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Loretta I. Mabinton
Associate General Counsel

May 11, 2018

Via Electronic Filing

Oregon Public Utility Commission
Attention: Filing Center
201 High Street, Ste. 100
Salem OR 97301-3612

Re: UM 1934- Portland General Electric Company's 2018 Request for Proposals for Renewable Resources

Attention Filing Center:

Pursuant to the Public Utility Commission of Oregon (Commission) directive at the May 8, 2018 Regular Public Meeting, and reflected in ALJ Rowe's May 10, 2018 Notice, Portland General Electric Company ("PGE") hereby submits for filing the redline version of the final 2018 Request for Proposals for Renewable Resources (RFP).

This redline reflects changes to PGE's filed March 9, 2018 Draft Final RFP. PGE has made these changes to the RFP in response to comments and feedback from the Independent Evaluator, Commission Staff and other Parties in this docket. This filing does not include the voluminous technical specifications attached as Appendix G to the March 9, 2018 filing. PGE has not made any changes to said Appendix G, and has represented Appendix G by a cover page in this filing.

Please do not hesitate to contact me if you have any questions.

Sincerely,

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

Loretta Mabinton
Associate General Counsel

LIM: sj

Attachments

Portland General Electric Company

REQUEST FOR PROPOSALS – FINAL DRAFT**

Renewable Energy Resources

****NOTE: PGE's issuance of the final 2018 Request for Proposals (RFP) for Renewable Energy Resources is subject to Oregon Public Utility Commission approval of the draft final RFP.**

~~March~~ May 9¹⁷, 2018



Table of Contents

1	Purpose and Scope	4
1.1	Resource Targets	4
1.2	About PGE.....	5
1.3	Independent Evaluator.....	6
1.4	Staffing Principles	6
2	RFP Schedule.....	7
3	Guidelines for Submitting Proposals.....	9
3.1	Registration on PGE’s RFP Website.....	9
3.2	Procedural and Commercial Questions	9
3.3	Submitting Bids	9
3.4	Bid Fee.....	10
3.5	Submitting a Confidentiality and Non-Disclosure Agreement	10
3.6	Validity of Price and Offer	11
3.7	Bid Evaluation Criteria.....	11
3.8	Reservation of Rights.....	11
3.9	Document Retention	12
4	Requested Power Products.....	13
4.1	Renewable Electric Energy Products Requested.....	13
4.2	Scheduling Requirements	14
4.3	Delivery Point and Transmission.....	14
5	Contract Terms and Conditions	16
5.1	Energy Purchase Agreement	16
5.2	Ownership Position in a Renewable Energy Resource	16
6	Bid Pre-Qualifications	18
6.1	General.....	18
6.1.1	Minimum Bid Quantity	18
6.1.2	Minimum Bid Term	18
6.1.3	Qualifying Product	18
6.1.4	Credit and Bidder Qualifications	18
6.1.5	PURPA Status	19
6.1.6	Transmission.....	20
6.1.7	Resource Delivery	20
6.1.8	Resource Availability.....	20
6.1.9	Other Bidder Pre-qualification	21
6.2	For New Projects	21
6.2.1	Site Control	21
6.2.2	Permitting.....	21
6.2.3	Financing.....	21
6.2.4	Technology.....	21
6.2.5	Equipment and Construction Costs.....	22
6.2.6	Tax Credit Eligibility.....	22
6.2.7	Interconnection.....	22
7	Bid Evaluation Process.....	24
7.1	Reviewing, Ranking and Selecting Bids.....	24

7.2	Bidder Feedback	26
8	Criteria Used for Scoring Qualified Bids	27
8.1	Determination of the Offer Cost.....	27
8.2	Determination of the Energy Value	28
8.3	Determination of Capacity Benefits.....	28
8.4	Determination of Flexibility Benefits.....	28
8.5	Adjustments to Prices Submitted by Bidders.....	29
8.6	Detailed Offer Price Scoring	31
8.7	Offer Price Screen	31
8.8	Non-Price Factors	32
8.8.1	Project Development Criteria	32
8.8.2	Project Physical Characteristics	32
8.8.3	Project Performance Certainty	33
8.8.4	Credit Evaluation	33
9	Final Short List Determination.....	34
10	Post-Bid Negotiations	38
11	Appendix A - Power Purchase Agreement.....	39
12	Appendix B - Asset Purchase Agreement	40
13	Appendix C - Engineering Procurement and Construction Agreement.....	41
14	Appendix D - Parent Guaranty.....	42
15	Appendix E - Credit Requirement Guidance.....	43
16	Appendix F - Confidentiality Agreement	44
17	Appendix G – PGE Technical Specifications.....	45
18	Appendix H – Scoring Procedures	46
19	Appendix I – Required Bid Information.....	47
20	Appendix J – Benchmark Bid Information.....	48

Tables

Table 1: Summary of Requested Renewable Energy Products	13
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Figures

Figure 1. PGE Service Territory	6
Figure 2. Resource Selection Process.....	24

1 Purpose and Scope

Portland General Electric Company (PGE), an investor-owned electric utility in Oregon, is soliciting bids through this Request for Proposals (RFP) for the renewable electric energy products described in section 1.1 below.

The timing of the RFP is intended to enable resources to capture for customers the value of federal renewable electricity tax credits including the Production Tax Credit (PTC) and Investment Tax Credit (ITC). PGE will consider proposals from a diverse range of renewable energy resources that comply with Oregon's Renewable Portfolio Standard (RPS).

This competitive RFP is being conducted in accordance with the OPUC Competitive Bidding Guidelines set forth in Appendix A of OPUC Order 06-446, dated August 10, 2006, as modified by OPUC Order 14-149, dated April 30, 2014 (Docket UM-1182) (Competitive Bidding Guidelines).

1.1 Resource Targets

PGE is seeking to acquire approximately 100 average megawatts (MWA)¹ of long-term renewable energy supply, bundled with the associated renewable energy credits (RECs). Renewable resources must meet the requirements of Oregon's RPS, as defined in Oregon Revised Statutes (ORS) Section 469A. PGE will consider proposals based on different commercial structures and commercially viable resource technologies. Acceptable bids for renewable resources include power purchase agreements (PPA), as well as a range of ownership structures, including PPAs with purchase options or obligations, sales of existing assets, acquisition of project development assets and rights, joint ownership, and build-own-transfer agreements. PGE intends to submit a benchmark proposal for the renewable RFP. PGE will evaluate and select renewable energy supplies consistent with the criteria and methodology contained herein.

Notwithstanding the above preferred target, PGE reserves the right to vary from this target² energy quantity based on evaluation of price and risk factors of received bids.

¹ An average megawatt is a unit of energy equal to 8,760 MWh during a common year.

² Including not procuring any energy through this RFP process.

1.2 About PGE

Headquartered in Portland, Oregon, PGE serves approximately 863,000 retail customers within a 4,000 square mile service territory (see Figure 1).

- Service territory population 1.9 million, about 46% of the state's population.
- Serves 51 cities, the largest being Portland and Salem.
- 28,000 miles of transmission and distribution lines.
- Net plant-in-service, \$9.9 billion.
- Forecast average annual demand in 2021, approximately 2,450 MWa.
- Peak load in 2016, 3,726 MW.
- Generation assets including seven hydro generation facilities, five gas-fired thermal plants, the Biglow Canyon and Tucannon River wind farms, majority ownership of one coal-fired thermal plant, and joint ownership in two units of another coal plant facility. PGE also holds long-term contracts for energy from the Mid-Columbia hydroelectric projects on the Columbia River, two wind farms, and regularly enters into short and mid-term wholesale power supply contracts.



Figure 1. PGE Service Territory

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

1.3 Independent Evaluator

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

- Consult with PGE during PGE's ~~in~~-preparation of the RFP and submit its assessment of the final draft RFP to the OPUC when PGE files for RFP approval.
- Review final scoring and evaluation criteria that are consistent with the OPUC Competitive Bidding Guidelines and review of "mock bids" to test the integrity of the evaluation models.
- Will confer with OPUC staff in accordance with the Competitive Bidding Guidelines.
- Oversee the RFP process to ensure it is administered fairly.
- Will evaluate and score PGE's Benchmark Resource bid.
- Independently score all, or a sample, of the bids to determine whether the selections for the initial and final short-lists are consistent with the bid evaluation criteria.
- Compare the results of the IE's scoring with PGE's scoring and work with PGE to reconcile and resolve scoring differences, if any.
- Request additional modeling sensitivities, as necessary.
- Prepare a Closing Report for the OPUC after PGE has selected the final short-list.
- In its Closing Report, provide its assessment of all aspects of the solicitation process and the IE's involvement, including detailed bid scoring and evaluation results, to PGE, non-bidding parties and the OPUC subject to the terms of the Protective Order.

1.4 Staffing Principles

Portland General Electric Company (PGE) has put in place certain measures, including separation of functions and restrictions on information sharing, that

1. Are designed to provide a comparable and unbiased evaluation of all third party bids and any PGE Benchmark Resource consistent with the OPUC Competitive Bidding Guidelines for major resources.
2. Staff the RFP Team and the Benchmark Resource Team with the appropriate levels of expertise and technical knowledge.
3. Make efficient use of the limited number of PGE employees qualified to assist with power supply resource development, evaluation and procurement.

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

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

The Benchmark Resource is described in Appendix J.

2 RFP Schedule

The schedule listed below may be revised throughout the RFP process:

- Friday March 2nd 2018 — Pre-issuance stakeholder and bidder RFP workshop.
- Friday March 9th 2018 — PGE submits final draft Renewable RFP to OPUC for approval.
- Friday March 23rd 2018 — IE submits assessment of the final draft renewable RFP to OPUC.
- Wednesday May 16th 2018 – OPUC Special Public Meeting to Approve Renewable RFP
- Tuesday May 17th 2018 — PGE issues Final RFP.
- Tuesday May 22nd 2018 – Post-issuance bidder conference
- Monday-Friday May-June 28th-1st 2018 – Benchmark bid due
- Wednesday June 13th, 2018 – Benchmark Bid scored and sealed
- Friday June 15th 2018 — RFP proposals from Bidders due.
- Monday August 6th 2018 - Initial shortlist identified
- Friday August 10th 2018 – Best and final price update
- Tuesday October 2nd 2018* — PGE submits request for acknowledgment of shortlist to OPUC.

- Tuesday October 2nd 2018* — IE issues final closing report to OPUC.
- Tuesday October 30th 2018* – OPUC considers PGE’s request for acknowledgment of shortlist
- Monday December 31, 2018* – Final contracts with winning Bidders, PGE issues notice to proceed (as applicable).

** These dates are subject to change depending on the quantity and complexity of bids received. However, given the time-sensitive nature of this RFP, PGE will use best efforts in working with Bidders, stakeholders, the IE and the OPUC to achieve the milestones in this timeline.*

3 Guidelines for Submitting Proposals

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

3.1 Registration on PGE's RFP Website

PGE's RFP website, hosted by the IE, is the platform for communication and bid materials exchanges between Bidders and PGE. All prospective Bidders, stakeholders, and other interested parties may register on PGE's RFP website at www.PortlandGeneralRFP2018.com. The website is secure and password protected so that confidential information can be posted on and exchanged via the site.

Other features of the site include:

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

3.2 Procedural and Commercial Questions

All correspondence regarding procedural questions, bid submissions and questions related to product characteristics, terms and conditions should be submitted to PGE's RFP website at www.PortlandGeneralRFP2018.com. PGE, in consultation with the IE, as appropriate, will post answers to questions from Bidders, stakeholders, and other interested parties on the site.

3.3 Submitting Bids

Bidders may submit one or more bids responding to the requested renewable energy product (see the Requested Power Products section below). All bids must be submitted online using the bid form that PGE will provide on the RFP website, www.PortlandGeneralRFP2018.com, no later than 12:00 p.m. Pacific Time on June 15, 2018. The bid form will require Bidders to submit information in support of their bids, including but not limited to project description, transaction type and price, project development criteria and developer experience, interconnection and scheduling services, tax benefits, permitting,

project resource characteristics, operating costs, credit and financial, etc. Bidders may edit their online bid form until the bid submission deadline. At 12:00 p.m. Pacific Time on June 15, 2018, bid forms will be closed to edits, and will be considered to be final submissions.

PGE's Benchmark Bid must also be submitted online no later than 12:00 p.m. Pacific Time on ~~May June 28th 2018~~. ~~PGE's benchmark bid will be considered final and complete following this deadline.~~

All bids on the initial shortlist will be invited to provide best and final price updates no later than August 10, 2018. Best and final price updates will only be accepted if offer's total price is reduced relative to initial offer.

3.4 Bid Fee

To help defray the costs of the IE and encourage high quality proposals and qualified Bidders, each Bidder in this RFP must pay a non-refundable bid fee of \$10,000. A bid may consist of one base proposal in addition to two alternatives for the same bid fee. The alternatives may consist of a different bid size, contract term, in-service date, and/or pricing structure for the same resource at the same location.

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

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

3.5 Submitting a Confidentiality and Non-Disclosure Agreement

The Confidentiality and Non-Disclosure Agreement is available for completion at www.PortlandGeneralRFP2018.com (and is included as Appendix F to this RFP). Bidders are required to complete and sign the confidentiality agreement prior to the bid submission deadline (12:00 PM on June 15, 2018). The confidentiality agreement is to be submitted to PGE through the IE website. Due to the need to ensure uniform treatment of all confidential information, PGE will not accept changes to the Confidentiality and Non-Disclosure Agreement.

PGE will treat any proprietary and confidential information contained in a bid, in a manner consistent with the terms of the Confidentiality and Nondisclosure Agreement and any Protective Orders issued by the OPUC, provided that such information is clearly identified by the Bidder on each confidential page as "Confidential" or "Confidential Information." Each Bidder must execute and deliver a copy of the Confidentiality and Nondisclosure Agreement, as soon as possible, but no later than the time of the submission of its bid or bids.

Confidentiality and Non-Disclosure Agreements received prior to June 1st 2018

will be countersigned and returned to bidder before June 15th 2018. *It is the Bidder's responsibility to indicate clearly in its proposal what materials and what pages it deems to be "confidential" and subject to the Confidentiality and Nondisclosure Agreement.*

3.6 Validity of Price and Offer

By submitting a bid, the Bidder acknowledges and agrees that the terms of its proposal shall remain irrevocable for the earlier of 200 days after the bid responses are due or when PGE issues a written release of the bid at or before the time the initial³ or final, as applicable, short list is issued.

3.7 Bid Evaluation Criteria

Bids will be assessed by PGE and the IE on the project's economic competitiveness, project specific commercial and performance risks, and portfolio economic risk. All bids will be evaluated within an individual offer analysis to assign a bid price and non-price score. Consistent with prior practice, PGE's price score comprises 60 percent of our evaluation criteria, reflecting PGE's desire and commitment to obtain the best possible value for our customers. Non-price factors comprise the other 40 percent and reflect commercial and performance risks in addition to operational attributes of the bid proposals. Additional description of the bid evaluation criteria is provided in Section 8 of this document "Criteria Used for Scoring Qualified Bids."

3.8 Reservation of Rights

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

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

The bids received will be evaluated and selected based on the information supplied by each Bidder pursuant to this RFP. PGE reserves the right to modify or withdraw from this RFP process, or modify the schedule and any provisions contained herein, for any reason. PGE also reserves the right, consistent with the Competitive Bidding Guidelines, to make purchase commitments at any time to suppliers not participating in this RFP process.

³ Bids that are not on the initial shortlist will be considered released for purposes of this section.

PGE reserves to itself:

- The selection of final short-listed bids and the awarding of contracts, if any, in the exercise of its sole discretion.
- The right to short-list projects with energy amounts in excess of its target to ensure sufficient back-up proposals are available should other bidders materially depart from their bids during the negotiation phase. PGE anticipates short-listing a minimum of approximately 150% of its targeted energy amounts, and at least 150 MWa of non-benchmark resources⁴.
- The right to reject any and all bids, and any portion of a specific bid for any reason.
- The right to waive any immaterial non-conformity in any bid received.
- The right to award a contract to a Bidder based on a combination of price and non-price factors, a quantitative and qualitative assessment of portfolio fit, and post-bid negotiations.

3.9 Document Retention

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

⁴ Ability to short-list a minimum of 150 MWa of non-benchmark resources will be dependent upon a sufficient number of bids passing PGE's offer-price screen detailed in section 8.7.

4 Requested Power Products

PGE requests proposals for renewable energy products, as described in this RFP.

Renewable resources must meet the requirements of Oregon’s RPS, as defined in ORS 469A. In addition, renewable bids must include all environmental attributes, including Renewable Energy Certificates (RECs). Bidders will be responsible for ensuring RECs from projects are bundled as defined in ORS 469A.005. Bidders will also be responsible for ensuring that RECs are established through Western Renewable Energy Generation Information System (WREGIS) consistent with OAR 330-160-0020.

PGE is targeting approximately 100 MWa of renewable energy resources in this RFP. However, PGE reserves the right to vary from the target based on evaluation of price and risk factors of received bids.⁵ PGE has expedited the RFP to enable capture of federal renewable tax credits including the PTC and ITC given the planned decline for each. Preference will be given to RFP resources and bids that offer the ability to maximize cost savings to customers.

Table 1: Summary of Requested Renewable Energy Products

Product	Capacity	Online/Contract Start Date		Term
	Minimum	<u>Preferred</u> - No later than	No later than	Minimum
Power Purchase Agreement	10 MW	Dec 31, 2020	Dec 31, 2021	20 years
Ownership	10 MW	Dec 31, 2020	Dec 31, 2021	NA

4.1 Renewable Electric Energy Products Requested

Physical Energy Purchase – PGE will consider proposals for the long-term purchase of renewable energy from an existing or to-be-constructed renewable facility, with energy to be delivered to PGE. The minimum bid capacity under this RFP is 10 MW, and the minimum term duration is twenty years.

Ownership Position in a Renewable Energy Resource – PGE will consider acquiring ownership positions in renewable energy resources. Ownership proposals may include (but are not limited to) the sale of existing plants, acquisition of project development rights, joint ownership, and build-own-transfer agreements.

⁵ Including not procuring any energy resources through this RFP process.

PGE will also consider hybrid structures that include both an ownership component and a PPA (e.g. the sale of a phase or portion of a project with an off-take agreement for the balance or a PPA with purchase option or obligation).

4.2 Scheduling Requirements

Renewable energy sold to PGE via a long-term power purchase agreement must be delivered firm for each 60-minute scheduling interval. Alternate proposals delivered firm for periods longer than 60 minutes (i.e. day ahead, firm blocks, etc.) will also be considered, if proposed. For the purposes of this RFP, delivered firm energy means the only excuse for failure to deliver or receive is force majeure, as defined in the purchase agreement. Firm energy includes reserves and ancillary services to ensure that energy schedules are certain and delivered intact throughout the 60-minute interval.

4.3 Delivery Point and Transmission

PGE is electrically connected to both Bonneville Power Administration (BPA) and PacifiCorp West. However, at this time and for the purposes of this RFP, the PacifiCorp West interface has been determined to have insufficient available capacity and is unavailable. For Bidders with projects outside of PGE's Balancing Authority Area (BAA), it is the Bidders' responsibility to provide as part of the bid submittal a reasonable and achievable plan to obtain annual long-term firm transmission from the resource to the delivery point prior to project Commercial Operation Date (COD).

Bidders relying on BPA for Transmission Service are required, at minimum, to have a schedule that allows transmission service commitments by December 31, 2018. For bidders relying on the TSR Study and Expansion Process (TSEP)⁶ or Individual Study Process, transmission service commitments will be deemed demonstrated by completion of phase four (Record of Decision issued) of the TSR Study and Expansion Process (TSEP)⁷ or completion of the facilities study respectively. and Associated BPA upgrades required near-term viable upgrades to receive long-term firm service must support the project COD. Bidders may rely upon up to two years of conditional firm bridge service that converts to long-term firm upon completion of required upgrades. Long-Term Firm transmission rights must match the duration of the contract term or include rollover rights. PGE's evaluation process will determine if there are additional costs or risks to deliver the resource to PGE load.

Bidders proposing to interconnect a resource within PGE's Balancing Authority Area will need to include all incremental costs to deliver, or sink, energy from the resource to PGE's load. Bidders can determine these costs by requesting Network Resource Interconnection Service and Network Integration Transmission Service under PGE's Open Access Transmission Tariff (OATT) from PGE's Transmission and Reliability

⁶ Transmission Service Request Study and Expansion Process

Services Department (T&RS) or Bidders can request Energy Resource Interconnection Service and Point-to-Point Transmission Service under PGE's OATT from T&RS. Either process will enable T&RS to study whether any system upgrades are needed to accommodate transmission service for the bid. Questions concerning the various types of Interconnection and Transmission Service available under PGE's OATT should be directed to T&RS.

Bidders relying on PGE-T transmission are required to have completed Facilities Studies for Transmission Service and subsequent Construction Agreements.

If, after identifying the initial shortlist, ~~during the evaluation~~, PGE determines that a Bidder's proposed transmission plan cannot demonstrate firm delivery to an acceptable delivery point, the proposal may be rejected. Long-Term Firm delivery capability or other demonstrable transmission rights to enable delivery to PGE's load, are subject to negotiation and confirmation prior to execution of any contracts in connection with this RFP.

For the purposes of scoring bids in this RFP, for resources outside PGE's BAA, acceptable delivery point is:

- BPAT.PGE

When requesting transmission service from BPA, the BPAT.PGE Point of Delivery is associated with the following substations or "sinks":

- PGE Contiguous
 - Pearl 230 kV (Sherwood)
 - McLoughlin 230 kV
 - Keeler 230 kV (St. Marys)
 - Rivergate 230 kV
- Bethel 230 kV
- Troutdale 230 kV (Blue Lake)

5 Contract Terms and Conditions

5.1 Energy Purchase Agreement

The contract template for power purchases is included in Appendix A – Wholesale Renewable Power Purchase Agreement (“Form PPA”). Bidders must review the Form PPA included in this RFP, and are required to include any proposed revisions to contract terms by providing a mark up to the PPA Form. Bidders are required to identify, through comments, exceptions to any term or condition. Additionally, Bidders are **required to propose alternative terms and conditions** in redline format to the highlighted terms and conditions in the Form PPA. Should proposed revisions to highlighted terms and conditions increase PGE’s exposure to risks related to project schedule, performance or cost then PGE will adjust the Bid’s non-price score consistent with Appendix H. PGE will evaluate all proposed revisions, but is under no obligation to accept any revisions or adopt any changes. Changes, if any, to the terms and conditions of the term sheet and the Form PPA will be discussed with Bidders on the final short list.

The Form PPA invites bidders to offer a purchase option for the facility. If Bidders elect to propose an end of term or during term option for PGE to purchase the facility, or an option for PGE to extend the term of the PPA, it should include such proposed option in its mark-up of the agreement. Proposed purchase options and/or term extensions will be evaluated in PGE’s price scoring assessment and non-price scoring assessment consistent with Appendix H.

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

Specifically, to allow for direct compensation for transmission costs, bidders are invited to propose power purchase agreements with both capacity and variable charges. Capacity charges may be escalated according to tariffed rate changes, however for non-dispatchable resources capacity charges are not to exceed the costs of all tariffed transmission costs.

5.2 Ownership Position in a Renewable Energy Resource

PGE invites Bidders to submit proposals for various types of asset sale and ownership transfer or service agreements. The contract templates are included in Appendix B and C – Asset Purchase Agreement (“Form APA”) and Engineering Procurement and Construction Agreement (“Form EPC”). Bidders are required to identify, through comments, exceptions to any term or condition in the form contracts. Additionally, bidders are **required to propose alternative terms and conditions** in redline format to the highlighted terms and conditions in the Form

APA and Form EPC. Should proposed revisions to highlighted terms and conditions increase PGE's exposure to risks related to project schedule, performance or cost then PGE will adjust the Bid's non-price score consistent with Appendix H.

PGE recognizes that alternative ownership structures may be available and Bidders proposing such alternatives must offer revisions to the Form APA and EPC and also propose a new term sheet. Changes to terms and conditions and/or new terms and conditions will be discussed with Bidders selected for final short list negotiations. [PGE may make adjustments to the listed evaluation procedures for Bids proposing alternate ownership structures.](#)

Ownership proposals may include (but are not limited to) sales of existing assets, acquisition of project development rights, build-own-transfer (BOT) agreements or joint ownership. We will also consider hybrid structures that include both an ownership component and a power purchase agreement (e.g. the sale of a phase or portion of a project with an off-take agreement for the balance or a PPA with purchase option or obligation).

Lastly, bids for new, utility ownership resources are expected to be procured and constructed in accordance with PGE's established technical requirements.

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

6 Bid Pre-Qualifications

To be considered for evaluation, all proposals must meet the requirements specified below.

6.1 General

The following general pre-qualifications apply to all bids to be evaluated in this RFP.

6.1.1 Minimum Bid Quantity

The minimum bid amount is 10 MW. PGE has specified a low minimum bid size to encourage the submission of a variety of renewable bid technologies in this RFP. Renewable projects 10 MW or under may be eligible for PGE's Schedule 201 Qualifying Facilities Standard Contract Power Purchase Agreement. ~~PGE is not accepting Schedule 201 Standard Contracts or Schedule 202 contracts~~ PGE welcomes Qualifying Facilities of 10 MW or more in this RFP. Additional information about Schedule 201 contracts can be found here:

<https://www.portlandgeneral.com/business/power-choices-pricing/renewable-power/install-solar-wind-more/sell-power-to-pge>

6.1.2 Minimum Bid Term

The minimum bid term is twenty years. The resource must be delivered to PGE no later than December 31, 2021. PGE prefers resources delivered to PGE after December 31 2019 and on or before December 31, 2020.

6.1.3 Qualifying Product

Bids must sell to PGE output from or title to an identified renewable resource. Renewable resources must meet the requirements of Oregon's RPS, as defined in ORS 469A. In addition, renewable bids must include all environmental attributes, including Renewable Energy Certificates (RECs). Bidders will be responsible for ensuring RECs from projects are bundled as defined in ORS 469A.005. The Bidder will also be responsible for ensuring that RECs are established through Western Renewable Energy Generation Information System (WREGIS) consistent with OAR 330-160-0020.

6.1.4 Credit and Bidder Qualifications

To be eligible for ~~bidding~~ the final short-list consideration a Bidder must ~~be~~ demonstrate an ability to secure necessary pre-COD performance assurances in the form of a letter of credit from a qualified institution. This demonstration can be in the form of a letter of credit commitment

letter. Furthermore, a Bidder offering a utility owned resource will also be required to secure a guarantee if the Bidder is not investment grade. Appendix D includes PGE's Guarantee Form. To be considered investment grade, Bidder's or Bidder's credit support provider's (if any) long-term, senior unsecured debt, that is not supported by third-party credit enhancement, must be rated by one or more of the following agencies as follows: BBB- or higher by Standard & Poor's and Fitch, BBB (low) by DBRS, or Baa3 or higher by Moody's Investor Services, Inc. If the Bidder or Bidder's credit support provider is rated by more than one agency, PGE will consider the lowest rating.

All transactions are contingent upon the Bidder meeting and maintaining the credit requirements established by PGE's Credit Risk Management Department. PGE's Risk Management credit requirements provide PGE reasonable assurance that PGE will be able to readily recover its actual damages in the event of default by the Bidder. Final collateral requirements will be determined prior to execution of an agreement.

Bidders proposing an Asset Purchase Agreement and/or an Engineering and Procurement Contract will have pre-COD performance assurance requirements of \$100/kW collateral in addition to a payment and performance bond. Power Purchase Agreement bids will be required to include \$200/kW pre-COD collateral and \$100/kW of post-COD collateral. Additional detail on the PGE's Credit Requirements, including necessary documentation of guarantor commitments can be found in Appendix E.

6.1.5 PURPA Status

Bidders with projects that are QFs under FERC rules are welcomed to bid such projects into this RFP under the terms and conditions of this RFP, ~~but~~ and not as QFs. ~~In any event, Bidders with projects that have an executed contract with PGE or are actively negotiating a contract under Schedule 202 may also participate, but PGE makes no commitment as to whether it will be willing to mutually terminate an existing Schedule 202 contract. PGE will make that determination on a case-by-case basis in the best interest of our customers.~~ ~~are not eligible to bid the project in this RFP. If a Bidder wishes to withdraw its project from negotiations under Schedule 202, PGE invites the Bidder to bid the project into this RFP, provided the Bidder has notified PGE accordingly.~~ Importantly, agreements entered into with any counterparty as a result of PGE's competitive solicitation will be consistent with the pricing and Form Contract term and conditions provided at time of bidding and reviewed through post-bid negotiations. For the avoidance of doubt, Bidders will not be awarded contracts with standard avoided cost pricing or standard contract terms and conditions.

6.1.6 Transmission

For those resources located outside PGE's BAA, Bidders must provide a reasonable, achievable plan for acquiring long-term firm transmission service to deliver to an acceptable delivery point prior to project COD.

Bidders interconnecting directly to PGE should meet the requirements in Section 4.3 above.

PGE will not entertain Bids that propose assignment of PGE's transmission rights to deliver to an acceptable delivery point. PGE will not entertain a Benchmark bid that proposes assignment of PGE's transmission rights to deliver to an acceptable delivery point.

6.1.7 Resource Delivery

For those resources located outside PGE's BAA, resource output must be delivered firm for each 60-minute scheduling interval. Alternate proposals to deliver firm for periods longer than 60 minutes (i.e. day ahead, firm blocks, etc.) will also be considered. For the purposes of this RFP, delivered firm energy means the only excuse for failure to deliver or receive is force majeure, as defined in the purchase agreement. Firm energy includes reserves and ancillary services to ensure that energy schedules are certain and delivered intact throughout the 60-minute interval.

6.1.8 Resource Availability

Bidders must include evidence substantiating the Bid's forecasted energy deliveries. Wind, solar and hydro bids must include at least three years of forecasted facility level generation consistent with a contemporaneous period of historical wind, irradiance or stream flow observations. Bidders must also provide average, expected generation for each month-hour (presented in a 12x24 table). The historical and average energy output estimates must be produced by a qualified independent third-party or consistent with an included energy assessment.

Geothermal Bids must have completed and included the resource's feasibility report based on a year or more of test data from full diameter production wells.

Biomass Bids must demonstrate physical and commercial access to fuel supplies and fuel transportation for the term of the contract proposed in the bid. PGE will not accept Bids for biomass or biogas projects that pass fuel obligations to PGE.

6.1.9 Other Bidder Pre-qualification

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

6.2 For New Projects

The following new project pre-qualifications apply to Bids for projects not yet constructed.

6.2.1 Site Control

Bidders must support the Bid by demonstrating dependable site control. At the time of bid submission, Bidders must possess title to the site, have executed a lease agreement, or executed an option agreement applicable to a minimum of 80% of the project site. Prior to placement on PGE's final shortlist, Bidders will be required to demonstrate site control for 100% of the project site.

~~6.2.2~~ ~~Permitting~~

~~Bidders must prepare a detailed plan that lists all required site specific permits and have a plan or schedule for obtaining all permits and licenses. PGE will assess the probability of successfully completing the permitting process as part of its evaluation. If at any point it is determined that a project cannot obtain the required permits as designed, PGE reserves the right to reject the Bid.~~

~~In addition, at time of bid submission Bidders must have received approval of many material permits. A complete list of the permitting threshold requirements can be found in Appendix H.~~

~~6.2.3~~ ~~6.2.2~~ Financing

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

~~6.2.4~~ ~~6.2.3~~ Technology

Proposals shall use utility-scale, commercially viable generation technology currently deployed in the western United States. PGE will

only consider Bids that use widely deployed generating technologies with proven records of reliability. For new, utility-ownership resources the major equipment as defined in Appendix H and Appendix G must be supplied by one of the identified preferred vendors.

PGE will not accept generation technology shown to have serial defects. Serial defects are considered to be a design or manufacturing problem that has affected 10% or more of the installed models. Generation technology must comply with all current applicable Codes and Standards for a USA-based resource.

Bidders may contact the IE in the event that they are uncertain whether their choice of specific generation technology is acceptable to PGE. Such requests need to be received by the IE no later than May 15 2018.⁸ PGE will review any such information as to their suitability for meeting our renewable energy requirements. PGE and the IE will respond to such requests within two weeks of receipt.

6.2.56.2.4 Equipment and Construction Costs

To be eligible to bid, Bidders must include a quote, commitment, or documentation of purchase from a wind turbine, photovoltaic panel, or steam turbine manufacturer. For utility-ownership projects, bids must also include EPC quotes to construct the facility. For utility-ownership projects the bid price estimate must be consistent with the equipment supplier and EPC contractor (or BOT agreement) documentation.

6.2.66.2.5 Tax Credit Eligibility

Offers that intend to utilize PTC federal tax credits will need to demonstrate the project's eligibility for the specified credit. PGE requires a narrative and plan describing the timeline to achieve the associated federal tax benefit. In addition, PGE requires a tax opinion from a qualified tax expert to further substantiate the Bidder's plan to generate PTCs. Offers that intend to utilize ITC federal tax credits must demonstrate a reasonable plan to obtain the credits.

6.2.76.2.6 Interconnection

All Bidders must have executed a System Impact Study Agreement prior to bid submittal in order to be evaluated in the RFP. Should bidders not

⁸ The IE can be contacted through the RFP website. The notification should identify the manufacturer and model the Bidder intends to include in a bid and include preliminary design studies – completed in sufficient detail to identify all major equipment and components.

have completed an interconnection agreement with the transmission provider at time of shortlisting, PGE will remain flexible by requiring Bidders that have not completed Bidders to have instead completed an Interconnection Facilities Study Agreement.⁹ prior to placement on PGE's Bidder's unable to provide Facilities Study reports before time of Final Shortlist will be deemed unready for construction and will be disqualified from the evaluation.

⁹ As described in Attachment L of BPA's Open Access Transmission Tariff, the Interconnection Facilities Study "specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facility to the Transmission System." Available at: https://www.bpa.gov/transmission/Doing%20Business/Tariff/Documents/attachment_1.pdf

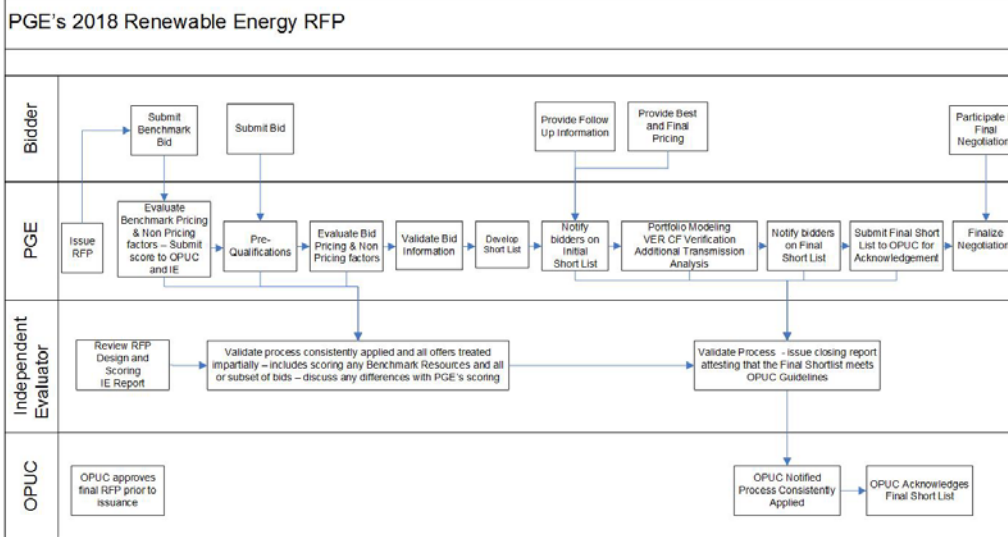
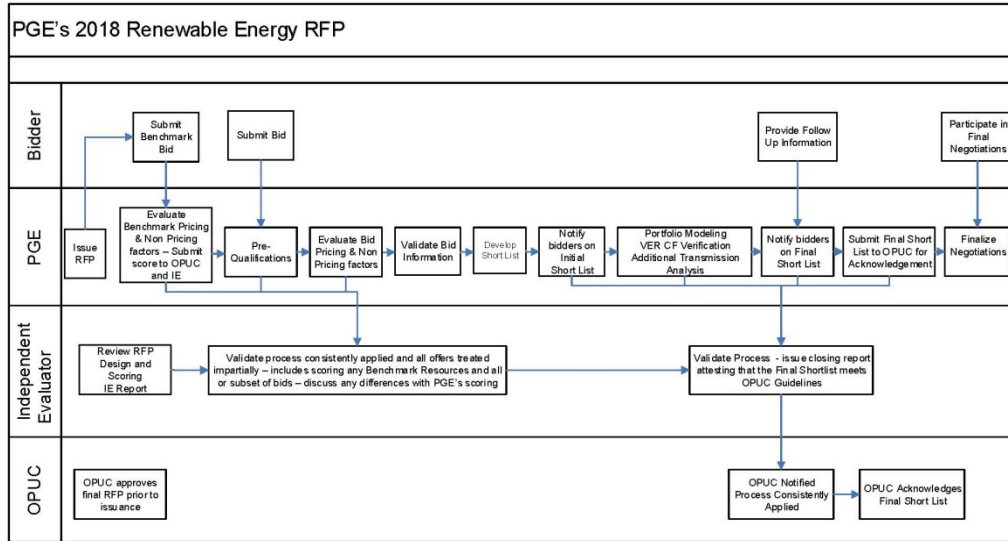
7 Bid Evaluation Process

This section describes PGE’s process for evaluating Bids received in response to this RFP. For details about our scoring criteria, see the sections, “Bid Pre-Qualifications,” and “Criteria Used for Scoring Qualified Bids.”

7.1 Reviewing, Ranking and Selecting Bids

In selecting the RFP short list, PGE will use a first-price, sealed-bid format. Under this format, Bidders may not update pricing during the scoring and evaluation period, except for the ‘best and final price updates’ described in Section 3.3. PGE’s evaluation of offers will be based on prices submitted within Bidders’ delivered bids, in conjunction with specified non-price criteria to select PGE’s initial short list. As stated in more detail in Section 5 and below, certain differences from PGE’s proposed contract terms and conditions may be addressed during post-bid negotiations. The scoring process is illustrated in Figure 2, below.

Figure 2. Resource Selection Process



Bids will be evaluated using a three-step process.

- *Assessment of Pre-Qualifications* – First, PGE will screen bids according to pre-established qualifying criteria described in Section Six and enumerated in Appendix M.
- *Individual Offer Analysis* – Next, PGE will score all Bids that meet the pre-qualification standards. Individual Overall scores will be comprised of price and non-price factors.
- *Short-list Analysis* – **Bids selected for the initial shortlist will be given the opportunity to provide best and final pricing.** Resources selected for the initial short list will be included in PGE's portfolio analysis. Portfolio analysis will evaluate how short-listed resources affect overall system costs and risks

when combined with other resources to meet PGE's resource target. Shortlisted resources will also be subjected to additional capacity factor and energy assessments review, owner's cost analysis, accounting treatment analysis, and final shortlist stage pre-qualification assessment, each as applicable.

PGE reserves the right to request additional information regarding any Bids submitted.

7.2 Bidder Feedback

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

8 Criteria Used for Scoring Qualified Bids

This section summarizes the criteria PGE will use to evaluate Bids submitted in response to the RFP.

Price represents a significant portion of the overall score. The price score will be calculated as the ratio of the bid's projected total cost per MWh to forecast market value using real-levelized or annuity methods (per Guideline 9a. of the Competitive Bidding Guidelines). The price scoring will incorporate benefits related to the expected energy value, capacity value and flexibility value associated with the offers.

Many project specific risks and benefits cannot be captured or quantified by evaluating resource price or resource portfolio cost benefit. For those projects, PGE evaluates and assigns a non-price score for specific development criteria, physical characteristics, performance certainty, and credit factors consistent with the detailed non-price scoring rubric included in Appendix H.

8.1 Determination of the Offer Cost

An offer's cost reflects the total cost, fixed and variable, associated with the project's delivery of energy and forecasted economic dispatch.

An offer's fixed costs include all revenue requirement components including, for resources to be owned by PGE: total depreciation, salvage, return, income taxes, deferred income taxes, property taxes, fixed O&M, wheeling charges, and ancillary services. For resources contracted for by PGE, an offer's fixed cost includes all forecasted fixed payments, capacity charges, ancillary services, if appropriate, and PGE system upgrade costs, if applicable.

An offer's variable costs include for resources to be owned by PGE: all fuel costs, variable O&M, emissions costs, start-up costs. For resources contracted for by PGE, an offer's variable cost includes all energy payments, additional variable O&M costs, emission costs passed onto the buyer, and start up charges, if applicable. The magnitude of an offer's variable costs will be determined by the offer's simulated dispatch against forecasted market prices using PGE's IRP economic dispatch AURORA software.

To evaluate Bids containing different product characteristics on a comparable basis, prices submitted by the Bidder may be subject to adjustment to ensure Bids are evaluated on a comparable basis.

An offer's total cost for the duration of the offer's term is expressed on a present value basis and included in the numerator of the offer's price scoring ratio.

8.2 Determination of the Energy Value

An offer's energy value reflects the value of energy generated throughout the offer's economic life or term. Energy value for the duration of the offer's term is expressed on a present-value basis and included in the denominator of an offer's cost to benefit price score ratio. The energy value will be based on the offer's simulated dispatch and the projected revenue associated with PGE's hourly market price forecast. The market price forecast is developed as follows:

- The hourly spot electricity price forecast is developed using a fundamental market simulation in AURORA, the principles of which are described in Chapter 10 of PGE's 2016 IRP. Electricity prices are simulated for the period 2018–2050.
- AURORA will use natural gas price inputs consistent with PGE's 2016 IRP Update reference case methodology forecast.

8.3 Determination of Capacity Benefits

An offer's capacity benefit reflects PGE's need to acquire new, physical capacity resources due to the offer's estimated system capacity value. PGE is facing a capacity deficit, and requires capacity products, to otherwise displace the need to contract with or construct new peaking generating facilities. The capacity benefit will be included in the denominator of the offers cost to benefit price score ratio.

An offer's capacity benefit will be calculated as the product of the offer's capacity value and the avoided capacity cost. The product's capacity value will be calculated annually using the Renewable Energy Capacity Planning (RECAP) model. RECAP is described in Chapter 5 of the 2016 IRP. The model has been updated to accurately reflect the assumptions included in PGE's 2016 IRP Update filed in March 2018. The offer's capacity value will be expressed as the quantity of avoided simple-cycle combustion turbine (SCCT) needed to meet PGE's long-term capacity targets. The avoided capacity cost will be based on a per kilowatt, real-levelized cost (net of wholesale revenues) of a simple-cycle combustion turbine (SCCT). The assumed costs and performance of the SCCT are consistent with 2016 IRP capital costs and performance metrics (described in Chapter 7) operated under the updated reference case gas and wholesale power prices. The product of the offer's annual capacity value and levelized avoided capacity cost constitute the offers annual capacity benefit. Capacity benefit for the duration of the offer's term is expressed on a present value basis and included in the denominator of the price score ratio.

8.4 Determination of Flexibility Benefits

The flexibility value associated with an offer reflects any additional value that the offer may bring to PGE's generation portfolio due to its ability to ramp, respond to

forecast errors, and/or provide ancillary services that is not captured by its energy value. For example, a resource that can provide ancillary services at a lower cost than PGE's current resource fleet is recognized for the associated reduced cost of existing PGE resources. PGE approximates flexibility benefits using the Resource Optimization Model (ROM), which the Company relied on in the 2016 IRP to quantify flexibility value associated with energy storage systems and the costs due to flexibility challenges (i.e., integration costs) associated with variable renewable resources. An offer's flexibility benefit is calculated using a methodology further explained in Appendix E. The flexibility benefit for the duration of the offer's term is expressed on a present value basis and is included in the denominator of the offer's cost to benefit price score ratio.

8.5 Adjustments to Prices Submitted by Bidders

Price represents a significant portion of the overall score. To evaluate offers containing different product characteristics on a comparable basis, prices submitted by the Bidder will be subject to adjustment for the following considerations:

Delivery Point – Applicable transmission service costs will be applied in order to capture the incremental cost of delivering energy to PGE. These costs include wheeling, losses, and required ancillary services as prescribed in applicable tariffs, as well as any incremental costs for transmission or distribution system improvements necessary to deliver the energy to PGE.

However, for Bids where the Bidder has secured and is paying for point-to-point transmission services for delivery from the generation facility to an acceptable delivery point and the offer contains all applicable service costs identified above, no other transmission costs for those point-to-point services will be applied.

Interconnection – Applicable interconnection costs will be applied in order to capture the identified interconnection upgrade costs identified in a System Impact Study and updated following completion of an Interconnection Facility Study.

However, for Bids where the Bidder has secured an interconnection agreement and included the appropriate interconnection costs into the Bid price, no other interconnection costs will be applied.

PGE line loss – All bids, regardless of their point of interconnection, will be applied a generic line loss consistent with PGE's OATT Schedule 11.

Ancillary Services – If ancillary services are not included in product pricing, Bids will, at a minimum, be adjusted to account for ancillary services (where applicable) to meet control area operations and transmission provider requirements.

Bidders shall provide a comprehensive list of all ancillary services they are planning to provide in delivering the power product to the point-of-delivery. To the extent that any of these required ancillary services are not being supplied by the Bidder, PGE will, for scoring purposes, adjust the price provided by the Bidder to reflect the cost of acquiring additional ancillary services required. As such, all off-system utility owned resources will be assigned tariffed transmission and integration costs to deliver to PGE's system using 60 minute schedules. Price adjustments will be consistent with tariffed rates or PGE study results consistent with IRP methodology.

Owner's Costs –

During PGE's initial offer analysis, PGE will assign generic owner's costs to all utility-ownership resources. These costs reflect estimated PGE project management, execution, oversight, and integration costs, as applicable.

Operations and Maintenance-

Utility-ownership Bids are required to detail expected operations and maintenance costs and provide quotes or contracts for long-term maintenance agreements, if available. If the long-term maintenance agreement costs are not provided PGE will compare Bidder supplied O&M costs to the estimated generic O&M costs for like resource in the most recently published IRP. Should Bidder's expected costs significantly differ from the generic estimates, Bidders will be asked to further substantiate their O&M costs. Should PGE find Bidder evidence inadequate, PGE will instead apply generic O&M costs from the most recently published IRP.

Performance Assurances -

PGE retains the right to adjust the Bid price to include performance assurance costs should the Bidder take exception to and redline pre and post COD performance assurances identified in PGE's Form Contracts.

Tax Credit Carrying Costs –

For those resources eligible for federal tax credits and bid a utility-ownership proposal, PGE will evaluate PGE's customer costs associated with PGE's utilization of the incremental tax credits. PGE intends to pass the revenue requirement benefit of the tax credits to customers on an as-generated basis for PTCs and over the life of the asset – due to normalization rules – for ITCs. To the extent that PGE cannot utilize a tax credit on its federal return in the same year it is credited to customers, PGE will incur a carrying cost. The ongoing carrying

cost of forecasted incremental tax credit carrying costs will be assigned to the applicable Bids.

8.6 Detailed Offer Price Scoring

Following the quantification of offer costs and benefits, including any necessary offer price adjustments described above, each offer's component cost and benefits will be converted to a cost to benefit price score ratio. Real-levelized offer costs, divided by the equivalent real-levelized benefits value (incorporating energy, capacity, and flexibility benefits) will be the basis for the offer's price ratio. The 600 points associated with the price scoring section will be allocated on a scaled basis, with the lowest price ratio offer receiving 600 Points.

8.7 Offer Price Screen

Consistent with PGE's 2016 IRP Addendum, PGE requires all Bids to pass a cost-containment screen in order to be considered for the short list. The cost containment screen requires Bids to be cost-effective under Reference Case conditions considering only the resource's forecasted energy and capacity values.

PGE's cost-containment screen compares the levelized cost of a renewable resource to the levelized energy, capacity and flexibility value of the renewable resource. To measure levelized costs, PGE will annuitize the present value revenue requirement of the proposed resource. To measure levelized value, PGE will first calculate the energy value of the proposed resource using resource specific generation profiles. Because each resource occupies a unique location with a different generating technology, each resource will be assigned a specific energy value in each year of operation using the hourly forecasted energy price under Reference Case conditions. The resource's levelized energy value reflects the annuitized present value of the resource's generated energy. Each resource will also have a calculated capacity value that reflects the product of the resource's capacity contribution, as calculated using the RECAP methodology, and the avoided costs associated with a generic capacity resource. The levelized capacity value reflects the annuitized present value of the resource's avoided generic capacity costs. Each resource will also have a calculated flexibility value that reflects the product of the resource's flexible range and estimated flexibility benefit calculated using ROM and further detailed in Appendix H. The resource's levelized flexibility value reflects the annuitized present value of the resource's annual flexible value. PGE's RFP price screen is consistent with the acknowledged 2016 IRP Addendum and ensures that the levelized energy, capacity and flexibility value of near-term renewable additions exceed the levelized cost of the associated resource.

The cost-containment screen will be unique for each resource evaluated by PGE. The screen will elevate resources that provide more value to PGE customers due to the resource's geographic diversity. For this reason it is possible that a lower priced resource does not pass the economic screen, while a higher priced resource passes the economic screen due to increased resource value (e.g., higher capacity contribution or more valuable energy production profile).

8.8 Non-Price Factors

8.8.1 Project Development Criteria

This category scores the likelihood that a project supporting a Bid will be placed in commercial service. The evaluation criteria for this category generally address construction and development risks associated with the completion of projects that are not yet in commercial operation, and which are necessary to support Bids. Plants that are already operating or are sufficiently advanced in construction may be deemed to earn the maximum possible score in this category.

For projects that are less advanced, some of the characteristics we will consider in our scoring are:

- Status of required permits, licenses and environmental studies.
- Project team experience.
- Method and status of project financing.
- Site Control.
- Cost certainty.
 - Status of equipment quotes.
 - Sale or PPA price structure.
- Project life and extension options. Bids that allow PGE to extend the life of a resource beyond the initial term, or Bids allowing for PGE to continue facility operation, provide opportunities for PGE to lower long term energy supply costs and risks.

8.8.2 Project Physical Characteristics

This category captures the physical characteristic risks of the Bid products. The evaluation criteria for this category generally address physical and operational risks associated with the production and delivery of power to PGE. Some of the characteristics that we will consider in our scoring are:

- Delivery points (as discussed above), includes interconnection, transmission, and curtailment.

- Remedial action schemes (RAS) – projects that PGE is able to use as a credit for its obligation to support AC intertie RAS will receive additional points. ~~Projects subject to a RAS obligation outside of the AC intertie will have points subtracted.~~
- Engineering reliability characteristics.
- Resource fuel availability confidence.

8.8.3 Project Performance Certainty

This category scores how well the Bid product matches PGE's system operating needs. The evaluation criteria for this category generally address price risk, performance and supply portfolio concentration risks, along with the benefits of operational flexibility. Some of the characteristics that we will consider in our scoring are:

- Quality of power.
 - Firmness of energy.
 - Scheduling period commitment.
- Contract/resource start date
- Performance guarantees and compensation for failure to achieve them.
- Deviations from product term sheet.

8.8.4 Credit Evaluation

This category scores the creditworthiness of the Bidder. We will take into account the following credit considerations in our scoring:

- Debt and equity ratings.
- Financial ratio analysis.
- Bond risk.
- Tangible net worth.
- Corporate structure.

9 Final Short List Determination

For the short list, PGE intends to include Bids representing a minimum of 150% of the renewable energy requested in this RFP, and at least 150% non-Benchmark bid, subject to receipt of a sufficient quantity and quality of Bids. Once the short list has been developed pursuant to the scoring criteria outlined above, PGE will refine bid evaluations in the following areas to determine the final short list:

Scoring Sensitivity Analysis – PGE will incorporate a price/non-price sensitivity analysis into its shortlist evaluation to demonstrate the reasonableness of the proposed scoring weighting of 60 price/40 non-price. PGE will study how the ranking of its short list would be affected by 70/30 and 50/50 price, non-price weighting sensitivities.

Review of Capacity Factor Assumptions – PGE will contract with an independent third party expert to review capacity factor assumptions for intermittent resources.

Security for Performance Requirements – PGE will perform a detailed credit risk evaluation of all Bidders on the shortlist, and will refine performance assurance requirements during this stage. However, performance assurance will only be required at the execution of a definitive agreement with a successful Bidder.

Permitting Requirements - Bidders must prepare a detailed plan that lists all required site-specific permits and have a plan or schedule for obtaining all permits and licenses. PGE will assess the probability of successfully completing the permitting process as part of its evaluation. If at any point it is determined that a project cannot obtain the required permits as designed, PGE reserves the right to reject the Bid. A complete list of the permitting threshold requirements can be found in Appendix H.

Portfolio Analysis – PGE will also take overall system costs and risks into account in its selection of final short list Bids. Portfolio modeling will provide PGE with additional information regarding the cost and risk profile of all offers considered. Portfolio analysis methods, consistent with the 2016 IRP, will demonstrate how resources perform together, on a cost and risk basis, due to their specific size, term, portfolio capacity value, and portfolio flexibility value.

Portfolio analysis begins with the assembly of portfolios evaluating many different unique combinations of resources. The candidate portfolios will be developed through multiple techniques including 1) portfolio size optimization, 2) portfolio net-cost optimization, 3) cost-screened resource permutations, and 4) additional analyst selected portfolios (if necessary).

Each portfolio will include sufficient resources to meet the targeted renewable volume in each year. The unique portfolio capacity value for each portfolio will be calculated using the IRP's RECAP methodology. The portfolio capacity calculation will recognize the resources' capacity diversity included in each portfolio. Any portfolio whose forecasted energy volume does not meet the targeted renewable volume will also include a specified fill resource ('fill'). Including a fill resource ensures the portfolio incorporates the total cost necessary to meet the long-term renewable target. The specified fill resource will be sized to fulfill the energy target in each year of the analysis.

Portfolio analysis will test combinations of resources across multiple futures. The futures will evaluate portfolio exposure to multiple scenarios of gas prices, hydro scenarios and carbon costs. For each portfolio, the relevant resources' variable costs and energy benefits will be calculated in AURORA under multiple economic and hydro futures. The variable net income for each resource will be reported annually for all futures.

A unique portfolio flexibility value will be calculated using the portfolio flexibility tool. The portfolio flexibility calculation will recognize the flexibility diversity included in each portfolio.

For each portfolio, the portfolio flexibility value and the relevant resources' net incomes will be subtracted from the relevant resources' fixed costs to calculate the portfolio's total net cost for each future.

For each portfolio, the total present value net cost for years 2018 through 2050 under each future will be calculated to estimate the cost impact of the additions on the PGE system. This expected cost impact will be measured as the total portfolio net present value of revenue requirement (NPVRR) under reference case conditions. Portfolio risk will be evaluated using the standard deviation of future results. Portfolios will be ranked according to a blended cost and risk metric - based upon 50% on reference case expected cost and 50% based upon the standard deviation of portfolio costs. In addition, portfolio risk will be characterized using additional IRP risk metrics including severity, variability, and durability as described in the 2016 IRP Chapter 11.

Portfolio results will be stress tested under multiple energy targets and planning horizons. Specifically, PGE will test a 2018 through 2040 planning horizon sensitivity in addition to a 2018 through 2050 base planning horizon.

Portfolio analysis performance will be based on the inclusion of specific offers across multiple top-performing portfolios. Those resources that appear most

frequently in top-performing portfolios are those that best reduce portfolio cost and economic risks. However, non-price factors are not evaluated or considered in portfolio analysis.

Accounting – The accounting and tax implications of PPA’s or asset acquisitions can be complex and the financial statement impacts may vary based on the facts and circumstances of each contract. For example, PPA contracts are commonly accounted for as operating or capital leases (or finance lease)¹⁰, capital tax leases¹¹, or variable interest entities (VIE)¹². PGE will not accept proposals that would be subject to VIE treatment, and PGE may require Bidders to make certain representations that all supporting information necessary for PGE to make this determination has been provided by the Bidder.

In order for PGE to properly evaluate and select Bids, PGE will require Bidders to supply adequate information necessary to analyze appropriate accounting treatment and its effects on PGE’s financial statements. Examples of such information may include: identification of the asset for which the contract is dependent upon, percentage of output to be obtained by PGE from the asset, pricing (fixed vs. variable), decision-making surrounding design of the asset, length of term of PPA (including proposed extensions), useful life of the asset with supporting documentation, fair market value of the underlying asset, projected cash flows through the life of the underlying asset, executory costs, non-executory costs, tax attributes (e.g. investment tax credits, production tax credits, etc.), minimum production guarantees, debt associated with the underlying asset, financial data contained in the Bidder’s financial statements, among others.

Costs Associated with Direct and Imputed Debt - If the contract is deemed to be an operating or capital (finance) lease, PGE would be required to capitalize on its balance sheet an asset equal to the present value of the non-executory minimum lease payments (or fair market value of the asset, whichever is lower) with a corresponding lease obligation liability. This is referred to as direct debt.

If the contract is deemed to be an executory contract and no amounts are recorded on PGE’s balance sheet, credit rating agencies will impute an amount of debt associated with the underlying PPA using a pre-determined methodology.

¹⁰ As defined by Accounting Standards Codification (ASC) 840 and 842.

¹¹ As defined by IRS Code Section 7701(e).

¹² As defined by ASC 810.

This amount of imputed debt would be incorporated into the determination of credit ratings for PGE. This is referred to as imputed debt.

PGE may take into consideration the impacts of direct and imputed debt into its evaluation and selection process.

10 Post-Bid Negotiations

PGE's goal is to conduct an efficient post-bid negotiation process. PGE will initiate negotiations with a short list of Bidders whose proposals rank highest in the evaluation process and whose proposed transactions, PGE believes in its sole discretion, offer value to PGE's energy supply portfolio for customers, and have a reasonable likelihood of being executed and performed.

The number of Bidders with whom negotiations will be held will depend upon the Bids received, the size or quantity of the highest ranked Bids as compared to our resource needs, the results of the scoring process, ability to access federal tax benefits and other factors described more fully in the sections "Bid Evaluation Process", "Criteria Used for Scoring Qualified Bids", and "Final Short List Determination." Selection for the final short-list and initiation of negotiations do not constitute a winning Bid.

PGE shall have no obligation to enter into a definitive agreement with any Bidder to this RFP and, at its sole discretion, may terminate negotiations with any Bidder at any time without liability or obligation to any Bidder. Whether or not, and until, negotiations with Bidders produce final and fully executed contracts satisfactory to PGE for its resource targets under the RFP, PGE reserves the right to pursue any and all other resource options available to it.

11 Appendix A - Power Purchase Agreement

APPENDIX A

WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT

Between

Portland General Electric Company

And

[*Seller*]

APPENDIX A

Table of Contents

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION	7
1.1 Definitions.....	7
1.2 Rules of Interpretation	22
1.3 Technical Meanings	23
ARTICLE 2 CONTRACT TERM; DELIVERY PERIOD; PRICE; SALE OF FACILITY	23
2.1 Term; [Conditions Precedent].....	23
2.2 Test Energy	24
2.3 Delivery Period; Price and Adjustments.....	24
2.4 Notice of Sale of Facility	25
2.5 [Option to Purchase/Option to Extend Term].....	26
ARTICLE 3 FACILITY DEVELOPMENT, CONSTRUCTION AND OPERATION.....	26
3.1 Development and Construction of Facility.....	26
3.2 Facility Operations.....	31
3.3 Specified Amounts.....	32
3.4 Energy Delivery	32
3.5 Green Attributes Delivery.....	33
3.6 Carbon Emissions	34
3.7 PGE’s Purchase Obligations.....	34
3.8 Transmission and Scheduling of Energy	34
3.9 Measurement and Transfer of RECs.....	38
3.10 Access	38
3.11 Facility Remedial Action Scheme	38
ARTICLE 4 FORCE MAJEURE	38
4.1 Definition	38
4.2 Occurrence and Notice.....	40
4.3 Obligations	40
4.4 Right to Terminate	40
ARTICLE 5 EVENTS OF DEFAULT; REMEDIES	40
5.1 Events of Default	40

APPENDIX A

5.2 Declaration of an Early Termination Date and Calculation of Settlement
Amounts42

5.3 Termination Payment.....43

5.4 Notice of Payment of Termination Payment43

5.5 Disputes with Respect to Termination Payment.....43

5.6 Closeout Setoffs43

5.7 Suspension of Performance.....44

5.8 Post-Termination PURPA Status44

ARTICLE 6 REMEDIES FOR FAILURE TO DELIVER/RECEIVE.....44

6.1 Seller Failure to Deliver Specified Energy44

6.2 PGE’s Failure to Accept45

6.3 Duty to Mitigate.....46

6.4 Acknowledgement of the Parties46

6.5 Survival.....46

ARTICLE 7 PAYMENT AND NETTING46

7.1 Billing Period46

7.2 Timeliness of Payment.....46

7.3 Disputes and Adjustments of Invoices.....47

7.4 Netting of Payments.....47

7.5 Payment Obligation Absent Netting47

ARTICLE 8 LIMITATIONS47

8.1 Essential Purposes.....47

8.2 Exclusive Remedies48

8.3 Direct Damages.....48

8.4 No Consequential Damages48

8.5 Causes Disregarded.....48

8.6 Liquidated Damages48

ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS48

9.1 Pre-COD Security48

9.2 Delivery Period Security.....49

9.3 Grant of Security Interest/Remedies50

9.4 Step-In Rights50

9.6 Holding Performance Assurance52

APPENDIX A

9.7 Interest Rate on Cash Collateral52

9.8 Performance Assurance is Not a Limit on Seller’s Liability52

9.9 Waiver.....52

ARTICLE 10 GOVERNMENTAL CHARGES.....53

10.1 Cooperation.....53

10.2 Non-Sale Related Governmental Charges and Taxes53

10.3 Sale-related Governmental Charges and Taxes53

10.4 Indemnification53

ARTICLE 11 RATES AND TERMS BINDING; FERC STANDARD OF REVIEW.....53

11.1 Mobile-Sierra Doctrine53

ARTICLE 12 REPRESENTATIONS AND WARRANTIES; INDEMNITY54

12.1 Representations and Warranties.....54

12.2 Indemnity55

12.3 Additional Representations and Warranties of Seller.....55

12.4 No Other Representations or Warranties56

ARTICLE 13 Insurance57

13.1 Insurance57

13.2 Seller to Provide Certificate of Insurance.....57

13.3 Seller to Notify PGE of Loss of Coverage.....57

ARTICLE 14 TITLE AND RISK OF LOSS58

ARTICLE 15 ASSIGNMENT; BINDING EFFECT58

15.1 Assignment58

15.2 Change in Control.....58

15.3 Binding Effect.....58

ARTICLE 16 GOVERNING LAW58

ARTICLE 17 RECORDS AND AUDIT59

17.1 Records59

17.2 Audit Rights59

ARTICLE 18 DISPUTE RESOLUTION59

18.1 Referral to Senior Management59

18.2 Mediation59

18.3 Legal Action.....60

18.4 Waiver of Jury Trial.....60

APPENDIX A

18.5 Attorneys’ Fees61

18.6 Survival61

ARTICLE 19 GENERAL PROVISIONS61

19.1 Entire Agreement61

19.2 Joint Efforts.....61

19.3 Amendments in Writing.....61

19.4 No Third Party Beneficiaries61

19.5 Non-Waiver.....61

19.6 Severability62

19.7 Survival62

19.8 Bankruptcy Matters.....62

19.9 Relationships of Parties.....62

19.10 Headings62

19.11 Consolidation of Variable Interest Entities.....63

ARTICLE 20 CONFIDENTIALITY63

ARTICLE 21 NOTICES AND COUNTERPARTS.....63

21.1 Notices63

21.2 Counterparts64

Exhibits

- Exhibit A Notices**
- Exhibit B Fixed Price**
- Exhibit C Specified Amount**
- Exhibit D Facility Description**
- Exhibit E Facility Documents**
- Exhibit F Site**
- Exhibit G Start-Up Testing**
- Exhibit H Intentionally Left Blank**
- Exhibit I Examples**

APPENDIX A

Exhibit J	Long-Term Transmission Plan
Exhibit K	Litigation
Exhibit L	Forecast Methodology
Exhibit M	Optimal Conditions/Nameplate Capacity
Exhibit N	Operational Hours and Mechanical Availability Methodology

APPENDIX A

This WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT (“Agreement”) is entered into effective as of the _____ day of _____, 201_ (“Effective Date”), by and between [Seller], a [STATE] limited liability company (“Seller”), and Portland General Electric Company, an Oregon corporation (“PGE”). PGE and Seller are also referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions.

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

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

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

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

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

1.1.5 “As-Available Energy” means any Firm Energy, measured in MWh, scheduled and delivered from the Facility to the Delivery Point during a month that exceeds the Specified Amounts for such month.

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

APPENDIX A

1.1.7 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not dismissed after one hundred and eighty (180) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

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

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

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

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

- (i) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that the Nameplate Capacity of the Facility is able

APPENDIX A

to generate electric power reliably in amounts and quality expected by this Agreement and in accordance with all other terms and conditions hereof;

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

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

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

(v) PGE has received confirmation from Seller and the applicable Transmission Provider(s) that Seller has obtained for the Facility long-term, firm, point-to-point transmission service agreement with roll over rights, sufficient to enable Energy to be transmitted from the Facility and delivered to the Delivery Point at no less than the Nameplate Capacity. ***[Note to bidders: Bidders may propose alternative transmission service arrangements. The quality of the proposed transmission service will be considered in PGE's evaluation of the bid.]***

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

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

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

Seller shall provide written notice to PGE stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the certificates described above. PGE shall have ten (10) days after receipt of Seller's notice either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PGE reasonably believes has not been satisfied. If, within such ten (10) day period, PGE does not

APPENDIX A

respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PGE notifies Seller within such ten (10) day period that PGE reasonably believes the Facility has not achieved Commercial Operation, the Commercial Operation Date shall not occur until Seller has addressed the concerns stated in PGE's notice to the mutual satisfaction of both Parties.

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

1.1.14 "Contract Termination Damages" has the meaning set forth in Section 3.1.12.

1.1.15 "Contract Year" means any consecutive twelve (12) month period during the Term, commencing at 00:00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00:00 hours on the last day of such twelve (12) month period.

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

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

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

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

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

1.1.21 "Delay Damages" for any given day are equal to (a) the Nameplate Capacity, expressed in kW, multiplied by (b) \$200 per kW divided by 365, but in no event less than [\$___] per day.

APPENDIX A

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

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

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

1.1.25 “Delivery Point” means the BPAT.PGE point of delivery on the BPA side of the BPA-PGE interface.

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

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

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

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

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

1.1.31 “Energy” means all electric energy, expressed in MWh, generated by the Facility and scheduled to PGE at the Delivery Point as required by this Agreement.

1.1.32 “Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Facility, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as the carbon content of the Energy generated by the Facility and REC Reporting Rights. Environmental Attributes do not include (i) production tax credits associated with the construction or operation of the Facility and other financial incentives

APPENDIX A

in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (ii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

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

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

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

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

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

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

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

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

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

APPENDIX A

1.1.42 “Firm Energy” means Energy that is to be scheduled, delivered, sold, received and purchased on an uninterrupted basis. Firm Energy shall be scheduled in hourly increments and delivered on long-term firm transmission from the Facility to the Delivery Point, in accordance with the provisions in Article Three. Neither Party shall be relieved of its obligations to sell and deliver or to receive and purchase Firm Energy except for any period during which such performance is prevented or delayed by Force Majeure or as otherwise expressly allowed herein.

1.1.43 “Fixed Price” means the respective monthly On-Peak and Off-Peak prices per MWh to be paid by PGE to Seller for Specified Energy scheduled and delivered during each month of the Delivery Period as set forth in the price schedule attached to this Agreement as Exhibit B.

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

1.1.45 “Force Majeure” is defined in Section 4.1.

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

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

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

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

1.1.50 “Guaranteed Commercial Operation Date” means the date that is ninety (90) days after the Scheduled Commercial Operation Date.

1.1.51 “Guarantor” means, with respect to Seller, [_____].

1.1.52 “Guaranty” means an instrument or agreement pursuant to which the Guarantor guarantees the performance of each and all of the obligations of Seller, which instrument or agreement is reasonably acceptable in form and substance to PGE.

APPENDIX A

1.1.53 “Guaranty Default” means with respect to a Guaranty or the Guarantor thereunder, the occurrence of any of the following events: (i) any representation or warranty made or deemed to be made or repeated by such Guarantor in connection with such Guaranty shall be false or misleading in any material respect when made or when deemed made or repeated; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) the failure of such Guarantor to comply with or timely perform any other material covenant or obligation set forth in such Guaranty if such failure is not capable of remedy or shall not be remedied in accordance with the terms and conditions of such Guaranty; (iv) a Merger Event occurs with respect to such Guarantor; (v) such Guaranty shall expire or terminate, or shall fail or cease to be in full force and effect and enforceable in accordance with its terms against such Guarantor, prior to the satisfaction of all obligations of the guaranteed Party under this Agreement, in any such case without replacement; (vi) such Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, its Guaranty, or (vii) such Guarantor becomes Bankrupt; provided, however, that no Guaranty Default shall occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to Seller in accordance with the terms of this Agreement.

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

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

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

1.1.57 “Initial Specified Amounts” means the Specified Amounts set forth on Exhibit C as of the Effective Date.

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

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

1.1.60 “Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the Transmission System,

APPENDIX A

including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

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

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

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

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

1.1.65 “Licensed Professional Engineer” means a Person proposed by Seller and acceptable to PGE in its reasonable judgment who (a) to the extent mandated by Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of PGE, services previously or currently being rendered to Seller or its members or

APPENDIX A

Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or seller of any equipment installed in the Facility.

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

1.1.67 “Market Index Settlement Prices” means the production-weighted sum of the Market Index Price for each hour during the delivery month. In the event of PGE’s participation in a different market design (e.g., full ISO participation), the respective five (5) minute pricing interval for the Delivery Point will be used to calculate the Market Index Settlement Prices. Exhibit I sets forth an accurate and indicative example of a Market Index Settlement Price calculation under certain stated assumptions.

1.1.68 “Market Price Index” means the EIM Locational Marginal Price associated with the Pricing Node or Aggregate Pricing Node for the Delivery Point.

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

1.1.70 “Maximum Annual Volume” means the maximum annual production of Specified Energy equal to [___] MWh (the annual total of the Initial Specified Amounts) for each calendar year during the Delivery Period, prorated for any partial calendar years during the Term.

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

APPENDIX A

of such Party or Affiliate immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.72 “Mid-Columbia” means an area which includes points at any of the switchyards associated with the following four hydro projects: Rocky Reach, Rock Island, Wanapum and Priest Rapids. These switchyards include: Rocky Reach, Rock Island, Wanapum, McKenzie, Valhalla, Columbia, Midway and Vantage.

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

1.1.74 “Minimum Annual Volume” means an annual production of Specified Energy equal to [___] MWh (85% of the Initial Specified Amounts) for all calendar years during the Delivery Period, prorated for partial calendar years. ***[Note to bidders: For use with baseload facilities.]***

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

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

1.1.77 “MW” means megawatt.

1.1.78 “MWh” means megawatt hour.

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

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

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

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

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

APPENDIX A

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

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

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

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

1.1.88 “Performance Assurance” means collateral in the form of cash, Letter(s) of Credit, or a Guaranty.

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

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

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

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

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

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

1.1.95 “Product” means, each and together, Specified Energy, Un-Specified Energy, and As-Available Energy to be scheduled, delivered and sold by Seller and to be received and purchased by PGE pursuant to this Agreement, together with all associated Environmental Attributes (including Bundled RECs) and Capacity Attributes.

1.1.96 “Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices,

APPENDIX A

reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility's equipment sellers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the Western Interconnection, during the relevant period, as described in the immediately preceding sentence.

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

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

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

1.1.100 “Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are (i) delivered to PGE bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [_____], and (D) achieves commercial operation after the Commercial Operation Date, or (ii) RECs from As-Available Energy that were not conveyed by Seller to PGE under this Agreement, if any, or (iii) a combination thereof.

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

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

1.1.103 “REC Reporting Rights” are the right of a buyer to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at such buyer's discretion, and include

APPENDIX A

without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

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

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

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

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

1.1.108 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by PGE in breach of PGE’s obligations under this Agreement, deducting from such proceeds any (i) Costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers. “Costs” shall not include any negative price amounts for the Product, penalties, ratcheted demand or similar charges. In no event shall the Sales Price be less than zero dollars (\$0.00).

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

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

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

1.1.112 “Scheduling Period” means the hourly scheduling period during which Energy is Scheduled to the Delivery Point in accordance with the tariff and business practices of the EIM.

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

APPENDIX A

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

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

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

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

1.1.118 “Specified Amount(s)” means the amount of Firm Energy generated by the Facility that Seller is required to deliver to PGE at the Delivery Point for each monthly On-Peak period and for each monthly Off-Peak period during the Delivery Period. The Specified Amounts for each month during the following calendar year shall be established by Seller pursuant to Section 3.3. ***[Note to bidders: For baseload facilities, the Specified Amount(s) will be based on daily On/Off Peak Hours.]***

1.1.119 “Specified Energy” means Firm Energy simultaneously bundled with the Facility’s associated Environmental Attributes, including Bundled RECs, as generated and metered net of all Facility losses and station service at the Facility Meter, scheduled in hourly blocks, and delivered to the Delivery Point, up to the Specified Amount according the Scheduling Procedure in Section 3.8. Each MWh of Specified Energy delivered shall include one (1) Bundled REC.

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

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

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

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

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

APPENDIX A

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

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

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

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

1.1.129 “Un-Specified Energy” means that portion of Firm Energy, measured in MWh, scheduled and delivered to Seller that was not generated by the Facility but is delivered to PGE as a result of Ancillary Services provided by a Balancing Authority Area or Transmission Provider, or other entity, as applicable.

1.1.130 “USD” means United States Dollars.

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

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

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

1.2 Rules of Interpretation.

Unless the context otherwise requires:

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

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

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

APPENDIX A

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

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

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

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

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

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

1.3 Technical Meanings.

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

ARTICLE 2

CONTRACT TERM; DELIVERY PERIOD; PRICE; SALE OF FACILITY

2.1 Term; [Conditions Precedent].

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

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

APPENDIX A

(a) [Project Specific Conditions: TBD]; and

(b) All authorizations, approvals and consents of all Persons, including PGE's Board of Directors, that are required in connection with the execution, delivery, and performance of this Agreement have been received by PGE; and

(c) All required regulatory approvals have been made and obtained.

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

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

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

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

2.3 Delivery Period; Price and Adjustments.

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

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

APPENDIX A

(a) Subject to subpart (d) below, the Specified Energy delivered during the calendar month, up to the Specified Amount for such month, multiplied by the applicable Fixed Price for On-Peak hours and for Off-Peak hours; and

(b) The As-Available Energy delivered during the calendar month multiplied by the Market Index Settlement Price for the calendar month; and

(c) The Un-Specified Energy delivered during the calendar month multiplied by the Market Index Price for each hour that the Un-Specified Energy was delivered.

(d) For each hour that the Market Index Price is negative, the sum of the Delivered Energy Quantity less Un-Specified Energy, for each applicable hour, multiplied by the Market Index Price.

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

2.4 Notice of Sale of Facility.

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

APPENDIX A

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

2.5 [Option to Purchase/Option to Extend Term]

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

ARTICLE 3 FACILITY DEVELOPMENT, CONSTRUCTION AND OPERATION

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

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

(a) Seller’s proposed Level 1 schedule, including significant Facility activities, milestones and deliverables.

(b) A list of permits and approvals required for the construction and operation of the Facility.

(c) Facility layout drawings, including all major equipment and balance of plant equipment.

(d) An electrical single-line diagram for the Facility.

(e) 12x24 net energy profile and, if available, 8760 net energy production estimate.

3.1.2 Intentionally Left Blank.

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

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

APPENDIX A

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

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

3.1.7 Monthly Reports. After the Effective Date, Seller shall provide PGE with monthly written reports regarding Seller's progress in completing the construction, testing and interconnection of the Facility and shall, at PGE's request, meet with PGE's representatives to discuss such progress.

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

3.1.9 Milestones.

(a) Seller shall design, construct, own, operate, repair, and maintain the Facility in accordance and consistent with the Facility Documents and Prudent Electric Industry Practice so as to ensure the continuous ability of the Facility to meet Seller's obligations to PGE under this Agreement. Seller shall exercise its best efforts, consistent with Prudent Electric Industry Practice, to complete development of the Facility in accordance with the dates for each Milestones set forth in this Section 3.1.9 (each, a "Milestone" and collectively "Milestones"). If Seller fails to meet a Milestone in any material respect by the date on which this Section 3.1.9 requires such Milestone to be achieved, Seller shall deliver to PGE the following no more than ten (10) Business Days after receiving notice from PGE: (i) further information concerning the status of Facility development; (ii) a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone(s), including a description of the remedial actions that Seller agrees to undertake to complete the Facility by the Commercial Operation Date; and (iii) further assurances that the Facility will be completed consistent with the terms of this Agreement.

APPENDIX A

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

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

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

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

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

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

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

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

APPENDIX A

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

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

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

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

(d) If any Milestone (other than a Critical Milestone identified in Section 3.1.9(e)) is not completed on or before the deadline specified for that Milestone in this Section 3.1.9, Seller shall (i) inform PGE of a revised projected date for the achievement of the Milestone, (ii) inform PGE of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide PGE with a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone deadline and describing the remedial actions that the Seller agrees to undertake to ensure the achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date and in any event no later than the Guaranteed Commercial Operation Date. If (1) Seller fails to submit such a report and remedial action plan within 30 days after a Milestone deadline is missed, or (2) Seller timely submits the required report and remedial action plan but thereafter fails to implement the remedial action plan with diligence, or (3) PGE reasonably concludes based on the report and proposed remedial action plan that the Facility is unlikely to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, a Seller Event of Default shall be deemed to have occurred.

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

APPENDIX A

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

3.1.11 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation.

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

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

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

3.1.15 Right of First Offer.

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

APPENDIX A

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

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

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

3.2 Facility Operations.

3.2.1 Commitment. Seller hereby commits one hundred percent (100%) of the Facility Output to PGE as provided under this Agreement, except only in the limited cases where Seller is required to deliver Facility Output to the provider of integration services.

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

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

3.2.4 Facility Meter Inspection and Correction. PGE shall have the right to periodically inspect, test, repair and replace the Facility Meter, without PGE assuming any obligations under the Interconnection Agreement. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Facility Meter rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the Facility Meter shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

APPENDIX A

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

3.2.6 Scheduled Maintenance. Seller shall notify PGE, on or before September 1 preceding the Commercial Operation Date and on or before September 1 of each subsequent calendar year, of the Facility's scheduled maintenance for the next calendar year, and shall use commercially reasonable efforts to plan scheduled maintenance (i) to maximize the productive output of the Facility and (ii) not to occur between July and September or between December and February.

3.3 Specified Amounts. On or before September 1 following the Commercial Operation Date and on or before September 1 of each subsequent year during the Delivery Period, Seller shall provide PGE with an updated version of Exhibit C establishing the Specified Amounts for each month during the following calendar year (except for any months outside the Delivery Period).

3.3.1 For the first three (3) years of the Delivery Period, Seller's designated Specified Amounts for each month shall be consistent with [*for solar facilities: a 50% probability of exceedance of forecasted value for such month (based on PV-Syst or equivalent)*] [*for wind facilities: generation profile associated with a 50% probability of exceedance forecast created by an independent third party based on 5 years of meteorological tower data*].

3.3.2 Beginning with Specified Amounts updated on September 1, 20[____] for the [*for solar facilities: fourth (4th)*] [*for wind facilities: sixth (6th)*] year of the Delivery Period, and for each year thereafter, the Specified Amounts for each month shall be consistent with [*for solar facilities: the Project's demonstrated 3-year rolling average generating output for such month*] [*for wind facilities: the Project's demonstrated 5-year rolling average generating output for such month*]. In the event that the Parties mutually agree that the generating output in any particular month or months during the rolling [3-year] [5-year] period was caused by materially unusual circumstances, the Parties may agree to exclude such month or months from the rolling [three (3) year] [five (5) year] calculation of generating output. The Parties agree that the intent of using the [three (3) year] [five (5) year] rolling output is to develop generation forecasts that accurately reflect the actual generating characteristics of the Facility.

3.4 Energy Delivery. Seller shall schedule and deliver the Product to PGE at the Delivery Point, commencing on [*specify date for existing Facility*] [*for new Facility: the Commercial Operation Date*] and continuing through the end of the Delivery Period, subject to the terms and conditions herein.

3.4.1 Seller shall provide PGE with (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) [*within PGE's Balancing Authority Area: a*

APPENDIX A

rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and fifteen (15) minutes respectively, for the next 24 hours], and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day (“Generation Forecast”). Each Generation Forecast shall be performed by the Forecasting Agent. The Forecasting Agent shall utilize methodology consistent that the requirements set forth in Exhibit L. At PGE’s request, Seller will cause the Forecasting Agent to provide PGE with an Application Program Interface from which PGE can access raw forecasting files. The Forecasting Agent and PGE shall have real time access to information and forecasts concerning the Facility’s availability status.

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

3.4.3 Seller shall make reasonable efforts to minimize the delivery of Un-Specified Energy to PGE.

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

3.4.5 Seller shall deliver to PGE a quantity of Specified Energy for each monthly On-Peak and Off-Peak period during the Delivery Period in an amount equal to Specified Amounts.

3.4.6 Seller shall be responsible for any costs or charges imposed on or associated with the Product or its receipt provided such costs or charges are either (a) imposed on the Seller’s side of the Delivery Point, (b) as a result of the schedule changes, or (c) Seller’s actions.

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

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

APPENDIX A

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

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

3.5.3 PGE and Seller may mutually agree during the Delivery Period for the purchase and conveyance of Environmental Attributes, including Bundled RECs, associated with any As-Available Energy delivered by Seller to PGE.

3.5.4 Seller shall, by written notice to PGE, offer to sell to PGE any RECs generated by the Facility that are not purchased by or conveyed to PGE pursuant to this Agreement. PGE shall have thirty (30) days in which to accept or decline the offer by notice to Seller. If PGE does not respond within the thirty (30) day period, it shall be deemed to have declined the offer. If PGE declines the offer, Seller may then sell such REC's to a third-party under terms and conditions (including price) no more favorable to the third party than those offered to PGE.

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

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

3.8 Transmission and Scheduling of Energy.

3.8.1 Transmission Capability to PGE's Sink Point. Within sixty (60) Business Days after the Effective Date, PGE will submit a request to designate the Facility as a Network Resource, as defined in Section 1.59 of PGE's Open Access

APPENDIX A

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

3.8.2 Transmission Service Agreement. No later than [__] days after Effective Date, Seller shall deliver to PGE copies of transmission service agreements with associated service tables between Seller and its Transmission Provider for transmission service between the Facility's point of interconnection and the Delivery Point for the entire Net Available Capacity during the entire Delivery Period in the form of either: i) a fully executed Precedent Transmission Service Agreement for Long-Term Firm Point-To-Point Service, or ii) a fully executed copy of a Long-Term Firm Point-To-Point Service Transmission Service Agreement, in each case commencing no later than the Commercial Operation Date. Seller may not satisfy the requirements of this Section 3.8.2 by acquiring transmission rights currently held by a third party, or its affiliates, engaged in the development of a Qualifying Facility if such party or its affiliates has contractual obligations to PGE for the delivery of energy under PGE's Tariff Schedule 201 ~~or Schedule 202~~, unless it can be reasonably determined that the transmission rights are in excess of such third party's contractual obligations to PGE.

Seller shall pay for and maintain Long-Term Firm Point-to-Point Transmission Service (as such term is defined in its Transmission Provider's Open Access Transmission Tariff that is posted on OASIS) for delivery of Energy from the Facility's point of interconnection to the Delivery Point for the entire Net Available Capacity during the entire Delivery Period, commencing on the Commercial Operation Date. Seller shall be responsible for all transmission costs for delivery of the Product to the Delivery Point, including but not limited to all Ancillary Services costs and integration service costs required by the Transmission Provider(s). Seller's transmission agreement shall have a term of no less than five (5) years. In the event Seller's transmission agreement expires prior to the end of the Delivery Period and is not eligible for reservation priority rights, Seller shall acquire replacement transmission agreement(s) consistent with the requirements set forth in this Section 3.8.2. A copy of Seller's long-term transmission plan, as of the Effective Date, is attached to this Agreement as Exhibit J. Within five (5)

APPENDIX A

days of execution of any new or replacement Transmission Service Agreement(s), Seller shall provide PGE with a copy of Seller's transmission agreement and generation interconnection agreements, and the Parties shall amend Exhibit J to include copies of such agreements.

3.8.3 Seller to Designate Forecasting and Scheduling Agents. At least ten (10) days before it begins to Schedule Test Energy under this Agreement, Seller shall engage at its expense a third-party Scheduling Agent (the "Scheduling Agent") and a third-party forecasting agent (the "Forecasting Agent"), subject in each case to PGE's prior approval. The Scheduling Agent shall perform Seller's pre-scheduling and Scheduling obligations under this Section 3.8.3 based exclusively on forecasts supplied by the Forecasting Agent.

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

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

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

(ii) Seller shall schedule the Energy by submitting a NERC e-Tag ("e-Tags") prior to 1:00 p.m. PPT of the applicable WECC Pre-Scheduling Day for all hours of the applicable delivery day(s); and

(iii) Seller shall schedule the Energy with e-Tags according to prevailing WECC Pre-scheduling provisions and protocols and the terms of this Agreement. Seller shall schedule the Facility as the identified e-Tag source. Seller may not net or otherwise combine schedules from resources other than the Facility, except as necessary for Ancillary Services, subject to the terms of this Agreement.

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

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

(i) communicate to PGE's Real-time Desk, as directed by PGE, its intent to adjust the Pre-Scheduled Energy no later than 120 minutes prior to the flow hour; and

APPENDIX A

(ii) submit and receive approval of e-Tag adjustment no later than sixty (60) minutes prior to the flow hour. Seller will make all NERC e-Tag adjustments. Seller's e-tag shall match the adjustment communicated to PGE pursuant to Section 3.8.4(c)(i). Seller shall be responsible for any costs, charges, or fees associated with deviations to the e-tag after sixty (60) minutes prior to the flow hour.

(d) In the event that the regional market design, Balancing Authority, Area, Reliability Entity or Regulatory Entity (e.g. PGE Transmission, BPA Transmission, WECC, NERC, Peak RC, FERC) causes PGE's scheduling practices to change after the Effective Date, PGE shall have the right but not the obligation to update the Scheduling Procedure by giving [__ (___)] days prior written notice to Seller of such update.

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

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

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

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

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

APPENDIX A

3.9 Measurement and Transfer of RECs.

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

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

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

ARTICLE 4 FORCE MAJEURE

4.1 Definition.

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

- (a) arises after the Effective Date,
- (b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,

APPENDIX A

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

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

4.2 Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Facility caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a Governmental Authority (other than in respect of or in relation to or resulting from Seller's non-compliance with Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work completed by a subcontractor of Seller on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Governmental Authority in respect of or in relation to or resulting from Seller's compliance or non-compliance with Laws; (ix) any failure by Seller to obtain and maintain any Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor of Seller or other personnel of Seller; (xi) loss of PGE's markets; (xii) PGE's inability economically to use or resell the Product purchased under this Agreement; (xiii) the loss or failure of Seller's fuel supply or equipment; (xiv) either Party's inability to pay when due any amounts owed under this Agreement; or (xv) Seller's ability to sell the Product at a price greater than the Fixed Price. Seller may not raise a claim of Force Majeure with respect to the unavailability of Energy or Bundled RECs from the Facility based on any of the following: (i) routine or scheduled maintenance of the Facility; (ii) any unscheduled outage undertaken to address normal wear and tear of the Facility during the Term; (iii) any outage caused by Seller's failure to design, construct, operate or maintain the Facility consistent with Prudent Electric Industry Practice; (iv) changes in climactic conditions; (v) environmental obstructions caused by events or circumstances that may impact the Facility's generation output but without causing a Facility outage (e.g., forest fire or volcanic eruption located outside of the Facility site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (ix) strikes or labor disturbances involving the employees of Seller or

APPENDIX A

any of its subcontractors unless such strike or labor disturbance has a national impact making it impossible for Seller to perform its obligations with respect to the Facility. .Occurrence and Notice.

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

4.3 Obligations.

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

4.4 Right to Terminate.

If a Force Majeure event prevents a Party from performing its material obligations under this Agreement for a period exceeding 180 consecutive days before the Commercial Operation Date or, after the Commercial Operation Date, for a period exceeding 240 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations under this Agreement, may terminate this Agreement by giving 10 days' prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to periods following the effective date of such termination, except for the right of first offer set forth in Section 3.1.15 and as otherwise expressly provided in this Agreement; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

5.1.1 in the case of the Seller, the occurrence of a Material Adverse Change with respect to Seller or its Guarantor; provided, such Material Adverse Change shall not be considered an Event of Default if Seller establishes, delivers to PGE and maintains for so long as the Material Adverse Change is continuing, Performance Assurance in an amount equivalent to the Termination Payment as determined under Section 5.3;

APPENDIX A

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

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

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

5.1.5 such Party becomes Bankrupt;

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

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

5.1.8 ***[Note to bidders: Applicable to baseload facilities.]*** commencing on the Commercial Operation Date, Seller's failure to deliver the Minimum Annual Volume to Buyer during two (2) out of three (3) calendar years during the Delivery Period;

5.1.9 ***[Note to bidders: Applicable to intermittent facilities.]*** beginning with the second full calendar year following the calendar year in which the Commercial Operation Date has occurred, Seller's failure to maintain a minimum Mechanical Availability Percentage for the Facility of [ninety-seven percent (97%)] for any two (2) out of three (3) calendar years on a rolling basis. The Mechanical Available Percentage of the Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year ***[non-solar resources: by the total number of hours in the calendar year] [solar resources: by the total number of daylight hours in the calendar year.]*** On or before January 31st of each year, Seller shall provide PGE written documentation, which shall be subject to audit by PGE, to verify or otherwise substantiate Seller's calculation of the Mechanical Available Percentage of the Facility for the prior calendar year. The operational hours for the Facility shall be the hours that the Facility is potentially capable of producing power at Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the point of interconnection with the Transmission Provider. The methodology for calculating Operational Hours and the resulting Mechanical Availability Percentage is set forth in Exhibit N ***[Note to bidders: the Parties would agree to a more detailed methodology consistent with this Section 6.1.9 and attached it as Exhibit N];***

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

APPENDIX A

5.1.11 with respect to Seller's Guarantor, if any, the occurrence of a Guaranty Default;

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

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

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

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

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Gains or Losses shall be calculated for a period equal to the remaining Term ("Settlement Period"). The quantity of Energy in each month of the Settlement Period shall be equal to the Initial Specified Amount for such month ("Settlement Energy"). The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of

APPENDIX A

market information. However, it is expressly agreed that (a) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment and (b) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges.

5.3 Termination Payment.

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

5.4 Notice of Payment of Termination Payment.

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

5.5 Disputes with Respect to Termination Payment.

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

5.6 Closeout Setoffs.

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

APPENDIX A

any right of setoff, combination of accounts, lien or other right to which the Non-Defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance.

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

5.8 Post-Termination PURPA Status. If this Agreement is terminated because of a default by Seller, and Seller has subsequently remedied the default after such termination, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Site, on whose behalf Seller acts herein as agent, may thereafter require or seek to require PGE to make any purchases from the Facility or any electric generation facility constructed on the Site under PURPA, or any other Law, under terms and conditions different from those set forth in this Agreement (including rates higher than those set forth in this Agreement) for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PGE to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the counties in which the Facility or Site is situated, and any federal agency as applicable, a memorandum in form acceptable to PGE to provide constructive notice to third parties of Seller's agreements under this Section 5.8. In no event will PGE be required to make any purchases from the Facility or any electric generation facility constructed on the Site in the event the default that caused the termination is still in effect.

ARTICLE 6 REMEDIES FOR FAILURE TO DELIVER/RECEIVE

6.1 Seller Failure to Deliver Specified Energy. If Seller fails to deliver Specified Energy and the associated Environmental Attributes, including Bundled RECs, in an amount equal to the Specified Amount for any monthly On-Peak and Off-peak period, and such failure is not excused by Force Majeure, or by PGE's breach of this Agreement, Seller shall owe PGE an amount as calculated below:

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

APPENDIX A

6.1.2 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Specified Amount result in incremental Carbon Emissions costs to PGE, consistent with Section 3.6,

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

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

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

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

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

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

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

6.2 PGE's Failure to Accept. If PGE fails to accept any part of the Product that is scheduled in accordance with Section 3.8, and Seller is ready willing and able to deliver to the Delivery Point, and such failure is not excused by a reliability or transmission constraint, Force Majeure or by Seller's failure to perform, then PGE shall owe Seller an amount for such deficiency equal to the positive difference between the applicable purchase price as set forth in Section 7.1 for the amount of Product PGE fails to accept minus the Sales Price associated with the amount of Product PGE fails to accept. Any such amount owed by PGE to Seller shall be added to the calculation of PGE's payment obligation for the month pursuant to Section 7.1. For each MWh of Product not accepted by PGE pursuant to this Section 6.2, Seller's obligation to deliver the Specified Amount shall be reduced by one (1) MWh, and Seller's Minimum Annual

APPENDIX A

Volume shall be reduced by one (1) MWh. An example illustrating the calculation of amounts due to Seller under this Section 6.2 under certain stated assumptions is set forth in Exhibit I.

6.3 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

6.4 Acknowledgement of the Parties.

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

6.5 Survival.

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

ARTICLE 7 PAYMENT AND NETTING

7.1 Billing Period.

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

7.2 Timeliness of Payment.

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

APPENDIX A

accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments.

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

7.5 Payment Obligation Absent Netting.

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

ARTICLE 8 LIMITATIONS

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

APPENDIX A

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

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

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

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

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

ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS

9.1 Pre-COD Security.

9.1.1 Amount of Pre-COD Security. On or before the date specified in Section 3.1.9(a)(i), Seller shall post and maintain Performance Assurance in favor of PGE, equal in each case to \$200 per kW of Nameplate Capacity (the "Pre-COD Security"). Seller shall ensure that any Person providing a guaranty for Seller shall provide within five (5) Business Days from receipt of a written request from PGE all reasonable financial records necessary for PGE to confirm Seller and/or the guarantor satisfies the Credit Requirements.

9.1.2 Use of Pre-COD Security to Pay Delay Damages. If the Commercial Operation Date occurs after the Expected Commercial Operation Date and Seller has failed to pay any Delay Damages when due under Section 3.1.13, PGE shall be entitled to

APPENDIX A

and shall draw upon the Pre-COD Security an amount equal to the Delay Damages until such time as the Pre-COD Security is exhausted. PGE shall also be entitled to draw upon the Pre-COD Security for Contract Termination Damages.

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

9.2 Delivery Period Security.

9.2.1 Duty to Post Delivery Period Security. Beginning on the Commercial Operation Date, at any time during the Term when Seller does not satisfy the Credit Requirements, Seller shall post and maintain Performance Assurance in favor of PGE as provided in this Section 9.2 (the "Delivery Period Security"). Seller and any party providing a guaranty for Seller shall provide within five (5) Business Days from receipt of a written request from PGE all reasonable financial records necessary for PGE to confirm Seller and/or the guarantor satisfies the Credit Requirements.

9.2.2 Amount of Delivery Period Security. The amount of the Delivery Period Security required by Section 9.2.1 shall be ~~sufficient to provide replacement power and Qualifying Replacement RECs under this Agreement for the next 60 calendar months. This amount shall be deemed equal to the positive difference between (a) the forward power prices at Mid-Columbia as determined by PGE in good faith using information from a commercially reasonable independent source (e.g., indicative of the most relevant ICE forward price curve for the Mid-Columbia) for the next 60 calendar months (or, if the remaining Term is less than 60 calendar months, then for the remainder of the Term), multiplied by [] percent ([]%), plus the Qualifying Replacement REC Price, plus the costs of transmitting such replacement energy from Mid-Columbia to the Delivery Point, minus (b) the Fixed Price, multiplied by the MWhs that would be delivered for such period under this Agreement (based on the Specified Amount set forth on Exhibit C for that period); provided, however, that the Delivery Period Security shall in no event be less than an amount equal to the Bundled RECs that would be delivered for the next 18 months (based on the Specified Amount set forth on Exhibit C for that period) multiplied by the Qualifying Replacement REC Price~~ **\$100/kw.**

9.2.3 ~~Adjustments to Delivery Period Security.~~ On or before January 31st of each year during the Term, Seller shall (a) adjust the Delivery Period Security by increasing or decreasing the Delivery Period Security to correspond to the amount reasonably determined by PGE under Section 9.2.2, and (b) deliver such adjusted Delivery Period Security to PGE. PGE shall notify Seller of the determination of such amount on or before the preceding December 1 of each calendar year.

APPENDIX A

9.3 Grant of Security Interest/Remedies.

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

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

9.4 Step-In Rights.

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

9.4.2 Books and Records. After notice is given and during the relevant notice period, Seller shall collect and have available at a convenient central location at the Facility and shall make available to PGE, at PGE's request, all documents, contracts, books, manuals, reports, records, plans, tools, equipment, inventories and supplies necessary or convenient to construct, operate and maintain the Facility in accordance with Prudent Electric Industry Practice.

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

APPENDIX A

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

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

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

9.4.3 PGE's Return of Control. If at any time after exercising its Step-In Rights and taking control of and operating the Facility, PGE elects to return control and operation to Seller, PGE shall give Seller thirty (30) Business Days' advance notice of the date that PGE intends to return such control to Seller. Upon receipt of such notice, Seller shall take all actions necessary or appropriate to resume control and operation of the Facility on such date in accordance with the terms of this Agreement.

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

APPENDIX A

and (iii) Seller's obligations in respect of the Step-In Rights are inextricably interrelated to PGE's obligations under the terms of this Agreement.

9.6 Holding Performance Assurance.

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

9.7 Interest Rate on Cash Collateral.

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

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

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

9.9 Waiver.

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

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

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

APPENDIX A

ARTICLE 10 GOVERNMENTAL CHARGES

10.1 Cooperation.

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

10.2 Non-Sale Related Governmental Charges and Taxes.

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

10.3 Sale-related Governmental Charges and Taxes.

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

10.4 Indemnification.

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

ARTICLE 11 RATES AND TERMS BINDING; FERC STANDARD OF REVIEW

11.1 Mobile-Sierra Doctrine.

11.1.1 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, proposed by a Party (to the extent that any waiver in

APPENDIX A

subsection 11.2 below is unenforceable or ineffective as to such Party), or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 527 (2010).

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

ARTICLE 12

REPRESENTATIONS AND WARRANTIES; INDEMNITY

12.1 Representations and Warranties.

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

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

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

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

12.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation

APPENDIX A

enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

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

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

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

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

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

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

12.1.11 it, and any guarantor of its obligations under this Agreement, is an “eligible contract participant” within the meaning of the Commodity Exchange Act.

12.2 Indemnity.

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

12.3 Additional Representations and Warranties of Seller.

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

APPENDIX A

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

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

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

12.3.4 The Facility is either an EWG or a QF;

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

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

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

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

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

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

APPENDIX A

ARTICLE 13 INSURANCE

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

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

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

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

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

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

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

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

APPENDIX A

ARTICLE 14 TITLE AND RISK OF LOSS

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

ARTICLE 15 ASSIGNMENT; BINDING EFFECT

15.1 Assignment.

Neither Party may assign this Agreement or its rights hereunder to any entity whose Credit Rating is not equal to or higher than that of such Party and is at least above BBB- by S&P and Baa3 by Moody's. No assignment may be made without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's Credit Rating is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets whose Credit Rating is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.2 Change in Control.

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

15.3 Binding Effect.

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

ARTICLE 16 GOVERNING LAW

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

APPENDIX A

ARTICLE 17 RECORDS AND AUDIT

17.1 Records.

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

17.2 Audit Rights.

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

ARTICLE 18 DISPUTE RESOLUTION

18.1 Referral to Senior Management

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

18.2 Mediation.

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

APPENDIX A

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

18.3 Legal Action.

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

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

APPENDIX A

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

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

ARTICLE 19 GENERAL PROVISIONS

19.1 Entire Agreement.

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

19.2 Joint Efforts.

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

19.3 Amendments in Writing.

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

19.4 No Third Party Beneficiaries.

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

19.5 Non-Waiver.

No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either

APPENDIX A

Party in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.6 Severability.

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

19.7 Survival.

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

19.8 Bankruptcy Matters.

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

19.9 Relationships of Parties.

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

19.10 Headings.

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

APPENDIX A

19.11 Consolidation of Variable Interest Entities.

If PGE or one of its Affiliates determines that, under Accounting Standards Codification 810 (“ASC 810”) Consolidation of Variable Interest Entities (“VIE’s”), formerly referred to as the Financial Accounting Standards Board’s revised Interpretation No. 46 (“FIN 46”), it may hold a controlling financial interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PGE’s written request, sufficient financial and ownership information so that PGE or its Affiliate may assess whether a controlling financial interest in a VIE does exist under FIN 46. If PGE or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PGE’s written request, sufficient financial and other information to PGE or its Affiliates so that PGE may properly consolidate the entity in which it holds the controlling financial interest and present the required disclosures. PGE shall reimburse Seller for Seller’s reasonable costs and expenses, if any, incurred in connection with PGE’s requests for information under this Section 19.11.

ARTICLE 20 CONFIDENTIALITY

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

ARTICLE 21 NOTICES AND COUNTERPARTS

21.1 Notices.

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is

APPENDIX A

provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications and notifications of changes in availability of the Facility sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

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

21.2 Counterparts.

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

APPENDIX A

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

**PORTLAND GENERAL ELECTRIC
COMPANY**

[Seller]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A

EXHIBIT A

Notices

Portland General Electric Company (“PGE”)

All Notices:

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

Invoices:

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

Scheduling:

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

Wire Transfer:

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

Credit and Collections:

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

With additional Notices of an Event of Default to:

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

Seller (“Seller” or “Name”)

All Notices:

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

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

APPENDIX A

EXHIBIT B

Fixed Price

Contract Year	On-Peak Price (\$/MWh)	Off-Peak Price (\$/MWh)
2021	\$60.00	\$40.00
2022	\$61.00	\$41.00
2023	\$62.00	\$42.00
2024	\$63.00	\$43.00
2025	\$64.00	\$44.00
2026	\$65.00	\$45.00
2027	\$66.00	\$46.00
2028	\$67.00	\$47.00
2029	\$68.00	\$48.00
2030	\$69.00	\$49.00
2031	\$70.00	\$50.00
2032	\$71.00	\$51.00
2033	\$72.00	\$52.00
2034	\$73.00	\$53.00
2035	\$74.00	\$54.00
2036	\$75.00	\$55.00
2037	\$76.00	\$56.00
2038	\$77.00	\$57.00
2039	\$78.00	\$58.00
2040	\$79.00	\$59.00

APPENDIX A

EXHIBIT C

Specified Amount

Month	On-Peak Specified Amount (MWh)	Off-Peak Specified Amount (MWh)
January	30,000	35,000
February	45,000	35,000
March	55,000	30,000
April	30,000	60,000
May	35,000	65,000
June	45,000	45,000
July	30,000	20,000
August	25,000	25,000
September	40,000	35,000
October	35,000	40,000
November	30,000	45,000
December	20,000	20,000

APPENDIX A

EXHIBIT D

Facility Description

APPENDIX A

EXHIBIT E

Facility Documents

APPENDIX A

EXHIBIT F

Site

APPENDIX A

EXHIBIT G

Start-Up Testing

APPENDIX A

EXHIBIT H

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APPENDIX A

EXHIBIT I

Examples

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

Market Index Settlement Price Example

(A)	(B)	(C)	(D) = (C)*(B)/Production Total
Hour	Production (MWh)	Market Index Price (\$/MWh)	Production-Weighted Market Index Price (\$/MWh)
HE01			
HE02			
HE03			
HE04			
HE05			
HE06			
HE07			
HE08			
HE09			
HE10			
HE11			
HE12			
HE13			
HE14			
HE15			
HE16			
HE17			
HE18			
HE19			
HE20			
HE21			
HE22			
HE23			
HE24			
Production Total			
Market Index Settlement Price			

APPENDIX A

Example Illustrating Determination of Payments Due under Section 2.3.2

Specified Energy

(A)	(B)	(C)	(D)	(E)	(F)=(B)*(C)+(D)*(E)
Month	On-Peak Specified Energy (MWh)	Off-Peak Specified Energy (MWh)	On-Peak Price (\$/MWh)	Off-Peak Price (\$/MWh)	Monthly Payment
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					

As-Available Energy

(A)	(B)	(C)	(D)=(B)*(C)
Month	As-Available Energy (MWh)	Market Index Settlement Price (\$/MWh)	Monthly Payment
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

APPENDIX A

Un-Specified Energy

(A)	(B)	(C)	(D) = (B)*(C)
Hour	Un-Specified Energy (MWh)	Market Index Price (\$/MWh)	Payment
HE01			
HE02			
HE03			
HE04			
HE05			
HE06			
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APPENDIX A

Example Illustrating Determination of Amount Due to PGE under Section 6.1

(A)	(B)	(C)	(D)	(E)=Max(0,(B)*[(D)-(C)])	(F)	(G)	(H)	(I)=Sum((E):(H))
Month	Energy (MWh)	Fixed Price (\$/MWh)	Market Index Settlement Price (\$/MWh)	Energy Cost	Incremental Carbon Emission Cost	Incremental Transmission & Ancillaries Cost	Qualifying Replacement REC Cost	Monthly Payment
January								
February								
March								
April								
May								
June								
July								
August								
September								
October								
November								
December								

APPENDIX A

Example Illustrating Determination of Amount Due to Seller under Section 6.2

(A) Month	(B) Energy (MWh)	(C) Fixed Price (\$/MWh)	(D) Sales Price (\$/MWh)	(E)=Max(0,(B)*[(C)-(D)]) Monthly Payment
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

APPENDIX A

EXHIBIT J

Long-Term Transmission Plan

APPENDIX A

EXHIBIT K

Litigation

APPENDIX A

EXHIBIT L

Forecast Methodology

APPENDIX A

EXHIBIT M

Optimal Conditions/Nameplate Capacity

APPENDIX A

EXHIBIT N

Operational Hours and Mechanical Availability Methodology

12 Appendix B - Asset Purchase Agreement

APPENDIX B

ASSET PURCHASE AGREEMENT¹

by and between

PORTLAND GENERAL ELECTRIC COMPANY

and

Dated _____

¹ NTD: Bidder is advised that this form of Asset Purchase Agreement was drafted contemplating the purchase of a development stage project that would not be constructed as of the Effective Date. Terms will be adjusted to accommodate assets that are operating or in further stages of development.

APPENDIX B

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND CONSTRUCTION	6
1.1 Specific Definitions	6
1.2 Construction	13
ARTICLE 2 PURCHASE AND SALE OF ASSETS; PURCHASE PRICE AND PAYMENT	14
2.1 Purchase and Sale	14
2.2 Instruments of Conveyance	15
2.3 Payments	15
2.4 Late Payments	16
2.5 Further Assurances; Cooperation	16
ARTICLE 3 CONDITIONS PRECEDENT	16
3.1 Conditions Generally	16
3.2 PGE Conditions Precedent to the Closing	17
3.3 Seller Conditions Precedent to the Closing	19
3.4 Term; Termination	19
3.5 Effect of Termination; Remedies	20
ARTICLE 4 CLOSING	20
4.1 Place of Closing	20
4.2 Closing Deliveries	21
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER	21
5.1 Organization and Authority	22
5.2 Binding Agreement	22
5.3 No Adverse Order or Injunctions	22
5.4 Litigation	22
5.5 No Conflicts	22
5.6 Third-Party Consents	23
5.7 Project Assets	23
5.8 [Real Estate	24
5.9 Tax Matters	24
5.10 [Contracts.]	25
5.11 Legal Compliance	26
5.12 [Environmental Laws.]	27
5.13 [Permits	27
5.14 [Renewable Resource Data	27
5.15 Solvency	27
5.16 Brokers	27
5.17 Investment Company	27
5.18 [Intellectual Property	28

APPENDIX B

5.19 Material Misstatements or Omissions.....28

5.20 [Project-Specific Representations28

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF PGE28

6.1 Organization and Authority28

6.2 Binding Agreement29

6.3 No Adverse Order or Injunctions.....29

6.4 No Conflicts29

6.5 Third-Party Consents29

6.6 Brokers29

ARTICLE 7 CONFIDENTIAL INFORMATION.....30

7.1 PGE Confidential Information30

7.2 Seller Confidential Information.....31

ARTICLE 8 [COVENANTS OF PGE AND SELLER]32

8.1 [Conduct Pending the Closing.....32

8.2 [Exclusivity33

8.3 [Site and Project Access33

8.4 [Due Diligence.....34

8.5 [Notice of Developments.....34

ARTICLE 9 INDEMNIFICATION34

9.1 Survival34

9.2 Applicable Survival Period.....34

9.3 Indemnification by Seller35

9.4 Indemnification by PGE.....36

9.5 Claims for Indemnification.....36

9.6 Defense.....37

9.7 Limitations on Liability.....37

ARTICLE 10 TAX MATTERS.....38

10.1 Allocation of Purchase Price38

10.2 Sales, Transfer and Documentary Taxes.....39

10.3 Treatment of Indemnity Payments39

ARTICLE 11 MISCELLANEOUS39

11.1 Successors and Assigns.....39

11.2 Entire Agreement; Amendments; Attachments.....39

11.3 Severability39

11.4 Dispute Resolution Process; Consent to Jurisdiction40

11.5 Consequential Damages41

11.6 Governing Law42

11.7 Section Headings.....42

11.8 Counterparts42

APPENDIX B

11.9 No Third-Party Beneficiaries42
11.10 Waiver.....42
11.11 Costs.....42
11.12 Relationship of Parties43
ARTICLE 12 NOTICES43

APPENDIX B

Exhibits²

[Exhibit A	Form of Bill of Sale]
[Exhibit B	Form of Assignment and Assumption Agreement]
[Exhibit C	Form of Assignment of Real Property Interests]
[Exhibit D	Form of Contract Estoppel Letter]
[Exhibit E	Form of Parent Guaranty]

Schedules

Schedule 2.1	Assumed Liabilities
Schedule 5.6	Seller Third-Party Consents; Seller Required Regulatory Approvals
Schedule 5.7	Project Assets
Schedule 5.8	Real Property Interests
Schedule 5.10	Contracts
Schedule 5.13	Permits
Schedule 5.14	Renewable Resource Data
Schedule 6.5	PGE Third-Party Consents; PGE Required Regulatory Approvals
Schedule 8.1.6	Project Development

² NTD: The type of project assets being conveyed to PGE will dictate the appropriate forms of these exhibits.

APPENDIX B

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (together with all exhibits and schedules appended hereto, this “*Agreement*”), dated as of [DATE] (the “*Effective Date*”), is made by and between [COUNTERPARTY], [STATE] [ENTITY TYPE] (“*Seller*”), and Portland General Electric Company, an Oregon corporation (“*PGE*”). PGE and Seller each may be referred to herein as a “*Party*”, and collectively as the “*Parties*”.

RECITALS

WHEREAS, Seller owns [and operates] the Project and owns all right, title and interest in and to the Project Assets.

WHEREAS, in accordance with the terms and conditions set forth in this Agreement, Seller desires to sell and transfer to PGE, and PGE desires to purchase from Seller, the Project and the Project Assets.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE 1

DEFINITIONS AND CONSTRUCTION

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

“*AAA*” shall mean the American Arbitration Association.

“*AAA Procedures*” shall have the meaning given to it in Section 11.4.2.

“*Account*” shall have the meaning given to it in Section 2.3.2.

“*Affiliate*” of a specified Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the immediately preceding sentence, “control” shall mean the ability to control or affect the day-to-day management and control of the Person or a fifty percent (50%) or greater beneficial ownership interest in the partnership interests, membership interests or voting stock of the Person. For purposes of this Agreement, any Person owning an interest in Seller shall be considered an “Affiliate” of Seller.

“*Affiliate Contracts*” shall have the meaning given to it in Section 5.10.1.

APPENDIX B

“**Agreement**” shall have the meaning given to it in the Preamble.

“**Allocation**” shall have the meaning given to it in Section 10.1.

“**Applicable Law**” shall mean any act, statute, law, regulation, Permit, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority having jurisdiction over (a) any Party, (b) the Project Assets or (c) the Project.

“**Applicable Survival Period**” shall have the meaning given to it in Section 9.2.

“**Assumed Liabilities**” shall mean those Liabilities and obligations of Seller set forth on Schedule 2.1, which shall be assumed by PGE.

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

“**Claim**” shall have the meaning given to it in Section 9.5.

“**Claim Notice**” shall have the meaning given to it in Section 9.5.

“**Closing**” shall have the meaning given to it in Section 4.1.

“**Closing Date**” shall have the meaning given to it in Section 4.1.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Contracts**” shall have the meaning given to it in Section 5.10.1.

“**Debt**” of any Person at any date means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all monetary liabilities of such Person under contracts, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, and (h) all obligations of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty.

“**Dispute**” shall have the meaning given to it in Section 11.4.1.

APPENDIX B

“Effective Date” shall have the meaning given to it in the Preamble.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to an electric generating facility or the electric energy, capacity or other generator-based products produced therefrom, including (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (b) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and (c) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

“Environmental Laws” shall mean all laws that regulate or relate to (a) the protection or clean-up of the environment, (b) the handling of Hazardous Substances, (c) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, and (d) the health and safety of persons or property as it pertains to the environment, including, without limitation, protection of the health and safety of employees. Environmental Laws shall include, without limitation, the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Comprehensive Environmental Response, Compensation and Liability Act, Emergency Planning and Community Right-to-Know Act, Hazardous Materials Transportation Act and Centers for Disease Control guidelines, policies and procedures, and all analogous or related laws.

“Federal Funds Effective Rate” shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal fund brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not published for any day that is a Business Day, the weighted average (rounded upwards if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with the members of the Federal Reserve System arranged by federal fund brokers, as published on the next succeeding Business Day by the Federal Reserve of New York.

“Final Order” shall mean, with respect to a Seller Required Regulatory Approval or PGE Required Regulatory Approval, as the case may be, that such Seller Required Regulatory Approval or PGE Required Regulatory Approval has not been reversed, stayed, set aside, annulled or suspended, with respect to which any waiting period prescribed by Applicable Laws

APPENDIX B

before the transactions contemplated hereby may be consummated has expired (but without the requirement for expiration of any applicable rehearing period), and as to which all conditions to the consummation of such transactions prescribed by Applicable Laws have been satisfied.

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

“Hazardous Material” shall mean (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, lead containing paints or coatings, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, (b) any chemicals or other materials or substances which are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants” or words of similar import under any Environmental Law, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority under any Environmental Law.

“Indemnified Party” shall have the meaning given to it in Section 9.5.

“Indemnifying Party” shall have the meaning given to it in Section 9.5.

“Instruments of Conveyance” shall have the meaning given to it in Section 2.2.

“Liabilities” shall mean, with respect to any Person, any and all Debts, liabilities, payables, obligations, commitments, losses, damages, expenses, claims, deficiencies, guarantees or endorsements, of any kind whatsoever, in each case requiring a payment (including a potential payment of damages for non-performance), including those of a contingent or deferred nature.

“Lien” shall mean mortgages, deeds of trust, liens, pledges, charges, security interests, assessments, reservations, hypothecations, restrictive covenants, easements or encumbrances.

“Losses” shall have the meaning given to it in Section 9.3.1.

“Material Adverse Effect” shall mean any event, occurrence, change or effect that, individually or in the aggregate, (a) with respect to Seller, could reasonably be expected to have a material adverse effect on the ability of Seller to consummate the transactions contemplated by this Agreement and to satisfy its obligations contemplated by this Agreement, and (b) with respect to the Project or the Project Assets, could reasonably be expected to have a material

APPENDIX B

adverse effect on the interconnection, ownership, operation or maintenance of the Project, or on the fair market value of the Project Assets; *provided, however*, that a “Material Adverse Effect” shall not include any adverse change, effect or circumstance directly or indirectly resulting from or arising out of (i) actions taken or omissions made by a Party at the request or with the consent of the other Party, or the failure to take any action prohibited by this Agreement, (ii) changes in the renewable power development industry or in renewable energy markets generally or (iii) changes in economic conditions or financial markets in any country or region or globally, including changes in interest or exchange rates and changes in currency and credit markets.

“*OPUC*” shall mean the Public Utility Commission of Oregon.

“*Ordinary Course of Business*” means the ordinary course of business consistent in material respects with past practices and Prudent Utility Standards.

“*Parent Guaranty*” means a guaranty from Seller’s Guarantor with a limitation of liability of not less than _____ (the “Parent Guaranty”) substantially in the form set forth in Exhibit E.

“*Party*” or “*Parties*” shall have the meaning given to it in the Preamble.

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

“*Permitted Liens*” shall mean all of the following: (a) liens for property Taxes and installments of assessments and charges of Governmental Authorities not yet due and payable as of the Closing Date; (b) liens created by the act or omission of PGE; (c) any other encumbrances created or permitted with the prior written consent of PGE; and (d) any encumbrances that will not have an adverse effect on the construction, ownership, operation or performance of the Project and/or Project Assets.

“*Person*” shall mean any natural person, corporation, limited liability company, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

“*PGE*” shall have the meaning given to it in the Preamble.

“*PGE Conditions Precedent*” shall have the meaning given to it in Section 3.2.

APPENDIX B

“**PGE Confidential Information**” shall have the meaning given to it in Section 7.1.

“**PGE Indemnified Party**” shall have the meaning given to it in Section 9.3.1.

“**PGE Indemnity Cap**” shall have the meaning given to it in Section 9.7.2.

“**PGE Required Regulatory Approvals**” shall mean those items listed on Part II of Schedule 6.5.

“**Placed in Service**” means placed in service for purposes of (a) Sections 48(b)(2) and (3) of the Code (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and (b) Section 168 of the Code.

“**Post-Closing Assets**” shall mean all assets and rights of any kind, whether tangible or intangible, real or personal, including land and properties (or interests therein, including rights of way, leaseholds and easements), buildings, equipment, machinery, improvements, fixtures, agreements, contracts, renewable resource data, reports and studies (including those related to interconnection, environmental, cultural, resource and market matters), Permits, intellectual property, inventory, books and records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses acquired by PGE after the Closing Date in connection with or associated with the Project.

“**Project**” shall mean that certain [[_____] MW [solar] [wind] [hydroelectric] [OTHER TECHNOLOGY]³ energy generating project [under development] [located in _____]].

“**Project Assets**” shall mean the assets, other than Retained Contracts, set forth on Schedule 5.7, which shall include all assets and rights of any kind, related to the ownership, operation or maintenance of the Project and owned by Seller, whether tangible or intangible, real or personal, including land and properties (or interests therein including rights of way, leaseholds and easements), buildings, equipment, machinery and associated equipment, improvements, fixtures, agreements, contracts, renewable resource data, reports and studies (including those related to interconnection, environmental, cultural, resource and market matters), the ownership of Environmental Attributes created on or after the Closing Date, Permits, software and intellectual property, inventory, books and records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

³ NTD: Bidder to include appropriate technology descriptor.

APPENDIX B

“Prudent Utility Standards” shall mean those practices, methods, equipment, specifications and standards of care, skill, safety and diligence and acts as the same may change from time to time, but applied in light of the facts known at the time, as are generally applied or utilized under comparable circumstances by experienced and prudent professionals in respect of the interconnection, transmission, ownership, operation or maintenance of renewable resource generating facilities of comparable type and complexity to the Project and which would have been expected to accomplish the desired result in a manner consistent with Applicable Law, safety, environmental protection, economy and expedition. Prudent Utility Standards are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather, refer to a range of actions reasonable under the circumstances.

“Purchase Price” shall have the meaning given to it in Section 2.3.

[**“Real Property Agreements”** shall mean the agreements set forth on Schedule 5.8 evidencing the Real Property Interests.]

[**“Real Property Interests”** shall mean, collectively, [_____].]

“Renewable Resource Data” means any and all renewable resource data measured by Seller at the Site and collected by the meteorological towers on the Site through the Closing Date and which are included as part of the Project Assets.

“Representatives” shall mean, with respect to a Person, such Person’s directors, partners, officers, managers, employees, members, agents and representatives, including attorneys, accountants, consultants, potential lenders, lenders, potential investors, investors and financial advisors.

“Retained Contracts” shall have the meaning given to it in Section 5.10.5.

“Retained Liabilities” shall mean those obligations and Liabilities of Seller arising under [_____], which shall be retained by Seller.

“RFP” shall mean that certain request for proposals for renewable energy resources issued by PGE in _____ 2018 and conducted in accordance with the OPUC Competitive Bidding Guidelines set forth in OPUC Order 14-149 (Docket UM-1182), dated April 30, 2014.

“Seller” shall have the meaning given to it in the Preamble.

“Seller Conditions Precedent” shall have the meaning given to it in Section 3.3.

“Seller Confidential Information” shall have the meaning given to it in Section 7.2.1.

APPENDIX B

“*Seller Contracts*” shall have the meaning given to it in Section 5.10.1.

“*Seller’s Exclusivity Obligations*” shall have the meaning given to it in Section 8.2.

“*Seller Indemnified Party*” shall have the meaning given to it in Section 9.4.1.

“*Seller Indemnity Cap*” shall have the meaning given to it in Section 9.7.1.

“*Seller Required Regulatory Approvals*” shall mean those items listed on Part II of Schedule 5.6.

“Seller’s Guarantor” means Seller’s ultimate parent company and issuer of the Parent Guaranty.

“*Site*” shall mean [_____]⁴.

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

“*Tax Return*” shall mean any return, report, statement, claim for refund, information return or other document (including any amendments thereto and any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of Taxes or the administration of any Applicable Law relating to Taxes.

“*Third-Party Claim*” shall have the meaning given to it in Section 9.6.

“*Treasury*” shall mean the United States Department of Treasury, including any successor agency.

“*Treasury Regulations*” shall mean the Treasury regulations promulgated under the Code, including any successor regulations.

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

⁴ NTD: Bidder to provide description of project site.

APPENDIX B

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

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

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

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

1.2.5 References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

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

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

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

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

ARTICLE 2

PURCHASE AND SALE OF ASSETS; PURCHASE PRICE AND PAYMENT

2.1 Purchase and Sale. Subject to and upon the terms and conditions of this Agreement, including (a) the satisfaction or written waiver by PGE of the PGE Conditions Precedent, and (b) the satisfaction or written waiver by Seller of the Seller Conditions Precedent,

APPENDIX B

on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to PGE, and PGE shall purchase, acquire and accept from Seller, all of the Project Assets, free and clear of any and all Liens other than Permitted Liens. Upon the consummation of the purchase by PGE of the Project Assets, PGE agrees to assume and become responsible for, and shall pay, discharge or perform when due, all of the Assumed Liabilities as of and after the Closing Date. PGE and its Affiliates shall not assume or incur any Liability in respect of, and Seller shall remain bound by and be liable for, and shall pay, discharge or perform when due, the Retained Liabilities.

2.2 Instruments of Conveyance. The sale, conveyance, assignment, transfer and delivery of the Project Assets will be effected by the execution and delivery by Seller and PGE of (a) the Bill of Sale, substantially in the form of Exhibit A, (b) the Assignment and Assumption Agreement substantially in the form set forth in Exhibit B, [(c) assignments of the Real Property Interests in recordable form, substantially in the form set forth in Exhibit C,] and (d) such other agreements or documents requested by PGE, with the items described in clauses (a) through (d) of this Section 2.2 collectively referred to herein as the “*Instruments of Conveyance*.”

2.3 Payments. As consideration for the sale, transfer, assignment, conveyance and delivery by Seller to PGE of the Project Assets, PGE will pay to Seller the “*Purchase Price*” in an amount equal to [_____] as further described and on the terms and conditions contained in this Agreement.

2.3.1 [Payment Terms]⁵ [_____].

2.3.2 Wiring Instructions. PGE shall pay the Purchase Price, to the extent due pursuant to the terms of this Agreement, to Seller by depositing the applicable amount for Seller’s account into the account listed below (the “*Account*”) by the date due (as provided in this Article 2) in accordance with the following transfer instructions, or such other instructions as Seller may provide to PGE in writing:

⁵ NTD: Bidder to propose additional payment terms, as applicable.

APPENDIX B

TO: [_____]

Account No.: [_____]

ABA Routing No.: [_____]

Bank Name: [_____]

Branch Address: [_____]

Contact: [_____]

2.4 Late Payments. Unless otherwise specified herein, the amount of any payment due by either PGE or Seller pursuant to the terms of this Agreement that is not paid when due hereunder shall bear interest at an annual rate equal to the lower of the Federal Funds Effective Rate plus two percent (2%) or the maximum rate allowed by Applicable Law, from the date such payment was required to have been made through and including the date such payment is actually received by the Party to whom such payment is due.

2.5 Further Assurances; Cooperation. At any time, and from time to time after the Closing Date, at either Party's reasonable request, the other Party shall promptly execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation, as are reasonably required, and take all such other action as the requesting Party may reasonably request, in connection with the performance of such Party's obligations under this Agreement. From and after the Effective Date until the Closing Date, each Party shall reasonably cooperate with the other Party in connection with the performance of such Party's obligations under this Agreement.

ARTICLE 3
CONDITIONS PRECEDENT

3.1 Conditions Generally. For purposes of this Agreement, there shall be conditions which must be satisfied or waived prior to the Closing. PGE's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by PGE, of each of the PGE Conditions Precedent, and Seller's obligation to cause the Closing to occur is subject to the satisfaction or waiver in writing by Seller, of each of the Seller Conditions Precedent, in each case within the applicable time periods herein. Seller and PGE expressly acknowledge and agree that each of the (a) PGE Conditions Precedent are for the sole benefit of and may only be waived by PGE in writing, and (b) Seller Conditions Precedent are for the sole benefit of and may only be waived by Seller in writing.

APPENDIX B

3.2 PGE Conditions Precedent to the Closing. PGE shall not be obligated to effect the Closing hereunder if the following conditions precedent (the “*PGE Conditions Precedent*”) are not satisfied (or waived in writing by PGE) on or prior to the Closing Date:

3.2.1 [Project Specific Conditions. _____] ⁶.

3.2.2 Third-Party Consents. All authorizations, approvals and consents of all Persons, including Governmental Authorities, that are required in connection with the execution, delivery, and performance of this Agreement by each of PGE and Seller shall have been received.

3.2.3 Certificates. PGE shall have received a certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to PGE, of a duly authorized officer of Seller certifying that attached thereto are the following: (a) the incumbency of Seller’s officers executing this Agreement and any other agreement delivered on the Closing Date and any certificate delivered in connection with the Closing; (b) true, accurate and complete copies of the certificates issued by the Secretary of State of the State of [_____] within ten (10) days of the Closing Date certifying that Seller is duly [organized] [incorporated] [formed] and validly existing under the laws of the State of [_____] and is current in payment of Taxes in such state; (c) true, accurate and complete resolutions of Seller duly authorizing the execution, delivery and performance of this Agreement and all other related agreements and transactions contemplated hereby and thereby, and that such resolutions are in full force and effect as of the Closing Date; (d) the certificate of formation of Seller, as certified by the Secretary of State of the State of [_____]; and (e) the [operating agreement] [by-laws] of Seller (as amended through the Closing Date).

3.2.4 Representations and Warranties. Each of the representations and warranties of Seller in this Agreement shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except to the extent such representations and warranties are made as of a particular date, in which case such representations and warranties shall be true and correct as of such date).

3.2.5 UCC Search Report. PGE shall have received Uniform Commercial Code search reports from the relevant jurisdictions covering the Seller with respect to the Project Assets, the results of which shall be satisfactory to PGE in its sole discretion.

⁶ NTD: PGE reserves the right to require additional conditions precedent to be met prior to the Closing, based on the nature and state of development of Bidder’s project. Such conditions may include, but are not limited to, delivery of a title insurance policy, survey, Permits and environmental reports.

APPENDIX B

3.2.6 Performance. Seller shall have performed, in all material respects, each and all of the covenants and obligations required to be performed by it prior to the Closing Date, on or prior to the Closing Date.

3.2.7 Litigation. No action or proceeding by or before any court or other Governmental Authority shall have been instituted or threatened by any Governmental Authority or Person whatsoever that (a) could reasonably be expected to impair, restrain, prohibit or invalidate the Closing, (b) could reasonably be expected to have a Material Adverse Effect on Seller, the Project or the Project Assets, (c) challenges any Permit in a way that could reasonably be expected to invalidate, impair or restrain, in a material way, such Permit, in PGE's reasonable discretion, or (d) could reasonably be expected to have a material adverse effect on PGE's ability to consummate the Closing.

3.2.8 No Material Adverse Effect. As of the Closing Date, no Material Adverse Effect shall have occurred with respect to Seller, the Project or the Project Assets.

3.2.9 Regulatory Approvals. The Seller Required Regulatory Approvals in Schedule 5.6 and the PGE Required Regulatory Approvals in Schedule 6.5 shall have been made or obtained and shall have become Final Orders.

3.2.10 FIRPTA Certificate. Seller shall have executed and delivered an affidavit, dated as of the Closing Date, stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, pursuant to Section 1445(b)(2) of the Code and Treasury Regulation 1.1445-2(b)(2)(iii)(B) (or any similar provision under other applicable Tax law).

3.2.11 Assignment of Project Contracts and Real Property Interests.⁷ PGE shall have received an assignment of each Contract (as set forth on Schedule 5.10) and each Real Property Interest (as set forth on Schedule 5.8), executed by all parties thereto, all in form and substance reasonably acceptable to PGE, and an estoppel letter from each counterparty to each Contract executed and delivered no earlier than ten (10) days prior to the Closing Date substantially similar to the form set forth in Exhibit D.

3.2.12 Parent Guaranty. PGE shall have received a copy of the Parent Guaranty signed by Seller's Parent.

3.2.13 Completion of Due Diligence. PGE shall have completed its due diligence review of the Project and the Project Assets to its satisfaction.

⁷ NTD: Any assignment of a Real Property Interest must be in recordable form and shall be recorded at Closing.

APPENDIX B

3.3 Seller Conditions Precedent to the Closing. Seller shall not be obligated to effect the Closing hereunder if the following conditions precedent (the “*Seller Conditions Precedent*”) are not satisfied (or waived in writing by Seller) on or prior to the Closing Date:

3.3.1 Certificates. Seller shall have received a certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Seller, of a duly authorized officer of PGE certifying that attached thereto are the following: (a) the incumbency of PGE’s officers executing this Agreement and any other agreement delivered on the Closing Date and any certificate delivered in connection with the Closing; (b) true, accurate and complete copies of the certificates issued by the Secretary of State of the State of Oregon within ten (10) days of the Closing Date certifying that PGE is duly organized and validly existing under the laws of the State of Oregon and is current in payment of Taxes in such state; (c) true, accurate and complete resolutions of PGE duly authorizing the execution, delivery and performance of this Agreement and all other related agreements and transactions contemplated hereby and thereby, and that such resolutions are in full force and effect as of the Closing Date; and (d) the certificate of formation of PGE, as certified by the Secretary of State of the State of Oregon.

3.3.2 Representations and Warranties. Each of the representations and warranties of PGE in this Agreement shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except to the extent such representations and warranties are made as of a particular date, in which case such representations and warranties shall be true and correct as of such date).

3.3.3 Performance. PGE shall have performed, in all material respects, each and all of the covenants and obligations required to be performed by it prior to the Closing Date, on or prior to the Closing Date.

3.3.4 Litigation. No action or proceeding by or before any court or other Governmental Authority shall have been instituted that seeks to impair, restrain, prohibit or invalidate the Closing (other than an action or proceeding commenced by Seller or an Affiliate of Seller).

3.3.5 Regulatory Approvals. The Seller Required Regulatory Approvals and the PGE Required Regulatory Approvals shall have been made or obtained and shall have become Final Orders. The PGE Required Regulatory Approvals shall have been made or obtained at PGE’s cost.

3.4 Term; Termination.

3.4.1 Term. This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement, shall remain in full force and effect until

APPENDIX B

the obligations of each of the Parties under the Agreement shall have been satisfied in full or waived in writing by the other Party, as applicable.

3.4.2 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) By the mutual written consent of the Parties;

(b) by PGE upon written notice to Seller of such termination, in the event the Closing has not occurred on or before [_____]; provided, that the failure to consummate the transactions contemplated by this Agreement did not result from the failure by PGE to fulfill in any material respect any undertaking or commitment provided for herein that is required to be fulfilled by it prior to the Closing; or

(c) by either Party, upon written notice to the other Party of such termination due to a breach of or default under this Agreement which breach or default continues for thirty (30) days after the non-breaching Party has delivered written notice of the default or breach to the breaching Party.]⁸

3.5 Effect of Termination; Remedies.

3.5.1 In the event that this Agreement is validly terminated in accordance with Section 3.4, this Agreement shall forthwith have no further force and effect and, except as set forth in this Agreement to the contrary, there shall be no further liability or obligation on the part of PGE or Seller under this Agreement. No such termination shall serve (a) to release any Party from any liability with respect to any breach of its duties and obligations hereunder prior to such termination, or (b) to void or terminate the limitations on liability expressly set forth in this Agreement.

3.5.2 Notwithstanding the foregoing, Article 7 (Confidential Information) shall survive the termination of this Agreement for a period of two (2) years from the date on which such termination occurs.

ARTICLE 4 CLOSING

4.1 Place of Closing. Upon the terms and conditions set forth in this Agreement, the sale of the Project Assets (the “*Closing*”) shall take place no later than the second Business Day after satisfaction or waiver of the conditions set forth in Article 3, unless this Agreement has been terminated prior to such date in accordance with the provisions of Section 3.4 (the actual

⁸ NTD: This Section can be omitted for any transaction that contemplates a simultaneous signing and closing.

APPENDIX B

time and date of the Closing being referred to herein as the “**Closing Date**”). The Closing shall take place at PGE’s offices or at such other location as the Parties may agree, on the Closing Date.

4.2 Closing Deliveries. On the Closing Date, the following shall occur:

4.2.1 Payment of Purchase Price. PGE shall deliver to Seller the Purchase Price in accordance with Section 2.3.1.

4.2.2 Delivery of Certificates by Seller. On the Closing Date, Seller shall deliver to PGE a certificate, dated as of the Closing Date, in form and substance satisfactory to PGE, stating that (a) the conditions set forth in Section 3.3 have been satisfied or waived in writing by Seller, and (b) that all representations and warranties of Seller set forth in Article 5 are true and correct as of the Closing Date (except to the extent such representations and warranties are made as of a particular date in which case such representations and warranties shall be true and correct as of such date).

4.2.3 Delivery of Certificates by PGE. On the Closing Date, PGE shall deliver to Seller one or more certificates of PGE, in form and substance satisfactory to Seller, stating that (a) the conditions set forth in Section 3.2 have been satisfied or waived in writing by PGE, and (b) that all representations and warranties of PGE set forth in Article 6 are true and correct as of the Closing Date (except to the extent such representations and warranties are made as of a particular date in which case such representations and warranties shall be true and correct as of such date).

4.2.4 Other Items. All other items required to be delivered or received as a Seller Condition Precedent or as a PGE Condition Precedent shall have been delivered to, or received by, Seller or PGE, as applicable, unless waived. Without limiting the generality of the foregoing, unless already delivered or unless waived by the relevant Party, the following documents, instruments and certificates shall be delivered at Closing: (a) by each Party to the other Party, executed counterparts of the Instruments of Conveyance; (b) by PGE to Seller, all documents, instruments and certificates required to be delivered by PGE to Seller pursuant to this Agreement; (c) by Seller to PGE, all documents, instruments and certificates required to be delivered by Seller to PGE pursuant to this Agreement; and (d) by Seller to PGE, all books, records[and operating logs] relating to the Project and the Project Assets, in the possession of, or subject to the control of, Seller.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER

APPENDIX B

Seller represents and warrants to PGE that, as of the Effective Date [and as of the Closing Date]⁹, the following are true and correct:

5.1 Organization and Authority. Seller is a [] duly [organized] [formed], validly existing and is qualified to do business under the laws of the State of [], and has all requisite power and authority to own the Project Assets, to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to carry on its business as now being conducted. Seller is duly qualified to do business and is in good standing in all other jurisdictions in which its ownership of property or the character of its business requires such qualification.

5.2 Binding Agreement. All necessary action on the part of Seller has been taken to authorize the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been, and the other documents and instruments required to be delivered by Seller in accordance with the provisions hereof at the Closing have been, or will be, duly and validly executed and delivered by Seller, and upon execution and delivery thereof by Seller, will constitute the valid and binding agreement and obligations of Seller, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in any proceeding in equity or at law), including the availability of injunctive relief.

5.3 No Adverse Order or Injunctions. Seller is not a party to, nor is Seller subject to or bound by, nor does there exist any agreement, or any judgment, order, writ, prohibition, injunction or decree of any Governmental Authority with respect to Seller, which would prevent the execution, delivery or performance of this Agreement by Seller, or the transfer, conveyance and sale of all of the Project Assets to PGE pursuant to the terms hereof.

5.4 Litigation. There is no action, suit, investigation or proceeding pending in which Seller has been named or served as a party or threatened against Seller before any Governmental Authority.

5.5 No Conflicts. None of the execution, delivery nor performance by Seller of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the compliance by Seller with any of the provisions of this Agreement, will result in: (a) a violation of or a conflict with any provision of the formation documents of Seller or any law, judgment, order, writ, decree, determination, award or injunction applicable to Seller; (b) a breach or

⁹ NTD: This item can be omitted for any transaction that contemplates a simultaneous signing and closing.

APPENDIX B

violation of, a conflict with or a default under, or the creation of a right of any Person to accelerate, terminate or cancel any Contract; (c) a violation by Seller of any Applicable Laws; or (d) a violation, or conflict with, or result in a breach of any provision of, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under, or result in the termination, cancellation, suspension, modification or acceleration of, or result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or result in the impairment, loss or forfeiture of any material benefit, rights or privilege under, or the creation of any Lien or other encumbrance upon any of the assets of Seller under any contract, note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Seller is a party.

5.6 Third-Party Consents. Part I of Schedule 5.6 sets forth a true, correct and complete list of all consents and approvals of all Persons, including Governmental Authorities, (other than any Permits) that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement. Part II of Schedule 5.6 sets forth a true, correct and complete list of all Seller Required Regulatory Approvals that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

5.7 Project Assets.

5.7.1 Seller holds of record and owns beneficially one hundred percent (100%) of the ownership interests of the Project Assets. Seller does not currently own any asset necessary for PGE to be able after the Closing to develop, construct, own, operate or maintain the Project in accordance with Prudent Utility Standards, except such assets that are (or by the Closing, will be) included in the Project Assets. Schedule 5.7 sets forth a true, accurate and complete list of the Project Assets owned by Seller, which constitute all of the assets and rights of any kind necessary for PGE to develop, construct, own, operate and maintain the Project.

5.7.2 [All of the Project Assets constituting physical assets, if any, including equipment, machinery, vehicles, structures, fixtures and other tangible property, have been maintained in accordance with Prudent Utility Standards and are in good operating condition and repair, ordinary wear and tear excepted.]

5.7.3 Seller has good, valid and marketable title to all the Project Assets, which are free and clear of any and all Liens, other than Permitted Liens.

5.7.4 [There are no existing or continuing claims against Seller, the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller (with respect to the Project Assets)).]

APPENDIX B

5.8 Real Estate.

5.8.1 Schedule 5.8 sets forth a true, accurate and complete list of the Real Property Interests Seller holds with respect to the Project and that will be assigned to PGE at Closing.]

5.8.2 [Seller represents and warrants to PGE that the Real Property Agreements: (a) comprise all of the property interests and other rights necessary in connection with the ownership, operation and maintenance of the Project in accordance with Applicable Law and Permits; (b) with respect to the Real Property Agreements, Seller has delivered to PGE correct and complete copies of each of them; (c) provide legal and practical ingress and egress rights for any reasonable purpose in connection with the development, construction, ownership, operation and maintenance of the Project; (d) each of the Real Property Agreements constitute the legal, valid and binding obligations of Seller, and the counterparties thereto, and are in full force and effect except, in each case, as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles; (e) each of the Real Property Agreements will continue to be legal, valid, binding and in full force and effect on identical terms immediately following the consummation of the transactions contemplated hereby (including any assignments and assumptions referred to herein) except, in each case, as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles; (f) no party to any Real Property Agreements is in breach or default and, no event has occurred which, with notice or lapse of time or without a cure being completed, would constitute a breach or default or permit termination or modification thereof or acceleration thereunder; (g) no party to any Real Property Agreement has repudiated any provision thereof; (h) there are no disputes, oral agreements or representations or forbearance programs in effect as to any Real Property Agreements; (i) no Real Property Agreement has been assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered by Seller; and (j) except as set forth in the Real Property Agreements, there are no rents, royalties, fees or other amounts payable or receivable by Seller or any Person in connection with any Real Property Interests.]

5.9 Tax Matters. Seller represents and warrants with respect to itself:

5.9.1 All Tax Returns required to have been filed with respect to the Project and the Project Assets have been duly and timely filed and each such Tax Return was true, correct and complete in all material respects. All Taxes required to be paid (whether or not shown on any Tax Return) with respect to the Project and the Project Assets have been duly and timely paid. Seller has adequately provided for, in its books of account and related records, liability for all unpaid Taxes with respect to the Project and the Project Assets.

APPENDIX B

5.9.2 Solely with respect to the Project or any of the Project Assets: (a) there is no action, audit, dispute or claim now pending against, or any proposed or threatened action, audit, dispute or claim against, or with respect to, Seller in respect of any Taxes; (b) no Tax Return of Seller has been subject to examination or audit; (c) Seller has not received from any Governmental Authority any written (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any taxing authority; and (d) no written claim has been made by a Governmental Authority in any jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by such jurisdiction.

5.9.3 Neither the Project nor any of the Project Assets constitutes tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code. None of Seller or any of its Affiliates has applied for, claimed or received a Cash Grant, production tax credit pursuant to Code Section 45, or an investment tax credit pursuant to Code Section 48 with respect to any of the Project Assets. At least 80% of the Project Assets constitutes “new Section 38 property,” as defined in Treasury Regulation Section 1.48-2. Neither the Project nor any Project Assets have been Placed in Service. Either: (a) the Project is a “qualified facility” that produces electricity using “qualified energy resources” within the meaning of Sections 45(d)(1) and 45(a)(2)(A)(i) or the Code, respectively; (b) the Project Assets are “energy property” within the meaning of Section 48(a)(3) of the Code; or (c) the Project Assets are “qualified property” or a “qualified investment credit facility” within the meaning of Section 48(a)(5) of the Code. In respect of any financial projections setting forth the amount of depreciation deductions available under Section 168 of the Code, or any tax credits available pursuant to either Section 45 or Section 48 of the Code, in each case in respect of the Project or any Project Assets, (i) the facts and information used to create such financial projections are true, complete and correct and (ii) such financial projections are based on reasonable assumptions and, to the knowledge of Seller, fairly represent the expected performance of the Project and the Project Assets.

5.9.4 Seller is not a “foreign person” as defined in Section 1445(f)(3) of the Code, and Seller will provide to PGE the certification described in Section 1445(b)(2) of the Code and Treasury Regulations Section 1.1445-2(b).

5.9.5 There are no Liens (other than Permitted Liens) for unpaid or delinquent Taxes, assessments or other charges or deposits upon the Project or the Project Assets.

5.10 [Contracts.]

5.10.1 [Part I of Schedule 5.10] sets forth a true, accurate and complete list of all written agreements and contracts entered into by Seller on or prior to the Effective Date for the

APPENDIX B

benefit of the Project or otherwise related to the Project (the “*Seller Contracts*”). Part II of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be retained by Seller. Part III of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by an Affiliate of Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be assigned to PGE on the Closing Date (the “*Affiliate Contracts*” and together with the Seller Contracts, the “*Contracts*”). Part IV of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by an Affiliate of Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be retained by Seller.]

5.10.2 [Each Contract has been duly authorized, executed and delivered by Seller, is in full force and effect, and constitutes the legal, valid, binding and enforceable agreement as to Seller, the respective counterparties thereto, and will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement, except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights and subject to general equitable principles.]

5.10.3 [Neither Seller (or its Affiliate with respect to the Affiliate Contracts), nor the counterparty thereto, is in material breach of or in default under any Contract, no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of material rights or permit termination or acceleration under, or result in the creation of any Lien (other than a Permitted Lien) under any Contract.]

5.10.4 [Neither Seller nor any of Seller’s Affiliates, as the case may be, has sold or transferred, or agreed to sell or transfer, or granted any options or rights to purchase energy or Environmental Attributes related to the electric power to be generated by the Project for any period after the Closing.]

5.10.5 [Each of the Contracts listed on Parts II and IV of Schedule 5.10 (the “*Retained Contracts*”) will not be assigned to PGE as part of the Project Assets. None of the Retained Contracts will provide any material ongoing benefit to the Project on or after the Closing Date.]

5.11 Legal Compliance. Seller is in compliance with all Applicable Laws (other than Environmental Laws, which are the subject of Section 5.12) with respect to the Project and the Project Assets.

APPENDIX B

5.12 Environmental Laws.

5.12.1 [Seller has conducted its activities with respect to the development of the Project and the Project Assets in compliance with all Environmental Laws, and no action, suit, proceeding, hearing, investigation or written charge, complaint, claim, demand or notice has been filed or commenced or threatened against Seller (with respect to the Project Assets), the Project or the Site alleging any failure to comply with or any violation of any applicable Environmental Law.]

5.12.2 [All environmental investigations, studies, audits, tests, reviews or other analyses conducted on behalf of, or that are in the possession of, Seller in relation to the Site, the Project Assets and the Real Property Interests have been delivered to PGE prior to the Effective Date of this Agreement and there are no other such items.]

5.13 Permits. Schedule 5.13 sets forth a true, correct and complete list of all Permits that Seller is required to obtain, and has obtained, in order to develop, construct, operate, and maintain the Project.]

5.14 Renewable Resource Data. Schedule 5.14 of this Agreement sets forth a true, correct and complete list of the Renewable Resource Data, which data does not contain any material errors. Seller has the right to use and to validly transfer to PGE the Renewable Resource Data.]

5.15 Solvency. Seller is solvent and has sufficient assets and capital to carry on its business as it is now conducted and to perform its obligations hereunder. No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller, nor does Seller have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and has sufficient assets and capital to carry on its businesses as they are now conducted and to perform its obligations hereunder.

5.16 Brokers. Seller does not have any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement.

5.17 Investment Company. Seller is not an “investment company” or a company controlled by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

APPENDIX B

5.18 [Intellectual Property. Seller has the right to use and to transfer to PGE all patents, trademarks, copyrights or other intellectual property rights used in connection with the Project Assets, and which constitute all intellectual property necessary for the operation, maintenance or use of the Project. Seller has not infringed nor has been claimed to have infringed the patent, trademark, copyright or other intellectual property rights of any Person. No Person is infringing the patent, trademark or other intellectual property rights of Seller.]

5.19 Material Misstatements or Omissions. None of the representations or warranties (a) given by Seller in this Agreement (including the Schedules hereto) or any certificate delivered by Seller at Closing, (b) included in any document, exhibit, written communication, certificate or schedule heretofore prepared by Seller, an Affiliate of Seller or a Representative (commissioned by Seller or an Affiliate of Seller) and furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement (including any and all materials delivered to and written communication made to any Governmental Authority), or (c) included in any document, exhibit, written communication, certificate or schedule heretofore furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement, that was not prepared by Seller, an Affiliate of Seller or a Representative (commissioned by Seller or an Affiliate of Seller) (including any and all materials delivered to and written communication made to any Governmental Authority), when taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained in such representations or warranties, in light of the circumstances in which they were made, not materially misleading.

5.20 [Project-Specific Representations.]¹⁰

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF PGE

PGE represents and warrants to Seller that, as of the Effective Date [and as of the Closing Date], the following are true and correct:

6.1 Organization and Authority. PGE is a corporation duly organized, validly existing and is qualified to do business under the laws of the State of Oregon, and has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. PGE is duly qualified to do business and is in good standing in all other jurisdictions in which its ownership of property or the character of its business requires such

¹⁰ NTD: PGE reserves the right to require the inclusion of additional representations and warranties based on the nature and state of development of Bidder's project. Such representations may include, but are not limited to, representations regarding permitting, regulatory status, insurance, affiliate transactions and studies and reports.

APPENDIX B

qualification, except where the failure to be so qualified would not reasonably be expected to have a material adverse effect with respect to PGE.

6.2 Binding Agreement. All necessary company action on the part of PGE has been taken to authorize the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been, and the other documents and instruments required to be delivered by PGE in accordance with the provisions hereof have been, or will be, duly and validly executed and delivered by PGE, and upon execution and delivery thereof by PGE, will constitute the valid and binding agreement and obligations of PGE, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in any proceeding in equity or at law), including the availability of injunctive relief.

6.3 No Adverse Order or Injunctions. PGE is not a party to, and to PGE's knowledge, is not subject to or bound by, any agreement, or any judgment, order or injunction of any Governmental Authority, which would prevent or have a material adverse effect on the execution, delivery or performance of this Agreement by PGE, or the purchase of the Project Assets by PGE pursuant to the terms hereof.

6.4 No Conflicts. Neither the execution, delivery nor performance by PGE of this Agreement will result in (a) a violation of or a conflict with any provision of the articles of incorporation, bylaws or other corporate documents of PGE, or (b) a violation by PGE of any Applicable Laws, except any such conflict, breach or violation, acceleration, termination or cancellation that would not have or be expected to have a material adverse effect on PGE.

6.5 Third-Party Consents. Part I of Schedule 6.5 sets forth a true, accurate and complete list of all consents and approvals of all Persons, including Governmental Authorities, that are required in connection with the execution, delivery and performance of this Agreement or the consummation by PGE of the transactions contemplated by this Agreement. Part II of Schedule 6.55.6 sets forth a true, correct and complete list of all PGE Required Regulatory Approvals that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

6.6 Brokers. Neither PGE nor its Affiliates has any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement.

APPENDIX B

ARTICLE 7 CONFIDENTIAL INFORMATION

7.1 PGE Confidential Information.

7.1.1 Seller acknowledges that PGE Confidential Information (as defined below) is valuable and proprietary and Seller agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any PGE Confidential Information without the prior written consent of PGE. For purposes of this Agreement, “*PGE Confidential Information*” shall mean (i) any and all information provided by PGE to Seller and identified by PGE as confidential and (ii) any and all information provided by PGE to Seller with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be PGE Confidential Information if: (a) it has become generally known or available within the industry or the public through no act or omission of Seller; (b) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (c) it was rightfully received by Seller from a third party who became aware of it through no act or omission of Seller and who is not under an obligation of confidentiality to PGE; or (d) Seller can demonstrate it was independently developed by employees or consultants of Seller. Notwithstanding the foregoing, from and after the Closing, PGE Confidential Information shall include any information that is a Project Asset, whether or not of the type referred to in clauses (b), (c) or (d) above.

7.1.2 Seller shall maintain any PGE Confidential Information which has been or will be disclosed directly or indirectly to Seller by or on behalf of PGE or its Affiliates in confidence and shall not disclose or cause to be disclosed by them or any third person without PGE’s prior express written consent; provided, however, that Seller may disclose the PGE Confidential Information to Persons who provide legal, accounting or other services to Seller in connection with Seller’s evaluation or implementation of the transactions contemplated by this Agreement, provided that such persons have first been informed of the duties required hereby.

7.1.3 Notwithstanding the preceding Section 7.1.1 and Section 7.1.2, PGE Confidential Information may be disclosed if required by any Governmental Authority or court or otherwise by Applicable Law; provided, however, that: (a) such PGE Confidential Information is submitted under any and all applicable provisions for confidential treatment and (b) PGE is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure.

7.1.4 Seller agrees that it will not make any use of any PGE Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing by PGE, and

APPENDIX B

this Agreement shall not be construed as a license or authorization to Seller to utilize the PGE Confidential Information except for such purpose.

7.1.5 Seller acknowledges that a breach of the covenants contained in this Section 7.1 will cause irreparable damage to PGE, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if Seller breaches any of the covenants contained in this Section 7.1, in addition to any other remedy that may be available at law or in equity, PGE shall be entitled to injunctive relief, without posting bond or other security and Seller shall have no right or power to raise the defense of adequate remedy at law.

7.2 Seller Confidential Information.

7.2.1 PGE acknowledges that Seller Confidential Information (as defined below) is valuable and proprietary to Seller and PGE agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Seller Confidential Information in respect of the Project without the prior written consent of either Seller. For purposes of this Agreement, “*Seller Confidential Information*” shall mean (i) any and all information provided by Seller to PGE and identified by Seller as confidential and (ii) any and all information provided by Seller to PGE with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Seller Confidential Information if: (a) the Closing has occurred and such information is also an a Project Asset and/or Post-Closing Asset under this Agreement; (b) it has become generally known or available within the industry or the public through no act or omission of PGE; (c) PGE can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of PGE; (d) it was rightfully received by PGE from a third party who became aware of it through no act or omission of PGE and who is not under an obligation of confidentiality to Seller; or (e) PGE can demonstrate it was independently developed by employees or consultants of PGE.

7.2.2 PGE shall maintain any Seller Confidential Information which has been or will be disclosed directly or indirectly to PGE by or on behalf of Seller in confidence by it and shall not disclose or cause to be disclosed by PGE or any third person without Seller’s prior express written consent; provided, however, that PGE may disclose Seller Confidential Information to its Representatives and to Persons who provide financial analysis, banking, legal, accounting or other services to PGE provided that such Persons have first been informed of the duties required hereby.

7.2.3 Notwithstanding the preceding Section 7.2.1 and Section 7.2.2, Seller Confidential Information may be disclosed (a) if required by any Governmental Authority or court or otherwise by Applicable Law and (b) to the OPUC and/or the independent evaluator

APPENDIX B

retained by PGE and approved by the OPUC in connection with the RFP; provided, however, that (i) such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment and (ii) if PGE is permitted to do so, Seller is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure.

7.2.4 PGE agrees that it will not make any use of any Seller Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing by Seller, and this Agreement shall not be construed as a license or authorization to PGE to utilize Seller Confidential Information except for such purpose.

7.2.5 PGE acknowledges that a breach of the covenants contained in this Section 7.2 will cause irreparable damage to Seller and Seller's Affiliates, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, PGE agrees that if PGE breaches any of the covenants contained in this Section 7.2, in addition to any other remedy that may be available at law or in equity, Seller and its Affiliates shall be entitled to injunctive relief, without posting bond or other security, and PGE shall have no right or power to raise the defense of adequate remedy at law.

ARTICLE 8 [COVENANTS OF PGE AND SELLER]¹¹

8.1 [Conduct Pending the Closing.] Between the Effective Date and the earlier to occur of the termination of this Agreement and the Closing Date, Seller shall:

8.1.1 [continue to operate the Project and conduct its business in the Ordinary Course of Business;]

8.1.2 [maintain and keep the Project and the Project Assets in a state of repair and condition as good as at the Effective Date, ordinary wear and tear excepted, and in accordance with the Ordinary Course of Business;]

8.1.3 [maintain relationships with landowners and suppliers in accordance with the Ordinary Course of Business;]

8.1.4 [maintain the Permits and comply with Applicable Law affecting the Project or the Project Assets;]

¹¹ NTD: This Article 8 can be omitted for any transaction that contemplates a simultaneous signing and closing.

APPENDIX B

8.1.5 [perform and comply in all material respects with [the Contracts, the Real Property Agreements and the Permits] and Seller shall not, without PGE’s consent, (a) amend or modify, or consent to the amendment or modification of, any of the [Contracts, the Real Property Agreements and the Permits] which amendments, modifications or consents would remain in effect for any period after Closing, or (b) enter into any new or additional contracts, real property agreements or permits relating to the Project that would remain in effect for any period after the Closing;]

8.1.6 [continue development of the Project as provided on Schedule 8.1.6;]

8.1.7 [not, without PGE’s prior written consent, (a) sell, transfer or otherwise dispose of, or agree to sell, transfer or otherwise dispose of, any of the Project Assets, or (b) lease, mortgage or pledge any of the Project Assets and which such lease, mortgage or pledge would remain in effect for any period after the Closing;]

8.1.8 [not place or cause to be Placed in Service the Project or any of the Project Assets, in each case for purposes of Section 45 or Section 48 of the Code;]

8.1.9 [not claim or permit any Person to claim any tax credit pursuant to Section 45 or Section 48 of the Code with respect to the Project or any Project Asset;]

8.1.10 [not cause or permit the Project or any Project Assets to become tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code;]

8.1.11 [not make any election or take any action that would limit, prevent or preclude the Project or any of the Project Assets from being classified in the hands of PGE as: (a) “qualified energy resources” and “qualified facilities” within the meaning of Sections 45(a)(2)(A)(i) and 45(d)(1) of the Code; (b) “energy property” in the hands of PGE within the meaning of Section 48(a)(3) of the Code; or (c) “qualified property” or a “qualified investment credit facility” within the meaning of Section 48(a)(5) of the Code]

8.1.12 [maintain all books and records of Seller relating to the Project Assets in the Ordinary Course of Business.]

8.2 [Exclusivity. From and after the Effective Date, Seller agrees that it shall not (and shall not permit or cause any of its Affiliates to) solicit, initiate, encourage, entertain, make or accept offers with respect to the sale of the Project or the Project Assets (the “***Seller’s Exclusivity Obligations***”).]

8.3 [Site and Project Access. From and after the Effective Date, Seller shall allow, permit or obtain the right of PGE to reasonable access to the Site and the Project (all in

APPENDIX B

accordance with the limitations imposed by the Real Property Agreements and other Project safety rules and regulations and security limitations imposed by Seller or the relevant landowners), upon reasonable prior notice, in order to perform its due diligence review, including physical inspection and analysis of the Project Assets.]

8.4 [Due Diligence. From and after the Effective Date, Seller shall allow, permit or obtain the right of PGE (a) to access to the management, development and operational personnel of Seller and (b) to review and make copies of the books and records of Seller. Any and all such access to Seller's management, development and operational personnel shall take place during normal business hours.]

8.5 [Notice of Developments. Seller shall, from time to time prior to the Closing, promptly (a) supplement or amend the Schedules referred to in Article 5, with respect to any matter that arises after the Effective Date, which if existing as of the Effective Date, would have been required to be set forth or described in such Schedules in order to make any representation or warranty set forth in Article 5 true and correct, and (b) notify PGE of any conditions, circumstances or events that could reasonably be expected to have a Material Adverse Effect.]

ARTICLE 9 INDEMNIFICATION

9.1 Survival. Except as set forth in Sections 9.1.1, all representations, warranties and related indemnification obligations contained in this Agreement and any Schedule, certificate or other document delivered pursuant to this Agreement at Closing, shall survive the Closing for a period of twenty-four (24) months.

9.1.1 The representations, warranties and related indemnification obligations of (a) Seller contained in Section 5.1 (Organization and Authority) and Section 5.7 (Project Assets), and (b) PGE contained in Section 6.1 (Organization and Authority) shall survive termination of this Agreement. The representations, warranties and related indemnification obligations of Seller contained in Section 5.9 (Tax Matters) and Section 5.12 (Environmental Laws) shall survive the Closing until the expiration of the applicable statute of limitations. The obligations of (i) Seller pursuant to Sections 9.3.1(d) and (e) or (ii) PGE pursuant to Sections 9.4.1(c) and (d) shall survive the Closing indefinitely.

9.2 Applicable Survival Period. The period for which a representation, warranty or indemnification obligation survives the Closing is referred to herein as the "**Applicable Survival Period.**" In the event notice of claim for indemnification under Sections 9.3 or 9.4 is given within the Applicable Survival Period, the representation, warranty or indemnification obligation that is the subject of such indemnification claim (whether or not formal legal action shall have been commenced based upon such claim) shall survive with respect to such claim until such

APPENDIX B

claim is finally resolved. All claims for indemnification shall be made no later than ninety (90) days after the Applicable Survival Period. In the event notice of claim for indemnification under Sections 9.3 or 9.4 is not given within ninety (90) days after the Applicable Survival Period, such claim shall be null and void and no remedy, relief or recourse will be available to the indemnified party with respect to such claim.

9.3 Indemnification by Seller.

9.3.1 Seller shall indemnify and defend PGE and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (each, a “*PGE Indemnified Party*”) against, and shall hold them harmless from, any and all losses, damages, claims (including third-party claims), charges, interest, penalties, Taxes, costs and expenses (including legal, consultant, accounting and other professional fees, costs of sampling, testing, investigation, removal, treatment and remediation of contamination and fees and costs incurred in enforcing rights under this Section 9.3) (collectively, “*Losses*”) resulting from, arising out of, or incurred by any PGE Indemnified Party in connection with, or otherwise with respect to:

(a) the failure of any representation and warranty or other statement by Seller contained in this Agreement or any certificate or other document furnished to PGE at Closing, to be true and correct in all respects as of the Effective Date [or the Closing Date, as applicable];

(b) any material breach of any covenant or agreement of Seller contained in this Agreement or any certificate or other document furnished to PGE at the Closing;

(c) any Retained Liabilities;

(d) any fraud, intentional misrepresentation, willful misconduct by or gross negligence of Seller in connection with this Agreement or the transactions contemplated by this Agreement;

(e) any claims, actions or suits made by third parties (before, on or after the Closing Date) against any PGE Indemnified Party arising from or as a result of the acts or omissions of Seller or any of its Affiliates in connection with the development, ownership or operation of the Project or the Project Assets; and

(f) any liability for Taxes (including Tax Liens) imposed on or incurred by PGE relating to any taxable period ending on or before the time of the Closing or the portion of any other taxable period beginning before and occurring on or before the time of the Closing relating to the Project or the Project Assets.

APPENDIX B

9.4 Indemnification by PGE.

9.4.1 PGE shall indemnify and defend Seller and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (each, a “*Seller Indemnified Party*”) against, and shall hold them harmless from, any and all Losses resulting from, arising out of, or incurred by any Seller Indemnified Party in connection with, or otherwise with respect to:

(a) the failure of any representation and warranty or other statement by PGE contained in this Agreement or any certificate or other document furnished to Seller at Closing, to be true and correct in all respects as of the Effective Date [and as of the Closing Date, as applicable;]

(b) any material breach of any covenant or agreement of PGE contained in this Agreement, or any certificate or other document furnished to Seller at the Closing;

(c) any claims, actions or suits made by third parties (before, on or after the Closing Date) against any Seller Indemnified Party arising from or as a result of the acts or omissions of PGE or any of its Affiliates in connection with its ownership or operation of the Project, the Project Assets or the Post-Closing Assets;

(d) any fraud, intentional misrepresentation, willful misconduct by or gross negligence of PGE in connection with this Agreement or the transactions contemplated by this Agreement;

(e) any liability for Taxes (including Tax Liens) imposed on or incurred by Seller relating to any taxable period ending on or after the time of the Closing or the portion of any other taxable period beginning before and occurring on or after the time of the Closing relating to the Project and the Project Assets; and

(f) Assumed Liabilities.

9.5 Claims for Indemnification. A Party seeking indemnification (the “*Indemnified Party*”) under this Article 9 shall give written notice (a “*Claim Notice*”) to the other Party (the “*Indemnifying Party*”) as soon as practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Article 9 (a “*Claim*”). Except as set forth in Section 9.2, the failure of the Indemnified Party to timely give a Claim Notice to the Indemnifying Party hereunder shall not affect the Indemnified Party’s rights to indemnification hereunder, except and only to the extent that the Indemnifying Party is materially prejudiced by such delay.

APPENDIX B

9.6 Defense. In the case of a Claim involving the assertion of a claim by a third party (whether pursuant to a lawsuit or other legal action or otherwise, a “*Third-Party Claim*”), the Indemnifying Party may, upon written notice to the Indemnified Party, take control of the defense and investigation of such Third-Party Claim if the Indemnifying Party acknowledges to the Indemnified Party in writing the obligation of the Indemnifying Party to indemnify the Indemnified Party with respect to all elements of such Third-Party Claim. If the Indemnifying Party assumes the defense of any such Third-Party Claim, the Indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party (and separate from counsel to the Indemnifying Party if there is any conflict or divergence of interest between the Indemnifying Party and the Indemnified Party) to conduct the defense of such claims or legal proceedings and, at the sole cost and expense of the Indemnifying Party, shall take all steps necessary in the defense or settlement thereof. The Indemnifying Party shall not consent to a settlement of or the entry of any judgment arising from any such Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed). The Indemnified Party shall be entitled to participate in (but not control) the defense of any such Third-Party Claim, with its own counsel and at its own expense; *provided, however*, that the Indemnified Party shall be entitled to settle any Third-Party Claim involving criminal penalties, civil fines or harm without the consent, but at the expense, of the Indemnifying Party if the Indemnifying Party shall unreasonably fail to do so after being requested to do so by the Indemnified Party. If the Indemnifying Party does not notify the Indemnified Party that it will assume the defense of such Third-Party Claim within thirty (30) days after the Indemnifying Party receives notice of such claim from the Indemnified Party: (a) the Indemnified Party may defend against such Third-Party Claim in such manner as it may deem reasonably appropriate, *provided* that the Indemnified Party shall not consent to a settlement of or the entry of any judgment arising from such Third-Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed); and (b) the Indemnifying Party shall be entitled to participate in (but not control) the defense of such action, with its counsel and at its own expense. Regardless of which Party shall assume the defense of the Third-Party Claim, the Parties agree to cooperate fully with one another in connection therewith. Such cooperation shall include the providing of records and information which are relevant to such Third-Party Claim and making employees and officers available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to act as a witness or respond to legal process, in each case to the extent that the Party being requested to provide records and information or to make employees and officers available can do so without waiving any evidentiary privileges to which it is entitled.

9.7 Limitations on Liability.

9.7.1 Notwithstanding any provision in this Agreement to the contrary, the aggregate maximum liability of Seller for indemnity under this Agreement shall not exceed the

APPENDIX B

sum of one hundred percent (100%) of the Purchase Price (the “*Seller Indemnity Cap*”); provided, however, that the Seller Indemnity Cap shall not apply to any breach by Seller of Sections 5.1 (Organization and Authority), 5.7 (Project Assets), 5.15 (Solvency) or 5.17 (Investment Company), any Third-Party Claim or any claims based upon fraud or willful misconduct of Seller.

9.7.2 Notwithstanding any provision in this Agreement to the contrary, the aggregate maximum liability of PGE for indemnity under this Agreement shall not exceed the sum of one hundred percent (100%) of the Purchase Price (the “*PGE Indemnity Cap*”); provided, however, that the PGE Indemnity Cap shall not apply to any breach by PGE of Section 6.1 (Organization and Authority) or any Third-Party Claim or any claims based upon fraud or willful misconduct of PGE.

9.7.3 No Indemnified Party shall be entitled to indemnification under Sections 9.3 or 9.4 for Losses to the extent directly or indirectly caused by the willful misconduct, fraud or a negligent act of such Indemnified Party, or any of its Affiliates, or a breach by such Indemnified Party, or any of its Affiliates, of any representation, warranty, covenant or other agreement set forth in this Agreement. Any Indemnified Party making a claim under Sections 9.3 or 9.4 shall take such commercially reasonable steps to mitigate its Losses upon becoming aware of any event which could reasonably be expected to give rise thereto.

9.7.4 Any Claim made or Losses claimed under this Article 9 shall be reduced to the extent the Seller Indemnified Party or PGE Indemnified Party, as applicable, recovers any insurance proceeds in respect of such Claim or Loss.

ARTICLE 10 TAX MATTERS

10.1 Allocation of Purchase Price. The allocation of the Purchase Price (the “*Allocation*”) shall be agreed between the Parties each acting reasonably as soon as practicable, but in no event later than sixty (60) days after the Closing Date. The Allocation agreed to by the parties shall be consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder, and any analogous provisions of state, local or foreign law. If any adjustment is subsequently made to the Purchase Price or other relevant items, the Parties shall reasonably cooperate with each other to promptly amend the Allocation to reflect such adjustment. The Allocation (as so adjusted) shall be binding on the Parties and each of their respective Affiliates for all purposes. The Parties and each of their respective Affiliates shall report, act and file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Allocation, to the extent permitted by Applicable Law. Neither the Parties nor their respective Affiliates shall take any position on any Tax Return,

APPENDIX B

before any Governmental Authority or in any judicial proceeding, that is inconsistent with the Allocation, unless taking such a position is required by Applicable Law.

10.2 Sales, Transfer and Documentary Taxes. Seller shall be responsible for all federal, state and local sales, documentary and other transfer taxes, if any, due as a result of the purchase, sale or transfer of the Project Assets in accordance herewith, whether imposed by law on Seller or PGE.

10.3 Treatment of Indemnity Payments. The Parties shall treat all payments made by Seller to or for the benefit of PGE and all payments by PGE to or for the benefit of Seller under any indemnity provision of this Agreement, as adjustments to the Purchase Price, unless otherwise required by Applicable Law (taking into account all relevant facts and circumstances underlying such payment), in which case any such payment will be increased by any Tax cost actually incurred by the recipient or reduced by any Tax benefit actually realized by the recipient, as applicable.

ARTICLE 11 MISCELLANEOUS

11.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that PGE, on the one hand, and Seller, on the other hand, may not assign their respective obligations hereunder without the prior written consent of the other Party.

11.2 Entire Agreement; Amendments; Attachments. This Agreement, and all exhibits and schedules hereto, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties. PGE and Seller may amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by PGE and Seller. If the provisions of any exhibit or schedule are inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail. The exhibits and schedules attached hereto are hereby incorporated as integral parts of this Agreement.

11.3 Severability. Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties

APPENDIX B

as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

11.4 Dispute Resolution Process; Consent to Jurisdiction.

11.4.1 Avoidance and Mediation. The Parties agree to cooperate with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“*Dispute*”), within three (3) Business Days following the date of delivery of a written request by either Party, (a) each Party shall appoint as its representative a senior officer, and (b) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

11.4.2 Mandatory Mediation. Any Dispute that is not resolved pursuant to Section 11.4.1 may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“*AAA Procedures*”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures, the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as Confidential Information. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article as a witness, collateral contract or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

11.4.3 If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 11.4.2, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect

APPENDIX B

to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, and (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Article 12, or at such other address of which the Parties have been notified.

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

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

11.4.6 The provisions set forth in this Section 11.4 shall survive the termination or expiration of this Agreement.

11.5 Consequential Damages. EXCEPT WITH RESPECT TO LOSSES DIRECTLY OR INDIRECTLY CAUSED BY A PARTY'S WILLFUL MISCONDUCT OR FRAUD, IN NO EVENT SHALL SELLER OR PGE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST OR PROSPECTIVE PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO, IRRESPECTIVE OF WHETHER

APPENDIX B

SUCH DAMAGES ARE REASONABLY FORESEEABLE OR WHETHER SUCH CLAIMS ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE.

11.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts made and to be performed in the State of Oregon and without reference to the conflicts of laws rules thereof.

11.7 Section Headings. The Section headings are for the convenience of the Parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the Parties.

11.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

11.9 No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

11.10 Waiver. At any time prior to the Closing Date, any Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (b) waive any inaccuracies in the representations and warranties of the other Parties contained herein or in any document delivered pursuant hereto and (c) waive compliance by any other Party with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party or Parties to be bound thereby. The failure of any Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

11.11 Costs. Each Party shall pay all of its own costs and expenses, including the fees and costs of its attorneys, consultants, contractors and representatives and internal overhead costs, incurred in connection with the negotiation, authorization, execution and delivery of this Agreement and the agreements, Permits and other documents prepared or to be entered into in connection with the transactions contemplated herein. In the event of legal action to enforce or interpret any provision of this Agreement or the agreements, instruments or certificates delivered pursuant hereto, the prevailing Party shall be entitled to recover from the other Party its reasonable attorneys' fees and other costs of suit so incurred from the losing Party, at trial, on any appeal, and on any petition for review or other proceeding, in addition to all other sums provided by law.

APPENDIX B

11.12 Relationship of Parties.

11.12.1 The duties, obligations and Liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and PGE or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and PGE shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

11.12.2 The relationship between PGE and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of this Agreement, PGE shall have no general right to prescribe the means by which Seller shall meet its obligations under this Agreement.

ARTICLE 12
NOTICES

Any communications between the Parties hereto or regular notices provided herein to be given shall be given to the following addresses:

To PGE:

Portland General Electric Company
121 SW Salmon St.
1 WTC 1700
Portland, Oregon 97204
Attention: [_____]
Facsimile: [_____]

To Seller:

[_____]
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

Any notice which is personally served shall be effective upon the date of service; any notice given by U.S. Mail shall be deemed effectively given, if deposited in the U.S. Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided

APPENDIX B

above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In addition, either Party may send notices by electronic mail, facsimile or by a nationally recognized overnight courier service which provides written proof of delivery (such as U.P.S. or Federal Express). Any notice sent by electronic mail or facsimile shall be effective upon confirmation of receipt in legible form, and any notice sent by a nationally recognized overnight courier shall be effective on the date of delivery to the Party at its address specified above as set forth in the courier's delivery receipt. Either Party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes.

[SIGNATURE PAGE FOLLOWS]

APPENDIX B

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of and on the date first above written.

SELLER:

PORTLAND GENERAL ELECTRIC
COMPANY

[_____]

By:_____

By:_____

Name:

Name:

Title:

Title:

By:_____

Name:

Title:

13 Appendix C - Engineering Procurement and Construction Agreement

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

by and between

PORTLAND GENERAL ELECTRIC COMPANY

as Owner

and

as Contractor

dated as of

_____, 2018

for the

PROJECT

Legal Notice: The drawings and specifications of this Agreement will contain the following requisite statutory notices: (i) "Notice of Alternative Billing Cycle" (O.R.S. 701.625(2)) (as applicable to the extent that any payments to Contractor as described in this Agreement are not considered monthly progress payments), (ii) "Notice of Extended Certification Period Provision" (O.R.S. 701.625(6)) (as with respect to Owner's making of progress payments and final payment as described in this Agreement), and (iii) "Notice of Extended Payment Provision" (O.R.S. 701.625(3)(b)) (as regards the timing of Owner's payments to Contractor as described in this Agreement).

APPENDIX C
TABLE OF CONTENTS

ARTICLE I DEFINITIONS	8
1.1 Definitions.....	8
1.2 Rules of Interpretation.	18
1.3 Order of Precedence.....	19
ARTICLE II RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES	19
2.1 Work to be Performed.....	19
2.2 Project.	20
2.3 Further Work Responsibilities and Commitments.....	20
2.4 Prudent Industry Practices for the Work/Compliance.	28
2.5 Commencement of Work; Project Schedule; Acceleration.	29
2.6 Hazardous Materials.	30
2.7 Owner’s Right to Inspect; Correction of Defects.	32
2.8 Inspection Not Approval.....	33
2.9 Liens.....	33
2.10 Cooperation.....	34
2.11 Intellectual Property Rights.	35
2.12 Credit Support.....	35
ARTICLE III SUBCONTRACTORS	36
3.1 Subcontractors.....	36
3.2 Subcontracts.....	36
3.3 Owner as Third Party Beneficiary.	37
3.4 Subcontractor Payments.....	37
3.5 Subcontractor Warranties.....	37
ARTICLE IV CONTRACT PRICE	38
4.1 Contract Price.....	38
4.2 Taxes.	38
4.3 Disputed Invoices.....	40
4.4 Retainage.....	40
4.5 Conditions of Payment.....	40

APPENDIX C

4.6 Deductions from Payments..... 41

4.7 Effect of Payment. 42

4.8 Set off..... 42

4.9 No Payment if Default. 42

4.10 Interest..... 42

ARTICLE V OWNER RESPONSIBILITIES..... 42

5.1 Project Site Access..... 42

5.2 Permits. 43

ARTICLE VI STAGES OF COMPLETION OF THE WORK..... 43

6.1 Work Completion..... 43

6.2 Project Mechanical Completion..... 43

6.3 Project Substantial Completion..... 44

6.4 Punch List for Project. 45

6.5 Final Completion. 46

6.6 Reasonable Amount; Exclusive Remedy..... 47

ARTICLE VII WARRANTIES 47

7.1 Warranty Provisions..... 47

7.2 Delay. 49

7.3 Subcontractor Warranties..... 49

7.4 Major Equipment Warranties..... 49

7.5 Proprietary Rights. 50

7.6 NO IMPLIED WARRANTIES. 50

7.7 Survival of Warranties. 50

ARTICLE VIII FORCE MAJEURE; OWNER-CAUSED DELAYS 50

8.1 Force Majeure. 50

8.2 Owner-Caused Delay. 51

8.3 No Effect on Obligation to Pay Delay Liquidated Damages..... 52

ARTICLE IX CHANGES 52

9.1 Changes..... 52

9.2 Changes at Owner’s Request. 52

9.3 No Unapproved Changes. 53

APPENDIX C

9.4 Changes Initiated by Contractor. 53

9.5 Required Change Orders..... 53

ARTICLE X INDEMNIFICATION 56

10.1 Indemnities..... 56

10.2 Indemnification Procedure..... 58

ARTICLE XI INSURANCE..... 59

ARTICLE XII DEFAULT, TERMINATION AND SUSPENSION 59

12.1 Contractor Default. 59

12.2 Owner Default..... 62

12.3 Termination Without Cause..... 62

12.4 Termination Payment..... 62

12.5 Actions Required Following Termination. 63

12.6 Suspension by Owner for Convenience..... 64

ARTICLE XIII TITLE AND RISK OF LOSS 65

13.1 Title to Project and the Work..... 65

13.2 Title to Contractor Deliverables..... 65

13.3 Risk of Loss. 65

ARTICLE XIV DISPUTE RESOLUTION 66

14.1 Referral to Senior Management. 66

14.2 Mediation. 66

14.3 Legal Action..... 66

14.4 WAIVER OF JURY TRIAL..... 67

14.5 Attorneys’ Fees. 67

14.6 Survival..... 67

ARTICLE XV REPRESENTATIONS AND WARRANTIES..... 67

15.1 Contractor Representations..... 67

15.2 Owner Representations. 69

15.3 Survival of Representations and Warranties..... 69

ARTICLE XVI MISCELLANEOUS PROVISIONS 69

16.1 Confidentiality and Publicity..... 69

APPENDIX C

16.2 Consequential Damages..... 71

16.3 Limitation on Liability..... 71

16.4 Notice..... 72

16.5 Time of the Essence..... 72

16.6 No Rights in Third Parties. 72

16.7 Entire Agreement..... 73

16.8 Amendments. 73

16.9 GOVERNING LAW..... 73

16.10 Right of Waiver..... 73

16.11 Severability. 73

16.12 Successors and Assigns; Assignment. 73

16.13 Survival..... 74

16.14 Expenses and Further Assurances..... 74

16.15 Counterparts..... 74

16.16 Status of Contractor; No Partnership; No Agency..... 74

16.17 Compliance with Applicable Laws..... 74

APPENDIX C

EXHIBITS

Exhibit A	Scope of Work
Exhibit B-1	Schedule of Values
Exhibit B-2	Payment Schedule
Exhibit B-3	Form of Request for Payment
Exhibit B-4	Unit Rates for Additional Work
Exhibit C-1	Initial Project Schedule
Exhibit C-2	Requirements for Progress Reporting
Exhibit C-3	Performance Testing
Exhibit C-4	Performance Guarantee and Performance Liquidated Damages
Exhibit D	Major Equipment Provider Technical Specifications, Manuals and Standards
Exhibits D-1 to D-5	Major Equipment Warranties
Exhibit E	Design Drawing and Specification Index
Exhibit F	Geotechnical Reports
Exhibit G-1	Site Map
Exhibit G-2	Summary of Land Owner Requirements
Exhibit H	Owner & Contractor Permits
Exhibit I-1	List of Approved Subcontractors or Suppliers
Exhibit I-2	List of Key Personnel
Exhibit J-1	Contractor-Provided Training
Exhibit J-2	Spare Parts List
Exhibit K	Site Control Agreement
Exhibit L	Contractor Site Safety Plan, Drug, and Alcohol Abuse Policy
Exhibit M	Form of Change Order
Exhibit N	Form of Quality Assurance and Quality Control Manual
Exhibit O-1	Form of Contractor's Partial Lien Waiver and Release
Exhibit O-2	Form of Subcontractor's Partial Lien Waiver and Release
Exhibit O-3	Form of Contractor's Final Lien Waiver and Release
Exhibit O-4	Form of Subcontractor's Final Lien Waiver and Release
Exhibit P-1	Insurance Requirements
Exhibit P-2	Contractor's Insurance Certificates
Exhibit P-3	Form of Payment and Performance Bond
Exhibit P-4	Form of Contractor Parent Guaranty
Exhibit P-5	Form of Letter of Credit
Exhibit Q	Form of Work Completion Certificates
Exhibit R-1	Environmental Assessment
Exhibit R-2	Environmental Permit Matrix
Exhibit S-1	Form of Notice to Proceed

APPENDIX C

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this “Agreement”), is made, entered into and is effective as of _____, 2018 (the “Effective Date”), by and between _____ (“Owner”), and _____ (“Contractor”).

RECITALS

Owner is developing a renewable energy generation facility (defined as the Project below) and all services and utilities related thereto, all to be located near the town of _____ in ____ County, _____.

In connection with such Project, Owner desires to obtain and Contractor desires to provide certain work, including, among other things, procurement, installation, construction and related services for the Project, all for the Contract Price (as hereinafter defined).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS

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

“AAA” means the American Arbitration Association.

“AAA Procedures” has the meaning set forth in Section 14.2.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word “controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“Agreement” has the meaning set forth in the preamble hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

“Applicable Laws” means any act, statute, law, regulation, Permit (including Applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent

APPENDIX C

mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Authority with jurisdiction over Contractor, Owner, the Project, the Project Site, the performance of the Work or other services to be performed under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

“Applicable Permits” means any and all Permits from or required by any Government Authority that are necessary for the performance of the Work or the completion or operation of the Project.

“As-Built Drawings” means final Drawings for the Work, as revised to reflect the changes in the Work during construction, and shall include as-built drawings that show the physical placement and location of all improvements, including the equipment, roads, overhead electric transmission line, underground collection lines, communication lines (both above and below ground), the Transformer Substation, electric one-line drawings, electric schematics and connection diagrams.

“Bankruptcy or Insolvency Event” has the meaning set forth in Section 12.1.(a).

“Builder’s Risk Policy” has the meaning set forth in Exhibit P-1.

“Business Day” means every day other than a Saturday, Sunday or a day which is a legal holiday in the state in which the Project is located.

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

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

“Change Order Request” has the meaning set forth in Section 9.4.

“Commence Construction” has the meaning as such term is defined in the US Tax Code.

“Commencement of Construction Liquidated Damages” has the meaning set forth in Section 6.1.1.

“Confidential Information” has the meaning set forth in Section 16.1.1.

“Consequential Damages” has the meaning set forth in Section 16.2.

“Consumable Parts” has the meaning set forth in Section 2.3.6.

“Contractor” has the meaning set forth in the preamble hereto and includes its legal successors and permitted assignees as may be approved by Owner, in writing, pursuant to the terms of the Agreement.

“Contractor Deliverables” means all Drawings, Job Books, Operating Manuals, all written comments, field changes, and redlined drawings for incorporation into the final As-Built Drawings, and other documents and similar information prepared or modified by Contractor or

APPENDIX C

any of its Subcontractors and delivered or required to be delivered hereunder, including all subcontractor payment records as required by Section 3.3.

“Contractor Event of Default” has the meaning set forth in Section 12.1.1.

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

“Contractor Termination for Cause” has the meaning set forth in Section 12.2.

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

“Contractor’s Project Manager” means the Person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for design, construction, procurement, testing and start-up of the Work, as well as all matters relating to the administration of the provisions of the Agreement, and who will be primarily located at the Project Site on a daily basis.

“Contractor’s Taxes” has the meaning set forth in Section 4.2.1(a).

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

“Day” or “day” means a period of twenty-four (24) consecutive hours from 12:00 midnight, and shall include Saturdays, Sundays and all holidays.

“Defect” or “Defective” means, any condition, characteristic or item of the Work that (a) does not conform to the terms or requirements of the Agreement (including Prudent Industry Practices), (b) is not of uniform good quality, free from defects or deficiencies in design, manufacture or workmanship, or (c) would adversely affect (i) the performance of the Project under anticipated operating conditions, (ii) the continuous safe operation of the Project during the Project’s design life, or (iii) the structural integrity of the Project.

“Delay Liquidated Damages” has the meaning set forth in Section 6.6.

“Direct Costs” has the meaning set forth in Section 9.5.3(c).

“Dispute” has the meaning set forth in Section 14.1.

“Dollar” or “\$” means a dollar of the currency of the United States of America.

“Drawings” means (a) all specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Project, including the structure and foundation thereof, and (b) all technical drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground

APPENDIX C

structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-line's, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors all of which are and required to be submitted by Contractor or any Subcontractor, from time to time under the Agreement or at Owner's request which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

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

“Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items required to complete the Project excluding the Contractor's Equipment and Major Equipment. The Parties acknowledge that Contractor will provide, install and incorporate the Equipment into the Project as described in this Agreement.

“Final Completion” has the meaning set forth in Section 6.5.1.

“Final Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit Q.

“Final Completion Date” means the date on which Final Completion occurs as per Section 6.5.1.

“Final Punch List” has the meaning set forth in Section 6.4.1.

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

- (a) arises after the Effective Date,
- (b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,
- (c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and
- (d) either (i) as with respect to Owner as the impacted Party, has an impact which will actually, demonstrably and adversely affect Owner's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Contractor as the impacted Party, has an impact which will actually, demonstrably and adversely affect Contractor's ability to perform Work on the Project Site so as to achieve a Key Milestone by the scheduled completion date for such Key Milestone as set forth in the Project Schedule.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Project caused by third parties who are not Subcontractors or representatives, employees or agents of the impacted Party, national, regional and area-wide strikes and other national, regional and area-wide labor

APPENDIX C

disputes (including collective bargaining disputes and lockouts) involving Contractor or Subcontractors and not directed exclusively at Contractor or such Subcontractor; a severe inclement weather condition not mentioned above, which prevents or substantially hinders the safe performance of the Work at the Project Site; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a Governmental Authority (other than in respect of or in relation to or resulting from Contractor's non-compliance with Applicable Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the Work by a Subcontractor on the Project Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or Subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective Subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Government Authority in respect of or in relation to or resulting from Contractor's compliance or non-compliance with Applicable Laws; (ix) any failure by Contractor to obtain and maintain any Applicable Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor or other Personnel of Contractor.

“Force Majeure Notice” has the meaning set forth in Section 8.1.1.

“Geotechnical Survey” means that certain geotechnical reports referenced in Exhibit F.

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

“Grid” means the interconnected high voltage transmission facilities that are a part of the transmission system to which the Project connects.

“Guaranteed Substantial Completion Date” shall mean _____, as set forth in the Initial Project Schedule.

“Guarantor” means _____, issuer of a parent guaranty with respect to Contractor's obligations hereunder.

“Hazardous Material” means any and all chemicals, constituents, contaminants, pollutants, materials, and wastes and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic or otherwise hazardous substances or mixtures (whether solids, liquids, gases), or

APPENDIX C

any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under Applicable Laws, including those laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport, or other use of such substances.

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

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

“Initial Project Schedule” means the “Level 2” (as defined by the Association for the Advancement of Cost Engineering International) Gantt Chart that sets forth the schedule of dates and milestones (including Key Milestones) for timely completion of the Work as set forth in Exhibit C-1 with specific start and end dates for each activity comprising (or relating to) the Work.

“Intellectual Property Rights” has the meaning set forth in Section 2.11.

“Interconnect Switchyard” means the Utility-owned electric transmission switchyard to be located at the end of the Transmission Corridor, immediately adjacent to the connection to the Grid, including all necessary breakers, protection equipment, metering and associated control buildings and other infrastructure associated therewith.

“Job Book” means all documentation specified in the Scope of Work, which shall include all engineering, design, purchasing and other information relating to the Project, including: (a) a drawing index; (b) a reference index; (c) copies of Contractor’s and Subcontractors’ Permits; (d) copies of all contracts and purchase orders for Major Subcontractor’s equipment (non-priced); (e) Subcontractor information for equipment purchased (as received from Subcontractors) including instruction and maintenance manuals from Subcontractors; (f) one copy of the As-Built Drawings and documentation; (g) training manuals; (h) the Operating Manuals; (i) electrical one-line diagrams for the Project; (j) a cable and raceway schedule for the Project; (k) connection report/loop diagrams for the Project; and (l) a final list and summary of the work performed by all Subcontractors.

“Key Milestones” means the milestones identified as such in the Initial Project Schedule (Exhibit C-1).

“Key Personnel” means the persons designated as “Key Personnel” in Exhibit I-2.

“Labor” means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers (and including those provided by Subcontractors).

“Letter of Credit” means a letter of credit in substantially the form set forth in Exhibit P-5 issued by a United States bank (with a branch office in Portland, Oregon) rated at least ‘A’ by Standard & Poor’s Rating Services or ‘A2’ by Moody’s Investor Service.

APPENDIX C

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

“Lien Waiver and Release” means waivers to lien rights and may be conditional or unconditional. Lien Waiver and Releases will follow the form as set forth in Exhibit O-1, Exhibit O-2, Exhibit O-3, and Exhibit O-4, as required.

“Limited Notice to Proceed” or “LNTP” means a written notice, substantially in form as shown in Exhibit S-1, issued by Owner on or after the Effective Date to Contractor in accordance with this Agreement that is signed by both Parties and directing Contractor to commence the Work set forth in the LNTP in accordance with the terms of this Agreement in advance of the Notice to Proceed.

“Major Equipment” shall be as defined in the Scope of Work (Exhibit A).

“Major Equipment Warranties” shall be as defined in Section 7.4.

“Major Subcontract” means any agreement or purchase order with a Subcontractor for performance of any part of the Work that has an aggregate value in excess of _____ Dollars (\$ _____).

“Major Subcontractor” means, any Owner-approved Subcontractor with whom Contractor will enter (or has entered) into a Major Subcontract.

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

[“Mechanical Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit Q.]

[“Mechanical Completion Checklist” means the checklist by this name as described in Exhibit Q.]

“Monthly Progress Report” means a monthly written report that complies with the requirements of Exhibit C-2 and includes a description of the progress and status of the Work compared to the Project Schedule, the Subcontractors’ activities, engineering and design progress, a summary of any Change Orders executed by the Parties as of the date of such report and a summary of any events that may affect the Project Schedule (including, without limitation, any Force Majeure Events, Owner-Caused Delays, Liens on the Project Site, or the Project, and any asserted violations of Applicable Laws).

“Tangible Net Worth” means the total assets minus intangible assets minus the total liabilities of Guarantor and its consolidated subsidiaries, all determined on a consolidated basis as in accordance with generally accepted accounting principles.

“Notice to Proceed” means a written notice issued by Owner to Contractor pursuant to Section 2.1, and substantially in form as shown in Exhibit S-2, that is signed by both Parties directing Contractor to commence the Work in accordance with the terms of this Agreement.

APPENDIX C

“Notice to Proceed Date” or “LNTP Date” means the date on which Notice to Proceed occurs as per Section 2.1.

“O&M Personnel” has the meaning set forth in Section 2.3.12.

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

“Other Owner Contractors” means those Persons, other than Contractor, with whom Owner contracts or subcontracts to perform work in connection with the Project, including the Equipment Provider and the Owner Engineer. Owner Contractors may also include Owner in the event Owner elects to perform any work in connection with the Project.

“Owner” has the meaning set forth in the preamble hereto.

“Owner-Caused Delay” means a delay in Contractor’s or a Subcontractor’s performance of the Work or an increase in Contractor’s or a Subcontractor’s costs that has been demonstrably caused by the failure of Owner, Other Owner Contractors (other than Equipment Provider) to perform any material obligation of Owner under this Agreement (other than by exercise of rights under this Agreement, including the exercise by Owner of the right to have Defective or nonconforming Work corrected or re-executed) or by the acts or omissions of Owner, Other Owner Contractors (other than Equipment Provider). Any delay that is due in part to Contractor’s or any of its Subcontractors’ actions or inactions shall not be an Owner-Caused Delay.

“Owner Engineer” means _____.

“Owner Event of Default” has the meaning set forth in Section 12.2.

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

“Owner Permits” means those Permits required to be obtained by Owner, as set forth on Exhibit H.

“Owner’s Project Manager” means the individual appointed by Owner to act on its behalf in connection with this Agreement.

“Owner’s Taxes” has the meaning set forth in Section 4.2.2(b).

“Parent Guaranty” has the meaning set forth in Section 2.12.1.

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

“Payment and Performance Bond” has the meaning set forth in Section 2.12.1.

APPENDIX C

“Payment Schedule” means the milestone payment schedule attached as Exhibit B-2, which sets forth an allocation of the Contract Price to the milestones described therein.

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

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

“Personnel” means, with respect to a Party or entity, such Party’s or entity’s employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third party independent contractors with whom such Party or entity has contracted, and its agents’, personnel’s, representatives’, invitees’, subcontractors’, vendors’ or third party independent contractors’ respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent contractors.

“Pre-Existing Hazardous Material” means any Hazardous Material (a) that existed on or in the Project Site prior to the date when Contractor or any of its Subcontractors or other representatives is present thereon following the Effective Date or (b) brought to the Project Site by Owner, any Other Owner Contractor or any third party other than Contractor or its Personnel after the Effective Date.

“Prime Rate” means _____.

“Project” means the electric generation project that is the subject of this Agreement, as described in the Scope of Work (Exhibit A).

“Project Schedule” has the meaning set forth in Section 2.5.2.

“Project Site” means all those parcels of land subject to the Real Property Rights in favor of Owner including the Transmission Corridor on which the Work will be located as shown in Exhibit G-1.

“Project Substantial Completion” has the meaning set forth in Section 6.3.1.

“Project Substantial Completion Certificate” means the certificate by this name as described in, and in the form set forth in Exhibit Q.

“Project Substantial Completion Date” means the date on which the Project achieves Project Substantial Completion, per Section 6.3.2.

“Prudent Industry Practices” means, in connection with the design and construction of renewable energy power generation systems of a type and size and having geographical and

APPENDIX C

climatic attributes similar to the Project, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members in the United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Punch List” means any punch list as described in Section 6.4.1, as applicable.

“Quality Assurance Procedures” means the quality assurance and quality control procedures as set forth in Exhibit N.

“Real Property Requirements” means the applicable covenants, agreements, restrictions, limitations, or requirements of the Real Property Rights imposed upon Owner or its assignees, contractors, licensees, or invitees regarding the use and possession of the Project Site, the construction, operation, and maintenance of the Project on the Project Site, and any other activities on or over the Project Site, a summary of which is attached hereto as Exhibit G-2.

“Real Property Rights” means all rights in or to real property (such as leasehold or other rights to use or access the Project Site), leases, agreements, Permits, easements, including licenses, private rights-of-way, and utility and railroad crossing rights required to be obtained or maintained by Owner in connection with construction of the Project on the Project Site, transmission of electricity to the Grid, performance of the Work, or operation of the Project.

“Request for Payment” means the written requests from Contractor to Owner for payment, as described in Exhibit B-2.

“Retainage” has the meaning set forth in Section 4.4.1.

“Safety Plan” has the meaning set forth in Section 2.3.14(a).

“Schedule of Values” means that schedule set forth in Exhibit B-1 which apportions the Contract Price among all cost code divisions or portions of the Work.

“Scope of Work” means the services and work to be provided, or caused to be provided, by or through Contractor under the Agreement, as more particularly described in Exhibit A, and the other obligations of Contractor under the Agreement, as the same may be amended from time to time in accordance with the terms hereof.

“Spare Parts” has the meaning set forth in Section 2.3.10.

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

“Subcontractor” means any Person other than Contractor performing any portion of the Work, including every tier of subcontractor, vendor or supplier of equipment, materials or

APPENDIX C

services to Contractor or any subcontractor of any Person engaged or employed by Contractor or any subcontractor in connection with the performance of the Work, whether or not incorporated into the Project.

“Substantial Completion of Liquidated Damages” has the meaning set forth in Section 6.1.2.

“Termination for Cause” has the meaning set forth in Section 12.1.2.

“Termination Payment” has the meaning set forth in Section 12.4.1.

“Termination Without Cause” has the meaning set forth in Section 12.3.

“Transmission Corridor” means, as part of the Project Site, those connected parcels of land subject to the Real Property Rights in favor of Owner on which certain Project, including transmissions lines, electrical works and the Interconnect Switchyard, will be located.

“Equipment Provider” means _____.

“Unforeseen Subsurface Condition” has the meaning set forth in Section 2.3.1(b).

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

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

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

“Work” has the meaning set forth in Section 2.1 and includes Contractor Deliverables, the Project, the Equipment, and any other product or result of the Work, and further described in Exhibit A.

“Working Day” means the hours from 7:00 am to 7:00 pm, Monday through Saturday, excluding holidays, at the Project Site.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) unless otherwise specified, references to “Articles,” “Sections,” or “Exhibits” (if any) shall be to Articles, Sections, or Exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; (b) all references to a Person shall include a reference to such Person’s successors and permitted assigns; (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (d) the use of the word “including” or “include” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, with advice of legal counsel; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

APPENDIX C

1.3 Order of Precedence. In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

1.3.1 Amendments, addenda or other modifications to the Agreement (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;

1.3.2 This Agreement (excepting Exhibits hereto);

1.3.3 Exhibit A through Exhibit S-2;

1.3.4 Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Notwithstanding the foregoing provisions of this Section 1.3, if a conflict exists within a part of the Agreement as listed in a lettered subclause above, or between or among the Agreement and Applicable Laws, the Real Property Requirements, then the more stringent or higher quality requirements shall control. Where a conflict exists among codes and standards applicable to the Project or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

ARTICLE II

RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES

2.1 Work to be Performed. Commencing on the date specified in the Notice to Proceed, or earlier with respect to Work authorized pursuant to the Limited Notice to Proceed ("LNTP"), and except as otherwise expressly set forth in Article V or elsewhere in this Agreement as being the responsibility of Owner or Equipment Provider, Contractor shall perform or cause to be performed all necessary work and services (the "Work") required in connection with (a) the design, procurement, engineering, specified permitting, construction, assembly, installation and, where applicable, the start-up and testing, of the Project to Final Completion, (b) the provision, management and supervision of all Labor, transportation, administration and other services as required in connection with any of the foregoing, (c) the inspection and furnishing of all materials, equipment, machinery, tools, temporary structures, temporary utilities as required in connection with the foregoing including the performance obligations described in this Article II and the Scope of Work, and (d) the performance of Contractor's warranty obligations hereunder. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed the Work in accordance with the terms and conditions of this Agreement. Contractor hereby represents that it has ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions including Applicable Laws, and the availability and productivity of Labor which might affect its

APPENDIX C

performance of the Work or the cost thereof and that, based upon the same, but subject to Section 9.5.1, commits that it can complete the Work for the Contract Price in accordance with the Initial Project Schedule.

2.2 Project. Contractor shall construct the Project and all other components of the Work that are set forth in Exhibit A as part of Contractor's Scope of Work.

2.2.1 Interconnection to Grid. As further described in the Scope of Work, Contractor shall be responsible for all interconnection up to and including provision of and connection to the Interconnect Switchyard. Contractor shall coordinate with and permit the Utility to install the interconnection works between such point and the Grid.

2.2.2 Start-up and Testing of Project. Contractor shall perform the start-up and testing of the Project, including the calibration and functional testing of all controls and equipment in accordance with Exhibit A. If the Scope of Work requires that any item comprising the Project be tested by Contractor, Contractor shall notify Owner in writing at least ten (10) Business Days prior to the commencement of any such test. Contractor shall coordinate with Owner the scheduling of any test and Owner shall coordinate such test with Equipment Provider, so as not to interfere, in either case, with either Party's obligations with respect thereto. Owner shall witness such tests and will, within three (3) Business Days after receipt of written results of such tests, deliver to Contractor a written notice either (a) accepting such tests as having been passed, or (b) rejecting such tests as having demonstrated that the tested item failed to comply with the performance requirements therefor under this Agreement. Any rejection shall include a detailed description of the basis for rejection.

2.3 Further Work Responsibilities and Commitments.

2.3.1 Site Clearance and Preparation.

(a) Topography. Contractor has surveyed the general surface conditions of the Project Site topography and represents that, subject to Unforeseen Subsurface Conditions, the same are sufficient for Contractor to construct the Project and perform the Work. Contractor will be responsible for clearance of the Project Site, including the removal of obstructions. Contractor will be responsible for access road construction as described in the Scope of Work. Contractor shall provide for the procurement of or disposal of, as necessary, all soil, gravel and similar materials required for the performance of or otherwise in connection with the Work. Contractor will provide adequate treatment of and protection against water runoff resulting from Contractor's and its Subcontractor's work. Contractor will provide for the collection, treatment and disposal of groundwater resulting from Contractor's and its Subcontractors' work.

(b) Geotechnical Survey; Subsurface Risk. "Unforeseen Subsurface Conditions" shall mean: (i) subsurface or latent physical conditions at the Project Site, differing materially from those indicated in the Geotechnical Survey, or (ii) previously unknown physical conditions at the Project Site of an unusual nature (including unknown and unexpected archaeological or religious sites, places, monuments or areas) or conditions that differ materially from those ordinarily encountered and generally recognized as inherent in work similar to the

APPENDIX C

Work or which should have been known or discoverable Contractor based upon the information in the Geotechnical Survey. If Contractor encounters any condition that Contractor believes is or may be an Unforeseen Subsurface Condition, Contractor shall notify Owner of the same promptly, but in any event no later than three (3) days after becoming aware of the condition. If the condition at issue is indeed an Unforeseen Subsurface Condition as defined herein and Contractor has delivered such notice within such time period, then Contractor will be entitled to a Change Order to the extent so provided in Section 9.5.1(d). If Contractor fails to notify Owner of such a condition within such three (3) day period, then Contractor shall not be entitled to and will thereby be deemed to have waived its rights to receive any Change Order as with respect to such condition.

2.3.2 Storage. At all times prior to the date of Project Substantial Completion, Contractor shall provide appropriate storage for the Consumable Parts, Equipment, and all other materials, supplies and other equipment utilized in connection with the Work and all other personal property owned or leased by Contractor or any Subcontractor located at the Project Site. At a minimum, Contractor shall comply with all Equipment manufacturer recommendations and requirements and shall comply with requirements in the Scope of Work.

2.3.3 Transportation and Delivery Specification. *[To Be Discussed as appropriate to equipment.]*

2.3.4 Drawings and Documents.

(a) Ownership of Drawings. All drawings, specifications and other documents prepared by or for Contractor in respect of the Project and all drawings, specifications, calculations, memoranda, data, notes and other materials containing information supplied by Owner which shall come into Contractor's possession during its performance hereunder, shall be the property of Owner, and such Owner documents and other materials shall be returned to Owner upon the earlier of the Project Substantial Completion Date or termination of this Agreement. Owner shall have the right to retain a reproducible set of all Contractor's proprietary drawings, specifications and other documents for use in respect of the Project. Review (or lack thereof) by Owner or its designees of any Project documents provided by Contractor, and the fact that Owner has not discovered any errors reflected in such Project documents, shall not relieve or release Contractor of any of its duties, obligations or liabilities under the terms of this Agreement.

(b) As-Built Drawings. During construction, Contractor shall keep on file one set of current as-built drawings reflecting all field deviations from the design drawings. As a condition to Final Acceptance, Contractor shall provide to Owner, for Owner's approval, a set of as-built drawings which have been fully conformed to the construction records as of the completion of the Work. Drawings shall be provided in AutoCAD DWG/DWF and Adobe PDF format.

2.3.5 Religious and Archaeological Resources. If any archaeological or religious sites, places, monuments or areas are discovered or identified by Contractor during the performance of Work under the Agreement, Contractor shall leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area and shall comply

APPENDIX C

with any applicable Real Property Requirements. Contractor shall notify Owner of any such discovery as soon as practicable, and Contractor shall carry out Owner's reasonable instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, religious, cultural or similar interest discovered on the Project Site shall, as between Owner and Contractor, be deemed to be the property of Owner. Contractor shall prevent its and its Subcontractors' Labor from removing or damaging any such article or thing.

2.3.6 Equipment, Consumables, Construction Utilities and Related Services.

Except to the extent provided by Owner or Equipment Provider as described in Article V or as part of the Work, Contractor shall procure and supply, at its own expense, all Equipment required to complete the Work, including without limitation all Equipment as necessary for performance and completion of its obligations under this Agreement (whether on or off the Project Site). Contractor shall inspect or cause to be inspected all such Equipment and shall reject those items determined not to be in compliance with the requirements of this Agreement. Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the completion of the Work. All Equipment provided by Contractor shall be new and of suitable grade for its intended purpose. With the exception of those consumable items expressly stated to be provided by Equipment Provider as described in Exhibit D, Contractor shall supply all consumable parts and supplies required for the Work including, but not limited to, cable ties, cable wraps, splices, wire nuts, lubricants, greases and other consumable materials (collectively, the "Consumable Parts").

2.3.7 Obtaining, Maintaining and Identifying Permits.

Contractor shall timely obtain and maintain all Contractor Permits. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits. If any Applicable Permit is required for the Project or to perform the Work that is not identified in Exhibit H, Contractor or Owner, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. If such Applicable Permit is of a nature typically obtained by contractors in similar projects, Contractor shall, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit. Otherwise, Owner shall obtain and maintain such Applicable Permit. All Applicable Permits (other than any building permits) designated as either "To be issued in the name of Owner" or "To be issued in the name of the Owner and Contractor" on Exhibit H shall be issued in the name of Owner or Owner and Contractor, as required, to the best of Contractor's ability unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Owner or otherwise requires action by Owner, Owner shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate. Owner reserves the right to review any such application of Contractor; provided, however, that Owner's exercise of such right shall not under any circumstances, be considered an approval of the necessity, effect or contents of such application or related Permit nor shall it be allowed to unreasonably delay the submittal of such application. Contractor shall deliver to Owner true and complete copies of all Permits obtained by Contractor upon its receipt thereof.

APPENDIX C

2.3.8 Real Property Requirements and Real Property Rights. Contractor shall comply with those Real Property Requirements as summarized in Exhibit G-2. In addition, Contractor shall provide such assistance as may be reasonably requested by Owner in connection with Owner's efforts to observe and maintain the Real Property Requirements, including efforts to obtain any necessary revisions or adjustments thereof. As of the date hereof, subject to Section 2.3.1(b) as regards Unforeseen Subsurface Conditions, Contractor represents and warrants that it has inspected and is fully familiar with the Project Site, including the boundaries thereof, and that (a) they are sufficient for Contractor to undertake and complete that portion of the Work to be located thereon in accordance with the Agreement, the Real Property Requirements and Applicable Laws, and (b) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming a Change. In the performance of the Work, Contractor and its Subcontractors shall abide by any restrictions in regard to the location of facilities that are part of the Real Property Requirements. Owner shall enforce the Real Property Requirements for the benefit of Contractor and shall indemnify Contractor with respect to any claims by the Owners other than those claims caused by Contractor or its Personnel. Contractor shall indemnify Owner from any claims or expenses arising out of the failure of Contractor or its Subcontractors to comply with the Real Property Requirements. Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking within the Project Site. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall, at Owner's expense, cooperate with Owner in resolving all such problems.

2.3.9 Environmental Compliance. Contractor shall comply with all Environmental Assessment requirements applicable to Contractor or the Work as set forth in Exhibit R-1 and the Environmental Permit Matrix as set forth in Exhibit R-2.

2.3.10 Spare Parts. Set forth in Exhibit J-2 is a list of spare parts that are necessary to operate and maintain the Project (the "Spare Parts"). Owner may at any time prior to Project Substantial Completion notify Contractor in writing that Owner wishes to purchase certain Spare Parts, and therein request pricing for the Spare Parts in question and the quantities desired. Contractor will supply the pricing for such identified Spare Parts to Owner as soon as practicable after such request. Owner may thereafter order those of such Spare Parts as Owner desires. Contractor shall thereafter deliver such Spare Parts Duty Paid (DDP) (Incoterms 2000) to Project Site, using commercially reasonable efforts to complete such delivery within two (2) weeks after Owner's placement of such order. Title and risk of loss to such Spare Parts will transfer to Owner upon such delivery. After such delivery is completed, Contractor will invoice Owner for the Spare Parts (based upon the quoted pricing), and the undisputed portions of such invoice shall be payable by Owner within thirty (30) days after Owner's receipt of such invoice. Should a component of the Equipment fail during commissioning, start-up or testing, Contractor may utilize a Spare Part of that component from Owner's inventory in order to return the Equipment to operating condition. Contractor shall at its cost promptly replace any such Spare Parts so utilized.

2.3.11 Operating Manuals and Job Books.

APPENDIX C

(a) Operating Manuals. Within 30 days after finalizing the equipment selection the Contractor shall prepare and deliver to the Customer the following documents: (i) Operating Manuals in an electronic draft version, (ii) recommended spare parts list, and (iii) lubrication schedule. Prior to commencing commissioning activities, Contractor shall prepare and deliver to Owner the documentation as required in the Scope of Work. In the event of total or partial rejection or revisions of the draft Operating Manuals by Owner, within fifteen (15) days after receipt of notice of such revisions or rejection Contractor shall make appropriate changes to the drafts to respond to Owner's revisions or reasons for rejection and shall resubmit such draft to Owner or shall explain why such revisions are not necessary. Such procedure shall be repeated until receipt of Owner's written approval therefore. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall prepare in individually numbered bound volumes and deliver to Owner two (2) sets of such approved Operating Manuals (which may be combined with the other Operating Manuals) and shall also provide three (3) copies of the Operating Manuals to Owner in electronic format.

(b) Job Books. As a condition to Project Substantial Completion, Contractor shall deliver to Owner two (2) copies of the semi-final draft of the Job Books, either in job book format or in form and format then available as a result of the design and construction process, as appropriate. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Project by Persons generally familiar with machinery and equipment similar to that comprising the same. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall provide two (2) original hard copies and three (3) electronic copies (on CD Roms) of the final and complete Job Books to Owner. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an electronic copy of such information.

2.3.12 Contractor-Provided Training. Commencing at least thirty (30) days prior to the then-scheduled date for achievement of Mechanical Completion, Contractor shall provide, at its own expense, a training program in the operation and maintenance of the Project for Owner's Project Personnel and the operation and maintenance contractor's Project Personnel (collectively, "O&M Personnel"). The training program provided by Contractor shall be as described on Exhibit J-1 and shall (a) include classroom and field training, (b) include all educational materials necessary for such training, and (c) establish quality controls so that O&M Personnel are suitably trained and capable of operating and maintaining the Project after Project Substantial Completion. Contractor shall make every reasonable effort to use the O&M Personnel during start-up and initial operation of the Project; provided, however, Owner shall not be obligated to supply (i) O&M Personnel for the construction of the Project or (ii) provide during Project start-up and initial operation more O&M Personnel than the number of O&M Personnel Owner an Operations and maintenance contractor would use during normal Project operation as determined by Owner. Contractor shall remain solely responsible for performing the Work in accordance with this Agreement, including Contractor's obligation to achieve Project Substantial Completion, and achieve Final Completion, subject to Contractor's right to a Change Order in the event of an Owner-Caused Delay. The cost of the O&M Personnel's salary, travel, lodging, food and other living expenses shall be borne by Owner.

APPENDIX C

2.3.13 Labor and Personnel.

(a) Engagement of Labor. Contractor shall provide and manage and transport all Labor and Personnel required in connection with the performance of the Work and of its obligations hereunder. Contractor shall retain only such Labor and Personnel that have experience with the equipment and who are competent to perform their assigned duties in a safe and secure manner, including: (i) Contractor's Project Manager; (ii) lead project engineer and field engineers, cost and schedule engineers. Contractor shall not change Contractor's Project Manager or any other member of Contractor's Key Personnel without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Contractor shall require its Subcontractors to adhere to the same standard with respect to their Labor. Where required by Applicable Law, Contractor shall employ only licensed Personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, safety, skill and responsibility customary among such licensed Personnel provided such performance is in accordance with Applicable Law and Prudent Industry Practices. To the extent required by Applicable Law and Prudent Industry Practices, all Labor shall have received formal documented training in their area of expertise and certification.

(b) Owner Review of Labor. Upon Owner's request, Contractor shall provide Owner with the resumes of all management and supervisory Personnel employed in connection with the Work and Owner may require the replacement of any Personnel, at Contractor's sole expense if, in Owner's reasonable opinion, such Person is (i) endangering life or limb on or near the Project Site or violates or breaches the Real Property Requirements, thereby adversely affecting Owner's relationship with the land owners, (ii) incompetent, or (iii) violating or has violated this Agreement, particularly the Safety Plan and Sections 2.3.13(c) through (e). Rejection of Contractor's Personnel by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under the Agreement.

(c) Alcohol and Drugs. Contractor shall comply with Owner's policies and practices regarding alcohol and drugs and shall not possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law) at the Project Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor. Subject to requirements of Applicable Law, Contractor shall perform random drug and alcohol testing on Persons employed by its Subcontractors and shall perform a drug and alcohol test on any Person employed by a Subcontractor who Owner or Contractor reasonably suspects is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work at the Project Site. Subject to requirements of Applicable Law, Contractor shall perform drug and alcohol testing on its Subcontractors, agents and Labor for purposes of such Person's hiring, treatment or annual physical. Additionally, Contractor shall perform, or cause its Subcontractors and agents to perform, a drug and alcohol test on each of their respective employees prior to any such employee first entering the Project Site to perform any Work. Contractor shall immediately identify and remove from its or its Subcontractors'

APPENDIX C

employment at the Project Site any Person (whether in the charge of Contractor or any of its Subcontractors) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work, excluding any Person using a prescription drug under supervision and approval from a medical doctor, or any other Person who does or whose actions may create any unsafe condition or other situation that may cause damage or harm to any Person or property, including any Person using a prescription drug under supervision and approval from a medical doctor. Contractor's Drug and Alcohol Abuse Policy is attached as Exhibit L. This policy does not apply to Owner and its Personnel. Owner shall enforce its own drug and alcohol policy with respect to its Personnel.

(d) Arms and Ammunition. Contractor and its Personnel, shall not possess, give, barter or otherwise dispose of, to any Person or Persons, any arms or ammunition of any kind at the Project Site, or permit or suffer the same as aforesaid and shall at all times assure that the Project Site is kept free from arms and ammunition. No hunting of any kind by Contractor or its Personnel, or other invitees, shall be permitted on the Project Site. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Project Site any Person that violates this provision.

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

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

2.3.14 Safety and Emergencies.

(a) Safety. Contractor shall initiate and maintain safety precautions and programs to conform with Applicable Laws, Applicable Permits, Exhibit A, or other requirements designed to prevent injury to all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Owner, Contractor and its Subcontractors, and other contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath,

APPENDIX C

above, across or near the Project Site) that are at or near the Project Site that are in any manner affected by the performance of the Work. Such precautions and programs shall include prevention of damage or injury to local flora and fauna. Contractor shall erect and maintain reasonable safeguards for the protection of Labor and the public. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. Contractor shall, and shall cause all of its Labor, agents, invitees, and Subcontractors to follow the safety plan set forth in Exhibit L (the “Safety Plan”) and to follow all other reasonable safety measures and procedures implemented by the Owner at the Project Site.

(b) Compliance with Safety Plan. Contractor shall be responsible for and shall notify Owner as soon as Contractor becomes aware of any injury resulting from a failure of its agents, invitees, Labor, or Subcontractors to abide by the requirements of the Safety Plan set forth in Exhibit L, in each case in connection with performance of the Work.

(c) Emergencies. In the event of any emergency endangering Persons or property during performance of the Work, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as practicable, report any such incidents, including Contractor’s response thereto, to Owner. Whenever Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, Owner may, but shall be under no obligation to, upon reasonable advance notice to Contractor and a reasonable opportunity to cure, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner’s failure to do so shall not limit Contractor’s obligations or liability hereunder. Provided Contractor fails to timely act, Contractor shall reimburse Owner for any reasonable costs incurred by Owner in taking such actions in the event of an emergency.

2.3.15 Security. Contractor shall take reasonable precautions, consistent with Prudent Industry Practices, to provide for the security and protection: (a) of the equipment, machinery and components comprising the Equipment and the Project through the date of Project Substantial Completion, and (b) for the other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Final Completion. Contractor shall use the same care to protect any of Owner’s and Equipment Provider’s property at any time in its possession or under its control while performing the Work as it does with its own property and shall be responsible for damage to such property resulting from Contractor’s failure to take such precautions or use such care.

2.3.16 Clean-up. Contractor shall at all times keep the Project Site reasonably free from waste materials, rubbish and Hazardous Materials produced by the Work. As part of the Work, Contractor will arrange and pay for disposal of sewage and wastes generated by Contractor or its Personnel as necessary to enable Contractor to perform the Work. Contractor shall maintain the Project Site in a neat and orderly condition throughout the performance of the Work. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of Article XII, Contractor shall (i) remove all Contractor equipment from the Project Site, (b) tear down and remove all

APPENDIX C

temporary structures on the Project Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed plant (including the re-grading and re-seeding of disturbed areas, which re-seeding may occur after Final Completion if Owner reasonably approves), (c) reclaim, in accordance with the applicable Real Property Requirements, laydown areas, and other construction areas as required by the applicable Real Property Requirements, and (d) remove and dispose of all waste and rubbish generated by Contractor and its Subcontractors from and around the Project Site. Contractor shall provide to Owner all legally required waste disposal manifests, if any, upon request.

2.3.17 Damage to Roads. Contractor shall abide by the maintenance provisions set forth in the Site Control Agreement (Exhibit K) and shall be responsible for (i) all damage it and its Subcontractors cause to state roads and highways (other than township roads) in violation of Applicable Law, (ii) all damage Contractor or its Subcontractors cause to County roads, (iii) all damage caused by it and its Subcontractors to private roads or property of third parties, in each case in connection with performance of the Work.

2.3.18 Fire Prevention. Contractor shall be responsible for providing adequate fire prevention and protection at the Project Site and shall take all reasonable precautions to minimize the risk of fire at the Project Site. Contractor shall provide instruction to the Labor in fire prevention control. Contractor shall provide appropriate fire-fighting and fire protection equipment and systems at the Project Site in a manner consistent with those as would be provided by a prudent contractor constructing a comparable project in comparable terrain and climate to that of the Project. Notwithstanding the foregoing sentence, this Agreement shall not, and does not obligate Contractor's or any of its Subcontractors' employees to fight any fires. In the event of a fire, Contractor's or any of its Subcontractors' employees shall immediately take steps to ensure the safety of themselves and others and shall contact the local fire department to report such fire and to determine the appropriate actions. Contractor shall promptly collect and remove combustible debris and waste material from the Project Site and shall not permit such debris and material to accumulate.

2.3.19 Other Work. As part of the Work (and except as otherwise stated in the Scope of Work, Article V or elsewhere in this Agreement as being the responsibility of Owner or Equipment Provider), Contractor shall provide any other services or items not specifically described in this Agreement if providing such additional work or item is necessary to make the Project operable, free from Defects and capable of performing as specified in this Agreement.

2.4 Prudent Industry Practices for the Work/Compliance. Contractor shall perform the Work in a manner that is (a) in conformance with Prudent Industry Practices and the Quality Assurance Procedures; (b) in compliance with the terms of the Agreement, and all interconnection requirements attached hereto; (c) compliant with all Applicable Laws, Applicable Permits; and (d) in compliance with and not in violation of the terms of the Real Property Requirements, including such that Owner would be in violation of the Real Property Requirements. In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or Permits contained in this Section 2.4 be interpreted to limit the applicability of all such standards, guidelines, practices, regulations, laws, and Permits to such provision.

APPENDIX C

2.5 Commencement of Work; Project Schedule; Acceleration.

2.5.1 Access to Project Site. Contractor will commence performance of all off-site Work promptly after the Effective Date and upon receipt of an LNTP, including ordering “long lead time” Equipment. Contractor will not perform any clearing Work on the Project Site until Owner issues to Contractor a Notice to Proceed.

2.5.2 Project Schedule; Monthly Progress Reports.

(a) Within eight (8) weeks after the Effective Date, Contractor shall prepare and submit to Owner for approval a complete “Level 3” working level critical path based in the Initial Project Schedule in sufficient detail acceptable to Owner, including identification of particular work tasks, durations and logical ties between activities (as further defined in the Scope of Work, the “Project Schedule”). Owner’s approval of the Project Schedule, which shall not be unreasonably withheld, conditioned or delayed, shall be a condition precedent to Owner’s approval of Contractor’s initial Request for Payment. Contractor shall perform the Work in accordance with the Project Schedule.

(b) Contractor shall provide Owner with Monthly Progress Reports as further defined in Exhibit A, which shall include progress reports, as compared to the Project Schedule, including the incorporation of delay and acceleration analyses where appropriate. Such Monthly Progress Reports shall be presented electronically and shall address all material elements of the Work. Contractor shall provide Owner with appropriate work and meeting facilities at the Site and shall conduct weekly and monthly project meetings at mutually agreeable locations or by telephone between representatives of Owner, Equipment Provider and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there will be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligations under Article VI.

2.5.3 Acceleration of Work. If, at any time or from time to time, Contractor fails to achieve or is reasonably likely to fail to achieve a Key Milestone by the date required therefor in the Project Schedule for any reason not otherwise excused under the terms of this Agreement, then, upon written request of Owner, Contractor shall promptly, but in any event within five (5) Business Days of such date, submit a written recovery plan with specific steps, tasks and subcontractor actions necessary to complete all necessary Work by the dates for the remaining Key Milestones. Such recovery plan shall contain a delay analysis, including a statement of the extent to which Contractor claims that the delay is excusable under the terms of the Agreement and Contractor’s reasons therefor. The recovery schedule shall also contain sufficient detail to demonstrate the feasibility of achieving Project Substantial Completion by the Guaranteed Substantial Completion Date. Owner shall promptly submit reasonable suggestions to such written recovery plan. To the extent reasonable and feasible, Contractor shall incorporate such suggestions to such recovery plan or shall provide explanation for why such suggestions were not incorporated, which may include alternative Work acceleration proposals. Contractor shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by Owner of such recovery plan nor Contractor’s prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Contractor of its obligations under

APPENDIX C

the Agreement relating to the failure to timely achieve any Key Milestone by the date required therefor, or (ii) be a basis for a Change Order or any other compensation or an increase in the Contract Price. Contractor shall not be entitled to a Change Order or any other compensation or increase in the Contract Price in connection with the implementation of a recovery plan or any acceleration thereunder.

2.6 Hazardous Materials.

2.6.1 Contractor Duties. Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Material. Without limiting the generality of the foregoing: (a) Contractor shall, and shall cause its Subcontractors to, have a release prevention and response plan to contain and clean up any spills or emissions of Hazardous Materials by Contractor or its Personnel (such plan to be made available to Owner upon Owner's request); (b) Contractor shall, and shall cause its Subcontractors to apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work; (c) Contractor shall, and shall cause its Subcontractors to have an independent Environmental Protection Agency identification number for disposal of Hazardous Material generated by Contractor if and as required under Applicable Laws; (d) Contractor shall conduct its activities under the Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to any Applicable Law; (e) neither Contractor nor its Subcontractors shall cause the release or disposal of Hazardous Material at the Project Site, bring Hazardous Material to the Project Site, or transport Hazardous Material from the Project Site, except as required for performance under the Agreement and in accordance with Applicable Law; (f) Contractor shall be responsible for the management of and proper disposal of all Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any; (g) if any spillage, discharge, emission, or release should occur through Contractor's actions, Contractor shall immediately notify Owner and take all reasonable steps necessary to: (1) stop and contain the spillage, discharge, emission, or release, (2) make any report(s) of the spillage, discharge, emission, or release as required under Applicable Law, and (3) clean-up the spillage, discharge, emission, or release as required by the applicable Government Authority; (h) Contractor shall cause all such Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any, (1) to be transported only by carriers maintaining valid Hazardous Materials transportation permits (as required) and operating in compliance with such permits and laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or Person who arranged for waste disposal, and (2) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits (as required) regarding Hazardous Material; (i) Contractor shall submit to Owner a list of all Hazardous Material to be brought onto or generated at the Project Site prior to bringing or generating such Hazardous Material onto or at the Project Site; and (j) Contractor shall keep Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site.

2.6.2 Environmental Releases.

APPENDIX C

(a) If Contractor or any of its Subcontractors releases any Hazardous Material on, at, or from the Project Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Project Site during the Work, Contractor shall notify Owner in writing within one hour of becoming aware of such circumstance. If Contractor's Work is involved in the area where such release occurred, Contractor shall immediately stop any Work affecting the area.

(b) Contractor shall, at its sole cost and expense, diligently proceed to take all necessary and desirable remedial action to clean up and remediate fully and dispose of, in accordance with Applicable Laws and to Owner's reasonable satisfaction, any contamination caused by (i) any negligent release by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material (the Parties agree that simply discovering any Pre-Existing Hazardous Material or accidentally disturbing previously unknown Pre-Existing Hazardous Material is not a negligent release of such Pre-Existing Hazardous Material, but that Contractor will act reasonably and prudently with respect to same upon discovery), and (ii) any Hazardous Material that was brought onto or generated at the Project Site by Contractor or any of its Subcontractors, whether on or off the Project Site.

(c) If Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Contractor is instructed to resume performance of the Work (after disposal or other decision by Owner regarding treatment of such Hazardous Substance), Contractor will be entitled to a Change Order as set forth in Section 9.5.1(e). Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination.

(d) In addition to Contractor's obligations as set forth above, if Owner desires Contractor to perform all or part of any clean up or remediation that may become necessary as a result of the discovery of any such Pre-Existing Hazardous Material as described in Section 2.6.2(c) above, the clean up and remediation of which is not the responsibility of Contractor as set forth in Section 2.6.2(b)(i) above, it shall request a Change Order pursuant to Section 9.2. Further, if so requested by Owner, Contractor shall cooperate with and assist Owner in making the Project Site available for taking necessary remedial steps to clean-up/remediate any such contamination at Owner's expense as determined in accordance with Article IX; provided, however, that under no circumstances shall Contractor be required to participate in such clean-up/remediation of a Pre-Existing Hazardous Material if such release is not the responsibility of Contractor as set forth in Section 2.6.2(b)(i) above.

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

APPENDIX C

monthly and make it available on site in accordance with Applicable Law. Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in performance of the Work on at or near the Project Site or at any construction area related to the Project and the record shall identify quantities, location of storage, use and final disposition of such Hazardous Materials.

2.6.4 Owner's Self-Help Rights. If Contractor fails or refuses to remove from the Project Site (or any areas adjacent thereto or any other areas where Contractor performs the Work) or properly dispose of such Hazardous Materials as required pursuant to Section 2.7, Owner may, after providing Contractor with reasonable notice and opportunity to cure, at its discretion perform such removal or disposal as it may deem to be reasonably necessary or appropriate and charge Contractor with the full cost of performing such work either directly or by offset of such cost from any payment then or thereafter due to Contractor. The taking of any action by Owner in connection with the removal or disposal of such Hazardous Materials shall not relieve Contractor of its obligations under this Agreement and any Applicable Laws or Applicable Permits.

2.7 Owner's Right to Inspect; Correction of Defects.

2.7.1 Right to Inspect. Owner and its representatives shall have the right to inspect the Work and Contractor's records of inspections and quality control/quality assurance and shall have the right to maintain Personnel at the Project Site for such purpose. Owner shall have the right to communicate with any and all Subcontractors in connection with its inspection of the Work. Contractor shall use commercially reasonable efforts to include rights in all Subcontracts to permit Owner and any of their authorized representatives to audit, inspect, test and observe the Equipment at the facilities of any Subcontractor and the manufacturer of Equipment, and, if permitted, Contractor shall ensure reasonable, adequate and safe access to such facilities for such purposes, subject to any reasonable safety rules or restrictions imposed by such Subcontractor. If any portion of the Work should be covered contrary to the timely request of Owner or contrary to requirements specifically expressed in the Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Contractor shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost of uncovering, replacement and re-covering shall be charged to Contractor. If such other portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs pursuant to an appropriate Change Order in accordance with Article IX. Such inspection of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work in accordance with this Agreement. If Contractor covers any portion of the Work after offering Owner the opportunity to inspect, then if Owner later requests Contractor to uncover such Work then Owner shall pay the costs to uncover unless such Work is found to contain a Defect.

2.7.2 Correction of Defects. Contractor shall, at its own cost and expense, correct or replace any Work that contains a Defect, or is not otherwise in compliance with the terms and requirements of the Agreement. Defective Equipment that has been replaced, if situated on the Project Site, shall be removed by Contractor at Contractor's sole cost and

APPENDIX C

expense. If Contractor fails within a reasonable period of time, not to exceed ten (10) Business Days after it knows of such Defect or noncompliance or neglects to commence and continue correction of such Defect or noncompliance with diligence and promptness, Owner may upon notice to Contractor, without prejudice to other remedies Owner may have under the Agreement, correct such Defect or noncompliance. In such event, an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such Defect or noncompliance, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within ten (10) Business Days from Owner's request.

2.8 Inspection Not Approval. Owner will not be responsible for and will not have control over or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with this Agreement. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, any Subcontractor, or any of their agents or employees. No inspection made, failure to inspect, acceptance of Work, payment of money or approval given by Owner shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Owner may reject any Work with Defects or which is not in accordance with the requirements of the Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise, except to the extent such discovery occurs after expiration of the Warranty Period. No approval given by Owner, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

2.9 Liens. Provided that Owner has paid Contractor in accordance with the requirements of this Agreement, Contractor shall, at Contractor's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within ten (10) days after receipt of a written demand from Owner, any Lien in respect to the Work, the Equipment, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing services or materials within the scope of Contractor's Work. Upon the failure of Contractor to promptly discharge or cause to be released any Lien as required by this Section 2.9, within ten (10) days after notice to Contractor, Owner may, but shall not be obligated to, pay, discharge or obtain a surety bond for such Lien and, upon such payment, discharge or posting of surety bond therefore, shall be entitled to immediately recover from Contractor the amount thereof together with all expenses incurred by Owner in connection with such payment, discharge or posting, or set off all such amounts against any sums owed by Owner to Contractor. Contractor shall notify Owner of the filing of any Lien against the Project, the Equipment, the Project Site, or any fixtures or personal property included in the Work

APPENDIX C

promptly upon learning of the existence or filing of such Lien. Acceptance by Contractor of the final payment shall constitute a release by Contractor of Owner, Affiliates and every officer and agent thereof from all Liens (whether statutory or otherwise and including mechanics' or suppliers' Liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Owner or of any Person relating to or affecting this Agreement, except claims for which Contractor has delivered a dispute notice to Owner. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Agreement.

2.10 Cooperation.

2.10.1 Contractor shall be responsible for coordinating work on the Project Site. Owner shall use commercially reasonable efforts to cause all Other Owner Contractors and Equipment Provider to comply with the reasonable coordination requirements imposed by Contractor, which coordination shall be intended to optimize completion of construction of the Project in a timely manner.

2.10.2 Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, financing and Owner Permits for the Project.

2.10.3 Contractor acknowledges that work may be performed by others at the Project Site during the execution of Work. Contractor further acknowledges that Owner, through itself or through its employees, Subcontractors or agents, may continue to work and perform activities in connection therewith at and around the Project Site during the execution of the Work. Contractor shall cooperate and cause its Subcontractors, and Owner shall use commercially reasonable efforts to cause the Other Owner Contractors to cooperate with Contractor, to assure that no Party unreasonably hinders or increases, or makes more difficult than necessary the work being done by the other Parties. Contractor shall perform the Work in full cooperation with such others (provided the Other Owner Contractors reasonably cooperate with Contractor) and to permit, without charge, reasonable access to, and use of, the Project Site, by others or by Owner, when such access or use is necessary for the performance and completion of the work of others.

2.10.4 All material and labor shall be furnished, and the Work performed, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Agreement with priority given in all instances to activities necessary to achieve Key Milestones in accordance with the Project Schedule, subject to Contractor's right to a Change Order in the event of a Force Majeure Event or Owner-Caused Delay.

2.10.5 Contractor shall use reasonable efforts, and cause its Subcontractors to use their reasonable efforts, to assist Owner in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the Project Site caused by the Work. To the extent they do not materially adversely affect costs or the achievement of Key Milestones on or prior to the scheduled completion dates for such Key Milestones, as set forth in the Project Schedule, such programs shall include: (i) minimizing the impacts of noise and dust at and around the Project Site; and (ii) using local Labor and other resources whenever possible, to the extent such Labor is qualified and cost competitive.

APPENDIX C

2.11 Intellectual Property Rights. Contractor shall obtain and, to the extent described below, maintain all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property rights (collectively, the “Intellectual Property Rights”) necessary for performance of the Work and the operation and maintenance of the Project. Contractor hereby grants to Owner an irrevocable, non-exclusive, perpetual, royalty-free license under all Intellectual Property Rights whether now existing or developed for the Work, now or hereafter owned, licensed to or controlled by Contractor or any of its Affiliates, to use the same to the extent necessary for the ownership, completion, operation, maintenance, repair, rebuilding, alteration and expansion of the Work (provided such alteration or expansion is within the Scope of Work for this Project) and all subsystems and components thereof. To the extent that the license granted to Owner above is predicated upon Intellectual Property Rights held by Contractor, Contractor will maintain those Intellectual Property Rights throughout the life of the Project.

2.12 Credit Support.

2.12.1 Within thirty (30) Days following the Effective Date, but in any case no later than the date on which Notice to Proceed is issued and as a condition on Owner’s obligation to make any payment hereunder, Contractor shall furnish to Owner the following forms of credit support to secure its obligations hereunder:

(a) a Letter of Credit with a total drawable amount (“face amount”) equal to _____ Dollars (\$_____) [~~\$200~~100/kW of nameplate capacity];

(b) a Payment and Performance Bond with a penal sum not less than twenty-five percent (25%) of the Contract Price in substantially in the form set forth in Exhibit P-3 (the “Payment and Performance Bond”); and

(c) a guaranty from Contractor’s ultimate parent company (“Guarantor”) with a limitation of liability of not less than the Contract Price (the “Parent Guaranty”) substantially in the form set forth in Exhibit P-4.

The Payment and Performance Bond may be issued by one or more sureties, provided that each one is jointly and severally liable under the Payment and Performance Bond. Each such surety must be an admitted insurer in the State of Oregon and be duly licensed or authorized in Oregon to issue bonds for the limits so required. If a surety on the Payment and Performance Bond is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Oregon, Contractor shall within seven (7) days thereafter substitute another surety (and new Payment and Performance Bond, if requested by Owner), which must be acceptable to Owner and meet the requirements of this Section 2.12. The Parent Guaranty shall remain in place until the expiration of the Warranty Period. Contractor shall not be entitled to any increase in the Contract Price for the provision of the Letter of Credit, the Payment and Performance Bond or the Parent Guaranty.

2.13 Financial Reports. If Guarantor or Contractor is not legally required to file quarterly and annual financial reports with the Securities and Exchange Commission, then it shall furnish to Owner:

APPENDIX C

2.13.1 as soon as available, but in any event within 45 days after the end of each calendar quarter, a consolidated and consolidating balance sheet and income statement covering its operations during such period, in a form reasonably acceptable to Owner and certified by its chief executive officer, chief financial officer, or treasurer; and

2.13.2 within 120 days after the end of each fiscal year, audited financial statements, together with an opinion that is unqualified on such financial statements of an independent certified public accounting firm of national standing.

All such financial statements shall be complete and correct in all material respects, shall include accompanying notes and schedules, and shall be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein and with prior periods.

ARTICLE III

SUBCONTRACTORS

3.1 Subcontractors. Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written subcontracts between Contractor and such Subcontractors. Exhibit I-1 sets forth a list of approved Major Subcontractors. Owner agrees to Contractor's use and engagement of Subcontractors; provided Contractor may not enter into any Major Subcontract with any Person not listed in Exhibit I-1 or approved by Owner in writing (which approval shall not be unreasonably conditioned, withheld or delayed). Except as otherwise expressly provided in the Agreement, Contractor shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by them; provided, however, that Owner shall have the right to communicate with Subcontractors and their personnel in connection with the Work and Owner's rights and obligations under this Agreement. Contractor shall require that all Work performed and all Equipment provided by Subcontractors be received, inspected and otherwise furnished in accordance with the Agreement. Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of its Subcontractors and whenever this Agreement refers to the negligence, fault or omission of Contractor, it shall include the negligence, fault or omission of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor.

3.2 Subcontracts. All contracts with Subcontractors shall be consistent with the terms and provisions of the Agreement. At a minimum, all subcontracts shall require the Subcontractors to comply with Applicable Laws, and shall provide that Owner has the right of inspection and communication with Subcontractors as provided hereunder and require such Subcontractors to (a) be subject to the Labor obligations hereunder as well as the safety and security provisions of the Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the Equipment and (c) obtain, maintain and keep in force throughout the time during which they are engaged by Contractor such insurance coverages as are required of Contractor under this Agreement. All subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to use reasonable

APPENDIX C

efforts to enter into similar agreements with other Subcontractors. All subcontracts shall require payment to Subcontractors within no less than thirty (30) calendar days of submission of a valid invoice and associated lien waivers for work performed or materials or equipment supplied in accordance with the terms of the subcontract. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of this Agreement. Contractor shall ensure that Contractor's rights and obligations under each Subcontract may be, without requiring the prior consent of the relevant Subcontractor, in whole or in part, assigned and delegated by Contractor to Owner. Each Subcontract shall provide that upon notification to the Subcontractor from Owner, that: (a) the Agreement has been terminated; (b) Contractor's right to proceed with the Work has been terminated; and (c) Owner will thereafter be assuming Contractor's obligations under such Subcontract, then such Subcontractor shall continue to perform its responsibilities under such Subcontract for the benefit of Owner and shall recognize Owner as being vested with all the rights and responsibilities of Contractor under such Subcontract (other than obligations, including payment obligations, arising or relating to prior to the date of the notice, which shall remain the responsibility of the Contractor). Notwithstanding the foregoing, it is specifically understood and agreed (and each Subcontract shall clarify) that no such assignment shall release Contractor from any liability hereunder, and no Subcontractor shall have any right to look to Owner for the performance of Contractor's obligations under any Subcontract unless and until such Subcontractor has received such notice from Owner. Each Major Subcontract shall require the Subcontractor to execute an acknowledgment of, and agreement to, the provisions of this Section 3.2. Contractor will deliver to Owner a copy of each such executed acknowledgment and agreement within forty-eight (48) hours after each Subcontractor's execution of its Subcontract.

3.3 Owner as Third Party Beneficiary. No Subcontractor is intended to be nor shall it be deemed a third party beneficiary of this Agreement. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each Subcontractor in accordance with the applicable Subcontract or purchase order between Contractor and the Subcontractor; provided, however, each agreement between Contractor and a Subcontractor with respect to the Work shall name Owner as an intended third party beneficiary.

3.4 Subcontractor Payments. Contractor shall pay all Subcontractors in accordance with the requirements of the applicable subcontracts, provided that in all cases, Contractor shall pay Subcontractors within thirty (30) days after Subcontractor has completed its work on the Project. On a no less than monthly basis, Contractor shall provide Owner with all reasonably requested documentation to evidence its compliance with the preceding sentence.

3.5 Subcontractor Warranties. Without in any way derogating Contractor's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Work, Contractor will require all Subcontractors to provide product and service warranties at a minimum equal to the Warranties in Article VII. Contractor shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, Equipment, tools, supplies, and other items furnished by such Subcontractors. Contractor shall assign all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Owner, and without recourse to Contractor, to

APPENDIX C

Owner upon default by Contractor or termination or expiration of this Agreement; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Contractor has any liability under this Agreement. To the extent assignable, Contractor hereby assigns to Owner, effective as of the end of the Warranty Period for the Project, all representations, warranties, guaranties and obligations of all Subcontractors.

ARTICLE IV

CONTRACT PRICE

4.1 Contract Price. As full consideration to Contractor for the complete performance of the Work and Contractor's other covenants in this Agreement, Owner will, subject to the provisions of this Article IV and the Schedule of Values attached hereto as Exhibit B-1, pay Contractor [_____] Dollars (\$ _____) (the "Contract Price"). The Contract Price may be adjusted only pursuant to a Change Order issued in accordance with the provisions of Article IX. Subject to the terms and conditions of this Article IV, the Contract Price shall be paid by Owner to Contractor, in accordance with the requirements set forth in the Agreement, by way of the milestone payments set forth in the Payment Schedule attached hereto as Exhibit B-2.

4.2 Taxes.

4.2.1 Contractor's Taxes.

(a) Contractor shall be responsible for all taxes, transportation fees, freight, packing costs, custom duties, personnel fees and all other costs associated with the performance of the Work and any other of its duties and responsibilities under this Agreement, unless otherwise stated in this Agreement (collectively "Contractor's Taxes"). The Parties agree that the Contract Price, as stated in Section 4.1, includes all Contractor's Taxes, excluding materials that are tax exempt under Applicable Law.

(b) To the extent Owner indicates to Contractor that it will obtain an exemption which is thereby factored into the original Contract Price and Contractor complies with Owner's reasonable instructions for implementing such exemption for purposes of avoiding payment of sales and use taxes to Subcontractors or Suppliers for goods and services subject to such exemption, then Owner shall reimburse Contractor for the amount of any sales or use taxes that Contractor is required to pay, to the extent excluded from the original Contract Price, notwithstanding the applicability of such exemption; provided, however, Contractor shall procure and provide to Owner such documents evidencing payment of such taxes as Owner may be reasonably required to enable Owner to obtain a refund of such paid taxes.

(c) At any time and from time to time upon Owner's reasonable request, Contractor will allow Owner and its designees the opportunity to review all purchases by Contractor and its Subcontractors (and will in this regard provide all relevant information regarding the same (including separate break-out pricing for goods and services, if reasonably

APPENDIX C

available)) for the purpose of determining whether such exemptions or rebates apply and have been or should have been granted.

(i) If Owner directs Contractor to seek an exemption or rebate and Contractor fails to seek such exemption or rebate for an item, Owner will be relieved of its obligation under Section 4.2.2(a) to reimburse Contractor for the taxes on such item.

(ii) If Contractor seeks exemption or rebate on an item in accordance with the foregoing, but the same is not granted, Owner shall reimburse Contractor for the disallowed amount, and Contractor will assign to Owner its right to seek a refund of, or rebate in connection with, the amount in question and will reasonably cooperate with Owner to seek such refund or rebate. If such assignment is not allowed under Applicable Law, then Contractor will, at Owner's direction and expense, seek such refund and, if received, pay over such refund to Owner, and all costs of seeking a refund or appealing the denial of an exemption, refund or rebate shall be borne by Owner.

(iii) Any rebates received by Contractor or its Subcontractors in connection with any Contractor's Taxes reimbursed by Owner under Section 4.2.2 from the purchase of any materials, supplies or equipment in connection with the Work shall be immediately paid over to Owner.

(d) Contractor shall promptly provide Owner with notice of any audits, assessments or challenges by any Governmental Authority with respect to Contractor's Taxes, which are to be reimbursed by Owner. In the event of any such audit, assessment or challenge, Owner shall have the right to receive copies of all correspondence and documents relating thereto, to attend and participate in all meetings with the Governmental Authority and to participate in and control all mediation, and litigation related thereto, provided the cost thereof is borne by Owner and Owner indemnifies, defends and holds Contractor harmless with respect thereto.

(e) To the extent Owner is obligated under Applicable Laws to pay any of Contractor's Taxes, Contractor shall: (i) furnish to Owner all information and reports required to be furnished to the appropriate taxing authorities in connection with all such Contractor's Taxes; and (ii) reimburse Owner for the full amount of such Contractor's Taxes paid by Owner that are not otherwise required to be reimbursed by Owner to Contractor under Section 4.2.2. Contractor will have no responsibility for property taxes assessed on the Work or the Project Site.

4.2.2 Owner Taxes.

(a) If Contractor is assessed any taxes, for tangible personal property and services purchased for the purpose of and in conjunction with constructing of the Project despite having complied with the requirements of Section 4.2.1, Contractor will invoice Owner for reimbursement of such assessment as part of each applicable Request for Payment, and shall include therewith all documentation necessary to evidence Contractor's and Subcontractor's payment of such taxes. For the avoidance of doubt, Owner will not be responsible: (i) to reimburse Contractor for those Contractor's Taxes as described in Section 4.2.1(a); or (ii) for any

APPENDIX C

penalties or interest related to non-payment or late payment of any required Contractor's Taxes, unless such non-payment or late payment is due to or caused by the instruction of Owner to Contractor, as provided in Section 4.2.1(c)(ii).

(b) Owner shall administer and pay all sales, use, gross receipts, income, value-added and withholding taxes and duties, and any other similar taxes or contributions (including penalties and interest related to such taxes), imposed by any taxing authority: (i) that are measured by Owner's sale of electricity from the Project; and (ii) upon services or labor provided by Owner or any Other Owner Contractors in connection with the Project (collectively "Owner's Taxes"). Owner shall furnish to the appropriate taxing authorities all required information and reports in connection with all such Owner's Taxes.

(c) To the extent Contractor is legally obligated to pay any of Owner's Taxes, Owner shall: (i) furnish to Contractor all information and reports required to be furnished to the appropriate taxing authorities in connection with all such Owner's Taxes; and (ii) reimburse Contractor for the full amount of such Owner's Taxes paid by Contractor.

4.3 Requests for Payment. Contractor shall, on or before then tenth (10th) Business Day of each calendar month, prepare and submit to Owner an application for payment substantially in the form of Exhibit B-3 (each, a "Request for Payment") for the milestone(s) achieved during the prior month, in accordance with the Payment Schedule.

4.4 Retainage.

4.4.1 Retainage. Owner shall withhold, as retainage (the "Retainage") an amount equal to ten percent (10%) of all payments made to Contractor under this Agreement.

4.4.2 Use of Retainage. The Retainage shall be held by Owner as security for the performance of Contractor's obligations hereunder and any interest thereon shall accrue for the account of Owner and not Contractor. The Parties acknowledge that because the Retainage shall constitute security, Owner may utilize the same to, among other things, cure any Contractor Event of Default, offset Delay Liquidated Damages, pay unpaid Contractor suppliers, remove Liens filed by Subcontractors and cover any expenses associated therewith, or offset against any other amounts payable by Contractor to Owner under this Agreement.

4.4.3 Release of Retainage. Within fifteen (15) days after the Project Substantial Completion Date, subject to Section 4.5 Owner shall release to Contractor all cash Retainage, except for a cash amount equal to two hundred percent (200%) of the projected costs to complete any remaining items on the Punch Lists, as such cost is reasonably estimated by Owner. Within fifteen (15) days after the Final Completion Date, Owner shall release the remaining cash Retainage (less any amount utilized by Owner to perform any Punch List items).

4.5 Conditions of Payment. PGE's obligation to may any payment hereunder is conditioned upon the following:

APPENDIX C

4.5.1 Contractor shall have submitted a Request for Payment to Owner in the form set forth as Exhibit B-3, together with all required documents referenced therein, including, without limitation the following:

(a) written waivers and releases in the form of Exhibit O-1, Exhibit O-2, Exhibit O-3 and Exhibit O-4 (as applicable), duly executed by Contractor and all Major Subcontractors; and

(b) a written certification of an officer of Contractor that (i) the requirements of Sections 4.5.2 through 4.5.5 have been satisfied and (ii) there are no known mechanics' or materialmen's liens or other such claims or encumbrances outstanding from Subcontractors at the date of the Request for Payment, all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the Request for Payment, and, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on any portion of the Project or the Work, and releases from all Subcontractors have been obtained in such form as to constitute an effective release of lien (corresponding to payments received by them) under the laws of the State of Oregon.

4.5.2 Contractor shall have completed the Work for which payment is sought and have submitted evidence reasonably acceptable to Owner that demonstrates the completion of such Work.

4.5.3 The representations and warranties made by Contractor in this Agreement shall be true and accurate in all respects, both before and after giving effect to the making of the requested payment.

4.5.4 All Contractor Permits required by Applicable Law and this Agreement shall have been obtained and shall be in full force and effect on the requested payment date.

4.5.5 No uncured Contractor Event of Default shall then exist and no material breach, violation or default shall have occurred and be continuing under the Parent Guaranty.

Within forty five (45) Days after its receipt of a Request for Payment, provided Contractor has satisfied the foregoing conditions, Owner shall pay to Contractor the amount that remains after the deduction from the amount requested in the applicable Request for Payment of the following amounts: (a) any portion thereof that Owner in good faith disputes as not being due and owing, (b) any overpayment made by Owner for any previous period, (c) any Delay Liquidated Damages payable by Contractor, (d) any amounts withheld pursuant to Sections 4.6 and 4.8 and (e) any costs incurred by Owner in enforcing any provision hereof (including attorneys' and other consultants' fees) regardless of whether such provisions expressly provide for withholding or set-off. Contractor may only submit one (1) Request for Payment per calendar month.

4.6 Deductions from Payments. Notwithstanding any other provision to the contrary contained herein, Owner may withhold and shall have no obligation to make payments to Contractor hereunder and Owner may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such

APPENDIX C

extent as may be reasonably necessary to protect Owner from loss because of (a) Defects in the Work not timely remedied; (b) third-party claims filed against Owner, (c) Liens filed (that have not been bonded off as described in Section 2.9 or are not covered by insurance maintained hereunder); (d) failure of Contractor to make undisputed payments when due to Subcontractors; (e) damage to Owner or another contractor, including damage to the property of Owner or any of its Affiliates, to the extent the costs of such damages are not covered by insurance maintained hereunder; (f) damages caused by Contractor or its Personnel; (g) Contractor's failure to deliver a recovery plan as set forth in Section 2.5.3 or the failure of Contractor to diligently proceed with the recovery plan; or (h) Contractor's failure to provide information requested by Owner to ensure conformance of the Work to the requirements of this Agreement and Applicable Law or to measure the progress of the Work, as necessary to conform Contractor's entitlement to payment. Contractor shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of its rights under this Section 4.6. Owner shall release payments withheld pursuant to this Section 4.6 within thirty (30) days from the date when Contractor cures all such events or breaches to the reasonable satisfaction of Owner. If there is any dispute about any amount invoiced by Contractor, the amount not in dispute shall be promptly paid.

4.7 Effect of Payment. Payment of the Contract Price shall not constitute Owner's approval of any portion of the Project or the Work which has been determined not to be, or subsequently is determined not to have been, performed in accordance with the requirements of this Agreement.

4.8 Set off. Owner may deduct and set off against any part of the balance due or to become due to Contractor under this Agreement or against any Retainage (a) any Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder that are not then the subject of dispute resolution under Section 14.2, or (b) any other amounts that are due from Contractor to Owner under or in connection with this Agreement.

4.9 No Payment if Default. Notwithstanding any other provision to the contrary contained herein, Owner shall have no obligation to make any payment to Contractor at any time when a Contractor Event of Default has occurred and is continuing.

4.10 Interest. Any sums not timely paid shall accrue interest at Prime Rate plus two percent (2%) from the date due until paid.

ARTICLE V

OWNER RESPONSIBILITIES

In addition to Owner's other duties and responsibilities under and pursuant to this Agreement, Owner shall have the following general obligations and responsibilities:

5.1 Project Site Access. As required by Project Schedule, Owner shall provide access to the Project Site to Contractor, Subcontractors and their Personnel as necessary to perform the Work.

APPENDIX C

5.2 Permits. Owner shall, with Contractor’s reasonable assistance, timely obtain and maintain, at its own cost and expense, all Owner Permits, copies of which shall be delivered to Contractor upon its request. In addition, Owner shall execute such applications as Contractor may reasonably request in connection with obtaining any of Contractor Permits.

ARTICLE VI

STAGES OF COMPLETION OF THE WORK

6.1 Work Completion. Contractor shall complete the Work in strict compliance with the Project Schedule and shall certify completion of such portions of the work in accordance with the process required in Exhibit Q (Form of Work Completion Certificates).

6.1.1 Commencement of Construction Liquidated Damages. Owner and Contractor acknowledge and agree that any failure of Contractor to Commence Construction (as such term is defined in the US Tax Code) to occur on or before _____ will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Thus, if such failure occurs, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the following amounts (collectively, “Commencement of Construction Liquidated Damages”). *[To be discussed depending on technology and Bidder’s tax credit assumptions.]*

6.1.2 Substantial Completion Delay Liquidated Damages. Owner and Contractor acknowledge and agree that any failure of Contractor to cause Project Substantial Completion to occur by the applicable Guaranteed Substantial Completion Date will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Thus, if such failure occurs, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the following amounts (collectively, “Substantial Completion Liquidated Damages”):

Days that Project Substantial Completion is Delayed Beyond Guaranteed Substantial Completion Date	Substantial Completion Liquidated Damages
Day 1 to Day ____	\$_____ per Day
Day ____ and beyond.	\$_____ per Day

6.1.3 Contractor shall not be relieved from the obligation to meet the Guaranteed Substantial Completion Dates except to the extent any such date is extended pursuant to a Change Order or a written notice from Owner.

6.2 Project Mechanical Completion. *[Definition to be determined by Bidder’s technology, Certificate of Mechanical Completion and Mechanical Completion Checklist in Exhibits.]*

APPENDIX C

6.3 Project Substantial Completion.

6.3.1 Conditions of Project Substantial Completion. “Project Substantial Completion” shall be achieved when each of the following conditions has been satisfied:

(a) all Equipment comprising the Project has been installed as required;

(b) the Project has been connected to and synchronized with the Grid, and is capable of operating as a fully-integrated electricity generating plant that safely and continuously generates electric power in accordance with the requirements of all Applicable Laws and this Agreement;

(c) Contractor and Owner have agreed upon the Final Punch List for all Work, as described in Section 6.4.1;

(d) Contractor has fully completed all Work (including all Work on or comprising all remaining Project for the Project), except those items on the agreed upon the Final Punch List;

(e) any Defects found have been corrected;

(f) Contractor (i) has demonstrated through Performance Testing in accordance with Exhibit C-3 that the Project has achieved the Performance Guarantee in accordance with Exhibit C-4, or (ii) has demonstrated through Performance Testing results in accordance with Exhibit C-3 that the Project has not achieved the Performance Guarantee and that Contractor has paid all applicable Performance Liquidated Damages accordance with Exhibit C-4.

(g) Contractor has provided Owner with copies of all Contractor Permits;

(h) all Spare Parts requested by Owner under Section 2.3.10 have been delivered by Contractor to the Project Site in accordance with Section 2.3.10; provided that any Spare Parts requested by Owner within two (2) weeks prior to the date of submittal of the Project Substantial Completion Certificate which have not been delivered by such date will be added to the Final Punch List;

(i) Contractor has paid all Delay Liquidated Damages due under this Agreement, if any;

(j) Contractor has delivered to Owner copies of all test reports and electrical schematics related to the Work;

(k) Contractor has delivered draft copies of the Operating Manual and Job Books in accordance with Sections 2.3.11(a) and (b);

APPENDIX C

(l) Contractor has delivered to Owner all interim progress payment or final, as the case may be, waivers of mechanic's and materialman's Liens from all Subcontractors for Work completed through such date; and

(m) Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.3.2.

6.3.2 Confirmation of Project Substantial Completion. When Contractor believes it has satisfied all of the requirements for Project Substantial Completion, Contractor shall notify Owner in writing. Within five (5) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Owner agrees that Contractor has fulfilled the requirements of Project Substantial Completion. If Owner believes Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Project Substantial Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.3.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. If Owner fails to respond within seven (7) Business Days to the Project Substantial Completion Certificate provided by Contractor, Project Substantial Completion shall be deemed to have been achieved; provided, however, such deemed Project Substantial Completion shall not relieve Contractor from any of its obligations hereunder, including Contractor's obligations to achieve Project Substantial Completion. For all purposes of this Agreement, Project Substantial Completion Date shall be the date the Project Substantial Completion Certificate is ultimately accepted by Owner or, if applicable, deemed accepted by Owner.

6.4 Punch List for Project.

6.4.1 Development of Punch List. Prior to submittal of the initial Project Substantial Completion Certificate, Contractor will prepare and deliver to Owner a written list setting forth all of the items that remain to be performed in order to complete the Work, provided such items of Work on such list shall only be items that are (i) minor in nature, (ii) not related to the functionality, utility, operation or restoration of Work, (iii) not related to the compliance of any such Work with any Applicable Laws or Applicable Permits, and (iv) not related to the correction of Defects. Such list shall also state the proposed time limits within which Contractor will complete each of such remaining Work items. Upon its receipt of such list, Owner will reasonably review the same and notify Contractor of any proposed revisions thereto. Owner's Project Manager and Contractor's Project Manager will then meet and consult in good faith to agree upon the definitive, final version of such list (including the approved time limits within which Contractor will perform such remaining Work items) (such final list, as agreed to by Owner, the "Final Punch List").

6.4.2 Completion of Punch List Items. Once any Punch List hereunder is agreed upon, Contractor will promptly begin the items thereon. Contractor's Work on such Punch Lists shall be performed in a manner that does not unreasonably interfere with the commercial operation of the Project. Owner will provide Contractor with reasonable access to the Project Site so that Contractor may perform the Work on the Punch Lists.

APPENDIX C

6.5 Final Completion.

6.5.1 Conditions of Final Completion. “Final Completion” will be achieved when each of the following conditions has been met:

- (a) Project Substantial Completion has occurred;
- (b) Contractor has completed performance of all of the Work, including all Punch List items, except for those items that Owner and Contractor agree are to be completed by Owner (and Contractor has paid all amounts due Owner in connection therewith);
- (c) Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof;
- (d) Contractor has provided to Owner all Lien releases as required under Section 4.5 (provided that Contractor’s Final Lien Waiver and Release, in substantially the form of Exhibit O-3 attached hereto from Contractor and Subcontractor’s Final Lien Waiver and Release in the form of Exhibit O-4 attached hereto from each Major Subcontractor, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);
- (e) all documentation, including data points and redlines, as necessary to accurately reflect the Project as constructed in the As-Built Drawings shall have been delivered to, and accepted by, Owner;
- (f) all sets of the final Operating Manuals and final Job Books have been delivered to Owner as required under Section 2.3.11; and
- (g) Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.5.2.

6.5.2 Confirmation of Final Completion. When Contractor believes that it has satisfied all of the requirements for Final Completion, Contractor shall notify Owner in writing. Within five (5) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Owner agrees Contractor has fulfilled the requirements of Final Completion. If Owner believes Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Final Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.5.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. If Owner fails to respond within five (5) Business Days to the Final Completion Certificate provided by Contractor, Contractor shall provide a second Final Completion Certificate, which will include a reference to the previously provided certificate and a statement to the effect that failure to respond to such second certificate shall result in Final Completion being deemed to have been achieved. If Owner fails to respond to the second Final Completion Certificate within seven (7) Business Days following receipt of such second certificate, Final Completion shall be deemed to have been achieved; provided, however, such deemed Final Completion shall not relieve Contractor from any of its obligations hereunder,

APPENDIX C

including Contractor's obligations to achieve Final Completion. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date the on which the relevant completion notice accepted by Owner or, if applicable, deemed accepted by Owner.

6.6 Reasonable Amount; Exclusive Remedy. The Parties agree that the sum of the amounts fixed as Construction Commencement Liquidated Damages and Substantial Completion Liquidated Damages ("Delay Liquidated Damages") are fair and reasonable, considering the damages that Owner would sustain in the described event, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained. Except as set forth in Article XII, collection of Delay Liquidated Damages shall constitute Owner's exclusive remedy and Contractor's exclusive liability for Contractor's failure to cause, as applicable, Project Substantial Completion to occur by the Guaranteed Substantial Completion Date, as such date may be extended by any executed Change Order. The foregoing sentence shall not relieve Contractor from its obligations (nor limit Owner's ability to seek other available remedies in connection with Contractor's failure to comply with its obligations) to perform the Work in accordance with this Agreement or from its Warranty or other obligations under this Agreement.

6.6.1 Limitation of Liability for Delay Liquidated Damages. Contractor's aggregate liability for Delay Liquidated Damages shall not exceed an amount equal to _____percent (___ %) of the Contract Price.

6.6.2 Offset Rights; Security for Obligations. Owner shall have the right to offset any amounts owing to Owner under this Article VI against payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.

ARTICLE VII

WARRANTIES

7.1 Warranty Provisions.

7.1.1 Warranty. As the "Warranty," Contractor warrants to Owner that: (a) all Equipment and Spare Parts shall be new, unused and undamaged when installed, (b) all such Equipment, Spare Parts and all Work shall (i) be free from Defects, (ii) conform to all applicable requirements of all Applicable Laws, Applicable Standards and the Agreement and (iii) be in strict compliance with the Scope of Work; (c) the services comprising the Work will be performed with Contractor's best skill and judgment in a good and workmanlike manner; (d) the Work will conform to, and be performed in accordance with, all Applicable Laws, Prudent Industry Practices, and the other terms and requirements of the Agreement; and (e) none of the Work and other services rendered by or through Contractor hereunder, nor the use of the Work by Owner, nor any license granted hereunder, infringes, violates or constitutes a misappropriation of any Intellectual Property Rights.

7.1.2 Warranty Period; Extensions. The Warranty shall commence on the Project Substantial Completion Date and shall continue for a period of _____ (___) years after

APPENDIX C

Project Substantial Completion Date (the “Warranty Period”); *provided, however*, that if any component of the Work is repaired or replaced pursuant to the Warranty Service, then the Warranty Period with respect to such component shall be continued for a period that is the longer of (a) the remainder of the original Warranty Period, or (b) one (1) year from the date of completion of the repair or replacement or re-performance thereupon, *provided, further*, that if fifteen percent (15%) or more of any type of component of the Work requires repair or replacement within the Warranty Period, then the Warranty Period for that type of component shall be automatically extended for all such components of that type for an additional one (1) year from the later of (i) the date of expiration of the Warranty Period or (ii) the date of the completion of Warranty Service to correct the failure that caused the percentage of failures to reach fifteen percent (15%). At expiration of the Warranty Period, any unexpired warranties relating to the Work shall be assigned to Owner (and Contractor will promptly execute such documents as may be necessary to cause such assignment to occur).

7.1.3 Correction of Deficiencies. If the Work or Equipment or Spare Part is in breach of any Warranty set forth in this Section 7.1, Contractor shall promptly cure such breach as promptly as practicable upon being given written notice thereof (“Warranty Service”). Owner shall provide Contractor with reasonable access to the Project in order to perform its obligation under this Article VII and the Parties shall schedule such work as necessary so as to minimize disruptions to the operation of the Project. Owner shall have the right to operate and otherwise use the Equipment until such time as Owner deems prudent to suspend such operation or use in order to accommodate Contractor’s Warranty Services. If Equipment has been placed in service, Contractor shall perform such Warranty Service as soon as Owner deems it prudent to remove the same from service for any Warranty Service by Contractor; provided that the Warranty Period will continue until Contractor has completed such Warranty Service. Neither payment by Owner, nor any other provision of this Agreement, nor partial or entire use or possession of the Work by Owner shall relieve Contractor of liability with respect to the Warranty contained in this Article VII. Contractor shall bear all costs and expenses directly associated with the Warranty Services, including, all costs of services and equipment and of any necessary disassembly, removal, replacement, transportation, reassembly, reinstallation, and retesting, as well as reworking, repair or replacement of such Work, and reassembly of structures, electrical work, machinery, Equipment, or any other obstruction as necessary to give access to the non-conforming item for correction, and for removal, repair or replacement of any damage to other work or property that arises from the breach of Warranty and any applicable insurance deductibles. Upon completion of Warranty Service, all Equipment shall be returned or restored to its proper condition (subject to normal wear and tear), including but not limited to fit alignment, adjustment, operability and finish. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Owner’s reasonable satisfaction that there is no material risk of the reoccurrence of such problem. Contractor’s obligations under this Section 7.1 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any vendor or Subcontractor to Contractor or Owner. No correction or cure shall be considered complete until Owner has reviewed and accepted such remedial work. So long as Contractor has been notified of a breach of Warranty prior to the end of the Warranty Period, the obligation of Contractor to

APPENDIX C

provide Warranty Service to correct such noncompliance, Defect or breach of Warranty shall survive the expiration of the Warranty Period.

7.1.4 Conformance of Warranty Service to Warranty. Contractor warrants that all materials incorporated into the Work as part of repairs to and replacements of the Work by Contractor or any Subcontractor, and repairs to and replacements of the Work pursuant to the Warranty Service shall conform to the requirements of this Agreement and the Warranty. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty Service complies with the requirements of the Warranty.

7.2 Delay. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified of the noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than two (2) Business Days after such notice. If, after notification of a Defect or breach of Warranty, Contractor delays past such date in commencing, or shall fail to continue performing or completing, Warranty Service with respect to such Defect or breach of Warranty, Owner may correct such breach of Warranty so that the Work and Equipment comply with the Warranty after giving Contractor three (3) Business Days written notice, and Contractor shall be liable for all reasonable direct costs, charges and expenses incurred by Owner in connection with the same and shall pay the same to Owner upon receipt of invoices with supporting documentation from Owner. Such correction of a breach of Warranty condition shall be deemed to be Warranty Service performed by Contractor and the Warranty Period for such corrected Work shall be extended in accordance with Section 7.1.2. No correction of a Defect or breach of Warranty pursuant to this Section 7.2 shall void the Warranty.

7.3 Subcontractor Warranties. Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. At the end of the Warranty Period, Contractor will assign to Owner its rights under any and all such Subcontractor warranties that continue past the end of the Warranty Period, including the Major Equipment Warranties. Contractor will secure such assignment from each Subcontractor, and Contractor will deliver to Owner copies of all Subcontracts providing for warranties enforceable by Owner. Contractor will not, and Contractor will ensure that Contractor's Personnel do not, take any action which could release, void, impair or waive any Subcontractor warranties. Contractor shall provide reasonable assistance to Owner without cost to Contractor in connection with the enforcement by Owner of any Subcontractor warranty after such assignment provided those warranties are in are excess of those set forth in Section 7.1.

7.4 Major Equipment Warranties. The following components of the Project have Equipment warranties from manufacturers or suppliers (the "Major Equipment Warranties"):

7.4.1 [_____], Appendix D-1;

7.4.2 [_____], Appendix D-2;

7.4.3 [_____], Appendix D-3;

APPENDIX C

7.4.4 [_____], Appendix D-4; and

7.4.5 [_____], Appendix D-5.

7.5 Proprietary Rights. Without limiting any of the provisions of the Agreement and notwithstanding any provision herein to the contrary, if Owner or Contractor is prevented from completing the Work (or any part thereof) in accordance with the Agreement or from the use, operation, repair, maintenance, alteration, expansion, rebuilding or enjoyment of the Work (or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Contractor's performance (or that of its Subcontractors) under the Agreement or any Intellectual Property Right or Contractor Deliverable transferred or licensed to Owner hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverable in connection with the completion, repair, operation, maintenance, alteration, rebuilding or expansion of the Work without obligation or liability; or (b) replace such materials, Equipment, or Contractor Deliverable, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of the Agreement.

7.6 NO IMPLIED WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT. The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

7.7 Survival of Warranties. The provisions of this Article VII shall survive the expiration or termination of this Agreement.

ARTICLE VIII

FORCE MAJEURE; OWNER-CAUSED DELAYS

8.1 Force Majeure.

8.1.1 Notice. If a Party believes that an event constituting a Force Majeure Event has occurred that has or will prevent or delay the performance of its obligations under this Contract, then such Party shall give the other Party written or electronic notice within ten (10) days after the Party became aware of such event (the "Force Majeure Notice"). The Force Majeure Notice need only be given to the other Party's on-site manager or supervisor (Owner's Project Manager), but shall be in writing or via email. Within thirty (30) Days after the Force Majeure Notice, the Party claiming a Force Majeure Event shall, to the extent practicable; (i) specify the length of the delay occasioned by, and additional costs incurred by reason of such Force Majeure Event; (ii) describe the particulars of the cause and nature of the Force Majeure

APPENDIX C

Event; and (iii) provide evidence of the occurrence of such Force Majeure Event. At all times after the Force Majeure Notice, the affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event.

8.1.2 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.1.2 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to the Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:

(a) any liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;

(b) the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

(c) the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(d) when the affected Party is able to resume performance of the affected obligations under the Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under the Agreement, provided that in the event that a Force Majeure Event causes a prolonged delay to the Project, Owner may elect to terminate this Agreement pursuant to Section 12.3.

8.1.3 Change Order Rights. If Contractor desires a Change Order for a Force Majeure Event, Contractor shall comply with the Force Majeure Notice requirements contained in Section 8.1.1. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(a). If Contractor fails to comply with such notice requirements, then Contractor will be deemed to have waived its right to receive a Change Order for the subject Force Majeure Event.

8.1.4 Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under this Section 8.1 shall be upon the Party claiming such Force Majeure Event.

8.2 Owner-Caused Delay.

8.2.1 Without limiting the definition of Owner-Caused-Delays, notwithstanding anything in this Agreement to the contrary, in any case where this Agreement states that Owner “shall cause” the Other Owner Contractors to take or not to take a certain action, the Parties agree that if the Owner fails to meet that obligation, such failure shall exclusively constitute an Owner-Caused Delay and shall not constitute an Owner Event of Default, and Contractor’s sole

APPENDIX C

and exclusive remedies as a result thereof will be as set forth in this Section 8.2 and Section 9.5.1(c).

8.2.2 Notice. If Contractor believes an Owner-Caused Delay has occurred, then Contractor shall give Owner's Project Manager written or electronic notice describing the alleged Owner-Caused Delay within ten (10) days following the date on which Contractor became aware of the occurrence of an event Contractor believes is or may be an Owner-Caused Delay and Contractor's notice shall describe the details of the Owner-Caused Delay and any effects on Contractor's performance of its obligations under this Agreement.

8.2.3 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.2 are satisfied, Contractor shall not be responsible or liable for or deemed in breach of the Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Key Milestone to the extent that such failure has been caused by one or more Owner-Caused Delays, provided that: (a) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner-Caused Delay; (b) Contractor provides timely notice of the Owner-Caused Delay, and (c) Contractor provides all assistance reasonably requested by Owner, at Owner's cost, for the elimination or mitigation of the Owner-Caused Delay.

8.2.4 Change Order Rights. If Contractor desires a Change Order for an Owner-Caused Delay, Contractor shall comply with the notice requirements contained in Section 8.2.2. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(c). If Contractor fails to comply with such notification requirements, Contractor will be deemed to have waived its right to receive a Change Order for the subject Owner-Caused Delay.

8.3 No Effect on Obligation to Pay Delay Liquidated Damages. Adjustments to the Project Schedule (including the Guaranteed Substantial Completion Date) may occur as a result of any of the events described in this Article VIII. Unless dates for performance are adjusted by an executed Change Order, the obligation to pay Delay Liquidated Damages on the Guaranteed Substantial Completion Date shall not be affected.

ARTICLE IX

CHANGES

9.1 Changes. Except to the extent expressly provided in this Article IX, there shall be no change to the Work, the Contract Price or the Project Schedule except to the extent provided in a written instrument signed by Owner and Contractor in substantially the form attached to this Agreement as Exhibit M (a "Change Order") stating their mutual agreement upon all of the following: (a) a change in the Work, if any; (b) the amount of the adjustment in the Contract Price, if any; and (c) the extent of the adjustment in the Project Schedule, if any (any of the foregoing, a "Change").

9.2 Changes at Owner's Request. Owner may, from time to time, without invalidating this Agreement, order or approve by notification in writing to Contractor (a) Changes in all or a portion of the Work or (b) acceleration of the Work, including to recover

APPENDIX C

from delays caused by an Owner-Caused Delay, a Force Majeure Event or suspension of the Work by Owner in accordance with Section 12.6. Contractor shall review and consider any request from Owner for such a Change and shall make a written response thereto within seven (7) days after receiving such request. If giving effect to any Change so requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Article VII or require a modification of any other provisions of the Agreement, the Parties shall agree to issue Change Order adjusting the Contract Price upwards or downwards and the Project Schedule accordingly (including any amendments to the Agreement). Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work.

9.3 No Unapproved Changes. Contractor shall not perform any Changes to the Work until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Change prior to such approval. If Owner does not approve the proposed adjustments and Contractor and Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Contractor cancel the Change. Upon receiving from Owner a written approval or written authorization to perform, Contractor shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement. Contractor shall not suspend, in whole or in part, performance of this Agreement during any Dispute over any Change Order unless directed to do so by Owner, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Change or disputed item) do so.

9.4 Changes Initiated by Contractor. Promptly after Contractor becomes aware of any circumstances which Contractor has reason to believe may necessitate a Change, Contractor will issue to Owner a “Change Order Request”. All Change Order Requests shall include documentation sufficient to enable Owner to determine: (a) the factors necessitating the possibility of a Change; (b) the impact which the Change is likely to have on the Contract Price; (c) the impact which the Change is likely to have on the timely achievement of the activities set forth in the Project Schedule (including the Guaranteed Substantial Completion Dates); and (d) such other information which Owner may request in connection with such Change. Owner may, but except as provided in Section 9.5 below, shall not be obligated to, issue a Change Order pursuant to a Change Order Request.

9.5 Required Change Orders.

9.5.1 Provided that Contractor has notified Owner as required and has used all reasonable efforts to avoid and mitigate any potential delays to the Project Schedule or increased Direct Costs resulting from such events, Contractor will, to the extent described in Sections 9.5.2 and 9.5.3, be entitled to receive Change Orders as and for the events described in this Section 9.5.1.

(a) Change Order Due to Force Majeure Event. Subject to Sections 8.1, and 9.5.1, if and to the extent that a Force Majeure Event causes Contractor to suffer a delay in its performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Sections 9.5.1, 8.1, and 13.3, in the event

APPENDIX C

one or more Force Majeure Events occurring at the Project Site, directly cause delays in the Work exceeding thirty (30) days in the aggregate, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Orders shall be Contractor's sole and exclusive remedy for any increased costs associated with delays caused by any Force Majeure Events, and Contractor will not be entitled to any additional payment, damages and costs or other compensation in connection with any such delays.

(b) Change Order Due to Suspension of Work by Owner. Subject to Section 9.5.1, if after the Effective Date Owner suspends the Work pursuant to the provisions of Section 12.6, then: (A) Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2; and (B) to the extent that such suspension increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any increased costs and delays resulting from such suspension of Work by Owner, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays.

(c) Change Order Due to Owner-Caused Delay. Subject to Section 9.5.1 and Section 8.2, (i) if and to the extent that an Owner-Caused Delay causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Owner-Caused Delay increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Owner-Caused Delay, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(d) Change Order Due to Unforeseen Subsurface Condition. Subject to Section 9.5.1 and Section 2.3.1(b), (i) if and to the extent that an Unforeseen Subsurface Condition causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Unforeseen Subsurface Condition increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Unforeseen Subsurface Condition, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(e) Change Order Due to Pre-Existing Hazardous Materials. Subject to Section 9.5.1, if and to the extent that Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, and, as required under Section 2.6, Contractor stops performance of the Work in that area, then, once such Work is recommenced, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Section 9.5.1, if and to the extent that such cessation of Work increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs

APPENDIX C

resulting from any such cessation of the Work, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

9.5.2 Changes Involving Schedule Extensions. To the extent that Contractor demonstrates that an event for which it is entitled to a Change as described in Section 9.5.1 is the sole cause of critical path delay to Contractor's ability to perform the Work despite Contractor's use of reasonable efforts to mitigate and avoid any such delay, Owner shall issue a Change Order to extend the dates in the Project Schedule as necessary to accommodate such delay. Contractor's demonstration of the impact on the critical path of the Work must be made on a basis that analyzes the actual impacts of the given event on the then-current schedule for completion of the Work. In no event will Contractor be entitled to an extension of time under this Section 9.5.2 to the extent that the performance of the Work for which the extension is sought would have been suspended, delayed or interrupted by the concurrent fault, actions or omissions of Contractor.

9.5.3 Changes to the Contract Price.

(a) Except as set forth in Section 9.5.3(b), with respect to any Change Order required to be issued to increase the Contract Price as a result of an event described in Section 9.5.1, unless the Parties agree otherwise in writing, such Change Order will, on a retrospective basis, increase the Contract Price by an amount equal to the Direct Costs incurred by Contractor solely in connection with such event, plus a mark-up. The mark-up is not to exceed _____ percent (___%) in the aggregate, including all Subcontractor and Contractor mark-ups solely in connection with such Change.

(b) In no event will Contractor be entitled to payment for Direct Costs hereunder to the extent that such costs would have occurred notwithstanding such event, due to the concurrent fault, actions or omissions of Contractor or its Subcontractors.

(c) For purposes hereof, "Direct Costs" shall mean only the actual, documented costs that are directly incurred by Contractor as a result of the event giving rise to the Change Order for the following items: (i) compensation for labor utilized and in the direct employ of Contractor at the Project Site, at the rates as set forth in Exhibit B-4; (ii) cost of materials and permanent equipment; (iii) payments properly made by Contractor to Subcontractors; (iv) rental charges of necessary machinery and equipment (but excluding hand tools) used at the Project Site; (v) Permit fees; (vi) compensation of engineers or other design professionals employed directly by Contractor; and (vii) reasonable costs of mobilization and demobilization. Notwithstanding the foregoing, "Direct Costs" shall not include (t) salaries or other compensation (including costs of contributions, assessments, fringe benefits or taxes based on salaries or compensation) of Contractor's Personnel at Contractor's principal office and branch offices (except as provided in the previous sentence); (u) expenses of Contractor's principal and branch offices; (v) Contractor's profit, overhead or general expenses of any kind; (w) any replacement, repair or other costs or liabilities arising from any loss of or damage to any equipment, tools or other property owned or used by Contractor or its Subcontractors; (x) costs to correct or reperform any components of such Work as a result of the acts or omissions of Contractor or its Personnel; (y) any fines or penalties assessed against Contractor or its Personnel in connection with such Work that were assessed due to the fault of Contractor or its Personnel;

APPENDIX C

(z) any Builder's All Risk deductibles; or (aa) any costs or expenses other than those specifically set forth above as Direct Costs.

9.5.4 Taxes. The Parties acknowledge that the provisions of Section 4.2 will apply to any additional Work covered by any Change Order.

9.5.5 Offsets. If Owner so requests, Contractor will in good faith work with Owner to enable a reduction in any required schedule extension hereunder via a Change Order directing and paying for achievable acceleration.

ARTICLE X

INDEMNIFICATION

10.1 Indemnities.

10.1.1 Contractor's General Indemnity. Contractor shall defend, indemnify, reimburse and hold harmless, Owner, the financing parties and each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, and the owners of the real property comprising the Project Site (each of the foregoing, an "Owner Indemnified Party") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any Owner Indemnified Party as a result of any and all of the following:

(a) any bodily injury, death or damage to property caused by any negligent act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Work or any curative action under any warranty related to the Work, following performance of the Work by Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) any claims resulting from bodily injury, death or property damage arising out of Defects or breach of Warranty;

(c) claims by any Government Authority for any Contractor's Taxes;

(d) any pollution or contamination that may originate from sources in Contractor's or its Subcontractors' possession, use and control or caused by the negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable (including as a result of the negligent release of Pre-Existing Hazardous Materials, the negligent exacerbation of Pre-Existing Hazardous Materials or negligent rendering of removal or remediation of Pre-Existing Hazardous Material more costly), including from Hazardous Material, industrial hazards, bilge and garbage;

(e) any Lien on the Work, Equipment, the Project, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) to the extent Owner has paid all amounts due relating to the Work that is the subject

APPENDIX C

of such Lien, created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor or other Person providing services, equipment or materials in connection with the Work;

(f) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Contractor's performance (or that of its Affiliates, Subcontractors) under the Agreement, (ii) the design, construction, use, operation or ownership of the Work (including the Equipment, Contractor Deliverables or any portion of any of them), or (iii) Owner's use of any license granted hereunder. Without limiting Contractor's other obligations under this Agreement, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall, in addition to its indemnification obligations hereunder, promptly use commercially reasonable efforts to have such injunction removed at no cost to Owner. Contractor shall timely notify Owner in writing of any claims which Contractor may receive alleging infringement of patents or other proprietary rights that may affect Contractor's performance of the Work, provided that in the event that such efforts are not effective within a period of sixty (60) days after the imposition of such injunction, Owner may take such steps as may be necessary to remove the injunction, including obtaining any necessary license, at Contractor's sole expense;

(g) any cancellation or invalidation of any insurance policy or part thereof procured under Article XI as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor (but only to the extent Contractor knows the requirements and they are attached hereto);

(h) any failure of Contractor to comply with, or failure of the Work to comply with, or be capable of operating in compliance with, Applicable Laws, the conditions or provisions of Applicable Permits, Prudent Industry Practices, any applicable Real Property Requirements; or

(i) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors, except to the extent caused by the negligent acts or omissions of Owner, Equipment Provider or Other Owner Contractors.

10.1.2 Owner's Indemnity. Owner shall defend, indemnify and hold harmless, Contractor and its directors, officers, agents, employees, successors and assigns from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any such Person (a) as a result of the injury or death of any Person, including employees of Owner, Contractor or any Person employed by any of them for whose acts any of them may be liable, but only to the extent caused by Owner's negligent acts or omissions, (b) as a result of any loss of or damage to property, but only to the extent caused by from Owner's negligent acts or omissions, (c) any claims by any Governmental Authority for any Owner Taxes or for any claims directly arising from following Owner's direction to seek exemptions or rebates for certain taxes as described in Section 4.2.1(b); or (d) as a result of any release of a Pre-

APPENDIX C

Existing Hazardous Material, except to the extent Contractor has an indemnification obligation with respect thereto pursuant to Section 10.1.1.

10.2 Indemnification Procedure.

10.2.1 Notice of Proceedings. The Person claiming to be indemnified under the terms of this Article X (the “Indemnified Person”) shall give the Party from which indemnification is sought (the “Indemnifying Party”) written notice of commencement of any legal action or of any claims against such Indemnified Person in respect of which indemnification will be sought, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article X.

10.2.2 Conduct of Proceedings. Each Party and each other Indemnified Person shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys’ fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person, and such Indemnifying Party shall conduct with due diligence and in good faith the defense of any claim against such party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Person shall cooperate with the Indemnifying Party in such defense. The Indemnified Person may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (a) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Person in the conduct of the defense of such claim or (b) the Indemnifying Party did not employ counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person reasonably concludes and specifically notifies the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party. In each of such cases the Indemnifying Party shall not have the right to control the defense or settlement of such claim and the reasonable fees and expenses of counsel engaged by the Indemnified Person shall be at the expense of the Indemnifying Party. Indemnifying Party shall give prompt written notice to Indemnified Person of any proposed settlement of an indemnified claim. Indemnifying Party may not, without Indemnified Person’s prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder unless such settlement, compromise or consent (i) includes an unconditional release of Indemnified Person from all liability arising out of such claim, (ii) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Indemnified Person, and (iii) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any

APPENDIX C

manner affects, restrains or interferes with the business of Indemnified Person or any of its Affiliates.

10.2.3 Contributory Negligence. If the joint, concurring, comparative or contributory fault or negligence of the Parties gives rise to damages for which the Parties are entitled to indemnification under this Article X, then such damages shall be allocated between the Parties in proportion to their respective degrees of fault or negligence contributing to such damages.

10.2.4 Survival of Indemnities. The indemnities set forth in this Article X shall survive the termination or expiration of this Agreement.

ARTICLE XI

INSURANCE

From the first to occur of the LNTP Date or the Notice to Proceed Date through and including the Final Completion Date, except as otherwise specified, Owner and Contractor shall procure and maintain, or cause to be procured and maintained, the insurance coverages set forth in Exhibit P-1 and identified therein as Owner's or Contractor's responsibility with one or more duly licensed insurance carrier(s).

ARTICLE XII

DEFAULT, TERMINATION AND SUSPENSION

12.1 Contractor Default.

12.1.1 Contractor Events of Default. The occurrence of any one or more of the following events shall constitute an event of default by Contractor hereunder ("Contractor Event of Default"):

(a) any of the following (each a "Bankruptcy or Insolvency Event") occurs (i) Contractor [or Guarantor] consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor [or Guarantor] files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws of any jurisdiction, whether now or hereafter in effect, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law of any jurisdiction, whether now or hereafter in effect, providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with creditors; (iii) a substantial part of Contractor's [or Guarantor's] assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iv) Contractor [or Guarantor] is adjudged bankrupt or insolvent,

APPENDIX C

has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing;

(b) Contractor fails, for any reason, (i) to pay when due Delay Liquidated Damages as required herein or (ii) to make any other payment or payments required to be made to Owner under the Agreement within ten (10) Business Days after receipt of written notice from Owner of Contractor's failure to make such other payment or payments (except to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

(c) Contractor fails to comply with any material provision of any Applicable Law, Applicable Permit, or applicable Real Property Requirement, the effects of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner, provided, if such failure to comply is not capable of being cured within ten (10) Business Days, Contractor shall not be in default so long as Contractor commences to cure within ten (10) Business Days and thereafter diligently proceeds to cure such breach in a manner reasonable satisfactory to Owner;

(d) either of the following occurs: (i) Contractor fails to make payments when due to Subcontractor for services, materials or equipment beyond applicable notice and cure periods, unless such payments are reasonably disputed by Contractor and any Liens relating to such disputed payments are satisfied or bonded off by Contractor; or (ii) Contractor suspends performance of a material portion of the Work resulting in the Work not progressing substantially in accordance with the Project Schedule (other than as permitted under Article VIII or pursuant to a Change Order); and in each instance as described in each of sub-clauses (i) and (ii) of this Section 12.1.1(d), the impacts of such condition remain un-remedied for five calendar days following written notice thereof to Contractor;

(e) any material breach by Contractor of any representation or warranty contained in Article XV, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(f) Contractor fails to: (i) provide a written recovery plan within the time provided for in Section 2.5.3 and satisfying the requirements of Section 2.5.3; or (ii) implement the recovery plan in a diligent and timely manner and, in any case, within the schedule provided for in such recovery plan.

(g) Contractor reaches the limitations of Delay Liquidated Damages set forth in Section 6.6.1 before Contractor achieves all of the Key Milestones;

(h) the transfer by Contractor of (i) all or a substantial portion of the rights or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor;

APPENDIX C

(i) any failure by Contractor to maintain the insurance coverages required of it in accordance with Article XI, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(j) Contractor fails to provide or maintain in effect each Letter of Credit, [the Payment and Performance Bond] or the Parent Guaranty as required under Section 2.12; or

(k) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under the Agreement (other than those breaches specified in this Section 12.1.1 (a) through (l)) and (i) such breach is not cured by Contractor within fifteen (15) days after notice thereof from Owner, or (ii) if such breach is not capable of being cured within such fifteen (15) day period, Contractor (A) fails to commence to cure such breach within such fifteen (15) day period, or (B) fails to thereafter diligently proceed to cure such breach in a manner reasonably satisfactory to Owner in its sole discretion.

12.1.2 Termination for Cause. Upon the occurrence and during the continuation of any Contractor Event of Default hereunder, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (a "Termination for Cause"). A Termination for Cause shall be effective upon delivery of Owner's notice with respect thereto. In the event of a termination by Owner under this Article XII, Owner shall have the right to take possession of and use all Contractor Deliverables and all of the equipment owned by Contractor or an Affiliate and located at the Project Site on the date of such termination for the purpose of completing the Work (provided that Owner will bear the risk of loss or damage to the same thereafter, until turnover back to Contractor or the Affiliate) and may employ any other Person to complete the Work by whatever method that Owner may deem necessary. In addition, Owner may make such expenditures as in Owner's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof. Owner shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement contractors, determine the total cost to Owner for completing the Work in accordance with the Scope of Work, and the other requirements of this Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In contracting with such replacement contractors, Owner shall, to the extent practicable, cause the Work to be completed in accordance with the Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the Contract Price is less than the sum of (i) all costs and expenses incurred by Owner to engage a substitute contractor to complete (or cure deficiencies in) the Work, including overhead and legal, engineering and other professional expenses, (ii) all other costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of this Agreement and the termination of the of the Agreement as a result thereof, and (iii) all amounts previously paid to Contractor pursuant to this Agreement, Contractor shall pay to Owner on demand the amount of such difference. Any amount owed by Owner to Contractor for the completion of the Work shall be retained by Owner until after completion of the Work and applied by Owner to pay any amounts and damages owed by Contractor pursuant to this Section 12.1.2 or otherwise. Any excess of the amount retained over the amount due under this Section 12.1.2 shall be remitted to Contractor within sixty (60) days after the Final Completion Date.

APPENDIX C

12.1.3 Other Owner Remedies. Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies, (a) seek performance by any guarantor or surety of Contractor's obligations hereunder, (b) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (c) make such payments or perform such obligations as are required to cure such Contractor Event of Default, make a claim against any security provided pursuant to this Agreement and offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement, provided that Owner shall be under no obligation to cure any such Contractor Event of Default, or (d) otherwise seek damages, including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement.

12.2 Owner Default. Owner's failure to pay to Contractor any required payment that is not in dispute, which failure continues for thirty (30) Days after written notice of failure has been received by Owner from Contractor, shall constitute an event of default by Owner hereunder (an "Owner Event of Default"). Upon any Owner Event of Default, Contractor may terminate this Agreement thirty (30) days after giving written notice thereof to Owner so long as the amount owed by Owner (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such thirty (30)-day period (a "Contractor Termination for Cause"). In the event of a Contractor Termination for Cause, Contractor shall be entitled to recover an amount equal to the Termination Payment. Unless Contractor terminates this Agreement pursuant to the foregoing provisions, Contractor shall not suspend or delay performance of the Work because of any Owner Event of Default. Contractor shall continue performance of the Work during any dispute over payment, so long as Owner continues to pay all undisputed amounts. Other than as stated above, Contractor will have no right to terminate this Agreement, and Contractor acknowledges that its sole and exclusive remedies for any failure of Owner to comply with its obligations under this Agreement (other than nonpayment as described above) are limited to receipt of a Change Order as described in Section 9.5.

12.3 Termination Without Cause. Owner may for its convenience terminate this Agreement after giving notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment under Section 12.4. As a condition to any termination by Owner pursuant to this Section 12.3 (a "Termination Without Cause"), Owner must provide written notice to Contractor of the Termination Without Cause at least three (3) Business Days prior to the effective date of such termination. If, at the date of termination under this Section 12.3, Contractor has properly performed services or purchased, prepared or fabricated off the Project Site any materials or Equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or Equipment delivered to the Project Site or to such other place as Owner shall reasonably direct.

12.4 Termination Payment.

12.4.1 Termination Payments Due to Contractor. Upon a termination of this Agreement pursuant to Section 12.2 or Section 12.3 and subject to Owner's rights under Sections 4.6 and 4.8 Contractor shall be entitled to a payment (the "Termination Payment"), which shall equal the sum of the following, without duplication: (a) that portion of the Contract Price that is

APPENDIX C

applicable to Work completed up to the date of termination that has not previously been paid to Contractor (as determined below); (b) the expenses reasonably incurred by Contractor in withdrawing Contractor's Equipment and Personnel from the Project Site and in otherwise demobilizing plus ten percent (10%) of such expenses; and (c) the expenses reasonably incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor) plus ten percent (10%) of such expenses, except to the extent Owner has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Owner, subject to Owner's assumption of same and, if required, Owner's adequate assurance to such Subcontractors regarding Owner's ability to pay. The Termination Payment shall not include any costs incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable, diligent efforts to mitigate the costs associated with termination of this Agreement, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement.

12.4.2 Payment of Termination Payment. Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documentation of any fees or expenses claimed by Contractor pursuant to Section 12.4.1. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within thirty (30) days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such thirty (30) day period; provided, that payments for termination under Section 12.3 shall be due Contractor within thirty (30) days after receipt of a substantiated invoice and Owner's receipt of any and all Equipment and Work under Sections 12.3 and 12.5. As a condition precedent to receiving any Termination Payment, Contractor shall comply with Section 12.5 in its entirety.

12.4.3 Termination Payment Contractor's Sole Remedy. Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement under Section 12.2 or Section 12.3, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of this Agreement pursuant to Section 12.2 or Section 12.3, and Owner and Contractor agree that the calculation of the Termination Payment is reasonable.

12.5 Actions Required Following Termination.

12.5.1 Discontinuation of Work. Upon termination of this Agreement under Sections 12.1 or 12.3, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in Section 12.4, if applicable), Contractor shall follow Owner's directions for the orderly turnover of the Project Site and the Work, and except as directed by Owner, Contractor shall remove from the Project Site its Personnel, all Contractor's Equipment, waste, rubbish and Hazardous Material brought onto the Project Site by Contractor or its Subcontractors or for which Contractor is otherwise responsible, and Owner shall be entitled to take exclusive possession of the Work, the Project

APPENDIX C

Site, and any and all Equipment (including materials delivered or en route to the Project Site). Contractor immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Site, stored off-site, or in transit.

12.5.2 Cancellation and Transfer of Subcontracts and Other Rights. If requested by Owner in the event of termination of this Agreement, Contractor will cancel existing contracts with Subcontractors upon terms as directed by Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor (subject to Section 12.4, in the event of a termination under Section 12.3). In the event of termination of this Agreement, Contractor shall also, as and to the extent requested by Owner, (a) irrevocably assign and deliver to Owner such Subcontracts, purchase orders, bonds, warranties and options made by Contractor in performance of the Work (but in no event shall Owner be liable for any action or default of Contractor occurring prior to such delivery and assignment), (b) provide to Owner without charge a license to use all rights to patented copyrighted, licensed or proprietary materials of Contractor and Subcontractors in connection with the Work, except as otherwise restricted herein, and (c) deliver to Owner originals of the Agreement, originals of all Drawings, to the extent available, Contractor Deliverables in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement executed by Owner), all other materials relating to the Work, and all papers and documents relating to Applicable Permits, orders placed, bills and invoices, Lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner. Except as provided herein, no action taken by Owner or Contractor after the termination of this Agreement shall prejudice any other rights or remedies of Owner or Contractor provided by Applicable Laws, the Agreement or otherwise upon such termination. In addition, Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Project Site, and Contractor shall take such other action as required hereunder upon termination of this Agreement.

12.5.3 Surviving Obligations. This Article XII shall survive the termination or expiration of this Agreement.

12.6 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under the Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (d) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (e) take any other reasonable steps to minimize costs and expenses associated with such suspension. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts. After the

APPENDIX C

conclusion of any suspension hereunder, Contractor will be entitled to a Change Order to the extent described in Section 9.5.1(b). If a suspension of Work continues for more than one hundred and eighty (180) days in the aggregate, Contractor may terminate this Agreement, which termination shall be deemed a Termination Without Cause.

ARTICLE XIII

TITLE AND RISK OF LOSS

13.1 Title to Project and the Work. Contractor warrants and guarantees that legal title to and ownership of the Work (including all Equipment) shall pass to Owner, free and clear of any and all Liens upon the earlier of (a) payment to Contractor of the portion of the Contract Price attributable to such Work and Equipment, and (b) in the case of Equipment, the delivery of such Equipment to the Project Site; provided that for all Equipment, title shall pass to Owner upon such payment only if title has previously been transferred to Contractor, otherwise, title shall pass to Owner at such time as Contractor has acquired title to the Equipment, but in no event later than delivery of such Equipment to the Project Site.

13.2 Title to Contractor Deliverables. Except as otherwise provided in this Article XIII, title to Contractor Deliverables, specifications and like materials (including the Job Books contents) which are owned by Contractor shall be transferred to Owner upon creation and delivered to Owner upon Project Substantial Completion. In addition, Contractor grants to Owner an irrevocable, royalty free, non-exclusive license to use and reproduce such Contractor Deliverables, specifications and other design documentation to which Contractor does not have title but has the right to grant sub-licenses for the purpose of completing, repairing, operating, maintaining, rebuilding and expanding the Project. Owner shall have the right to assign the benefit of such license to any financing parties in connection with granting a security interest in the Project, to a purchaser in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 13.2. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Project. Any costs to register such licenses in the United States shall be paid by Owner.

13.3 Risk of Loss. Notwithstanding passage of title as provided in Section 13.1, from the date hereof until the Project Substantial Completion Date, Contractor hereby assumes the risk of loss for all Equipment upon Delivery and the Work, including: (a) all Work completed on or off the Project Site and (b) all Work in progress. If any loss, damage, theft or destruction occurs to the Work or other items, on or off the Project Site, for which Contractor has so assumed the risk of loss hereunder, Contractor shall, at the option of Owner and at Contractor's cost, promptly repair or replace the property affected thereby. In such event, Contractor shall have access to Owner's Builder's All Risk Policy, provided that in the event of a covered loss, Contractor shall pay any applicable deductible amount. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor's Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Project Substantial Completion Date, provided, however, Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Contractor's or its Personnel's

APPENDIX C

negligent acts or omissions, and failure to comply with the requirements of the Agreement. Notwithstanding the foregoing, if Contractor is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, Contractor shall bear the risk of loss and damage with respect to such Work until such additional Work is complete.

ARTICLE XIV

DISPUTE RESOLUTION

14.1 Referral to Senior Management. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“Dispute”), the Parties’ Project representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so, then within three (3) Business Days following the date of delivery of a written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

14.2 Mediation. Any Dispute that is not resolved pursuant to Section 14.1 may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“AAA Procedures”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article XIV as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

14.3 Legal Action. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 14.2, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in the United States District Court for the District of

APPENDIX C

Oregon or, if such court lacks subject matter jurisdiction, the courts of the State of Oregon located in the City of Portland, and any appellate court from any thereof. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) consents to the personal and exclusive jurisdiction of the aforesaid courts, and agrees that it will not commence or consent to participate in any action, litigation or proceeding of any kind whatsoever against any the other Party in any way related to such documents in any forum other than such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Section 16.4, or at such other address of which the Parties have been notified, and (e) acknowledges that there is no agreement between the Parties to arbitrate any dispute that may arise between them related to the subject matter of this Agreement.

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

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

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

ARTICLE XV

REPRESENTATIONS AND WARRANTIES

15.1 Contractor Representations. Contractor represents and warrants the following:

15.1.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization, and is duly authorized and qualified to do business in the State where the Project is located, and all other jurisdictions in which the

APPENDIX C

nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform any of its obligations under this Agreement.

15.1.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Government Authority which violations, individually or in the aggregate, would affect its performance of any of its obligations under this Agreement. Except as Contractor has disclosed in writing to the Owner prior to the Effective Date, there are no legal, administrative or arbitration proceedings or actions, controversies, investigations, actions or other proceedings, now pending or (to the best knowledge of Contractor) threatened against Contractor which, if adversely determined, could reasonably be expected to effect on the ability of Contractor to perform any of its obligations under this Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.

15.1.3 Licenses. It is the holder of all governmental consents, licenses, permissions and other authorizations and Permits required to operate and conduct its business now and as contemplated by this Agreement.

15.1.4 No Breach. None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Contractor, or any Applicable Law or regulation, order, writ, injunction, award, judgment or decree of any court, or any agreement, contract, indenture or other instrument to which Contractor is a party or by which it or its assets is bound or to which it or its assets is subject, or constitute a default under any such agreement or instrument.

15.1.5 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Contractor of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

15.1.6 Experience. It has by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including to construct the Project and to erect and install the equipment.

15.1.7 Intellectual Property. It owns or has the right to use all Intellectual Property Rights necessary to perform the Work without conflict with the rights of others.

15.1.8 Solvency. It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

APPENDIX C

15.1.9 Certifications. All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement.

15.1.10 Site Access. The access rights granted to or obtained by Contractor to the Project Site are adequate for the performance of the Work and operation of the Project.

15.2 Owner Representations. Owner represents and warrants that:

15.2.1 Organization. It is a _____ company duly formed, validly existing and in good standing under the laws of the State of _____, and is duly authorized and qualified to do business in the State where the Project is located and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

15.2.2 No Breach. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof, conflicts with or will result in a breach of, or require any consent under, the limited liability company agreement of Owner, or any Applicable Law or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

15.2.3 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite limited liability company action; and this Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

15.3 Survival of Representations and Warranties. The representations and warranties of Contractor herein shall survive execution and termination of this Agreement.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 Confidentiality and Publicity.

16.1.1 Confidential Information and Permitted Disclosures. Each Party shall hold in confidence (a) any information provided or supplied by the other Party or its Personnel that is marked to be confidential, including such information as may have been provided or supplied prior to the Effective Date, (b) the commercial terms of any leases or other documents related to the Real Property Rights, and (c) the contents of this Agreement (collectively, "Confidential

APPENDIX C

Information”). Both Parties shall inform their Affiliates, Subcontractors, suppliers and Personnel of their obligations under this Section 16.1 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information.

(a) information that was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;

(b) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

(c) information received by such Party from a third party having no obligation of confidentiality with respect thereto;

(d) information at any time developed independently by such Party providing it is not developed from otherwise Confidential Information.

16.1.2 Permitted Disclosures. Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

(a) Confidential Information may be disclosed pursuant to and in conformity with Applicable Law or in connection with any legal proceedings described in Article XVI, or by Owner to the Oregon Public Utility Commission or the independent evaluator retained by Owner and approved by the Oregon Public Utility Commission in connection with the Project, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

(b) Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

(c) Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisors or representatives of such Party as necessary in connection with the Project; provided that such Persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such Person in violation of the terms of this Section 16.1; and

(d) Owner may disclose a copy of this Agreement to any actual or potential financing parties or insurers.

16.1.3 Consent. Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld, or delayed.

APPENDIX C

16.1.4 Publicity. Until expiration of the Warranty Period, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any Confidential Information for publication concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written consent of the other Party; provided, however, that such limitation on disclosure shall not apply to disclosures or reporting required by a Government Authority if the Party seeking disclosure informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of Confidential Information.

16.1.5 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section 16.1, without proof of any actual or special damages.

16.1.6 Ownership of Confidential Information. All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. Contractor shall deliver the Confidential Information, including all copies thereof, to Owner upon request.

16.1.7 Survival. The Parties' obligations under this Article XVI shall remain in force during the term of this Agreement and for a period of five (5) years after Final Completion.

16.2 Consequential Damages. In no circumstances shall either Party (or the parent companies and Affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) be liable to the other Party (or its parent companies and Affiliates, and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of power, loss of production, loss of actual or anticipated profits, revenues or product; increased expense of borrowing or financing, claims of Owner's customers and damage to property or equipment, and increased cost of capital) (collectively, "Consequential Damages") arising out of this Agreement; and, regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort, (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory. Increased expense of borrowing or financing, and increased cost of capital arising by virtue of a contractual obligation owed to an off-taker or purchaser of electricity generated by the Work are agreed for the purposes of this Agreement to be Consequential Damages. For avoidance of doubt, any liquidated damages as set forth in this Agreement and any third party indemnification claims for loss of actual or anticipated profits, revenues or product shall not constitute Consequential Damages under this Agreement.

16.3 Limitation on Liability. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Contractor be liable to Owner for any damages, claims, demands, suits, causes of action, losses, costs, expenses or liabilities in excess of an amount

APPENDIX C

equal to one hundred percent (100%) of the Contract Price, as adjusted for Change Orders (other than those which reduce the Contract Price related to damages of Owner hereunder), regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal theory; *provided, however*, that the preceding limitation of liability shall not apply to, and no liability amounts shall be apply against such limitation of liability for (a) liabilities resulting from the negligence, fraud, willful misconduct or illegal or unlawful acts of Contractor or its Personnel (including their Subcontractors), (b) liabilities arising out of Contractor's obligations to indemnify Owner or other indemnitees for third party claims under this Agreement, or (c) costs incurred by Contractor (and, in the event Contractor fails to perform, Owner) in performing Warranty Service, or (d) any taxes payable by Contractor; (e) damages for risks required to be insured by Contractor under this Agreement, or (f) costs incurred by Contractor (and in the event of Contractor Default, Owner) in achieving Project Substantial Completion.

16.4 Notice. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received (i) when actually received by the Party to whom it is sent, if served personally or if delivered by nationally recognized courier service to the Party to whom notice is to be given, (ii) when received by the Party to whom it is sent, if sent in the form of a signed letter on the sending Party's letterhead, transmitted by email in Portable Document Format (pdf) or similar format; (iii) when received (with confirmation of receipt) if delivered by facsimile or email, or (iv) at the end of the first Business Day following actual delivery, if mailed by first class registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the address or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with the Section):

If to Owner:

If to Contractor:

with a copy to :

with a copy to :

16.5 Time of the Essence. Time is of the essence in the performance of the Work in accordance with the requirements of this Agreement.

16.6 No Rights in Third Parties. Except as otherwise set forth herein including in Section 3.2, hereof, with respect to the rights of permitted successors and assigns, and the rights of indemnitees under Article X, (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no Person that is not a Party shall have any rights or interest, direct or indirect, in this

APPENDIX C

Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

16.7 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. All the Exhibits (Exhibit A through Exhibit S-2) attached hereto are incorporated into and made a part of this Agreement. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

16.8 Amendments. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties. For the avoidance of doubt, emails between the Parties shall not be considered a writing for purposes of this Section 16.8.

16.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

16.10 Right of Waiver. No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

16.11 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

16.12 Successors and Assigns; Assignment. Subject to the following, this Agreement shall be binding upon the Parties, their successors and permitted assigns. Except as set forth herein, this Agreement and all of Contractor's rights, duties and obligations under this Agreement are personal in nature and shall not be assigned, delegated or otherwise disposed of by Contractor without the prior written consent of Owner. Owner may assign this Agreement in

APPENDIX C

whole or in part; provided that Contractor is provided written notice as soon as reasonably possible following such assignment. Contractor agrees and acknowledges that any third party receiving such an assignment provided it assumes all obligations hereunder, in writing, shall be entitled to exercise any and all rights of Owner under this Agreement in accordance with the terms hereof (in its own name or in the name of Owner) and Contractor shall comply in all respects with such exercise. Provided the assignee assumes, in a writing reasonably satisfactory to Contractor, all obligations of Owner hereunder, Owner shall be released upon assignment. Nothing in this Section 16.12 shall affect Owner's ability to collaterally assign this Agreement to any financing parties.

16.13 Survival. All provisions of the Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including Articles VII, X and XIII, shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of Contractor contained herein shall survive the execution and delivery hereof and thereof.

16.14 Expenses and Further Assurances. Each Party shall pay its own costs and expenses in relation to the negotiation, preparation execution and carrying into effect this Agreement. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.

16.15 Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument.

16.16 Status of Contractor; No Partnership; No Agency. Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Agreement. The Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

16.17 Compliance with Applicable Laws. Contractor and its Subcontractors are familiar with and shall comply with and observe, all Applicable Laws, including but not limited to the federal Foreign Corrupt Practices Act (15 U.S.C.S. §§ 78a and 78m et seq.) ordinances, rules, regulations, executive orders, all applicable safety orders and all orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor and its Subcontractors, Owner or the Equipment which may now or hereafter exist.

[Signatures on following page]

APPENDIX C

APPENDIX C

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

Owner:

By: _____
Name: _____
Title: _____

Contractor:

By: _____
Name: _____
Title: _____

14 Appendix D - Parent Guaranty

APPENDIX D

GUARANTY

This GUARANTY (“**Guaranty**”) is made as of the __ day of _____, 20__, by _____ (“**Guarantor**”), to and for the benefit of **Portland General Electric Company**, an Oregon corporation having a principal office at 121 SW Salmon Street, Portland, OR 97204 (“**Owner**”), with reference to the following.

WHEREAS, _____ (“**Contractor**”),¹ is wholly owned, directly or indirectly, by Guarantor; and

WHEREAS, Contractor and Owner have entered into the [_____] dated as of [_____, 20__] (the “**Contract**”); and

WHEREAS, to induce Owner to enter into the Contract, Guarantor is willing to furnish to Owner this Guaranty;

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein which are defined in the Contract shall have their respective meanings as therein defined. All references to the Contract contained herein shall be construed to mean the Contract as it may be amended from time to time. Unless otherwise required by the context in which any term appears in this Guaranty: (a) the singular shall include the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” shall refer to this Guaranty as a whole and not to any particular sections or subsections hereof; (c) the words “including” or “includes” shall be construed to mean without limitation” or “but not limited to” and (d) the word “or” is not necessarily exclusive.

2. Guaranty. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Owner, its successors and permitted assigns the full and prompt payment and performance when due of all of Contractor's warranties, covenants, indebtedness, duties and agreements contained in the Contract including, but not limited to, payment obligations under the Contract. All obligations, representations, warranties, covenants, indebtedness, duties and agreements described above are individually referred to herein as an “Obligation” and collectively as the “Obligations.” This Guaranty is in no way conditioned upon any requirement that Owner first attempt to enforce any of the Obligations against Contractor. If at any time Contractor fails, neglects or refuses to timely or fully perform any of the Obligations as provided in the Contract, Guarantor shall promptly perform or cause to be performed such Obligation upon receipt of written notice of such default and demand for performance from Owner. Notwithstanding anything set forth to the contrary herein, with respect to any claim, action or

¹ Counterparty name to be modified as appropriate in the event the guaranty is used in connection with the Asset Purchase Agreement.

APPENDIX D

proceeding against Guarantor in connection with this Guaranty, Guarantor shall be entitled to assert any rights, remedies and defenses that Contractor would be able to assert if such claim, action or proceeding were to be asserted or instituted against Contractor based upon the Contract, including, but not limited to, any limitations of liability and cure periods set forth in the Contract, but provided that: (i) no defense previously raised by Contractor arising out of or in connection with an Obligation claimed hereunder that has been settled in Owner's favor may be raised by Guarantor; (ii) no cure period previously used by Contractor may be used by Guarantor; and (iii) in no event shall Guarantor be entitled to assert any defenses that arise by operation of law on account of an Event of Bankruptcy (as defined below) or the bankruptcy or insolvency of Contractor. Guarantor agrees that this Guaranty is a guaranty of performance including, but not limited to, payment, and not merely a guaranty of collection and shall apply regardless of whether recovery of any or all of the Obligations may be or become discharged or uncollectible in Event of Bankruptcy (as defined below) in which Contractor is the debtor. All payments hereunder shall be made without reduction, whether by set-off or otherwise.

3. Unconditional Guaranty. The obligations of Guarantor hereunder are independent, absolute and unconditional, irrespective of any genuineness, validity, regularity or enforceability of the Obligations and irrespective of any genuineness, validity, regularity or enforceability of the Contract, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Without limiting the generality of the foregoing, the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (a) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any acts or omissions by Contractor with respect to the Obligations;
- (c) any of the Obligations shall be modified, supplemented or amended in any respect, or any right with respect to the Obligations shall be waived or any other guaranty of any of the Obligations or any security therefore shall be released or exchanged in whole or in part or otherwise modified or dealt with;
- (d) any lien or security interest granted to, or in favor of, Owner as security for any of the Obligations shall fail to be valid or perfected;
- (e) the voluntary or involuntary liquidation, dissolution, sale or other disposition of the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceeding affecting Contractor, or rejection of the Contract in any such proceeding, or any action taken by any trustee or receiver in connection therewith (an "Event of Bankruptcy");

APPENDIX D

- (f) any lack of authorization, in whole or in part, of the Obligations or any term or provision hereof or of the Contract for any reason, or the rejection or purported rejection thereof in any Event of Bankruptcy;
- (g) Owner shall have taken or failed to have taken any steps to collect or enforce any obligation or liability from Contractor or shall have taken any actions to mitigate its damages;
- (h) Owner shall have taken or failed to have taken any steps to collect or enforce any guaranty of or to proceed against any security for any Obligation;
- (i) any applicable law that might in any manner cause or permit to be invoked any alteration in the time, amount or manner of payment or performance of any of the Obligations or the obligations of Guarantor hereunder;
- (j) any merger or consolidation of Contractor or Guarantor into or with any other person or any sale, lease or transfer of all or any of the assets of Contractor or Guarantor to any other person;
- (k) any change in the ownership of any of the voting securities of Contractor or Guarantor;
- (l) to the extent as may be waived by applicable law, the benefit of all principles or provisions of laws, rules and regulations which may be in conflict with the terms hereof; or
- (m) any failure on the part of Contractor or Guarantor to comply with any applicable law.

4. Subordination of Subrogation Rights. Guarantor hereby subordinates to all claims, rights and remedies that Owner or any of Owner's permitted assigns may have against Contractor any claim, right or remedy that Guarantor may now have or hereafter acquire against Contractor that arises hereunder or in connection herewith, including any claim, remedy or right of subrogation, reimbursement, indemnity, exoneration, contribution or participation in any claim, remedy or right against Contractor that arises in connection herewith, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise until the Obligations have been paid and performed in full. If any amount shall erroneously be paid to Guarantor on account of such subrogation, reimbursement, indemnity, exoneration, contribution, and similar rights, such amount shall be held in trust for the benefit of Owner and shall forthwith be paid to Owner to be credited against the payment of the Obligations, whether matured or unmatured.

5. Remedies. Guarantor agrees that the Obligations shall be due and payable for purposes of this Guaranty notwithstanding any stay, injunction or other prohibition preventing a declaration of payment as against Contractor.

APPENDIX D

6. Certain Waivers. Guarantor hereby unconditionally and irrevocably waives, to the extent permitted by applicable law, (i) notice of any of the matters referred to in Section 3 hereof; (ii) all notices that may be required by applicable law or otherwise, now or hereafter in effect, to preserve any rights against Guarantor hereunder, including, any demand, proof or notice of non-payment of the Obligations except as otherwise required by Section 2 hereof; (iii) acceptance of this Guaranty, demand, protest, promptness, diligence, presentment, notice of default or dishonor and any requirement of diligence, notice of intent to accelerate, notice of acceleration and notice of the incurring of the Obligations; (iv) any right to assert against Owner any defense (legal or equitable), counter-claim, set-off, cross-claim or other claim that Guarantor may now or at any time hereafter have (a) against Contractor or (b) acquired from any other party to which Owner may be liable; (v) any defense arising by reason of any claim or defense based upon an election of remedies by Owner which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Contractor for reimbursement, or any other rights of the Guarantor to proceed against Contractor or against any other person, property or security and (vi) any right to require Owner to marshal, or have recourse to other collateral or surety, before exercising its rights hereunder.

7. Separate Enforcement. The obligations of Guarantor under this Guaranty are independent of and may be enforced separately from the Obligations, in a separate action or actions that may be brought and prosecuted against Guarantor whether or not action is brought against Contractor. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Contract shall also toll the statute of limitations applicable to Guarantor's liability under this Guaranty.

8. Representations and Warranties. Guarantor additionally represents and warrants to Owner as follows:

- (a) Guarantor is a corporation duly organized, validly existing, authorized to do business and in good standing under the laws of the State of its formation.
- (b) Guarantor has the requisite corporate power and authority to own its property and assets, transact the business in which it is engaged and to enter into this Guaranty and carry out its obligations hereunder. The execution, delivery, and performance of this Guaranty have been duly and validly authorized and no other corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guaranty or the transactions contemplated hereby.
- (c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party is required for the due execution, delivery and performance by Guarantor of this Guaranty.
- (d) This Guaranty, when executed, shall constitute a valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with the terms of this Guaranty, except as may be limited by bankruptcy or insolvency or by other laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies, and except to the extent that the execution

APPENDIX D

of this Guaranty was induced by fraud, misrepresentation, or fraudulent concealment by or on behalf of the Owner.

- (e) As of the date hereof, the execution, delivery, and performance of this Guaranty does not and will not (i) result in a default, breach or violation of the certificate or articles of incorporation or bylaws of Guarantor, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guaranty, (iii) constitute an event which would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty, or (iv) result in any default, breach or violation of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to Guarantor and which default, breach or violation would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty.

9. Amendments. No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor, Owner and any permitted assignee of Owner's rights hereunder, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Owner or any permitted assignee of Owner's rights hereunder. No delay on the part of Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Guaranty by Owner shall constitute a subsequent waiver of the same or any other breach, term or condition. No notice to or demand on Guarantor shall entitle Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Owner to any other or further action in any circumstances without notice or demand. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Owner would otherwise have.

10. Continuing Guaranty; Successor and Assigns. This Guaranty is a continuing guaranty and (i) shall apply to all Obligations whenever arising, (ii) shall remain in full force and effect until satisfaction in full of all of the Obligations, (iii) shall be binding upon Guarantor and its successors and permitted assigns and (iii) shall inure to the benefit of and be enforceable by Owner and its successors, and assigns permitted under the Contract. Notwithstanding the foregoing, however, Guarantor may not assign all or any portion of its rights or delegate all or any portion of its duties under this Guaranty without the prior written consent of Owner. Any assignment by Guarantor without the foregoing consent shall be void.

11. Payments. Owner shall have the right from time to time to make demand for Obligations. With respect to payments to be made by Guarantor under this Guaranty, all such payments shall be made in United States dollars promptly following written demand by Owner, by wire transfer into a bank account designated in writing from time to time by Owner. All

APPENDIX D

payments required to be made by Guarantor hereunder shall be made without set-off or counterclaim and shall be made without deduction for any withholding or other taxes or charges. If in compliance with the laws of any jurisdiction, any deduction or withholding on account of any taxes is required to be made from any amount paid or payable by Guarantor to Owner (other than any amount Contractor would have been required to deduct or withhold pursuant to the Contract), Guarantor shall pay to Owner any such additional amount as shall be necessary to ensure that Owner receives on the due date for payment hereunder, after the payment by Guarantor of such taxes, an amount equal to what it would have received and retained had no such deduction or withholding been required.

12. Expenses. Guarantor agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Owner's counsel) in any way relating to the enforcement or protection of the rights of Owner hereunder; provided that the Guarantor shall not be liable for any expenses of Owner if no payment under this Guarantee is due.

13. Reinstatement. In the event that Owner for any reason (including but not limited to bankruptcy preferences or alleged fraudulent transfers), is required to repay or disgorge any amounts received by it in respect of the Obligations, then the liability of Guarantor under this Guaranty, with respect to such amounts, shall be reinstated.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the state of Oregon, excluding rules governing conflicts of laws.

15. Dispute Resolution.

a. Informal Consultation. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Guaranty ("Dispute"), the parties' representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so, then within three (3) business days following the date of delivery of a written request by either Party, (i) each party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

b. Mediation. Any Dispute that is not resolved pursuant to Section 15(a) may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation ("AAA Procedures"); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all

APPENDIX D

commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Section 15 as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

- c. Legal Action. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 15(b), then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Guaranty may be brought in the United States District Court for the District of Oregon or, if such court lacks subject matter jurisdiction, the courts of the State of Oregon located in the City of Portland, and any appellate court from any thereof. By execution and delivery of this Guaranty and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) consents to the personal and exclusive jurisdiction of the aforesaid courts, and agrees that it will not commence or consent to participate in any action, litigation or proceeding of any kind whatsoever against any the other Party in any way related to such documents in any forum other than such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Section 16, or at such other address of which the Parties have been notified, and (e) acknowledges that there is no agreement between the Parties to arbitrate any dispute that may arise between them related to the subject matter of this Guaranty.
- d. Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING

APPENDIX D

OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.

- e. Survival. The provisions set forth in this Section 15 shall survive the termination or expiration of this Guaranty.

16. Notices. Any notices or other communication to be given hereunder shall be given in writing, sent by (a) personal delivery, (b) internationally recognized expedited delivery service, (c) registered or certified United States mail, postage prepaid, or (d) facsimile (followed by registered or certified United States mail, postage prepaid) as follows:

To Guarantor:

To Owner: Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204
Attention: [_____]

With a copy to: Portland General Electric Legal Department
121 SW Salmon Street, 1WTC13
Portland, OR 97204
Attention: [_____]

or to such other address or to the attention of such other individual as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of receipt at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

17. Severability. In the event that any of the provisions, or portions or applications thereof, of this Guaranty are held to be unenforceable or invalid by any court of competent jurisdiction, Owner and Guarantor shall negotiate an equitable adjustment in such provisions of this Guaranty with a view toward effecting the purpose of this Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

18. Duty to Keep Informed. Guarantor assumes the responsibility for being and keeping itself informed of the financial condition and performance under the Contract of Contractor until the termination of all of the Obligations, and of all other circumstances bearing upon the risk of nonpayment or default under the Obligations which diligent inquiry would reveal, and agrees that Owner shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

19. Entire Agreement. This Guaranty contains the entire agreement and understanding of Guarantor and Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of Guarantor and Owner

APPENDIX D

relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Guarantor or Owner.

20. No Third Party Beneficiaries. The provisions of this Guaranty shall only be for the benefit of, and enforceable by, Owner and its permitted assigns and shall not inure to the benefit of or be enforceable by any other person or entity.

21. Further Assurances. Guarantor and Owner shall each, at the request of the other, execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other reasonable actions, as may be necessary or desirable to more fully and effectively carry out the intent and purposes of this Guaranty.

22. Counterparts. This Guaranty may be executed in two or more separate counterparts (including by facsimile transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

23. Captions. The captions contained in this Guaranty are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Guaranty or the intent of any provision contained herein.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Guaranty as of the date first written above.

Accepted:

[GUARANTOR]

PORTLAND GENERAL ELECTRIC
COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

15 Appendix E - Credit Requirement Guidance

APPENDIX E

Appendix E – Credit Guidance

A Bidder must provide reasonable assurance to PGE that PGE will be able to readily recover its actual damages in the event of default by the Bidder. All transactions are contingent upon the Bidder meeting and maintaining, during the term of the transaction, the credit requirements established by PGE's Credit Risk Management Department. All Bidders will be subject to credit review under PGE's internal guidelines by PGE's Credit Risk Management Department for qualification.

Each Bidder must provide performance assurance in a form and amount reasonably acceptable to PGE based on PGE's assessment of the Bidder's credit profile and the amount of expected financial exposure related to the bid.

Bidder Credit Eligibility Thresholds

All bidders must meet PGE's credit eligibility thresholds. Investment grade bidders meet PGE's credit eligibility thresholds if their long-term, senior unsecured debt has been recently rated BBB- or higher by Standard & Poor's and Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody's Investor Services, Inc. Bidders that have recently been rated below the above standards, or not rated, are deemed non-investment grade. Those bidders that are non-investment grade must demonstrate, prior to ~~bidding~~initial final short-list, that a qualified institution (defined below) is willing to support the bidder's pre-COD performance obligations through a Letter of Credit Commitment Letter and, for applicable utility-owned bids, a Guarantor Commitment Letter.

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

APPENDIX E

Required Performance Assurances for New, Utility-Owned Resources

Winning bidders offering new, utility owned resources under APA and EPC (or similar) agreements must provide pre-COD performance assurances. The pre-COD performance assurance will include \$~~200~~100/kW of collateral. The collateral will take the form of cash, or an irrevocable, transferable, standby letter of credit issued by a Qualified Institution (defined above) in a form and substance reasonably acceptable to PGE. The pre-COD performance assurance will also include a payment and performance bond in a penal sum up to 100% of the contract price. The payment and performance bond must be issued by a Qualified Institution in a form and substance reasonably acceptable to PGE.

In addition, non-investment grade bidders will be required to provide a guarantee from an investment grade guarantor. At time of ~~bid~~initial short-list, non-investment grade bidders offering a new, utility-owned resource must provide a Guarantee Commitment Letter from the Bidder's guarantor.

In the event the Bidder experiences a material adverse change (i.e., is no longer creditworthy as defined above or as defined in the negotiated contract) during the term of the contract, the Bidder may be required to provide additional eligible performance assurances in one or more of the forms defined above.

The performance assurances for new, utility owned resources are summarized in the following table:

Timing	Performance Assurance
Pre-COD Amount	<ol style="list-style-type: none">1. \$200100/kw collateral2. Payment and performance bond up to 100% of the contract price3. Guarantee
Post-COD Amount	No Post-COD collateral required

Required Performance Assurances for Power Purchase Agreements (PPA)

For long-term Power Purchase Agreements, PGE will require pre-COD (for facilities not yet constructed) and post-COD performance assurance to provide adequate protection if the counterparty defaults under the PPA . PGE requires that Bidders include the cost of adequate, acceptable performance assurance as part of their bid proposal as shown below. Proposed exceptions or alternatives to these required performance assurances

APPENDIX E

need to be explicitly stated in the Form PPA.

The performance assurances power purchase agreements are summarized in the following table:

Timing	Performance Assurance
Pre-COD Amount	\$200/kW collateral
Post-COD Amount	\$100/kW collateral 60 months of estimated contract margin or minimum performance assurance*

~~*The estimated contract margin will be based on a mark to market assessment of the expected facility output, the Contract Price and replacement forward power and bundled REC replacement costs. The minimum performance assurance will be based on the expected facility output and an estimated replacement bundled REC cost.~~

~~Post COD performance assurances will be the amount calculated by taking the difference of the current market forward price for power and bundled RECs compared to the contract price for the prompt five years, and multiplying this difference by the forecasted megawatt hours for delivery over the same prompt five year period. In no event shall Post COD performance assurance(s) be less than the minimum performance assurance equal to the forecasted megawatt hours for delivery over an 18 month period multiplied by the forecasted bundled REC price. Market forward prices and REC prices will be based on reasonably available forecasts and broker quotes. The performance assurance requirement may be reduced by any credit threshold (see below) granted to Bidder by PGE. PGE calculates these exposures at least once a week. Below are two examples of required post COD performance assurances:~~

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Facility Size (MW)	Forecasted Capacity Factor (%)	Annual Forecasted Energy or Specified Amount (MWa)	Number of Hours in Five Prompt Years (hrs)	Contract Price (\$/MWh)	Delivered Average Market Forward Price and Bundled REC (\$/MWh)	Forecasted Imputed Bundled REC Price (\$/MWh)	Minimum Performance Assurance $\{C * D * 30\% * G\}$	Performance Assurance Required Greater of $\{C * D * (F - E)\}$ or $\{H\}$
300 MW	33%	100 MWa	43,800	35	40	5	\$6,570,000	\$21,900,000

APPENDIX E

500 MW	20%	100 MWa	43,800	45	40	5	\$6,570,000	\$6,570,000
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Potential Credit Threshold Granted by PGE

For some energy and REC sale structures, investment grade bidders may be eligible for a credit threshold to be applied against the required performance assurance. The table below provides a range of potential thresholds for which a Bidder may be eligible. These amounts may be increased or decreased by PGE Credit Risk Management based on other factors such as company size, credit rating, bid type, payment history, financial analyses, and overall risk assessment.

Credit Threshold (Estimated) Matrix					
Range of Moddy's Credit Rating					
Tangible Net Worth	Aaa - A1	A2 - A3	Baa1 - Baa2	Baa3	< Baa3
Up to \$250M	1,000,000	500,000	250,000	125,000	-
\$250M to \$500M	1,650,000	825,000	412,500	206,250	-
\$500M to \$750M	2,500,000	1,250,000	625,000	312,500	-
\$750M to \$1B	7,500,000	3,750,000	1,875,000	937,500	-
\$1B to \$25B	10,000,000	5,000,000	2,500,000	1,250,000	-
\$25B to \$50B	15,000,000	7,500,000	3,750,000	1,875,000	-
Over \$50B	20,000,000	10,000,000	5,000,000	2,500,000	-

If the Bidder is an established counterparty of PGE, then the combined amounts of existing thresholds and the additional threshold will not exceed the above amounts, after any adjustments made by PGE Credit Risk Management.

APPENDIX E

Attachment 1

GUARANTY COMMITMENT LETTER

(Must be on letterhead of Bidder's credit support provider)

Portland General Electric Company
121 SW Salmon Street
3 World Trade Center - 0306
Portland, Oregon 97204
Attn: Credit Dept.

Dear Sirs or Madams:

| _____, ("Bidder") (insert Bidder name) ~~plans to~~ submit a bid in response to the Portland General Electric Company's 2018 Renewable Resources Request For Proposals ("RFP"). Bidder is the _____ (insert nature of relationship, e.g., wholly owned subsidiary, partially owned subsidiary, affiliate, etc.) of the undersigned. The undersigned will directly benefit from the bid submitted by Bidder into the RFP. And the undersigned and Bidder have their own, separate legally enforceable arrangement with respect to the undersigned's promise set forth in this letter.

The undersigned promises and agrees that, if a Bid by Bidder is selected, that we will at that time issue an unconditional guaranty in form and substance consistent with PGE's Form Parent Guaranty, and that we will guarantee all obligations of payment and performance of Bidder to you as our independent obligation, plus expenses of enforcing the guaranty.

We understand that said guaranty is a required element in evaluating the Bidder's bid and that the execution and delivery of the guaranty is a condition precedent to you entering into an agreement with Bidder. We also understand that you are under no obligation to enter into any agreement with Bidder, under the RFP or otherwise.

Yours truly,

(Name of guarantor)

(Name of authorized officer)

APPENDIX E

Attachment 2

LETTER OF CREDIT COMMITMENT LETTER

(Must be on letterhead of Bidder's letter of credit issuer)

Portland General Electric Company
121 SW Salmon Street
3 World Trade Center - 0306
Portland, Oregon 97204
Attn: Credit Dept.

Dear Sirs or Madams:

| _____, ("Bidder") (insert Bidder name) ~~plans to~~ submit~~ting~~ a bid in response to the Portland General Electric Company's 2018 Renewable Resources Request For Proposals ("RFP"). The undersigned promises that, should any bid submitted by Bidder in the RFP be selected for negotiations, that we will issue an irrevocable standby letter of credit in a form reasonably acceptable to you up to a maximum amount of \$_____.

| We understand that ~~said letter of credit is a required element in evaluating the Bidder's bid and that~~ the execution and delivery of the letter of credit is a condition precedent to you entering into an agreement with Bidder. We also understand that you are under no obligation to enter into any agreement with Bidder, under the RFP or otherwise.

Yours truly,
(Name of letter of credit issuer)

16 Appendix F - Confidentiality Agreement

APPENDIX F

Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement (the "**Agreement**"), effective as of _____, 2018 (the "**Effective Date**"), is entered into by and between [NAME OF PARTY 1], a [PARTY 1 STATE OF ORGANIZATION] [ENTITY TYPE] having its principal place of business at [PARTY 1 BUSINESS ADDRESS] and Portland General Electric Company ("PGE"), an Oregon corporation having its principal place of business at 121 SW Salmon Street, Portland, OR 97204 (together, the "**Parties**", and each, a "**Party**").

WHEREAS, PGE is in the process of acquiring electricity resources to fulfill certain electricity needs, including but not limited to issuing a Request for Proposal ("**RFP**") to fulfill such needs (collectively, the "**Purpose**");

WHEREAS, in furtherance of the Purpose, each Party desires to share with the other Party certain information that is non-public, confidential or proprietary in nature.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

1. Confidential Information. Except as set forth in Section 2 below, "**Confidential Information**" means all non-public, confidential or proprietary information disclosed on or after the Effective Date, by either Party (a "**Disclosing Party**") to the other Party (a "**Recipient**"), or to any of such Recipient's employees, officers, directors, agents, attorneys, accountants or advisors (collectively, "**Representatives**"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," which may include:

(a) all information concerning the Disclosing Party's and its affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;

(b) the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(c) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(d) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and

(e) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials (the "**Notes**") prepared by or for the Recipient or its

APPENDIX F

Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

Any Confidential Information disclosed orally shall be clearly identified as such by Disclosing Party at the time it is disclosed.

2. Exclusions from Confidential Information. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

3. Recipient Obligations. The Recipient shall:

(a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose;

(c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

(i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

(ii) are informed by the Recipient of the confidential nature of the Confidential Information; and

APPENDIX F

(iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and

(d) be responsible for any breach of this Agreement caused by any of its Representatives.

Notwithstanding the foregoing, PGE may disclose Confidential Information pursuant to the following Protective Order (or other Protective Order(s) that may be issued by the OPUC in connection with the RFP or related proceedings): Order No. _____ dated _____ (as such Orders may be modified by the OPUC). In addition, PGE may disclose Confidential Information to the independent evaluator retained by PGE for the RFP.

4. Security. Recipient will maintain and comply with administrative, technical and physical safeguards that are designed to protect the security and integrity of the Confidential Information, including in connection with any transfer, communication, remote access or storage of the Confidential Information as permitted or required under this Agreement. Recipient will promptly notify the disclosing Party of any unauthorized disclosure or use of the Disclosing Party's Confidential Information.

5. Required Disclosure. Any disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order or other legally supported data request issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall provide the Disclosing Party with:

(a) to the extent reasonably possible and not prohibited by law, prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, such Legal Order specifically requires the Recipient to disclose. Recipient shall not be in breach of this Agreement or liable to Disclosing Party for any disclosure made pursuant to this Section 6 (Required Disclosure).

6. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed; provided, however, that Recipient may keep copies of the Confidential Information for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement. In addition, the

APPENDIX F

Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed; provided, however, that Recipient may keep copies of the Notes for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement.

7. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire two (2) years from the Effective Date. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of one (1) year from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient.

8. No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

9. No Transfer of Rights, Title or Interest. Each Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Recipient or any of its Representatives.

10. No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise and may pursue a similar purpose without the involvement of, or liability to, the other party.

11. Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

12. Limitation of Liability.

(a) No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR

APPENDIX F

BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Maximum Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED ~~ONE FIVE~~ HUNDRED THOUSAND DOLLARS (\$~~100~~500,000.00). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Oregon. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the city of Portland and County of Multnomah, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

14. Waiver of Jury Trial. PGE AND COUNTERPARTY WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN PGE AND COUNTERPARTY ARISING OUT OF THIS AGREEMENT OR OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH.

15. Attorney Fees. In the event that any party institutes any legal suit, action or proceeding, including arbitration, against the other party to enforce the covenants contained in this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable and actual attorneys' fees and expenses and court costs.

16. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications

APPENDIX F

must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

17. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

18. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

20. Assignment. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

[Signature page begins on the following page.]

APPENDIX F

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

[PARTY 1 NAME]

By_____

Name:

Title:

Portland General Electric Company

By_____

Name:

Title:

17 Appendix G – PGE Technical Specifications

***NOT INCLUDED BECAUSE NO TECHNICAL CHANGES WERE MADE TO
TECHNICAL SPECIFICATIONS FILED WITH THE OPUC ON MARCH 9, 2018***

18 Appendix H – Scoring Procedures

Overview

Appendix H details the RFP's Price and Non-Price Scoring components, which all bids will be subject to. The maximum possible price score will be 600 points, and the maximum possible non-price score will be 400 points. The maximum overall offer score a bid may receive is 1,000 total points. This 60/40 weighting of the price and non-price scores provides a balance between cost and risk, similar to that in the 2016 IRP, and consistent with past Commission-approved RFP processes. Appendix H also provides additional description on PGE's portfolio analysis methodology.

Price Scoring

Price accounts for 60% of the maximum overall offer score, or a maximum of 600 points out of 1,000 total. The price score will be determined by the ratio of the offer's projected total cost to its total benefits using real-levelized, or annuity methods, per Guideline 9a of Order No. 14-149 (Oregon Competitive Bidding Guidelines). The price scoring will incorporate benefits of expected energy value, capacity value, and flexibility value associated with each offer.

Price Scoring Ratio

Following the quantification of offer costs and benefits, including any necessary offer price adjustments (as outlined in the RFP main document section 8.5), each offer's component cost and benefits will be converted to a cost-to-benefit price score ratio. Real-levelized offer costs, divided by the equivalent real-levelized benefits value (incorporating energy, capacity, and flexibility benefits) will be the basis for the offer's price ratio.

Score Allocation

Once price ratios have been calculated for all offers, PGE will allocate price scoring points on a scaled basis, with 600 points allocated to the offer with the lowest (best) price ratio. The point allocation system is illustrated in the tables below, which are populated with fictitious cost-to-benefit and price scores for the sole purpose of illustrating the score allocation method.

Table 1. - Illustrative Scoring Example - Cost-to-Benefit Score

Cost-to-Benefit Ratio (%)	Price Score
75%	378
50%	528
80%	348
91%	282
60%	468
38%	600
88%	300
42%	576
101%	222

Table 2 - Illustrative Scoring Example - Price Ratio to Price Score

	Price Ratio	Price Score
Lowest (Best)	38 %	600
Highest	101%	222
Average	69.4%	411
Ratio Highest/Lowest	2.66	2.70

The lowest price ratio offer will receive the highest amount of points possible. All other offers will receive a scaled score, out of the 600 possible points, depending on their relative scores compared to the best score:

The lowest offer with a 38% price ratio will receive 600 points;

Any offer at or above a 138% price ratio will receive 0 points; and

An offer with a 75.0% price ratio will receive:

$$600 - [600 * (75\% - 38\%)]$$

$$= 600 - (600 * 37\%)$$

$$= 600 - 222$$

$$= 378$$

Determination of the Energy Value

An offer's energy value reflects the value of energy generated throughout the offer's economic life or term. Energy value for the duration of the offer's term is expressed on a present-value basis and included in the denominator of an offer's cost to benefit price

score ratio. The energy value will be based on the offer's simulated dispatch and the projected revenue associated with PGE's hourly market price forecast. The methodology used to create the hourly market price forecast is further described in Exhibit C, the 2016 IRP and the 2016 IRP Update.

Determination of Capacity Benefits

An offer's capacity benefit reflects PGE's need to acquire new, physical capacity resources due to the offer's estimated system capacity value. PGE is facing a capacity deficit, and requires capacity products, to otherwise displace the need to contract with or construct new peaking generating facilities. The capacity benefit will be included in the denominator of the offers cost to benefit price score ratio.

An offer's capacity benefit will be calculated as the product of the offer's capacity value and the avoided capacity cost. The product's capacity value will be calculated annually using the Renewable Energy Capacity Planning (RECAP) model. RECAP is described in Chapter 5 of the 2016 IRP. The model has been updated to accurately reflect the assumptions included in PGE's 2016 IRP Update filed in March 2018. The offer's capacity value will be expressed as the quantity of avoided simple-cycle combustion turbine (SCCT) needed to meet PGE's long-term capacity targets. The avoided capacity cost will be based on a per kilowatt, real-levelized cost (net of wholesale revenues) of a simple-cycle combustion turbine (SCCT). The assumed costs and performance of the SCCT are consistent with 2016 IRP capital costs and performance metrics (described in Chapter 7) operated under the updated reference case gas and wholesale power prices. The product of the offer's annual capacity value and levelized avoided capacity cost constitute the offers annual capacity benefit. Capacity benefit for the duration of the offer's term is expressed on a present value basis and included in the denominator of the price score ratio.

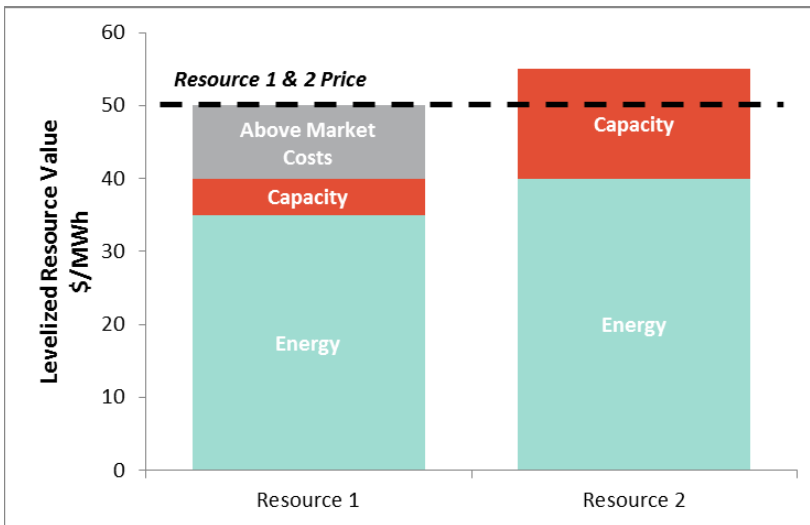
Determination of Flexibility Benefits

The flexibility value associated with an offer reflects any additional value that the offer may bring to PGE's generation portfolio due to its ability to ramp, respond to forecast errors, and/or provide ancillary services that is not captured by its energy value. PGE approximates flexibility benefits using the Resource Optimization Model (ROM), which the Company relied on in the 2016 IRP to quantify flexibility value associated with energy storage systems and the costs due to flexibility challenges (i.e., integration costs) associated with variable renewable resources. An offer's flexibility benefit is calculated using a methodology further explained in Example B. The flexibility benefit for the duration of the offer's term is expressed on a present value basis and is included in the denominator of the offer's cost-to-benefit price score ratio.

Price Screen

The cost-containment screen will be unique for each resource evaluated by PGE. The screen will be elevated for resources that provide more value to PGE customers due to the resource's geographic diversity. For this reason it is possible that a lower priced resource does not pass the economic screen, while a higher priced resource passes the economic screen due to increased resource value (e.g., higher capacity contribution, more valuable energy production profile or higher flexibility value). For example, Figure 1 illustrates a possible application of the proposed cost-containment screen. Resource 1 and Resource 2 have the same resource pricing. However, Resource 1's levelized cost exceeds the resource's energy, capacity and flexibility value. The resource is found to have above-market costs on a real-levelized forecasted basis and does not pass the economic screen. Resource 2 passes the economic screen as its resource value exceeds the resource cost.

Figure 1: Example of cost containment screen



It is PGE's expectation that the most economically competitive resources are capable of passing the proposed cost-containment screen. Table 3 provides an example of the applicable economic screen for generic 100 MW renewable resources.

Table 3: Example energy and capacity values for generic 100 MW resources*

	Gorge Wind (\$/MWh)	Solar (\$/MWh)	MT Wind (\$/MWh)
Energy Value	\$ 44.47	\$ 38.70	\$ 44.05
Capacity Value	\$ 6.73	\$ 8.15	\$ 12.72
Total	\$ 51.20	\$ 46.85	\$ 56.78

*Generic wind and solar resources are not considered dispatchable and therefore do not include flexible value.

Were these generic IRP resources to be evaluated within the RFP, the resources would only pass the cost-containment screen if priced below the total resource value. Importantly, each actual resource offered into the RFP will be screened against its unique resource value (not a generic threshold).

Non-Price Scoring

Non-Price accounts for 40% of the maximum overall offer score, or a maximum of 400 points out of 1,000 total. The non-price scoring will capture elements of the offers that are not easily captured in the price scoring. This is consistent with the RFP Guidelines, specifically 9a. The four main areas of focus are Development Criteria, Physical Characteristics, Performance Certainty, and Credit. See attached Exhibit A for the detailed Non-Price Scoring Rubric.

Portfolio Analysis

Portfolio modeling will provide PGE with additional information regarding the cost and risk profile of all offers considered. Portfolio analysis methods, consistent with the 2016 IRP, will demonstrate how resources perform together, on a cost and risk basis, due to their specific size, term, portfolio capacity value, and portfolio flexibility value.

Portfolio Construction

Portfolio analysis begins with the assembly of portfolios evaluating many different unique combinations of resources. The candidate portfolios will be developed through multiple techniques including 1) portfolio size optimization, 2) portfolio net-cost optimization, 3) cost-screened permutations, and 4) additional analyst selected portfolios (if necessary). The specific methodologies used to construct portfolios are described in further detail in Exhibit D.

Each portfolio will include sufficient resources to meet the RFP targeted capacity need in each year. The unique portfolio capacity value for each portfolio will be calculated using the IRP's RECAP methodology. The portfolio capacity calculation will recognize the resources' capacity diversity included in each portfolio. The RECAP model is described in Chapter 5 of the 2016 IRP. Any portfolio whose capacity contribution does not meet the RFP capacity target will also include a specified fill resource ('fill'). Including a fill resource ensures the portfolio incorporates the total cost necessary to meet the RFP capacity target in each year of the analysis. The specified fill resource will be sized to fulfill the resource target in each year of the analysis.

The specified fill resource will have cost and performance characteristics comparable to the average cost and performance of new resources of like product type offered into the RFP.

Portfolio Analysis

Portfolio analysis will test combinations of resources across multiple futures. The futures will evaluate portfolio exposure to multiple scenarios of gas prices, carbon costs, and hydro conditions. The futures are discussed in Exhibit C. For each portfolio, the relevant resources' variable costs and energy benefits will be calculated recognizing AURORA results under 27 economic and hydro futures. The variable net income for each resource will be reported annually for all futures. The AURORA dispatch simulation is described in Exhibit C.

A unique portfolio flexibility value will be calculated using the portfolio flexibility tool. The portfolio flexibility calculation will recognize the flexibility diversity included in each portfolio. The portfolio flexibility calculation is further detailed in Exhibit B.

For each portfolio, the portfolio flexibility value and the relevant resources' net incomes will be subtracted from the relevant resources' fixed costs to calculate the portfolio's total net cost for each future.

For each portfolio, the total present value net cost for years 2019 through 2050 under each future will be calculated to estimate the cost impact of the additions on the PGE system. This expected cost impact will be measured as the total portfolio net present value of revenue requirement (NPVRR) under reference case conditions. Portfolio risk will be evaluated using the standard deviation of future results. Portfolios will be ranked according to a blended cost and risk metric based 50% on reference case expected cost and 50% based upon the standard deviation of portfolio costs. In addition, portfolio risk will be characterized using additional IRP risk metrics including severity, variability, and durability as described in the 2016 IRP Chapter 11.

Portfolio results will be stress tested under multiple resource targets and qualifying facility planning scenarios. Specifically, PGE will test a 2018 through 2040 planning horizon sensitivity in addition to a 2018 through 2050 base planning horizon.

Portfolio analysis performance will be based on the inclusion of specific offers across multiple top-performing portfolios. Those resources that appear most frequently in top-performing portfolios are those that best reduce cost and economic risks. However, non-price factors are not evaluated or considered in portfolio analysis.

Exhibit A – Scoring Criteria

Exhibit A - 2018 RFP Scorecard Template

Summary

Bid Number:	Fill In		
Summary	Max Score	Bid Score	Description
1. Price Scoring	600		
2. Project Development Criteria	100	0	Includes Development team experience, Permitting, Project Finance, Cost Certainty
3. Project Physical Characteristics	130	0	Interconnection, Transmission rights, Resource Certainty (production assessment), Engineering Reliability
4. Project Performance Certainty	120	0	Firmness of Energy, Scheduling, Technological maturity, Online date, Contractual elements
5. Credit Evaluation	50	0	Score based on counterparty's ratio and debt rating
Total Score	1,000	0	

Exhibit A - 2018 RFP Scorecard Template
Thresholds

Bid Number:			Required at Bid Submittal or Short List	Yes	No
1. Proposal satisfies minimum bid quantity and duration criteria:					
Size and Term	Minimum size of 10 MW with minimum 20 year duration.		Submittal		
Qualifying Product	Projects must include all associated Renewable Energy Credits (RECs) and all environmental attributes.		Submittal		
Registered Product	Bidder will be responsible for ensuring RECs are established in WREGIS.		Submittal		
2. Proposal satisfies minimum development criteria					
Site Control	Title, executed lease or executed option agreement for a minimum of 80% of site, with 100% required two weeks prior to final short list.		Submittal and Shortlist		
Permitting	Refer to attached permitting table attached.		Final Shortlist Submittal and Shortlist	-	-
Project Financing	Demonstrated ability to internally finance project or evidence of good faith commitment from financing institution/financial backer prior to final short listing.		Final Shortlist		
Equipment costs estimates - PPA	OEM Supply agreements or quote. LTSA quote optional.		Submittal		
Equipment costs estimates - Utility Ownership	OEM and APA+EPC/BOT bid quote. LTSA quote optional.		Submittal		
Tax Credit Eligibility	New Wind projects must include PTC Opinion from qualified accounting firm for PTC eligibility. Solar projects claiming ITC eligibility must demonstrate plan to receive the credit.		Submittal		
3. Proposal satisfies minimum physical characteristics criteria					
Interconnection	Executed System Impact Study Agreement.		Submittal		
<u>Interconnection</u>	<u>Completed Interconnection Facilities Study</u>		<u>Final Shortlist</u>		
Off System Bidders - BPA Transmission:	Already have long term firm service, PTSA for long term firm service, or CF bridge service agreement transitioning to long-term firm <u>within two years</u> upon near-term, viable upgrades. Alternatively, has completed phase four of the project is included in BPA's currently active TSEP process (Record of Decision issued) and requires near-term viable upgrades which must be completed at least six months prior to COD <u>or has requested and been accepted for Individual Study.</u>		Submittal		

<u>Off System Bidders - BPA Transmission:</u>	<u>Has transmission study schedule that allows transmission service commitments by December 31, 2018. For bidders relying on the TSR Study and Expansion Process (TSEP) or Individual Study Process, transmission service commitments will be deemed demonstrated by completion of phase four (Record of Decision issued) or completion of the facilities study respectively.</u>	Final Shortlist		
On System Bidders - PGE Transmission	Already have service or granted facility plan with approved construction plan targeting completion at least six months prior to COD.	Submittal		
Resource certainty - Historical Data Requirements:	Wind/Solar/Hydro resources must provide a minimum 3-years of data and include an output study from verifiable third-party. Geothermal proposals must have feasibility report completed, based on a year or more of test data from full diameter production wells. Biomass/biogas proposals must come with long-range fuel supply plan with identified, established suppliers and transportation options.	Submittal		
4. Proposal satisfies minimum performance certainty criteria				
Quality of Power	Must be at a minimum unit contingent agreement associated with an identified resource.	Submittal		
Power Scheduling	Off-system resources: Must be integrated by third-party balancing services delivered to PGE using hourly schedules. On-system resources: Must be designated Network Resources.	Submittal		
Technological acceptability - Utility Ownership	Major equipment manufacturer must be on attached preferred vendor list.	Submittal		
Online Date	Online on or before December 31, 2021.	Submittal		
Contractual requirements	Proposed contractual structure, redline or otherwise, must contain provisions related to: Liability Caps, Indemnification, Default/Termination Rights, Performance Guarantees, Remedies for non-performance non-performance, and Security/Collateral.	Submittal		
5. Proposal satisfies minimum credit threshold criteria				
Security requirements	PGE will only award contracts to Bidders that have, at a minimum, investment grade credit rating (or with investment-grade guarantors) and can prove that they can provide acceptable performance assurance at time of execution. Investment grade as rated by S&P, Moody's, DBRS and/or Fitch, requires ratings at a minimum must be BBB-, Baa3, BBB low, or BBB- respectively.	Submittal		

Exhibit A - 2018 RFP Scorecard Template

Development Criteria

Development Criteria	Score	Weight	Total	Scoring Rules
2. Project Development Criteria Max Score = 115100			100	Measures likelihood that project to support proposal will be placed into commercial service on time and on budget
2. Project already in service	0	14	0	Use the following scoring rules for projects that are already in operation: Operating plants should be given a score of 5 points, however this score can be reduced by 1 point if the plant has experienced extended outages, shutdowns or closures during the asset life. For scoring product development from portfolios use the following rules: (1) If product mostly supplied from a specific plant, use that plant for scoring (2) If product supplied from several plants, use the average score from all plants.
For projects not in service proceed with questions below, otherwise go to Section 3				
2.a Permitting status (see permitting attachment)	2	10	20	2 = All project permits and Site Certificate approved.
				1 = Major permits approved
				0 = Permit process underway, all permits timely acquired consistent with identified thresholds
2.b Experience of Project Team	2	5	10	2 = Successfully developed multiple similar projects in WECC delivered on time without material facility unplanned outages within first year.
				1 = Successfully developed multiple similar projects in US.
				0 = Successfully developed similar project in US.
2.c Project Financing	1	10	10	1 = Project can be internally financed by developer. Alternatively, project has financing agreement (e.g. primary lender, and tax equity as appropriate) with credible funding source with joint commitment to proceed.
				0 = PGE bid award needed to obtain financing (e.g. lender commitment contingent on bid award)
2.d Site Control: Including all rights required for project including access to the project site, easements and resources rights appropriate for the project	1	15	15	1 = Title/Executed lease or options for a minimum of 100% of site
				0 = Title/Executed lease or options for a minimum of 80% of site
2.e Cost Certainty - equipment	3	5	15	2 = Pricing guarantee for identified major equipment in addition to executable agreement for prime movers (e.g. turbines, panels)
				1 = Executable agreement for prime mover (e.g. turbines, panels)
				0 = OEM quotes for prime mover (e.g. turbines, panels)
				+1 for LTSA or other long-term service quote
All proposals regardless of current online status				
2.f Cost Certainty – Value of Extension	2	10	20	2 = Allows contract extension at original contract price or purchase option at book value or allows for continued operation at cost for benefit of customers
				1 = Allows contract extension at price certain or purchase option at known price
				0 = Allows for no rights for contract extension or purchase option. Alternatively allows for contract extension or purchase

				option at unknown price (e.g. fair market value)
For ownership proposals regardless of current online status				
2.g Cost Certainty - Milestone payments	1	10	10	1 = Payments at, or under PGE suggested milestone schedule (i.e. payments total less than actual completion percentage prior to completion)
				0 = Payments match with PGE suggested milestones
				-1 = Payments front loaded relative to proposed schedule of values and milestone payment schedule
For PPA proposals regardless of current online status				
2.h Cost Certainty – Pricing Structure	0	5	0	2 = Contract price does not escalate and does not include capacity payment
				1 = Contract price escalating at known and committed escalation rate and does not include capacity payment
				0 = Contract price escalating at market based escalator (e.g. historical CPI) or does include capacity payment

Exhibit A - 2018 RFP Scorecard Template
Physical Characteristics

Physical Characteristics	Score	Weight	Total	Scoring Rules
3. Physical Characteristics Max Score = 150 130			130	Measures project specific physical attributes for each offer. For scoring physical characteristics from portfolios use the following rules: (1) If product primarily supplied from a specific plant, use that plant for scoring; (2) If product supplied from several plants, use the average score from all plants.
3.a Interconnection Rights	5	10	50	5 = Executed LGIA or project in operation. 4= Tendered LGIA, in Negotiations. 3 = Executed optional Engineering and Procurement Agreement (E and P) or procurement agreement for long-lead interconnection items if applicable. 2 = Completed Interconnection Facility <u>Facilities</u> Study (must be completed prior to final short list). 1 = Completed Interconnection System Impact Study. 0=Executed System Impact Study Agreement.
3.b.1 Long Term Firm Transmission Rights on BPA's transmission	4	10	40	4 = Existing long-term firm rights to BPAT.PGE POD. 3 = Existing long-term firm rights confirmed by transmission provider to be redirectable to PGE's system. 2 = Executed PTSA for existing firm transmission to BPAT.PGE POD. 1 = PTSA agreement executed for identified upgrades. PTSA contains offer of conditional firm-bridge service that converts to long-term service upon completion of upgrades. Facility upgrades to be completed no later than one <u>two</u> years after COD. 0 = Have completed Project included in the currently active round of TSEP or has requested and been accepted for Individual Study, and require near term viable upgrades which must be completed at least six months prior to COD. PTSA agreement not yet executed.
3.b.2 Long Term Firm Transmission Rights on PGE's Transmission	0	10	0	4 = Executed Interconnection Agreement with Network Resource Integration Service or existing long-term firm rights. 2 = Tendered Interconnection Agreement with Network Resource Integration Service or executed Construction Agreement. 1 = Completed Facility Study. 0 = Completed System Impact Study.
3.c Projects Subject to BPA Oversupply Management Protocol	0	-10	0	1 = Project subject to BPA Oversupply Management Protocol. 0 = Project not subject to BPA Oversupply Management Protocol.
3.d Remedial Action Scheme Projects Subject to (RAS)	1	10	10	1 = PGE able to use resource as a credit for its obligation to support AC inertia RAS.

				0 = No RAS. -1 = Subject to RAS other than the AC inertia.		
3.e Engineering Reliability	5	2	10	For all project types (maximum of 5 points)		
				1 = PGE is able to influence in maintenance and availability decisions impacting reliability (0 if no influence).		
				2 = The experience and expertise of O&M operator (<5 years=0, 5-9 years=1, >10 years=2).		
				1 = The owner and/or operator is supported by local or centralized engineering staff (0 otherwise).		
				1 = The seller has an established relationship with prime mover vendor including vendor support through a service agreement (<5 years=0, 5-9 years=.5, >10 years=1).		
Resource Specific Issues						
3.f Resource Certainty	Wind/Solar/Hydro Resources			20	Select Resource type for 4.a	
	4	5				4 = 7+ years data. 3 = 6-years data. 2 = 5-years data. 1 = 4-years data. 0 = 3-years data (threshold). 2 = Wind project is a staged build-out of an adjacent project (assumes adjacent project has at least 7 years' wind data and the adjacent project has a similar wind microclimate to the original project).
	Geothermal Resource					
	0	20	0			1 = Production and injections wells for the project drilled and completed. 0 = Feasibility report completed, based on >1 year of test data from full diameter production wells.
	Biomass/Biogas – Project Fuel Supply					
	0	5	0	4 = Firm access to multiple fuel sources for 100% or greater of need, with ability to store fuel on site and options for fuel transportation. 3 = Firm access to multiple fuel sources for 100% or greater of need. 2 = Have executed long-term fuel supply contract for minimum of 60% of need with ability to store fuel on site and options for fuel transportation. 1 = Have executed long-term fuel supply contract for minimum of 60% of need with plan for remaining need. 0 = Have fuel supply plan with identified, established suppliers and transportation options.		

Exhibit A - 2018 RFP Scorecard Template

Performance Certainty

Performance Certainty	Score	Weight	Total	Scoring Rules
4. Performance Certainty Max Score = 100 120			120	Measures project specific commercial and delivery attributes for each offer.
4.a Quality of Power - Firmness of Energy	2	10	20	2 = Backed by physical resources or system with resupply obligation for curtailments or outages including make whole provisions for bundled RECs.
				1 = Backed by physical resources or system with finite resupply obligation for curtailments or outages including finite make whole provisions for bundled RECs.
				0 = Finite resupply obligation without make whole provisions for RECs.
4.b Quality of Power - Scheduling Period Commitment	2	5	10	2 = Weekly or greater in scheduling.
				1 = Pre-schedule.
				0 = Hourly.
4.c Online Date	2	10	20	0 = prior to 12/31/2019.
				2 = After 12/31/2019 and prior to 12/31/2020.
				1 = After 12/31/2020.
4.d Output Guarantee	10	3	30	Project owner financially guarantees project output for PGE customers through AUT forecast or PPA Form Contract Specified Amount provisions, defined over the following time period:
				10 = Monthly On/Off Peak or more granular.
				8 = Monthly.
				6 = Quarterly.
				2 = Annually.
4.e Guarantee Available Factor	2	5	10	2 = Minimum mechanical availability agreement of 97% or greater for any two out of three calendar years on a rolling basis.
				0 = No stated minimum mechanical availability commitment.
4.f Liability Cap Contractual Terms and Conditions Redlines	6	1	6	6 = All highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.
				3 = Most highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.
				1 = Most highlighted terms conform to contract form and present low risks to schedule, performance or cost.
				0 = Most highlighted terms conform to contract form and present medium risks to schedule, performance or cost.
4.g Indemnification Contractual Terms and	6	1	6	6 = All highlighted terms conform to contract form and

Conditions				<p>present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>3 = Most highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>1 = Most highlighted terms conform to contract form and present low risks to schedule, performance or cost.</p> <p>0 = Most highlighted terms conform to contract form and present medium risks to schedule, performance or cost.</p>
4.h Default & Termination Contractual Terms and Conditions	6	1	6	<p>6 = All highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>3 = Most highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>1 = Most highlighted terms conform to contract form and present low risks to schedule, performance or cost.</p> <p>0 = Most highlighted terms conform to contract form and present medium risks to schedule, performance or cost.</p>
4.i Security and Collateral Contractual Terms and Conditions	6	1	6	<p>6 = All highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>3 = Most highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>1 = Most highlighted terms conform to contract form and present low risks to schedule, performance or cost.</p> <p>0 = Most highlighted terms conform to contract form and present medium risks to schedule, performance or cost.</p>
4.j Performance Guarantees and Remedies of Non-Performance Contractual Terms and Conditions	6	1	6	<p>6 = All highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>3 = Most highlighted terms conform to contract form and present low risk to schedule, performance or cost, and additional terms are included that lowers Company risk.</p> <p>1 = Most highlighted terms conform to contract form and present low risks to schedule, performance or cost.</p> <p>0 = Most highlighted terms conform to contract form and present medium risks to schedule, performance or cost.</p>

Exhibit A - 2018 RFP Scorecard Template

Credit

Credit	Score	Weight	Total	Scoring Rules	
5. Credit Evaluation Max Score = 50			50	Score based on Bidder, not Guarantor	
5.a PGE ratio analysis score	10	2	20	10=Credit score of 10	5=Credit score of 5
				9=Credit score of 9	4=Credit score of 4
				8=Credit score of 8	3=Credit score of 3
				7=Credit score of 7	2=Credit score of 2
				6=Credit score of 6	1=Credit score of 1
5.b Bond Rating	10	2	20	10=Aaa/AAA	
				8=Aa/AA	
				6=A/A	
				4=Baa/BBB	
				2=Baa-/BBB-	
0=Below BBB- or not rated					
5.c Tangible Net Worth	10	0.5	5	10 >1,000mm	5=600mm-501mm
				9= 1000mm-901mm	4=500mm-401mm
				8= 900mm-801mm	3=400mm-301mm
				7= 800mm-701mm	2=300mm-101mm
				6= 700mm-601mm	1= <100mm
5.d Corporate Structure	5	1	5	5=Publicly Traded	
				4=Publicly Traded subsidiary	
				3=Private Corporation	
				2=Private LLC	
				1=Sole Proprietorship/Partnership	

Permitting Threshold Requirements

Permits - Required by....(if applicable to the specific project)	Wind	Solar	Geothermal	Hydro / Pumped Storage	Biomass	Notes
Detailed Plan for Obtaining All Major Permits Required (w/schedule)	Bid	Bid	Bid	Bid	Bid	-
State/local siting permit (e.g. site certificate, conditional use permit)	Award	Award	Award	Bid	Award	Hydro: Applicable permits/certificates will be addressed in EIS.
Federal siting permit (e.g. NEPA Record of Decision for construction*, FERC License or final EIS from FERC) <i>*This does not include NEPA for an Eagle Take Permit</i>	Award	Award	Award	Bid	Award	For Hydro, a final EIS from FERC is also acceptable if a project does not have a license. Once a project has a final EIS, a license will typically follow within in 6 months.
Air quality permit (e.g. ACDP)	N/A	N/A	N/A	N/A	Award	-
FCC permit	Award	Award	Award	Award	Award	For communication path interference
FAA permits	CP	Award	N/A	Award	Award	Wind is CP only since FAA permit needed for every WTG for its exact location, which may not be available until detailed design is completed
Airspace and Obstacle Evaluation Analysis	Bid	N/A	N/A	N/A	N/A	-
Water rights	N/A	N/A	Award	Bid	Award	-
Wastewater discharge permit (e.g. NPDES, WPCF)	N/A	Award	Award	N/A	Award	Only permits that are critical for operation (e.g. does not apply to septic system permits)
Construction Permits (NPDES - 1200 C, etc.)	Award	Award	Award	Award	Award	Not critical, but highly preferable
Removal Fill Permits (DSL and Corp)	Award	Award	Award	Award	Award	Wetlands and in-water work
Eagle surveys finished or nearly finished	Bid	Bid	Bid	Bid	Bid	Should be within 1 month of completion at bid and follow appropriate USFWS guidelines; surveys are a 2 year process

Federal	ESA surveys completed	Bid	Bid	Bid	Bid	Bid	Surveys require long lead time; if there are impacts, consultation requires more time and could end project if no federal nexus exists. These surveys include critical habitat surveys, which are no longer part of site certificate.
Cultural	Resources Surveys	Bid	Bid	Bid	Bid	Bid	Cultural surveys with subsequent agency consultation requires some lead time. For projects that do not have a federal nexus, it may be comprised within an EFSC permit. If project area is on public lands, additional permit may become necessary. If adverse impacts are noted, this may delay project so while ideally we could wait until award, it is better to have the surveys underway at least by bid time.
Tribal coordination (Traditional Use Studies. Traditional Cultural Properties)		Bid	Bid	Bid	Bid	Bid	Tribal consultation should have begun by time of bid and if Tribes have any major concerns, they should be made known.
Misc: Dikes, Scenic Areas, Local Requirements							As needed basis
							-
Key:							-
Bid - Must be approved by bid submittal date							-
Award - Must be approved by bid award date							-
CP - Must be approved as a condition precedent in the definitive agreement(s)							-
N/A - Not applicable							-

2018 Renewable RFP - Major Permit Identification by Technology

Wind	Solar	Geothermal	Hydro / Pumped Storage	Biomass
Federal and State and Local Permitting	Federal and State and Local Permitting	Federal and State and Local Permitting	Construction Permit	Federal and State and Local Permitting
FCC Permit FAA Permit	FAA Permit	Water Rights	Removal Fill Permit, if appropriate	Air Permit
		Wastewater Permit		Water Rights
				Wastewater Permit

Local permits include Conditional Use Permit and Zoning Permit

2018 Renewable RFP Major Equipment Preferred Vendors

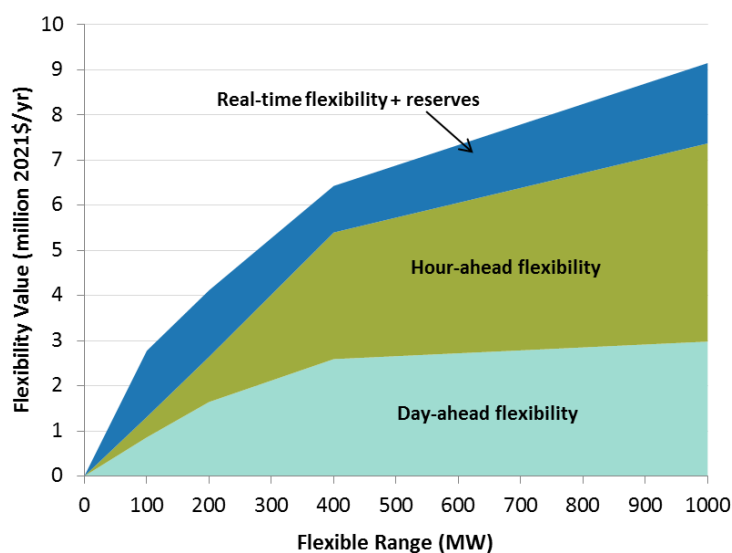
Substation Main Power Transformer	GSU Pad-mount Transformers	Photovoltaic Inverters	Photovoltaic Modules	Wind Turbine Generators
ABB, Varennes, Canada shop	ABB	SMA	JA Solar	General Electric
ABB, St. Louis, Missouri shop	CG Power Systems USA	Power Electronics	Trina Solar	Siemens Gamesa
ABB, Bad Honnef, Germany shop	General Electric	TMEIC	Jinko	Vestas
ABB, South Boston, Virginia shop	Cooper Power Systems	Eaton	Canadian Solar	Nordex/Acciona
HICO, ChangWon, South Korea shop	Siemens	General Electric	Hanwha Q-Cells	
Hyundai, Montgomery, Alabama shop	Pacific Crest Transformers	ABB	First Solar	
Hyundai, Ulsan, South Korea shop			Sunpower	
Smit, Nijmegen, The Netherlands shop			Kyocera	
SPX Waukesha, Waukesha, Wisconsin shop			LG	
EFACEC, Arroiteia, Portugal shop			REC	
Siemens, Guanajuato, Mexico shop				
GE Prolec, Monterrey, Mexico shop				
Shihlin, Taipei, Taiwan shop				

Exhibit B – Flexibility

B.1 Flexibility value functions

In preparation for the evaluation of offers, PGE conducted a series of simulations with the ROM tool to isolate the flexibility benefits of perfectly flexible products available in various time frames (day-ahead, hour-ahead, and real-time¹) and at various sizes (100MW, 200MW, 400MW, and 600MW) in a 2021 test year. For each simulation, the resource operational value was calculated as the annual operational cost difference between the PGE resource fleet with the perfectly flexible resource and the PGE resource fleet without the perfectly flexible resource. The flexibility value was isolated by subtracting the market revenues that the resource was capable of providing if it had dispatched to market in all hours from the total operational value obtained by optimizing its dispatch in coordination with the PGE resource fleet. This exercise yielded a set of functions that could be used to approximate the flexibility value associated with each offer in each stage according to its “flexible range” – the portion of the resource capacity that could be approximated as perfectly flexible in each stage. These functions are shown in the figure below.

Figure 1. Flexibility value functions by stage and size



The annual flexibility values shown in the above figure were allocated to each season based on the seasonal distributions of the flexibility values identified by

¹ Real-time flexibility was bundled with the ability to provide load following, regulation, spinning, and non-spinning reserves, since the incremental value of these ancillary services was found to be relatively small.

ROM. The resulting allocation factors, which are summarized in the table below, were used to obtain monthly flexibility values by stage and flexible range.

Table 3. Flexibility value seasonal allocation factors

Stage	Q1	Q2	Q3	Q4
Day-ahead flexibility	25%	34%	30%	10%
Hour-ahead flexibility	19%	34%	33%	13%
Real-time flexibility + reserves	27%	23%	39%	12%

Flexibility values were assumed to escalate at inflation through the analysis horizon.

B.2 Flexible ranges

For each offer, flexible ranges are calculated for the day-ahead, hour-ahead, and real-time stages based on the operating characteristics of the resource. The flexible range calculation is conducted on a monthly basis over the full duration of the resource in the PGE portfolio. This calculation depends on whether the offer reflects an energy-limited or non-energy-limited resource. Energy-limited resources are those with a fixed amount of energy that must be used over a stated length of time – in other words, they behave like hydro resources. Non-energy-limited resources are all other resources that do not have this energy-driven constraint – they behave more like thermal resources.

B.3 Energy-limited

In the flexibility evaluation, each energy-limited resource is characterized by its minimum (p_m^{min}), maximum (p_m^{max}), and average (p_m^{avg}) dispatch level by month throughout the resource duration. Flexible ranges may also be limited by a fixed amount in each stage (f_k). In month m and stage k , the flexible range for an energy-limited resource is:

$$\min[2(p_m^{max} - p_m^{avg}), 2(p_m^{avg} - p_m^{min}), f_k]$$

B.4 Non-energy-limited

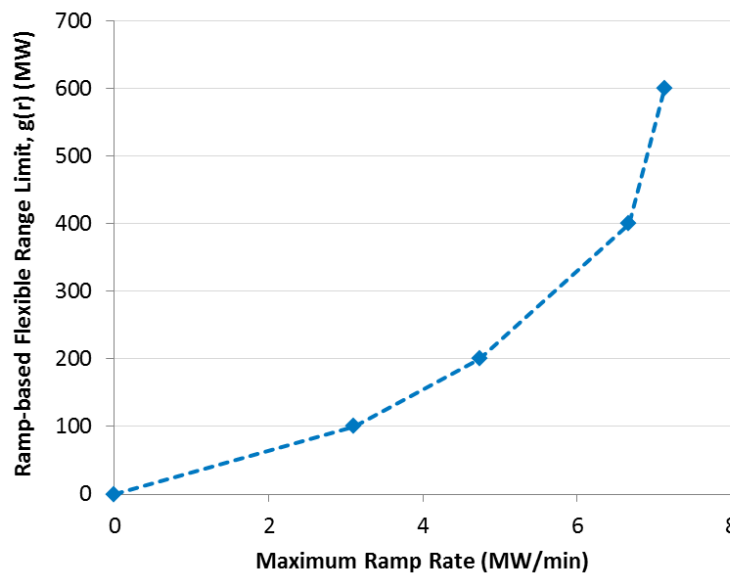
Non-energy-limited resources are characterized in the flexibility evaluation by their monthly maximum output (p_m^{max}), minimum output (p_m^{min}), availability in each stage (a_{km}), ability to be re-committed in each stage (c_k), ability to redispatch in each stage (d_k), and maximum ramp rate (r). The availability in a given month is defined as the fraction of hours that the resource is committed (i.e., has non-zero output) in that month in the AURORA dispatch simulation. If a resource can be re-committed and redispatched in a given stage, then its flexible range reflects the full capacity range between its minimum and maximum output regardless of

its availability. However, if the commitment is fixed in a given stage (due to fuel or operational constraints) but the resource can be redispatched, then the flexibility range is scaled by the availability in order to reflect the probability that the resource has been committed in a prior stage. The flexibility range is also limited by a function, $g(r)$, of the maximum ramp rate, which is discussed further below. In month m and stage k , the flexible range for a non-energy-limited resource is:

$$\min[d_k(p_m^{max} - p_m^{min})[c_k + (1 - c_k)a_{km}], g(r)]$$

The ramp rate-based function, $g(r)$, limits the flexible range based on the ramping capability of the resource. In the day-ahead and hour-ahead stages, this function was determined by calculating the ramping capability needed to meet 95% of all ramps experienced by the perfectly flexible resource in the ROM simulation. Because units ramp between hourly schedules over the last 10 minutes of each hour and the first 10 minutes of the following hour, the function assumes that the resource must be capable of meeting simulated hourly ramps over a 20-minute period. The resulting function is shown below.

Figure 2. Ramp-based flexible ramp limit, $g(r)$, for day-ahead and hour-ahead stages



The ramp-based limit on the flexible range for real-time flexibility and reserves is equal to 10 minutes times the MW/min ramp rate to reflect the approximate time scale of modeled subhourly dispatch needs and reserve requirements.

B.5 Portfolio flexibility values

The flexibility value in the portfolio modeling stage is calculated using the same methodology and the same flexibility value functions used to evaluate specific resources. In this exercise, the flexible range in each month associated with the portfolio is the sum of the flexible ranges of the component resources in the

corresponding month. Because the flexibility functions are sub-linear, the monthly portfolio flexibility value is less than the sum of the monthly flexibility values of the component resources. This approach therefore captures the declining marginal value of flexible resources in PGE's resource portfolio, a phenomenon identified in the energy storage evaluation and discussed in Chapter 8 of the 2016 IRP. Within the portfolio flexibility value assessment, PGE will recognize the flexibility value effects of the bilateral capacity agreements executed by PGE in Q1 2018 and described in the 2016 IRP Update.

Exhibit C – Aurora Dispatch

As discussed in PGE’s 2016 IRP, AURORAxmp allows PGE to perform fundamental analysis of the western power markets under various assumptions and test the performance of candidate resource portfolios in those environments. PGE uses the net present value of revenue requirements (NPVRR) to summarize the expected cost of portfolios. The NPVRR includes the fixed and variable costs associated with operating the respective resources, as well as the net market revenue or expense associated with net sales or purchases in the portfolio. PGE evaluates portfolio risk according to two primary categories:

1. Reliability risk: Serves as a threshold for portfolio design; and,
2. Deterministic risk: Referred to above as “futures.”

To evaluate the variable benefits of the candidate resources in the bilateral capacity acquisition initiative, PGE used AURORAxmp consistent with the Integrated Resource Plan (IRP) methodology. This methodology includes:

- 1) Western Electric Coordination Council (WECC) Capacity Expansion
- 2) Generate Market Power Prices
- 3) Compute the “Value” of all candidate resources

WECC Capacity Expansion: PGE used the three capacity plans developed under various carbon price futures in the 2016 IRP. PGE used Wood McKenzie’s database for information regarding the existing resources in WECC. It was not necessary to execute new long-term capacity expansion studies as long-term market fundamentals have not moved significantly enough to justify the effort required to perform long-term studies.

Market Power Prices: Using the applicable WECC capacity plan, hourly Mid-Columbia power price curves until year 2050 under 27 various futures were generated. The futures were designed to study impacts of three factors on power pricing: carbon pricing, natural gas pricing, and regional hydro availability. More detail for each factor is shown below.

Carbon pricing: PGE used three carbon price estimates: zero carbon prices, reference carbon prices, and high carbon prices. Consistent with the IRP, PGE used Synapse’s forecasts for the reference and high carbon pricing.

Natural Gas pricing: PGE used three natural gas pricing scenarios: Low, reference and high. Consistent with the 2016 IRP Update data source assumptions, the trading curve was used until 2021 for all three scenarios.

Regional hydro availability: PGE used three regional hydro scenarios: low, reference and high. The reference case value is the average of historical hydro estimates provided by Wood Mackenzie. For low and high values, consistent with the 2016 IRP Update, PGE adjusted forecasted hydro volumes by ten percent.

PGE simulated all combinations of carbon price, gas price and regional hydro availability scenarios to create 27 futures.

Exhibit D – Portfolio Construction

Candidate portfolios will consist of executable combinations of all offers. The total resources selected must meet the energy target identified in Commission Order No. 18-044. PGE will optimize portfolio selection with the following two-step processes:

1. Select the starter resource. There will be an optimal candidate portfolio based on each resource.
2. Use the Excel solver to select additional resources to add to the starter resource. Excel will select resources under different optimization routines such as minimizing the deviation from the target MWh energy addition in 2021 or total net costs.

The first optimization routine consists of an optimization problem to minimize the difference (delta) between a portfolio's total energy and the energy target in 2021. The optimized portfolio under the first optimization routine will be calculated using the following formula:

$$f(\underline{x}) = \left| TG_t - \sum_{i=1}^n E_{t,i} \cdot \underline{x} \right|$$

$$\min_{\underline{x}} f(\underline{x})$$

$$s.t. \underline{x} \text{ is binary}$$

where:

\underline{x} : A binary vector representing resource selection in a portfolio
(0 represents exclusion, and 1 represents inclusion)

$E_{t,i}$: Energy of the resource i for the year t

TG_t : Energy target of the year t

t : Year 2021

i : Resource index

The second optimization routine set up an objective function to minimize a portfolio's total present value net cost. The optimized portfolio under the second optimization routine will be calculated using the following formula:

$$f(\underline{x}, y_t) = \sum_t^T P_t \cdot \{TC_{t,i} \cdot \underline{x} + F_t \cdot y_t\}$$

$$\min_{\underline{x}, y_t} f(\underline{x}, y_t)$$

$$s.t. \underline{x} \text{ is binary}$$

$$\text{and } \underline{x} \cdot E_{t,i} + y_t \geq TG_t$$

where:

\underline{x} : A binary vector representing resource selection in a portfolio

(0 represents exclusion, and 1 represents inclusion)

y_t : Amount of the fill resource needed for the year t

$TC_{t,i}$: Total net cost of the resource i for the year t

TG_t : Energy target of the year t

$E_{t,i}$: Energy of the resource i for the year t

F_t : The fill resource's total net cost

(standardized by the fill resource's name plate capacity)

P_t : Present value factor

t : The beginning of the period

T : The end of the period

To supplement the optimized portfolios, PGE will also develop all possible portfolio permutations with total energy ranging from 75MWa to 125MWa in 2021 and will advance the top 50th percentile of these portfolios to portfolio evaluation. Performance in the 50th percentile screen will be measured on the basis of present value net cost, with the top portfolios achieving the lowest present value net cost.

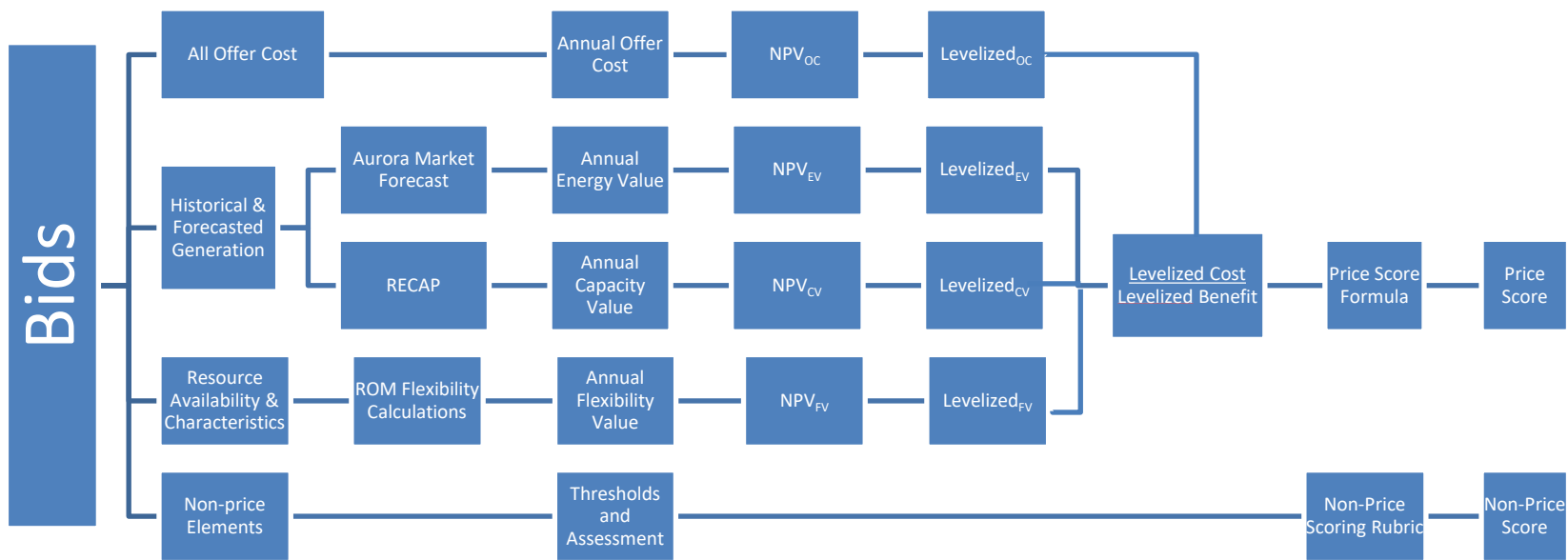
Portfolio Term and Size Normalization

For portfolio analysis, resources will be term and size normalized to match the energy target identified:

- To term normalize for resources with shorter duration (e.g. PPA for 20 years), we will fill with the real levelized cost of an appropriate specific resource of like size for the remaining planning horizon.
- To size normalize, any difference in size between the offers' total energy and the targeted energy need will be effectively filled in by the remaining specific fill resource.
- The specific resource used to size and term normalize reflects the cost and performance of new resources informed by the initial short list.

Filling with costs associated with new resources will correctly account for the risks associated with the energy target identified in Commission Order No. 18-044. We will calculate a total portfolio cost based on the AURORA dispatch of the candidate portfolios across futures including the reference case of carbon price, natural gas price, and hydro availability. In addition, we will calculate risk as the standard of deviation of the total portfolio present value net cost of candidate portfolios across the futures. Candidate portfolios will be ranked in order of increasing costs and risks. After the initial analysis, portfolio results will be stress-tested under multiple energy targets and qualifying facility planning scenarios.

Exhibit E – Scoring Process Flow



19 Appendix I – Required Bid Information

*INTENTIONALLY BLANK: TO BE POSTED ON
PROCUREMENT WEBSITE*

20 Appendix J – Benchmark Bid Information

APPENDIX J

Portland General Electric's ~~Company Owned Self-Build~~ Benchmark Resource (~~Benchmark Resource~~)

Proposed 2018 RFP Company Benchmark Resource

- PGE intends to submit one (1) individual wind Benchmark Resource to satisfy approximately 300 MW of targeted wind resources. Variations to the bid could be the addition of solar and/or storage to the resource.
- The Benchmark Resource would be a greenfield wind resource constructed in Eastern Oregon.
- ~~The Benchmark Resource would be built on property that PGE intends to acquire the rights to develop.~~
- The Benchmark Resource would be 100% PTC qualified with an expected on-line date in 2020.
- The Benchmark Resource will not use ~~transmission~~ PGE-Merchant transmission, and will be responsible for acquiring necessary transmission to the specified delivery point.~~The Benchmark Resource would be constructed in compliance with PGE's wind farm specifications and technical standards.~~