and every officer and agent thereof from all Liens (whether statutory or otherwise and including mechanics' or suppliers' Liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Owner or of any Person relating to or affecting this Agreement, except claims for which Contractor has delivered a dispute notice to Owner. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Agreement.

2.10 Cooperation.

2.10.1 Contractor shall be responsible for coordinating work on the Project Site. Owner shall use commercially reasonable efforts to cause all Other Owner Contractors and Equipment Provider to comply with the reasonable coordination requirements imposed by Contractor, which coordination shall be intended to optimize completion of construction of the Project in a timely manner.

2.10.2 Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, financing and Owner Permits for the Project.

2.10.3 Contractor acknowledges that work may be performed by others at the Project Site during the execution of Work. Contractor further acknowledges that Owner, through itself or through its employees, Subcontractors or agents, may continue to work and perform activities in connection therewith at and around the Project Site during the execution of the Work. Contractor shall cooperate and cause its Subcontractors, and Owner shall use commercially reasonable efforts to cause the Other Owner Contractors to cooperate with Contractor, to assure that no Party unreasonably hinders or increases, or makes more difficult than necessary the work being done by the other Parties. Contractor shall perform the Work in full cooperation with such others (provided the Other Owner Contractors reasonably cooperate with Contractor) and to

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permit, without charge, reasonable access to, and use of, the Project Site, by others or by Owner, when such access or use is necessary for the performance and completion of the work of others.

2.10.4 All material and labor shall be furnished, and the Work performed, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Agreement with priority given in all instances to activities necessary to achieve Key Milestones in accordance with the Project Schedule, subject to Contractor's right to a Change Order in the event of a Force Majeure Event or Owner-Caused Delay.

2.10.5 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 Project Site caused by the Work. To the extent they do not materially adversely affect costs or the achievement of Key Milestones on or prior to the scheduled completion dates for such Key Milestones, as set forth in the Project Schedule, such programs shall include: (i) minimizing the impacts of noise and dust at and around the Project Site; and (ii) using local Labor and other resources whenever possible, to the extent such Labor is qualified and cost competitive.

2.11 Intellectual Property Rights. Contractor shall obtain and, to the extent described below, maintain all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property rights (collectively, the "Intellectual Property Rights") necessary for performance of the Work and the operation and maintenance of the Project. Contractor hereby grants to Owner an irrevocable, non-exclusive, perpetual, royalty-free license under all Intellectual Property Rights whether now existing or developed for the Work, now or hereafter owned, licensed to or controlled by Contractor or any of its Affiliates, to use the same to the extent necessary for the ownership, completion, operation, maintenance, repair, rebuilding, alteration and expansion of the Work (provided such alteration or expansion is within the Scope of Work for this Project) and all subsystems and components thereof. To the extent that the license granted to Owner above is predicated upon Intellectual Property Rights held by Contractor, Contractor will maintain those Intellectual Property Rights throughout the life of the Project.

2.12 Credit Support.

2.12.1 Within thirty (30) Days following the Effective Date, but in any case no later than the date on which Notice to Proceed is issued and as a condition on Owner's obligation to make any payment hereunder, Contractor shall furnish to Owner the following forms of credit support to secure its obligations hereunder:

(a) Cash or a Letter of Credit with a total drawable amount ("face amount") equal to _____ Dollars (\$ _____) [*\$100/kW of nameplate capacity*];

(b) a Payment and Performance Bond with a penal sum not less than one-hundred percent (100%) of the Contract Price in substantially in the form set forth in Exhibit P-3 (the "Payment and Performance Bond").

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If the issuing bank for a Letter of Credit issued pursuant to this Section 2.12.1 fails to maintain the minimum credit rating required pursuant to the definition of Letter of Credit set forth in this Agreement, Contractor shall within five (5) days thereafter substitute such Letter of Credit for a new one whose issuing bank meets such credit rating. The Payment and Performance Bond may be issued by one or more sureties, provided that each one is jointly and severally liable under the Payment and Performance Bond. Each such surety must be an admitted insurer in the State of Oregon, have a rating of no less than [A- according to A.M. Best's Financial Strength Rating and Financial Size Category] and be duly licensed or authorized in Oregon to issue bonds for the limits so required.⁴ If a surety on the Payment and Performance Bond is declared bankrupt or becomes insolvent, fails to meet the minimum rating standard set forth in the preceding sentence, or its right to do business is terminated in the State of Oregon, Contractor shall within five (5) days thereafter substitute another surety (and new Payment and Performance Bond, if requested by Owner), which must be acceptable to Owner and meet the requirements of this Section 2.12. Contractor shall not be entitled to any increase in the Contract Price for the provision of the Letter of Credit or the Payment and Performance Bond.

2.13 Financial Reports. If Contractor is not legally required to file quarterly and annual financial reports with the Securities and Exchange Commission, then Contractor shall furnish to Owner:

2.13.1 as soon as available, but in any event within 45 days after the end of each calendar quarter, a consolidated and consolidating balance sheet and income statement covering its operations during such period, in a form reasonably acceptable to Owner and certified by its chief executive officer, chief financial officer, or treasurer; and

2.13.2 within 120 days after the end of each fiscal year, audited financial statements, together with an opinion that is unqualified on such financial statements of an independent certified public accounting firm of national standing.

All such financial statements shall be complete and correct in all material respects, shall include accompanying notes and schedules, and shall be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein and with prior periods.

2.13.3 EPC Contractor shall conduct the performance testing requirements as set forth in Exhibit C-3 (the "Performance Tests"). EPC Contractor shall provide Owner Notice of commencement of the Performance Tests in accordance with Exhibit C-3. EPC Contractor shall report and certify the results of the Performance Tests to Owner within five (5) Days after completion thereof. All Performance Tests specified in Exhibit C-3 shall be conducted at EPC Contractor's sole cost and expense.

ARTICLE III

SUBCONTRACTORS

⁴ Note to Draft: Sureties to be subject to minimum credit threshold.

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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. Exhibit I-1 sets forth a list of approved Major Subcontractors. Owner agrees to Contractor's use and engagement of Subcontractors; provided Contractor may not enter into any Major Subcontract with any Person not listed in Exhibit I-1 or approved by Owner in writing (which approval shall not be unreasonably conditioned, withheld or delayed). Except as otherwise expressly provided in the Agreement, Contractor shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by them; provided, however, that Owner shall have the right to communicate with Subcontractors and their personnel in connection with the Work and Owner's rights and obligations under this Agreement. Contractor shall require that all Work performed and all Equipment provided by Subcontractors be received, inspected and otherwise furnished in accordance with the Agreement. Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of its Subcontractors and whenever this Agreement refers to the negligence, fault or omission of Contractor, it shall include the negligence, fault or omission of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor.

3.2 Subcontracts. All contracts with Subcontractors shall be consistent with the terms and provisions of the Agreement. Contractor will provide Owner with copies of all subcontracts as requested by Owner (with redacted pricing, in Contractor's discretion). At a minimum, all subcontracts shall require the Subcontractors to comply with Applicable Laws, and shall provide that Owner has the right of inspection and communication with Subcontractors 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 the Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the Equipment and (c) obtain, maintain and keep in force throughout the time during which they are engaged by Contractor such insurance coverages as are required of Contractor under this Agreement. All subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to use reasonable efforts to enter into similar agreements with other Subcontractors. All subcontracts shall require payment to Subcontractors within no less than thirty (30) calendar days of submission of a valid invoice and associated lien waivers for work performed or materials or equipment supplied in accordance with the terms of the subcontract. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of this Agreement. Contractor shall ensure that Contractor's rights and obligations under each Subcontract may be, without requiring the prior consent of the relevant Subcontractor, in whole or in part, assigned and delegated by Contractor to Owner. Each Subcontract shall provide that upon notification to the Subcontractor from Owner, that: (a) the Agreement has been terminated; (b) Contractor's right to proceed with the Work has been terminated; and (c) Owner will thereafter be assuming Contractor's obligations under such Subcontract, then such Subcontractor shall continue to perform its responsibilities under such Subcontract for the benefit of Owner and shall recognize Owner as being vested with all the rights and responsibilities of Contractor under such Subcontract (other than obligations, including payment obligations, arising or relating to prior to the date of the notice, which shall remain

APPENDIX I

the responsibility of the Contractor). Notwithstanding the foregoing, it is specifically understood and agreed (and each Subcontract shall clarify) that no such assignment shall release Contractor from any liability hereunder, and no Subcontractor shall have any right to look to Owner for the performance of Contractor's obligations under any Subcontract unless and until such Subcontractor has received such notice from Owner. Each Major Subcontract shall require the Subcontractor to execute an acknowledgment of, and agreement to, the provisions of this Section 3.2. Contractor will deliver to Owner a copy of each such executed acknowledgment and agreement within forty-eight (48) hours after each Subcontractor's execution of its Subcontract.

3.3 Owner as Third Party Beneficiary. No Subcontractor is intended to be nor shall it be deemed a third party beneficiary of this Agreement. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each Subcontractor in accordance with the applicable Subcontract or purchase order between Contractor and the Subcontractor; provided, however, each agreement between Contractor and a Subcontractor with respect to the Work shall name Owner as an intended third party beneficiary.

3.4 Subcontractor Payments. Contractor shall pay all Subcontractors in accordance with the requirements of the applicable subcontracts, provided that in all cases, Contractor shall pay Subcontractors within thirty (30) days after Subcontractor has completed its work on the Project. On a no less than monthly basis, Contractor shall provide Owner with all reasonably requested documentation to evidence its compliance with the preceding sentence.

3.5 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 will require all Subcontractors to provide product and service warranties at a minimum equal to the Warranties in Article VII. 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 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.

ARTICLE IV

CONTRACT PRICE

4.1 Contract Price. As full consideration to Contractor for the complete performance of the Work and Contractor's other covenants in this Agreement, Owner will,

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subject to the provisions of this Article IV and the Schedule of Values attached hereto as Exhibit B-1, pay Contractor [_____] Dollars (\$ _____) (the “Contract Price”). The Contract Price may be adjusted only pursuant to a Change Order issued in accordance with the provisions of Article IX. Subject to the terms and conditions of this Article IV, the Contract Price shall be paid by Owner to Contractor, in accordance with the requirements set forth in the Agreement, by way of the milestone payments set forth in the Payment Schedule attached hereto as Exhibit B-2.

4.2 Taxes.

4.2.1 Contractor’s Taxes.

(a) Contractor shall be responsible for all taxes, transportation fees, freight, packing costs, custom duties, export/import tariffs, personnel fees and all other costs associated with the performance of the Work and any other of its duties and responsibilities under this Agreement, unless otherwise stated in this Agreement (collectively “Contractor’s Taxes”). The Parties agree that the Contract Price, as stated in Section 4.1, includes all Contractor’s Taxes, excluding materials that are tax exempt under Applicable Law.

(b) To the extent Owner indicates to Contractor that it will obtain an exemption which is thereby factored into the original Contract Price and Contractor complies with Owner’s reasonable instructions for implementing such exemption for purposes of avoiding payment of sales and use taxes to Subcontractors or Suppliers for goods and services subject to such exemption, then Owner shall reimburse Contractor for the amount of any sales or use taxes that Contractor is required to pay, to the extent excluded from the original Contract Price, notwithstanding the applicability of such exemption; provided, however, Contractor shall procure and provide to Owner such documents evidencing payment of such taxes as Owner may be reasonably required to enable Owner to obtain a refund of such paid taxes.

(c) At any time and from time to time upon Owner’s reasonable request, Contractor will allow Owner and its designees the opportunity to review all purchases by Contractor and its Subcontractors (and will in this regard provide all relevant information regarding the same (including separate break-out pricing for goods and services, if reasonably available)) for the purpose of determining whether such exemptions or rebates apply and have been or should have been granted.

(i) If Owner directs Contractor to seek an exemption or rebate and Contractor fails to seek such exemption or rebate for an item, Owner will be relieved of its obligation under Section 4.2.2(a) to reimburse Contractor for the taxes on such item.

(ii) If Contractor seeks exemption or rebate on an item in accordance with the foregoing, but the same is not granted, Owner shall reimburse Contractor for the disallowed amount, and Contractor will assign to Owner its right to seek a refund of, or rebate in connection with, the amount in question and will reasonably cooperate with Owner to seek such refund or rebate. If such assignment is not allowed under Applicable Law, then Contractor will, at Owner’s direction and expense, seek such refund and, if received, pay over such refund to Owner,

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and all costs of seeking a refund or appealing the denial of an exemption, refund or rebate shall be borne by Owner.

(iii) Any rebates received by Contractor or its Subcontractors in connection with any Contractor's Taxes reimbursed by Owner under Section 4.2.2 from the purchase of any materials, supplies or equipment in connection with the Work shall be immediately paid over to Owner.

(d) Contractor shall promptly provide Owner with notice of any audits, assessments or challenges by any Government Authority with respect to Contractor's Taxes, which are to be reimbursed by Owner. In the event of any such audit, assessment or challenge, Owner shall have the right to receive copies of all correspondence and documents relating thereto, to attend and participate in all meetings with the Government Authority and to participate in and control all mediation, and litigation related thereto, provided the cost thereof is borne by Owner and Owner indemnifies, defends and holds Contractor harmless with respect thereto.

(e) To the extent Owner is obligated under Applicable Laws to pay any of Contractor's Taxes, Contractor shall: (i) furnish to Owner all information and reports required to be furnished to the appropriate taxing authorities in connection with all such Contractor's Taxes; and (ii) reimburse Owner for the full amount of such Contractor's Taxes paid by Owner that are not otherwise required to be reimbursed by Owner to Contractor under Section 4.2.2. Contractor will have no responsibility for property taxes assessed on the Work or the Project Site.

4.2.2 Owner Taxes.

(a) If Contractor is assessed any taxes, for tangible personal property and services purchased for the purpose of and in conjunction with constructing of the Project despite having complied with the requirements of Section 4.2.1, Contractor will invoice Owner for reimbursement of such assessment as part of each applicable Request for Payment, and shall include therewith all documentation necessary to evidence Contractor's and Subcontractor's payment of such taxes. For the avoidance of doubt, Owner will not be responsible: (i) to reimburse Contractor for those Contractor's Taxes as described in Section 4.2.1(a); or (ii) for any penalties or interest related to non-payment or late payment of any required Contractor's Taxes, unless such non-payment or late payment is due to or caused by the instruction of Owner to Contractor, as provided in Section 4.2.1(c)(ii).

(b) Owner shall administer and pay all sales, use, gross receipts, income, value-added and withholding taxes and duties, and any other similar taxes or contributions (including penalties and interest related to such taxes), imposed by any taxing authority: (i) that are measured by Owner's sale of electricity from the Project; and (ii) upon services or labor provided by Owner or any Other Owner Contractors in connection with the Project (collectively "Owner's Taxes"). Owner shall furnish to the appropriate taxing authorities all required information and reports in connection with all such Owner's Taxes.

(c) To the extent Contractor is legally obligated to pay any of Owner's Taxes, Owner shall: (i) furnish to Contractor all information and reports required to be furnished

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to the appropriate taxing authorities in connection with all such Owner's Taxes; and (ii) reimburse Contractor for the full amount of such Owner's Taxes paid by Contractor.

4.3 Requests for Payment. Contractor shall, on or before then tenth (10th) Business Day of each calendar month, prepare and submit to Owner an application for payment substantially in the form of Exhibit B-3 (each, a "Request for Payment") for the milestone(s) achieved during the prior month, in accordance with the Payment Schedule.

4.4 Retainage.

4.4.1 Retainage. Owner shall withhold, as retainage (the "Retainage") an amount equal to ten percent (10%) of all payments made to Contractor under this Agreement. To the extent it is determined by any Government Authority that the Retainage exceeds limits set by Applicable Laws, such Retainage shall be reduced to the maximum percentage of all payments made to Contractor so permitted by Applicable Laws.

4.4.2 Use of Retainage. The Retainage 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. The Parties acknowledge that because the Retainage shall constitute security, Owner may utilize the same to, among other things, cure any Contractor Event of Default, offset Delay Liquidated Damages, pay unpaid Contractor suppliers, remove Liens filed by Subcontractors and cover any expenses associated therewith, or offset against any other amounts payable by Contractor to Owner under this Agreement.

4.4.3 Release of Retainage. Within fifteen (15) days after the Project Substantial Completion Date, subject to Section 4.5 Owner shall release to Contractor all cash Retainage, except for a cash amount equal to two hundred percent (200%) of the projected costs to complete any remaining items on the Punch Lists, as such cost is reasonably estimated by Owner. Within fifteen (15) days after the Final Completion Date, Owner shall release the remaining cash Retainage (less any amount utilized by Owner to perform any Punch List items).

4.5 Conditions of Payment. Owner's obligation to make any payment hereunder is conditioned upon the following:

4.5.1 Contractor shall have submitted a Request for Payment to Owner in the form set forth as Exhibit B-3, together with all required documents referenced therein, including, without limitation the following:

(a) written waivers and releases in the form of Exhibit O-1, Exhibit O-2, Exhibit O-3 and Exhibit O-4 (as applicable), duly executed by Contractor and all Major Subcontractors; and

(b) a written certification of an officer of Contractor that (i) the requirements of Sections 4.5.2 through 4.5.5 have been satisfied and (ii) there are no known mechanics' or materialmen's liens or other such claims or encumbrances outstanding from Subcontractors at the date of the Request for Payment, all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the Request for Payment,

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and, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on any portion of the Project or the Work, and releases from all Subcontractors have been obtained in such form as to constitute an effective release of lien (corresponding to payments received by them) under the laws of the State of Oregon.

4.5.2 Contractor shall have completed the Work for which payment is sought and have submitted evidence reasonably acceptable to Owner that demonstrates the completion of such Work.

4.5.3 The representations and warranties made by Contractor in this Agreement shall be true and accurate in all respects, both before and after giving effect to the making of the requested payment.

4.5.4 All Contractor Permits required by Applicable Law and this Agreement shall have been obtained and shall be in full force and effect on the requested payment date.

4.5.5 No uncured Contractor Event of Default shall then exist and no material breach, violation or default shall have occurred and be continuing under the Payment and Performance Bond or any Letter of Credit issued in accordance with this Agreement.

Within forty five (45) Days after its receipt of a Request for Payment, provided 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: (a) any portion thereof that Owner in good faith disputes as not being due and owing, (b) any overpayment made by Owner for any previous period, (c) any Delay Liquidated Damages payable by Contractor, (d) any amounts withheld pursuant to Sections 4.6 and 4.8 and (e) any costs incurred by Owner in enforcing any provision hereof (including attorneys' and other consultants' fees) regardless of whether such provisions expressly provide for withholding or set-off. Contractor may only submit one (1) Request for Payment per calendar month.

4.6 Deductions from Payments. Notwithstanding any other provision to the contrary contained herein, Owner may withhold and shall have no obligation to make 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 reasonably necessary to protect Owner from loss because of (a) Defects in the Work not timely remedied; (b) third-party claims filed against Owner, (c) Liens filed (that have not been bonded off as described in Section 2.9 or are not covered by insurance maintained hereunder); (d) failure of Contractor to make undisputed payments when due to Subcontractors; (e) damage to Owner or another contractor, including damage to the property of Owner or any of its Affiliates, to the extent the costs of such damages are not covered by insurance maintained hereunder; (f) damages caused by Contractor or its Personnel; (g) Contractor's failure to deliver a recovery plan as set forth in Section 2.5.3 or the failure of Contractor to diligently proceed with the recovery plan; or (h) Contractor's failure to provide information requested by Owner to ensure conformance of the Work to the requirements of this Agreement and Applicable Law or to measure the progress of the Work, as necessary to conform Contractor's entitlement to payment. Contractor shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of

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its rights under this Section 4.6. Owner shall release payments withheld pursuant to this Section 4.6 within thirty (30) days from the date when Contractor cures all such events or breaches to the reasonable satisfaction of Owner. If there is any dispute about any amount invoiced by Contractor, the amount not in dispute shall be promptly paid.

4.7 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.

4.8 Set off. Owner may deduct and set off against any part of the balance due or to become due to Contractor under this Agreement or against any Retainage (a) any Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder that are not then the subject of dispute resolution under Section 14.2, or (b) any other amounts that are due from Contractor to Owner under or in connection with this Agreement.

4.9 No Payment if Default. 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.

4.10 Interest. Any sums not timely paid shall accrue interest at Prime Rate plus two percent (2%) from the date due until paid.

ARTICLE V

OWNER RESPONSIBILITIES

In addition to Owner's other duties and responsibilities under and pursuant to this Agreement, Owner shall have the following general obligations and responsibilities:

5.1 Project Site Access. As required by Project Schedule, Owner shall provide access to the Project Site to Contractor, Subcontractors and their Personnel as necessary to perform the Work.

5.2 Permits. Owner shall, with Contractor's reasonable assistance, timely obtain and maintain, at its own cost and expense, all Owner Permits, copies of which shall be delivered to Contractor upon its request. In addition, Owner shall provide reasonable assistance and cooperation, and execute such applications as Contractor may reasonably request, in connection with obtaining any of Contractor Permits.

ARTICLE VI

STAGES OF COMPLETION OF THE WORK

6.1 Work Completion. Contractor shall complete the Work in strict compliance with the Project Schedule and shall certify completion of such portions of the work in accordance with the process required in Exhibit Q (Form of Work Completion Certificates).

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6.1.1 Commencement of Construction Liquidated Damages. Owner and Contractor acknowledge and agree that any failure of Contractor to Commence Construction (as such term is defined in the US Tax Code) to occur on or before _____ will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Thus, if such failure occurs, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the following amounts (collectively, “Commencement of Construction Liquidated Damages”). *[To be discussed depending on technology and Bidder’s tax credit assumptions.]*

6.1.2 Substantial Completion Delay Liquidated Damages.⁵ Owner and Contractor acknowledge and agree that any failure of Contractor to cause Project Substantial Completion to occur by the applicable Guaranteed Substantial Completion Date will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Thus, if such failure occurs, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the following amount (collectively, “Substantial Completion Liquidated Damages”): \$ _____ per Day that Project Substantial Completion is delayed beyond the Guaranteed Substantial completion Date.⁶

6.1.3 Contractor shall not be relieved from the obligation to meet the Guaranteed Substantial Completion Dates except to the extent any such date is extended pursuant to a Change Order or a written notice from Owner.

6.2 Project Mechanical Completion. *[Definition to be determined by Bidder’s technology, Certificate of Mechanical Completion and Mechanical Completion Checklist in Exhibits.]*

6.3 Project Substantial Completion.

6.3.1 Conditions of Project Substantial Completion. “Project Substantial Completion” shall be achieved when each of the following conditions has been satisfied:

- (a) all Equipment comprising the Project has been installed as required;
- (b) the Project has been connected to and synchronized with the Grid, and is capable of operating as a fully-integrated electricity generating plant that safely and continuously generates electric power in accordance with the requirements of all Applicable Laws and this Agreement;
- (c) Contractor and Owner have agreed upon the Final Punch List for all Work, as described in Section 6.4.1;

⁵ Note to Draft: Guaranteed Mechanical Completion, and other guaranteed milestones to be added, as required in accordance with downstream liabilities and overall economics of the project.

⁶ Note to Draft: Increase in daily amount of Substantial Completion Delay LDs after an initial period to be established depending upon downstream liabilities and overall economics of the Project.

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(d) Contractor has fully completed all Work (including all Work on or comprising all remaining Project for the Project), except those items on the agreed upon the Final Punch List;

(e) any Defects found have been corrected;

(f) Contractor has completed all Performance Tests and (i) has demonstrated through Performance Testing in accordance with Exhibit C-3 that the Project has achieved the Performance Guarantee in accordance with Exhibit C-4, or (ii) has demonstrated through Performance Testing results in accordance with Exhibit C-3 that the Project has not achieved the Performance Guarantee and that Contractor has paid all applicable Performance Liquidated Damages in accordance with Exhibit C-4.⁷

(g) Contractor has provided Owner with copies of all Contractor Permits;

(h) all Spare Parts requested by Owner under Section 2.3.10 have been delivered by Contractor to the Project Site in accordance with Section 2.3.10; provided that any Spare Parts requested by Owner within two (2) weeks prior to the date of submittal of the Project Substantial Completion Certificate which have not been delivered by such date will be added to the Final Punch List;

(i) Contractor has paid all Delay Liquidated Damages due under this Agreement, if any;

(j) Contractor has delivered to Owner copies of all test reports and electrical schematics related to the Work;

(k) Contractor has delivered draft copies of the Operating Manual and Job Books in accordance with Sections 2.3.11(a) and (b);

(l) Contractor has delivered to Owner all interim progress payments or final, as the case may be, waivers of mechanic's and materialman's Liens from all Subcontractors for Work completed through such date, and Contractor has certified that there are no Liens threatened, pending or existing on the Project; and

(m) Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.3.2.

6.3.2 Confirmation of Project Substantial Completion. When Contractor believes it has satisfied all of the requirements for Project Substantial Completion, Contractor shall notify Owner in writing. Within five (5) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Owner agrees that Contractor has fulfilled the requirements of Project Substantial Completion. If Owner believes Contractor has not fulfilled such requirements,

⁷ Note to Draft: Performance Testing provisions to be inserted depending upon Bidder's technology, overall project economics, and related downstream obligations. Significant, enhanced testing and warranty provisions to be developed for BESS construction.

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Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Project Substantial Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.3.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. If Owner fails to respond within seven (7) Business Days to the Project Substantial Completion Certificate provided by Contractor, Project Substantial Completion shall be deemed to have been achieved; provided, however, such deemed Project Substantial Completion shall not relieve Contractor from any of its obligations hereunder, including Contractor's obligations to achieve Project Substantial Completion. For all purposes of this Agreement, Project Substantial Completion Date shall be the date the Project Substantial Certificate is ultimately accepted by Owner or, if applicable, deemed accepted by Owner.

6.4 Punch List for Project.

6.4.1 Development of Punch List. Prior to submittal of the initial Project Substantial Completion Certificate, Contractor will prepare and deliver to Owner a written list setting forth all of the items that remain to be performed in order to complete the Work, provided such items of Work on such list shall only be items that are (i) minor in nature, (ii) not related to the functionality, utility, operation or restoration of Work, (iii) not related to the compliance of any such Work with any Applicable Laws or Applicable Permits, and (iv) not related to the correction of Defects. Such list shall also state the proposed time limits within which Contractor will complete each of such remaining Work items. Upon its receipt of such list, Owner will reasonably review the same and notify Contractor of any proposed revisions thereto. Owner's Project Manager and Contractor's Project Manager will then meet and consult in good faith to agree upon the definitive, final version of such list (including the approved time limits within which Contractor will perform such remaining Work items) (such final list, as agreed to by Owner, the "Final Punch List").

6.4.2 Completion of Punch List Items. Once any Punch List hereunder is agreed upon, Contractor will promptly begin the items thereon. Contractor's Work on such Punch Lists shall be performed in a manner that does not unreasonably interfere with the commercial operation of the Project. Owner will provide Contractor with reasonable access to the Project Site so that Contractor may perform the Work on the Punch Lists.

6.5 Final Completion.

6.5.1 Conditions of Final Completion. "Final Completion" will be achieved when each of the following conditions has been met:⁸

- (a) Project Substantial Completion has occurred;

⁸ Note to Draft: For certain projects, certain performance guarantees may be required for Final Completion, such as a multi-day, or multi-week availability or project energy test. These performance guarantees may be accompanied by buy-down liquidated damages.

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(b) Contractor has completed performance of all of the Work, including all Punch List items, except for those items that Owner and Contractor agree are to be completed by Owner (and Contractor has paid all amounts due Owner in connection therewith);

(c) Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof;

(d) Contractor has provided to Owner all Lien releases as required under Section 4.5 (provided that Contractor's Final Lien Waiver and Release, in substantially the form of Exhibit O-3 attached hereto from Contractor and Subcontractor's Final Lien Waiver and Release in the form of Exhibit O-4 attached hereto from each Major Subcontractor, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);

(e) all documentation, including data points and redlines, as necessary to accurately reflect the Project as constructed in the As-Built Drawings shall have been delivered to, and accepted by, Owner;

(f) all sets of the final Operating Manuals and final Job Books have been delivered to Owner as required under Section 2.3.11; and

(g) Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.5.2.

6.5.2 Confirmation of Final Completion. When Contractor believes that it has satisfied all of the requirements for Final Completion, Contractor shall notify Owner in writing. Within five (5) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Owner agrees Contractor has fulfilled the requirements of Final Completion. If Owner believes Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Final Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.5.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. If Owner fails to respond within five (5) Business Days to the Final Completion Certificate provided by Contractor, Contractor shall provide a second Final Completion Certificate, which will include a reference to the previously provided certificate and a statement to the effect that failure to respond to such second certificate shall result in Final Completion being deemed to have been achieved. If Owner fails to respond to the second Final Completion Certificate within seven (7) Business Days following receipt of such second certificate, Final Completion shall be deemed to have been achieved; provided, however, such deemed Final Completion shall not relieve Contractor from any of its obligations hereunder, including Contractor's obligations to achieve Final Completion. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date on which the relevant completion notice accepted by Owner or, if applicable, deemed accepted by Owner.

6.6 Reasonable Amount; Exclusive Remedy. The Parties agree that the sum of the amounts fixed as Construction Commencement Liquidated Damages and Substantial

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Completion Liquidated Damages (“Delay Liquidated Damages”) are fair and reasonable, considering the damages that Owner would sustain in the described event, 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. Except as set forth in Article XII, collection of Delay Liquidated Damages shall constitute Owner’s exclusive remedy and Contractor’s exclusive liability for Contractor’s failure to cause, as applicable, Project Substantial Completion to occur by the Guaranteed Substantial Completion Date, as such date may be extended by any executed Change Order. The foregoing sentence shall not relieve Contractor from its obligations (nor limit Owner’s ability to seek other available remedies in connection with Contractor’s failure to comply with its obligations) to perform the Work in accordance with this Agreement or from its Warranty or other obligations under this Agreement.

6.6.1 Limitation of Liability for Delay Liquidated Damages. Contractor’s aggregate liability for Delay Liquidated Damages shall not exceed an amount equal to ____percent (___ %) of the Contract Price.

6.6.2 Offset Rights; Security for Obligations. Owner shall have the right to offset any amounts owing to Owner under this Article VI against 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 VII

WARRANTIES

7.1 Warranty Provisions.

7.1.1 Warranty. As the “Warranty,” Contractor warrants to Owner that: (a) all Equipment and Spare Parts shall be new, unused and undamaged when installed, (b) all such Equipment, Spare Parts and all Work shall (i) be free from Defects, (ii) conform to all applicable requirements of all Applicable Laws, Applicable Standards, the Construction Documents and the Agreement and (iii) be in strict compliance with the Scope of Work; (c) the services comprising the Work will be performed with Contractor’s best skill and judgment in a good and workmanlike manner; (d) the Work will conform to, and be performed in accordance with, all Applicable Laws, Prudent Industry Practices, and the other terms and requirements of the Agreement; and (e) none of the Work and other services rendered by or through Contractor hereunder, nor the use of the Work by Owner, nor any license granted hereunder, infringes, violates or constitutes a misappropriation of any Intellectual Property Rights.

7.1.2 Warranty Period; Extensions. The Warranty shall commence on the Project Substantial Completion Date and shall continue for a period of ____ (___) years after Project Substantial Completion Date (the “Warranty Period”); *provided, however*, that if any component of the Work is repaired or replaced pursuant to the Warranty Service, then the Warranty Period with respect to such component shall be continued for a period that is the longer of (a) the remainder of the original Warranty Period, or (b) one (1) year from the date of completion of the repair or replacement or re-performance thereupon, *provided, further*, that if fifteen percent (15%)

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or more of any type of component of the Work requires repair or replacement within the Warranty Period, then the Warranty Period for that type of component shall be automatically extended for all such components of that type for an additional one (1) year from the later of (i) the date of expiration of the Warranty Period or (ii) the date of the completion of Warranty Service to correct the failure that caused the percentage of failures to reach fifteen percent (15%). At expiration of the Warranty Period, any unexpired warranties relating to the Work shall be assigned to Owner (and Contractor will promptly execute such documents as may be necessary to cause such assignment to occur).

7.1.3 Correction of Deficiencies. If the Work or Equipment or Spare Part is in breach of any Warranty set forth in this Section 7.1, Contractor shall, subject to Section 7.2, cure such breach as promptly as practicable upon being given written notice thereof (“Warranty Service”). Owner shall provide Contractor with reasonable access to the Project in order to perform its obligation under this Article VII and the Parties shall schedule such work as necessary so as to minimize disruptions to the operation of the Project. Owner shall have the right to operate and otherwise use the Equipment until such time as Owner deems prudent to suspend such operation or use in order to accommodate Contractor’s Warranty Services. If Equipment has been placed in service, Contractor shall perform such Warranty Service as soon as Owner deems it prudent to remove the same from service for any Warranty Service by Contractor; provided that the Warranty Period will continue until Contractor has completed such Warranty Service. Neither payment by Owner, nor any other provision of this Agreement, nor partial or entire use or possession of the Work by Owner shall relieve Contractor of liability with respect to the Warranty contained in this Article VII. Contractor shall bear all costs and expenses directly associated with the Warranty Services, including, all costs of services and equipment and of any necessary disassembly, removal, replacement, transportation, reassembly, reinstallation, and retesting, as well as reworking, repair or replacement of such Work, and reassembly of structures, electrical work, machinery, Equipment, or any other obstruction as necessary to give access to the non-conforming item for correction, and for removal, repair or replacement of any damage to other work or property that arises from the breach of Warranty and any applicable insurance deductibles. Upon completion of Warranty Service, all Equipment shall be returned or restored to its proper condition (subject to normal wear and tear), including but not limited to fit alignment, adjustment, operability and finish. 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 no material risk of the reoccurrence of such problem. Contractor’s obligations under this Section 7.1 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any vendor or Subcontractor to Contractor or Owner. No correction or cure shall be considered complete until Owner has reviewed and accepted such remedial work. So long as Contractor has been notified of a breach of Warranty prior to the end of the Warranty Period, the obligation of Contractor to provide Warranty Service to correct such noncompliance, Defect or breach of Warranty shall survive the expiration of the Warranty Period.

7.1.4 Conformance of Warranty Service to Warranty. Contractor warrants that all materials incorporated into the Work as part of repairs to and replacements of the Work by Contractor or any Subcontractor, and repairs to and replacements of the Work pursuant to the Warranty Service shall conform to the requirements of this Agreement and the Warranty. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to

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verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty Service complies with the requirements of the Warranty.

7.2 Delay. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified of the noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than two (2) Business Days after such notice. If, after notification of a Defect or breach of Warranty, Contractor delays past such date in commencing, or shall fail to continue performing or completing, Warranty Service with respect to such Defect or breach of Warranty, Owner may correct such breach of Warranty so that the Work and Equipment comply with the Warranty after giving Contractor three (3) Business Days written notice, and Contractor shall be liable for all reasonable direct costs, charges and expenses incurred by Owner in connection with the same and shall pay the same to Owner upon receipt of invoices with supporting documentation from Owner. Such correction of a breach of Warranty condition shall be deemed to be Warranty Service performed by Contractor and the Warranty Period for such corrected Work shall be extended in accordance with Section 7.1.2. No correction of a Defect or breach of Warranty pursuant to this Section 7.2 shall void the Warranty.

7.3 Subcontractor Warranties. 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. At the end of the Warranty Period, Contractor will assign to Owner its rights under any and all such Subcontractor warranties that continue past the end of the Warranty Period, including the Major Equipment Warranties. Contractor will secure such assignment from each Subcontractor, and Contractor will deliver to Owner copies of all Subcontracts providing for warranties enforceable by Owner. Contractor will not, and Contractor will ensure that Contractor’s Personnel do not, take any action which could release, void, impair or waive any Subcontractor warranties. Contractor shall provide reasonable assistance to Owner without cost to Contractor in connection with the enforcement by Owner of any Subcontractor warranty after such assignment provided those warranties are in are excess of those set forth in Section 7.1.

7.4 Major Equipment Warranties. The following components of the Project have Equipment warranties from manufacturers or suppliers (the “Major Equipment Warranties”):

7.4.1 [_____], Appendix D-1;

7.4.2 [_____], Appendix D-2;

7.4.3 [_____], Appendix D-3;

7.4.4 [_____], Appendix D-4; and

7.4.5 [_____], Appendix D-5.

7.5 Proprietary Rights. Without limiting any of the provisions of the Agreement and notwithstanding any provision herein to the contrary, if Owner or Contractor is prevented from completing the Work (or any part thereof) in accordance with the Agreement or from the use, operation, repair, maintenance, alteration, expansion, rebuilding or enjoyment of the Work

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(or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Contractor's performance (or that of its Subcontractors) under the Agreement or any Intellectual Property Right or Contractor Deliverable transferred or licensed to Owner 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 assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverable in connection with the completion, repair, operation, maintenance, alteration, rebuilding or expansion of the Work without obligation or liability; or (b) replace such materials, Equipment, or Contractor Deliverable, 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 Agreement.

7.6 NO IMPLIED WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. 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 herein.

7.7 Survival of Warranties. The provisions of this Article VII shall survive the expiration or termination of this Agreement.

ARTICLE VIII

FORCE MAJEURE; OWNER-CAUSED DELAYS

8.1 Force Majeure.

8.1.1 Notice. If a Party believes that an event constituting a Force Majeure Event has occurred that has or will prevent or delay the performance of its obligations under this Contract, then such Party shall give the other Party written or electronic notice within ten (10) days after the Party became aware of such event (the "Force Majeure Notice"). The Force Majeure Notice need only be given to the other Party's on-site manager or supervisor (Owner's Project Manager), but shall be in writing or via email. Within thirty (30) Days after the Force Majeure Notice, the Party claiming a Force Majeure Event shall, to the extent practicable; (i) specify the length of the delay occasioned by, and additional costs incurred by reason of such Force Majeure Event; (ii) describe the particulars of the cause and nature of the Force Majeure Event; and (iii) provide evidence of the occurrence of such Force Majeure Event. At all times after the Force Majeure Notice, the affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event.

8.1.2 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.1.2 are satisfied, except with regard to payment obligations, 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 under or pursuant to the Agreement to the extent that such failure

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has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:

(a) 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;

(b) 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;

(c) the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(d) when the affected Party is able to resume performance of the affected obligations under the Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under the Agreement, provided that in the event that a Force Majeure Event causes a prolonged delay to the Project, Owner may elect to terminate this Agreement pursuant to Section 12.3.

8.1.3 Change Order Rights. If Contractor desires a Change Order for a Force Majeure Event, Contractor shall comply with the Force Majeure Notice requirements contained in Section 8.1.1. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(a). If Contractor fails to comply with such notice requirements, then Contractor will be deemed to have waived its right to receive a Change Order for the subject Force Majeure Event.

8.1.4 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 this Section 8.1 shall be upon the Party claiming such Force Majeure Event.

8.2 Owner-Caused Delay.

8.2.1 Without limiting the definition of Owner-Caused Delays, notwithstanding anything in this Agreement to the contrary, in any case where this Agreement states that Owner “shall cause” the Other Owner Contractors to take or not to take a certain action, the Parties agree that if the Owner fails to meet that obligation, such failure shall exclusively constitute an Owner-Caused Delay and shall not constitute an Owner Event of Default, and Contractor’s sole and exclusive remedies as a result thereof will be as set forth in this Section 8.2 and Section 9.5.1(c).

8.2.2 Notice. If Contractor believes an Owner-Caused Delay has occurred, then Contractor shall give Owner’s Project Manager written or electronic notice describing the alleged Owner-Caused Delay within ten (10) days following the date on which Contractor became aware of the occurrence of an event Contractor believes is or may be an Owner-Caused Delay and Contractor’s notice shall describe the details of the Owner-Caused Delay and any effects on Contractor’s performance of its obligations under this Agreement.

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8.2.3 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.2 are satisfied, Contractor shall not be responsible or liable for or deemed in breach of the Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Key Milestone to the extent that such failure has been caused by one or more Owner-Caused Delays, provided that: (a) 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; (b) Contractor provides timely notice of the Owner-Caused Delay, and (c) Contractor provides all assistance reasonably requested by Owner, at Owner's cost, for the elimination or mitigation of the Owner-Caused Delay.

8.2.4 Change Order Rights. If Contractor desires a Change Order for an Owner-Caused Delay, Contractor shall comply with the notice requirements contained in Section 8.2.2. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(c). If Contractor fails to comply with such notification requirements, Contractor will be deemed to have waived its right to receive a Change Order for the subject Owner-Caused Delay.

8.3 No Effect on Obligation to Pay Delay Liquidated Damages. Adjustments to the Project Schedule (including the Guaranteed Substantial Completion Date) may occur as a result of any of the events described in this Article VIII. Unless dates for performance are adjusted by an executed Change Order, the obligation to pay Delay Liquidated Damages on the Guaranteed Substantial Completion Date shall not be affected.

ARTICLE IX

CHANGES

9.1 Changes. Except to the extent expressly provided in this Article IX, there shall be no change to the Work, the Contract Price or the Project Schedule except to the extent provided in a written instrument signed by Owner and Contractor in substantially the form attached to this Agreement as Exhibit M (a "Change Order") stating their mutual agreement upon all of the following: (a) a change in the Work, if any; (b) the amount of the adjustment in the Contract Price, if any; and (c) the extent of the adjustment in the Project Schedule, if any (any of the foregoing, a "Change").

9.2 Changes at Owner's Request. Owner may, from time to time, without invalidating this Agreement, order or approve by notification in writing to Contractor (a) Changes in all or a portion of the Work or (b) acceleration of the Work, including to recover from delays caused by an Owner-Caused Delay, a Force Majeure Event or suspension of the Work by Owner in accordance with Section 12.6. Contractor shall review and consider any request from Owner for such a Change and shall make a written response thereto within seven (7) days after receiving such request. If giving effect to any Change so 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 the Agreement, the Parties shall agree to issue Change Order adjusting the Contract Price upwards or downwards and the Project Schedule accordingly (including any amendments to the Agreement). Each Change Order shall

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constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work.

9.3 No Unapproved Changes. Contractor shall not perform any Changes to the Work until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Change prior to such approval. If Owner does not approve the proposed adjustments and Contractor and Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Contractor cancel the Change. Upon receiving from Owner a written approval or written authorization to perform, Contractor shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement. Contractor shall not suspend, in whole or in part, performance of this Agreement during any Dispute over any Change Order unless directed to do so by Owner, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Change or disputed item) do so.

9.4 Changes Initiated by Contractor. Promptly after Contractor becomes aware of any circumstances which Contractor has reason to believe may necessitate a Change, Contractor will issue to Owner a “Change Order Request”. All Change Order Requests shall include documentation sufficient to enable Owner to determine: (a) the factors necessitating the possibility of a Change; (b) the impact which the Change is likely to have on the Contract Price; (c) the impact which the Change is likely to have on the timely achievement of the activities set forth in the Project Schedule (including the Guaranteed Substantial Completion Dates); and (d) such other information which Owner may request in connection with such Change. Owner may, but except as provided in Section 9.5 below, shall not be obligated to, issue a Change Order pursuant to a Change Order Request.

9.5 Permitted Change Orders.

9.5.1 Provided that Contractor has notified Owner as required and has used all reasonable efforts to avoid and mitigate any potential delays to the Project Schedule or increased Direct Costs resulting from such events, Contractor will, to the extent described in Sections 9.5.2 and 9.5.3, be entitled to receive Change Orders as and for the events described in this Section 9.5.1.

(a) Change Order Due to Force Majeure Event. Subject to Sections 8.1, and 9.5.1, if and to the extent that a Force Majeure Event causes Contractor to suffer a delay in achieving any Key Milestone, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Sections 9.5.1, 8.1, and 13.3, in the event one or more Force Majeure Events occurring at the Project Site, directly cause delays in the Work exceeding thirty (30) days in the aggregate, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Orders shall be Contractor’s sole and exclusive remedy for any increased costs associated with delays caused by any Force Majeure Events, and Contractor will not be entitled to any additional payment, damages and costs or other compensation in connection with any such delays.

(b) Change Order Due to Suspension of Work by Owner. Subject to Section 9.5.1, if after the Effective Date Owner suspends the Work pursuant to the provisions of

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Section 12.6, then: (A) Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2; and (B) to the extent that such suspension increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any increased costs and delays resulting from such suspension of Work by Owner, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays.

(c) Change Order Due to Owner-Caused Delay. Subject to Section 9.5.1 and Section 8.2, (i) if and to the extent that an Owner-Caused Delay causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Owner-Caused Delay increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Owner-Caused Delay, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(d) Change Order Due to Unforeseen Subsurface Condition. Subject to Section 9.5.1 and Section 2.3.1(b), (i) if and to the extent that an Unforeseen Subsurface Condition causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Unforeseen Subsurface Condition increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Unforeseen Subsurface Condition, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(e) Change Order Due to Pre-Existing Hazardous Materials. Subject to Section 9.5.1, if and to the extent that Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, and, as required under Section 2.6, Contractor stops performance of the Work in that area, then, once such Work is re-commenced, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Section 9.5.1, if and to the extent that such cessation of Work increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from any such cessation of the Work, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(f) Change Order Due to Change of Law. Subject to Section 9.5.1, if and to the extent that a Change of Law occurs that (a) directly delays Contractor in its ability to achieve any Key Milestone, then Owner will, via Change Order, extend the Project Schedule as described in Section 9.5.2, and/or (b) directly increases Contractor's Direct Costs of performing the Work by more than \$[____], then Owner will, via Change Order, increase the Contract Price as described in Section 9.5.3. Change Order(s) issued under this Section 9.5.1(f) shall be

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Contractor's sole and exclusive remedy and compensation for any additional costs and/or delays resulting from any Change of Law, and Contractor will not be entitled to any additional payment, damages or other compensation in connection therewith.

9.5.2 Changes Involving Schedule Extensions. To the extent that Contractor demonstrates that an event for which it is entitled to a Change as described in Section 9.5.1 is the sole cause of critical path delay to Contractor's ability to perform the Work despite Contractor's use of commercially reasonable efforts to mitigate and avoid any such delay, Owner shall issue a Change Order to extend the dates in the Project Schedule as necessary to accommodate such delay. Contractor's demonstration of the impact on the critical path of the Work must be made on a basis that analyzes the actual impacts of the given event on the then-current schedule for completion of the Work. In no event will Contractor be entitled to an extension of time under this Section 9.5.2 to the extent that the performance of the Work for which the extension is sought would have been suspended, delayed or interrupted by the concurrent fault, actions or omissions of Contractor.

9.5.3 Changes to the Contract Price.

(a) Except as set forth in Section 9.5.3(b), with respect to any Change Order required to be issued to increase the Contract Price as a result of an event described in Section 9.5.1, unless the Parties agree otherwise in writing, such Change Order will, on a retrospective basis, increase the Contract Price by an amount equal to the Direct Costs incurred by Contractor solely in connection with such event, plus a mark-up. The mark-up is not to exceed _____ percent (___%) in the aggregate, including all Subcontractor and Contractor mark-ups solely in connection with such Change.

(b) In no event will Contractor be entitled to payment for Direct Costs hereunder to the extent that such costs would have occurred notwithstanding such event, due to the concurrent fault, actions or omissions of Contractor or its Subcontractors.

(c) For purposes hereof, "Direct Costs" shall mean only the actual, documented costs that are directly incurred by Contractor as a result of the event giving rise to the Change Order for the following items: (i) compensation for labor utilized and in the direct employ of Contractor at the Project Site, at the rates as set forth in Exhibit B-4; (ii) cost of materials and permanent equipment; (iii) payments properly made by Contractor to Subcontractors; (iv) rental charges of necessary machinery and equipment (but excluding hand tools) used at the Project Site; (v) Permit fees; (vi) compensation of engineers or other design professionals employed directly by Contractor; and (vii) reasonable costs of mobilization and demobilization. Notwithstanding the foregoing, "Direct Costs" shall not include (t) salaries or other compensation (including costs of contributions, assessments, fringe benefits or taxes based on salaries or compensation) of Contractor's Personnel at Contractor's principal office and branch offices (except as provided in the previous sentence); (u) expenses of Contractor's principal and branch offices; (v) Contractor's profit, overhead or general expenses of any kind; (w) any replacement, repair or other costs or liabilities arising from any loss of or damage to any equipment, tools or other property owned or used by Contractor or its Subcontractors; (x) costs to correct or reperform any components of such Work as a result of the acts or omissions of Contractor or its Personnel; (y) any fines or penalties assessed against Contractor or its Personnel in connection with such Work that were assessed due

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to the fault of Contractor or its Personnel; (z) any Builder's All Risk deductibles; or (aa) any costs or expenses other than those specifically set forth above as Direct Costs.

9.5.4 Taxes. The Parties acknowledge that the provisions of Section 4.2 will apply to any additional Work covered by any Change Order.

9.5.5 Offsets. If Owner so requests, Contractor will in good faith work with Owner to enable a reduction in any required schedule extension hereunder via a Change Order directing and paying for achievable acceleration.

ARTICLE X

INDEMNIFICATION

10.1 Indemnities.

10.1.1 Contractor's General Indemnity. Contractor shall defend, indemnify, reimburse and hold harmless, Owner, Other Owner Contractor, the financing parties and each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, and the owners of the real property comprising the Project Site (each of the foregoing, 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, including third-party claims, as a result of any and all of the following:

(a) any bodily injury, death or damage to property caused by any negligent act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Work or any curative action under any warranty related to the Work, following performance of the Work by Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) any claims resulting from bodily injury, death or property damage arising out of Defects or breach of Warranty;

(c) claims by any Government Authority for any Contractor's Taxes;

(d) any pollution or contamination that may originate from sources in Contractor's or its Subcontractors' possession, use and control or caused by the negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable (including as a result of the negligent release of Pre-Existing Hazardous Materials, the negligent exacerbation of Pre-Existing Hazardous Materials or negligent rendering of removal or remediation of Pre-Existing Hazardous Material more costly), including from Hazardous Material, industrial hazards, bilge and garbage;

(e) any Lien on the Work, Equipment, the Project, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) to the extent Owner has paid all amounts due relating to the Work that is the subject

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of such Lien, 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 services, equipment or materials in connection with the Work;

(f) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Contractor's performance (or that of its Affiliates, Subcontractors) under the Agreement, (ii) the design, construction, use, operation or ownership of the Work (including the Equipment, Contractor Deliverables or any portion of any of them), or (iii) Owner's use of any license granted hereunder. Without limiting Contractor's other obligations under this Agreement, 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, in addition to its indemnification obligations hereunder, promptly use commercially reasonable efforts to have such injunction removed at no cost to Owner. Contractor shall timely notify Owner in writing of any claims which Contractor may receive alleging infringement of patents or other proprietary rights that may affect Contractor's performance of the Work, provided that in the event that such efforts are not effective within a period of sixty (60) days after the imposition of such injunction, Owner may take such steps as may be necessary to remove the injunction, including obtaining any necessary license, at Contractor's sole expense;

(g) any cancellation or invalidation of any insurance policy or part thereof procured under Article XI 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 (but only to the extent Contractor knows the requirements and they are attached hereto);

(h) any failure of Contractor to comply with, or failure of the Work to comply with, or be capable of operating in compliance with, Applicable Laws, the conditions or provisions of Applicable Permits, Prudent Industry Practices, any applicable Real Property Requirements; or

(i) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors, except to the extent caused by the negligent acts or omissions of Owner, Equipment Provider or Other Owner Contractors.

10.1.2 Owner's Indemnity. Owner shall defend, indemnify and hold harmless, Contractor and its directors, officers, agents, employees, successors and assigns 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 such Person (a) as a result of the injury or death of any Person, including employees of Owner, Contractor or any Person employed by any of them for whose acts any of them may be liable, but only to the extent caused by Owner's negligent acts or omissions, (b) as a result of any loss of or damage to property, but only to the extent caused by from Owner's negligent acts or omissions, (c) any claims by any Government Authority for any Owner Taxes or for any claims directly arising from following Owner's direction to seek exemptions or rebates for certain taxes as described in Section 4.2.1(b); or (d) as a result of any release of a Pre-Existing Hazardous

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Material, except to the extent Contractor has an indemnification obligation with respect thereto pursuant to Section 10.1.1.

10.2 Indemnification Procedure.

10.2.1 Notice of Proceedings. 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 of commencement of any legal action or of any claims against such Indemnified Person in respect of which indemnification will be sought, 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 Party and each other Indemnified Person 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 Person shall cooperate with the Indemnifying Party in such defense. The Indemnified Person 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 Person unless (a) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Person in the conduct of the defense of such claim or (b) the Indemnifying Party did not employ counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person reasonably concludes and specifically notifies 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. Indemnifying Party shall give prompt written notice to Indemnified Person of any proposed settlement of an indemnified claim. Indemnifying Party may not, without Indemnified Person's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder unless such settlement, compromise or consent (i) includes an unconditional release of Indemnified Person from all liability arising out of such claim, (ii) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Indemnified Person, and (iii) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains or interferes with the business of Indemnified Person or any of its Affiliates.

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10.2.3 Contributory Negligence. If the joint, concurring, comparative or contributory fault or negligence of the Parties gives rise to damages for which the Parties are entitled to indemnification under this Article X, then such damages shall be allocated between the Parties in proportion to their respective degrees of fault or negligence contributing to such damages.

10.2.4 Survival of Indemnities. The indemnities set forth in this Article X shall survive the termination or expiration of this Agreement.

ARTICLE XI

INSURANCE

From the first to occur of the LNTP Date or the Notice to Proceed Date through and including the Final Completion Date, except as otherwise specified, Owner and Contractor shall procure and maintain, or cause to be procured and maintained, the insurance coverages set forth in Exhibit P-1 and identified therein as Owner's or Contractor's responsibility with one or more duly licensed insurance carrier(s).⁹

ARTICLE XII

DEFAULT, TERMINATION AND SUSPENSION

12.1 Contractor Default.

12.1.1 Contractor Events of Default. 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 (each a "Bankruptcy or Insolvency Event") 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 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 of any jurisdiction, whether now or hereafter in effect, or files 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 of any jurisdiction, whether now or hereafter in effect, providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with 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 thirty (30) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for

⁹ Note to Draft: Insurance Exhibit to include (i) coverage requirements and limits, (ii) mutual waivers of subrogation (iii) naming the other party as an additional insured and (iv) provide that it may not be canceled or materially changed without giving Owner 60 days prior written notice thereof.

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more than thirty (30) 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 Delay Liquidated Damages as required herein or (ii) to make any other payment or payments required to be made to Owner under the 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 to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

(c) Contractor fails to comply with any material provision of any Applicable Law, Applicable Permit, or applicable Real Property Requirement, the effects of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner, provided, if such failure to comply is not capable of being cured within ten (10) Business Days, Contractor shall not be in default so long as Contractor commences to cure within ten (10) Business Days and thereafter diligently proceeds to cure such breach in a manner reasonable satisfactory to Owner;

(d) either of the following occurs: (i) Contractor fails to make payments when due to Subcontractor for services, materials or equipment beyond applicable notice and cure periods, unless such payments are reasonably disputed by Contractor and any Liens relating to such disputed payments are satisfied or bonded off by Contractor; or (ii) Contractor suspends performance of a material portion of the Work resulting in the Work not progressing substantially in accordance with the Project Schedule (other than as permitted under Article VIII or pursuant to a Change Order); and in each instance as described in each of sub-clauses (i) and (ii) of this Section 12.1.1(d), the impacts of such condition remain un-remedied for five calendar days following written notice thereof to Contractor;

(e) any material breach by Contractor of any representation or warranty contained in Article XV, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(f) Contractor fails to: (i) provide a written recovery plan within the time provided for in Section 2.5.3 and satisfying the requirements of Section 2.5.3; or (ii) implement the recovery plan in a diligent and timely manner and, in any case, within the schedule provided for in such recovery plan.

(g) Contractor reaches the limitations of Delay Liquidated Damages set forth in Section 6.6.1 before Contractor achieves all of the Key Milestones;

(h) the transfer by Contractor of (i) all or a substantial portion of the rights or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor;

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(i) any failure by Contractor to maintain the insurance coverages required of it in accordance with Article XI, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(j) Contractor fails to provide or maintain in effect each Letter of Credit or the Payment and Performance Bond ;

(k) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under the Agreement (other than those breaches specified in this Section 12.1.1 (a) through (l)) and (i) such breach is not cured by Contractor within fifteen (15) days after 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, or (B) fails to thereafter diligently proceed to cure such breach in a manner reasonably satisfactory to Owner in its sole discretion; or

(l) Contractor fails to achieve [Mechanical Completion] or Project Substantial Completion within [____] days after the guaranteed date therefor.

12.1.2 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 (a "Termination for Cause"). A 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 Article XII, Owner shall have the right to take possession of and use all Contractor Deliverables and all of the equipment owned by Contractor or an Affiliate and located at the Project Site on the date of such termination for the purpose of completing the Work (provided that Owner will bear the risk of loss or damage to the same thereafter, until turnover back to Contractor or the Affiliate) 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 sole 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 Scope of Work, 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 the 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 to engage a substitute contractor to complete (or cure deficiencies in) the Work, including overhead and legal, engineering and other professional expenses, (ii) all other 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 the of the Agreement as a result thereof, (iii) the amount of Delay Liquidated Damages that would be due and owing to Owner in accordance with this Agreement (and subject to the aggregate cap on Delay Liquidated Damages set forth in Section 6.6.1) if no such Termination for Cause had occurred and Contractor had achieved Substantial Completion of the Project at the date that Owner ultimately so achieved Substantial Completion, and (iv) all amounts previously paid to Contractor pursuant to this

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Agreement, Contractor shall pay to Owner on demand the amount of such difference. Any amount owed by Owner to Contractor for the 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 12.1.2 or otherwise. Any excess of the amount retained over the amount due under this Section 12.1.2 shall be remitted to Contractor within sixty (60) days after the Final Completion Date.

12.1.3 Other Owner Remedies. Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies, (a) seek performance by any surety of Contractor's obligations hereunder, (b) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (c) make such payments or perform such obligations as are required to cure such Contractor Event of Default, make a claim against any security provided pursuant to this Agreement and offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement, provided that Owner shall be under no obligation to cure any such Contractor Event of Default, or (d) otherwise seek damages, including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement.

12.2 Owner Default. Owner's failure to pay to Contractor any required payment that is not in dispute, which failure continues for thirty (30) Days after written notice of failure has been received by Owner from Contractor, shall constitute an event of default by Owner hereunder (an "Owner Event of Default"). Upon any Owner Event of Default, Contractor may terminate this Agreement thirty (30) days after giving written notice thereof to Owner so long as the amount owed by Owner (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such thirty (30)-day period (a "Contractor Termination for Cause"). In the event of a Contractor Termination for Cause, Contractor shall be entitled to recover an amount equal to the Termination Payment. Unless Contractor terminates this Agreement pursuant to the foregoing provisions, Contractor shall not suspend or delay performance of the Work because of any Owner Event of Default. Contractor shall continue performance of the Work during any dispute over payment, so long as Owner continues to pay all undisputed amounts. Other than as stated above, Contractor will have no right to terminate this Agreement, and Contractor acknowledges that its sole and exclusive remedies for any failure of Owner to comply with its obligations under this Agreement (other than nonpayment as described above) are limited to receipt of a Change Order as described in Section 9.5.

12.3 Termination Without Cause. Owner may for its convenience terminate this Agreement after giving notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment under Section 12.4. As a condition to any termination by Owner pursuant to this Section 12.3 (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 12.3, 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 delivered to the Project Site or to such other place as Owner shall reasonably direct.

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12.4 Termination Payment.

12.4.1 Termination Payments Due to Contractor. Upon a termination of this Agreement pursuant to Section 12.2 or Section 12.3 and subject to Owner's rights under Sections 4.6 and 4.8 Contractor shall be entitled to a payment (the "Termination Payment"), which shall equal the sum of the following, without duplication: (a) that portion of the Contract Price that is applicable to Work completed up to the date of termination that has not previously been paid to Contractor (as determined below); (b) the expenses reasonably incurred by Contractor in withdrawing Contractor's Equipment and Personnel from the Project Site and in otherwise demobilizing; and (c) the expenses reasonably incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Owner has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Owner, subject to Owner's assumption of same and, if required, Owner's adequate assurance to such Subcontractors regarding Owner's ability to pay. The Termination Payment shall not include any costs 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 of this Agreement, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement.

12.4.2 Payment of Termination Payment. Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documentation of any fees or expenses claimed by Contractor pursuant to Section 12.4.1. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within thirty (30) days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such thirty (30) day period; provided, that payments for termination under Section 12.3 shall be due Contractor within thirty (30) days after receipt of a substantiated invoice and Owner's receipt of any and all Equipment and Work under Sections 12.3 and 12.5. As a condition precedent to receiving any Termination Payment, Contractor shall comply with Section 12.5 in its entirety.

12.4.3 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 12.2 or Section 12.3, 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. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of this Agreement pursuant to Section 12.2 or Section 12.3, and Owner and Contractor agree that the calculation of the Termination Payment is reasonable.

12.5 Actions Required Following Termination.

12.5.1 Discontinuation of Work. Upon termination of this Agreement under Sections 12.1 or 12.3, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in Section 12.4, if applicable), Contractor shall follow Owner's directions for the orderly turnover of the Project Site

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and the Work, and except as directed by Owner, Contractor shall remove from the Project Site its Personnel, all Contractor's Equipment, waste, rubbish and Hazardous Material brought onto the Project Site by Contractor or its Subcontractors or for which Contractor is otherwise responsible, and Owner shall be entitled to take exclusive possession of the Work, the Project Site, and any and all Equipment (including 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.

12.5.2 Cancellation and Transfer of Subcontracts and Other Rights. If requested by Owner in the event of termination of this Agreement, Contractor will cancel existing contracts with Subcontractors upon terms as directed by Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor (subject to Section 12.4, in the event of a termination under Section 12.3). In the event of termination of this Agreement, Contractor shall also, as and to the extent requested by Owner, (a) irrevocably assign and deliver to Owner such 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), (b) provide to Owner without charge a license to use all rights to patented copyrighted, licensed or proprietary materials of Contractor and Subcontractors in connection with the Work, except as otherwise restricted herein, and (c) deliver to Owner originals of the Agreement, originals of all Drawings, to the extent available, Contractor Deliverables in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the 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, the 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 Project Site, and Contractor shall take such other action as required hereunder upon termination of this Agreement.

12.5.3 Surviving Obligations. This Article XII shall survive the termination or expiration of this Agreement.

12.6 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under the 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: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) 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; (d) continue to protect and

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maintain the Work performed, including those portions on which Work has been suspended; and (e) take any other reasonable steps to minimize costs and expenses associated with such suspension. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts. After the conclusion of any suspension hereunder, Contractor will be entitled to a Change Order to the extent described in Section 9.5.1(b). If a suspension of Work continues for more than one hundred and eighty (180) days in the aggregate, Contractor may terminate this Agreement, which termination shall be deemed a Termination Without Cause.

ARTICLE XIII

TITLE AND RISK OF LOSS

13.1 Title to Project and the Work. Contractor warrants and guarantees that legal title to and ownership of the Work (including all Equipment) shall pass to Owner, free and clear of any and all Liens upon the earlier of (a) payment to Contractor of the portion of the Contract Price attributable to such Work and Equipment, and (b) in the case of Equipment, the delivery of such Equipment to the Project Site.

13.2 Title to Contractor Deliverables. Except as otherwise provided in this Article XIII, title to Contractor Deliverables, specifications and like materials (including the Job Books contents) which are owned by Contractor shall be transferred to Owner upon creation and delivered to Owner upon Project Substantial Completion (or otherwise as required in accordance with this Agreement). In addition, Contractor grants to Owner an irrevocable, royalty free, non-exclusive license to use and reproduce such Contractor Deliverables, specifications and other design documentation to which Contractor does not have title but has the right to grant sub-licenses for the purpose of completing, repairing, operating, maintaining, rebuilding and expanding the Project. Owner shall have the right to assign the benefit of such license to any financing parties in connection with granting a security interest in the Project, to a purchaser 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 13.2. 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.

13.3 Risk of Loss. Notwithstanding passage of title as provided in Section 13.1, from the date hereof until the Project Substantial Completion Date, Contractor hereby assumes the risk of loss for all Equipment upon Delivery and the Work, including: (a) all Work completed on or off the Project Site and (b) all Work in progress. If any loss, damage, theft or destruction occurs to the Work or other items, on or off the Project Site, for which Contractor has so assumed the risk of loss hereunder, Contractor shall, at the option of Owner and at Contractor's cost, promptly repair or replace the property affected thereby. In such event, Contractor shall have access to [Owner's Builder's All Risk Policy]¹⁰, provided that in the event of a covered loss, Contractor shall pay any applicable deductible amount. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor's Equipment and other items to be

¹⁰ Note to Draft: Party responsible for procuring BAR policy subject to further review.

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removed by Contractor, which shall remain the responsibility of Contractor) on the Project Substantial Completion Date, provided, however, Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Contractor's or its Personnel's negligent acts or omissions, and failure to comply with the requirements of the Agreement. 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 such additional Work is complete.

ARTICLE XIV

DISPUTE RESOLUTION

14.1 Referral to Senior Management. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“Dispute”), the Parties’ Project representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so, then within three (3) Business Days following the date of delivery of a written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

14.2 Mediation. Any Dispute that is not resolved pursuant to Section 14.1 may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“AAA Procedures”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article XIV as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

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14.3 Legal Action. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 14.2, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in the United States District Court for the District of Oregon or, if such court lacks subject matter jurisdiction, the courts of the State of Oregon located in the City of Portland, and any appellate court from any thereof. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) consents to the personal and exclusive jurisdiction of the aforesaid courts, and agrees that it will not commence or consent to participate in any action, litigation or proceeding of any kind whatsoever against the other Party in any way related to such documents in any forum other than such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Section 16.4, or at such other address of which the Parties have been notified, and (e) acknowledges that there is no agreement between the Parties to arbitrate any dispute that may arise between them related to the subject matter of this Agreement.

14.4 WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.5 Attorneys' Fees. If either Party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, whether incurred before suit, during suit, or at the appellate level, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

14.6 Survival. The provisions set forth in this Article XIV shall survive the termination or expiration of this Agreement.

ARTICLE XV

REPRESENTATIONS AND WARRANTIES

15.1 Contractor Representations. Contractor represents and warrants the following:

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15.1.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization, and is duly authorized and qualified to do business in the State where the Project is located, 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 any of its obligations under this Agreement.

15.1.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Government Authority which violations, individually or in the aggregate, would affect its performance of any of its obligations under this Agreement. Except as Contractor has disclosed in writing to the Owner prior to the Effective Date, 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 effect on the ability of Contractor to perform any of its obligations under this Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.

15.1.3 Licenses. It is 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.

15.1.4 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.

15.1.5 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.

15.1.6 Experience. It has by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including to construct the Project and to erect and install the equipment.

15.1.7 Intellectual Property. It owns or has the right to use all Intellectual Property Rights necessary to perform the Work without conflict with the rights of others.

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15.1.8 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.

15.1.9 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.

15.1.10 Site Access. The access rights granted to or obtained by Contractor to the Project Site are adequate for the performance of the Work and operation of the Project.

15.2 Owner Representations. Owner represents and warrants that:

15.2.1 Organization. It is a _____ company duly formed, 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 where the Project is located 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.

15.2.2 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 limited liability company agreement 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.

15.2.3 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 limited liability company 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.

15.3 Survival of Representations and Warranties. The representations and warranties of Contractor herein shall survive execution and termination of this Agreement.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 Confidentiality and Publicity.

16.1.1 Confidential Information and Permitted Disclosures. Each Party shall hold in confidence (a) any information provided or supplied by the other Party or its Personnel that is marked to be confidential, including such information as may have been provided or supplied prior to the Effective Date, (b) the commercial terms of any leases or other documents related to the

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Real Property Rights, and (c) the contents of this Agreement (collectively, “Confidential Information”). Both Parties shall inform their Affiliates, Subcontractors, suppliers and Personnel of their obligations under this Section 16.1 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information.

(a) information that 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;

(b) 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;

(c) information received by such Party from a third party having no obligation of confidentiality with respect thereto;

(d) information at any time developed independently by such Party provided it is not developed from otherwise Confidential Information.

16.1.2 Permitted Disclosures. Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

(a) Confidential Information may be disclosed pursuant to and in conformity with Applicable Law or in connection with any legal proceedings described in Article XVI, or by Owner to the Oregon Public Utility Commission or the independent evaluator retained by Owner and approved by the Oregon Public Utility Commission in connection with the Project, provided that the Party required to disclose such information shall give prior notice to the other Party 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;

(b) Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

(c) Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives of such Party as necessary in connection with the Project; provided that such Persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such Person in violation of the terms of this Section 16.1; and

(d) Owner may disclose a copy of this Agreement to any actual or potential financing parties or insurers.

16.1.3 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 conditioned, withheld, or delayed.

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16.1.4 Publicity. Until expiration of the Warranty Period, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any Confidential Information for publication concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written consent of the other Party; provided, however, that such limitation on disclosure shall not apply to disclosures or reporting required by a Government Authority if the Party seeking disclosure informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of Confidential Information.

16.1.5 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section 16.1, without proof of any actual or special damages.

16.1.6 Ownership of Confidential Information. All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. 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.

16.1.7 Survival. The Parties' obligations under this Article XVI shall remain in force during the term of this Agreement and for a period of five (5) years after Final Completion.

16.2 Consequential Damages. In no circumstances shall either Party (or the parent companies and Affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) be liable to the other Party (or its parent companies and Affiliates, and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of power, loss of production, loss of actual or anticipated profits, revenues or product; increased expense of borrowing or financing, claims of Owner's customers and damage to property or equipment, and increased cost of capital) (collectively, "Consequential Damages") arising out of this Agreement; and, regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort, (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory; *provided* that, any liquidated damages as set forth in this Agreement and any third party indemnification claims for loss of actual or anticipated profits, revenues or product shall not constitute Consequential Damages under this Agreement. Increased expense of borrowing or financing, and increased cost of capital arising by virtue of a contractual obligation owed to an off-taker or purchaser of electricity generated by the Work are agreed for the purposes of this Agreement to be Consequential Damages.

16.3 Limitation on Liability. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Contractor be liable to Owner for any damages, claims, demands, suits, causes of action, losses, costs, expenses or liabilities in excess of an amount equal to one hundred percent (100%) of the Contract Price, as adjusted for Change Orders

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(other than those which reduce the Contract Price related to damages of Owner hereunder), regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal theory; *provided, however*, that the preceding limitation of liability shall not apply to, and no liability amounts shall be apply against such limitation of liability for (a) liabilities resulting from the negligence, fraud, willful misconduct or illegal or unlawful acts of Contractor or its Personnel (including their Subcontractors), (b) liabilities arising out of Contractor’s obligations to indemnify Owner or other indemnitees for third party claims under this Agreement, or (c) costs incurred by Contractor (and, in the event Contractor fails to perform, Owner) in performing Warranty Service, or (d) any taxes payable by Contractor; (e) damages for risks required to be insured by Contractor under this Agreement, or (f) costs incurred by Contractor (and in the event of Contractor Default, Owner) in completing the Work.

16.4 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 the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received (i) when actually received by the Party to whom it is sent, if served personally or if delivered by nationally recognized courier service to the Party to whom notice is to be given, (ii) when received by the Party to whom it is sent, if sent in the form of a signed letter on the sending Party’s letterhead, transmitted by email in Portable Document Format (pdf) or similar format; (iii) when received (with confirmation of receipt) if delivered by facsimile or email, or (iv) at the end of the first Business Day following actual delivery, if mailed by first class registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the address 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:

If to Contractor:

with a copy to :

with a copy to :

16.5 Time of the Essence. Time is of the essence in the performance of the Work in accordance with the requirements of this Agreement.

16.6 No Rights in Third Parties. Except as otherwise set forth herein including in Section 3.2, hereof, with respect to the rights of permitted successors and assigns, and 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

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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.

16.7 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. All the Exhibits (Exhibit A through Exhibit S-2) attached hereto are incorporated into and made a part of this Agreement. 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.

16.8 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. For the avoidance of doubt, emails between the Parties shall not be considered a writing for purposes of this Section 16.8.

16.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

16.10 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.

16.11 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.

16.12 Successors and Assigns; Assignment. Subject to the following, this Agreement shall be binding upon the Parties, their successors and permitted assigns. Except as set forth herein, this Agreement and all of Contractor's rights, duties and obligations under this Agreement are personal in nature and shall not be assigned, delegated or otherwise disposed

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of by Contractor without the prior written consent of Owner. Owner may assign this Agreement in whole or in part; provided that Contractor is provided written notice as soon as reasonably possible following such assignment. Contractor agrees and acknowledges that any third party receiving such an assignment provided it assumes all obligations hereunder, in writing, shall be entitled to exercise any and all rights of Owner under this Agreement in accordance with the terms hereof (in its own name or in the name of Owner) and Contractor shall comply in all respects with such exercise. Provided the assignee assumes, in a writing reasonably satisfactory to Contractor, all obligations of Owner hereunder, Owner shall be released upon assignment. Nothing in this Section 16.12 shall affect Owner's ability to collaterally assign this Agreement to any financing parties.

16.13 Survival. All provisions of the 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, X and XIII, shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of Contractor contained herein shall survive the execution and delivery hereof and thereof.

16.14 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.

16.15 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.

16.16 Status of Contractor; No Partnership; No Agency. Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Agreement. The 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.

16.17 Compliance with Applicable Laws. Contractor and its Subcontractors are familiar with and shall comply with and observe, all Applicable Laws, including but not limited to the federal Foreign Corrupt Practices Act (15 U.S.C.S. §§ 78a and 78m et seq.) ordinances, rules, regulations, executive orders, all applicable safety orders and all orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor and its Subcontractors, Owner or the Equipment which may now or hereafter exist.

16.18 Compliance with Supply-Chain Ethics.

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16.18.1 Contractor shall, and shall use commercially reasonable efforts to require its Subcontractors to (i) implement and/or comply with such environmental, safety and governance (“ESG”) policies and procedures as directed by Owner; (ii) report any Material ESG Incident occurring at the Site or in relation to the Work promptly to Owner, or, in the case of a Subcontractor, to Contractor, who shall, promptly convey such information to Owner after obtaining actual knowledge of such Material ESG Incident; (iii) take such action as is reasonably necessary to resolve, and mitigate against the recurrence of, such Material ESG Incident; (iv) collect and provide any ESG data reasonably specified by Owner; and (iv) prohibit and refrain from use of Forced Labor in performance of the Work.

16.18.2 Contractor represents and warrants that, as of the Effective Date: (a) there is no unresolved Material ESG Incident relating to the Work involving EPC Contractor that could materially and adversely impact the Project, the Work or the Owner; and (b) neither Contractor nor, to Contractor’s actual knowledge (after reasonable inquiry), its Subcontractors currently uses or has in the past used Forced Labor in the conduct of its operations.

[Signatures on following page]

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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:

By: _____
Name: _____
Title: _____

Contractor:

By: _____
Name: _____
Title: _____

Appendix J

Form Parent Guarantee

A decorative horizontal band consisting of multiple overlapping, light-colored wavy lines that span the width of the page.

2021 All-Source RFP



GUARANTY

This GUARANTY ("**Guaranty**") is made as of the [Date], by [Name of Guarantor], a [State of Organization] [Type of Entity] having a principal office at [Address] ("**Guarantor**"), to and for the benefit of **Portland General Electric Company**, an Oregon corporation having a principal office at 121 SW Salmon Street, Portland, OR 97204 ("**Owner**"), with reference to the following.

WHEREAS, _____ ("**Seller**"),¹³ is wholly owned, directly or indirectly, by Guarantor; and

WHEREAS, Seller and Owner have entered into the [Title of Contract] dated as of [Date] (the "**Contract**"); and

WHEREAS, to induce Owner to enter into the Contract, Guarantor is willing to furnish to Owner this Guaranty;

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein which are defined in the Contract shall have their respective meanings as therein defined. All references to the Contract contained herein shall be construed to mean the Contract as it may be amended from time to time. Unless otherwise required by the context in which any term appears in this Guaranty: (a) the singular shall include the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" shall refer to this Guaranty as a whole and not to any particular sections or subsections hereof; (c) the words "including" or "includes" shall be construed to mean without limitation" or "but not limited to" and (d) the word "or" is not necessarily exclusive.

2. Guaranty. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Owner, its successors and permitted assigns the full and prompt payment and performance when due of all of Seller's warranties, covenants, indebtedness, duties and agreements contained in the Contract including, but not limited to, payment obligations under the Contract. All obligations, representations, warranties, covenants, indebtedness, duties and agreements described above are individually referred to herein as an "Obligation" and collectively as the "Obligations." This Guaranty is in no way conditioned upon any requirement that Owner first attempt to enforce any of the Obligations against Seller. If at any time Seller fails, neglects or refuses to timely or fully perform any of the Obligations as provided in the Contract, Guarantor shall promptly perform or cause to be performed such Obligation upon receipt of written notice of such default and demand for performance from Owner. Notwithstanding anything set forth to the contrary herein, with respect to any claim, action or proceeding against Guarantor in connection with this Guaranty, Guarantor shall be entitled to

¹³ Counterparty name to be modified as appropriate for the Contract.

assert any rights, remedies and defenses that Seller would be able to assert if such claim, action or proceeding were to be asserted or instituted against Seller based upon the Contract, including, but not limited to, any limitations of liability and cure periods set forth in the Contract, but provided that: (i) no defense previously raised by Seller arising out of or in connection with an Obligation claimed hereunder that has been settled in Owner's favor may be raised by Guarantor; (ii) no cure period previously used by Seller may be used by Guarantor; and (iii) in no event shall Guarantor be entitled to assert any defenses that arise by operation of law on account of an Event of Bankruptcy (as defined below) or the bankruptcy or insolvency of Seller. Guarantor agrees that this Guaranty is a guaranty of performance including, but not limited to, payment, and not merely a guaranty of collection and shall apply regardless of whether recovery of any or all of the Obligations may be or become discharged or uncollectible in an Event of Bankruptcy (as defined below) in which Seller is the debtor. All payments hereunder shall be made without reduction, whether by set-off or otherwise.

3. Unconditional Guaranty. The obligations of Guarantor hereunder are independent, absolute and unconditional, irrespective of any genuineness, validity, regularity or enforceability of the Obligations and irrespective of any genuineness, validity, regularity or enforceability of the Contract, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Without limiting the generality of the foregoing, the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (a) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any acts or omissions by Seller with respect to the Obligations;
- (c) any of the Obligations shall be modified, supplemented or amended in any respect, or any right with respect to the Obligations shall be waived or any other guaranty of any of the Obligations or any security therefore shall be released or exchanged in whole or in part or otherwise modified or dealt with;
- (d) any lien or security interest granted to, or in favor of, Owner as security for any of the Obligations shall fail to be valid or perfected;
- (e) the voluntary or involuntary liquidation, dissolution, sale or other disposition of the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceeding affecting Seller, or rejection of the Contract in any such proceeding, or any action taken by any trustee or receiver in connection therewith (an "Event of Bankruptcy");
- (f) any lack of authorization, in whole or in part, of the Obligations or any term or provision hereof or of the Contract for any reason, or the rejection or purported rejection thereof in any Event of Bankruptcy;

- (g) Owner shall have taken or failed to have taken any steps to collect or enforce any obligation or liability from Seller or shall have taken any actions to mitigate its damages;
- (h) Owner shall have taken or failed to have taken any steps to collect or enforce any guaranty of or to proceed against any security for any Obligation;
- (i) any applicable law that might in any manner cause or permit to be invoked any alteration in the time, amount or manner of payment or performance of any of the Obligations or the obligations of Guarantor hereunder;
- (j) any merger or consolidation of Seller or Guarantor into or with any other person or any sale, lease or transfer of all or any of the assets of Seller or Guarantor to any other person;
- (k) any change in the ownership of any of the voting securities of Seller or Guarantor;
- (l) to the extent as may be waived by applicable law, the benefit of all principles or provisions of laws, rules and regulations which may be in conflict with the terms hereof; or
- (m) any failure on the part of Seller or Guarantor to comply with any applicable law.

4. Subordination of Subrogation Rights. Guarantor hereby subordinates to all claims, rights and remedies that Owner or any of Owner's permitted assigns may have against Seller and any claim, right or remedy that Guarantor may now have or hereafter acquire against Seller that arises hereunder or in connection herewith, including any claim, remedy or right of subrogation, reimbursement, indemnity, exoneration, contribution or participation in any claim, remedy or right against Seller that arises in connection herewith, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise until the Obligations have been paid and performed in full. If any amount shall erroneously be paid to Guarantor on account of such subrogation, reimbursement, indemnity, exoneration, contribution, and similar rights, such amount shall be held in trust for the benefit of Owner and shall forthwith be paid to Owner to be credited against the payment of the Obligations, whether matured or unmatured.

5. Remedies. Guarantor agrees that the Obligations shall be due and payable for purposes of this Guaranty notwithstanding any stay, injunction or other prohibition preventing a declaration of payment as against Seller.

6. Certain Waivers. Guarantor hereby unconditionally and irrevocably waives, to the extent permitted by applicable law, (i) notice of any of the matters referred to in Section 3 hereof; (ii) all notices that may be required by applicable law or otherwise, now or hereafter in effect, to preserve any rights against Guarantor hereunder, including, any demand, proof or notice of non-payment of the Obligations except as otherwise required by Section 2 hereof; (iii) acceptance of this Guaranty, demand, protest, promptness, diligence, presentment, notice of default or dishonor and any requirement of diligence, notice of intent to accelerate, notice of acceleration and notice of the incurring of the Obligations; (iv) any right to assert against

Owner any defense (legal or equitable), counter-claim, set-off, cross-claim or other claim that Guarantor may now or at any time hereafter have (a) against Seller or (b) acquired from any other party to which Owner may be liable; (v) any defense arising by reason of any claim or defense based upon an election of remedies by Owner which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Seller for reimbursement, or any other rights of the Guarantor to proceed against Seller or against any other person, property or security and (vi) any right to require Owner to marshal, or have recourse to other collateral or surety, before exercising its rights hereunder.

7. Separate Enforcement. The obligations of Guarantor under this Guaranty are independent of and may be enforced separately from the Obligations, in a separate action or actions that may be brought and prosecuted against Guarantor whether or not action is brought against Seller. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Contract shall also toll the statute of limitations applicable to Guarantor's liability under this Guaranty.

8. Representations and Warranties. Guarantor additionally represents and warrants to Owner as follows:

- (a) Guarantor is a corporation duly organized, validly existing, authorized to do business and in good standing under the laws of the State of its formation.
- (b) Guarantor has the requisite corporate power and authority to own its property and assets, transact the business in which it is engaged and to enter into this Guaranty and carry out its obligations hereunder. The execution, delivery, and performance of this Guaranty have been duly and validly authorized and no other corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guaranty or the transactions contemplated hereby.
- (c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party is required for the due execution, delivery and performance by Guarantor of this Guaranty.
- (d) This Guaranty, when executed, shall constitute a valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with the terms of this Guaranty, except as may be limited by bankruptcy or insolvency or by other laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies, and except to the extent that the execution of this Guaranty was induced by fraud, misrepresentation, or fraudulent concealment by or on behalf of the Owner.
- (e) As of the date hereof, the execution, delivery, and performance of this Guaranty does not and will not (i) result in a default, breach or violation of the certificate or articles of incorporation or bylaws of Guarantor, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guaranty, (iii) constitute an event which would require any consent of

a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty, or (iv) result in any default, breach or violation of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to Guarantor and which default, breach or violation would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty.

9. Amendments. No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor, Owner and any permitted assignee of Owner's rights hereunder, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Owner or any permitted assignee of Owner's rights hereunder. No delay on the part of Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Guaranty by Owner shall constitute a subsequent waiver of the same or any other breach, term or condition. No notice to or demand on Guarantor shall entitle Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Owner to any other or further action in any circumstances without notice or demand. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Owner would otherwise have.

10. Continuing Guaranty; Successor and Assigns. This Guaranty is a continuing guaranty and (i) shall apply to all Obligations whenever arising, (ii) shall remain in full force and effect until satisfaction in full of all of the Obligations, (iii) shall be binding upon Guarantor and its successors and permitted assigns and (iii) shall inure to the benefit of and be enforceable by Owner and its successors, and assigns permitted under the Contract. Notwithstanding the foregoing, however, Guarantor may not assign all or any portion of its rights or delegate all or any portion of its duties under this Guaranty without the prior written consent of Owner. Any assignment by Guarantor without the foregoing consent shall be void.

11. Payments. Owner shall have the right from time to time to make demand for Obligations. With respect to payments to be made by Guarantor under this Guaranty, all such payments shall be made in United States dollars promptly following written demand by Owner, by wire transfer into a bank account designated in writing from time to time by Owner. All payments required to be made by Guarantor hereunder shall be made without set-off or counterclaim and shall be made without deduction for any withholding or other taxes or charges. If in compliance with the laws of any jurisdiction, any deduction or withholding on account of any taxes is required to be made from any amount paid or payable by Guarantor to Owner (other than any amount Seller would have been required to deduct or withhold pursuant to the Contract), Guarantor shall pay to Owner any such additional amount as shall be necessary to ensure that Owner receives on the due date for payment hereunder, after the payment by Guarantor of such taxes, an amount equal to what it would have received and retained had no such deduction or withholding been required.

12. Expenses. Guarantor agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Owner's counsel) in any way relating to the enforcement or protection of the rights of Owner hereunder; provided that the

Guarantor shall not be liable for any expenses of Owner if no payment under this Guarantee is due.

13. Reinstatement. In the event that Owner for any reason (including but not limited to bankruptcy preferences or alleged fraudulent transfers), is required to repay or disgorge any amounts received by it in respect of the Obligations, then the liability of Guarantor under this Guaranty, with respect to such amounts, shall be reinstated.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the state of Oregon, excluding rules governing conflicts of laws.

15. Dispute Resolution.

- a. Informal Consultation. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Guaranty ("Dispute"), the parties' representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so, then within three (3) business days following the date of delivery of a written request by either Party, (i) each party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.
- b. Mediation. Any Dispute that is not resolved pursuant to Section 15(a) may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the American Arbitration Association in effect at the time of the mediation ("AAA Procedures"); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either

Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Section 15 as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

- c. Legal Action. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 15(b), then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Guaranty may be brought in the United States District Court for the District of Oregon or, if such court lacks subject matter jurisdiction, the courts of the State of Oregon located in the City of Portland, and any appellate court from any thereof. By execution and delivery of this Guaranty and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) consents to the personal and exclusive jurisdiction of the aforesaid courts, and agrees that it will not commence or consent to participate in any action, litigation or proceeding of any kind whatsoever against any the other Party in any way related to such documents in any forum other than such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Section 16, or at such other address of which the Parties have been notified, and (e) acknowledges that there is no agreement between the Parties to arbitrate any dispute that may arise between them related to the subject matter of this Guaranty.
- d. Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- e. Survival. The provisions set forth in this Section 15 shall survive the termination or expiration of this Guaranty.

16. Notices. Any notices or other communication to be given hereunder shall be given in writing, sent by (a) personal delivery, (b) internationally recognized expedited delivery service, (c) registered or certified United States mail, postage prepaid, or (d) electronic mail (followed by registered or certified United States mail, postage prepaid) as follows:

To Guarantor: [Name]

[Address]
[Attention:]
[Email:]

To Owner: Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204
Attention: Credit and Contract Administration
Email: _____

With a copy to: Portland General Electric Legal Department
121 SW Salmon Street, 1WTC13
Portland, OR 97204
Attention: [_____]

or to such other address or to the attention of such other individual as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of receipt at the address and in the manner provided herein, or in the case of electronic mail, upon receipt.

17. Severability. In the event that any of the provisions, or portions or applications thereof, of this Guaranty are held to be unenforceable or invalid by any court of competent jurisdiction, Owner and Guarantor shall negotiate an equitable adjustment in such provisions of this Guaranty with a view toward effecting the purpose of this Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

18. Duty to Keep Informed. Guarantor assumes the responsibility for being and keeping itself informed of the financial condition and performance under the Contract of Seller until the termination of all of the Obligations, and of all other circumstances bearing upon the risk of nonpayment or default under the Obligations which diligent inquiry would reveal, and agrees that Owner shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

19. Entire Agreement. This Guaranty contains the entire agreement and understanding of Guarantor and Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of Guarantor and Owner relating to the subject matter hereof. No oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall be binding on either Guarantor or Owner.

20. No Third Party Beneficiaries. The provisions of this Guaranty shall only be for the benefit of, and enforceable by, Owner and its permitted assigns and shall not inure to the benefit of or be enforceable by any other person or entity.

21. Further Assurances. Guarantor and Owner shall each, at the request of the other, execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other

reasonable actions, as may be necessary or desirable to more fully and effectively carry out the intent and purposes of this Guaranty.

22. Counterparts. This Guaranty may be executed in two or more separate counterparts (including by electronic mail), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

23. Captions. The captions contained in this Guaranty are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Guaranty or the intent of any provision contained herein.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Guaranty as of the date first written above.

Accepted:

[GUARANTOR]

PORTLAND GENERAL ELECTRIC
COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Appendix K

Credit Requirements



2021 All-Source RFP



Credit Requirements

A Bidder must provide reasonable assurance to PGE that PGE will be able to readily recover its actual damages in the event of default by the Bidder. All transactions are contingent upon the Bidder meeting and maintaining, during the term of the transaction, the credit requirements established by PGE's Credit Risk Management Department. All Bidders will be subject to credit review under PGE's internal guidelines by PGE's Credit Risk Management Department for qualification.

Each Bidder must provide performance assurance in a form and amount reasonably acceptable to PGE based on PGE's assessment of the Bidder's credit profile and the amount of expected financial exposure related to the bid.

Bidder Credit Eligibility Thresholds

All Bidders must be investment grade or otherwise meet PGE's credit eligibility thresholds. For investment grade Bidders, their long-term, senior unsecured debt must be rated BBB- or higher by Standard & Poor's or Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody's Investor Services, Inc. Non-investment grade Bidders must be guaranteed by an investment grade guarantor prior to the execution of definitive agreements. In addition, all bidders must secure the Bidder's performance obligations through a letter of credit from a qualified institution (defined below), in a form acceptable to PGE. Examples of acceptable forms are included below.

"Qualified Institution" means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders' equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody's, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located.

Required Performance Assurances for New, Utility-Owned Resources

Winning bidders offering new, utility owned resources under BTA, APA and EPC (or similar) agreements must provide pre-COD performance assurances. The pre-COD performance assurance will include \$100/kW of collateral. The collateral will take the form of cash, or an irrevocable, transferable, standby letter of credit issued by a Qualified Institution (defined above) in a form and substance reasonably acceptable to PGE. The pre-COD performance assurance for EPC (or similar) will also include a payment and performance bond in a penal sum up to 100% of the contract price. The payment and performance bond must be issued by a Qualified Institution in a form and substance reasonably acceptable to PGE. A payment and performance bond is not required for an APA-only bid.

In addition, non-investment grade bidders will be required to provide a guarantee from an investment grade guarantor. At time of initial short-list, non-investment grade bidders offering a new, utility-owned resource must provide a Guarantee Commitment Letter from the Bidder's guarantor.

In the event the Bidder experiences a material adverse change (i.e., is no longer creditworthy as defined above or as defined in the negotiated contract) during the term of the contract, the Bidder may be required to provide additional eligible performance assurances in one or more of the forms defined above.

The performance assurances for new, utility owned resources are summarized in the following table:

Timing	Performance Assurance
Pre-COD Amount	<ol style="list-style-type: none"> 1. \$100/kw collateral 2. For EPC (or similar), payment and performance bond up to 100% of the contract price 3. Guarantee
Post-COD Amount	No Post-COD collateral required

Required Performance Assurances for Power Purchase Agreements (PPA)

For long-term Power Purchase Agreements, PGE will require pre-COD (for facilities not yet constructed) and post-COD performance assurance to provide protection if the counterparty defaults under the PPA. PGE requires that Bidders include the cost of adequate, acceptable performance assurance as part of their bid proposal as shown below. Proposed exceptions or alternatives to these required performance assurances need to be explicitly stated in the Form PPA.

In addition, non-investment grade bidders will be required to provide a guarantee from an investment grade guarantor. Prior to execution of definitive agreements, non-investment grade bidders offering a new, third-party resource must be guaranteed by the Bidder's guarantor.

The performance assurances for power purchase agreements are summarized in the following table:

Timing	Performance Assurance
Pre-COD Amount	1. \$200/kW collateral 2. Guarantee
Post-COD Amount	\$100/kW collateral

Attachment 1

GUARANTY COMMITMENT LETTER

(Must be on letterhead of Bidder's credit support provider)

Portland General Electric Company

121 SW Salmon Street

3 World Trade Center - 0306

Portland, Oregon 97204

Attn: Credit Dept.

Dear Sirs or Madams:

_____, ("Bidder") (insert Bidder name) is submitting a bid in response to the Portland General Electric Company's 2018 Renewable Resources Request For Proposals ("RFP"). Bidder is the _____ (insert nature of relationship, e.g., wholly owned subsidiary, partially owned subsidiary, affiliate, etc.) of the undersigned. The undersigned will directly benefit from the bid submitted by Bidder into the RFP. And the undersigned and Bidder have their own, separate legally enforceable arrangement with respect to the undersigned's promise set forth in this letter.

The undersigned promises and agrees that, if a Bid by Bidder is selected, that we will at that time issue an unconditional guaranty in form and substance consistent with PGE's Form Parent Guaranty, and that we will guarantee all obligations of payment and performance of Bidder to you as our independent obligation, plus expenses of enforcing the guaranty.

We understand that said guaranty is a required element in evaluating the Bidder's bid and that the execution and delivery of the guaranty is a condition precedent to you entering into an agreement with Bidder. We also understand that you are under no obligation to enter into any agreement with Bidder, under the RFP or otherwise.

Yours truly,

(Name of guarantor)

(Name of authorized officer)

Attachment 2

LETTER OF CREDIT COMMITMENT LETTER

(Must be on letterhead of Bidder's letter of credit issuer)

Portland General Electric Company

121 SW Salmon Street

3 World Trade Center - 0306

Portland, Oregon 97204

Attn: Credit Dept.

Dear Sirs or Madams:

_____, ("Bidder") (insert Bidder name) is submitting a bid in response to the Portland General Electric Company's 2018 Renewable Resources Request For Proposals ("RFP"). The undersigned promises that, should any bid submitted by Bidder in the RFP be selected for negotiations, that we will issue an irrevocable standby letter of credit in a form reasonably acceptable to you up to a maximum amount of \$_____.

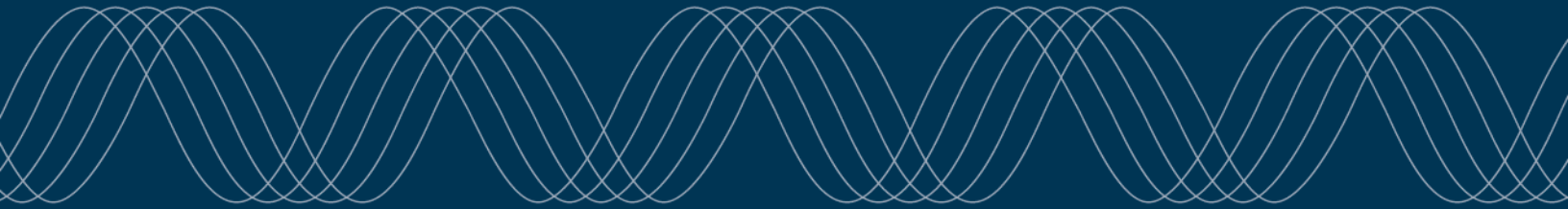
We understand that the execution and delivery of the letter of credit is a condition precedent to you entering into an agreement with Bidder. We also understand that you are under no obligation to enter into any agreement with Bidder, under the RFP or otherwise.

Yours truly,

(Name of letter of credit issuer)

Appendix L

Non-Disclosure Agreement



2021 All-Source RFP



Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement (the "**Agreement**"), effective as of [DATE] (the "**Effective Date**"), is entered into by and between [COUNTERPARTY NAME] ("Counterparty"), a [STATE OF ORGANIZATION] [ENTITY TYPE] having its principal place of business at [INSERT ADDRESS] and Portland General Electric Company ("PGE"), an Oregon corporation having its principal place of business at 121 SW Salmon Street, Portland, OR 97204 (together, the "**Parties**", and each, a "**Party**").

WHEREAS, PGE is in the process of acquiring electricity and capacity resources through the issuance of a 2021 All-Source Request for Proposal (the "**RFP**").

WHEREAS, Counterparty desires to participate in the RFP as a bidder (the "**Purpose**").

WHEREAS, the Parties desire to share certain information that is non-public, confidential or proprietary in nature in furtherance of the Purpose.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

1. Confidential Information. Except as set forth in Section 2 below, "**Confidential Information**" means all non-public, confidential or proprietary information disclosed on or after the Effective Date, by either Party (a "**Disclosing Party**") to the other Party (a "**Recipient**"), or to any of such Recipient's employees, officers, directors, agents, attorneys, accountants or advisors (collectively, "**Representatives**"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," which may include:

(a) all information concerning the Disclosing Party's and its affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;

(b) the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(c) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(d) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and

(e) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials (the "**Notes**") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

Any Confidential Information disclosed orally shall be clearly identified as such by Disclosing Party at the time it is disclosed.

2. Exclusions from Confidential Information. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

3. Recipient Obligations. The Recipient shall:

(a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose;

(c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

(i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

(ii) are informed by the Recipient of the confidential nature of the Confidential Information; and

(iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and

(d) be responsible for any breach of this Agreement caused by any of its Representatives.

4. Security. Recipient will maintain and comply with administrative, technical and physical safeguards that are designed to protect the security and integrity of the Confidential Information, including in connection with any transfer, communication, remote access or storage of the Confidential Information as permitted or required under this Agreement. Recipient will promptly notify the disclosing Party of any unauthorized disclosure or use of the Disclosing Party's Confidential Information.

5. Permitted Disclosure. Any disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order or other legally supported data request issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall provide the Disclosing Party with:

(a) to the extent reasonably possible and not prohibited by law, prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, such Legal Order specifically requires the Recipient to disclose. Recipient shall not be in breach of this Agreement or liable to Disclosing Party for any disclosure made pursuant to this Section 5 (Permitted Disclosure).

Notwithstanding anything to the contrary in this Agreement, PGE may disclose Confidential Information (a) pursuant to the following Protective Order (or other Protective Order(s) that may be issued by the OPUC in connection with the RFP or any cost recovery proceedings related to resources or products acquired pursuant to the RFP): Order No. _____ dated _____ (as such Orders may be modified by the OPUC), (b) to the independent evaluator retained by PGE for the RFP, and (c) to comply with the disclosure requirements set forth in OAR 860-089-0500 (Final Shortlist Acknowledgement and Result Publication).

6. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its

Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed; provided, however, that Recipient may keep copies of the Confidential Information for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed; provided, however, that Recipient may keep copies of the Notes for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement.

7. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire two (2) years from the Effective Date. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of one (1) year from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient.

8. No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

9. No Transfer of Rights, Title or Interest. Each Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Recipient or any of its Representatives.

10. No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise and may pursue a similar purpose without the involvement of, or liability to, the other party.

11. Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for

the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

12. Limitation of Liability.

(a) No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Maximum Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Oregon. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the city of Portland and County of Multnomah, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

14. Attorney Fees. In the event that any party institutes any legal suit, action or proceeding, including arbitration, against the other party to enforce the covenants contained in this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable and actual attorneys' fees and expenses and court costs.

15. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the

addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

16. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

17. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

19. Assignment. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

20. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

Portland General Electric Company

[Counterparty]

By_____

By_____

Name:

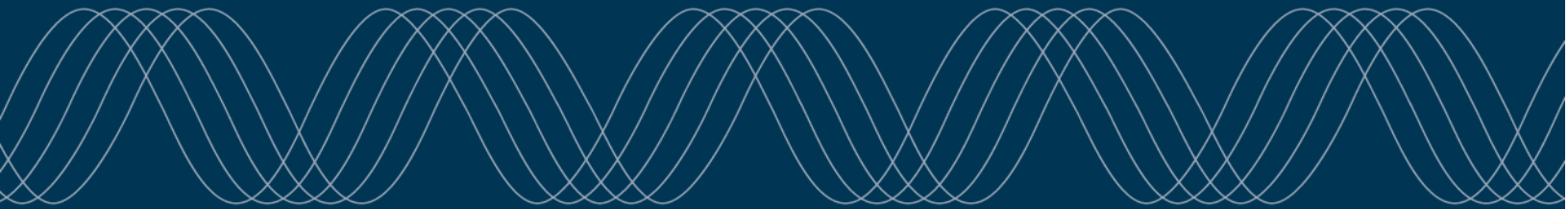
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Appendix M

Technical Specifications



2021 All-Source RFP

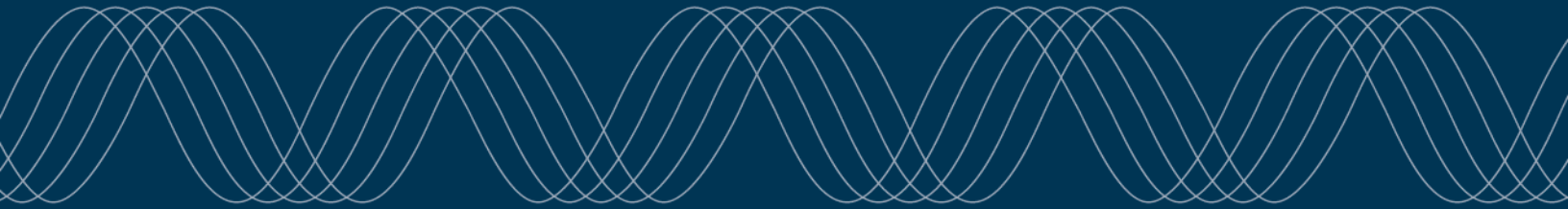


PGE's 2021 All-Source RFP Technical Specifications

Due to the voluminous nature of PGE's RFP technical specifications, please go to www.portlandgeneralrfp2021.com to separately download Appendix M.

Appendix N

Scoring and Methodology



2021 All-Source RFP



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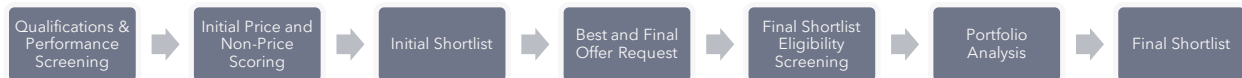
Scoring Methodology

1.1 Overall Analysis Process

PGE’s evaluation and scoring process is designed to account for the unique attributes of several resource types and determine the resource portfolio that offers the best combination of cost and risk for PGE customers. PGE intends to use IRP models with select modifications to evaluate proposed resources and to work closely with the IE as they validate that the evaluation criteria, methods, models, and other processes have been applied consistently and appropriately to all bids. All proposed alterations to PGE’s IRP models are discussed in detail in the analysis sections below.

The following diagram illustrates the anticipated key steps in the analysis process, and the discussion below provides additional detail on the required modeling and scoring within each step.

Figure 1: 2021 All-Source RFP Analysis Process



1.2 Qualifications & Performance Screen

PGE intends to employ a qualifications and performance screen as the first step in the RFP evaluation process. Resources that do not meet all of PGE’s initial applicable requirements will not be considered for the initial short list and will not receive a price and non-price score. PGE will document why bids did not pass the qualifications and performance screen and will provide that highly confidential information upon request to Staff and docket participants that have signed a modified protective order. A description of the various qualifications is included in Table 1 below.

Table 1: Qualifications & Performance Screening Requirements

Qualifications & Performance Screening Requirements	
Entity Requirement	As applicable, entities must be authorized under the law to sell power, and able to schedule power and operate under industry standards established by the Federal Energy Regulatory Commission (FERC), Western Electricity Coordinating Council (WECC), and the North American Energy Reliability Council (NERC), or other applicable regulatory body or government agency.
Financing Requirement	As applicable, bidders must provide a reasonable plan to obtain project financing. Those bidders who are unable to internally or balance sheet finance the proposed project (supported by appropriate financial statements) must provide evidence of a good faith commitment from a financial institution or lender prior to placement on PGE’s final short list.
Technology Eligibility	PGE will accept bids for resource core technologies that are commercially proven and deployed at large scales within the North American utility industry. Renewable resources bid into the solicitation must be RPS eligible. Dispatchable resources must be non-emitting technologies that can generate when called upon.
Resource Online Date	Resources must be online no later than the end of 2024, with the exception of pumped hydro, which must be online by the end of 2027.
Qualifying Product	PGE shall be the offtake for all output from the facility or portion of the facility bid into this RFP. Projects must include all power attributes including associated renewable energy credits, environmental attributes, energy benefits, and capacity benefits. Bidder is responsible for ensuring RECs are established in WREGIS.
Nameplate Requirement	Resources that are bid into this RFP must be large enough to qualify for contracting under PGE’s Schedule 202 for qualifying facilities. ¹ Solar resources must be larger than 3 MW and all other facilities must be larger than 10 MW. If a Bidder already has a Schedule 202 agreement with PGE, they are welcome to include such the resource subject of

¹ This requirement is consistent with OAR 860-089-0250(4).

	agreement in its bid, but PGE does not guarantee that the bidder will be excused from the existing agreement.
Term Length	PGE requires a 15-year minimum term and a 30-year maximum term for those agreements.
Tax Credit Eligibility	Renewable resources must be eligible for the federal PTC or ITC and all bids must provide a narrative on how the project will obtain the tax credits.
Credit	Bidders must meet PGE’s credit eligibility thresholds. For investment grade Bidders, their long-term, senior unsecured debt must be rated BBB- or higher by Standard & Poor’s and Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody’s Investor Services, Inc. For non-investment grade Bidders, they must demonstrate, prior to final short list, that a qualified institution will secure the Bidder’s performance obligations through a letter of credit or guaranty, in a form acceptable to PGE.
Site Control	<p>Bidders must support the bid by demonstrating dependable site control, for both the location of the resource and any gen-tie path that is required. At the time of bid submission, Bidders must possess at least one of the following:</p> <ul style="list-style-type: none"> • title to the site • an executed lease agreement • an executed easement • an executed option agreement applicable to a minimum of 80% of the project site <p>The site control documents should reflect the resource type bid into this RFP.</p> <p>Prior to placement on PGE’s final short list, bidders will be required to demonstrate site control for 100% of the project site.</p>
Permitting	<p>Please see the chart in Exhibit A that denotes permitting requirements for the initial short list and final short list by resource type.</p> <p>In the event a specific permit is not required for the resources that is bid into this RFP, the Bidder may provide a narrative explanation on the bid form regarding why it is not applicable.</p>
Acceptable Delivery Points	<p>PGE will accept delivery within PGE’s balancing authority area and at BPAT.PGE. PGE will not accept delivery at Pelton Round Butte or at PacifiCorp West.</p> <p>The BPAT.PGE Point of Delivery is associated with the following substations or “sinks”:</p>

	<ul style="list-style-type: none"> • PGE Contiguous • Pearl 230 kV (Sherwood) • McLoughlin 230 kV • Keeler 230 kV (St. Marys) • Rivergate 230 kV • Bethel 230 kV ² • Troutdale 230 kV (Blue Lake)
Interconnection	<p>For a bid to qualify for the initial short list it must have the following:</p> <p>An active generation interconnection request in the transmission provider’s interconnection queue</p> <p>A completed system impact study</p> <p>If interconnection involves a 3rd party other than the transmission provider, the bid must also include an interconnection request to the 3rd party and all associated studies.</p> <p>To qualify for the final short list, it must have a completed facilities study.</p> <p>Resources located on PGE’s system must be studied as Network Resource Interconnection Service.</p> <p>Resources located off-system can be studied as Energy Resource Interconnection Service or Network Resource Interconnection Service.</p>
Transmission Requirements	<p>Renewable Resources</p> <p>Eligible transmission service products include:</p> <ul style="list-style-type: none"> • long-term firm transmission service, • long-term conditional firm bridge, number of hours, or • long-term conditional firm reassessment, number of hours

² At this time the Bethel 230 kV POD has been determined to have insufficient available capacity and is unavailable for new transmission service requests. However, Bidders that have already been granted long-term service at this POD may use this POD.

	<p>To qualify for this RFP, a bidder must have eligible transmission service described above that is equivalent to at least 80 percent of the facility's interconnection limit. The eligible transmission service must originate at the POR/POI and provide delivery to one of the acceptable points of delivery, defined above, prior to project COD.</p> <p>Bidders relying on BPA for transmission service are required to have either: 1) previously granted eligible transmission service, or 2) an eligible and active OASIS status Transmission Service Request (TSR) participating in the BPA TSR Study and Expansion Process.</p> <p>PGE's evaluation process will determine if there are additional costs or risks to deliver the resource to PGE load.</p> <p>If a Bidder has a TSR that utilizes Newpoint as the POR, the TSR must reference the specific Generation Interconnection Request number for the resource in the comments field.</p> <p>Dispatchable Resources</p> <p>To qualify for this RFP as a dispatchable resource, a bidder must have long term firm transmission rights for 100 percent of the facility's interconnection limit. The long-term firm transmission service must originate at the resource POR/POI and provide delivery to one of the acceptable points of delivery, defined above, prior to project COD.</p> <p>Bidders relying on BPA for transmission service are required to have either previously granted transmission service or an active OASIS TSR participating in the BPA TSR Study and Expansion Process.</p> <p>If a Bidder has a TSR that utilizes Newpoint as the POR, the TSR must reference the specific Generation Interconnection Request number for the resource in the comments field.</p>
Integration	<p>For projects located outside of PGE's Balancing Authority Area, PGE will determine and elect integration services necessary to ensure delivery of energy to the Point of Delivery. For a third party owned project, PGE will reimburse projects for integration services elected by PGE. Integration Services include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Integration Services do not include ancillary service costs associated with the transmission provider's provision of firm transmission service.</p>
Labor Requirement	<p>Union labor must be utilized for major construction activities related to the resource and must include a Project Labor Agreement requirement in any related executed Engineering, Procurement and Construction Agreements.</p> <p>PGE requires that the labor group has policies in place that are designed to limit or prevent workplace harassment and discrimination.</p>

	<p>PGE will be asking that the labor group has policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least 15 percent of the total work hours performed by individuals from those communities.</p> <p>PGE requires that bidders recognize this requirement upon bidding and affirm their commitment to meet the requirement. However, PGE does not expect a bidder to have secured a PLA prior to contract execution with PGE as it is customary to negotiate such labor agreements closer to construction activities.</p>
Accepted equipment manufacturers for utility owned	All major equipment manufacturers must be PGE preferred vendors.
Reasonable adherence to PGE technical specifications for utility ownership structures	Concurrent with supplying the best and final offer, all bids that contemplate a utility ownership structure must provide redlines to PGE’s technical specifications.
Service agreement requirements for utility ownership structures	Utility-owned resources must include quoted vendor costs for long--term service agreements (LTSA) for a minimum of five years. For battery-energy storage resources, LTSAs must include commitments to maintain the capacity performance through augmentation or alternative mechanisms.

1.3 Scoring Methodology

Consistent with the Commission’s CBRs all bids that pass PGE’s qualifications and performance screen will be scored and ranked based on price and non-price factors. Price scores will be based on prices submitted by bidders, the forecasted performance of the resource, and the associated real-levelized cost and benefit of the bid. Non-price scores will focus on commercial and economic risks that a bidder elects to transfer to PGE and our customers through proposed modifications to form contract term sheets as well as certain bid attributes further detailed in the non-price scoring section.

1.3.1 Price and Non-Price Weightings

Each bid will be scored based on a combination of price and non-price points. PGE will allocate 70 percent of available bid points to bids based on the price and performance considerations reflected in the price score. PGE will allocate 30 percent of the available bid points to bids based on non-price factors that cannot be readily converted into minimum bidder requirements. As is required in OAR 860-89-0400(5)(b)(A), additional sensitivities will be performed when developing the initial and final short lists

that evaluate how bids perform under a 80/20 and 60/40 price and non-price weighting sensitivities. A matrix that details the allocation of price and non-price points for each resource type is included in Exhibit B.

The purpose of non-price scoring is to acknowledge the important benefits and risks associated with a proposed project that cannot be practically expressed in a bid's price. As is permitted under OAR 860-089-0400(2)(b), PGE's non-price scoring is largely based on conformance to proposed standard form contracts and term sheets. Additional non-price scoring criteria must be objective and reasonably subject to self-scoring by bidders.

1.3.2 Price Scoring

PGE's price scoring will utilize models and methodologies consistent with the 2019 IRP and IRP Update process. Revenue requirement modeling will determine the bid cost, AURORA will be used to calculate energy values, Sequoia will be used to determine the capacity value, and results from ROM will provide flexibility value assessments. Some of these models required modifications for RFP evaluation purposes. Those modifications are further detailed in each section below.

Bid Cost Determination

A bid's cost reflects the total cost, fixed and variable, associated with the project's delivery of energy, capacity, and ancillaries at its forecast economic dispatch. PGE will utilize a revenue requirement model in Excel over the economic life of the asset to calculate the total offer cost, expressed on a present-value basis. A real levelized net present value is the value that when escalated at the annual inflation rate, has the same net present value as the original total offer cost. The model will consider the unique fixed and variable costs associated with each resource.

For bids that contemplate a power purchase agreement, a bid's fixed cost will include (if applicable) all forecast fixed payments, capacity charges, wheeling costs, integration costs, ancillary services, and PGE system upgrade costs. Variable costs for power purchase agreements will include all energy payments, additional variable O&M costs, line losses, emission costs passed onto the buyer, and start-up charges, if applicable. PGE will determine the magnitude of a bid's variable costs by the bid's simulated dispatch against forecast market prices developed using the Aurora modeling, forecasting, and analysis software.

For bids that contemplate a utility ownership structure, a bid's fixed costs will include total depreciation, salvage, return, income taxes, deferred income taxes, deferred tax asset costs, property taxes, fixed operating and maintenance costs (O&M), wheeling charges, and ancillary services less any tax credit benefits. A bid's variable costs will include all fuel costs, variable O&M, emissions costs, start-up costs less any PTC benefit.

To evaluate bids containing different resource characteristics on a comparable basis, prices submitted by the Bidder may be subject to adjustments, and adjustments may also be required throughout the evaluation process. For consistency PGE intends to assess all bids the BPA reserves rate. Renewable resources will be assessed BPA's variable energy resource balancing services, and dispatchable resources will be assessed dispatchable energy resource balancing services. Examples of other adjustments include applying applicable interconnection costs captured in interconnection facilities

studies, adjusting for ancillary service rate changes, altering assumed project costs based on redlines to technical specifications, and performance assurance adjustments if the Bidder takes exception to the required performance assurances for before and after the commercial operation date.

Energy Value Determination

An offer's energy value reflects the value of energy generated throughout the offer's economic life or term. To calculate the energy value, PGE will forecast resource production and utilize the reference case market price forecast from the 2019 IRP Update, inclusive of available natural gas price forecast updates. The production value will be based on bidder provided generation information, and in the instance of storage resources, PGE will simulate resource dispatch using the Aurora production cost simulation tools deployed in the IRP. Energy value for the duration of the offer's term is expressed on a present-value basis, levelized using annuity methods, and included in the offer's total levelized value. To evaluate energy value risks, PGE will conduct energy value sensitivities using multiple price curves within portfolio analysis.

Capacity Value Determination

PGE is facing an upcoming capacity deficit in 2025 and requires capacity products to otherwise displace the need to contract with or construct new generating facilities. Individual resource capacity values will be calculated as the product of the bid's capacity contribution and the avoided capacity cost. PGE's avoided capacity cost will utilize the real-levelized cost, net of wholesale revenues and flexibility value, adjusted for effective load carrying capability (ELCC) of a simple-cycle combustion turbine (SCCT) as depicted in the 2019 IRP Update. For additional perspective, PGE will also use the average cost of dispatchable capacity from bids in this RFP as a proxy for avoided capacity cost.

Individual capacity contributions will be calculated using Sequoia. Sequoia is a loss-of-load probability model that assesses both capacity need and capacity contribution of potential incremental resources. The model uses a Monte Carlo module to construct thousands of plausible weeks of load and resource conditions. It then evaluates these weeks independently in a dispatch module that optimizes the generation from dispatchable resources across all hours of the week to minimize the reliability objective function (i.e., minimize the sum of the average unserved energy across the week and the maximum unserved energy experienced in a single hour during the week).

The model has an Excel interface with a Python and GAMS back end. It also requires a license to the Gurobi solver to achieve adequate performance. Further details on Sequoia were included in Appendix K of the 2019 IRP Update.

Since the 2019 IRP Update, PGE has identified necessary modeling changes and improved Sequoia to allow for direct modeling of the diverse commercial bids expected to bid into the 2021 All-Source RFP. The Sequoia changes include the following:

- Load update - PGE updated Sequoia to include the most recent econometric load forecast which was conducted in March of 2021.
- Contracts update - PGE will update Sequoia to include the appropriate snapshot of PURPA qualifying facilities and bi-lateral contracts.
- Hybrid resource dispatch - PGE updated Sequoia to enable more accurate hybrid resource representation. The changes allow PGE to model DC-coupled storage paired with DC and/or

AC generation as well as AC-coupled storage paired with DC and/or AC generation. The updated functionality replaced the earlier hybrid dispatch module, which was a simplified AC storage paired with AC generation.

- Disaggregation of hybrid resource dispatch – Sequoia now allows for hybrid resources to be treated as separate resources for dispatch. This also improves the modeling for storage resources, which were previously aggregated for the storage dispatch module.
- Storage cycling limitation – PGE introduced functionality to reflect any daily cycling limitations, if commercially applicable.
- Hourly transmission curtailments – Sequoia can include assumed hourly curtailments based on the type of transmission product the resource is planning to use.

As discussed above, PGE will evaluate multiple transmission products as part of this RFP. Depending on the product selected, PGE will adjust the capacity value of the resource to account for the product’s reliability, which is described in more detail in the chart below.

Table 1: Impacts to Capacity Value Based on Transmission Products

Impacts to Capacity Value Based on Transmission Products	
Long-Term Firm	<ul style="list-style-type: none"> • When determining capacity contribution, the maximum facility output will be limited to the quantity of long-term firm rights (no less than 80% of interconnection limit). • No capacity value will be attributed to the portion of the resource’s interconnection limit that is relying on short-term firm, if any.
Conditional Firm Bridge	<ul style="list-style-type: none"> • When determining capacity contribution, the maximum facility output will be limited by the amount of conditional firm bridge rights (no less than 80% of interconnection limit). • For the purposes of capacity contribution calculations, generation delivered by condition firm bridge will be assumed to be curtailed. Specifically, resources on conditional firm bridge will also have their output curtailed for 50% of annual curtailment hours as identified and reserved for use by BPA. The model will assume that these curtailments happen during PGE’s approximate times of highest need. Upon the forecasted completion of transmission upgrades necessary to convert conditional firm bridge service into long term firm service, a resource’s forecasted curtailment conditions will be removed.³ If BPA’s cluster study results are not available to indicate the maximum number of curtailed hours, PGE will use the average assessed hours from the previous study. • No capacity value will be attributed to the portion of the resources facility’s interconnection limit that is relying on short term firm, if any.

³ LC 73, 2019 IRP reply comments at 85, see figure 15, available at: <https://edocs.puc.state.or.us/efdocs/HAC/lc73hac153345.pdf>

Conditional Firm Reassessment	<ul style="list-style-type: none"> Due to the unpredictable long-term nature of this product as discussed in the transmission section above, PGE will not attribute any capacity value to bids relying on conditional firm reassessment.
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Flexibility Value Determination

Flexibility value was new in PGE’s 2019 IRP and was included to estimate the value a resource brings to PGE’s portfolio by responding to forecast errors, enabling fast ramping, and meeting reserve requirements. PGE estimated these values using PGE’s Resource Optimization Model (ROM). ROM is a multi-stage optimal commitment and dispatch model that accounts for the operational impacts of forecast errors, operating constraints based on commitment decisions with imperfect information, gas constraints, and operating reserves (load following, regulation, spinning, and non-spinning reserves). It ensures that the system can respond to short time-scale variability of load and renewables as well as contingency events and is implemented using the General Algebraic Modeling System (GAMS) programming and a Gurobi Optimizer⁴.

For resource flexibility values in the 2021 All-Source RFP, PGE will rely on flexibility values from ROM as detailed in the 2019 IRP. These values will be adjusted based on the size of each resource evaluated. For combined solar and storage projects, PGE will give a battery storage project its full flexibility value if it is able to charge from the grid after it has been online for five years. Due to ITC eligibility requirements, solar and storage resources generally cannot rely on grid charge for the five years following a project’s online date. Below are the flexibility values for 100 MW resources included in the 2019 IRP.

Table 2: Flexibility Value from the 2019 IRP

Flexibility Value (2020\$/kW-yr)	
2-hour Battery	\$23.73
4-hour Battery	\$28.10
6-hour Battery	\$29.43
Pumped Storage	\$25.95

Offer Price Value-to-Cost Evaluation

PGE will evaluate all Renewable RFP bids against a value-to-cost binary metric. The value-to-cost metric evaluates whether a project’s costs are exceeded by a project’s forecasted value under Reference Case

⁴ For a more detailed description of ROM, please consult Appendix I.5 in PGE’s 2019 IRP at 358-359.

conditions considering only the resource’s forecasted energy, capacity, and flexibility values. Offers will be considered to have a ‘True’ value-to-cost metric if the resource’s forecasted levelized benefit exceeds their forecasted levelized cost. The formula below illustrates how the metric will be assessed for renewable bids.

Renewable Resources’ Value-to-Cost Binary Metric is True if:

$$\text{Levelized Resource Cost} < \text{Levelized Energy Value} + \text{Levelized Capacity Value} + \text{Levelized Flexibility Value}$$

The value-to-cost evaluation will be unique for each resource evaluated by PGE and will elevate resources that provide more value to PGE customers due to the resource’s generation profile. For this reason, it is possible that a lower-priced resource will not pass the economic evaluation while a higher-priced resource will pass the economic evaluation due to increased resource value, such as by providing higher capacity contribution or more valuable energy production.

Allocation of Price Score Points

Once the cost of each bid is determined it will be netted against the levelized energy, capacity, and flexibility value associated with the bid. This net cost will be expressed in real levelized \$/MWh for renewable bids and real levelized \$/kw-mo for dispatchable bids. Each bid’s component cost and benefits will be converted into a cost-to-benefit price score ratio. Price scoring points will be allocated on a scaled basis, with 700 points allocated to the best price ratio. The allocation system is illustrated by the example below.

Table 3: Price Score Point Allocation Example

Price Score Point Allocation Example					
A	B	C	D	E	F
	Total Cost	Total Value	Ratio of Cost to Benefit	Lowest Ratio	Points
			B/C	Min(D)	700*(E/D)
Bid 1	40	50	0.8	0.73	638
Bid 2	35	48	0.73	0.73	700
Bid 3	15	20	0.75	0.73	681
Figures are fictitious and for example purposes only					

1.4 Non-Price Scoring

Non-price scoring is designed to reflect the commercial and performance risks and benefits associated with the project that is not captured in the offer's price score. Non-price scoring will be assigned 300 points. Scores for dispatchable resources will be based on commercial performance risk and COD related risks. Scores for renewable resources will be based on commercial performance risk, transmission plan attributes and level capacity ratio score (based on a ratio of a resource's capacity contribution to MWa). PGE will first calculate the non-price score for the initial short list, and then will calculate a second non-price score in the portfolio analysis stage based on the resources in each portfolio.

Commercial Performance Risks

Commercial performance risks will be assessed based on bidder proposed modifications to form agreement term sheets and additional bid materials that inform identified commercial risk provisions. Please refer to Appendix A: Renewable Resource Form Term Sheet, Appendix B: Storage Capacity Form Term Sheet, Appendix C: Hybrid Resource Form Term Sheet, and Appendix D: APA & EPC Form Term Sheets. Bidder term sheet commitments are important and consequential as they are the primary indicator of a bidder's commitment to deliver on bid specifications and limit the transference of risk onto PGE and its customers. Two-hundred Twelve (212) non-price points for dispatchable and renewable resources will be based on the scoring of commercial performance risk reflected in the term sheets and associated documents. Bidders are required to review PGE form term sheets and mark any exceptions to those term sheet agreements. Modified term sheets will be the foundation for negotiations with successful bidders. In addition, form agreements are also included for reference and further characterize the terms and conditions that PGE expects to initiate its negotiations preceding contract execution. In contrast to form term sheets, Bidders are not required to mark-up the form agreements. BIDDERS THAT CHOOSE NOT TO PROVIDE REDLINES AND DEFER COMMERCIAL COMMITMENTS UNTIL NEGOTIATION PHASE WILL NOT RECEIVE COMMERCIAL PERFORMANCE RISK NON-PRICE POINTS. The specific commercial performance scoring rubric relied upon to guide PGE's scoring is included in Exhibit C.

Characteristics that PGE will consider in commercial performance risk non-price scoring include the following:

- Resource performance guarantees - adherence to provisions including scheduling commitments, forecasting commitments, remedies of non-performance, security, credit support, warranties, service agreements, and output, availability factor, and/or performance guarantees will determine the allocation of 106 non-price points for dispatchable and renewable resources.
- Limitations of liability and remedies - adherence to provisions including commercial online date guarantees, force majeure, settlement, indemnification, default, and termination, will determine the allocation of 106 non-price points for dispatchable and renewable resources.

Transmission Plan Attributes

PGE will also assess how the transmission plan for each renewable resource introduces additional risk to PGE’s portfolio; 25 points will be included in this score. Bidders that propose to rely on greater quantities of short-term firm service introduce long term risks to PGE that cannot be adequately accounted for in price scoring. As enumerated in the table below, points will be awarded to offers that have a lower risk of service associated with more of the facility’s potential output delivered with long-term transmission rights.

Table 4: Non-Price Score Allocation Based on Transmission Plan

	Max Score	Weight	Total Points	Point Allocation
Long term transmission product reservation	4	7.25	29	4 - 100% of facility's interconnection limit 3 - 95% of facility's interconnection limit 2 - 90% of facility's interconnection limit 1 - 85% of facility's interconnection limit 0 - 80% of facility's interconnection limit

Level Capacity Ratio

For renewable resources, PGE proposes to employ non-price scoring metric that favors renewable resources that offer higher capacity contributions with lower annual energy output. The level capacity ratio metric will be calculated in accordance with the formula below. This metric allocates the remaining non-price points for renewable resources to those resources that have a high capacity contribution compared to the energy that they generate as depicted below:

$$\frac{ELCC \text{ (Measure of Capacity Contribution)}}{MWh \text{ (Measure of Energy)}} \times 59 \text{ Non - Price Points}$$

- This metric intentionally favors resources that best support reliability while recognizing PGE's portfolio energy load-resource-balance limitations.

Online Date Certainty

Given that PGE has short-term capacity needs and that the future availability of short-term and medium-term dispatchable resource contracts is challenging to forecast, PGE will attribute non-price points to dispatchable resources that have an earlier COD. Renewable resources are already incentivized to have the earliest COD possible due to the timelines associated with PTCs and ITCs. The impact of those tax credits is captured in the offer price. The table below illustrates how points will be awarded to dispatchable resources that offer earlier capacity value to PGE:

Table 5: Non-Price Score Allocation for Dispatchable Resources based on Commercial Operation Date

	Max Score	Weight	Total Points	Point Allocation
Non-Price Score Allocation based on Commercial Online Date	5	17.6	88	5- COD by 12/31/2023 4 - COD by 12/31/2024 0 - COD after 12/31/2024

1.5 Best and Final Offer Request & Final Short List Eligibility Screening

Initial short list candidates will be contacted by PGE and requested to provide their best and final offer. PGE will also ask that they redline technical specifications (if they have not already done so) and provide updates on pricing, permitting processes, interconnections studies, and the cluster study process. This new information will be evaluated to ensure the bid meets the eligibility requirements for the final short list, and all relevant updates will be incorporated into the portfolio analysis.

1.6 Portfolio Analysis

Consistent with the methodology in PGE's 2019 IRP and 2019 IRP Update, PGE will utilize ROSE--E for portfolio analysis for this RFP. ROSE-E is a portfolio analysis tool that generates optimal portfolios

according to a specified objective. In doing so, ROSE-E creates various cost and risk metrics that enable comparison across portfolios. For this RFP, ROSE-E will forecast the long-term economic performance of bids, both in isolation as well as when combined, allowing a comprehensive evaluation of bids that ensures the final short list is in the best long-term interests of customers. ROSE-E was extensively described and vetted in LC 73; for a full description of the model's construction and functionality please refer to PGE's 2019 IRP.⁵ While the core of ROSE-E remains in this RFP, several important changes have been made to the model to answer questions relevant to this specific setting.

ROSE-E's capacity expansion will be set to meet the carbon reduction targets established in House Bill (HB) 2021. In an IRP setting, ROSE-E ensures the system remains capacity adequate and in compliance with policy mandates by determining the optimal size and timing of additions from a list of proxy resources available to PGE.⁶ However, in this RFP energy additions will be limited to one proxy renewable resource (SE Washington wind), and capacity additions will be limited to the capacity fill resource.⁷ Doing so allows ROSE-E to evaluate individual bids and combinations of bids in the context of PGE's pathway to meet HB2021's targets. However, this analysis will produce only a cursory view of the resource additions necessary to comply with HB2021; the next IRP will produce a more developed and nuanced view of the most optimal resource expansion pathway for the Company.

In this analysis ROSE-E will only use the main objective function (minimizing long-term costs).⁸ The benefits from each bid/combination (energy and flexibility) and costs (variable and fixed) will be direct inputs into the model, along with the key financial parameters, price forecasts, and resource generation. The capacity value brought by each bid/combination will be reflected in reductions in capacity need, calculated in PGE's capacity model Sequoia. With these, PGE will calculate the traditional scoring metrics used in the 2019 IRP and IRP Update. PGE is also committed to work with Staff to determine the most informative approach to examine a low wholesale market price sensitivity as well as a PTC extension sensitivity and will share all sensitivity analyses with the independent evaluator for their review.

Once PGE determines the portfolio values for various combinations of bids that are examined in ROSE-E, PGE will convert the traditional metrics into a price score. PGE will also generate a non-price score for each resource combination based on the latest non-price scoring information. If a portfolio consists of multiple resources, PGE will weigh the various non-price scores for each resource in a portfolio based on the lesser of the MW nameplate size or the interconnection limit for the resource. Finally, PGE will also calculate multiple portfolio scores that examine multiple price score and non-price score weighting structures.

⁵ See 2019 IRP, Appendix I.6 ROSE-E - PGE's Portfolio Optimization Tool at 359, available here: <https://apps.puc.state.or.us/edockets/edocs.asp?FileType=HAA&FileName=lc73haa162516.pdf&DocKetID=21929&numSequence=37>

⁶ Proxy resources used in the 2019 IRP included four wind, four natural gas, three battery storage, solar, solar plus storage, pumped storage, geothermal, and biomass resource options.

⁷ Described in the 2019 IRP, the Capacity Fill resource is a technology-agnostic resource that provides capacity priced just over the avoided cost resource

⁸ The other three objective functions (minimize short-term cost, minimize variability, and minimize GHG & cost) were only used for select optimized portfolios in the 2019 IRP.

1.7 Final Short List

Upon completion of the portfolio analysis, PGE will examine the total combined price and non-price scores to determine the best combination of cost and risk for PGE customers. These results will be used to determine PGE's final short list, which, if acknowledged, will be the group of resources that PGE will make selections from. Once the final short list is filed, PGE will engage in negotiations with those selected bidders. The selected IE will issue its closing report two weeks after PGE has filed the final short list of bids.

Exhibit A: Required Permits

Permits/Studies	Required By						
	Wind	Solar	Geothermal	Hydro / Pumped Storage	Energy Storage (Batteries)	Biomass	Hydrogen/ Other
State permit (e.g., site certificate)	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist
Local land use permit (e.g., conditional use permit)	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist
FERC License (or final EIS from FERC)	n/a	n/a	n/a	Bid	n/a	n/a	n/a
Federal siting permit (e.g., NEPA Record of Decision for construction*) <i>*This does not include NEPA for an Eagle Take Permit</i>	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist
Air quality permit (e.g., ACDP, etc.)	n/a	n/a	n/a	n/a	n/a	Final Shortlist	n/a
FCC permit	Construction	Construction	Construction	Construction	Construction	Construction	Construction
FAA permits	CP	CP	CP	CP	CP	CP	CP
Airspace and Obstacle Evaluation Analysis	Bid	n/a	n/a	n/a	n/a	n/a	n/a
Water rights	n/a	n/a	Bid	Bid	n/a	Bid	Bid
Wastewater discharge permit (e.g., NPDES, WPCF, etc.)	n/a	Final Shortlist	Final Shortlist	n/a	n/a	Final Shortlist	Final Shortlist
Construction Permits (e.g., NPDES-1200C, building permit, site development permit, etc.)	Construction	Construction	Construction	Construction	Construction	Construction	Construction
Removal Fill Permits (wetland and in-water work, e.g., State, Army Corps)	Construction	Construction	Construction	Construction	Construction	Construction	Construction
Eagle surveys and take estimates: provide available survey data, a well justified preliminary take estimate, and a detailed schedule for completing surveys and final take estimate per USFWS-approved protocols	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Federal ESA surveys: provide comprehensive project-wide survey results (this does not include any final pre-construction follow-up surveys, such as may be required in a site certificate or other project authorization, for the purpose of micro-siting and defining boundaries of and avoiding active occupied habitat in a given construction year)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
State/local sensitive species surveys: provide comprehensive project-wide survey results (this does not include any final pre-construction follow-up surveys, such as may be required in a site certificate or other project authorization, for the purpose of micro-siting and defining boundaries of and avoiding active occupied habitat in a given construction year)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Cultural resource surveys started (at a minimum, contracted with a cultural resources consultant)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Tribal coordination initiated (started consultation with area tribes to discuss Traditional Use Studies, Traditional Cultural Properties, and other relevant studies)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Demonstrate a realistic timeline for procuring any additional permits, licenses, or assessments required to start construction	Bid	Bid	Bid	Bid	Bid	Bid	Bid

Key:

Bid - Must be obtained by bid submittal date

Final Shortlist - Must be obtained by bid Final Shortlist date

Construction - Must be obtained by start of construction

CP - Must be approved as a condition precedent in the definitive agreement

n/a - Not applicable

Exhibit B: Point Allocation Matrix

Score Type	Component	Description	Total Dispatchable Resource Points Possible	Total Renewable Resource Points Possible
Price Score	N/A	Points are allocated based on a cost to benefit ratio	700	700
Non-Price Score	Commercial Performance Risk	Points are allocated based on adherence to commercial terms and conditions that focus on performance guarantees and limitations of liability and remedies	212	212
	Transmission Plan Attributes	Points are allocated based on the facility's potential output met with long-term transmission rights	N/A	29
	Level Capacity Ratio	Points are allocated based on the ratio of the resource's capacity contribution to its expected energy production	N/A	59
	Online Date Certainty	Points are allocated based on the online date of the resource	88	N/A

Exhibit C: Commercial Performance Risk Non-Price Scoring Matrix

RESOURCE PERFORMANCE GUARANTEE SECTION			
	Max Score	Point Allocation	Key Terms, Conditions, and Circumstances to Consider
Forecasting & Scheduling	35	<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions</p> <p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost.</p> <p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	<ul style="list-style-type: none"> • Forecasting • Scheduling • Forecast Agent • Discharge Schedule Provisions • eTag Modification • Entity • Failure to Deliver Facility Output
Credit & Security	35	<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions</p>	<ul style="list-style-type: none"> • Security • Parent Guarantee • Credit Support

		<p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost.</p> <p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	<ul style="list-style-type: none"> • Aggregate Limitation of Liability
<p>PPA and SCA Output Guarantee (Note: Bidder to receive score for either PPA and SCA Output Guarantee or Utility Owned Asset Output Guarantee)</p>	<p>35</p>	<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions</p> <p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost.</p> <p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks</p>	<ul style="list-style-type: none"> • Output Guarantee • Minimum Availability Guarantee • Capacity Guarantee • Duration Guarantee • Round Trip Efficiency Guarantee • Related Default Provisions • Related Damages and Remedies • Operations and Maintenance

		<p>to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	
<p>Utility Owned Asset Output Guarantee</p> <p>(Note: Bidder to receive score for either PPA and SCA Output Guarantee or Utility Owned Asset Output Guarantee)</p>	35	<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions and specifically include robust warranties and LTSA for asset life.</p> <p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost and specifically include robust warranties and LTSA.</p> <p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	<ul style="list-style-type: none"> • Warranties • Long-Term Service Agreements • Energy or Capacity Guarantees • Consideration of Utility Customer Fixed Price and Fixed Volume Guarantees Through Regulatory Model

LIMITATION OF LIABILITY AND REMEDIES

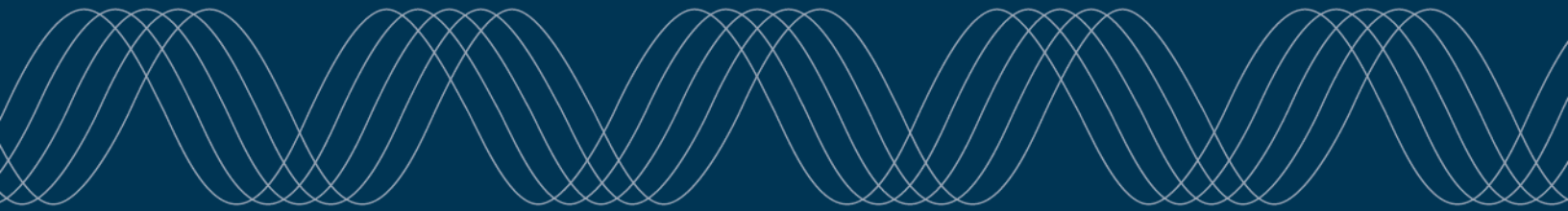
	Max Score	Point Allocation	<ul style="list-style-type: none"> • Key Terms, Conditions, and Circumstances to Consider
Commercial Online Date Provisions		<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions</p> <p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost.</p> <p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	<ul style="list-style-type: none"> • Guaranteed COD • Delay Damages • Test Energy • Progress Reports • Force Majeure • Conditions Precedent • Commercial Contingencies • Interconnection Transmission Study and Contract
Payment and Settlement Provisions		<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions</p> <p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost.</p>	<ul style="list-style-type: none"> • Assumed Liabilities • Excess Energy • Curtailment • Negative Price Event • Settlement Netting Provisions

	<p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	<ul style="list-style-type: none"> • Termination Payment • Payment Schedule • Consideration of Utility Customer Fixed Price and Fixed Volume Guarantees Through Regulatory Model
<p>Product Definition and Other Limitations</p>	<p>35 = Term sheet redlines and related commercial circumstances better protect PGE customers from schedule, performance or cost risk than form term sheet provisions</p> <p>28 = Term sheet redlines and related commercial documents generally conform to form term sheet and present modest risk to schedule, performance or cost.</p> <p>21 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is reasonably bound by commercial term or circumstance.</p> <p>14 = Term sheet redlines and related commercial documents present isolated significant risks to schedule, performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p> <p>7 = Term sheet redlines and related commercial documents present compounded and significant risks to schedule performance or cost. Risk is not reasonably bound by commercial term or circumstance.</p>	<ul style="list-style-type: none"> • Product Definitions • Third Party Sales • Commercial Transmission Risk • Control Area Services • Work to be Performed

		<p>0 = Term sheet redlines and related commercial documents present unacceptable and unmitigated risks to schedule performance or cost.</p> <p>0 = Bidder does not provide any redlines, declines to negotiate definitive agreement consistent with redlined or unedited term sheet, and/or defers all commercial considerations to negotiation phase.</p>	
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Appendix 0

Bid Form



2021 All-Source RFP

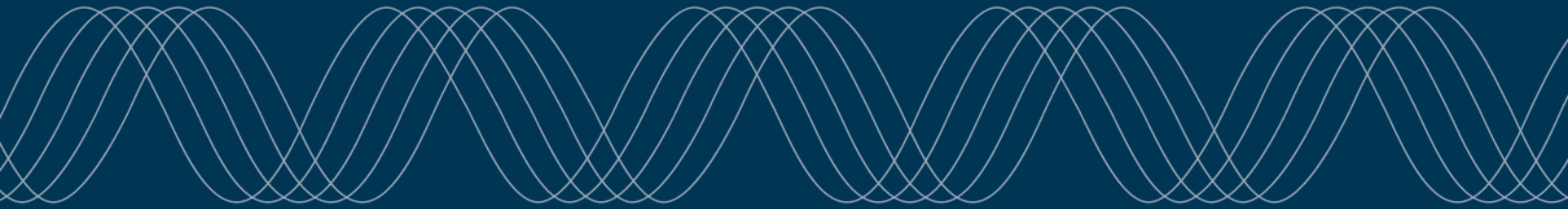


PGE's 2021 All-Source RFP Bid Form

Please download PGE's most current Bid Form at www.portlandgeneralrfp2021.com.

Appendix P

Benchmark Submission



2021 All-Source RFP



Portland General Electric's Benchmark Submission

Bid Descriptions

PGE currently intends to submit four benchmark resources and one affiliate resource. PGE intends to submit bids to meet both PGE's renewable needs and non-emitting capacity needs.

Renewable

- PGE intends to submit two wind Benchmark Resources that could each individually contribute approximately 150 MWa of renewable energy.
 - One greenfield wind resource constructed in Southeast Washington. The project would qualify for 80% PTC with an expected on-line date in 2023. Variations to the bid may include the addition of solar and/or storage to the resource, and additional wind capacity, with an expected on-line date of 2024.
 - One greenfield wind resource constructed in Northeast Montana, that would qualify for 80% PTC with an expected on-line date in 2023.
- PGE intends to submit one solar resource in Northeast Oregon as an Affiliate bid.

Non-Emitting Capacity

- PGE intends to submit two individual battery storage Benchmark Resources to satisfy a portion or all of PGE's capacity needs.
 - One greenfield battery energy storage project located on PGE's system with a nameplate capacity not expected to be greater than 200 MW.
 - One greenfield battery energy storage project located on PGE's system with a nameplate capacity not expected to be greater than 200 MW.

Utility Controlled Bid Elements

Certain assets controlled by the utility are under consideration for use in support of Benchmark Resources or an Affiliate bid. Consistent with the Commission's Competitive Bidding Rules, the following enumerated bid elements can be made available to third-party bidders at market value. Utility assets being evaluated include:

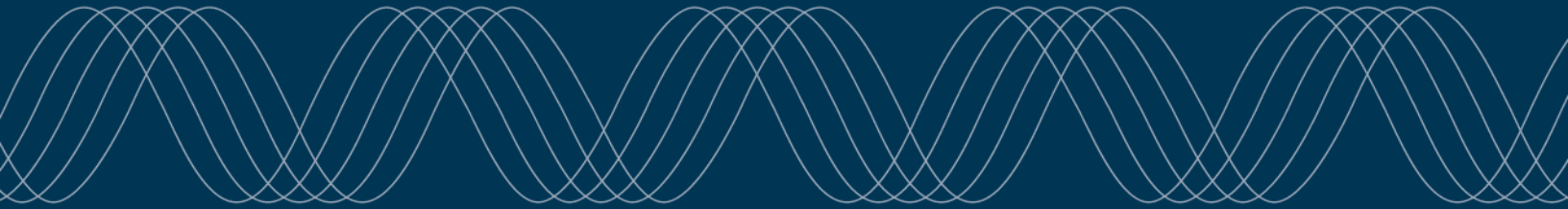
- Land in Northeast Oregon owned by the utility in support of a solar resource intended to be bid as an Affiliate bid.
 - Approximately 300-600 acres located at the following coordinates: 45.696, -119.797
- Land in the Hillsboro area in support of a greenfield battery energy storage project
 - Approximately 7 acres located at the following coordinates: 45.559, -122.941
 - This property is contiguous with current PGE operations. Due to physical and cyber-security risks associated with co-location, PGE will only be making this property available to third-party developers under a utility owned commercial structure as to avoid unacceptable risks associated with multiple entity operation within the site perimeter.

Utility Controlled Transmission Rights

PGE's Benchmark resources or affiliate bids will not rely on utility-controlled transmission rights to meet the 2021 All-Source RFP bid requirements. Should, through the course of this solicitation, additional certainty develop regarding the removal of Colstrip from PGE's portfolio, PGE reserves its discretion to consider whether Colstrip associated transmission rights could become available across PGE's planning horizon for the benefit of PGE's customers. Should PGE make Colstrip associated transmission rights available to improve the long-term economics of a benchmark or other bid, those rights would also be made available for all bidders subject to the same constraints and limitations.

Appendix Q

Resource Needs



2021 All-Source RFP



Intro

In this appendix, PGE provides additional information regarding its forecasted resource needs. This appendix includes the same information as was shared in PGE’s September 13, 2022 Reply Comment in OPUC docket UM 2166. In addition, this appendix provides additional information as was requested in Commission Order 21-320.

PGE Needs Assessment Update

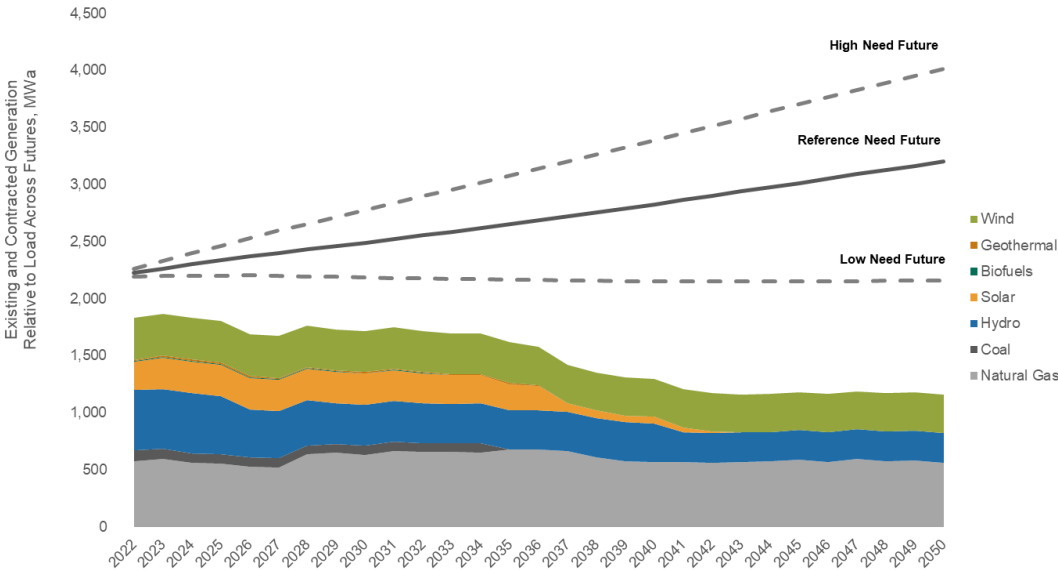
In accordance with Order No. 20-152, PGE provided updated needs assessments within the 2019 IRP Update. That update included the latest available econometric load forecast at that time, sensitivities for recent Green Future Impact procurements, market capacity information, and QF assumptions.

In Order No. 20-152, the Commission also outlined its expectation that PGE provide a formal needs assessment within the IE Selection docket. This update includes the executed contract with the Confederated Tribes of Warm Springs, latest load forecast, all signed agreements for Green Future Impact (“GFI”), and several sensitivities around QF procurements using information from the latest QF snapshot. PGE is not including sensitivities for GFI at this time as it is looking to procure only for the PGE supply option through this solicitation and has not received a request to procure or execute PPAs for the Customer Supply Option.

Energy Position Update

PGE’s net market position is calculated by the difference between forecasted load and the expected contribution of PGE’s baseline portfolio (all owned and contracted resources). While hydro and renewable resources are expected to contribute based on average capacity factors, existing thermal resources are economically dispatched against forecasted market prices. In this forecast, PGE used price forecasts from the 2019 IRP Update. The forecasted net market position through 2050 is displayed below in Figure 1.

Figure 1: PGE’s Forecasted Reference Case 2025 Energy Position (MWa)



Updated analysis for this RFP suggests that PGE remains in a net-market purchasing position. While the inclusion of PGE’s most recent load forecast increased PGE’s net reliance on the market, the extension of PGE’s purchase of 100% of the output from the Pelton and Round Butte Project (PRB Extension) and the second resource from Phase 1 of the Green Energy Affinity Rider (GEAR) led to a net reduction of PGE’s energy position relative to that from the 2019 IRP Update filed in January 2021, shown in Table 1 below. This position remains through 2050 as shown below in Figure 1. It is important to note that consistent with the methodology used in both the 2019 IRP and IRP Update, this calculation totals the economic generation from dispatchable resources while not considering the emission targets established in HB2021. The later inclusion of these policy mandates these is expected to limit the generation from existing thermal resources and create an increased reliance on market purchases.

Table 1: PGE’s Forecasted Reference Case 2025 Energy Position (MWa)

	2019 IRP Update	RFP Update
Reference Case	595	521
10th Percentile	428	380
90th Percentile	887	791

Capacity Need Update

Table 2 below identifies PGE’s updated capacity needs in 2025. With the updates outlined above, PGE’s reference case forecasted capacity need decreased to 372 MW. There remains a wide range of uncertainty in these values, reflected in the capacity need associated with the high and low need futures.¹

Table 2 : PGE’s Forecasted 2025 Capacity Needs (MW)

	2019 IRP	RFP Update
High	737	587
Reference	511	372
Low	292	160

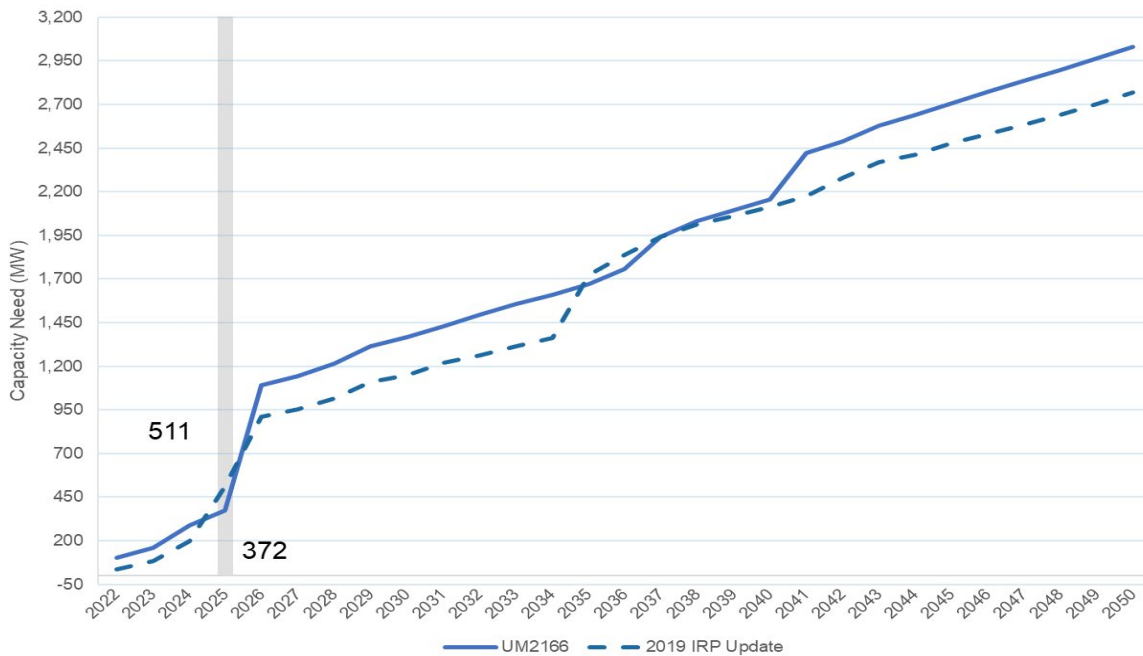
Order 21-320 requested additional information regarding PGE’s capacity need forecast. The Order requested a forecast of PGE’s capacity needs across the planning horizon.² PGE’s forested capacity needs are presented in Figure 2. Figure 2 compares PGE’s forecasted capacity needs across the planning horizon to those that were forecasted in the 2019 IRP Update. Several changes are visible in this forecast update. A lower 2025 capacity need is reflective of the inclusion of both the PRB Extension and the second GEAR Phase I resource (138 MW solar). Capacity needs increase 2026 as Colstrip reaches the end of its planned depreciable life and is removed from PGE’s portfolio. Additional

¹ See LC 73, PGE’s 2019 IRP Table 3-1 at 73 for the construction of need futures.

² Order 21-320 at Appendix A Page 15

resources reach the end of their contract life later in the planning horizon including the second GEAR Phase I resource and extended Pelton Round Butte contract in 2036 and 2040, respectively.

Figure 2: PGE' Forecasted Capacity Needs (MW)



Lastly, Order 21-320 calls for additional clarity on the drivers behind PGE's increased capacity need forecast. ³ Since August 2021, PGE has presented three different forecasted capacity needs: one in this docket and two sensitivities in UM 1953. These two latter values investigated two specific questions in that docket while keeping most of the forecasts from the 2019 IRP Update. In addition to PRB Extension and GEAR resource added in the two UM 1953 filings, this RFP's 2025 Reference Case value included updated a load forecast and QF snapshot, producing the most current value (372 MW in the Reference Case for 2025). These changes are summarized below in Table 3.

³ Order 21-320 at Appendix A Page 15

Table 3: PGE 2025 Reference Case Capacity Need Estimates

	IRP Update⁴	UM 1953: GEAR⁵	UM 1953: QTS⁶	UM 2166⁷
Filing Date	Jan-21	Aug-21	Sep-21	Sep-21
2025 MW Need	511	275	335	372
Load Forecast	June 2020	June 2020	June 2020, with QTS load added	March 2021
QF Snapshot	June 2020	June 2020	June 2020	June 2021
Baseline Portfolio	IRP Update	IRP Update	IRP Update	IRP Update
Resource Additions		Second GEAR Phase I resource, PRB Extension	Second GEAR Phase I resource, PRB Extension	Second GEAR Phase I resource, PRB Extension
Notes			Not run in Sequoia	

⁴ Available here: <https://edocs.puc.state.or.us/efdocs/HAH/lc73hah13049.pdf>

⁵ Available here: <https://edocs.puc.state.or.us/efdocs/HAD/um1953had17169.pdf>

⁶ Available here: <https://edocs.puc.state.or.us/efdocs/HAA/um1953haa14249.pdf>

⁷ PGE Reply Comments available here:
<https://edocs.puc.state.or.us/efdocs/HAC/um2166hac162833.pdf>



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