

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**OM POWER 1, LLC**

**for the Olene Gap Geothermal Project**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 10<sup>th</sup> day of April, 2012, is between OM Power 1, LLC, "Seller" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "PacifiCorp." (Seller and PacifiCorp are referred to individually as a "Party" or collectively as the "Parties").

### RECITALS

A. Seller intends to construct, own, operate and maintain a geothermal facility for the generation of electric power, including interconnection facilities, located near Klamath Falls, Klamath County, Oregon with a Facility Capacity Rating of 10,000 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on November 2, 2013 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on November 30, 2013 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 56,482,812 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one)  sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp  sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

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

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

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

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

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

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

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

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

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

1.4.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.23 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

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

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

2.2.1 By April 11, 2012, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

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

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

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

2.4 Except as otherwise provided herein, this Agreement shall terminate on May 31, 2028 (“**Termination Date**”).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

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

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

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

principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

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

Seller hereby declares (Seller initial one only):

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

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

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

**SECTION 4: DELIVERY OF POWER**

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

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 56,482,812 kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 41,913,142 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-

rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 57,356,257 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

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

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

### **SECTION 5: PURCHASE PRICES**

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

- Fixed Price
- Firm Electric Market
- Gas Market
- Banded Gas Market

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

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

- Firm Electric Market
- Gas Market
- Banded Gas Market

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

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller a blended market index price for day-ahead non-firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market

indices as reported by Dow Jones, for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

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

## **SECTION 6: OPERATION AND CONTROL**

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

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

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

by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

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

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

## **SECTION 7: FUEL/MOTIVE FORCE**

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

## **SECTION 8: METERING**

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

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

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection

agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

### **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

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

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

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

### **SECTION 10: SECURITY**

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

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

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

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

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

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

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

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

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

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

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

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

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4.

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

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

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

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

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

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

notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

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

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

11.2 Notice; Opportunity to Cure.

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

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

### 11.3 Termination.

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

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

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

#### 11.4 Damages.

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

#### 11.4.2 Recoupment of Damages.

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

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### 12.1 Indemnities.

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

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

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

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

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

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

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

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

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

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

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

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

## **SECTION 14: FORCE MAJEURE**

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

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

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

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

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

## **SECTION 15: SEVERAL OBLIGATIONS**

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

## **SECTION 16: CHOICE OF LAW**

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

## **SECTION 17: PARTIAL INVALIDITY**

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

## **SECTION 18: WAIVER**

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

## **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

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

## **SECTION 20: REPEAL OF PURPA**

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

## **SECTION 21: SUCCESSORS AND ASSIGNS**

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

as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

**SECTION 22: ENTIRE AGREEMENT**

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

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

**SECTION 23: NOTICES**

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

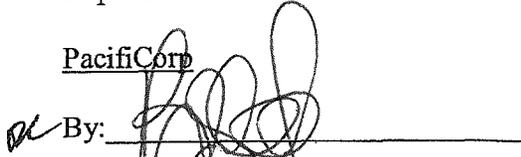
<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	OM Power 1, LLC Attn: Jagadeeswara Kodali 1755 E. Plumb Lane, Suite 220 Reno, Nevada 89502 Phone: 775-323-1175 Fax: 775-323-1176 Duns: 965018778 Federal Tax ID: 27-4577855
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as above)
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	To be provided under a separate letter

Notices	PacifiCorp	Seller
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as above)
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	(same as above)

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

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

PacifiCorp

By: 

Name: Bruce Griswold

Title: Director Short Term Origination and QF Contracts

OM Power 1, LLC

By: 

Name: Jagadeeswara Kodali

Title: Managing Member

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

Seller's Facility consists of two (2) binary cycle generators manufactured by Hyundai Ideal. More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):** Synchronous

**Model:** TBD

**Number of Phases:** 3

**Rated Output (kW):** 5,000 each

**Rated Output (kVA):** 6,250 each

**Rated Voltage (line to line):** 12.4 KV

**Rated Current (A):** Stator: 257 A; Rotor: TBD A

**Maximum kW Output:** 6,548 kW **Maximum kVA Output:** 8,185 kVA

**Minimum kW Output:** 4,785 kW

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

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**Facility Capacity Rating:** 6,625 kW at full capacity less station service loads

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

**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Station Service consists of transformer losses 100 KW, Condensing Fan 1,530 KW, Feed Pump 1,060 KW, Well Pump 640 KW and other miscellaneous loads 45 KW

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

13881 Hwy 140 East, Klamath Falls, OR 97603

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): PF .9

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

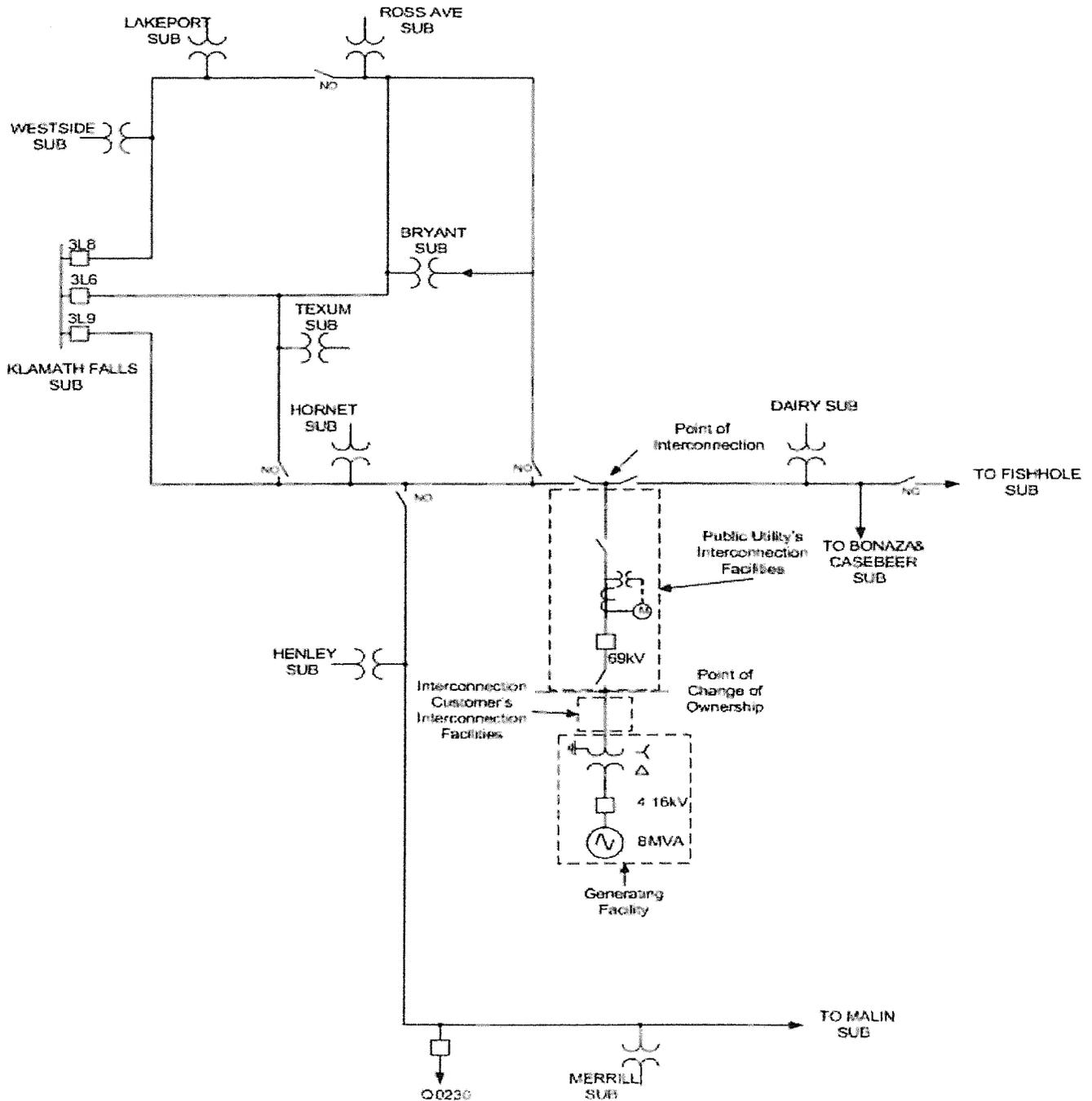
#### Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
  1. Point of metering and Point of Delivery are at the high side of the step-up transformer at the Point of Interconnection on PacifiCorp's 69 KV transmission line #9 Klamath Falls to Fish Hole
  2. A one-line diagram from the Interconnection Agreement is attached. Also a one-line diagram of the Facility that shows station service loads is attached.

**Interconnection Agreement for Small Generator Facility**  
**Tier 1, Tier 2, Tier 3 or Tier 4 Interconnection**  
**(Small Generator Facilities with Electric Nameplate Capacities of 10MW or less)**

**Attachment 2**

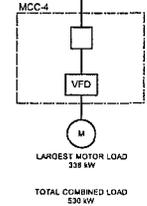
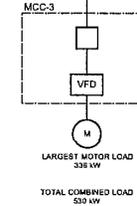
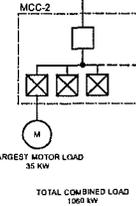
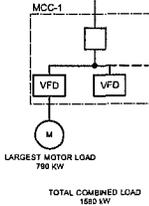
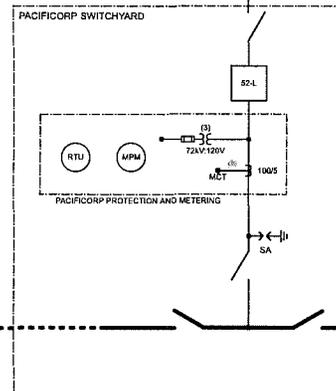
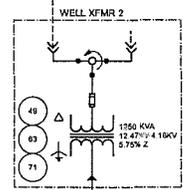
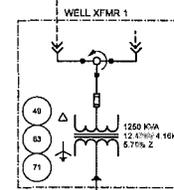
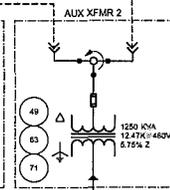
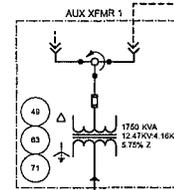
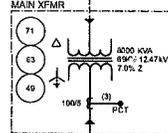
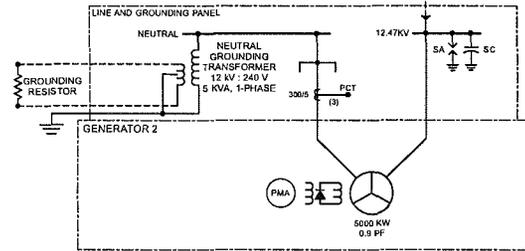
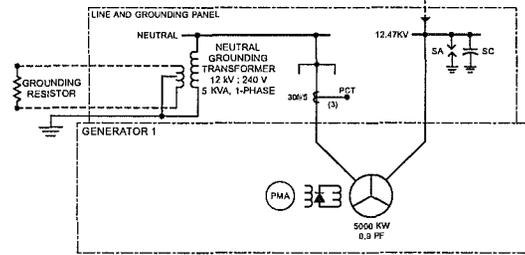
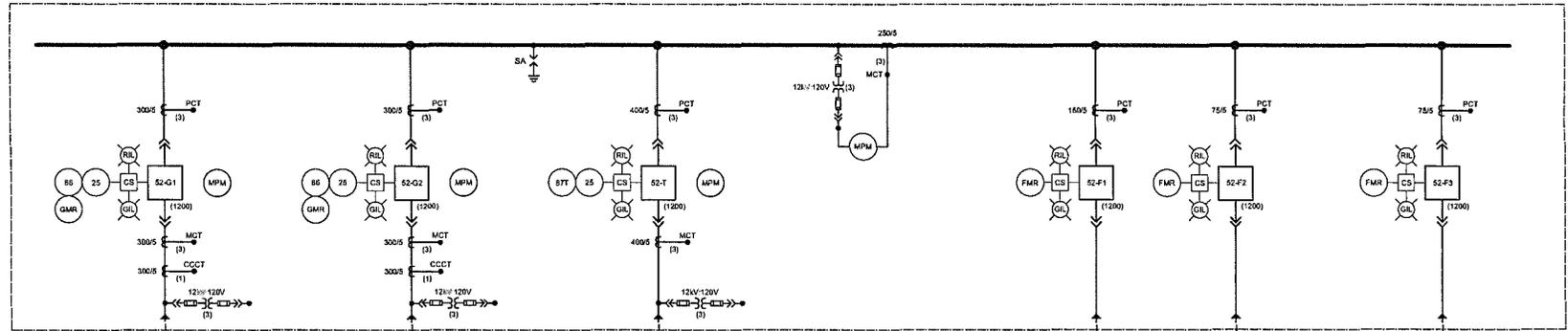
**One-line Diagram Depicting the Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades**



**DEVICE LEGEND**

- 25 - SYNC-CHECK RELAY
- 49 - TEMPERATURE SWITCH
- 52 - VACUUM CIRCUIT BREAKER
- 63 - PRESSURE SWITCH
- 71 - LIQUID LEVEL SWITCH
- 86 - LOCKOUT RELAY
- 87T - TRANSFORMER CURRENT DIFFERENTIAL RELAY
- CCCT - CROSS-CURRENT COMPENSATION TRANSFORMER
- CS - CONTROL SWITCH
- DECS - DIGITAL EXCITATION CONTROL SYSTEM
- FMR - FEEDER MANAGEMENT RELAY
- GL - GREEN INDICATING LIGHT
- GMR - GENERATOR MANAGEMENT RELAY
- MCC - MOTOR CONTROL CENTER
- MCT - METERING CURRENT TRANSFORMER
- MPM - MULTI-FUNCTION POWER METER
- O/H - OVERHEAD
- PCT - PROTECTION CURRENT TRANSFORMER
- PMA - PERMANENT MAGNET ALTERNATOR
- R/L - RED INDICATING LIGHT
- SA - SURGE ARRESTOR
- SC - SURGE CAPACITOR
- U/G - UNDERGROUND

MSB (MAIN SWITCHBOARD)



PACIFICORP 69KV TRANSMISSION LINE  
(KLAMATH FALLS TO FISH HOLE #9)

THIS DOCUMENT CONTAINS INFORMATION PROPRIETARY TO GEOTHERMAL DEVELOPMENT ASSOCIATES AND IS FURNISHED HEREIN ONLY UNDER THE EXPRESS CONDITIONS THAT THE INFORMATION CONTAINED HEREIN WILL NOT BE USED FOR OR REPRODUCED IN ANY MANNER OR FOR ANY PURPOSES WITHOUT THE WRITTEN CONSENT OF GEOTHERMAL DEVELOPMENT ASSOCIATES.					
REV	DESCRIPTION	DATE	DRN	CHKD	APP
4	GENERAL REVISIONS, ISSUED FOR DISCUSSION	30 MAR 12	SFG		

OM  
POWER 1  
LLC

**GEOTHERMAL DEVELOPMENT ASSOCIATES**  
 3740 BARRON WAY, RENO, NV 89511 USA  
 PHONE: 775-825-5800, FAX: 775-825-4880

PROJECT	OLENE GAP GEOTHERMAL POWER PROJECT		
TITLE	PLANT SINGLE-LINE DIAGRAM		
DRAWING NUMBER	1044E101	SHEET	1 OF 1
REV			4

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF12-203-000

Interconnection Agreement: Provided March 22, 2012

Agreement Assignment dated February 22, 2011 provided March 30, 2012

Fuel Supply Agreement: Geothermal Land Lease dated July 30, 2009 provided on March 30, 2012

Prior to COD: Insurance Coverage in satisfaction of Section 13.2

**Other Required Facility Documents:**

- State of Oregon, Division of Geological and Mineral Industries (DOGAMI) – Drilling permits for three wells. One is obtained and in force, two are applied for and pending final approval and will be obtained as soon as drilling arrangements are in place.
  - State of Oregon, Division of Parks & Recreation – Permanent access across State Park Lands to access all parcels for drilling and operations, applied for and obtained November 16, 2011.
  - U.S. Bureau of Reclamation – Permanent access across BOR land to facilitate access to all parcels. Temporary permit in place, permanent application filed, expected date of approval is April 1, 2012.
  - Oregon Department of Transportation – Permanent access from Highway 140 to property access. Temporary permit in place December 7, 2010; permanent application filed, pending completion of BOR access.
  - Cultural Archaeological Survey – Surveying of State Parks Lands to comply with State Historical Preservation requirements. Survey completed and filed with State Historical Preservation Office. Site complies with requirements.
  - Klamath County - Land Use Compatibility Statement. Two obtained, one filed and obtained, January 13, 2011 for the power plant and one filed and obtained February 2, 2011 for the water pit at OG#1.
  - Oregon Division of Environmental Quality, (DEQ) – Injection Test Well Permit, obtained February 14, 2011.
  - Oregon Division of Environmental Quality, (DEQ) - Storm water Runoff Permit, permit was not required due to limited size of the drilling site.
  - Federal Energy Regulatory Commission, (FERC) – Qualifying Facility, (QF) Status obtained.
  - Klamath County – Building Permit. Application to be filed upon completion of power plant design which is in progress.
  - Oregon Department of Energy - Electrical Facility Site Permit. Application to be filed upon completion of power plant design which is in progress.
  - Oregon Department of Water Resources – Geothermal Energy Brine Reinjection Permit. Application to be filed upon decision which well is the reinjection well.
- Western Regional Energy Generation Information System (WREGIS) – Membership application. Membership required depending on selection of PPA. To be filed if required after determination of the PPA.

REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

## EXHIBIT D

### A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

The results of the Motive Force Plan (see Exhibit D-1) analysis are summarized in the following table showing the monthly energy sales for both on-peak and off-peak periods.

Average Monthly Energy Sales			
	On Peak	Off Peak	Total
	kwh	kwh	kwh
January	3,028,826	2,401,731	5,430,557
February	2,745,347	2,109,351	4,854,699
March	3,063,784	2,285,789	5,349,572
April	2,581,646	2,233,426	4,815,072
May	2,459,161	2,229,129	4,688,290
June	2,134,924	1,866,226	4,001,150
July	1,725,697	1,933,404	3,659,101
August	1,951,365	1,789,117	3,740,482
September	2,090,575	2,210,856	4,301,431
October	2,790,801	2,212,302	5,003,103
November	2,867,729	2,327,919	5,195,649
December	2,920,779	2,522,927	5,443,706
		<b>TOTAL</b>	<b>56,482,812</b>
		<b>Average kW Net</b>	<b>6,448</b>

The following further explains the basis for this estimate:

- Energy sales are net production from the facility after accounting for parasitic loads both within the plant and in the wellfield for pumping.
- On-peak hours are assumed to be Monday-Saturday, 6 am to 10 pm. Off-peak hours are assumed to be Monday-Saturday, 10:01 pm to 5:59 am, all day Sundays and NREC holidays.

- Downtime due to unforeseen circumstances and for planned maintenance is accounted for by assuming the entire plant will be down for a total of 264 hours, or 11 days. In reality there will be times when only one unit is down for maintenance, and in all likelihood the entire plant would be down for less than 11 days.
- The scheduling of major maintenance can be coordinated with the needs of PacifiCorp to minimize significant impacts.

## **B. MINIMUM ANNUAL DELIVERY CALCULATION**

As the plant is expected to be operated as a base load facility, and since the geothermal energy available to the plant is constant under normal operation, there is no minimum annual energy delivery that can be described as expected.

Assuming that a single unit remained off-line for the first six months of the year, representing a major unplanned maintenance issue, the annual energy sales would total 41,913,142 kWh. This could also serve for the scenario where only half the geothermal energy was available to the plant for the first six months of the year due to an unexpected issue with wellfield production.

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

If the facility only required the equivalent of 132 hours of downtime for maintenance, the expected monthly energy sales would increase to the values in the following table.

Maximum Monthly Energy Sales			
	On Peak	Off Peak	Total
	kwh	kwh	kwh
January	3,075,663	2,438,871	5,514,534
February	2,787,801	2,141,970	4,929,771
March	3,111,162	2,321,136	5,432,298
April	2,621,569	2,267,963	4,889,532
May	2,497,190	2,263,600	4,760,790
June	2,167,939	1,895,085	4,063,024
July	1,752,383	1,963,302	3,715,685
August	1,981,540	1,816,784	3,798,324
September	2,122,904	2,245,045	4,367,948
October	2,833,957	2,246,513	5,080,470
November	2,912,076	2,363,918	5,275,994
December	2,965,945	2,561,942	5,527,887
		<b>TOTAL</b>	<b>57,356,257</b>
		<b>Average kW Net</b>	<b>6,548</b>

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

### *Introduction*

This Motive Force Plan is intended to describe the methodology used to estimate the net output of the Olene Gap Geothermal Plant located near Klamath Falls, Oregon.

The output of the plant is tied to the ambient atmospheric conditions, so output will vary both diurnally and seasonally.

### *Approach*

The proponent has specified certain parameters that serve as inputs to the analysis. Primary among these are the following:

- Binary technology will be used as the resource temperature is most appropriate for this type of plant. Binary plants are typically characterized by several important features, which include the use of a working fluid in a closed loop in the process. These types of plants typically produce geothermal brine that is kept pressurized to prevent the formation of steam, with the heat from the geothermal brine used to boil the working fluid which then drives the turbine.
- As water for cooling is not available, the plant will utilize air cooling to reject heat from the thermodynamic cycle. Hence the plant output is closely tied to ambient dry bulb temperature, rather than wet bulb temperature typical of a water-cooled plant.
- The plant will have a nameplate gross generation of 10.0 MW.
- Geothermal brine at a temperature of 129°C and a flow rate of 1.1 million kg/hr will be produced by the wellfield to provide the thermal energy for the plant.
- The design ambient temperature associated with producing the nameplate gross generation is 10°C.

Secondary assumptions used as inputs to the analysis will be explained below at appropriate junctures.

Using the specified parameters and secondary assumptions, a process simulation model was generated to estimate plant output on an hourly basis using Typical Meteorological Year data for Klamath Falls, Oregon. This data includes hourly ambient dry bulb figures allowing the performance of the plant to be estimated for each hour of a typical year.

## *Results*

Attachment 2 to Schedule 37 presents a Process Flow Diagram that shows details of the process for the design ambient temperature. It presents a base case for the process simulation, and shows the resulting net output of the plant typically described as “within the fence.” This means that parasitic loads associated with the process are identified, including the feed pump and the fans used in the air-cooled condenser. The parasitic load associated with pumping the geothermal brine is not included in this diagram. Pressures and temperatures of the both the geothermal brine and the working fluid are indicated. This diagram can therefore be thought of as a “snapshot” of the performance of the plant at the ambient design condition.

Using the process simulation software, variation from the design ambient condition can then be modeled to predict energy production for any given hour of any given day of the typical meteorological year. The estimated net energy production from the facility is presented in summarized monthly totals in the two tables above.

## *Limitations*

This level of analysis is subject to the following assumptions and limitations:

- Any given year may differ from the Typical Meteorological Year used in the analysis. Plant output is dependent on ambient conditions, so a year generally colder will cause the plant to produce more annual energy, and a year generally warmer will cause the plant to produce less annual energy.
- The downtime related to maintenance of the plant has been assumed to be typical of these types of facilities. Operations and maintenance efficiency can be significantly impacted by poor planning, lack of spare parts, etc.
- The plant has yet to be designed. As such, final design may result in changes to the assumptions used in the model in order to incorporate certain optimizations. For example, the assumption of the actual working fluid selection may change, which would result in an updated process flow diagram. In any event, final design will respect the predictions made herein as much as possible. There is a chance that the monthly energy deliveries could vary slightly, but the annual expected delivery would remain the same.
- As the ability of the resource to deliver the amount of thermal energy at the assumed parasitic pumping load has not been quantified, the assumption of this parasitic load is only estimated. It is expected that the proponent will define this parameter during project development, with the result that the gross nameplate generation may need to be adjusted accordingly.

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

*Certification*

As a registered Professional Engineer in the states of Nevada and California, I certify that given the assumptions and limitations stated herein, this analysis predicts the output of the plant using methods that represent a standard of care appropriate for the stage of development of the project. The Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum and minimum Net Output.



April 5, 2012

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Lawrence H. Green, P.E.

Date

## EXHIBIT E

### START-UP TESTING

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

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

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

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

**EXHIBIT F**

**Seller Authorization to Release Generation Data to PacifiCorp**

*[Interconnection Customer Letterhead]*

Transmission Services  
Attn: Vice President, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: OM Power 1, LLC Interconnection Request**

Dear Sir:

OM Power 1, LLC hereby voluntarily authorizes PacifiCorp's Transmission business unit to share OM Power 1, LLC 's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. OM Power 1, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.



JAGADEESWARA KODALI  
Name

Managing Member  
Title

April 10, 2012  
Date

**EXHIBIT G**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

Year	On-Peak \$/mWh	Off- Peak \$/mWh
2013	61.40	45.00
2014	79.60	61.00
2015	81.60	62.70
2016	83.90	64.60
2017	86.00	66.50
2018	88.70	68.70
2019	87.60	67.40
2020	88.50	67.90
2021	93.30	72.30
2022	98.40	77.00
2023	93.30	71.50
2024	90.30	68.10
2025	94.70	72.20
2026	96.50	73.60
2027	96.80	73.50
2028	100.40	76.76

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

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

**Applicable**

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

**Definitions**

**Cogeneration Facility**

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

**Qualifying Facilities**

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

**Small Power Production Facility**

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

**On-Peak Hours or Peak Hours**

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

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

**Off-Peak Hours**

All hours other than On-Peak.

**West Side Gas Market Index**

The monthly indexed gas price shall be the average of the price indexes published by Platts in "Inside FERC's Gas Market Report" monthly price report for Northwest Pipeline Corp. Rock Mountains, Northwest Pipeline Corp. Canadian Border, and Rockies/Northwest Stanfield, OR.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price as described and calculated under pricing option 5 for all Excess Output.

(continued)

**Same Site**

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

**Person(s) or Affiliated Person(s)**

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

**Shared Interconnection and Infrastructure**

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

**Dispute Resolution**

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

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

(continued)

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**Pricing Options**

**1. Fixed Avoided Cost Prices**

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

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2010 through 2013), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2010 through 2013), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**4. Firm Market Indexed Avoided Cost Prices**

Firm market index avoided cost prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Dow Jones Index Firm day-ahead Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde on-peak and off-peak prices. The monthly blending matrix is available upon request.

**5. Non-firm Market Index Avoided Cost Prices**

Non- Firm market index avoided cost prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are a blending of Dow Jones Index Non-firm day-ahead Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde on-peak and off-peak prices. The monthly blending matrix is available upon request.

(continued)

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**Monthly Payments**

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

**Fixed Avoided Cost Prices**

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

**Gas Market Indexed Avoided Cost Prices**

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

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.715 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

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

**Banded Gas Indexed Avoided Cost Prices**

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

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.715 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

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

**Firm Market Indexed and Non-firm Market Index Avoided Cost Prices**

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

(continued)

**AVOIDED COST PURCHASES FROM  
 QUALIFYING FACILITIES OF 10,000 KW OR LESS**
**Avoided Cost Prices**
**Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2010	5.12	3.95
2011	5.51	4.21
2012	5.87	4.36
2013	6.14	4.50
2014	7.96	6.10
2015	8.16	6.27
2016	8.39	6.46
2017	8.60	6.65
2018	8.87	6.87
2019	8.76	6.74
2020	8.85	6.79
2021	9.33	7.23
2022	9.84	7.70
2023	9.33	7.15
2024	9.03	6.81
2025	9.47	7.22
2026	9.65	7.36
2027	9.68	7.35
2028	10.04	7.67

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**
**Avoided Cost Prices (Continued)**
**Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast West Side Gas Market Index Price (2) \$/MMBtu	Estimated Prices (3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Capacity Adder (1)	Off-Peak Energy Adder		On- Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 90.4% * 57%)	Total Avoided Energy Costs - ((e) * 0.715)		(g) + (c)	((e) * 0.715) + (d)
2010	5.12	3.95					
2011	5.51	4.21					
2012	5.87	4.36					
2013	6.14	4.50					
			Market Based Prices 2010 through 2013				
2014			1.86	1.38	\$6.61	7.96	6.10
2015			1.89	1.40	\$6.81	8.16	6.27
2016			1.92	1.41	\$7.07	8.39	6.46
2017			1.96	1.41	\$7.32	8.60	6.65
2018			1.99	1.44	\$7.60	8.87	6.87
2019			2.03	1.45	\$7.40	8.76	6.74
2020			2.06	1.47	\$7.44	8.85	6.79
2021			2.10	1.53	\$7.97	9.33	7.23
2022			2.14	1.59	\$8.55	9.84	7.70
2023			2.18	1.51	\$7.89	9.33	7.15
2024			2.21	1.45	\$7.50	9.03	6.81
2025			2.25	1.51	\$7.98	9.47	7.22
2026			2.29	1.52	\$8.17	9.65	7.36
2027			2.33	1.57	\$8.08	9.68	7.35
2028			2.37	1.64	\$8.43	10.04	7.67
2029			2.42	1.71	\$8.83	10.43	8.02
2030			2.46	1.78	\$9.15	10.78	8.32
2031			2.50	1.81	\$9.32	10.98	8.48
2032			2.55	1.84	\$9.49	11.17	8.62

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2008 IRP.
- (2) A heat rate of 0.715 is used to adjust gas prices from \$/MMBtu to ¢/kWh
- (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**
**Avoided Cost Prices (Continued)**
**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices  $\$/kWh$** 

Deliveries During Calendar Year	Fixed Prices		Banded Gas Market Index				Forecast West Side Gas Market Index Price (2) \$/MMBtu	Estimated Prices (3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Capacity Adder (1)	Off-Peak Energy Adder	Gas Market Index			On-Peak Energy Price	Off-Peak Energy Price
					Floor 90%	Ceiling 110%			
	(a)	(b)	(c)	(d)	(e)	(f)		(g)	(h)
			Avoided Firm Capacity Costs / (0.876 * 90.4% * 57%)	Total Avoided Energy Costs - ((e) * 0.715)	(g) * 0.715 * 90%	(g) * 0.715 * 110%		(i) + (c)	MIN(MAX( (g) * 0.715), (e)), (f) + (d)
2010	5.12	3.95							
2011	5.51	4.21							
2012	5.87	4.36							
2013	6.14	4.50							
			Market Based Prices 2010 through 2013						
2014			1.86	1.38	4.25	5.20	\$6.61	7.96	6.10
2015			1.89	1.40	4.38	5.36	\$6.81	8.16	6.27
2016			1.92	1.41	4.55	5.56	\$7.07	8.39	6.46
2017			1.96	1.41	4.71	5.76	\$7.32	8.60	6.65
2018			1.99	1.44	4.89	5.98	\$7.60	8.87	6.87
2019			2.03	1.45	4.76	5.82	\$7.40	8.76	6.74
2020			2.06	1.47	4.79	5.85	\$7.44	8.85	6.79
2021			2.10	1.53	5.13	6.27	\$7.97	9.33	7.23
2022			2.14	1.59	5.50	6.72	\$8.55	9.84	7.70
2023			2.18	1.51	5.08	6.21	\$7.89	9.33	7.15
2024			2.21	1.45	4.83	5.90	\$7.50	9.03	6.81
2025			2.25	1.51	5.14	6.28	\$7.98	9.47	7.22
2026			2.29	1.52	5.26	6.43	\$8.17	9.65	7.36
2027			2.33	1.57	5.20	6.36	\$8.08	9.68	7.35
2028			2.37	1.64	5.42	6.63	\$8.43	10.04	7.67
2029			2.42	1.71	5.68	6.94	\$8.83	10.43	8.02
2030			2.46	1.78	5.89	7.20	\$9.15	10.78	8.32
2031			2.50	1.81	6.00	7.33	\$9.32	10.98	8.48
2032			2.55	1.84	6.11	7.46	\$9.49	11.17	8.62

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2008 IRP.  
 (2) A heat rate of 0.715 is used to adjust gas prices from \$/MMBtu to  $\$/kWh$   
 (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
 Actual prices will be calculated each month using actual index gas prices.

(continued)

**Example of Gas Pricing Options available to the Qualifying Facility**

An example of the two gas pricing options using different assumed gas prices is provided at the end of this tariff.

**Qualifying Facilities Contracting Procedure**

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

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

**1. Qualifying Facilities up to 10,000 kW**

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

**I. Process for Completing a Power Purchase Agreement**

**A. Communications**

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

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

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

(continued)

**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
  
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

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

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

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

(continued)

**II. Process for Negotiating Interconnection Agreements (continued)**

**A. Communications**

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

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

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

**B. Procedures**

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

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**
**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu	Fuel Index			Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%		Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
(a)	(b)	(c)	(d)	(e)	(f) (e) x 0.715	(g)	(h)	(i) (b) + (g)	(j) (a) + (i)	(k)	(l)	
2014	1.86	1.38	4.25	5.20	\$3.00	2.15	4.25	Floor	5.63	7.49	6.10	7.96
					\$5.00	3.58	4.25	Floor	5.63	7.49		
					\$7.00	5.01	5.01	Actual	6.39	8.25		
					\$9.00	6.44	5.20	Ceiling	6.58	8.44		
					\$12.00	8.58	5.20	Ceiling	6.58	8.44		

Gas Market Method												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu	Fuel Index			Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%		Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
(a)	(b)	(c)	(d)	(e)	(f) (e) x 0.715	(g)	(h)	(i) (b) + (f)	(j) (a) + (i)	(k)	(l)	
2014	1.86	1.38	Not Relevant		\$3.00	2.15			3.53	5.39	6.10	7.96
					\$5.00	3.58			4.96	6.82		
					\$7.00	5.01	Not Relevant		6.39	8.25		
					\$9.00	6.44			7.82	9.68		
					\$12.00	8.58			9.96	11.82		

WHEN RECEIVED MAIL TO:

PACIFICORP  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232  
Attn: Manager, Origination

**MEMORANDUM OF POWER PURCHASE AGREEMENT AND  
STEP IN RIGHTS**

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT AND STEP IN RIGHTS (“**Memorandum**”), dated as of the 10<sup>th</sup> day of April, 2012, is made by and between OM Power 1, LLC, a Delaware limited liability company, as GRANTOR (“**Seller**”) and PACIFICORP, an Oregon corporation, as GRANTEE (“**PacifiCorp**”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “**Parties**” and individually as “**Party**.”

RECITALS

A. Seller and PacifiCorp have entered into the Power Purchase Agreement (the “**Agreement**”) on the same date as this Memorandum and which Agreement is to terminate on May 31, 2028, pursuant to which Seller has agreed to construct, own, operate and maintain a geothermal energy generation facility (as more particularly defined in the Agreement, the “**Facility**”) for the generation of electric energy, to be located in Klamath County, Oregon, and upon completion of said Facility, to sell to PacifiCorp the electric energy to be produced by the Facility, all on the terms and conditions set forth in the Agreement. The leased property on which the Facility is to be constructed (the “**Premises**”) is more particularly described in the attached **Exhibit A**

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

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

TERMS

1. The Premises. Seller acknowledges and agrees that the real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Facility and items described in **Exhibit B**, are and will be owned or leased by

Seller and shall hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the provisions of Section 10.4 of the Agreement and this Memorandum.

2. Filings. Seller immediately upon the execution and delivery of this Memorandum, and thereafter from time to time, shall cause this Memorandum, any supplements hereto, any renewals and each instrument of further assurance to be filed, registered or recorded and refiled, reregistered or rerecorded in such manner and in such places as may be required by any present or future law in order to publish notice of and perfect the interest memorialized by this Memorandum, and authorizes PacifiCorp to do the same, and Seller shall pay all recording fees and costs in connection therewith.

3. Notice.

a. Agreement to Grant Step-in Rights. Until Seller substitutes another form of security pursuant to the Agreement or, prior to any termination of the Agreement due to an Event of Default of Seller, as identified in Section 11 of the Agreement, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under the Agreement) during the period provided for in the Agreement. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("**Facility Lender**"), a right to possess, assume control of, and operate the Facility, the Premises as described on Exhibit A, and items identified on Exhibit B that is equal to or superior to PacifiCorp's right under Section 10.4 of the Agreement.

b. Exercise of Step-in Rights. Pursuant to Section 10.4.2 of the Agreement, PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under Section 10.4 of the Agreement. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices (as the term is defined in Section 1.31 of the Agreement). Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller, pursuant to Section 10.4.2 of the Agreement, has irrevocably appointed PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under Section 10.4 of the Agreement.

c. Proceeds from operation of the Facility. Pursuant to Section 10.4.3 of the Agreement, during any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller (as such events are identified and described in Section 11.1 of the Agreement) have been cured.

d. Legal Title and Ownership. Pursuant to Section 10.4.4 of the Agreement, during any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain

legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

i. Resumption of Operation by Seller. Pursuant to Section 10.4.4(a) of the Agreement, in the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided in Section 10.4 of the Agreement, in that Seller (a) will resume operation of the Facility in accordance with the provisions of the Agreement, and (b) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under Section 10.4 of the Agreement.

ii. Foreclosure by Facility Lender. Pursuant to Section 10.4.4(b) of the Agreement, in the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

e. Liability and Return of Possession to Seller. Pursuant to Section 10.4.5 of the Agreement, PacifiCorp's exercise of its rights under Section 10.4 of the Agreement to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

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

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

[Remainder of page is intentionally left blank]

6. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from PacifiCorp at 825 NE Multnomah, Suite 600, Portland, Oregon 97232, Attn: Manager, Origination. Disclosure of any such information shall be subject to the terms and conditions of a written confidentiality agreement acceptable to PacifiCorp in its sole and absolute discretion.

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

OM Power 1, LLC,  
a Delaware limited liability company

PACIFICORP,  
an Oregon corporation

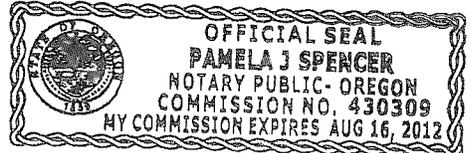
By: [Signature]  
Name: Jagadeeswara Kodali  
Title: Managing Member

By: [Signature]  
Name: Bruce Griswold  
Title: Director, Short term Origination

STATE OF Oregon )  
: ss.  
COUNTY OF Klamath )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of April 2012 by Jagadeeswara Kodali, the managing member of, OM Power 1, LLC, a Delaware limited liability company.

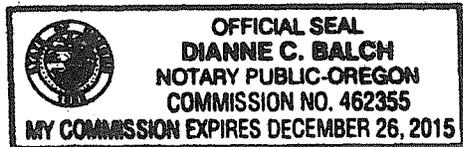
[Signature]  
NOTARY PUBLIC



STATE OF OREGON )  
: ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of April 2012 by Bruce Griswold, the Director, Short-Term of PACIFICORP, an Oregon corporation.

[Signature]  
NOTARY PUBLIC



**Exhibit A**

**LEGAL DESCRIPTION**

**Parcel 1:**

TOWNSHIP 39 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN

Sections 14 and 15: Portions, being more particularly described as follows:

Lot 1 of Section 15, Township 39 South, Range 10 East, of the Willamette Meridian; Lot 1 Lot 2, Lot 3, Lot 4, Lot 5, and Lot 6 and the NW 1/4 of the NE 1/4 of Section 14, Township 39 South, Range 10 East of the Willamette Meridian.

Excepting those portions thereof heretofore sold to the United States for reclamation and canal use, as located on the ground.

Also excepting 19.61 acres of land, more or less, conveyed to the City of Klamath Falls, Oregon, by deed recorded in Book 47 at Page 428.

Also excepting one acre heretofore sold to School District No. 4, described as follows:

Beginning at North line of Klamath Falls and Bonanza County Road and West line of Lot 1 Section 15, Township 39 South, Range 1 - East of the Willamette Meridian; thence East 3 1/5 chains; thence North 3 1/5 chains; thence West 3 1/5 chains; thence South 3 1/5 chains to the point of beginning.

Also excepting those lands granted to the State of Oregon by deed recorded March 31, 2005 in Book M05, Page 22272, shown therein as Parcels 1, 2, 3, 4 and 5 on Exhibit "A" of said Deed.

MTL: R-3910-015D0-00100-000 & R-3910-01400-00100-000; R-3910-01400-00400-000

**Parcel 2:**

TOWNSHIP 39 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN

Section 14: A portion, more particularly described as follows:

All that portion of Lot 7, Section 14, Township 39 South, Range 10 East of the Willamette Meridian, included in the parcel of land described as follows:

Beginning at a point on the North boundary of Lot 7, Section 14, Township 39 South, Range 10 - East, of the Willamette Meridian, from which the one-quarter section corner common to Sections 14 and 15 said, Township and Range aforesaid, bears North 34°44' West 1607.5 feet and running thence south 513.5 feet to an iron pin; thence West 341.7 feet to an iron pin; thence North 33°43' West 54.6 feet to an iron pin; thence North 34°37' East 204.4 feet; thence North

30°21' East 347.5 feet to an iron pin; thence East 80.4 feet to the iron pin marking the place of beginning.

Saving and excepting that portion of the above described parcel of land now occupied by the right of way for the F-1 lateral of the Klamath Project.

R-391-0-1400-600

Also, a parcel of land lying in Lot 7 of Section 14, Township 39 South, Range 10 East of the Willamette Meridian and being that part within Section 14 of the following described tract lying partly in Section 14 and partly in Section 15, to-wit:

Beginning at a one-inch iron pin set on the South bank of Lost River, said point being South 89°30' West a distance of 1054.0 feet from the section corner common to Sections 14, 15, 22 and 23, Township 39 South, Range 10 East of the Willamette Meridian, said distance being measured along the East-West Section line between Sections 15 and 22; thence North 89°30' East a distance of 366.0 feet to the North right of way of the Klamath Irrigation District Canal, said point being monumented by a 5/8 inch iron pin; thence following right of way of said canal, North 54°45' East a distance of 200.0 feet; thence North 62°33' East a distance of 452.0 feet; thence North 44°11' East a distance of 400.0 feet; thence North 55°25' East a distance of 215.0 feet to a point on the North bank of said canal and the South boundary of the County Road; thence North 52°05' West a distance of 93.0 feet to the South bank of Lost River, said point being monumented by a 5/8 inch iron pin; thence following the South bank of Lost River downstream to the point of beginning.

It is the intent that this description does not cover any of the Tract lying within Section 15.

MTL: R-3910-01400-00500-000; R-3910-01400-00600-000

**Parcel 3:**

Section 14: A portion, more particularly described as follows:

A tract of land situated on Government Lot 7, Section 14, T39S, R10E, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

That portion of said Lot 7 lying Northwesterly of Crystal Springs Road, a county road.

Except therefrom that portion conveyed to Peter Boor, and more particularly described as follows:

Beginning at a point on the bank of Lost River, said point being 1054 feet West of the Northeast corner of Section 22, of said Township and Range; thence East 366 feet to the right of way line of the U.S.B.R. ditch; thence following said right of line North 54°45' East 200 feet; thence North 64°30' East, 452 feet; thence 45°45' East 400 feet; thence North 57° East, 275 feet; thence

North 48° West, 138 feet to Lost River; thence following Lost River down stream, to the point of beginning.

MTL: R-3910-01400-00701-000

**Parcel 4:**

Section 15: A portion, more particularly described as follows:

All that portion of the SW 1/4 of the SE 1/4 of Section 15, Township 39 South, Range 10 East, Willamette Meridian, lying between the Southeasterly line of the right of way of the O.C. & E. and the Northerly line of the Klamath Falls Lakeview Highway.

Also that portion of Lot 1 of said Section 15, Township 39 South, Range 10 East, Willamette Meridian, described as follows:

Beginning at the intersection of the North line of the Klamath Falls-Lakeview Highway and the West line of said Lot 1; running thence 3 1/5 chains East, thence 3 1/5 chains North, thence 3 1/5 chains West, thence South 3 1/5 chains to the point of beginning.

Saving and excepting therefrom portions contained in the O.C. & E. Railway right of way and the U.S.R.S. "B" Canal.

MTL: R-3910-15D-1000

**Exhibit B**  
(Description of Facility)

Debtor: OM Power 1, LLC  
Secured Party: PacifiCorp

The Facility consists of:

1. Debtor's fee simple interests, if any, leasehold interests, if any, and easement interests in the real property located in the County of Klamath, State of Oregon, that is more particularly described in **Exhibit A** to this Memorandum (the "**Premises**");
2. All easements appurtenant, easements in gross, license agreements and other rights in land running in favor of Debtor relating to the ownership, operation, maintenance and/or repair of the Facility and appurtenant to any real property comprising the Premises (the "**Easements**");
3. Any land lying between the boundaries of the Premises and the center line of any adjacent street, road, avenue or alley, whether opened or proposed, and, if such land is described as two or more parcels, in any strips or gores that may separate or purport to separate any two or more of such parcels;
4. All buildings, structures and improvements now or hereafter located on the Premises and the Easements and relating to the ownership, operation, maintenance and/or repair of the Facility, including but not limited to, and with the exception of items owned by the fee owners of such land, by tenants or by third parties, all machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached and including all trade fixtures) now or hereafter located in, on or under such land or improvements and used or usable in connection with any present or future operation thereof, including but not limited to all power generation, fire suppression, piping, tanks, engines, interconnection and communications apparatus, and all additions thereto and replacements therefor (the "**Improvements**");
5. All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of the rights and interests described in (1) through (4) above;
6. All Contract Rights (to the extent assignable by Debtor without the consent of the other Contract signatory(ies) or to the extent such consent is granted), General Intangibles, Accounts, Deposit Accounts, Instruments, Documents, Chattel Paper and Goods (including all of Equipment, Fixtures and Inventory and all accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor) comprising the Facility or associated with the Facility, each as defined in the Uniform Commercial Code in effect in the State of Oregon (as amended or recodified from time to time);
7. Without limiting the generality of the foregoing in any way, all electric transmission rights, electric interconnection rights, and other rights and services related to transmitting generated electricity to market not otherwise described above;
8. All additions and accessions to, all proceeds, products, offspring and profits of, and all rights and privileges incident to, any of the foregoing whether previously or in the future acquired; and
9. All documents, contracts, books, manuals, reports, and records incident to any of the foregoing.