



Pacific Power | Utah Power
Rocky Mountain Power
825 NE Multnomah
Portland, Oregon 97232

October 20, 2006

VIA ELECTRONIC FILING

Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

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

RE: **Docket No. UM 1129**

Pursuant to Commission Order 06-538 issued in UM 1129, enclosed for filing are an original and five (5) copies of PacifiCorp's Application for approval of its proposed tariff Schedule No. 37 – Avoided Cost Purchases From Qualifying Facilities of 10,000 kW Or Less and PacifiCorp's proposed standard form power purchase agreements for new, existing, and off-system qualifying facilities contracting under Schedule No. 37. The power purchase agreements will be provided in both clean and red-lined formats.

A CD containing the filing in both original and pdf formats will be provided. Copies of the filing have been served on all parties of record as noted in the attached certificate of service.

The company respectfully requests that all formal correspondence and data requests regarding this matter be addressed to:

By E-mail (preferred): datarequest@pacificorp.com.

By Fax: (503) 813-6060

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Please direct informal questions with respect to this filing to Laura Beane at 503-813-5542.

Very truly yours,

Andrea L. Kelly
Vice President, Regulation

Enclosure

cc: Service List on Docket No. UML-1129

I hereby certify that on this 20th day of October 2006, I caused to be served, via U.S. mail, a true and correct copy of PacifiCorp's Application for approval of its proposed tariff Schedule No. 37 – Avoided Cost Purchases From Qualifying Facilities of 10,000 kW Or Less and PacifiCorp's proposed standard form power purchase agreements for new, existing, and off-system qualifying facilities contracting under Schedule No. 37, in both clean and red-lined formats in Docket No. UM-1129.

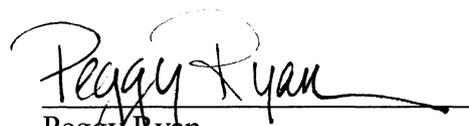
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Oregon Public Utility Commission



Peggy Ryan
Supervisor Regulatory Administration

PACIFIC POWER & LIGHT COMPANY
AVOIDED COST PURCHASES FROM QUALIFYING
FACILITIES OF 10,000 KW OR LESS

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Available

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

Applicable

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less, or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

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Definitions

Cogeneration Facility

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

Qualifying Facilities

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

Small Power Production Facility

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

On-Peak Hours or Peak Hours

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Off-Peak Hours

All hours other than On-Peak.

Opal Gas Market Index

The monthly indexed gas price shall be from Platts "Gas Daily Price Guide" for gas deliveries to Northwest Pipeline Corp at the Rocky Mountains.

Excess Output

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price for all Excess Output.

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Issued By
Andrea L. Kelly, Vice President, Regulation

**PACIFIC POWER & LIGHT COMPANY
AVOIDED COST PURCHASES FROM QUALIFYING
FACILITIES OF 10,000 KW OR LESS**

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Same Site

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

Person(s) or Affiliated Person(s):

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit. A unit of Oregon local government may also be a "passive investor" if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

Shared Interconnection and Infrastructure:

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

Dispute Resolution:

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract. Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

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TF1 37-2.REV

Advice No. 06-019

Pricing Options

1. Fixed Avoided Cost Prices

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either Banded Gas Market Indexed Avoided Cost Prices or Gas Market Indexed Avoided Cost Prices.

2. Gas Market Indexed Avoided Cost Prices

Fixed prices apply during the resource sufficiency period (2005 through 2009), thereafter a portion of avoided cost prices are indexed to actual Opal monthly gas market index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

3. Banded Gas Market Indexed Avoided Cost Prices

Fixed prices apply during the resource sufficiency period (2005 through 2009), thereafter a portion of avoided cost prices are indexed to actual Opal monthly gas market index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

Monthly Payments

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

Fixed Avoided Cost Prices

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

Gas Market Indexed Avoided Cost Prices

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the Opal Gas Market Index price in \$/MMBtu by 0.76 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

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PACIFIC POWER & LIGHT COMPANY
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Monthly Payments (Continued)

Banded Gas Indexed Avoided Cost Prices

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the Opal Gas Market Index price in \$/MMBtu by 0.76 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

Avoided Cost Prices

Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2005	7.13	5.98
2006	6.36	5.27
2007	5.96	4.87
2008	5.58	4.63
2009	5.26	4.33
2010	6.21	4.30
2011	6.54	4.57
2012	7.13	5.11
2013	7.43	5.35
2014	7.52	5.37
2015	7.66	5.45
2016	7.86	5.59
2017	8.07	5.73
2018	8.27	5.86
2019	8.50	6.02
2020	8.72	6.17
2021	8.97	6.33
2022	9.23	6.49
2023	9.49	6.66
2024	9.75	6.82
2025	10.03	7.00
2026	10.31	7.18
2027	10.60	7.36
2028	10.90	7.55

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Avoided Cost Prices (Continued)

Pricing Option 2 – Gas Market Indexed Avoided Cost Prices €/kWh

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast	Estimated Prices (3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Capacity Adder (1)	Off-Peak Energy Adder	Opal Gas Index Price (2)	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)	(e) \$/MMBtu	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 84.2% * 57%)	Total Avoided Energy Costs - ((e) * 0.76)		(g) + (c)	((e) * 0.76) + (d)
2005	7.13	5.98					
2006	6.36	5.27					
2007	5.96	4.87					
2008	5.58	4.63					
2009	5.26	4.33					
			Market Based Prices 2005 through 2009				
2010			1.91	0.38	\$5.16	6.21	4.30
2011			1.97	0.40	\$5.49	6.54	4.57
2012			2.02	0.42	\$6.17	7.13	5.11
2013			2.08	0.42	\$6.48	7.43	5.35
2014			2.14	0.42	\$6.51	7.52	5.37
2015			2.21	0.44	\$6.60	7.66	5.45
2016			2.27	0.45	\$6.77	7.86	5.59
2017			2.34	0.45	\$6.95	8.07	5.73
2018			2.41	0.45	\$7.12	8.27	5.86
2019			2.48	0.46	\$7.31	8.50	6.02
2020			2.55	0.47	\$7.50	8.72	6.17
2021			2.64	0.48	\$7.70	8.97	6.33
2022			2.73	0.49	\$7.90	9.23	6.49
2023			2.83	0.50	\$8.10	9.49	6.66
2024			2.93	0.51	\$8.31	9.75	6.82
2025			3.03	0.52	\$8.53	10.03	7.00
2026			3.13	0.53	\$8.75	10.31	7.18
2027			3.24	0.54	\$8.98	10.60	7.36
2028			3.35	0.55	\$9.21	10.90	7.55

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2004 IRP.
- (2) A heat rate of 0.76 is used to adjust gas prices from \$/MMBtu to €/kWh
- (3) Estimated avoided cost prices based upon forecast Opal Gas Market Index prices.
Actual prices will be calculated each month using actual Opal Gas Market Index prices.

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Avoided Cost Prices (Continued)
Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh

Deliveries During Calendar Year	Fixed Prices		Banded Gas Market Index				Forecast	Estimated Prices (3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Capacity Adder (1)	Off-Peak Energy Adder	Gas Market Index		Opal Gas Index Price (2) \$/MMBtu	On-Peak Energy Price	Off-Peak Energy Price
					Floor 90%	Ceiling 110%			
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Avoided Firm Capacity Costs / (0.876 * 84.2% * 57%)			Total Avoided Energy Costs - ((e) * 0.76)	(g) * 0.76 * 90%	(g) * 0.76 * 110%		(i) + (c)	MIN(MAX(((g) * 0.76), (e)), (f)) + (d)	
2005	7.13	5.98							
2006	6.36	5.27							
2007	5.96	4.87							
2008	5.58	4.63							
2009	5.26	4.33							
2010			1.91	0.38	3.53	4.31	\$5.16	6.21	4.30
2011			1.97	0.40	3.75	4.59	\$5.49	6.54	4.57
2012			2.02	0.42	4.22	5.16	\$6.17	7.13	5.11
2013			2.08	0.42	4.43	5.42	\$6.48	7.43	5.35
2014			2.14	0.42	4.45	5.44	\$6.51	7.52	5.37
2015			2.21	0.44	4.51	5.51	\$6.60	7.66	5.45
2016			2.27	0.45	4.63	5.66	\$6.77	7.86	5.59
2017			2.34	0.45	4.75	5.81	\$6.95	8.07	5.73
2018			2.41	0.45	4.87	5.96	\$7.12	8.27	5.86
2019			2.48	0.46	5.00	6.11	\$7.31	8.50	6.02
2020			2.55	0.47	5.13	6.27	\$7.50	8.72	6.17
2021			2.64	0.48	5.27	6.44	\$7.70	8.97	6.33
2022			2.73	0.49	5.40	6.60	\$7.90	9.23	6.49
2023			2.83	0.50	5.54	6.77	\$8.10	9.49	6.66
2024			2.93	0.51	5.69	6.95	\$8.31	9.75	6.82
2025			3.03	0.52	5.83	7.13	\$8.53	10.03	7.00
2026			3.13	0.53	5.99	7.32	\$8.75	10.31	7.18
2027			3.24	0.54	6.14	7.51	\$8.98	10.60	7.36
2028			3.35	0.55	6.30	7.70	\$9.21	10.90	7.55

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2004 IRP.
 (2) A heat rate of 0.76 is used to adjust gas prices from \$/MMBtu to ¢/kWh
 (3) Estimated avoided cost prices based upon forecast Opal Gas Market Index prices.
 Actual prices will be calculated each month using actual Opal Gas Market Index prices.

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Example of Pricing Options available to the Qualifying Facility

An example of the three pricing options using different assumed gas prices is available at the Company web site.

Qualifying Facilities Contracting Procedure

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

1. Qualifying Facilities up to 10,000 kW

APPLICATION: To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

I. Process for Completing a Power Purchase Agreement

A. Communications

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

Pacific Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

B. Procedures

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at www.pacificorp.com, or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:

- (a) demonstration of ability to obtain QF status;

(Continued)

Issued:	October 20, 2006	P.U.C. OR No. 35
Effective:	With service rendered on and after November 19, 2006	First Revision of Sheet No. 37-7 Canceling Original Sheet No. 37-7

Issued By
Andrea L. Kelly, Vice President, Regulation

PACIFIC POWER & LIGHT COMPANY
AVOIDED COST PURCHASES FROM QUALIFYING
FACILITIES OF 10,000 KW OR LESS

OREGON
SCHEDULE 37
Page 8

B. Procedures (Continued)

- b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
- c) generation technology and other related technology applicable to the site;
- d) proposed site location;
- e) schedule of monthly power deliveries;
- f) calculation or determination of minimum and maximum annual deliveries;
- g) motive force or fuel plan;
- h) proposed on-line date and other significant dates required to complete the milestones;
- i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
- j) status of interconnection or transmission arrangements;
- k) point of delivery or interconnection;

3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.

4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

5. After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.

6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

(Continued)

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Andrea L. Kelly, Vice President, Regulation

II. Process for Negotiating Interconnection Agreements

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

A. Communications

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp
Director – Transmission Services
825 NE Multnomah St, Suite 1600
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

B. Procedures

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

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Issued By
Andrea L. Kelly, Vice President, Regulation

POWER PURCHASE AGREEMENT

BETWEEN

[an existing Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less]

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("Agreement"), entered into this ____ day of _____, 20____, is between _____, "Seller" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp.**" (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

RECITALS

A. Seller owns, operates and maintains a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

B. The Parties desire to enter into this Agreement to replace in its entirety the power purchase agreement dated _____ (the "PPA"), which terminates on _____ [date]; and

C. Seller intends to continue to deliver Net Output under this Agreement; and

D. Seller intends to continue to operate the Facility as a Qualifying Facility, and is deemed to have established commercial operation under the previous PPA; and

E. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is _____ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

F. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

G. This Agreement is an "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-Built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction on the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

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

1.4 **"Commission"** means the Oregon Public Utilities Commission.

1.5 **"Contract Price"** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.

1.6 **"Contract Year"** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time ("PPT") on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Effective Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.7 **"Credit Requirements"** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) "Baa3" or greater by Moody's, or (2) "BBB-" or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.8 **"Default Security"**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at [**specify POD**] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller's average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.9 **"Effective Date"** of this Agreement shall be _____, which is the date upon which the PPA terminates.

- 1.10 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.
- 1.11 “**Environmental Attributes**” shall have the meaning set forth in Section 5.5.
- 1.12 “**Excess Output**” shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.
- 1.13 “**Facility**” shall have the meaning set forth in Recital A.
- 1.14 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.
- 1.15 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.
- 1.16 “**Generation Interconnection Agreement**” means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.
- 1.17 “**Letter of Credit**” means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.
- 1.18 “**Licensed Professional Engineer**” means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.
- 1.19 “**Material Adverse Change**” means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to operate, maintain or own the Facility as provided in this Agreement
- 1.20 “**Maximum Annual Delivery**” shall have the meaning set forth in Section 4.3.
- 1.21 “**Minimum Annual Delivery**” shall have the meaning set forth in Section 4.3.
- 1.22 “**Nameplate Capacity Rating**” means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility’s Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.
- 1.23 “**Net Energy**” means the energy component, in kWh, of Net Output.

1.24 "**Net Output**" means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.25 "**Net Replacement Power Costs**" shall have the meaning set forth in Section 11.4.1.

1.26 "**Off-Peak Hours**" means all hours of the week that are not On-Peak Hours.

1.27 "**On-Peak Hours**" means the hours between 6 a.m. Pacific Prevailing Time ("**PPT**") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.28 "**Point of Delivery**" means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, or as otherwise specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.29 "**Prime Rate**" means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

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

1.31 "**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.

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

1.33 “**Required Facility Documents**” means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for operation, and maintenance of the Facility consistent with the terms of this Agreement and requested in writing by PacifiCorp, including without limitation those set forth in **Exhibit C**.

1.34 “**Schedule 37**” means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit E**.

1.35 “**Termination Date**” shall have the meaning set forth in Section 2.4.

SECTION 2: TERM; EFFECTIVE DATE

2.1 After execution by both Parties, this Agreement shall become effective on the Effective Date.

2.2 By the Effective Date, Seller shall provide PacifiCorp with (a) a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement, and (b) the Required Facility Documents.

2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.4 Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Effective Date] (“**Termination Date**”).

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

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

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

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

3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

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

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of _____.

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

3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and

providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
 - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
 - (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
 - (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
 - (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

_____ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Effective Date, Seller will sell and PacifiCorp will purchase all Net Output from the Facility.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, _____ kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of _____ kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Effective Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of _____ kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

SECTION 5: PURCHASE PRICES

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

- _____ Fixed Price
- _____ Gas Market
- _____ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit E**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Effective Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

- _____ Gas Market
- _____ Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller’s ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller’s Facility.

SECTION 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of any construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month’s prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity

Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this

Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

SECTION 8: METERING

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 10: SECURITY

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- _____ Cash Escrow
- _____ Letter of Credit
- _____ Senior Lien
- _____ Step-in Rights
- _____ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller’s obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller’s delinquent performance of construction-related financial obligations, upon Seller’s request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller’s financial risks to PacifiCorp’s reasonable satisfaction.

[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]

10.3 Senior Lien. Within thirty (30) days after the Effective Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp’s, other than workers’, mechanics’, suppliers’ or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet

due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

- 10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.
- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
 - (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller

which allowed PacifiCorp to exercise its rights under this Section 10.4.

- (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

SECTION 11: DEFAULTS AND REMEDIES

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate for a default under Section 11.1.5 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such

termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.
- 11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

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

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

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

12.3 **No Consequential Damages.** EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)

13.1 Certificates. No later than the Effective Date of this Agreement, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

SECTION 14: FORCE MAJEURE

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

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

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

SECTION 20: REPEAL OF PURPA

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 22: ENTIRE AGREEMENT

22.1 Upon the Effective Date, this Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

SECTION 23: NOTICES

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
All Invoices:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
With Additional Notices of an Event of	(same as street address above)	

Notices	PacifiCorp	Seller
Default or Potential Event of Default to:	Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

SECTION 24: COMMISSION INVESTIGATION

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY
[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: _____ A; Rotor: _____ A

Maximum kW Output: _____ kW **Maximum kVA Output:** _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:

Facility Capacity Rating: _____ kW at _____

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

Station service requirements, and other loads served by the Facility, if any, are described as follows:

_____.

Location of the Facility: The Facility is located in _____ County, _____ .
The location is more particularly described as follows:

[legal description of parcel]

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Wheeling Agreement [if applicable], and [others to be identified]

**EXHIBIT D-1
SELLER'S MOTIVE FORCE PLAN**

A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

Month	Average Energy (kWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

B. MINIMUM ANNUAL DELIVERY CALCULATION

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account unscheduled repairs or maintenance and Seller's load (if any).

C. MAXIMUM ANNUAL DELIVERY CALCULATION

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

**EXHIBIT D-2
ENGINEER'S CERTIFICATION
OF
MOTIVE FORCE PLAN**

Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.

EXHIBIT E
SCHEDULE 37 and PRICING SUMMARY TABLE

POWER PURCHASE AGREEMENT

BETWEEN

**[an existing Qualifying Facility with ~~10MW Design~~ 000 kW Facility Capacity Rating, or
Less]**

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("Agreement"), entered into this ____ day of _____, 20____, is between _____, "Seller" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

RECITALS

A. Seller owns, operates and maintains a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. The Parties desire to enter into this Agreement to replace in its entirety the power purchase agreement dated _____ (the "PPA"), which terminates on _____ [date]; and

C. Seller intends to continue to deliver Net Output under this Agreement; and

D. Seller intends to continue to operate the Facility as a Qualifying Facility, and is deemed to have established commercial operation under the previous PPA; and

E. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is _____ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

F. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

G. This Agreement is an "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 "As-Built Supplement" shall be a supplement to Exhibit A and Exhibit B, provided by Seller following completion of construction on the Facility, describing the Facility as actually built.

1.1.2 "Average Annual Generation" shall have the meaning set forth in Section 4.2.

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

1.3.4 "Commission" means the Oregon Public Utilities Commission.

1.4.5 "Contract Price" means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.

1.5.6 "Contract Year" means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time ("PPT") on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Effective Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.6.7 "Credit Requirements" means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) "Baa3" or greater by Moody's, or (2) "BBB-" or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.7.8 "Default Security", unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **[specify POD]** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller's average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

~~1.81.9~~ **“Effective Date”** of this Agreement shall be _____, which is the date upon which the PPA terminates.

~~1.91.10~~ **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.

1.11 **“Environmental Attributes”** shall have the meaning set forth in Section 5.5.

~~1.101.12~~ **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

~~1.111.13~~ **“Facility”** shall have the meaning set forth in Recital A.

~~1.121.14~~ **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

~~1.131.15~~ **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

~~1.141.16~~ **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

~~1.151.17~~ **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

~~1.161.18~~ **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

~~1.171.19~~ **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to operate, maintain or own the Facility as provided in this Agreement

~~1.181.20~~ **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

~~1.191.21~~ **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.201.22 **"Nameplate Capacity Rating"** means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility's Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.

1.211.23 **"Net Energy"** means the energy component, in kWh, of Net Output.

1.221.24 **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.231.25 **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

1.241.26 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.

1.251.27 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.261.28 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/ transmission system, or as otherwise specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.271.29 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

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

1.291.31 **"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.

1.301.32 **"Replacement Price"** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement

for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.31.33 "Required Facility Documents" means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for operation, and maintenance of the Facility consistent with the terms of this Agreement and requested in writing by PacifiCorp, including without limitation those set forth in **Exhibit C**.

1.32.34 "Schedule 37" means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit E**.

1.33.35 "Termination Date" shall have the meaning set forth in Section 2.4.

SECTION 2: TERM; EFFECTIVE DATE

2.1 After execution by both Parties, this Agreement shall become effective on the Effective Date.

2.2 By the Effective Date, Seller shall provide PacifiCorp with (a) a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement, and (b) the Required Facility Documents.

2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.4 Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Effective Date] ("**Termination Date**").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

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

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

- 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
 - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
 - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of _____.
 - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
 - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
 - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
 - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
 - 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its

FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.

~~3.2.73.2.8~~ 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.

- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3 MW,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____ Seller affirms and adopts all warranties of this Section 3.2.78, and therefore is not required to post security under Section 10; or

_____ Seller does not affirm and adopt all warranties of this Section 3.2.78, and therefore Seller elects to post the security specified in Section 10.

3.3 **Notice.** If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Effective Date, Seller will sell and PacifiCorp will purchase all Net Output from the Facility.

4.2 **Average Annual Generation.** Seller estimates that the Facility will generate, on average, _____ kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 **Minimum and Maximum Delivery.** Seller shall make available from the Facility a minimum of _____ kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Effective Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure ("**Minimum Annual Delivery**"). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of _____ kWh of Net

Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

SECTION 5: PURCHASE PRICES

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

- _____ Fixed Price
- _____ Gas Market
- _____ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit E**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Effective Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

- _____ Gas Market
- _____ Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller’s ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller’s Facility.

SECTION 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of any construction affecting the Facility, **Seller shall not increase the Facility Capacity Rating above that specified in Exhibit A or increase provide PacifiCorp an As-built Supplement to specify the ability of the actual Facility to deliver as built.** The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

~~6.16.2~~ **Incremental Utility Upgrades.** At start-up (and at any other time upon at least six month's prior written notice), Seller may increase **Net Output** in quantities in excess of the Facility Capacity Rating through any means including, but not limited, if such increase is due to replacement of, modification of normal variances in estimated versus actual performance, changed Facility operations, or addition of existing equipment, except improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply **with the written consent** Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, **PacifiCorp—** and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

~~6.26.3~~ **Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time.** PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section ~~6.23~~ upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

~~6.36.4~~ **Scheduled Outages.** Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably

accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.46.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

SECTION 8: METERING

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests ~~disclosed~~discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter

records shall be made in the next monthly billing or payment rendered following the repair of the meter.

SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 10: SECURITY

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.78, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- Cash Escrow
- Letter of Credit
- Senior Lien
- Step-in Rights
- Seller has adopted the Creditworthiness Warranties of Section 3.2.78.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution

from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]

10.3 Senior Lien. Within thirty (30) days after the Effective Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably

appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

~~(c) As a condition to providing a Senior Lien or Step-in Rights, Seller shall, within thirty (30) days after the Effective Date, post and maintain, in an amount reasonably determined by PacifiCorp, a Letter of Credit in favor of PacifiCorp, which PacifiCorp, during the term of this Agreement, can draw upon to satisfy amounts PacifiCorp might reasonably incur in order to satisfy environmental remediation requirements.~~

SECTION 11: DEFAULTS AND REMEDIES

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.
- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30)

day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate for a default under Section 11.1.5 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**")—; *provided, however,* that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for

damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

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

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

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)

13.1 Certificates. No later than the Effective Date of this Agreement, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an

insurance company or companies rated not lower than "~~A-VHB-~~" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

SECTION 14: FORCE MAJEURE

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or

availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

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

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such

decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

SECTION 20: REPEAL OF PURPA

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 22: ENTIRE AGREEMENT

22.1 Upon the Effective Date, this Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

SECTION 23: NOTICES

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when

deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
All Invoices:	(same as street address above) Attn: Back Office, Suite 600 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	(same as street address above) Attn: Back Office, Suite 600 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 4800 1200 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
With Additional Notices of an Event of Default or Potential Event of Default to:	(same as street address above) Attn: PacifiCorp General Counsel and Legal Counsel Phone: (503) 813- 6266 and (801)- 220-4568 5029 Facsimile: (503) 813- 7262 and (801)- 220-3299 7252	

~~23.1~~—The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

23.2

SECTION 24: COMMISSION INVESTIGATION

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY
[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: _____ A; Rotor: _____ A

Maximum kW Output: _____ kW **Maximum kVA Output:** _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]: _____

Facility Capacity Rating: _____ kW at _____

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

Station service requirements, and other loads served by the Facility, if any, are described as follows:

Location of the Facility: The Facility is located in _____ County, _____ .
The location is more particularly described as follows:

[legal description of parcel]

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Wheeling Agreement [if applicable], and [others to be identified]

**EXHIBIT D-1
SELLER'S MOTIVE FORCE PLAN**

A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

Month	Average Energy (kWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

B. MINIMUM ANNUAL DELIVERY CALCULATION

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account unscheduled repairs or maintenance and Seller's load (if any).

C. MAXIMUM ANNUAL DELIVERY CALCULATION

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

**EXHIBIT D-2
ENGINEER'S CERTIFICATION
OF
MOTIVE FORCE PLAN**

Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.

EXHIBIT E
SCHEDULE 37 and PRICING SUMMARY TABLE

POWER PURCHASE AGREEMENT

BETWEEN

[a new Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less]

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this ____ day of _____, 20____, is between _____, "Seller" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "PacifiCorp." (Seller and PacifiCorp are referred to individually as a "Party" or collectively as the "Parties").

RECITALS

A. Seller intends to construct, own, operate and maintain a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on _____, 20____ ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on _____, 20____ ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is _____ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

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

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

- 1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;
- 1.4.2 The Facility has completed Start-Up Testing;
- 1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;
- 1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

1.4.5 Seller has complied with the security requirements of Section 10.

1.5 “**Commission**” means the Oregon Public Utilities Commission.

1.6 “**Contract Price**” means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.

1.7 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at [**specify POD**] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.10 “**Effective Date**” shall have the meaning set forth in Section 2.1.

1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.

1.12 “**Environmental Attributes**” shall have the meaning set forth in Section 5.5.

1.13 “**Excess Output**” shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.14 “**Facility**” shall have the meaning set forth in Recital A.

1.15 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.16 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

1.17 “**Generation Interconnection Agreement**” means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and

maintenance of PacifiCorp's interconnection facilities required to accommodate deliveries of Seller's Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 "**Letter of Credit**" means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of "A" or greater from S&P or "A2" or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.19 "**Licensed Professional Engineer**" means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.20 "**Material Adverse Change**" means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.21 "**Maximum Annual Delivery**" shall have the meaning set forth in Section 4.3.

1.22 "**Minimum Annual Delivery**" shall have the meaning set forth in Section 4.3.

1.23 "**Nameplate Capacity Rating**" means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility's Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.

1.24 "**Net Energy**" means the energy component, in kWh, of Net Output.

1.25 "**Net Output**" means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.26 "**Net Replacement Power Costs**" shall have the meaning set forth in Section 11.4.1.

1.27 "**Off-Peak Hours**" means all hours of the week that are not On-Peak Hours.

1.28 "**On-Peak Hours**" means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.29 "**Point of Delivery**" means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility

is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.30 "**Prime Rate**" means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

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

1.32 "**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.

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

1.34 "**Required Facility Documents**" means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.35 "**Schedule 37**" means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit F**.

1.36 "**Scheduled Commercial Operation Date**" shall have the meaning set forth in Recital C.

1.37 "**Scheduled Initial Delivery Date**" shall have the meaning set forth in Recital B.

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

1.39 "Termination Date" shall have the meaning set forth in Section 2.4.

SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after execution by both Parties ("Effective Date").

2.2 Time is of the essence for this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By _____, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] ("Termination Date").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

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

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

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

3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any

court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

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

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of _____.

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

3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status,

a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
 - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
 - (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
 - (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
 - (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

_____ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, _____ kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of _____ kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of _____ kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

SECTION 5: PURCHASE PRICES

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

- _____ Fixed Price
- _____ Gas Market
- _____ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit F**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

- _____ Gas Market
- _____ Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output and for all Net Output delivered prior to the Commercial Operation Date. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller’s ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller’s Facility.

SECTION 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month’s prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing

additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached

hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

SECTION 8: METERING

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 10: SECURITY

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- Cash Escrow
- Letter of Credit
- Senior Lien
- Step-in Rights
- Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet

due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller

which allowed PacifiCorp to exercise its rights under this Section 10.4.

- (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

SECTION 11: DEFAULTS AND REMEDIES

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more

rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of

time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

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

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

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

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO

COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for

nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

SECTION 14: FORCE MAJEURE

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

SECTION 20: REPEAL OF PURPA

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the

foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 22: ENTIRE AGREEMENT

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

SECTION 23: NOTICES

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
All Invoices:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	

Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
With Additional Notices of an Event of Default or Potential Event of Default to:	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

SECTION 24: COMMISSION INVESTIGATION

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY
[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: _____ A; Rotor: _____ A

Maximum kW Output: _____ kW **Maximum kVA Output:** _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:

Facility Capacity Rating: _____ kW at _____

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

Station service requirements, and other loads served by the Facility, if any, are described as follows:

Location of the Facility: The Facility is to be constructed in the vicinity of _____ in _____ County, _____. The location is more particularly described as follows:

[legal description of parcel]

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Wheeling Agreement [if applicable], and [others to be identified]

**EXHIBIT D-1
SELLER'S MOTIVE FORCE PLAN**

A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

Month	Average Energy (kWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

B. MINIMUM ANNUAL DELIVERY CALCULATION

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any).

C. MAXIMUM ANNUAL DELIVERY CALCULATION

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

EXHIBIT D-2
ENGINEER'S CERTIFICATION
OF
MOTIVE FORCE PLAN

Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.

EXHIBIT E

START-UP TESTING

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

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

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

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

EXHIBIT F
SCHEDULE 37 and PRICING SUMMARY TABLE

POWER PURCHASE AGREEMENT

BETWEEN

[a new Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less]

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this ____ day of _____, 20 ____, is between _____, "Seller" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "PacifiCorp." (Seller and PacifiCorp are referred to individually as a "Party" or collectively as the "Parties").

RECITALS

A. Seller intends to construct, own, operate and maintain a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("Facility"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on _____, 20 ____ ("Scheduled Initial Delivery Date"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on _____, 20 ____ ("Scheduled Commercial Operation Date"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is _____ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A and Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

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

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing;

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

1.4.5 Seller has complied with the security requirements of Section 10.

1.5 “**Commission**” means the Oregon Public Utilities Commission.

1.6 “**Contract Price**” means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.

1.7 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at [**specify POD**] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.10 “**Effective Date**” shall have the meaning set forth in Section 2.1.

1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.

1.12 “**Environmental Attributes**” shall have the meaning set forth in Section 5.5.

~~1.12.13~~ “**Excess Output**” shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

~~1.13.14~~ “**Facility**” shall have the meaning set forth in Recital A.

~~1.14.15~~ “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

~~1.15.16~~ “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

~~1.161.17~~ **"Generation Interconnection Agreement"** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp's transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp's interconnection facilities required to accommodate deliveries of Seller's Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

~~1.171.18~~ **"Letter of Credit"** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of "A" or greater from S&P or "A2" or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

~~1.181.19~~ **"Licensed Professional Engineer"** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

~~1.191.20~~ **"Material Adverse Change"** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

~~1.201.21~~ **"Maximum Annual Delivery"** shall have the meaning set forth in Section 4.3.

~~1.211.22~~ **"Minimum Annual Delivery"** shall have the meaning set forth in Section 4.3.

~~1.221.23~~ **"Nameplate Capacity Rating"** means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility's Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.

~~1.231.24~~ **"Net Energy"** means the energy component, in kWh, of Net Output.

~~1.241.25~~ **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

~~1.251.26~~ **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

1.261.27 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.

1.271.28 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.281.29 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/ transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.291.30 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

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

1.311.32 **"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.

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

1.331.34 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.341.35 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of

10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit F**.

1.351.36 "**Scheduled Commercial Operation Date**" shall have the meaning set forth in Recital C.

1.361.37 "**Scheduled Initial Delivery Date**" shall have the meaning set forth in Recital B.

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

1.381.39 "**Termination Date**" shall have the meaning set forth in Section 2.4.

SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after execution by both Parties ("**Effective Date**").

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By _____, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] ("**Termination Date**").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
 - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
 - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
 - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
 - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of _____.
 - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
 - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
 - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
 - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and

except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.

~~3.2.7.3.2.8~~ **Additional Seller Creditworthiness Warranties.** Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than ~~3 MW~~ 000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____ Seller affirms and adopts all warranties of this Section 3.2.78, and therefore is not required to post security under Section 10; or

_____ Seller does not affirm and adopt all warranties of this Section 3.2.78, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, _____ kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of _____ kWh of Net Output during each Contract Year, provided that such

minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of _____ kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

SECTION 5: PURCHASE PRICES

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

- _____ Fixed Price
- _____ Gas Market
- _____ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit F**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

- _____ Gas Market
- _____ Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output and for all Net Output delivered prior to the Commercial Operation Date. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

SECTION 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

~~6.16.2 Incremental Utility Upgrades.~~ At start-up (and at any other time upon at least six month's prior written notice), Seller shall not increase the Facility Capacity Rating above that specified in ~~Exhibit A~~ or may increase Net Output, if such increase the ability of the Facility is due to deliver Net Output normal variances in estimated versus actual performance, changed Facility operations, or improvements in quantities Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in excess of the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating through any means including, but not limited to, replacement of, modification of, after the upgrade is 10,000 kW or additionless, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of existing equipment, except with the written consent Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

~~6.26.3~~ Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.23 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held

responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.36.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.46.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

SECTION 8: METERING

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests ~~discloses~~discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering

equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 10: SECURITY

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.78, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- Cash Escrow
- Letter of Credit
- Senior Lien
- Step-in Rights
- Seller has adopted the Creditworthiness Warranties of Section 3.2.78.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such

notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

~~As a condition to providing a Senior Lien or Step-in Rights, Seller shall, before the Scheduled Commercial Operation Date, post and maintain, in an amount reasonably determined~~

~~by PacifiCorp, a Letter of Credit in favor of PacifiCorp, which PacifiCorp, during the term of this Agreement, can draw upon to satisfy amounts PacifiCorp might reasonably incur in order to satisfy environmental remediation requirements.~~

SECTION 11: DEFAULTS AND REMEDIES

11.1 **Events of Default.** The following events shall constitute defaults under this Agreement:

- 11.1.1 **Breach of Material Term.** Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 **Default on Other Agreements.** Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 **Insolvency.** A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 **Material Adverse Change.** A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 **Delayed Commercial Operations.** Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 **Underdelivery.** If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 **Notice; Opportunity to Cure.**

- 11.2.1 **Notice.** In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however that PacifiCorp shall not terminate:* (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by

subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.*

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

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

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

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

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling,

Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "~~A-VHB~~" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

SECTION 14: FORCE MAJEURE

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the

exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

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

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

SECTION 20: REPEAL OF PURPA

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 22: ENTIRE AGREEMENT

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

SECTION 23: NOTICES

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
All Invoices:	(same as street address above) Attn: Back Office, Suite 600700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	(same as street address above) Attn: Back Office, Suite 600700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 6001900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
With Additional Notices of an Event of Default or Potential Event of Default to:	(same as street address above) Attn: PacifiCorp General Counsel and Legal Counsel Phone: (503) 813-6266 and (801)-220-4568 5029 Facsimile: (503) 813-7262 and (801)-220-32997252	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

SECTION 24: COMMISSION INVESTIGATION

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY
[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: _____ A; Rotor: _____ A

Maximum kW Output: _____ kW **Maximum kVA Output:** _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]: _____

Facility Capacity Rating: _____ kW at _____

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

Station service requirements, and other loads served by the Facility, if any, are described as follows:

Location of the Facility: The Facility is to be constructed in the vicinity of _____ in _____ County, _____. The location is more particularly described as follows:

[legal description of parcel]

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Wheeling Agreement [if applicable], and [others to be identified]

**EXHIBIT D-1
SELLER'S MOTIVE FORCE PLAN**

A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

Month	Average Energy (kWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

B. MINIMUM ANNUAL DELIVERY CALCULATION

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any).

C. MAXIMUM ANNUAL DELIVERY CALCULATION

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

EXHIBIT D-2
ENGINEER'S CERTIFICATION
OF
MOTIVE FORCE PLAN

Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.

EXHIBIT E

START-UP TESTING

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

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

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

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

EXHIBIT F
SCHEDULE 37 and PRICING SUMMARY TABLE

POWER PURCHASE AGREEMENT

BETWEEN

**[Qualifying Facility (new or existing) located in non-PacifiCorp Control Area,
interconnecting to non-PacifiCorp system, with 10,000 kW Facility Capacity Rating, or
Less, and uninterruptible transmission to the Point of Delivery]**

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (“**Agreement**”), entered into this ____ day of _____, 20____, is between _____, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, “**PacifiCorp**.” (Seller and PacifiCorp are referred to individually as a “**Party**” or collectively as the “**Parties**”).

RECITALS

A. **[New QFs Only:]** Seller intends to construct, own, operate and maintain a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** (“**Facility**”); and

A. **[Existing QFs Only:]** Seller owns, operates, and maintains a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** (“**Facility**”); and

B. Seller intends to commence delivery of Net Output under this Power Purchase Agreement, for the purpose of Start-up Testing, on _____, 20____ (“**Scheduled Initial Delivery Date**”); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on _____, 20____ (“**Scheduled Commercial Operation Date**”); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is _____ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a “New QF Contract” under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

G. Seller intends to transmit Net Output to PacifiCorp via transmission facilities operated by a third party, and PacifiCorp intends to accept scheduled firm delivery of Seller’s Net Output, under the terms of this Agreement, including the Generation Scheduling Addendum attached as **Addendum W** and incorporated contemporaneously herewith.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing (applies to new Facilities and new upgrades only);

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents (Facilities over 200 kW only) and, if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents.

1.4.4 Seller has complied with the security requirements of Section 10.

1.5 **"Commission"** means the Oregon Public Utilities Commission.

1.6 **"Contract Price"** means the applicable price for Net Output stated in Sections 5.1 and 5.2.

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

1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at _____ [specify POD] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.10 “**Effective Date**” shall have the meaning set forth in Section 2.1.

1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.

1.12 “**Environmental Attributes**” shall have the meaning set forth in Section 5.5.

1.13 “**Excess Output**” shall mean any increment of Net Output produced at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.14 “**Facility**” shall have the meaning set forth in Recital A.

1.15 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.16 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

1.17 “**Generation Scheduling Addendum**” means **Addendum W**, the portion of this Agreement providing for the measurement, scheduling, and delivery of Net Output from the Facility to the Point of Delivery via a non-PacifiCorp transmission provider.

1.18 “**Interconnected Utility**” means _____, the operator of the electric utility system at the Point of Interconnection.

1.19 “**Interconnection Agreement**” means the agreement (or contemporaneous agreements) between Seller and the Interconnected Utility governing interconnection of Seller’s Facility at the Point of Interconnection and associated use of the Interconnected Utility’s system.

1.20 “**Letter of Credit**” means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.21 “**Licensed Professional Engineer**” means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.22 “**Material Adverse Change**” means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.23 “**Maximum Annual Delivery**” shall have the meaning set forth in Section 4.3.

1.24 “**Minimum Annual Delivery**” shall have the meaning set forth in Section 4.3.

1.25 “**Nameplate Capacity Rating**” means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility’s Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.

1.26 “**Net Energy**” means the energy component, in kWh, of Net Output.

1.27 “**Net Output**” means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any, up to and including the Point of Interconnection. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Interconnection, less any station use not provided by the Facility.

1.28 “**Net Replacement Power Costs**” shall have the meaning set forth in Section 11.4.1.

1.29 “**Off-Peak Hours**” means all hours of the week that are not On-Peak Hours.

1.30 “**On-Peak Hours**” means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.31 “**Point of Delivery**” means the location in PacifiCorp’s system where PacifiCorp has agreed to receive Seller’s Net Energy, as specified in **Exhibit B**.

1.32 “**Point of Interconnection**” means the point of interconnection between Seller’s Facility and the Transmitting Entity’s system, if applicable, as specified in **Exhibit B**.

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

Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

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

1.35 “**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.

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

1.37 “**Required Facility Documents**” means all licenses, permits, authorizations, and agreements, including an Interconnection Agreement and Transmission Agreement(s), necessary for construction, operation and maintenance of the Facility, and delivery of Facility output, consistent with the terms of this Agreement. The Required Facility Documents are set forth in **Exhibit C**.

1.38 “**Schedule 37**” means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit F**.

1.39 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.40 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

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

1.42 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.43 “**Transmission Agreement**” means the agreement (or contemporaneous agreements) between Seller and the Transmitting Entity providing for Seller’s uninterrupted right to transmit Net Output to the Point of Delivery.

1.44 "Transmitting Entity(s)" means _____, the (non-PacifiCorp) operator of the transmission system at the Point of Delivery.

SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after execution by both Parties ("Effective Date").

2.2 Time is of the essence for this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By _____, Seller shall provide PacifiCorp with a copy of an executed Interconnection Agreement and an executed Transmission Agreement, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] ("Termination Date").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

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

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

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

3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any

court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

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

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of _____.

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

3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

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

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status,

a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.

3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Sellers with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

_____ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 **Notice.** If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 **Average Annual Generation.** Seller estimates that the Facility will generate, on average, _____ kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 **Minimum and Maximum Delivery.** Seller shall deliver (or cause to be delivered) from the Facility a minimum of _____ kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced *pro rata* to reflect the Commercial Operation Date, and further provided that such minimum delivered Net Output shall be reduced on a *pro rata* basis for any periods during a Contract Year that the Facility was prevented from generating or delivering electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will deliver from the Facility a maximum of _____ kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 **Deliveries in Deficit of Delivery Obligation.** Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 **Energy Delivery Schedule.** Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

SECTION 5: PURCHASE PRICES

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

_____ Fixed Price
_____ Gas Market
_____ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit F**.

5.2 (Applies only to “Fixed Price” Contracts Greater than 15 Years). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

_____ Gas Market
_____ Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output and for all Net Output delivered prior to the Commercial Operation Date. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller’s ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller’s Facility.

SECTION 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month’s prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement

by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Interconnection Agreement, Transmission Agreement and any other relevant agreements.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with this Agreement, the Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and the Point of Delivery is disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreement or Transmission Agreement(s), or to the extent generation curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement or Transmission Agreement(s). PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit**

D-1, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

SECTION 8: METERING AT THE POINT OF INTERCONNECTION

8.1 Metering shall be performed at the location and in a manner consistent with this Agreement, as specified in **Exhibit B**. Seller shall provide to PacifiCorp metered Facility Net Output in hourly increments, and any other energy measurements required to administer this Agreement. If the Transmitting Entity requires Seller to telemeter data, PacifiCorp shall be entitled to receive the same data Seller provides to the Transmitting Entity, if such data is useful to PacifiCorp's administration of this Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Interconnection. The loss adjustment shall be ___% of the kWh energy production recorded on the Facility output meter.

8.2 Seller shall pay for the installation, testing, and maintenance of any metering required by Section 8.1, and shall provide reasonable access to such meters. PacifiCorp shall have reasonable access to inspection, testing, repair and replacement of the metering equipment. If any of the inspections or tests discloses a measurement error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 10: SECURITY

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- Cash Escrow
- Letter of Credit
- Senior Lien
- Step-in Rights
- Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers',

mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

- 10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.
- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume

operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

SECTION 11: DEFAULTS AND REMEDIES

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Interconnection Agreement and any Transmission Agreement) within the time allowed for a cure under such agreement or instrument.

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

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the

posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period

Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

11.4.2 Recoupment of Damages.

(a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

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

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

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or

to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any

other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

SECTION 14: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

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

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

SECTION 20: REPEAL OF PURPA

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 22: ENTIRE AGREEMENT

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

SECTION 23: NOTICES

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
All Invoices:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	

Notices	PacifiCorp	Seller
Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
With Additional Notices of an Event of Default or Potential Event of Default to:	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

SECTION 24: COMMISSION INVESTIGATION

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY**

[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

A. Manufacturer's Nameplate Data:

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: _____ A; Rotor: _____ A

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

B. Seller's Estimate of Facility Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output: _____ kW **Maximum kVA Output:** _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:

Facility Capacity Rating: _____ kW at _____

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

Station service requirements, and other loads served by the Facility, if any, are described as follows:

C: Location of the Facility: The Facility is to be constructed in the vicinity of _____ in _____ County, _____. The location is more particularly described as follows:

[legal description of parcel]

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES

Instructions to Seller:

1. Describe the point(s) of metering, including the type of meter(s), and the owner of the meter(s).
2. Provide single line diagram of Facility including station use meter, Facility output meter(s), Interconnection Facilities, Point of Interconnection,
3. Specify the Point of Delivery, and any transmission facilities on Seller's side of the Point of Delivery used to deliver Net Output.

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Transmission Agreement, QF Certification, and [others to be identified].

**EXHIBIT D-1
SELLER'S MOTIVE FORCE PLAN**

A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

Month	Average Energy (kWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

B. MINIMUM ANNUAL DELIVERY CALCULATION

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account unscheduled repairs or maintenance and Seller's load (if any).

C. MAXIMUM ANNUAL DELIVERY CALCULATION

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

**EXHIBIT D-2
ENGINEER'S CERTIFICATION
OF
MOTIVE FORCE PLAN**

Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.

EXHIBIT E

START-UP TESTING

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

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

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

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

EXHIBIT F
SCHEDULE 37 and PRICING SUMMARY TABLE

ADDENDUM W

GENERATION SCHEDULING ADDENDUM

WHEREAS, Seller's Facility is not located within the control area of PacifiCorp;

WHEREAS, Seller's Facility will not interconnect directly to PacifiCorp's System;

WHEREAS, Seller and PacifiCorp have not executed, and will not execute, a Generation Interconnection Agreement in conjunction with the Power Purchase Agreement;

WHEREAS, Seller has elected to exercise its right under PURPA to deliver Net Output from its QF Facility to PacifiCorp via one (or more) Transmitting Entities.

WHEREAS, PacifiCorp desires that Seller schedule delivery of Net Output on a firm, hourly basis;

WHEREAS, PacifiCorp does not intend to buy, and Seller does not intend to deliver, more or less than Net Output from the Facility (except as expressly provided, below);

THEREFORE, Seller and PacifiCorp do hereby agree to the following, which shall become part of their Power Purchase Agreement:

DEFINITIONS

The meaning of the terms defined in the Power Purchase Agreement and this **Addendum W** shall apply to this Generation Scheduling Addendum:

"Day" means midnight to midnight, prevailing local time at the Point of Delivery, or any other mutually agreeable 24-hour period.

"Energy Imbalance Accumulation," or **"EIA,"** means the accumulated difference between Seller's Net Output and the energy actually delivered at the Point of Delivery. A positive accumulated difference indicates Seller's net delivery of Supplemented Output to PacifiCorp.

"Firm Delivery" means uninterrupted transmission service that is reserved and/or scheduled between the Point of Interconnection and the Point of Delivery pursuant to Seller's Transmission Agreement.

"Settlement Period" means one month.

"Supplemented Output" means any increment of scheduled hourly energy or capacity delivered to the Point of Delivery in excess of the Facility's Net Output during that same hour.

"Surplus Delivery" means any energy delivered by the Facility in excess of hourly Net Output that is not offset by the delivery of energy in deficit of hourly Net Output during the Settlement Period. PacifiCorp shall accept Surplus Delivery, but shall not pay for it.

ADDENDUM W-ctd.

SELLER'S OBLIGATIONS IN LIEU OF THOSE CONTAINED IN A GENERATION INTERCONNECTION AGREEMENT.

1. **Seller's Responsibility to Arrange for Delivery of Net Output to Point of Delivery.** Seller shall arrange for the Firm Delivery of Net Output to the Point of Delivery. Seller shall comply with the terms and conditions of the Transmission Agreement(s) between the Seller and the Transmitting Entity(s). Whenever Seller fails to provide for Firm Delivery of Net Output, all Net Output delivered via non-firm transmission rights shall be deemed Excess Output, and therefore subject to the payment provision in Section 5.4.

2. **Seller's Responsibility to Schedule Delivery.** Seller shall coordinate with the Transmitting Entity(s) to provide PacifiCorp with a schedule of the next Day's hourly scheduled Net Output deliveries at least 24 (twenty-four) hours prior to the beginning of the day being scheduled; *provided, however*, that a schedule provided on a Day before any non-Business Day shall include schedules for each day to and including the next Business day. The term "Business Day" shall have the meaning set forth in Pacific Power & Light's Schedule 37.

3. **Seller's Responsibility to Maintain Interconnection Facilities.** PacifiCorp shall have no obligation to install or maintain any interconnection facilities on Seller's side of the Point of Interconnection. PacifiCorp shall not pay any costs arising from Seller interconnecting its Facility with the Transmitting Entity(s).

4. **Seller's Responsibility to Pay Transmission Costs.** Seller shall make all arrangements for, and pay all costs associated with, transmitting Net Output to PacifiCorp, scheduling energy into the PacifiCorp system and any other costs associated with delivering the Seller's Net Output to the Point of Delivery.

5. **Energy Reserve Requirements.** The Transmitting Entity shall provide all generation reserves as required by the WECC and/or as required by any other governing agency or industry standard to deliver the Net Energy to the Point of Delivery, at no cost to PacifiCorp.

6. **Seller's Responsibility to Report Net Output.** On or before the tenth (10th) day following the end of each Billing Period, Seller shall send a report documenting hourly station service, Excess Output, and Net Output from the Facility during the previous Billing Period, in columnar format substantially similar to the attached **Example 1**. If requested, Seller shall provide an electronic copy of the data used to calculate Net Output, in a standard format specified by PacifiCorp. For each day Seller is late delivering the certified report, PacifiCorp shall be entitled to postpone its payment deadline in Section 9 of this Power Purchase Agreement by one day. Seller hereby grants PacifiCorp the right to audit its certified reports of hourly Net Output. In the event of discovery of a billing error resulting in underpayment or overpayment, the Parties agree to limit recovery to a period of three years from the date of discovery.

7. **Seller's Supplemental Representations and Warranties.** In addition to the Seller's representations and warranties contained in Section 3 of this Agreement, Seller warrants that:

- (a) Seller's Supplemented Output, if any, results from Seller's purchase of some form of energy imbalance ancillary service;

ADDENDUM W-ctd.

(b) The Transmitting Entity(s) requires Seller to procure the service, above, as a condition of providing transmission service;

(c) The Transmitting Entity requires Seller to schedule deliveries of Net Output in increments of no less than one (1) megawatt;

(d) Seller is not attempting to sell PacifiCorp energy or capacity in excess of its Net Output; and

(e) The energy imbalance service, above, is designed to correct a mismatch between energy scheduled by the QF and the actual real-time production by the QF.

8. **Seller's Right to Deliver Supplemented Output.** In reliance upon Seller's warranties in Section 5, above, PacifiCorp agrees to accept and pay for Supplemented Output; *provided, however, that* Seller agrees to achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period.

(a) **Remedy for Seller's Failure to Achieve zero EIA.** In the event Seller does not achieve zero EIA at the end of each Settlement Period, PacifiCorp will declare any positive balance to be Surplus Delivery, and Seller's EIA will be reset to zero. PacifiCorp will include an accounting of Surplus Delivery in each monthly statement provided to Seller pursuant to Section 9.1 of this Agreement.

(b) **Negative Energy Imbalance Accumulations.** Any negative EIA (indicating that the Transmitting Entity has delivered less than Seller's Net Output), will be reset to zero at the end of each Settlement Period without any corresponding compensation by PacifiCorp.

(c) **PacifiCorp's Option to Change EIA Settlement Period.** In the event PacifiCorp reasonably determines that doing so likely will have a *de minimis* net effect upon the cost of Seller's Net Output to PacifiCorp, it may elect to enlarge the Settlement Period, up to a maximum of one Contract Year. Conversely, if PacifiCorp reasonably determines, based on the QF's performance during the current year, that reducing the Settlement Period likely will significantly lower the net cost of Seller's Net Output to PacifiCorp, it shall have the right to shorten Seller's EIA settlement period beginning the first day of the following Contract Year. However, in no case shall the Settlement Period be less than one month.

ADDENDUM W—Example 1

Example of Seller's Output Reporting Requirement

		A	B	C	D	E
			Meter reading at Station	(=A-B)		(=Max (0, C-D))
	Hour ending (HE)	Meter Reading ^ψ at Point of Interconnection (MWh)	Power Meter*	Net Output (MWh)	Facility Capacity Rating (MW)	Excess Output (MWh)
Day			(MWh)			
1	7:00	0.50	0.01	0.49	1.50	
1	8:00	0.50	0.02	0.48	1.50	
1	9:00	0.50	0.01	0.49	1.50	
1	10:00	0.50	0.01	0.49	1.50	
1	11:00	0.50	0.01	0.49	1.50	
1	12:00	1.60	0.01	1.59	1.50	0.09
1	13:00	1.70	0.01	1.69	1.50	0.19
1	14:00	1.60	0.01	1.59	1.50	0.09
1	15:00	1.50	0.01	1.49	1.50	
1	16:00	1.50	0.01	1.50	1.50	
1	17:00	1.50	0.00	1.50	1.50	
1	18:00	1.50	0.01	1.49	1.50	
1	19:00	0.50	0.02	0.48	1.50	
1	20:00	0.50	0.01	0.49	1.50	

^ψ Seller shall show adjustment of Meter Reading for losses, if any, between point of metering and the Point of Interconnection, in accordance with Section 8.1.

* Does not apply if Station Service is provided from the gross output of the Facility.

POWER PURCHASE AGREEMENT

BETWEEN

**[Qualifying Facility (New or Existing) located in non-PacifiCorp Control Area,
interconnecting to non-PacifiCorp system, with 10MW,000 kW Facility Capacity Rating,
or Less, and uninterruptible transmission to the Point of Delivery]**

AND

PACIFICORP

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (“**Agreement**”), entered into this ____ day of _____, 20____, is between _____, “**Seller**” and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, “**PacifiCorp**.” (Seller and PacifiCorp are referred to individually as a “**Party**” or collectively as the “**Parties**”).

RECITALS

A. [New QFs Only:] Seller intends to construct, own, operate and maintain a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** (“**Facility**”); and

A. [Existing QFs Only:] Seller owns, operates, and maintains a _____ [state type of facility] facility for the generation of electric power, including interconnection facilities, located in _____ [City, County, State] with a Facility Capacity Rating of _____ kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** (“**Facility**”); and

B. Seller intends to commence delivery of Net Output under this Power Purchase Agreement, for the purpose of Start-up Testing, on _____, 20____ (“**Scheduled Initial Delivery Date**”); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on _____, 20____ (“**Scheduled Commercial Operation Date**”); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is _____ kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall sell and PacifiCorp shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a “New QF Contract” under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

G. Seller intends to transmit Net Output to PacifiCorp via transmission facilities operated by a third party, and PacifiCorp intends to accept scheduled firm delivery of Seller’s Net Output, under the terms of this Agreement, including the Generation Scheduling Addendum attached as **Addendum W** and incorporated contemporaneously herewith.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing (applies to new Facilities and new upgrades only);

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents (Facilities over 200 kW only) and, if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents.

1.4.4 Seller has complied with the security requirements of Section 10.

1.5 **"Commission"** means the Oregon Public Utilities Commission.

1.6 **"Contract Price"** means the applicable price for Net Output stated in Sections 5.1 and 5.2.

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

1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at _____ [specify POD] (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.10 “**Effective Date**” shall have the meaning set forth in Section 2.1.

1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.

1.12 “**Environmental Attributes**” shall have the meaning set forth in Section 5.5.

~~1.13~~ “**Excess Output**” shall mean any increment of Net Output produced at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

~~1.14~~ “**Facility**” shall have the meaning set forth in Recital A.

~~1.15~~ “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

~~1.16~~ “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

~~1.17~~ “**Generation Scheduling Addendum**” means **Addendum W**, the portion of this Agreement providing for the measurement, scheduling, and delivery of Net Output from the Facility to the Point of Delivery via a non-PacifiCorp transmission provider.

~~1.18~~ “**Interconnected Utility**” means _____, the operator of the electric utility system at the Point of Interconnection.

~~1.19~~ “**Interconnection Agreement**” means the agreement (or contemporaneous agreements) between Seller and the Interconnected Utility governing interconnection of Seller’s Facility at the Point of Interconnection and associated use of the Interconnected Utility’s system.

1.191.20 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.201.21 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.211.22 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.221.23 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.231.24 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.241.25 **“Nameplate Capacity Rating”** means the maximum generating capacity, as provided by the manufacturer, in kW, of any qualifying small power or cogeneration unit supplying all or part of the Facility’s Net Output. Voluntary curtailment by Seller of a generating unit cannot reduce the Nameplate Capacity Rating of that unit.

1.251.26 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.261.27 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any, up to and including the Point of Interconnection. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Interconnection, less any station use not provided by the Facility.

1.271.28 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.281.29 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.291.30 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.301.31 **"Point of Delivery"** means the location in PacifiCorp's system where PacifiCorp has agreed to receive Seller's Net Energy, as specified in **Exhibit B**.

1.341.32 **"Point of Interconnection"** means the point of interconnection between Seller's Facility and the Transmitting Entity's system, if applicable, as specified in **Exhibit B**.

1.321.33 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

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

1.341.35 **"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.

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

1.361.37 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including an Interconnection Agreement and Transmission Agreement(s), necessary for construction, operation and maintenance of the Facility, and delivery of Facility output, consistent with the terms of this Agreement. The Required Facility Documents are set forth in **Exhibit C**.

1.371.38 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit F**.

1.381.39 **"Scheduled Commercial Operation Date"** shall have the meaning set forth in Recital C.

1.391.40 "Scheduled Initial Delivery Date" shall have the meaning set forth in Recital B.

1.401.41 "Start-Up Testing" means the completion of required factory and start-up tests as set forth in Exhibit E hereto.

1.411.42 "Termination Date" shall have the meaning set forth in Section 2.4.

1.421.43 "Transmission Agreement" means the agreement (or contemporaneous agreements) between Seller and the Transmitting Entity providing for Seller's uninterrupted right to transmit Net Output to the Point of Delivery.

1.431.44 "Transmitting Entity(s)" means _____, the (non-PacifiCorp) operator of the transmission system at the Point of Delivery.

SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after execution by both Parties ("Effective Date").

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By _____, Seller shall provide PacifiCorp with a copy of an executed Interconnection Agreement and an executed Transmission Agreement, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on _____ [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] ("Termination Date").

SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
 - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
 - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
 - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
 - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a [corporation, partnership, or limited liability company] duly organized and validly existing under the laws of _____.
 - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
 - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
 - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
 - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and

except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.

~~3.2.7~~ 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

(a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Sellers with a Facility having a Facility Capacity Rating greater than 3-MW,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____ Seller affirms and adopts all warranties of this Section 3.2.78, and therefore is not required to post security under Section 10; or

_____ Seller does not affirm and adopt all warranties of this Section 3.2.78, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

SECTION 4: DELIVERY OF POWER

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, _____ kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall deliver (or cause to be delivered) from the Facility a minimum of _____ kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced *pro rata* to reflect the Commercial Operation Date, and further provided that such minimum delivered Net Output

shall be reduced on a *pro rata* basis for any periods during a Contract Year that the Facility was prevented from generating or delivering electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will deliver from the Facility a maximum of _____ kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

SECTION 5: PURCHASE PRICES

5.1 Seller shall have the option to select one of three pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

_____ Fixed Price
_____ Gas Market
_____ Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit F**.

5.2 (Applies only to “Fixed Price” Contracts Greater than 15 Years). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

_____ Gas Market
_____ Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 PacifiCorp shall pay Seller the Off-peak Price for all Excess Output and for all Net Output delivered prior to the Commercial Operation Date. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

SECTION 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

~~6.16.2 Incremental Utility Upgrades.~~ At start-up (and at any other time upon at least six month's prior written notice), Seller shall not increase the Facility Capacity Rating above that specified in Exhibit A or may increase Net Output, if such increase the ability of the Facility is due to deliver Net Output normal variances in estimated versus actual performance, changed Facility operations, or improvements in quantities Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in excess of the event that the Facility upgrade causes the Facility Capacity Rating through any means including, but not limited to, replacement of, modification of, or addition to existing equipment, except with the written consent exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of PacifiCorp, the Facility complies with Seller's Interconnection Agreement, Transmission Agreement and any other relevant agreements.

~~6.26.3~~ Seller shall operate and maintain the Facility in a safe manner in accordance with this Agreement, the Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and the Point of Delivery is disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreement or Transmission Agreement(s), or to the extent generation curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement or Transmission Agreement(s). PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.23 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such

inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

~~6.36.4~~ Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

~~6.46.5~~ Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

SECTION 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

SECTION 8: METERING AT THE POINT OF INTERCONNECTION

8.1 Metering shall be performed at the location and in a manner consistent with this Agreement, as specified in **Exhibit B**. Seller shall provide to PacifiCorp metered Facility Net Output in hourly increments, and any other energy measurements required to administer this Agreement. If the Transmitting Entity requires Seller to telemeter data, PacifiCorp shall be entitled to receive the same data Seller provides to the Transmitting Entity, if such data is useful to PacifiCorp's administration of this Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Interconnection. The loss adjustment shall be ___% of the kWh energy production recorded on the Facility output meter.

8.2 Seller shall pay for the installation, testing, and maintenance of any metering required by Section 8.1, and shall provide reasonable access to such meters. PacifiCorp shall have reasonable access to inspection, testing, repair and replacement of the metering equipment. If any of the inspections or tests ~~disclosed~~discloses a measurement error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing

Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 10: SECURITY

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.~~78~~, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- Cash Escrow
- Letter of Credit
- Senior Lien
- Step-in Rights
- Seller has adopted the Creditworthiness Warranties of Section 3.2.~~78~~.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum

shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such

notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

~~As a condition to providing a Senior Lien or Step-in Rights, Seller shall, before the Scheduled Commercial Operation Date, post and maintain, in an amount reasonably~~

determined by PacifiCorp, a Letter of Credit in favor of PacifiCorp, which PacifiCorp, during the term of this Agreement, can draw upon to satisfy amounts PacifiCorp might reasonably incur in order to satisfy environmental remediation requirements.

SECTION 11: DEFAULTS AND REMEDIES

11.1 **Events of Default.** The following events shall constitute defaults under this Agreement:

- 11.1.1 **Breach of Material Term.** Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 **Default on Other Agreements.** Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Interconnection Agreement and any Transmission Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 **Insolvency.** A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 **Material Adverse Change.** A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 **Delayed Commercial Operations.** Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 **Underdelivery.** If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 **Notice; Opportunity to Cure.**

- 11.2.1 **Notice.** In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however that PacifiCorp shall not terminate.* (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by

subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.*

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

SECTION 12: INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and

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

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

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

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the

insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "~~A+VHB-~~" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

SECTION 14: FORCE MAJEURE

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars,

hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

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

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

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

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 16: CHOICE OF LAW

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

SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

SECTION 20: REPEAL OF PURPA

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

SECTION 21: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

SECTION 22: ENTIRE AGREEMENT

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

SECTION 23: NOTICES

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

Notices	PacifiCorp	Seller
All Notices	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5952 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	
All Invoices:	(same as street address above) Attn: Back Office, Suite 600700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	
Payments:	(same as street address above) Attn: Back Office, Suite 600700 Phone: (503) 813 - 5585 Facsimile: (503) 813 - 5580	
Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 48401900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	
With Additional Notices of an Event of Default or Potential Event of Default to:	(same as street address above) Attn: PacifiCorp General Counsel and Legal Counsel Phone: (503) 813-6266 and (801) 220-45685029 Facsimile: (503) 813-7262 and (801) 220-32997252	

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

SECTION 24: COMMISSION INVESTIGATION

The Seller and PacifiCorp acknowledge that the rates, terms and conditions specified in this Agreement and the related tariffs are being investigated by the Oregon Public Utility Commission. Upon a decision by the Oregon Public Utility Commission in the investigation, PacifiCorp will notify the Seller within ten calendar days. The Seller shall have thirty calendar days from the effective date of the revised standard contract and tariffs complying with the Commission's order to amend this Agreement if the Seller so chooses to adopt the revised standard contract and/or the revised rates, terms and conditions in the tariff approved by the Oregon Public Utility Commission as a result of the investigation.

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

PacifiCorp

Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**EXHIBIT A
DESCRIPTION OF SELLER'S FACILITY**

[Seller to Complete]

Seller's Facility consists of _____ generators manufactured by _____ . More specifically, each generator at the Facility is described as:

A. Manufacturer's Nameplate Data:

Type (synchronous or inductive):

Model:

Number of Phases:

Rated Output (kW):

Rated Output (kVA):

Rated Voltage (line to line):

Rated Current (A): Stator: _____ A; Rotor: _____ A

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR):

B. Seller's Estimate of Facility Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output: _____ kW **Maximum kVA Output:** _____ kVA

Minimum kW Output: _____ kW

Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:

Facility Capacity Rating: _____ kW at _____

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

Station service requirements, and other loads served by the Facility, if any, are described as follows:

C: Location of the Facility: The Facility is to be constructed in the vicinity of _____ in _____ County, _____. The location is more particularly described as follows:

[legal description of parcel]

EXHIBIT B

SELLER'S INTERCONNECTION FACILITIES

[Seller to provide its own diagram and description]

POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES

Instructions to Seller:

1. Describe the point(s) of metering, including the type of meter(s), and the owner of the meter(s).
2. Provide single line diagram of Facility including station use meter, Facility output meter(s), Interconnection Facilities, Point of Interconnection,
3. Specify the Point of Delivery, and any transmission facilities on Seller's side of the Point of Delivery used to deliver Net Output.

EXHIBIT C
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement, Transmission Agreement, QF Certification, and [others to be identified].

**EXHIBIT D-1
SELLER'S MOTIVE FORCE PLAN**

A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

Month	Average Energy (kWh)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

B. MINIMUM ANNUAL DELIVERY CALCULATION

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account unscheduled repairs or maintenance and Seller's load (if any).

C. MAXIMUM ANNUAL DELIVERY CALCULATION

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

**EXHIBIT D-2
ENGINEER'S CERTIFICATION
OF
MOTIVE FORCE PLAN**

Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.

EXHIBIT E

START-UP TESTING

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

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

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

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

EXHIBIT F
SCHEDULE 37 and PRICING SUMMARY TABLE

ADDENDUM W

GENERATION SCHEDULING ADDENDUM

WHEREAS, Seller's Facility is not located within the control area of PacifiCorp;

WHEREAS, Seller's Facility will not interconnect directly to PacifiCorp's System;

WHEREAS, Seller and PacifiCorp have not executed, and will not execute, a Generation Interconnection Agreement in conjunction with the Power Purchase Agreement;

WHEREAS, Seller has elected to exercise its right under PURPA to deliver Net Output from its QF Facility to PacifiCorp via one (or more) Transmitting Entities.

WHEREAS, PacifiCorp desires that Seller schedule delivery of Net Output on a firm, hourly basis;

WHEREAS, PacifiCorp does not intend to buy, and Seller does not intend to deliver, more or less than Net Output from the Facility (except as expressly provided, below);

THEREFORE, Seller and PacifiCorp do hereby agree to the following, which shall become part of their Power Purchase Agreement:

DEFINITIONS

The meaning of the terms defined in the Power Purchase Agreement and this **Addendum W** shall apply to this Generation Scheduling Addendum:

"Day" means midnight to midnight, prevailing local time at the Point of Delivery, or any other mutually agreeable 24-hour period.

"Energy Imbalance Accumulation," or **"EIA,"** means the accumulated difference between Seller's Net Output and the energy actually delivered at the Point of Delivery. A positive accumulated difference indicates Seller's net delivery of Supplemented Output to PacifiCorp.

"Firm Delivery" means uninterruptible transmission service that is reserved and/or scheduled between the Point of Interconnection and the Point of Delivery pursuant to Seller's Transmission Agreement.

"Settlement Period" means one month.

"Supplemented Output" means any increment of scheduled hourly energy or capacity delivered to the Point of Delivery in excess of the Facility's Net Output during that same hour.

"Surplus Delivery" means any energy delivered by the Facility in excess of hourly Net Output that is not offset by the delivery of energy in deficit of hourly Net Output during the Settlement Period. PacifiCorp shall accept Surplus Delivery, but shall not pay for it.

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SELLER'S OBLIGATIONS IN LIEU OF THOSE CONTAINED IN A GENERATION INTERCONNECTION AGREEMENT.

1. **Seller's Responsibility to Arrange for Delivery of Net Output to Point of Delivery.** Seller shall arrange for the Firm Delivery of Net Output to the Point of Delivery. Seller shall comply with the terms and conditions of the Transmission Agreement(s) between the Seller and the Transmitting Entity(s). Whenever Seller fails to provide for Firm Delivery of Net Output, all Net Output delivered via non-firm transmission rights shall be deemed Excess Output, and therefore subject to the payment provision in Section 5.4.

2. **Seller's Responsibility to Schedule Delivery.** Seller shall coordinate with the Transmitting Entity(s) to provide PacifiCorp with a schedule of the next Day's hourly scheduled Net Output deliveries at least 24 (twenty-four) hours prior to the beginning of the day being scheduled; *provided, however*, that a schedule provided on a Day before any non-Business Day shall include schedules for each day to and including the next Business day. The term "Business Day" shall have the meaning set forth in Pacific Power & Light's Schedule 37.

3. **Seller's Responsibility to Maintain Interconnection Facilities.** PacifiCorp shall have no obligation to install or maintain any interconnection facilities on Seller's side of the Point of Interconnection. PacifiCorp shall not pay any costs arising from Seller interconnecting its Facility with the Transmitting Entity(s).

4. **Seller's Responsibility to Pay Transmission Costs.** Seller shall make all arrangements for, and pay all costs associated with, transmitting Net Output to PacifiCorp, scheduling energy into the PacifiCorp system and any other costs associated with delivering the Seller's Net Output to the Point of Delivery.

5. **Energy Reserve Requirements.** The Transmitting Entity shall provide all generation reserves as required by the WECC and/or as required by any other governing agency or industry standard to deliver the Net Energy to the Point of Delivery, at no cost to PacifiCorp.

6. **Seller's Responsibility to Report Net Output.** On or before the tenth (10th) day following the end of each Billing Period, Seller shall send a report documenting hourly station service, Excess Output, and Net Output from the Facility during the previous Billing Period, in columnar format substantially similar to the attached **Example 1**. If requested, Seller shall provide an electronic copy of the data used to calculate Net Output, in a standard format specified by PacifiCorp. For each day Seller is late delivering the certified report, PacifiCorp shall be entitled to postpone its payment deadline in Section 9 of this Power Purchase Agreement by one day. Seller hereby grants PacifiCorp the right to audit its certified reports of hourly Net Output. In the event of discovery of a billing error resulting in underpayment or overpayment, the Parties agree to limit recovery to a period of three years from the date of discovery.

7. **Seller's Supplemental Representations and Warranties.** In addition to the Seller's representations and warranties contained in Section 3 of this Agreement, Seller warrants that:

- (a) Seller's Supplemented Output, if any, results from Seller's purchase of some form of energy imbalance ancillary service;

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(b) The Transmitting Entity(s) requires Seller to procure the service, above, as a condition of providing transmission service;

(c) The Transmitting Entity requires Seller to schedule deliveries of Net Output in increments of no less than one (1) megawatt;

(d) Seller is not attempting to sell PacifiCorp energy or capacity in excess of its Net Output; and

(e) The energy imbalance service, above, is designed to correct a mismatch between energy scheduled by the QF and the actual real-time production by the QF.

8. **Seller's Right to Deliver Supplemented Output.** In reliance upon Seller's warranties in Section 5, above, PacifiCorp agrees to accept and pay for Supplemented Output; *provided, however, that* Seller agrees to achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period.

(a) **Remedy for Seller's Failure to Achieve zero EIA.** In the event Seller does not achieve zero EIA at the end of each Settlement Period, PacifiCorp will declare any positive balance to be Surplus Delivery, and Seller's EIA will be reset to zero. PacifiCorp will include an accounting of Surplus Delivery in each monthly statement provided to Seller pursuant to Section 9.1 of this Agreement.

(b) **Negative Energy Imbalance Accumulations.** Any negative EIA (indicating that the Transmitting Entity has delivered less than Seller's Net Output), will be reset to zero at the end of each Settlement Period without any corresponding compensation by PacifiCorp.

(c) **PacifiCorp's Option to Change EIA Settlement Period.** In the event PacifiCorp reasonably determines that doing so likely will have a *de minimis* net effect upon the cost of Seller's Net Output to PacifiCorp, it may elect to enlarge the Settlement Period, up to a maximum of one Contract Year. Conversely, if PacifiCorp reasonably determines, based on the QF's performance during the current year, that reducing the Settlement Period likely will significantly lower the net cost of Seller's Net Output to PacifiCorp, it shall have the right to shorten Seller's EIA settlement period beginning the first day of the following Contract Year. However, in no case shall the Settlement Period be less than one month.

ADDENDUM W—Example 1

Example of Seller's Output Reporting Requirement

		A	B	C	D	E
			Meter reading at	(=A-B)		(=Max (0, C-D))
	Hour ending	Meter Reading ^ψ at Point of Interconnection	Station Power Meter*	Net Output	Facility Capacity Rating	Excess Output
Day	(HE)	(MWh)	(MWh)	(MWh)	(MW)	(MWh)
1	7:00	0.50	0.01	0.49	1.50	
1	8:00	0.50	0.02	0.48	1.50	
1	9:00	0.50	0.01	0.49	1.50	
1	10:00	0.50	0.01	0.49	1.50	
1	11:00	0.50	0.01	0.49	1.50	
1	12:00	1.60	0.01	1.59	1.50	0.09
1	13:00	1.70	0.01	1.69	1.50	0.19
1	14:00	1.60	0.01	1.59	1.50	0.09
1	15:00	1.50	0.01	1.49	1.50	
1	16:00	1.50	0.01	1.50	1.50	
1	17:00	1.50	0.00	1.50	1.50	
1	18:00	1.50	0.01	1.49	1.50	
1	19:00	0.50	0.02	0.48	1.50	
1	20:00	0.50	0.01	0.49	1.50	

^ψ Seller shall show adjustment of Meter Reading for losses, if any, between point of metering and the Point of Interconnection, in accordance with Section 8.1.

* Does not apply if Station Service is provided from the gross output of the Facility.

ADDENDUM W—Example 1

Example of Seller's Output Reporting Requirement

		A	B	C (=A-B)	D	E (=Max (0, C-D))
	Hour ending (HE)	Meter Reading [‡] at Point of Interconnection (MWh)	Meter reading at Station Power Meter* (MWh)	Net Output (MWh)	Facility Capacity Rating (MW)	Excess Output (MWh)
Day						
1	7:00	0.50	0.01	0.49	1.50	
1	8:00	0.50	0.02	0.48	1.50	
1	9:00	0.50	0.01	0.49	1.50	
1	10:00	0.50	0.01	0.49	1.50	
1	11:00	0.50	0.01	0.49	1.50	
1	12:00	1.60	0.01	1.59	1.50	0.09
1	13:00	1.70	0.01	1.69	1.50	0.19
1	14:00	1.60	0.01	1.59	1.50	0.09
1	15:00	1.50	0.01	1.49	1.50	
1	16:00	1.50	0.01	1.50	1.50	
1	17:00	1.50	0.00	1.50	1.50	
1	18:00	1.50	0.01	1.49	1.50	
1	19:00	0.50	0.02	0.48	1.50	
1	20:00	0.50	0.01	0.49	1.50	

[‡] Seller shall show adjustment of Meter Reading for losses, if any, between point of metering and the Point of Interconnection, in accordance with Section 8.1.

* Does not apply if Station Service is provided from the gross output of the Facility.